TILBURG UNIVERSITY

Detained abroad

van der Meulen, Femke

Document version:
Publisher's PDF, also known as Version of record

Publication date:
2015

Link to publication

Citation for published version (APA):
van der Meulen, F. B. A. M. (2015). Detained abroad: Assisting Dutch nationals in foreign detention 's Hertogenbosch: Uitgeverij BOXPress

General rights
Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Take down policy
If you believe that this document breaches copyright, please contact us providing details, and we will remove access to the work immediately and investigate your claim.

Download date: 17. Jun. 2018

DETAINED ABROAD

Assisting Dutch nationals in foreign detention

Femke Hofstee-van der Meulen

Detained abroad - Assisting Dutch nationals in foreign detention

© Femke B.A.M. Hofstee-van der Meulen

ISBN: 978-94-6295-410-6

Cover design:	Tjeerd Royaards © Prison Watch
Printed & lay out by:	Proefschriftmaken.nl, Uitgeverij BOXPress
Published by:	Uitgeverij BOXPress, 's-Hertogenbosch

No part of this book may be reproduced in any way whatsoever without the written permission of the author.

DETAINED ABROAD

Assisting Dutch nationals in foreign detention

Proefschrift

ter verkrijging van
de graad van doctor aan Tilburg University
op gezag van de rector magnificus, prof. dr. E.H.L. Aarts,
in het openbaar te verdedigen ten overstaan van een door het
college voor promoties aangewezen commissie in de aula van de Universiteit op
donderdag 10 december 2015 om 10.15 uur

door

Femke Bertje Addie Marie Hofstee-van der Meulen

geboren op 10 september 1970 te Eindhoven

Promotores:	Prof. dr. A.M. van Kalmthout
	Prof. dr. D. van Zyl Smit
Promotiecommissie:	Prof. mr. T. Kooijmans
	Prof. dr. A. Coyle
	Prof. dr. F. Dünkel
	Prof. mr. M. Kuijer

For Josephine, Hein and Tom

CHAPTER 0

FOREWORD

'Thank you for visiting me. You made me feel human again.'
German prisoner to researcher, Tihar jail, New Delhi (India) 26 December 1996

The idea of embarking on a study of Dutch nationals in foreign detention was not born overnight. I have been fascinated by the theme of foreign national prisoners for a long time. On reflection this interest is linked to an accumulation of four events of which the first took place nearly twenty years ago. At that time I had just finished my history studies at Leiden University and travelled to India to take an internship at the Dutch Embassy.

Tihar Central Jail, New Delhi

On Christmas day 1996, I went to the Tihar Central Jail in New Delhi, the biggest prison in Asia, to visit a German girl who was sentenced to 8 years imprisonment for the possession of marijuana. I visited her because I heard she liked to receive visitors. With a written accreditation from the Embassy and, after hours of waiting in the sun, I met her in a large room that was divided by a zoo-like fence. Both prisoners and visitors tried to press themselves as much as possible towards the bars of the fence in order to make contact. Despite the surreal circumstances we had a nice conversation. Via a hole in the fence I could give her oranges, drinks and cookies which I had brought for her. When it was time to say goodbye she expressed her gratitude for my visit and interest in her. She said that the visit had made her 'feel human again'. I left the prison dazed but also inspired because I had the feeling that my visit had done something good.

Wormwood Scrubs, London

The second event took place in the United Kingdom in the period 2001-2002. I was appointed as member of the Independent Monitoring Board of Wormwood Scrubs, a large, male prison in London. Members of the Independent Monitoring Board are volunteers who have unrestricted access to prison in order to monitor the situation of prisoners and to handle complaints by prisoners. Due to the proximity of London Heathrow airport the Wormwood Scrubs has a large foreign population. During my regular visits to this prison I spoke to many prisoners including foreigners. Being a 'foreigner' myself enabled me to understand the difficulties which foreign prisoners face in daily prison life as a result of a poor understanding of the language and distance from family at home.

Ezeiza Women's prison, Buenos Aires

In 2004 I accompanied a volunteer from the International Office of the Dutch Probation Service to Ezeiza Women's prison close to the airport of Buenos Aires in Argentina. During this visit we met a Dutch girl who had been arrested a week beforehand for offences related to drugs and was being held in remand. The girl had not yet been able to inform her family about her detention and she had to sleep on the floor. The visiting volunteer, who visited the prison very regularly and who was known by staff, promptly arranged a bed for her to sleep in and for her to make a phone call home. For another Dutch prisoner the visiting volunteer brought medicines and she had a long conversation with another Dutch woman. I was impressed by the work of the visiting volunteer and the impact her visit had had on these Dutch women. It even made me feel proud that my country did not neglect people who, despite being accused or convicted of a crime, were nonetheless not left on their own in a difficult situation.

Foreigners in European Prisons-study

The fourth and last event is related to the outcome of a study into foreign national prisoners in the European Union. Curious about the situation of foreign nationals in European prisons, Professor Anton van Kalmthout from Tilburg University and I participated successfully in a tender from the European Commission on Social Exclusion in 2005. The study was carried out together with the International Office of the Dutch Probation Service, Greifswald University, Jesuit Refugee Service-Europe (JRS), Hungarian Helsinki Committee, Confederation of European Probation (CEP), International Centre for Prison Studies (ICPS), Prisoners Abroad, Aire Centre and one national expert from each EU country. In September 2006, the first results of the research were presented to the European Parliament in Brussels. In May 2007 the book 'Foreigners in European prisons' was published. One of the main conclusions was that more than 120,000 foreign nationals are detained in the European Union, this is on average nearly one in every five prisoners. The study confirmed that foreign national prisoners experience many difficulties in daily prison life as a result of their foreign status,

language difficulties and distance from their families. As a result of this they are often unable to benefit from the same rights as national prisoners, they feel socially excluded and have reduced opportunities to prepare for a successful return to society. Further, prison authorities often do not take into consideration difficulties which foreign prisoners face as a result of their foreign status, nor do they address their specific needs. Also, diplomatic missions hardly provide any consular assistance to their nationals detained abroad.

Incentive to start thesis

Besides the rather grim picture of the situation of foreign national prisoners in the European Union, the study also identified a few 'good practices'. One of them is the fact that Dutch nationals in foreign detention receive extensive consular assistance. In addition to assistance from the Dutch Ministry of Foreign Affairs and diplomatic missions, they can receive assistance from visiting volunteers of the International Office of the Dutch Probation Service and from chaplains of the religious foundation Epafras. The regular visits by volunteers who visit their own nationals who are detained abroad appear to be unique. The extent to which assistance received by Dutch nationals in foreign detention is appreciated or the extent to which it has a positive impact on their detention experience and special needs had not yet been studied. This became the incentive to embark on this thesis in order to fill the gap in research, to create awareness and to encourage authorities to address the needs of this special group of prisoners.

Motive

My personal motive to dedicate time and energy, during a considerable number of years, to this thesis is to stimulate the social inclusion of prisoners from both a human perspective and for the sake of society. If we desire to live in a safe world then we have to do it together. In my opinion it is therefore important not to avert our eyes from prisoners but to make them feel that they are still human beings and to empower them to rebuild their lives. The fact that there are people around the world who visit prisoners on a voluntary basis is inspiring for me.

Gratitude

Conducting a thesis is a lonely process, but I have not carried it out on my own. In fact, without the assistance and moral support from others, I could never have completed it. For this reason I would like to thank a number of people. First of all my thanks go to the Dutch nationals in foreign detention who openly shared their experiences and personal thoughts with me during interviews and by completing a very long questionnaire. Without their insight this thesis could not have been written. Further I would like to thank the Dutch Ministry of Foreign Affairs for granting me access to Dutch nationals in foreign detention and also Dutch diplomatic missions for distributing 2,600 questionnaires. Staff and visiting

volunteers from the International Office of the Dutch Probation Service generously allowed me the opportunity to be a 'fly on the wall' in their office for several months and the opportunity to accompany their visits and training sessions. I would very much like to thank them for their trust and openness. I also thank staff and chaplains from Epafras. Relatives of prisoners and ex-prisoners have been also very kind in sharing their experiences with me. I appreciate especially their willingness to talk as these conversations often led to strong emotions reminding them of a difficult period in their life.

It was Professor Anton van Kalmthout who stimulated me to start a thesis. Although there were several moments when I regretted my decision to start this academic adventure as an external PhD-student, I thank him for his guidance and friendship. In a late stage Professor Dirk van Zyl Smit became my co-promoter and I am grateful for his kind support and advice. I am also very thankful to Arjan Alberts, Alexandra Shearn, Elina Steinerte, Emily Bremers, Hindpal Singh Bhui, Mumbai-team, Mary Murphy and John Cameron-Webb who kindly proof-read parts of the text of this thesis. I like to thank my colleagues at the Dutch Inspectorate of Security and Justice for their support and collegiality. They invented the verb *poggen* for my thesis avoidance behaviour.[1] Furthermore, I owe much gratitude to my family and friends for their continuous moral support and friendship.
The person I am most grateful to is Mikkel Hofstee who became involuntarily a prison expert. I like to thank him for his confidence in me, humour and endurance during this thesis. This book is dedicated to our dearest: our daughter Josephine and our sons Hein and Tom.

Femke Hofstee-van der Meulen
Maarssen, October 2015

1 POG-en (Proefschrift Ontwijkend Gedrag)

CONTENT

FOREWORD **7**

CONTENT **11**

CHAPTER 1: INTRODUCTION **21**
1.1 Situation 22
1.2 Relevance of research and objectives 24
1.3 Hypotheses and research questions 25
1.4 Structure of thesis 26
1.5 Scope and terminology 27

CHAPTER 2: METHODOLOGY **31**
2.1 Introduction 32
2.2 Questionnaires 32
2.2.1 Questionnaire for Dutch FNPs 32
2.2.1.1 Scope 32
2.2.1.2 Content 34
2.2.1.3 Format 35
2.2.1.4 Reach and response rate 35
2.2.1.5 Reasons for no response 37
2.2.2 Questionnaire for relatives of Dutch FNPs 37
2.2.3 Questionnaire for consular staff 38
2.3 Interviews and letters 38

2.3.1 Interviews with Dutch FNPs 39
2.3.2 Interviews with other respondents 40
2.3.2.1 Dutch ex-FNPs 40
2.3.2.2 Relatives of Dutch FNPs 41
2.3.2.3 Consular staff 41
2.3.2.4 Volunteers and staff of the Dutch Probation Service 42
2.3.2.5 Chaplains and staff of Epafras 43
2.3.2.6 Consultations with organisations 43
2.3.3 Letters 43
2.4 Research methods 44
2.4.1 Differences 45
2.4.1.1 EU vs non-EU 45
2.4.1.2 Pre-trial vs sentenced 46
2.4.2 Research ethics 47

CHAPTER 3: FOREIGN NATIONAL PRISONERS 51
3.1 Introduction 52
3.2 Statistics 52
3.2.1 Prudence with figures 52
3.2.2 Worldwide 53
3.2.3 Regional overview 53
3.2.4 Trends worldwide 56
3.2.5 European Union 57
3.2.5.1 Trends EU 57
3.2.5.2 Pre-trial detention EU 59
3.2.6 Over-representation? 60
3.2.7 Explanations 60
3.3 Special legal rights of FNPs 64
3.3.1 Consular rights 65
3.3.2 Right to information and interpretation 65
3.3.3 Humane treatment and fair trial 66
3.3.4 Transfer agreements 67
3.3.5 FNP Recommendations 68
3.4 Situation of FNPs 68
3.4.1 Foreign status 68
3.4.1.1 Non-custodial sanctions 68
3.4.1.2 Access to open prisons and prison leave 69
3.4.1.3 Treatment 70
3.4.1.4 Access to consular authorities 71
3.4.1.5 Availability of consular assistance 72

3.4.1.6 Resettlement activities 73
3.4.1.7 Immigration and deportation 74
3.4.1.8 Aftercare 75
3.4.2 Language skills 76
3.4.2.1 Understanding rules, rights and procedures 76
3.4.2.2 Information about arrest, charges and assistance of an interpreter 77
3.4.2.3 Legal support 79
3.4.2.4 Social inclusion within prison 80
3.4.2.5 Participation in prison activities 81
3.4.2.6 Interaction with prison staff and fellow prisoners 81
3.4.3 Distance from family 82
3.4.3.1 Contact with family 82
3.4.3.2 Support and ability to organise resettlement at home 83
3.4.3.3 Relatives of prisoners 84
3.4.4 Cultural and religious differences 84
3.4.4.1 Culture 85
3.4.4.2 Religion 85
3.4.4.3 Food 86
3.4.4.4 Allocation and cell size 86
3.4.4.5 Clothing and hygiene 87
3.4.5 Vulnerability 87
3.5 Special needs of FNPs 88

CHAPTER 4: DUTCH NATIONALS IN FOREIGN DETENTION 93
4.1 Introduction 94
4.2 Statistics 94
4.2.1 Numbers 94
4.2.2 Trends 95
4.2.3 Detention countries 96
4.2.3.1 Popular detention countries 97
4.2.3.2 EU vs non-EU 97
4.2.4 International context 98
4.2.5 Explanations 98
4.3 Personal characteristics 99
4.3.1 Gender 99
4.3.2 Age and marital status 100
4.3.3 Country of birth and nationality 100
4.3.4 Education 101
4.4 Crime and punishment 102

4.4.1 Types of crime 102
4.4.2 Detention period 103
4.4.3 Motives 103
4.4.4 Guilty? 104
4.4.5 Recidivism 105

CHAPTER 5: CONSULAR ASSISTANCE TO DUTCH FNPs 107
5.1 Introduction 108
5.2 Context of consular assistance 108
5.2.1 Dutch citizenship 108
5.2.2 Historical context 109
5.2.3 Basic principles of consular assistance 111
5.2.4 Adherence to basic principles 111
5.2.5 Entitlement to consular assistance 113
5.2.5.1 Formal position 113
5.2.5.2 Position in practice 114
5.3 Organisations which provide consular assistance 114
5.3.1 Ministry of Foreign Affairs and diplomatic missions 115
5.3.1.1 Activities 116
5.3.1.2 Monthly allowance and material support 117
5.3.1.3 Transfer 118
5.3.1.4 Consular staff 118
5.3.1.5 Funding and cooperation 119
5.3.2 International Office of the Dutch Probation Service 119
5.3.2.1 History 120
5.3.2.2 Activities 121
5.3.2.3 Volunteers 122
5.3.2.4 Funding and cooperation 123
5.3.3 Religious foundation Epafras 124
5.3.3.1 History 124
5.3.3.2 Activities 125
5.3.3.3 Chaplains 126
5.3.3.4 Funding and cooperation 127
5.3.4 Key figures 128
5.4 Analysis of consular assistance to Dutch FNPs 129

CHAPTER 6: RESETTLEMENT IN THE NETHERLANDS 131
6.1 Introduction 132
6.2 Resettlement of ex-prisoners in the Netherlands 132
6.2.1 During detention 133

6.2.1.1 Screening five basic necessities 134
6.2.1.2 RISC-assessment - plan of action - intervention 135
6.2.1.3 Factors with a high correlation to re-offending 137
6.2.2 During conditional / supervised release 137
6.2.3 After release 138
6.3 Resettlement of Dutch ex-FNPs in the Netherlands 139
6.3.1 During detention 139
6.3.2 After release 140
6.3.3 Prison transfer 141
6.4 Studies of 'effective' interventions 142
6.4.1 *What Works?* 142
6.4.2 *How does it work?* 144
6.4.3 *Who works?* 145
6.5 Analysis of resettlement in the Netherlands 146

CHAPTER 7: DETENTION EXPERIENCE OF DUTCH FNPs 149
7.1 Introduction 150
7.2 Well-being and treatment of the prisoner 150
7.2.1 Detention conditions 151
7.2.1.1 Cell 151
7.2.1.2 Hygiene 154
7.2.1.3 Food 155
7.2.1.4 Drugs 156
7.2.2 Safety 156
7.2.3 Discriminatory and ill-treatment 158
7.2.4 Health 161
7.3 Awareness of legal procedures and rights 162
7.3.1 Clarity of rules and rights 162
7.3.1.1 Consular rights 164
7.3.2 Punishments and complaints 164
7.3.3 Legal support 166
7.3.4 Judicial process and interpretation 167
7.3.5 Immigration and deportation 168
7.4 Contact with the outside world and family 169
7.4.1 Contact with the outside world 169
7.4.1.1 First contact after arrest 170
7.4.1.2 Contact with diplomatic mission 170
7.4.1.3 Contact with lawyer 171
7.4.1.4 Contact with family 171
7.4.1.5 No contact 172

7.4.2 Means of contact 172
7.4.2.1 Letters 172
7.4.2.2 Telephone 173
7.4.2.3 Visits 175
7.5 Social inclusion within the prison 176
7.5.1 Activities 176
7.5.1.1 Work 177
7.5.1.2 Education, library and sports 179
7.5.2 Religion 179
7.5.3 Interaction with prison staff 180
7.5.4 Interaction with fellow prisoners 181
7.6 Preparation for release and resettlement 182
7.6.1 Reintegration activities 183
7.6.2 Prison leave and release 183
7.6.3 Aftercare 185
7.6.4 Expectations of the future 185
7.7 Analysis of detention experience 186

CHAPTER 8: EVALUATION OF CONSULAR ASSISTANCE 189
8.1 Introduction 190
8.2 Received assistance 190
8.2.1 Overview 192
8.2.2 Personal visit 193
8.2.2.1 Timing of first visit after arrest 194
8.2.2.2 Frequency of visits 195
8.2.3 Informing prisoners 196
8.2.4 Contact with family 197
8.2.5 Monitoring the legal case and attending trials 198
8.2.6 Attention to health 199
8.2.7 Monitoring humane treatment 200
8.2.8 Preparing for release and resettlement 201
8.2.9 Differences between EU and non-EU, pre-trial and sentenced 201
8.2.9.1 Ministry of Foreign Affairs 201
8.2.9.2 Probation Service 203
8.2.9.3 Epafras 204
8.2.10 Reasons for not receiving assistance 205
8.3 Appreciation of consular assistance 206
8.3.1 Appreciation of consular assistance by prisoners 206
8.3.2 Ministry of Foreign Affairs 208
8.3.3 Probation Service 211

8.3.4 Epafras 213
8.3.5 Differences between EU vs non-EU and pre-trial vs sentenced 214
8.3.5.1 Ministry of Foreign Affairs 214
8.3.5.2 Probation Service 215
8.3.5.3 Epafras 216
8.3.6 Appreciation by prisoners who receive assistance from all three organisations 216
8.3.7 Appreciation of assistance by relatives of prisoners 217
8.3.7.1 Most important types of assistance 218
8.3.7.2 Assistance to prisoners 219
8.3.7.3 Assistance to relatives 220
8.3.8 Indication of appreciation by prisoners who did not receive assistance 221
8.4 Analysis of consular assistance 222
8.4.1 Overlapping activities 222
8.4.2 Consonances and discrepancies 223

CHAPTER 9: IMPACT OF CONSULAR ASSISTANCE ON DETENTION EXPERIENCE AND SPECIAL NEEDS 227
9.1 Introduction 228
9.2 Impact of assistance on detention experience 228
9.2.1 Overview 228
9.2.1.1 Hygiene 229
9.2.1.2 Safety 230
9.2.1.3 Medical care 230
9.2.1.4 Rules 231
9.2.1.5 Contact with the outside world 231
9.2.1.6 Activities 232
9.2.1.7 Interaction with prison staff 232
9.2.1.8 Interaction with fellow prisoners 233
9.2.1.9 Reintegration and expectations future 233
9.3 Impact of assistance on special needs 234
9.3.1 Well-being and treatment of the prisoner 235
9.3.2 Awareness of legal procedures and rights 238
9.3.3 Contact with outside world and family 240
9.3.4 Social inclusion within prison 243
9.3.5 Preparation for release and aftercare 245
9.4 Analysis of 1st and 2nd hypothesis 247
9.4.1 Impact of those who provide assistance 247
9.4.1.1 *Belief-effect* 249
9.4.2 Reflection 250

CHAPTER 10: RESETTLEMENT OF DUTCH ex-FNPs **253**
10.1 Introduction 254
10.2 Expectations upon return to the Netherlands 254
10.2.1 Expectation figures 254
10.2.2 Expectation needs 254
10.2.3 Expectations of support 256
10.2.4 Recidivism 256
10.2.4.1 Factors that may lead to recidivism 257
10.2.4.2 General reasons for avoiding recidivism 258
10.2.4.3 Personal reasons to avoid recidivism 259
10.3 Resettlement of Dutch ex-FNPs 260
10.3.1 Experiences of ex-prisoners, relatives and others 260
10.3.2 Municipalities and aftercare 261
10.3.3 Organisations which provide consular assistance 263
10.3.4 Prognosis for recidivism 263
10.4 Analysis of 3rd hypothesis 264

CHAPTER 11: THE HUMAN RIGHTS PROTECTION OF FNPs **267**
11.1 Introduction 268
11.2 FNPs and human rights 268
11.2.1 Role of the authorities in the protection of human rights 269
11.2.2 Infringements of basic human rights 269
11.2.2.1 Information and translation 270
11.2.2.2 Right to assistance of a lawyer and an interpreter 272
11.2.2.3 Prohibition of ill-treatment 274
11.2.2.4 Prison conditions 275
11.2.2.5 Contact with family 276
11.2.2.6 Medical care 277
11.2.2.7 Religious care 278
11.2.2.8 Resettlement 278
11.2.2.9 Alternatives to custodial sentences 278
11.2.2.10 Conclusions 279
11.2.3 Responsibility of States 281
11.2.3.1 National 282
11.2.3.2 International 284
11.2.3.3 Diplomatic protection 286
11.2.4 Safeguards 289
11.3 Foreign nationals in Dutch prisons 294
11.4 Dutch FNPs and human rights 298
11.4.1 Attention to the human rights of FNPs 298

11.4.2 Ministry of Foreign Affairs 300
11.4.3 Probation Service 303
11.4.4 Epafras 304
11.4.5 Impact of the person who provides assistance 305
11.5 New policy on consular assistance 305
11.6 Codification of the right to consular assistance 308

CHAPTER 12: CONCLUSIONS AND RECOMMENDATIONS 313
12.1 Introduction 314
12.2 Hypotheses 314
12.2.1 Hypothesis 1: Consular assistance improves the detention experience 314
12.2.2 Hypothesis 2: Consular assistance addresses the special needs of FNPs 314
12.2.3 Hypothesis 3: Consular assistance contributes to effective resettlement after release 315
12.3 Key issues 316
12.3.1 Vulnerability of foreign national prisoners 316
12.3.2 Infringements of basic human rights of Dutch FNPs 317
12.3.3 Need to provide assistance to FNPs 319
12.3.4 Organisations that should and/or could provide assistance 320
12.3.5 Aims of assistance to FNPs 322
12.3.6 Important elements of consular assistance 324
12.3.7 Cooperation of consular authorities to address human rights violations 326
12.3.8 The strengths and weaknesses of consular assistance to Dutch FNPs 327
12.3.9 Need to develop a special human rights instrument for FNPs 332
12.3.10 The right to receive consular assistance 333
12.4 Final remarks 334

Bibliography 337

Literature 339

Abbreviations 350

Summary 352

Summary in Dutch 363

Annexes 375

Annex 1 Questionnaires 375
Annex 1.1 Letter to prisoners about questionnaire 377
Annex 1.2 Letter to prison staff about questionnaire 378
Annex 1.3 Questionnaire prisoners 379
Annex 1.4 Questionnaire contact persons prisoners 389
Annex 1.5 Questionnaire diplomatic posts 396
Annex 2 List of respondents 397
Annex 3 Overview total number FNPs 2005-2010-2015 401
Annex 4 Overview number of Dutch nationals in foreign detention (1995-2015) 404
Annex 5 Overview location of Dutch diplomatic missions (2015) 406
Annex 6 Overview numbers International Office and Epafras 407
Annex 7 Scores detention experience 408
Annex 8 Scores evaluation consular assistance 415
Annex 9 Scores impact consular assistance on detention experience and special needs 420
Annex 10 Scores expectations resettlement in the Netherlands 423
Annex 11 UN and Council of Europe Recommendation on Foreign national prisoners 426
Annex 12 Recommendations thesis 432

CHAPTER 1

INTRODUCTION

'For those arrested outside their own country, detained hundreds of miles from home, unable to speak the local language, ignorant of the local legal system and with no idea of who to turn to for help, consular assistance provides a lifeline. It is, however, a public service which has been subject to almost no detailed examination whether by academic institutions, bodies like Fair Trials International or even Ministries of Foreign Affairs themselves.'

Fair Trials International, November 2009

1.1 Situation

Worldwide more than 10 million people are imprisoned. This group includes foreign national prisoners (FNPs), persons who are detained in relation to a criminal offence in a country of which they are neither a national nor a resident, and to whom another country is entitled to provide consular assistance. The actual size of the group of FNPs is not known but it is likely that the group is considerable and that the number will rise due to globalisation. In the European Union, nearly one in five prisoners is a foreign national.[1] The presence of FNPs has direct consequences for prison and judicial authorities, consular authorities, foreign nationals and their families and ultimately for societies as a whole.

Studies show that FNPs face difficulties during their detention as a result of communication problems, distance from their families and their foreign origin.[2] It seems that prison authorities do not recognise their particular situation and do not address their special needs adequately.[3] Whether FNPs have fewer opportunities to exercise their rights is not clear.

Prison authorities are responsible for treating prisoners, including those of foreign origin, humanely and with respect for the inherent dignity of the human person.[4] According to legally binding human rights law prison authorities are obliged to inform prisoners in a language they can understand about the reason for detention and to provide access to legal support and to free interpretation in court.[5] States should further ban discrimination and guarantee that all persons receive equal and effective protection against discrimination.[6] It is further important to mention that human rights law increasingly refers to the so-called 'positive obligation' of States to act in order to ensure that individuals on their territory, including those deprived of their liberty, can effectively enjoy their human rights.[7] This means that States can be held responsible for the violation of their national and/or international obligations, which derive from international human rights law. Liability arises when an individual, including a foreigner, is physically present on the State's territory and therefore within its jurisdiction.

Although the concept of jurisdiction is primarily territorial consular authorities can in certain circumstances exercise extra-territorial public powers.[8] Diplomatic and consular agents are

---

1 See section 3.2.5 in chapter 3.

2 A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

3 UNODC, *Handbook on Prisoners with special needs* (UN Publications New York 2009) p 79-98

4 Article 10.1 and Article 14.3 of the International Covenant on Civil and Political Rights (ICCPR)

5 Article 14.3 a) and Article 14.3 d) and Article 14.3 f) ICCPR

6 Article 26 ICCPR

7 Piet Hein Kempen,`Positive obligations to ensure the human rights or prisoners` in Peter J.P. Tak and Manon Jendly (eds) *Prison policy and prisoners' rights. The protection of prisoners' fundamental rights in international and domestic law* (Wolf Legal Publishers, Nijmegen 2008) p 21-44

8 Martin Kuijer, *Training manual on international human rights standards in the field of prevention of torture* (CNDH, April 2013) p 4-5

entitled on the basis of Article 36 of the Vienna Convention on Consular Relations (VCCR) to visit their nationals in foreign detention and to provide them with assistance. The State remains responsible however for treating prisoners, irrespective of the nationality, humanely and according to the rules.

Foreign national prisoners have a distinctive and unique right. According to the same Vienna Convention they are allowed to make contact with their diplomatic mission and to receive assistance from the authorities of their country of origin. Yet diplomatic missions are often not able or willing to provide consular assistance to their nationals in foreign detention. Furthermore, 'home countries' are often not aware when nationals return from detention abroad and have therefore no adequate aftercare facilities available. This situation can hamper the resettlement process and can therefore have negative and costly consequences for the ex-prisoner and, ultimately, society as a whole. The consequence of the lack of attention paid to FNPs by prison authorities, consular authorities and countries of origin is that FNPs are 'doubly' socially excluded, from society and also within the prison.

Worldwide there are around 2,300 Dutch nationals who are detained abroad.[9] These Dutch FNPs are not neglected by the Netherlands. The Dutch Ministry of Foreign Affairs, together with the International Office of the Dutch Probation Service and the religious foundation Epafras, are actively involved in providing consular assistance.[10] For the past three decades Dutch FNPs have been visited by representatives of these organisations on a voluntary basis. This Dutch approach is widely regarded as a good practice and the way it is organised is unique in the world.[11] It has, however, never been evaluated or studied closely. Nor has the actual detention experience of (Dutch) FNPs and the impact of assistance on their detention experience, their distinctive needs and their resettlement.

9 See section 4.2.1 in chapter 4.

10 The assistance by the Dutch Probation Service and Epafras is also called 'consular assistance' since it is almost entirely funded by the Dutch government and the Ministry of Foreign Affairs arranges access to prisoners. See also section 1.5 Scope and terminology in this chapter.

11 Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 15) p 5 / A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons*, (Wolf Legal Publishers Nijmegen 2007) p 75, 87 (recommendation 69) / Hans van Kooten, *Eyes and Ears - Liaison Office for Dutch Prisoners Abroad and International contacts (*Reclassering Nederland Utrecht 2005) p 9 / European Conference on Foreign National Prisoners, Nieuwersluis 16-17 October 2008 / Epafras, *Nieuwsbrief* (July 2013) www.epafras.nl/16-nieuwsbrief.html

1.2 Relevance of research and objectives

The existence of FNPs worldwide, the general lack of attention to their specific situation and indications that their rights are being infringed are a major concern. The assumption is that when authorities do not acknowledge FNPs as a special group of prisoners, prison populations will become even more difficult and costly to manage[12], prison authorities will be criticised for inhuman or degrading treatment of FNPs, consular authorities will receive criticism for not providing effective consular assistance.[13] Societies will face difficulties with the resettlement of ex-prisoners once they return from detention abroad. That may lead to re-offending, which is a negative and costly consequence for society as a whole. It is therefore important that prison/judicial authorities, consular authorities, non-governmental organisations and aftercare organisations become more aware of the situation of FNPs, their distinctive rights and needs, and about beneficial types of assistance.

It might be possible that consular authorities can also play a preventive role by monitoring whether their nationals in foreign detention are detained and treated in compliance with international human rights law. In case FNPs encounter difficulties consular authorities can make prison authorities aware of these bottlenecks and ensure via follow-up visits that they are addressed adequately. Exercising the right of States to visit nationals in foreign detention and to provide consular assistance can be beneficial for individual prisoners and their families, for prison authorities and societies in general. As mentioned in the quote at the beginning of this chapter consular assistance can be a lifeline for FNPs. Especially when taking into consideration that FNPs are often unable to speak the local language, are ignorant of the local legal system and have no idea of who to turn to for help. This public service has however not yet been subject to detailed examination.

The general objective of this thesis is to contribute to existing literature on FNPs. This is done by bringing together figures and information about FNPs from secondary data and by verifying, on the basis of primary data, whether consular assistance, as received by Dutch FNPs, has a positive effect on their detention experience and whether it adequately addresses their special needs. Since the resettlement of prisoners into society after release is not only a particular need but also an essential feature of the detention, it receives particular attention in this thesis.

The ultimate goal is that the outcome of this thesis will inspire and stimulate prison authorities, diplomatic missions, civil society organisations and after-care organisations to

12 Council of Europe, 14th Conference of Directors of Prison Administrations (CDAP), Vienna 19-21 November 2007

13 Foreign Affairs Committee*, Support for British nationals abroad: The Consular Service* (House of Commons, Fifth Report of Session 2014-15) p 54

treat FNPs as a special group of prisoners, like women and juveniles, and to address their distinctive rights and needs adequately.

1.3 Hypotheses and research questions

The Dutch authorities do, as mentioned before, not forget Dutch nationals in foreign detention and many of them receive from them consular assistance. This thesis is therefore focussed on this particular group and the impact of the assistance they receive. The central research question is:

Central research question

Does consular assistance, as received by Dutch nationals in foreign detention, contribute to their detention experience, special needs and resettlement?

This research question is studied by combining a literature study with questioning Dutch nationals in foreign detention and others involved. This thesis builds around the following three hypotheses:

Hypotheses

1. Consular assistance, as received by Dutch FNPs, improves their detention experience.
2. Consular assistance, as received by Dutch FNPs, addresses their special needs.
3. Consular assistance, as received by Dutch FNPs, contributes to their resettlement.

In order to validate the above hypotheses, the following research has been conducted:

1. Desk research on FNPs in research literature, studies, statistics, legislation and reports by independent monitoring bodies.
2. Field research through questionnaires and interviews. In total 2,600 questionnaires were send to Dutch FNPs of which 584 returned. Over 140 interviews were conducted with Dutch FNPs, ex-prisoners, relatives, consular staff, volunteers, chaplains and others. A further 48 letters were received from Dutch FNPs.

To explore whether these three hypotheses can be upheld or not nine main research questions have been formulated. Each research question is tackled in a separate chapter of this thesis. The first four questions are based on desk research and the last five questions on field research. The research questions are:

Research questions

1. What is the situation of FNPs worldwide; do they have any distinctive rights and needs? (Chapter 3)
2. What is the background and location of Dutch nationals in foreign detention? (Chapter 4)
3. How is consular assistance to Dutch FNPs organised in the Netherlands, and what do the different organisations involved aim to achieve? (Chapter 5)
4. How is resettlement of ex-prisoners arranged in the Netherlands and what are the factors that are considered to be 'effective' in stimulating their resettlement? (Chapter 6)
5. How do Dutch FNPs experience their detention abroad; and are the findings in line with what has been published in the literature? (Chapter 7)
6. What kind of consular assistance do Dutch FNPs receive in practice and which types of assistance do they regard as the most important? (Chapter 8)
7. What is the impact of consular assistance on the detention experience and the special needs of Dutch FNPs? (Chapter 9)
8. What are the expectations, needs and experiences of Dutch FNPs in relation to their resettlement in the Netherlands? (Chapter 10)
9. What does the situation of Dutch FNPs say about the protection of their human rights? (Chapter 11)

1.4 Structure of thesis

This thesis consists of twelve chapters. This chapter serves as an introduction. Chapter 2 describes the methodology used. It discloses how the research has been planned, which primary and secondary sources have been used, how data have been analysed and which research ethics have been applied.

Secondary data

The focus in chapter 3 is on what is already known in research literature about FNPs. This chapter serves as background as it will be used in other chapters to compare with findings from primary sources. Based on findings in research literature and in reports by independent monitoring bodies this chapter analyses whether FNPs have specific rights and needs that can be identified as characteristic of FNPs.

Little is known about the personal characteristics of FNPs. The aim of chapter 4 is to provide insight into Dutch FNPs and to find out who they are, where they are detained and for what reasons. Chapter 5 explores how consular assistance to Dutch FNPs has been organised in the Netherlands and to what extent it is seen as a right or a favour. It further looks into

the basic principles on which assistance by the Ministry is grounded and into the aims of the organisations that are involved: the International Office of the Dutch Probation Service and the religious foundation Epafras. Chapter 6 provides insight into how resettlement is organised in the Netherlands during detention and after release and which elements in assistance are considered in contemporary criminal justice studies as beneficial for the resettlement of prisoners.

Primary data

Chapter 7 provides insight into the detention experience and special needs of Dutch FNPs. The aim is to verify whether the sum of their individual and subjective situation can be compared to what is known in secondary data. Besides general outcomes this chapter also looks at whether there are significant differences in the experiences of those detained within or outside the European Union and prisoners in pre-trial or post-trial detention. Chapter 8 presents the kind of consular assistance Dutch FNPs receive in practice from the Netherlands. Chapter 9 qualifies the influence of consular assistance on the detention experience of Dutch FNPs and on their special needs. The outcome is used to verify whether the first and second hypotheses can be upheld or not. Chapter 10 elaborates on the expected needs of Dutch FNPs upon release and how ex-prisoners experience their resettlement into the Dutch society. The outcome is used to explore whether the last hypothesis can or cannot be supported. In chapter 11 the outcomes of this thesis are used to reflect on the situation of Dutch FNPs from a human rights perspective. The final chapter, chapter 12, draws conclusions on the three hypotheses. It further comments on the key issues of consular assistance and makes recommendations on how to proceed in the future.

1.5 Scope and terminology

The focus in this thesis is on Dutch nationals who are detained abroad (Dutch FNPs) and FNPs in general. Irregular migrants who are detained in detention centres for administrative reasons fall outside the scope of this research. The international transfer of sentenced prisoners and extradition of FNPs are also topics falling outside the scope of this thesis.

In this thesis the term ‘prison’ is used to mean an institution containing people who have been remanded in custody by a judicial authority. The term ‘prisoner’ is used for persons who are confined in prison or kept in custody as the result of a criminal procedure.
The term ‘foreign national prisoner’ has many different definitions in legislation and research literature. In general, the term ‘foreigner’ means someone from a foreign country. The UNODC Handbook on Prisoners with special needs (2009) defines a foreign national prisoner as ‘a prisoner who does not carry the passport of the country in which he or she is imprisoned’.[14] The definition includes ‘prisoners who have lived for extended periods in

14 UNODC, *Handbook on Prisoners with special needs* (UN Publications New York 2009) p 79

the country of imprisonment, but who have not been naturalized, as well as those who have recently arrived'. The Council of Europe used the definition 'prisoners of a different nationality' in its recommendation on foreign prisoners in 1984. The Council of Europe's European Prison Rules (2006) speak about 'foreign nationals' without giving an explanation of the term. In 2012, the Council of Europe adopted a new recommendation on FNPs.[15] The first rule in this recommendation defines the terms 'foreign person', 'foreign suspect' and 'foreign offender'.[16] The commentary on the recommendation stresses that the meaning is about the relation to nationality and residence. In other words 'those who do not have the nationality and resident status of the State in which they are subject to criminal proceedings, sanctions or measures or are deprived of their liberty will be considered to be foreign suspects, offenders or prisoners'.

For this thesis, the term *foreign national prisoner* (FNP) is used. This is done to highlight that FNPs do not have the nationality of the State nor are they considered a national of the State in which they are detained, and therefore another State is allowed to provide consular assistance to them. The description for 'foreign national prisoner' used in this thesis is:

Definition foreign national prisoner (FNP)

A person who is detained in relation to a criminal offence in a country of which he is neither a national nor a resident, and to whom another country is entitled to provide consular assistance.

The term *consular assistance* has a broad meaning in this thesis with respect to Dutch FNPs. It encompasses not only assistance from the Dutch Ministry of Foreign Affairs but it also includes assistance that is provided by the International Office of the Dutch Probation Service and the religious foundation Epafras. The reason for this is threefold: Firstly, because the latter two organisations were established to provide assistance to Dutch nationals in foreign detention. Secondly, these organisations arrange access to Dutch prisoners via the Dutch Ministry of Foreign Affairs on the basis of consular entitlements. The final reason is that the activities of both organisations are almost entirely funded by the Ministry of Foreign Affairs and the Ministry of Security and Justice. For more information about the aims and activities of these organisations see chapter 5. To avoid superfluous usage of names, the term Dutch Ministry of Foreign Affairs is abbreviated to *Ministry*, the term International

15 Council of Europe Recommendation CM/Rec (2012)12 concerning *foreign* prisoners

16 A foreign person is a person 'who does not have the nationality of and is not considered to be a resident by the State where he or she is'. A foreign suspect is 'any foreign person who is alleged to have committed but who has not been convicted of a criminal offence'. A foreign offender is 'any foreign person who has been convicted of a criminal offence' (Rule 1 of Recommendation CM/Rec(2012)12).

Office of the Dutch Probation Service to *Probation Service* and the religious foundation Epafras to *Epafras*.

The term Europe refers to the geographic continent. It largely corresponds with the territories of the 47 European countries that are Member States of the Council of Europe, including Belarus which is not a Member State. The term European Union, or its abbreviation EU, is used for the organisation of which 28 European countries are currently member. All EU countries are also Member States of the Council of Europe.

The next chapter provides insight into the methods used in this research to verify whether consular assistance, as received by Dutch nationals in foreign detention, contributes to their detention experience, special needs and resettlement.

CHAPTER 2

METHODOLOGY

2.1 Introduction

This thesis relies on both primary and secondary research. Primary research has been carried out, via questionnaires and interviews, to measure the detention experience of Dutch nationals in foreign detention (Dutch FNPs) and to document and evaluate the impact of consular assistance. Secondary sources such as findings in research literature, reports, legislation and figures about FNPs and studies about resettlement, have been collected to form a point of reference for the evaluation of primary data. This thesis starts by discussing the secondary data, presented in chapter 3 to 6, followed by the analysis of the primary data in chapter 7 to 11. These last five chapters form the core of this thesis.

This chapter further looks into the research methods that have been applied, how the results have been evaluated, which ethical codes have been used and why differences are measured with regards to Dutch nationals detained in and outside the European Union (EU) and those in pre-trial and post-trial detention. The table below presents an overview of the different primary sources that have been used in this thesis and is followed by a more detailed description of the different sources.

2.2 Questionnaires

Three different types of questionnaires were used to collect quantitative data for this thesis. The main source of data is the questionnaire that was sent to all Dutch FNPs. Further all known relatives of Dutch FNPs received a questionnaire and also all Dutch diplomatic missions. This section provides insight into the scope, format, content as well as the response rate of these questionnaires. The text of the three questionnaires can be found in Annex 1.

2.2.1 Questionnaire for Dutch FNPs

Dutch FNPs received an extensive questionnaire in Dutch with more than 200 questions. The aim of the questionnaire was to obtain first hand information about how each individual prisoner experienced their detention abroad, what kind of consular assistance he or she received, which types of assistance they regarded as most important and to what extent the assistance addressed their needs. Prisoners were further questioned about their personal background, their preparations and expectations for release, the needs they envisaged after release and how they thought they could avoid re-offending after release. The outcomes of this questionnaire are presented in chapters 7 to 10.

2.2.1.1 Scope

The questionnaire was sent to all 2,606 Dutch nationals who were detained abroad in May 2008. In order not to run the risk of not receiving sufficient responses, it was decided to not use a sample of this population. A sample would have been convenient from a practical and cost-and-time efficiency point of view but it would increase the risk of a low response rate.

Table 2.1 Overview of primary sources

Quantitative data		
Source	**Number**	**Response**
Questionnaire Dutch FNPs	584	Response from Dutch FNPs detained in 54 countries. Response rate 22% (2,606 questionnaires were sent out)
Questionnaire relatives of FNPs	274	Response from relatives based in the Netherlands. Response rate 22% (1,250 questionnaires were sent out)
Questionnaire diplomatic missions	96	Response from Dutch embassies and consulates in 83 countries. Response rate 69% (137 questionnaires were sent out)
Qualitative data		
Source	**Number**	**Response**
Interviews with Dutch FNPs	48	Prisoners detained in Austria, Belgium, Cyprus, Germany, Greece, Morocco, Spain, Turkey and United Kingdom.
Interviews with Dutch ex-FNPs	11	Ex-FNPs formerly detained in Belgium, Brazil, France, Germany (2), Greece, Morocco, United States of America (3) and Venezuela.
Interviews with relatives FNPs	15	Relatives of Dutch FNPs based in the Netherlands
Interviews with consular staff at diplomatic missions	22	Consular staff based in Austria, Belgium, Cyprus, France, Germany, Morocco (4), Peru, Spain (7), Thailand, Turkey (2), United Kingdom and the United States of America.
Interviews with consular staff at the Ministry of Foreign Affairs	5	Consular staff based in The Hague, the Netherlands.
Interviews with staff International Office of Dutch Probation Service	6	Probation staff based in Utrecht, the Netherlands.
Interviews with volunteers of the International Office of Dutch Probation Service	17	Volunteers based in Austria, Belgium, Dominican Republic, France, Germany, Indonesia, Morocco, Spain (7), United Kingdom and the United States of America (2).
Interviews with chaplains Epafras	6	Chaplains responsible for Belgium, Brazil, Dominican Republic, Italy, Spain and the United States of America.
Interviews with staff Epafras	2	Staff based in Utrecht, the Netherlands
Consultations with others/ organisations	11	Staff from: Dutch Ministry of Security and Justice (2); Prisoners Abroad (UK); National Offender Management Service (UK); Gevangenenzorg Nederland; Leger des Heils Dienstencentrum Schiphol, founder of EABT and the Dutch municipality Stichtse Vecht. Consultations with a British teacher in Nicosia prison (Cyprus), prison staff in Fontcalent (Spain) and the German consul in Morocco.
Letters from Dutch FNPs	46	Response from Dutch FNPs detained in 19 countries: Argentina, Belgium (2), Brazil, Cuba, Czech Republic (2), France (6), Gambia, Germany (4), Greece (3), Italy (2), Luxembourg (2), Mexico, Portugal (2), Serbia, Spain (9), Sweden, Turkey, United Kingdom (2) and the United States of America (4).

A low response rate was envisaged due to the difficulty in gaining access to this particular group of prisoners. It was difficult to reach them for a number of reasons.

The first reason is that, at the time the questionnaire was sent out, Dutch FNPs were detained in 94 different countries and often in several prisons within these countries.[1] Secondly prisoners tend not to remain in the same prison due to transfer and release. Thirdly prison authorities are not always cooperative with regards to conducting research into the detention experience and especially not in a language which is not understood

1 Dutch nationals detained in the Netherlands Antilles did not receive a questionnaire because the Dutch Caribbean islands are part of the Kingdom of the Netherlands.

by the authorities. Fourthly, not all Dutch FNPs have a good understanding of the Dutch language and/or are literate. The fifth reason is connected to the fact that prisoners might be hesitant to provide personal information. For example, they might think that expressing their views could have a negative consequence for their treatment by the prison authorities and/or by the diplomatic mission or by volunteers or chaplains who visit them. In order to avoid feelings of fear or hesitation the questionnaire was set up on the basis of anonymity.[2]

2.2.1.2 Content

The first version of the questionnaire was tested as a pilot with Dutch FNPs in the Dominican Republic in December 2007. The items in the questionnaire were originally based on indicators of social exclusion and Maslow's hierarchy of needs.[3] The questionnaire therefore contained questions about the prisoners' financial and emotional situation before and during detention and whether they felt for example lonely and in need of emotional support. Besides filling out the questionnaire FNPs were also asked for their feedback. They explained that they felt uncomfortable with some of the questions and that they were hesitant to provide personal details about their already difficult life. Their feedback was taken into consideration and it was decided to abandon the focus on social exclusion and Maslow's needs. Instead the detention experience and the assistance they received from the Netherlands became the central focus.

In the beginning of 2008 the revised questionnaire was presented to the Ministry of Foreign Affairs, to the International Office of the Dutch Probation Service and to the religious foundation Epafras, to make sure the main types of assistance were included and correctly described. The non-governmental organisation Delikwentie en Samenleving, which works with ex-offenders, kindly reviewed the questionnaire to make sure the text was clear and understandable for the 'average' prisoner.

The questionnaire consists of two parts. The first part covers consular assistance that FNPs do or do not receive from the Netherlands and the second part covers the detention experience. The questions on the detention experience are largely the same questions as were developed and used by the Dutch Custodial Institutions Agency (DJI)[4] to measure the detention climate in Dutch prisons. The questions are categorised according to fourteen different topics, ranging from security and clarity about the rules, to contact with the outside world and hygiene.

---

2 Prisoners were however asked to fill out personal details like their gender, age category, country of birth, cultural background and level of education.

3 Abraham Maslow (1908-1970) developed the *Hierarchy of Needs*-model in his book *Motivation and Personality* (1954) which is often portrayed in the shape of a pyramid. In the pyramid the largest and most basic life needs are at the bottom and the need for self-actualization at the top. According to Maslow if the most basic needs are swept away persons tend to be not any longer concerned about the maintenance of higher order needs.

4 Translation and abbreviation of the *Dienst Justitiële Inrichtingen* (Prison Service).

2.2.1.3 Format

Dutch FNPs received the 20-page questionnaire with a covering letter and a stamped addressed envelope.[5] The covering letter was on letterhead paper from Tilburg University and was personally signed by the researcher. The reverse of the letter contained a short introduction about the research for prison staff, in seven foreign languages[6], and a link to the website www.foreignersinprison.eu. This website contained information about this research, the original text of the questionnaire in Dutch and a translation in English. FNPs were informed about the research via an article in the magazine *Gezant uit Nederland*[7] by the religious organisation Epfras in the summer edition of 2008.[8]

2.2.1.4 Reach and response rate

In order to reach all Dutch FNPs, the questionnaires were sent via the Ministry of Foreign Affairs in The Hague to Dutch diplomatic missions around the world. Consular staff at diplomatic missions was informed about the research via the official internal messaging system of the consular department of the Ministry. In this message the missions were requested to provide assistance by delivering the questionnaire to all Dutch FNPs in their remit. This could be done either by mail or in person during a visit.

Within six months of sending out the questionnaires the majority of the completed questionnaires were returned to Tilburg University. The last questionnaire was returned in December 2009. In total 584 completed questionnaires were received. This means a response rate of 22%.[9] The questionnaire had been sent to 94 countries. The returned questionnaires originated from a total of 54 countries. In these 54 countries, at the time the questionnaire was sent out, 2,415 Dutch nationals were being detained. This means that the returned questionnaires represent countries where a very large majority (93%) of Dutch prisoners were detained at the time the questionnaire was sent out. The high number of prisoners who returned a questionnaire and the fact that they were detained in so many different countries has a positive effect on the representativity of the response. There are only twelve countries with four or more Dutch prisoners from which no response was received from prisoners.[10] In total 53 envelopes returned to Tilburg University without having being opened. The most likely reason is that either prisoners had been transferred

5 The printing costs were kindly reimbursed by benefactor Mr. Den Hertog and envelopes were provided by the department of criminal law of Tilburg University.

6 Dutch, English, French, German, Portuguese, Spanish and Russian.

7 Translation: 'Envoy from the Netherlands', further mentioned as magazine *Gezant*.

8 The spring 2009 edition of *Gezant* included an article to thank Dutch FNPs for their participation in this research.

9 Total number returned questionnaire (584) divided by total number of questionnaires which were sent out (2,606) is 22.4%.

10 Bolivia (8), Cuba (12), Cyprus (8, but all prisoners were transferred to The Netherlands before the questionnaire actually arrived), Jamaica (6), Japan (28), Malta (4), Pakistan (4), Panama (16), Uruguay (4), United Arabic Emirates (5), South-Africa (6) and Switzerland (14).

to another prison or released at the time the questionnaire arrived or the prison authorities did not want the prisoners to participate in this research. Below is an overview of the total number of Dutch FNPs detained worldwide on May 6th 2008, the date that the questionnaire was sent, together with the number of responses and response rate per country. In seven countries the response rate was 100%.[11]

Table 2.2 Number of questionnaires sent to Dutch FNPs and response rate

Detention country	Sent	Returned	Response rate	Detention country	Sent	Returned	Response rate
Algeria	2	-	-	Latvia	1	-	-
Argentina	46	8	17%	Lebanon	1	-	-
Armenia	1	-	-	Luxembourg	18	3	17%
Australia	15	6	40%	Malawi	1	-	-
Austria	6	6	100%	Malaysia	3	-	-
Barbados	3	-	-	Maldives	1	-	-
Belgium	86	25	29%	Malta	4	2	50%
Bolivia	8	-	-	Morocco	72	2	3%
Bosnia Herzegovina	3	-	-	Mauritius	2	2	100%
Brazil	77	18	23%	Mexico	11	6	55%
Bulgaria	15	8	53%	Nepal	2	-	-
Cambodia	2	-	-	New Zealand	5	1	20%
Cameroon	1	-	-	Nigeria	1	-	-
Canada	3	1	33%	Norway	37	14	38%
Cape Verde	10	2	20%	Oman	1	-	-
Chile	1	1	100%	Pakistan	4	-	-
China	7	-	-	Peru	106	15	14%
Colombia	17	3	18%	Philippines	3	-	-
Costa Rica	10	2	20%	Poland	9	5	56%
Croatia	5	2	40%	Portugal	50	6	12%
Cuba	12	-	-	Qatar	1	-	-
Cyprus	8	-	-	Réunion	1	-	-
Czech Republic	4	4	100%	Romania	4	2	50%
Denmark	16	5	31%	Russia	1	-	-
Dominican Republic	173	31	18%	Senegal	2	-	-
Ecuador	37	8	22%	Serbia	3	2	67%
Egypt	2	-	-	Sierra Leone	1	-	-
Eritrea	1	-	-	Slovenia	1	-	-
Finland	5	2	40%	South-Africa	6	-	-
France	219	64	29%	South Korea	1	-	-
French Guyana	22	1	5%	Spain	335	66	20%
Gambia	3	2	67%	Sri Lanka	2	-	-
Germany	436	83	19%	Suriname	47	14	30%
Ghana	13	6	46%	Sweden	22	11	50%
Greece	21	8	38%	Switzerland	14	-	-
Guadeloupe	2	-	-	Thailand	14	3	21%
Guyana	2	2	100%	Trinidad & Tobago	6	1	17%
Honduras	1	-	-	Tunisia	1	-	-
Hungary	9	6	67%	Turkey	54	9	17%
Iceland	1	1	100%	Ukraine	3	1	33%
India	3	1	33%	United Arab Emirates	5	-	-
Indonesia	15	2	13%	United Kingdom	121	40	33%
Iran	3	-	-	USA	75	21	28%
Iraq	1	-	-	Uruguay	4	-	-
Ireland	15	2	13.3%	Venezuela	63	7	11.1%
Italy	95	40	42.1%	Zambia	1	-	-
Jamaica	6	-	-	Unknown	-	1	-
Japan	28	-	-	**Total**	**2,606**	**584**	**22%**

Source: Ministry of Foreign Affairs

11 These countries are Austria, Chile, Czech Republic, Guyana, Iceland and Mauritius.

2.2.1.5 Reasons for no response

As foreseen it was not possible to reach all Dutch FNPs. In some countries the Dutch diplomatic mission decided, in consultation with the Ministry and the researcher, not to ask prisoners to participate because prison authorities did not allow it or it could be harmful for the prisoner or it could put the relationship between the local authorities and the diplomatic mission under pressure. Since some questionnaires were sent by mail it is possible that prison authorities did not hand over the questionnaire to the Dutch FNP. Normally prison authorities check the incoming (and outgoing) mail from prisoners, in order to secure safety and order in prison. It is therefore possible that prison authorities did not allow the questionnaire because of the foreign language, which they could not understand. Lastly it is possible that prisoners participated in the questionnaire but that the envelope with the questionnaire did not return to the Netherlands as a result of unreliable postal services.
A handful of diplomatic missions informed the Ministry about the reasons for not sending out or handing over the questionnaire to prisoners. The diplomatic mission in Sri Lanka did not hand over the questionnaire because the only prisoner who was detained could not speak or read Dutch. In the United States of America the questionnaires were only sent to prisoners who had a good understanding of the Dutch language. In Japan consular staff did not want to send the questionnaires to prisons because of the prison regulations. In Cuba and Morocco the consular staff feared that participation in this research would cause harm to the Dutch FNPs.[12] One prisoner who was detained in Cuba heard about the research via the magazine *Gezant* and requested via a letter to participate in the research. In consultation with the Ministry it was decided not to send him the questionnaire to avoid putting his safety in prison at risk. In Lebanon the prison authorities could only approve the distribution of the questionnaire with the approval of the Lebanese public prosecutor and in Iran the diplomatic mission was not allowed to visit the prisoners due to their dual-citizen status. By the time the questionnaire arrived in Qatar the only Dutch prisoner in Qatar's prison had been released. In Eritrea the diplomatic mission had strong fears that the Dutch prisoner would be harmed by the prison authorities if he provided information about his detention and therefore the questionnaire was not handed over.

2.2.2 Questionnaire for relatives of Dutch FNPs

As part of a review of consular services provided by the Dutch Ministry of Foreign Affairs, the Policy and Operations Evaluation Department (IOB) contracted the researcher of this thesis to develop a questionnaire that was sent to relatives of prisoners. Each Dutch FNP who wishes to receive consular assistance can appoint one person with whom the Ministry of Foreign Affairs can keep contact about the whereabouts and well-being of the prisoner. In April 2010, when this questionnaire was sent out, in total 1,250 persons were registered

12 Two questionnaires were filled out during a visit by the researcher in Salé prison in Morocco.

as such contact-persons.[13] This meant that less than half of the Dutch FNPs had formally appointed a contact-person.[14] The questionnaire was developed in order to obtain that person's view on the detention experience of their partner, child, parent, or friend, how they would evaluate the different types of consular assistance and to what extent they thought it would address the needs of the prisoner. The questionnaire was sent by regular mail and contact-persons could fill out the questionnaire on paper and via internet. In total 274 questionnaires were returned, 249 via regular mail and 25 via internet. This is a response rate of 22%. This outcome was lower than expected, especially because relatives were given the option to respond anonymously via paper or via internet. Relatives were asked about their relation with the prisoner. In total 33% of the prisoners were offspring; 21% brother or sister; 16% partner; 9% friend and 8% parent. The results of the questionnaire are presented in section 8.3.7 of chapter 8.

2.2.3 Questionnaire for consular staff

The third questionnaire, also developed in the context of the IOB-screening, was sent to consular staff at Dutch diplomatic missions. The aim was to obtain their view on consular assistance including assistance to Dutch FNPs. This researcher composed the questions on providing assistance to Dutch FNPs and the involvement of volunteers of the Dutch Probation Service and chaplains from Epafras. In April 2010 the questionnaire was sent via the internal messaging system of the Ministry to all 137 consular sections at Dutch embassies and consulates around the world. In total 96 consulates and embassies in 83 countries returned the questionnaire, a response rate of 69%. The results of this questionnaire are presented in section 5.3.1 of chapter 5.

2.3 Interviews and letters

Qualitative data collected for this research consists of in-depth interviews and letters. The reason for conducting interviews is cross-validation and to deepen the understanding of the impact of detention abroad and the effect of receiving assistance. The arrival of 46 letters from individual prisoners came as a pleasant surprise and provided unexpected insights into prison life. Besides interviews with prisoners, ex-prisoners and their relatives, interviews were also conducted with consular staff at the Ministry of Foreign Affairs in The Hague and at several Dutch diplomatic missions, with staff and volunteers from the International Office of the Dutch Probation Service and staff and chaplains from Epafras. An overview of the respondents that were interviewed or contacted can be found in Annex 2.

---

13 IOB, *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2011 nr. 338) p 251

14 The low number of contact-persons might be explained by the fact that almost all of them had been in contact with their relatives (see section 7.4.1) and therefore they might not regard it as beneficial to appoint a central point of contact.

2.3.1 Interviews with Dutch FNPs

Interviews were held with Dutch nationals during their detention abroad, and after their return to the Netherlands. Names of respondents for these interviews were given by prisoners themselves. On the last page of the questionnaire they could indicate whether a relative of theirs was interested in participating in the research. Interviews were conducted according to a semi-open list of questions. Besides a fixed list of topics there was room for exploring other aspects which may arise during the interview for further evaluation. The fixed topics were: detention experience, difficulties as a result of foreign background of Dutch FNPs, evaluation of assistance and involvement of volunteers, the impact of assistance on prisoners' needs, and finally, needs after release and how to avoid re-offending.

The majority of interviews took place with Dutch nationals during their detention abroad. The initial plan was to visit Dutch prisoners in the Dominican Republic, Germany, Japan, Morocco and the United States of America. The selection was based on the fact that at the time the questionnaire was sent out the highest number of Dutch FNPs per region were detained in these seven countries. In total 127 Dutch FNPs in these countries, but also in other countries, indicated their willingness to be interviewed.
Ultimately no interviews were held in the Dominican Republic, Japan and the United States of America. The reason for not visiting the Dominican Republic is related to the timing of the planned visit. Due to major staff changes at the Dutch embassy in Santa Domingo it was not possible for consular staff to obtain permission to visit prisons. Japan was not visited because the Dutch embassy in Tokyo was very clear that it was impossible to obtain permission from the Japanese authorities to visit the Dutch prisoners. An alternative visit to Thailand was envisaged but due to political riots and unrest in Bangkok the visit was cancelled. Despite the fact that a visit to the United States of America took place it was not possible to interview Dutch prisoners. At the time the visit took place all Dutch prisoners in the state New York had been either released or transferred to a penitentiary outside the state and therefore it was not possible to interview them. Interviews with consular staff at the Dutch consulate in New York and with a volunteer did however, take place.

Because it was not possible to interview Dutch FNPs in all the envisaged countries the following seven other countries were added to the list: Austria, Belgium, Cyprus, Greece, Spain, Turkey and the United Kingdom. Austria and Belgium were added to the list because of the relatively high number of FNPs in their prison population. Interviews with young Dutch female prisoners were held in Nicosia prison in Cyprus during FNP training delivered to prison staff by the researcher.[15] Interviews with Dutch prisoners in Morocco, Spain and Turkey were held during a visit in the context of the IOB screening of consular assistance by

15 At the time the questionnaire arrived in Cyprus all Dutch FNPs had been transferred to the Netherlands and therefore they were unable to fill out the questionnaire.

the Ministry of Foreign Affairs. In the United Kingdom, Dutch prisoners were visited in three prisons in and around London.

Requesting permission to visit prisons abroad and especially requesting permission to interview prisoners about their detention experience is not an easy task. It entails lengthy bureaucratic procedures, which often lead to objections and refusals. Thanks to the assistance of Dutch diplomatic missions it was possible to obtain access in a number of countries.[16] In total 48 Dutch prisoners, 33 men and 15 women, were interviewed in nine different countries. The penitentiary institutions visited are Justizanstalt Wien-Josefstadt in Vienna (Austria), the 19th century prison Saint-Gilles in Brussels (Belgium), Central prison in Nicosia (Cyprus), Justizvollzugsanstalt Kleve in Kleve (Germany), female prison Korydallos in Piraeus (Greece), Salé prison close to Rabat (Morocco), Fontcalent prison in Alicante (Spain), Bakirköy prison close to Istanbul (Turkey) and HMP Wormwood Scrubs, HMP Holloway and HMP Wandsworth in London (United Kingdom).

Before each visit to a prison, the research was announced to Dutch FNPs via a letter and they were asked whether they would like to be interviewed. If so, prisoners could give their consent in writing. The interviews normally took place in the visiting area or in visiting rooms for official visitors used by lawyers and diplomatic staff. In Cyprus it was possible to visit Dutch female prisoners in their living area and to speak to a teacher. In Spain a tour was made inside the prison together with prison staff. With the exception of interviews in Austria and Spain, the conversations were held in rooms without partitions of safety glass. All interviews took place outside earshot of prison staff and lasted from 30 minutes to two hours. Most interviews were held in Dutch. The transcripts of the interviews are kept securely at the Law Department of Tilburg University.

2.3.2 Interviews with other respondents

2.3.2.1 Dutch ex-FNPs

The motivation for interviewing Dutch FNPs post-release was to hear first-hand about their experiences as they resettle in Dutch society (see section 10.3 in chapter 10). As mentioned above, prisoners could indicate on the last page of the questionnaire whether they were interested to be interviewed during detention but also after their release. In total 183 Dutch FNPs, detained in 35 different countries, were willing to be interviewed after their return to the Netherlands. The expected date of release was for many prisoners however more than two years. From the prisoners who would return to the Netherlands within a workable period a selection was made on the basis of their country of detention. It turned out not to

16 The researcher is grateful for the efforts by consular staff at Dutch diplomatic missions in Athens, Brussels, Düsseldorf, Istanbul, London, Madrid, New York, Rabat and Vienna. Despite efforts by consular staff in Paris it was not possible to arrange access to French prisons.

be easy to contact Dutch ex-FNPs. Many of them could not be reached using the contact-details provided. Finally 25 Dutch ex-FNPs were approached by e-mail and/or by telephone. The selection was based on a balanced selection of regions in the world. Several of them were not eager to speak about their time in prison. For most of them it was a period they rather liked to forget. Finally only 11 ex-prisoners agreed to be interviewed. They had been detained in Belgium, Brazil, France, Germany (2), Greece, Morocco, United States of America (3) and Venezuela. More than half of the interviews were held face-to-face and less than half via telephone. The interviews were conducted according to a semi-open list of questions with a focus on their experiences with regards to their resettlement in the Dutch society. The fact that only 11 ex-prisoners were interviewed means that their responsiveness is rather low. Questions about experiences with aftercare were however also included in interviews with consular staff, relatives of prisoners, volunteers, chaplains and others.

2.3.2.2 Relatives of Dutch FNPs

Relatives of prisoners, such as partners, family members or friends, are included in this research because they are considered to be closely connected to individual prisoners and to have an opinion too (see section 8.3.7 of chapter 8).
Dutch FNPs were therefore asked in the questionnaire whether a relative would be willing to participate in the research. In total 151 persons, detained in 62 countries, gave permission to contact their relative. As with approaching ex-prisoners it was not easy to track down relatives of prisoners and to make appointments for interviews. In total 25 persons were approached by letter, telephone and email to check whether they were interested to participate in this research. The aim of the interviews was to receive a good understanding of how they were informed about the arrest of their relative, whether they received information and assistance from the Ministry, how they were able to maintain contact with their relative, what kind of needs their relative had, to what extent these needs were addressed by consular assistance, and what their expectations had been of the needs of their relative upon return to the Netherlands. The selection of relatives was based on a balanced selection of detention countries. In total 15 relatives were interviewed from prisoners detained in Brazil, Croatia, Dominican Republic (4), France (3), Ghana, Germany, Morocco, the United Kingdom and the United States of America. The interviews took place mostly at the home address of the prisoner's relative.
The interviews lasted on average between 1.5 and 3.5 hours and were conducted in Dutch and in a few cases in English. Two interviews took place via telephone. The interviews were held according to a semi-open list of questions.

2.3.2.3 Consular staff

For this thesis in total 22 consular staff members were interviewed at Dutch diplomatic missions in order to capture their views on what kind of assistance they provide and how (see section 8.2 in chapter 8). Interviews were held with consular staff based in Austria,

Belgium, Cyprus, Germany, Morocco, Peru, Spain, Thailand, Turkey, United Kingdom and the United States of America. Most interviews were held at the consular department of the diplomatic mission. One interview, with consular staff from the Dutch consulate in Düsseldorf, was held in Kleve prison. The interview with consular staff at the Dutch embassy in Bangkok (Thailand) and Paris (France) took place via telephone and the interview with consular staff in Lima (Peru) via Facetime.
During interviews with consular staff a range of topics were discussed such as their opinion on types of assistance particularly useful during phases of the detention (pre-trial vs sentenced), the impact of assistance by volunteers and chaplains and how they thought it was possible to prevent re-offending after release. Interviews lasted normally between 45 minutes and 2 hours. In the context of the IOB-screening the visits to consular sections of diplomatic missions in Rabat (Morocco), La Nucia and Madrid (Spain) and Istanbul (Turkey) lasted 1 to 3 days. Furthermore there was regular contact with staff at the consular department of the Dutch Ministry of Foreign Affairs. In the context of the IOB-screening four interviews took place with case-managers, the archivist and the head of unit of the consular department at the Ministry of Foreign Affairs.

2.3.2.4 Volunteers and staff of the Dutch Probation Service

During the preliminary phase of this research, between 2007 and 2009, the researcher was, as mentioned earlier, kindly granted hospitality to spend a few months at the office of the International Office of the Dutch Probation Service in Utrecht. During this period numerous conversations took place with various regional coordinators, supportive staff and the director. The aim of the lengthy stay at the International Office was to receive a salient picture of the situation of Dutch FNPs, about the types of activities that were performed by the case-managers and the volunteers and their contact with prisoners, relatives of prisoners and authorities. Besides the numerous conversations conducted during the months at the International Office, two 'official' interviews were held with the director and three interviews with regional coordinators.
For this thesis, in total eleven volunteers of the International Office of the Dutch Probation Service were interviewed to obtain their view on the kind of assistance they provide (see section 8.2 of chapter 8). Volunteers are Dutch nationals who live abroad and who visit on a regular basis Dutch nationals who are detained in the country of residence. These eleven volunteers were based in Austria, Belgium, Dominican Republic, France, Germany, Indonesia, Morocco, Spain, United Kingdom and the United States of America. Most interviews were held face-to-face in either the prison, at the diplomatic mission or in a public space. Interviews with volunteers in the Dominican Republic, France, Indonesia, Morocco and the United States of America were held via telephone. The interviews lasted in general between 1 and 2 hours. General topics of these interviews were the way they had been recruited and trained for the job, the type of assistance they provided, how they evaluated the detention conditions and treatment of Dutch FNPs, the impact of their work

and their views on how to prevent re-offending after release. More insight into the work of volunteers was obtained by attending a two-day regional meeting for volunteers in London in 2007, and in Benidorm (Spain) in 2010.

2.3.2.5 Chaplains and staff of Epafras

For this thesis the researcher frequently had conversations with staff and chaplains from Epafras and conducted several interviews in order to receive a good understanding of the assistance they provide (see section 8.2 of chapter 8) These chaplains are professionals who work (or had worked) in pastoral care in the Netherlands and who visit Dutch FNPs on behalf of Epafras on a voluntary basis. In the context of the IOB, two interviews were held with the director of Epafras and six interviews with chaplains. These chaplains are active in Belgium, Brazil, Dominican Republic, Italy, Spain and the United States of America. In these interviews a range of topics were discussed such as the content of their work and the impact of assistance.

2.3.2.6 Consultations with organisations

To obtain a profound knowledge about aftercare for ex-prisoners in the Netherlands and in other countries the researcher spoke with several organisations about this topic. In the preliminary phase of the research the following persons and organisations were consulted: the Head of the Internationale Rechtshulp in Strafzaken (AIRS) and programme manager of 'Sluitende aanpak nazorg'[17] from the Ministry of Security and Justice; the director of the British non-governmental organisation Prisoners Abroad[18]; the Equality & Diversity Officer from the National Offender Management Service (NOMS) of the British Ministry of Justice[19]; the director of Gevangenenzorg Nederland (Prison Fellowship The Netherlands)[20]; management staff from Exodus[21] and staff from Leger des Heils Dienstencentrum Schiphol.[22] In the last phase of the research the researcher spoke with civil servants from the department of civil service and social service at the municipality Stichtse Vecht.

2.3.3 Letters

Despite the fact that Dutch FNPs were not requested to send in letters, many prisoners felt the need to include such a letter with the return envelope. In total 46 letters were received from the following 19 countries: Argentina (1), Belgium (2), Brazil, Cuba, Czech

17 Translation of 'comprehensive approach aftercare'.
18 www.prisonersabroad.org.uk
19 www.justice.gov.uk/about/noms
20 Gevangenenzorg Nederland www.gevangenenzorg.nl
21 Exodus is provides guidance to ex-prisoners. Exodus has houses in eleven different municipalities in the Netherlands where motivated ex-prisoners can stay a few months. www.exodus.nl/English_335.html
22 Salvation Army shelter at Schiphol airport at: www.legerdesheils.nl

Republic (2), France (6), Gambia, Germany (4), Greece (3), Italy (2), Luxembourg (2), Mexico, Portugal (2), Serbia, Spain (9), Sweden, Turkey, United Kingdom (2) and United States of America (4). Most letters were handwritten and a handful were written on a typewriter. The language varied from Dutch to 'broken' Dutch. One letter was written in Spanish. Not only was the format of the letters varied but also the content. Some letters were written in order to make supplementary additions to the questionnaire, some provided information about their personal detention experience and view on the future, some explained the legal injustice in their criminal case according to examples and some requested financial help. Their comments are, like the quotations from interviews, used to illustrate the findings from quantitative sources.

2.4 Research methods

Different research methods were used for the quantitative and qualitative data. The questionnaires contained several types of questions. First, multiple choice questions were used with closed and mutually exclusive answer categories. An example of such a multiple choice question is: "I share a cell with..." with answer categories *nobody*, *1 person*, *2-5 persons*, *6-10 persons*, *10-20 persons* and *>20 persons*. Second, multiple choice questions were used with closed but not mutually exclusive answer categories. Therefore, prisoners could select multiple answer categories on these questions. An example is: "I feel unsafe in …" with answer categories such as *my cell*, *my wing*, *showers*, *segregation unit* etc. The responses on the first type of multiple choice questions were analysed as nominal data with multiple answer categories. The responses on each of the answer categories of the second type of multiple choice questions were analysed as independent dichotomous responses (answer category was selected or not). For some multiple choice questions, an open answer category "Other, namely..." was added so prisoners could fill in their own answer if the answer categories in the questionnaire were not extensive. Third, open-ended questions were used. These 'open' questions were used, for example, to find out in which country the person is detained. Fourth, the questionnaires contained statements that could be rated on a 4- or 5-point Likert scale ranging from 'totally disagree' to 'totally agree'. An additional answer category 'not applicable' was added as well. These responses were treated as continuous data. An example statement is: "Prisoners treat each other with respect". For some constructs, such as *interaction with prison staff*, multiple statements were averaged to represent an overall score on the construct.

The nominal data was reported in frequencies and percentages. Means with a standard deviation were used to report continuous outcomes. When responses were compared among groups, statistical tests, such as Chi-square tests for the nominal data and t-tests and ANOVAs for the continuous data were performed in SPSS. A significance-level of 5% was used, implying that differences in responses were considered significant when the p-value of the test was ≤.05.

Qualitative data collected via interviews and quotes from letters have been entered into a large excel sheet that is structured according to a large number of different topics. The results from this data are used to put the outcomes of numerical data into perspective and to find out whether there is a connection or not between the general outcomes of the questionnaires and the opinion of individual respondents who were interviewed.

Control group

It would have been interesting to use two groups of Dutch FNPs, one that received and one that did not receive consular assistance (control group). This was however not possible because practically all Dutch FNPs (93% n=546) who participated in the questionnaire received some kind of assistance from either one, two or all three organisations. In total 85% (n=497) of Dutch FNPs received consular assistance from the Ministry of Foreign Affairs; 52% (n=302) received assistance from the Dutch Probation Service and 40% (n=235) received assistance from Epafras. Only 7% (n=37) of the Dutch FNPs had not received a form of assistance. Such a small group is too small to serve as a control group. It should further be mentioned that assistance to Dutch FNPs is not a standard product provided in identical ways. The personal background and experience of the person who provides assistance, the personal background and situation of the individual prisoner and the conditions under which he or she is detained can make a difference in how he or she experiences their detention abroad and the assistance they receive from the Netherlands.

2.4.1 Differences

Besides general information, this thesis seeks to determine whether or not there are differences with regards to two issues. The first is whether the Dutch prisoner is detained in or outside the European Union (EU) and the second is whether the prisoner is in pre-trial detention or in post-trial detention. Where relevant the differences in responses among these groups are mentioned in the chapters that present the research findings.

2.4.1.1 EU vs non-EU

The main reason for looking into differences between those detained in the EU as compared to those detained outside the EU is the fact that prison conditions are considered to be harsher outside the EU than inside. These differences are reflected in the policy of the Dutch Ministry of Foreign Affairs. Those who are detained outside the EU receive additional assistance in the form of a monthly gift of €30.[23] The Ministry considers prison conditions and facilities outside the EU in general to be 'less favourable' compared to those in the EU. Furthermore, the Ministry anticipates that FNPs who are detained outside the EU receive fewer necessities free of charge from prison authorities such as food, toiletries and medicines.

23 Except for Iceland, Norway and Switzerland.

It is further interesting to note that post-sentence Dutch FNPs detained in Europe can request a prison transfer according to the Council of Europe's Convention on the Transfer of Sentenced Persons, in order to serve the remainder of their sentence in the Netherlands. A prison transfer can only be arranged with the personal consent of the prisoner. With the entry into force of the EU Council Framework Decision 2008/909/JHA in December 2011, Dutch FNPs sentenced in the EU can be transferred, without their personal consent, to the Netherlands. Prisoner transfer agreements, immigration and deportation do not fall into the scope of this thesis.

In total 388 prisoners who participated in this research were detained in the EU[24]and 195 prisoners were detained outside the EU.[25] This means that two thirds (67%) of the Dutch FNPs who participated in the questionnaire were detained in the EU compared to one third (33%) outside the EU. The participation of those detained in the EU is high when comparing this to the group of prisoners detained in the EU at the time the questionnaire was sent out. According to figures mentioned in table 2.2, 52% (1,357) were detained in the EU and 48% (1,249) outside the EU. Most Dutch FNPs who returned the questionnaire and who were detained in the EU were detained in Germany (83) followed by Spain (66), France (64), Italy and United Kingdom (40) and Belgium (25). The highest number of Dutch FNPs detained outside the EU was detained in the Dominican Republic (31), the United States of America (21), Brazil (18), Peru (15), Norway (14) and Surinam (14).

Table 2.3 Location Dutch FNPs who participated in research

Location Dutch FNPs	Numbers	Percentage
EU	388	67%
Non-EU	195	33%
Unknown country	1	0.2%

2.4.1.2 Pre-trial vs sentenced

In the research literature reference is often made to differences in detention conditions for prisoners in pre-trial detention in comparison to sentenced prisoners.[26] It is possible that FNPs who are in pre-trial detention have other needs as compared to sentenced prisoners. First of all they are likely to be focussed on the preparation of their legal case and arranging practicalities at home during their absence. Sentenced prisoners are more likely to be focussed on their release date and on organising their resettlement. FNPs were asked in the questionnaire whether they were in pre-trial detention or not. In total 182 prisoners

24 Croatia became a Member State of the European Union on 1st of July 2013 and was therefore not an EU Member State at the time the questionnaires were sent out. In one questionnaire the country of detention was not mentioned.

25 In one questionnaire the country of detention was not mentioned.

26 Kalmthout, A.M. van, M.M. Knapen, C. Morgenstern, *Pre-trial detention in the European Union* (Wolf Legal Publishers, Nijmegen 2009) p 3

indicated that they were in pre-trial detention and 359 prisoners were not. This means that in this research nearly one third (31%) of the prisoners is in pre-trial detention and nearly two-thirds (62%) are not. Although FNPs were not explicitly asked in the questionnaire, it is likely that the group of prisoners who were not in pre-trial detention received their final sentence. In total 43 prisoners did not indicate whether they were in pre-trial detention or sentenced. It is possible that these prisoners received a sentence but had appealed the decision and were therefore again awaiting trial.

Table 2.4 Status Dutch FNPs who participated in research

Status Dutch FNPs	Numbers	Percentage
Pre-trial	182	31%
Sentenced	359	62%
Unknown	43	7%

2.4.2 Research ethics

It is important to adhere to ethical norms in research. There are many ethical issues to be taken into serious consideration to promote the aims of research, such as knowledge, truth and integrity, to strive to advance existing knowledge and to serve the public good.
The researcher has first of all the responsibility to obtain the actual permission of all those involved in the research and to protect the privacy and interests of respondents. The information that is obtained should not be misused and the confidentiality of respondents should be secured. For this reason the questionnaires were set up on the basis of anonymity. The researcher promised respondents of interviews full confidentiality. In order to protect the privacy of those who were interviewed a code system was introduced. Each interview received a secure code that consists of the combination of: letters for the country code, the position of the respondent and a number. For example, the second volunteer of the Dutch Probation Service who was interviewed in Spain was coded S.V2, and the third prisoner interviewed in a prison in Turkey, T.P3. The table below shows the codes that have been used to identify the respondents.

Table 2.5 Overview codes respondents

Country code					
A	Austria	G	Germany	P	Peru
AR	Argentina	GA	Gambia	PO	Portugal
B	Belgium	GH	Ghana	SE	Serbia
BR	Brazil	GR	Greece	S	Spain
C	Croatia	I	Indonesia	SW	Sweden
CU	Cuba	IT	Italy	T	Thailand
CY	Cyprus	L	Luxembourg	TU	Turkey
CZ	Czech Republic	MX	Mexico	UK	United Kingdom
D	Dominican Republic	M	Morocco	US	United States of America
F	France	N	Norway	V	Venezuela

Category respondent			
C	Chaplain	O	Others
CS	Consular staff at diplomatic mission	P	Prisoner
CSH	Consular staff at Ministry of Foreign Affairs The Hague	PS	Staff International Office Dutch Probation Service
E	Staff Epafras	R	Relative of FNP
EXP	Ex-FNP	S	Prison staff
L	Letter	V	Volunteer of International Office Probation Service

Number respondent			
1	Interview[44] with first respondent in a particular country	3	Interview with third respondent
2	Interview with second respondent	4	Etc.

The information from the questionnaires has been registered in a SPSS-database, each interview has been reported in a word-document[28] and the content of these reports have been filed thematically in an excel-sheet. The data collected, such as the SPSS-database with code book, interview reports and content letters in excel-sheet, is kept with the researcher and at the Law department of Tilburg University.[29] The reason for this is to make sure the data is kept secure and to make it possible to verify whether the research has been carried out correctly, with respect of research ethics, and that primary data has been analysed in a coherent and competent way.

Respondents

When conducting research with human beings it is important to respect not only their privacy but also their human dignity and to minimise harms and risks. Taking into consideration safety and well-being is especially important when questioning persons who are deprived of their liberty. For this reason permission for handing out questionnaires to Dutch FNPs was obtained via the Ministry of Foreign Affairs. Permission for conducting interviews was obtained from the prison authorities and from the prisoner him or herself. In case prison

27 Or letter.
28 The personal names of respondents are available in the interview reports.
29 The data is also available with the researcher and at the Department of Social & Behavioural Science of Tilburg University.

authorities were reluctant to provide access to Dutch FNPs or when the Dutch Ministry of Foreign Affairs or the Dutch diplomatic mission advised the researcher not to reach out to prisoners for their own safety this was respected (see also section 2.2.1). As mentioned before all interviews took place outside earshot of prison staff, the outcome was not shared with others and the questionnaire contained information in seven languages to inform prison staff in case they had questions. Information about the research and the text of the questionnaire, including a translation in English, was published on the website www.foreignersinprison.eu. Participants in this study agreed to cooperate on a voluntary basis and no one has been paid.

Research material

Secondary sources that have been used in this thesis, such as research literature and quotes in studies or reports by independent monitoring bodies, have a reference of authorship on the page where they are mentioned (footnote) and in the bibliography. This is done to acknowledge and honour intellectual property. The website links mentioned in this thesis (footnotes) were accessed for the last time in October 2015. As mentioned in section 2.2.2 and 2.2.3, the Policy and Operations Evaluation Department (IOB) of the Dutch Ministry of Foreign Affairs conducted an evaluation of their consular services in 2010. The researcher of this thesis was contracted by the IOB to evaluate consular assistance to Dutch FNPs. She developed the text for a questionnaire for relatives, and questions for the questionnaire for diplomatic missions, and information from both questionnaires has been used in this thesis as well. There is or has been no personal or financial interest that affects the outcome of this research.

Secondary data have been collected for this thesis to form a point of reference for the outcomes of primary data. The next chapter provides insight into what is already known about foreign national prisoners.

CHAPTER 3

FOREIGN NATIONAL PRISONERS

3.1 Introduction

This chapter is designed to bring together what is already known about foreign national prisoners (FNPs) in international research literature, legislation, reports and statistics. The aim of this chapter is to identify, on the basis of existing knowledge, the situation of FNPs and whether they have special rights and needs. Information in this chapter is used to check whether the research-results of the detention experience of Dutch FNPs (chapter 7) corresponds to what is already known in research literature or whether there are different or new insights.

This chapter commences with figures. Until this thesis there was no general overview of the total size of the FNP population worldwide. It also looks into explanations for the presence of FNPs in prison populations. This chapter further provides insight into the different aspects of the detention of FNPs and whether their situation is in accordance with international legislation. This chapter concludes by analysing whether FNPs have special needs and if so, what these needs are precisely.

3.2 Statistics

In various studies there is the assumption that prison populations have become less homogenous over time and that the number of FNPs has grown considerably over recent decades.[30] The rise of the FNP population in the European Union (EU) is for example regarded in research literature as higher relative to the average growth of the total prison population.[31] This section starts by a few comments about the collection of figures.

3.2.1 Prudence with figures

For a number of reasons it is important to exercise caution when accepting the validity of statistics about FNPs. The first reason concerns the definition. It is unlikely that all countries in the world use a similar definition for FNPs. It is therefore inevitable that prison authorities do not always count exactly the same type of foreigners. It is possible for example that there are prison authorities that are responsible for the care of irregular migrants in detention centres and therefore add this number to the total size of FNPs. Or that prisoners are registered as 'foreign' despite the fact that they were born and raised in the country of detention but were not able to acquire citizenship of that country. Another reason for being prudent is that the organisations which provide figures regarding FNPs might use different recording methods. Sometimes figures for the total prison population and those representing

30 Marieke Post, *Detentie en culturele diversiteit* (Pompe Reeks, Boom Juridische Uitgevers 2005) p 1 / Loic Wacquant, ''Suitable enemies' Foreigners and Immigrants in the prisons of Europe' (1999) Punishment and Society Vol 1(2) p 216

31 Commentary to recommendation concerning foreign prisoners (CoE PC-CP(2011) p 1 / UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 80 / A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel in *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 7

the percentage of FNPs are not obtained on the same date, or the definition of a term, for example 'pre-trial', is not calculated in the same way.[32] The third reason to be careful is that information derives from different official sources, such as the national statistical office, national prison administrations, Ombudsman offices, the Ministry of Justice or the Ministry of Internal Affairs. Despite the fact that these official sources could be regarded as reputable there is no 100% guarantee that this is indeed the case and that they provide the accurate figure. Figures which are used in this thesis derive from the World Prison Brief[33] (WPB) of the International Centre for Prison Studies (ICPS) in London and from the SPACE I[34] statistics of the Council of Europe (CoE). Annex 3 provides in alphabetical order, when available, figures of foreign national prisoners per country in the world since 2005.

3.2.2 Worldwide

The total prison population worldwide is just over 10 million. Of this group nearly half a million are detained in a country of which they are not nationals.[35] This is an average of 4.7%.[36] In reality the percentage is slightly higher since not all countries provide details of the total number of FNPs in their prison population.[37] When measuring the percentage of FNPs in the total prison population of countries which provide figures on FNPs, the average percentage is 5%.[38]

3.2.3 Regional overview

There are two regions in the world which detain by far the largest number of FNPs. Both are located in the Western world and they are Europe and North America. The region which detains the highest number of FNPs is Europe. The total number of FNPs in Europe[39] is 156,346, which is on average 9.6% of the total prison population. Nearly three-quarters (114,734) of this group are detained in the 28 countries of the EU, which is on average

32 A.M. van Kalmthout, M.M. Knapen and C. Morgenstern, *Pre-trial Detention in the European Union* (Wolf Legal Publishers, Nijmegen 2009) p 18-19

33 Roy Walmsley, director of the World Prison Brief (www.prisonstudies.org/info/worldbrief), kindly revised an earlier draft of section 3.2 of this chapter.

34 www3.unil.ch/wpmu/space/space-i/annual-reports

35 The figures derive from the World Prison Brief of ICPS and were taken on January 2015.

36 Total number FNPs (485,080) divided by total prison population (10,356,981) = 4.7%.

37 Countries that do not provide figures for FNPs are: Angola, Bahamas, Benin, Bhutan, Canada, Central African Republic, Comores, Congo, Cuba, Curaçao (Netherlands), Djibouti, Ethiopia, Faroe Islands (Denmark), French Polynesia (France), Gabon, Greenland (Denmark), Guinea Bissau, Haiti, Iran, Iraq, Laos, Mali, Marshall Islands, Mauretania, Micronesia, Niger, Nigeria, North Korea, Puerto Rico, Reunion, Somalia, South Sudan, Taiwan, Timor Leste, Togo, Tunisia and Uzbekistan.

38 Total number FNPs (485,080) divided by total prison population of countries which publish data on foreign nationals (9,762,719) = 5%.

39 The term 'Europe' is used for the continent. It largely corresponds with the territories of the 47 European countries that are Member States of the Council of Europe, including Belarus which is not a Member State. Russia and Ukraine are both Member States of the Council of Europe.

18.7% of the total prison population. This means that the total percentage of FNPs in the EU is nearly twice as high compared to the percentage detained in Europe. This discrepancy is mainly due to the fact that the prison population in Russia and Ukraine is very large and there are relatively few FNPs. The second highest number of FNPs (151,564) is detained in North America. The FNPs in this region are mainly detained in the United States of America (USA).[40] It is remarkable that the Middle East, a region with a relatively modest prison population, detains the third largest group of FNPs. In total 60,269 FNPs are detained in Middle East. This is on average more than a third (36.3%) of the total prison population.[41] The total prison population in Asia consists of more than 3.7 million persons. Despite the high number of prisoners the total number of FNPs (57,579) is relatively small, on average 1.5%. One of the reasons for this low percentage is the large Chinese prison population of 1.7 million prisoners, which has only 0.4% FNPs. In Africa just over 1 million persons are detained and of this total group there are on average 2.3% FNPs. The total number of FNPs in prison populations in Central and South American countries is relatively low and so is the percentage of FNPs. The percentage of FNPs in Oceania[42] is rather high, 13.8%.

Table 3.1 provides an overview of the total number and percentage of FNPs in prison populations worldwide and per region. The first column presents the regions in the world with the total prison population in column two. The third column presents the total prison population of countries which publish figures on FNPs. The fourth column presents the total number of FNPs per region and the fifth column presents the percentage. The percentage is based on the total prison population of countries which provide data on FNPs in that region.

40 The Canadian Prison Service does not publish figures of FNPs.

41 In the United Arab Emirates the percentage of FNPs is 92% and in Saudi Arabia 72%.

42 Oceania consists of American Samoa (USA), Australia, Cook Isl. (New Zealand), Fiji, French Polynesia (France), Guam (US), Kiribati, Marshall Islands, Micronesia, Nauru, New Caledonia (France), New Zealand,North. Mariana Isl. (USA), Palau, Papua New Guinea, Samoa, Solomon Islands, Timor Leste, Tonga, Tuvalu and Vanuatu

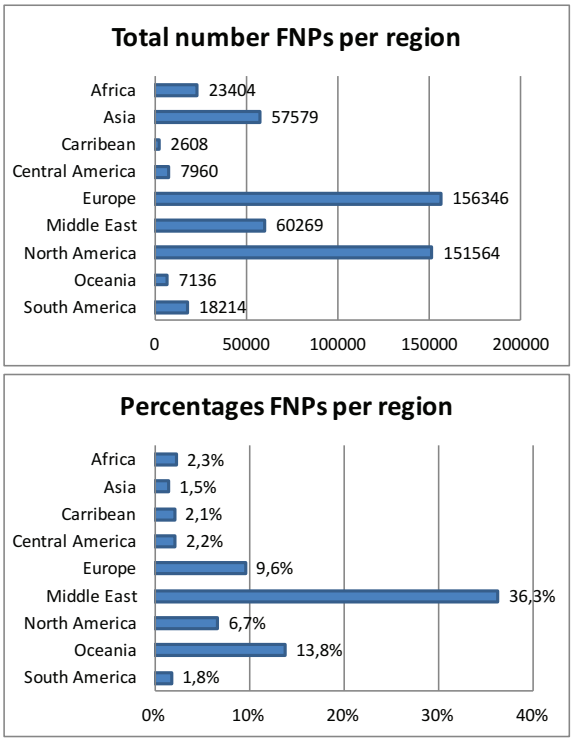
Table 3.1 Total number FNP and percentage per region in the world in 2015

Region	Total prison population	Prison population countries FNP[60]	Total number FNP	Percentage FNP[61]
Africa	1,012,807	808,979	23,404	2.3%
Asia	3,743,383	3,524,428	57,579	1.5%
Carribean	123,689	40,276	2,608	2.1%
Central America	361,203	361,203	7,960	2.2%
Europe	1,631,018	1,631,018	156,346	9.6%
Middle East	166,097	120,463	60,269	36.3%
North America	2,269,915	2,228,866	151,564	6.7%
Oceania	51,571	50,188	7,136	13.8%
South America	997,298	997,298	18,214	1.8%
Total	**10,356,981**	**9,762,719**	**485,080**	**4.7%**

Source: World Prison Brief, ICPS (January 2015)

The numbers and percentages as presented above are visualised in two graphs. The first graph shows the total number of FNPs per region in the world and the second graph the FNP percentages.

Graph 3.1/3.2 Total number and percentage of FNPs per region in the world in 2015



Source: World Prison Brief, ICPS (January 2015)

43 Countries that provide information on the number of FNPs on the total prison population.

44 Number of FNPs divided by total prison population of countries that provide information on FNPs.

3.2.4 Trends worldwide

In 2008 Walmsley from the World Prison Brief reported that 70% to 75% of all prison systems in the world experienced a rise of their prison population in comparison to five to ten years earlier. Walmsley stated that a significant contributing factor to this rise was connected to an increase in the number of FNPs.[45] Whether the total size of the FNP population worldwide is indeed on the rise, as mentioned in research literature, is difficult to prove on the basis of figures which are available. The main reason for this is that many countries have only recently started to publish, and perhaps also to collect and register, statistics for FNPs. In 2005 the World Prison Brief published figures on FNPs in 135 countries and this increased to 224 countries and overseas territories in 2015. This means that the rise in the absolute number of FNPs over recent years might also be explained by the fact that more and more countries publish figures about this particular group.

There are however in total 87 countries[46] which have been publishing figures about FNPs since 2003.[47] Based on these figures it is possible to confirm that the number of FNPs has increased over the last twelve years. In fact the FNP population doubled in these 87 countries: from 198,278 in 2003 to 423,429 in 2015. The average percentage of FNPs increased also considerably: from 2.9% in 2003 to 5.4% in 2015. The table and graph below show the sharp increase in absolute terms.

Table 3.2 Trends in 87 countries between 2003-2015

Year	Total prison population in 87 countries	Total number FNP	Percentage
2003	6,799,521	198,278	2.9%
2005	7,130,896	350,298	4.9%
2010	7,768,443	449,067	5.8%
2013	7,750,682	406,966	5.3%
2015	7,841,005	423,429	5.4%

Source: World Prison Brief, ICPS

45 Peter Tak and Manon Jendly (Eds) *Prison policy and prisoner's rights* (Wolf Legal Publishers Nijmegen, 2008) p 6

46 Albania, Algeria, Andorra, Armenia, Austria, Azerbaijan, Barbados, Belarus, Belgium, Botswana, Brazil, Bulgaria, Chad, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, France, Gambia, Georgia, Germany, Greece, Guyana, Hungary, Iceland, Indonesia, Israel, Italy, Jamaica, Japan, Jordan, Kyrgyzstan, Latvia, Lebanon, Lesotho, Libya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Namibia, the Netherlands, New Zealand, Norway, Oman, Panama, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Russia, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Singapore, Saint Vincent & Grenadines, Slovakia, Slovenia, South Africa, Spain, Sudan, Suriname, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Tonga, Turkey, Uganda, Ukraine, United Kingdom, United States of America and Zimbabwe.

47 Home Office, *World Prison Population List* (Home Office Findings, 4th edition 2003) / NationMaster Prisoners statistics (2003) www.nationmaster.com/country-info/stats/Crime/Prisoners/Foreign-prisoners All website links in this thesis have been accessed in October 2015.

Aside from these 87 countries it is also possible to demonstrate that the total number of FNPs in EU countries increased considerably in recent years.

3.2.5 European Union

This section provides insight into the total number of FNPs in the EU and general trends in individual EU countries over the last decade. The highest number of FNPs is, as mentioned above, detained in Europe and in particular in the EU. In 2015 in total 114,734 FNPs were detained in the EU. On a total prison population of 614,502 this is an average percentage of 18.7%. The table below presents per country the total number of FNPs in comparison with the total prison population and the percentage of FNPs. The highest number of FNPs in the European Union can be found in Italy and Spain and the lowest numbers in Latvia and Lithuania. The highest percentages of FNPs are detained in Luxembourg and Greece and the lowest percentages in Poland and Romania.[48]

Table 3.3 Total number and percentage FNP in EU

Country	Total prison population	Number FNP	% FNP	Country	Total prison population	Number FNP	% FNP
Austria	8,384	4,075	48.6%	Italy	54,428	17,635	32.4%
Belgium	11,769	5,202	44.2%	Latvia	5,280	69	1.3%
Bulgaria	10,006	200	2.0%	Lithuania	9,261	148	1.6%
Croatia	3,853	216	5.6%	Luxembourg	701	506	72.2%
Cyprus	930	492	52.9%	Malta	615	236	38.4%
Czech Rep.	18,376	1,617	8.8%	Netherlands	12,638	2,932	23.2%
Denmark	3,774	1064	28.2%	Poland	78,094	547	0.7%
Estonia	3,065	1,168	38.1%	Portugal	14,148	2,504	17.7%
Finland	3,011	440	14.6%	Romania	30,609	275	0.9%
France	68,295	14,820	21.7%	Slovakia	10,206	184	1.8%
Germany	65,710	17,807	27.1%	Slovenia	1,526	153	10.0%
Greece	13,147	8,309	63.2%	Spain	65,194	19,754	30.3%
Hungary	17,841	660	3.7%	Sweden	5,525	1,746	31.6%
Ireland	3,531	470	13.3%	UK	94,944[bb]	11,567[67]	12.2%
				Total	**614,502**	**114,734**	**18.7%**

Source: World Prison Brief, ICPS (January 2015)

3.2.5.1 Trends EU

In the period 2000 to 2015 the total prison population in the EU increased, as did the total number of FNPs. Since 2004 there have been more than 100,000 foreign nationals in EU prisons on any given day.[51] This means an average of one FNP to every six prisoners.

48 See for an annual overview of the total number and percentage of FNPs per country Annex 3.

49 UK England and Wales (85,406) + Gibraltar (48), Guernsey (96), Isle of Man (82), Jersey (133), Northern Ireland (1,745) and Scotland (7,434).

50 UK England and Wales (11,103) + Gibraltar (14), Guernsey (11), Isle of Man (4), Jersey (33), Northern Ireland (134) and Scotland (268).

51 Including pre-trial prisoners.

The total number of FNPs has increased in relative and absolute terms. According to SPACE the total prison population grew from 558,245 in 2000 to 639,187 in 2013[52], an increase of 14%. In the same period the total number of FNPs grew from 84,376 in 2000 to 120,480 in 2013, an increase of 43%. This means that the increase of FNPs is higher compared to the rise of the total prison population.

The World Prison Brief figures are from a later period, namely from 2005 to 2015. According to the World Prison Brief the total prison population in the EU hardly grew from 614,155 in 2005 to 614,502 in 2015, an increase of nearly zero. The number of FNPs grew in that same period from 105,113 to 114,734 in 2015, an increase of 9%. So, despite the fact that the available figures are not from the same period both SPACE and the World Prison Brief show an increase of the FNP population, both in absolute and relative terms, which is higher than the average rise of the total prison population. The fact that the numbers from both sources are not exactly the same for the same year can be explained by the fact that the dates for collecting figures are not the same.

The average percentage of FNPs within the total prison population also increased. According to SPACE the average percentage of FNPs increased from 15% in 2000 to 19% in 2013. According to the World Prison Brief the average percentage of FNPs grew from 17% in 2005 to 19% in 2015. It is important to mention that this increase took place despite the implementation of the EU Council Framework Decision 2008/909/JHA on the transfer of sentenced persons between EU Member States[53] (see section 3.3.4). The table below presents an overview of the total number and percentage of FNPs in EU-countries in the period 2000 to 2013 according to SPACE and the World Prison Brief.[54]

52 The latest Council of Europe SPACE figures derive from 1-9-2013, www3.unil.ch/wpmu/space/

53 The deadline for implementation expired on 5 December 2011.

54 In 2005 SPACE started to list separately figures of asylum seekers and illegal aliens who were held in prison for administrative reasons. It is therefore possible that the figures from before 2005 might include people who were held in prison without being accused or sentenced for a criminal offence.

Table 3.4 Comparison FNP figures SPACE and WPB in EU (2000-2013)

Year	SPACE Total prison population	SPACE Total FNP	SPACE Percentage FNP[1]	WBP Total prison population	WPB Total FNP[2]	WPB Percentage FNP
2000	558,245	84,376	15.1%	*	*	*
2001	575,600	*	*	*	*	*
2002	600,619	96,672	16.1%	*	*	*
2003	608,695	*	*	*	*	*
2004	606,773	104,479	17.2%	*	*	*
2005	622,094	108,695	17.5%	614,155	105,113	17.1%
2006	607,725	104,355	17.2%	681,877	112,387	16.5%
2007	621,936	110,721	17.8%	593,296	110,738	18.7%
2008	633,069	116,342	18.4%	599,442	114,531	19.1%
2009	652,201	119,517	18.3%	624,602	119,212	19.1%
2010	640,103	124,163	19.4%	626,372	123,554	19.7%
2011	647,931	122,784	19.0%	630,795	122,822	19.5%
2012	659,781	125,710[3]	19.1%	647,970	122,733	18.9%
2013	639,187	120,480	18.8%	647,518	120,286	18.6%
2014	**	**	**	*	*	*
2015	**	**	**	614,502	114,734	18.7%

Source: SPACE and World Prison Brief / ***=No figures available / **= figures not yet published.***

3.2.5.2 Pre-trial detention EU

Research literature frequently states that FNPs in the EU are more affected by the coercive measure of pre-trial detention than national prisoners.[58] Since SPACE collects figures about pre-trial detention of FNPs, it is possible to verify whether this is actually true. Figures from SPACE show that FNPs are indeed over-represented in practically all EU-countries within pre-trial prison populations. The percentage of FNPs in pre-trial detention is on average 6.7% higher than the, already high, percentage of FNPs on the total prison population.[59] In Austria, Belgium, Greece and Spain more than half of the total pre-trial prison population consists of FNPs. The discrepancy between the percentage of FNPs in pre-trial detention compared to the percentage of FNPs in the total prison population is particularly high in countries with a relatively low number of FNPs, for example in Czech Republic, Poland and Slovakia. The pre-trial prison population in Czech Republic consists of 21% FNPs compared to 7% FNPs in the total prison population.

55 Date of measurement: 1st of September.

56 The WPB publishes the percentage of FNPs. The calculation is made for this thesis and the figures are approximate and not an exact number.

57 There are no figures available of FNPs in Greek prisons in 2012 and therefore the figure of 2011 has been used.

58 A.M. van Kalmthout, M.M. Knapen and C.Morgenstern, *Pre-Trial Detention in the European Union* (Wolf Legal Publishers, Nijmegen 2009) p 45

59 Council of Europe, SPACE Statistics (2009) No figures are available for Bulgaria, France and Sweden.

3.2.6 Over-representation?

The figures, as presented above, show that the absolute number of FNPs and the percentage of FNPs are considerable and increasing. These findings confirm statements in the research literature that the number of FNPs is on the increase.[60] Whether the FNPs are over-represented is however more difficult to prove. As mentioned in section 3.2.1 it is important to be prudent with statistics. A simple calculation of the rate of non-citizens in the total national population compared to the rate of foreigners in the total prison population is not likely to be accurate and nor does it reflect reality. There are other features besides nationality that may distinguish prisoners and play a role in imprisonment. In countries where access to citizenship is hard to acquire many foreigners are those who have been living in the country for a long period, some even for generations, but who have not obtained or are not able to obtain citizenship and thus remain classified as a foreigner. Some countries are more liberal about granting citizenship and therefore it can be misleading to draw comparisons based on statistics. There are also many countries that have a high number of FNPs for various reasons like work, study or holiday.
Besides nationality there are also other features that distinguish nationals from foreigners, such as language, religion and race. These distinguishing features might be clear and visible but they are not recorded by the prison authorities.

3.2.7 Explanations

Variations in the total number of FNPs between countries and between different periods within the same country do not lend themselves to clear conclusions. This is especially true because there is no data available with a breakdown of country of origin in combination with grounds for detention. Furthermore, no research has been carried out for this thesis into sentencing policies of individual countries. It is however possible to find general explanations in research literature for the fact that many people are detained in a foreign country.

Globalisation

The first explanation is globalisation. The worldwide economic growth, increase in international trade and communication methods, improvements in infrastructure, more and cheaper options to travel abroad are seen as contributing to increased mobility of people.[61] People travel abroad for various reasons, for instance for immigration, work, study and holiday. Even the most distant countries have become accessible. Freedom of movement, one of the founding principles of the EU, allows EU citizens to move freely to other EU

60 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 80-81 / K. Tomašeski, *Foreigners in prison* (European Institute for Crime Prevention and Control, Publication Series No. 24, 1994) p 9

61 G. Hill, *The treatment of foreign prisoners* (International Scientific and Professional Advisory Council of the UN Crime Prevention and Criminal Justice Programme (ISPAC), January 2004) p 4

countries. This might be an explanation of the high number of FNPs in European prisons. The *UNODC Handbook on Prisoners with special needs* explains the rise of the number of FNPs as the result of globalisation, migration, trafficking and transnational crime.[62] An increase in crime committed by foreign visitors and foreign residents is a logical consequence of increased mobility by foreign nationals. The factors of youth and living in urban areas, which apply also to foreign visitors and foreign residents, are regarded in research literature as predictors for offending.[63] It is however important to state that there is little evidence to suggest that foreign nationals are more likely to be imprisoned, and imprisoned for longer, due to their committing more serious crimes than nationals.[64] The European Institute for Crime Prevention and Control linked the growth of the FNP population from the late 1980s to general migration flows in Europe.[65] According to a British study there is little evidence to demonstrate that increased levels of immigration result in higher crime.[66]

Increased probability of detection

The second reason is the increased probability of detection. Foreign nationals run a greater risk of being detected and apprehended by the legal system for a number of reasons. First of all, their conspicuous foreign appearance and foreign language increase the risk of detention.[67] Secondly, they are often more likely to be taken into police custody due to prejudiced perceptions of the level of danger foreign nationals pose to society.[68] Statistics show that people from ethnic minority backgrounds are often disproportionately stopped and searched.[69] A comparative analysis by researchers at the London School of Economics and the Open Society Justice Initiative has shown that in England and Wales in 2008/09, black people were 26 times more likely to be stopped and searched than white people, and Asian people in total 6.3 times more.[70] Possible clarifications are the stereotyping or racism by police officers in their use of stops and searches; the concentration of policing in areas

62 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 80
63 Hindpal Singh Bhui, *Race & Criminal Justice* (SAGE Publications Ltd, 2009) p 155
64 James Banks, 'Foreign National Prisoners in the UK: Explanations and Implications' (2011) The Howard Journal of Criminal Justice p 187
65 K. Tomašeski, *Foreigners in prison* (European Institute for Crime Prevention and Control, Publication Series No. 24, 1994) p 9
66 B. Bell, F. Fasani and S. Machin, *Crime and Immigration: Evidence from Large Immigrant Waves* (Institute for the Study of Labor (IZA) Discussion paper no. 4996, London 2010) p 22-25
67 Frieder Dünkel, Andrea Gensing and Christine Morgenstern, 'Germany' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 356
68 UNODC, *Custodial and non-custodial measures. Detention Prior to Adjudication. Criminal justice assessment toolkit* (UNODC, New York 2006) p 29
69 European Union Agency for Fundamental Rights (FRA), *Police Stops and Minorities* (EU-MIDIS Data in Focus Report nr. 04, 2010) p 7 / WODC, *Ethnic Diversification and Crime* (European Journal on Criminal Policy and Research 2001/01) p 2
70 Mark Townsend, 'Stop and search 'racial profiling' by police on the increase, claims study', *The Observer* (London 14 January 2012)

with high ethnic minority populations and more people from ethnic minority backgrounds in public places at times when stops and searches take place.[71] The Open Society Justice Initiative also documented over 500 police stops in Paris. The study showed that stops and identity checks by French police officers are in principle based on the appearance (ethnicity and dress) of individuals, rather than on suspicious individual behaviour and actions.[72]

Limited awareness of legal rights and limited access to legal/financial support

The third reason is that foreign nationals who are arrested are often unfamiliar with the local judicial system, the criminal proceedings in the country of detention and their own rights. Language barriers, absence of support from relatives and poor provision of information by the authorities mean that they often remain unaware during their pre-trial detention period. Studies reveal that FNPs, especially those who are awaiting trial, experience particular problems accessing basic information about the legal system of the country of detention.[73] Language difficulties and poor contact with a legal counsel means that FNPs are sometimes insufficiently aware of the charges made against them. It also occurs that they are obliged to sign documents which they cannot read and do not understand.[74] Another complicating factor is that the charges brought against FNPs sometimes present more complexities for lawyers as they may also include immigration issues which may exceed (pro bono) lawyers' expertise or time constraints. Distance from relatives can also complicate arranging a money transfer to cover legal expenses. These complications undoubtedly have an impact on the way that FNPs can prepare their legal case, the outcome of the cases and therefore also the likelihood that they have to remain in prison.

Perceived lack of alternatives to detention

The fourth reason is that FNPs run a greater risk of being held in preventive (pre-trial) detention because they may abscond and avoid trial.[75] FNPs are not considered on an equalbasis as nationals of the country for non-custodial measures or alternative sanctions, such as paying a fine or for bail. This is due to preconditions such as having an income, legal employment or a locally residing family.[76] The Dutch Code of Criminal Procedure allows, for

71 Home Office, *The Impact of Stops and Searches on Crime and the Community* (Police Research Series Paper 127, London 2000) p 48

72 Open Society Justice Initiative, *A Study of stop-and-search practices in Paris* (Open Society Institute, New York 2009) p 10

73 Diana Ruthven and Elizabeth Seward, R*estricted Access: Legal Information for Remand Prisoners* (Prison Reform Trust, London 2002)

74 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 82

75 A.M. van Kalmthout, M.M. Knapen and C.Morgenstern, *Pre-Trial Detention in the European Union* (Wolf Legal Publishers, Nijmegen 2009) p 73 / Loic Wacquant, 'Suitable enemies' Foreigners and Immigrants in the prisons of Europe (1999) Punishment and Society Vol 1(2) p 219

76 A. Kensey and P. Tournier, *Arithmétique de l'exécution des peines, Travaux & documents* (Ministère de la Justice, Paris 2002) p 24-25

example, judges to order pre-trial detention for those who are suspected of committing a crime which can result in a sentence of four years or more or when the person has 'no fixed place of residence in the Netherlands'.[77] The fact that authorities do not have access to information and/or a criminal record of the foreign national reduces further the chances of alternatives to detention.[78] Authorities further see the risk of escape as too high because FNPs do not in general have a permanent home address in the country of detention and/or a strong link with society. The fact that FNPs are often excluded from alternatives to pre-trial detention and from non-custodial sanctions was confirmed in country reports on, for example Austria, Belgium and Malta in the publication *Foreigners in European prisons*.[79]

Punitive measures

The fifth reason is that FNPs receive differential treatment in courts.[80] It has been said in a study of the degree of discrimination against poor people in the USA that once arrested by police, poor people are more likely to be charged and if charged they are more likely to be convicted and if convicted they are more likely to be sentenced and if sentenced they are more likely to be given a longer sentence.[81] The same might apply to foreign nationals.
Consistent with this statement researchers found that ethnicity has a small to moderate effect on sentencing outcomes of the USA Federal Court.[82] The researchers looked at the sentences from 1993 to 1996 and discovered that the USA court favours white defendants and penalises other dependents like Hispanics and blacks. In the United Kingdom only ten per cent of FNPs are serving short sentences of less than 12 months. In total three quarters of female FNPs and nearly two thirds of male FNPs are serving sentences of four years or more.[83] A study by Dutch criminologists from Leiden University revealed that foreign nationals with a foreign appearance and who are unable to speak Dutch are twenty times more likely to receive an unconditional prison sentence compared to persons who 'look' Dutch and who speak Dutch.[84] Those who look foreign but who speak Dutch have five times

77 Article 67 (2) Wetboek van Strafvordering
78 James Banks, 'Foreign National Prisoners in the UK: Explanations and Implications' (2011) The Howard Journal of Criminal Justice p 194-195
79 Arno Pilgram and Veronika Hofinger, 'Austria', Sonja Snacken, 'Belgium', Tonio Cachia and Mark F. Montebello 'Malta' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 100, 133, 605
80 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 81
81 Jeffre Reiman, *And the Poor Get Prison: Economic Bias* (American Criminal Justice, Boston 1996) p 92
82 D. Steffensmeier and Stephen Demuth, 'Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?' (2000) American Sociological Review Vol. 65 No. 5 p 705
83 Prison Reform Trust, *Forgotten Prisoners – The Plight of Foreign National Prisoners in England and Wales* (PRT Briefing, London May 2004) p 2
84 H. Wermink, J. de Keijser and P. Schuyt, 'Verschillen in straftoemeting in soortgelijke zaken. Een kwantitatief onderzoek naar de rol van specifieke kenmerken van de dader' (2012) Nederlands Juristenblad edition 11 p 726-733

more chance to receive a suspended sentence. Apparently there is a strong link between appearance and language in combination with the length and type of a sentence.

Patterns of offending and punishment

Foreign nationals can be detained for a wide variety of offences, ranging from fraud (for example possession of false documents), violence, theft, sexual offences, robbery and offences related to the use or possession of illegal drugs. Illegal residence is considered an administrative offence in many countries but in others it is regarded as a criminal offence. A significant proportion of FNPs are detained for offences related to the importation of illegal drugs.[85] This is particularly true for Dutch FNPs (see chapter 4). Drug-related offences are punished severely in most countries throughout the world. The long sentences awarded for these offences account therefore for the prominence of FNPs in prison populations.[86] The high number of FNPs held for drug-related crimes in the United Kingdom is a significant contributory factor to their over-representation in the prison population.[87] An attempt to address this particular problem by improving external communication on the seriousness of drug offences in the United Kingdom has led to a 45% fall in the proportion of female FNPs for drug offences in the period 2002 to 2009.[88]

3.3 Special legal rights of FNPs

'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'.

Article 10 § 1 - ICCPR

Prisoners' rights in international law are found in a number of treaties, the legally binding International Covenant on Civil and Political Rights (ICCPR)[89] and recommendations such as the UN Recommendations on the Treatment of Foreign Prisoners. This section explores briefly the special provisions for FNPs in legal instruments. See section 11.2.2 in chapter 11 for a reflection of the human rights situation of Dutch FNPs.

85 UNODC, *Custodial and non-custodial sentences - Alternatives to imprisonment (*New York, 2006) p 14

86 M. Richards et al, 'Foreign Nationals in English Prisons: II. Some Policy Issues' (August 1995) The Howard Journal, Vol 34 No. 3

87 James Banks, 'Foreign National Prisoners in the UK: Explanations and Implications' (2011) The Howard Journal of Criminal Justice p 187

88 Ibidem p 188

89 The ICCPR has 168 States Parties in April 2015. In this chapter the ICCPR will be mentioned more frequently than regional human rights instruments due to its universal application.

3.3.1 Consular rights

The most *visible* provision is the right of FNPs to make contact with their diplomatic mission and to receive consular assistance when they are detained abroad. According to Article 36 of the UN Vienna Convention on Consular Relations[90], prison authorities have the duty to inform FNPs about their right to make contact and should, upon request of the FNP, notify the diplomatic mission about the detention. The prison authorities are further requested to allow consular staff free communication with the prisoner and grant access to the prisoner. Whether this right is applied in practice by prison authorities can be seen in section 3.4.1.4. The Vienna Convention empowers consular staff to provide, with the consent of the prisoner, legal representation and a wide range of humanitarian and other assistance.[91] States are however not obliged to do so under existing international law. This means that States have a significant degree of discretion as to whether they provide assistance and what kind of assistance to provide. The consular provision is frequently used in other legislation.[92]

The fact that receiving consular assistance is not a legally protected right makes it a matter of government policy. Whether States provide consular assistance to FNPs in practice is mentioned in section 3.4.1.5. How the Netherlands has organised consular assistance to Dutch FNPs is described in chapter 6, and chapter 8 provides insight in what Dutch FNPs receive in practice.

It is further noteworthy that under existing national law, there are several States that are obliged to provide consular assistance. For example in Germany, Finland and Sweden there is a Consular Act which stipulates that in case of emergency citizens are entitled to aid and assistance from consular staff.[93] The practical implementation of these Consular Acts appears to differ little from the consular assistance provided by countries that do not have a Consular Act.[94]

3.3.2 Right to information and interpretation

The legally binding International Covenant on Civil and Political Rights stipulates that everyone who is arrested should be 'informed promptly and in detail in a language which

---

90 This convention codified consular practices developed through customary international law. The convention was adopted in 1963, entered into force in 1967 and is ratified by 174 countries in August 2014.

91 Article 36.1 c) Vienna Convention on Consular Relations

92 Article 38 UN Standard Minimum Rules for the Treatment of Prisoners (SMR), Rule 6 UN Recommendation on the Treatment of Foreign Prisoners, Principle 16.2 UN Resolution 1984/47 Procedures for the effective implementation of the SMR, Rule 24-25 Council of Europe Recommendation CM/Rec(2012)12 concerning foreign prisoners

93 Frieder Dünkel, Andrea Gensing and Christine Morgenstern, 'Germany' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 388

94 Ministerie van Buitenlandse Zaken, Gedetineerdenbeleid in buitenlands perspectief. Inventarisatie uitgevoerd in het kader van de Ronde Tafel Conferentie Gedetineerdenbegeleiding (Den Haag October 2001) p 3

he understands of the nature and cause of the charge against him' and 'to have free access of an interpreter if he cannot understand or speak the language used in court'.[95] These rights focus on court proceedings to make sure that 'all persons shall be equal before the courts'. In the EU there are attempts to strengthen the procedural rights of FNPs to enhance mutual trust in each other's legal systems and to achieve common minimum standards of procedural rights. In 2010 the EU adopted a Directive about the right to interpretation and translation in criminal proceedings.[96] EU nationals who are suspected and accused of a criminal offence in an EU country and who do not speak or understand the language of the criminal proceedings, are supposed to receive, without delay, interpretation during criminal proceedings, including police questioning and court hearings. Member States are further requested to provide them, within a reasonable period of time, with a written translation of all essential documents such as the decision on their deprivation of liberty, charges and judgment.[97] Despite the fact that EU Member States should have implemented this Directive in national laws by October 2013, it is not yet a general practice (see also section 3.4.2.1 and 3.4.2.2).[98] In 2012 the EU adopted a Directive about the right of information in criminal proceedings. EU Member States are obliged to inform those who are suspected or accused of a criminal offence promptly about their rights (*Letter of Rights*[99]) and the accusation against them and give them timely access to the case materials. Those who cannot read the *Letter of Rights* shall be informed orally and the *Letter of Rights* shall be given in a language that they understand without undue delay.[100]

3.3.3 Humane treatment and fair trial

State Parties to the ICCPR[101] are obliged to treat those deprived of their liberty with humanity and with respect for the inherent dignity of the human person.[102] It is important to mention that this includes prisoners of foreign origin. This implies that States have to act to ensure that prisoners are held in decent prison conditions and that their treatment is focussed on

95 Article 9.2, Article 14.3 f) International Covenant on Civil and Political Rights

96 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings OJ L280

97 Article 1.1, Article 3.1, Article 3.2 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings OJ L280/1

98 http://eur-lex.europa.eu/homepage.html?locale=en

99 The right of access to a lawyer; any entitlement to free legal advice; the right to be informed about the accusation; the right to interpretation and translation for those who do not understand the language of the proceedings; the right to remain silent; the right to access to case materials; the right to have consular authorities and one person informed (such as a family member or employer); the right of access to urgent medical assistance; the right to know the maximum hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority; the possibility to challenge the lawfulness of the arrest.

100 Article 5.4 of the Directive 2012/13/EU on the right of information in criminal proceedings OJ L142. The Directive became effective on 2nd June 2014.

101 The ICCPR is ratified by 168 State Parties (including the USA).

102 Article 10.1 ICCPR

their social rehabilitation.[103] State Parties should further ensure that *all* persons are entitled, without any discrimination, to the equal protection of the law[104] and receive a fair trial in the determination of any criminal charge against them.[105] The right to legal assistance from a counsel is generally regarded as a constituent of the right to a fair trial.[106]

3.3.4 Transfer agreements

In order to stimulate the resettlement of FNPs, countries can conclude bilateral and/or multilateral transfer agreements with foreign countries. Examples include the Council of Europe's Convention on the Transfer of Sentenced Persons, which is signed by 64 countries.[107] In case the country of detention has concluded a convention with another country, FNPs can request a transfer but they do not have the right to be transferred. FNPs do not automatically qualify for a prison transfer, they first have to meet several conditions.[108]

Within the EU the consent of a convicted prisoner is not necessary any more for a transfer to their home country. The EU adopted three framework decisions which establish rules for the mutual recognition of judgments and measures during criminal proceedings.[109] The Framework Decision 2008/909/JHA (Transfer of Prisoners) concerns the transfer of prison sentences; the Framework Decision 2008/947/JHA (Probation and Alternative Sanctions) concerns the transfer of suspended sentences and community punishment orders and the Framework Decision 2009/829/JHA (European Supervision Order) concerns the transfer of suspensions from provisional detention.[110] Whether these three Framework Decisions have the desired effect for EU citizens detained in other EU countries is not yet clear since the number of prisoners transferred is still small.[111] An explanation is that a large majority of EU

---

103 Article 10.3 ICCPR

104 Article 26 ICCPR

105 Article 14.1 establishes the basic right to a fair trial, article 14.1 provides for the presumption of innocence, and article 14.3 sets out a list of minimum fair trial rights in criminal proceedings.

106 Article 14.3 b) and 14.3 d) ICCPR

107 http://conventions.coe.int/Treaty

108 Conditions are for example: sufficient ties with the country of return; the remaining sentence must be long enough; criminal proceedings are complete; the offence is also punishable in the country of return; both countries agree.

109 Article 3 Council Framework Decision 2008/909/JHA and article 1 Council Framework Decision 2008/947/JHA, The Council Framework Decision 2009/829/JHA promotes, according to article 2 b, the use of non-custodial measures for persons who are not resident in the Member State where the criminal proceedings are taking place.

110 Under 909 it is possible for citizens of EU Member States, when certain criteria are met, to be transferred to their home country once they are sentenced. Under 947 it is possible to be transferred to their home country once they are sentenced and the court imposes supervision or a community punishment instead of a prison sentence. And under 829 EU citizens can await trial in their home country, so that they can continue working, for example, instead of being locked up.

111 European Commission, Meeting with EU Member States' experts on the implementation of the Framework Decisions 909/947/829, Brussels 13 November 2013 p 2.

Member States have not yet implemented the Framework Decisions, although the deadline for implementation expired already in 2011 and 2012.[112]

3.3.5 FNP Recommendations

There are several formally not legally binding instruments which focus in particular on FNPs. The most important ones are the UN Recommendation on the Treatment of Foreign Prisoners (1985); the UN Resolution 1998/22 - Status of foreign citizens in criminal proceedings; and the Council of Europe Recommendation Cm/Rec(2012)12 concerning foreign prisoners. Whether the provisions in legally binding and non-binding instruments are sufficient, whether they protect the position of FNPs and whether the authorities adhere to them in practice will be described in the following section. Where applicable the topic starts with a particular rule or recommendation that can be linked directly or indirectly to FNPs.

3.4 Situation of FNPs

This section explores the situation of FNPs according to studies in research literature and reports by independent monitoring bodies. Furthermore it provides insight into whether international rules and standards address their particular situation. Their situation is presented under four headings which are directly related to FNPs. These are: their foreign status; lack of language skills; distance from families at home; and cultural and religious differences.

3.4.1 Foreign status

Does foreign status, due to foreign nationality, have consequences for FNPs? This is considered by looking at their: ability to receive non-custodial sanctions; access to open prisons and prison leave; treatment by staff and other prisoners; access to consular authorities and availability of consular assistance; participation in resettlement activities; immigration and deportation; and access to aftercare upon release.

3.4.1.1 Non-custodial sanctions

'Foreign prisoners should be eligible for measures alternative to imprisonment'.
Rule 3 - UN Recommendation on the Treatment of Foreign Prisoners

Foreign nationals are, as mentioned in section 3.2.7, often excluded from non-custodial sentences, bail and/or fines.[113] During a visit to Malta in 2009 the UN Working Group on Arbitrary Detention experienced that the 'rules of release on bail were not being applied by

112 EuroPris, *State of Play: EU Framework Decisions 909/947 <www.europris.org/state-of-play-eu-framework-decisions-909-947-829/*

113 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 84

courts equally to Maltese citizens and foreigners alike'.[114] And in 2011 the Working Group was concerned that foreigners are more 'prone to be detained and arrested due to the very fact of being foreign'.[115]

The practice of excluding foreign nationals from non-custodial sentences may amount to unfair discrimination. The UN Resolution 1998/22 on status of foreign citizens in criminal proceedings stresses that foreign nationals, provided that they fulfil the relevant legal requirements, should receive 'alternative penal sentence or administrative penalties'. Being eligible for the same range of non-custodial sanctions and measures as other suspects and offenders is also a basic principle of the Council of Europe's Recommendation concerning foreign prisoners.[116]

3.4.1.2 Access to open prisons and prison leave

'Foreign prisoners should be eligible for (...) prison leave and other authorized exits from prison according to the same principles as nationals'.
Rule 3 - UN Recommendation on the Treatment of Foreign Prisoners

FNPs are, contrary to the above mentioned rule, often not allocated to an open prison or to a prison with a low level of security. This has often to do with fears of absconding.[117] The risk of absconding is also a reason that FNPs are not allowed on prison leave or conditional leave. A German study revealed that 58% of all German prisoners were granted the opportunity to go on prison leave compared to 18% of FNPs.[118]

Exclusion from home leave and transfer to a (semi-)open institution has been criticised by the Council of Europe Committee for the Prevention of Torture (CPT) during several visits.[119] In Greece FNPs complained that, even if they and their family had been resident in Greece for many years, they were excluded from home leave. The CPT therefore recommended the Greek authorities to consider extending the home leave system to all FNPs who have resident status in Greece.

---

114 UN Working Group on Arbitrary Detention, Report of mission to Malta (2009) A/HRC/13/30/Add.2 §19 p 6

115 UN Working Group on Arbitrary Detention, Report of mission to Germany (2011) A/HRC/19/57/Add.3 §45 p 11

116 Rule 4 Council of Europe Recommendation CM/Rec(2012) concerning foreign prisoners

117 Agneta Johnson, 'Sweden' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 798

118 N. Tzschaschel, *Ausländische Gefangene im Strafvollzug* (Centaurus, 2002) p 42

119 CPT Report visit Bulgaria (2008) §79, CPT Report visit Greece (2009) §146

3.4.1.3 Treatment

'(..) the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Article 26 - ICCPR

FNPs, especially those with a foreign appearance, often feel verbally and/or physically discriminated against by prison staff and/or by fellow prisoners.[120] HM Inspectorate of Prisons in the United Kingdom conducted two major studies into FNPs in prisons and in immigration detention centres.[121] These studies revealed that FNPs experience discrimination and general racism from staff and from other prisoners.[122] Nearly 80% of FNPs that were interviewed commented on disrespectful treatment by staff, often as a result of intolerance of language or cultural difference. The UNODC states that FNPs belonging to an ethnic or racial minority group are even more likely to be subjected to discrimination and disrespectful attitudes.[123] The British Prison Reform Trust explained that one reason that the prison system is failing to meet the needs of FNPs is because, all too often, FNPs are treated as though they are a homogenous group.[124]

Independent monitoring bodies have also come across discriminatory treatment of FNPs during their visits.[125] The UN Subcommittee on Prevention of Torture (SPT) emphasized that 'it is one of the fundamental principles of treatment of prisoners that there (will) be no discrimination on the basis of, among other, national origin' and that as a result the relevant authorities should ensure that 'prisoners of foreign nationality are treated without discrimination and that all basic safeguards equally apply to this category of persons'.[126] The CPT has also come across allegations of mistreatment and disrespectful behaviour and racist remarks against FNPs during their visits.[127] In 2001, just before the CPT went to Malta, two major hunger strikes broke out involving most of the male FNPs because they claimed that they were being treated in a discriminatory manner.[128]

---

120 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 84

121 HM Inspectorate of Prisons, *Foreign National Prisoners: A thematic review* (HMIP, London 2006) and HM Inspectorate of Prisons, *Foreign National Prisoners: A Follow Up report* (HMIP, London 2007)

122 HM Inspectorate of Prisons, *Foreign national prisoners: a thematic review* (HMIP, London 2006) p 9

123 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 84

124 F. Cooney, 'Double Punishment: the treatment of foreign national prisoners' (January 2013) Prison Service Journal (issue 205) p 45

125 Conseil National des Droits de L'Homme, *Prison Crisis: a shared responsibility – 100 recommendations for the protection of prisoners' rights* (CNDH, Rabat 2012) p 6

126 SPT Report visit Maldives (2009) §177

127 CPT Report visit Bulgaria (2010) §37, Armenia (2010) §64, Ireland (2010) §29, Ukraine (2009) §50, Ukraine (2005) §16, Serbia & Montenegro (2004) §33, Czech Republic (2002) §22

128 CPT Report visit Malta (2001) §59

The prohibition of discrimination is laid down clearly in international instruments. The legally binding International Covenant on Civil and Political Rights (ICCPR) forbids discrimination and urges State Parties to 'prohibit any discrimination' and to guarantee to all persons 'equal and effective protection against discrimination'.[129] The UN Standard Minimum Rules for the Treatment of Prisoners (SMR) have one basic rule and that is that the rules should be applied impartially irrespective of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. One of the basic principles of the Council of Europe's Recommendation concerning foreign prisoners is that Member States should take 'positive steps to avoid discrimination'.[130] In the commentary to this recommendation it is made clear that these steps are not intended to give - and should not be interpreted as giving foreign prisoners more rights and freedoms than other prisoners.

3.4.1.4 Access to consular authorities

'Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State'

Article 36.1 a - Vienna Convention

According to research literature, FNPs experience difficulties in receiving access to their diplomatic mission. The first reason is that FNPs are not always aware, or made aware of their right to make contact.[131] The prison rules are often only available in the language of the country of detention. Although many European prison services claim that the house rules are translated in the different languages, it is often up to the willingness of prison staff to provide a copy of the translated rules or to inform them orally.[132] The CPT urges therefore prison authorities to inform FNPs that they are entitled to contact their consular authorities.[133] FNPs should be notified about their entitlement upon arrival in prison.[134] The second reason is that prison authorities sometimes do not facilitate contact between the FNP and consular staff.[135] It is further important that consulates should only be informed with the consent of the FNP.[136] The CPT is very clear that a notification against the wish of a prisoner

---

129 Article 26 ICCPR

130 Rule 7 Council of Europe Recommendation CM/Rec(2012)12 concerning foreign prisoners

131 Article 36 Vienna Convention on Consular Relations provides that when a national of a foreign country is arrested or detained on criminal or immigration charges, the FNP must be advised of the right to notify the diplomatic mission.

132 Arno Pilgram and Veronika Hofinger 'Austria', Sonja Snacken 'Belgium', Petr Škvain 'Czech Republic' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 107, p 141-143, p 194-195

133 CPT Report visit Greece (1997) §189-190

134 SPT Report visit Maldives (2009) §176 p 38

135 John Quigley, William J. Aceves and S. Adele Shank, *The Law of Consular Access – a documentary guide* (Routlegde Research, 2010) p 1

136 CPT Report visit Spain (1991) §54

is not correct because it could have unfavourable consequences for the prisoner. Lastly it is possible that there is no diplomatic mission that can be contacted because the country of the FNP has no consular representation in the country of detention. Many countries do not have a large network of consular representations. There are for example only three countries in the world where all 28 EU Member States have consular representation.[137]

3.4.1.5 Availability of consular assistance

'Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation.'

Article 36.1 c- Vienna Convention

It seems that FNPs cannot always exercise their consular rights, as enshrined in Article 36 of the Vienna Convention on Consular Relations, properly. This can be connected, as demonstrated above, to restricted access to the diplomatic mission, but also to the lack of assistance being provided. Diplomatic missions are entitled to provide assistance to their nationals in foreign detention but whether a country provides assistance or not depends on domestic policies. In practice it varies from country to country, as do the different types of consular assistance.[138] Even though international law provides general guidelines on consular assistance, it does not give detailed instructions on the forms of assistance that could be offered to prisoners. This means that the types of assistance that are being provided mainly depend on what the country of origin seeks to achieve, their financial resources, extensiveness of the diplomatic network and the cooperation with foreign (prison) authorities.

The Moroccan National Council for Human Rights has noticed that FNPs, especially those from Sub-Saharan African countries, have difficulties receiving support from their embassies either because of low interest or negligence and indifference shown by the latter.[139] The international non-governmental organisation Fair Trials International analysed how policies on consular assistance of a number of countries translated into practice with regards to attendance at trial. The study showed that there are discrepancies. Australia's policy is for example to attend trials where possible and/or where they are logistically able to do. The United Kingdom, the Netherlands and Germany, by contrast, decide on a case by case basis and attend the trials of their nationals only exceptionally. The United States of America

137 European Commission - MEMO/07/551 (2007) EU Initiative to strengthen consular protection for citizens outside the European Union, p 3. These three countries are China, Russia and the United States of America.

138 Katerina Mantouvalou, *Consular Assistance and Trial Attendance: A Comparative Examination of the American, Australian, British, Dutch and German Ministries of Foreign Affairs* (Fair Trials International, London 2009) p 1

139 Conseil National des Droits de L'Homme, *Prison Crisis: a shared responsibility – 100 recommendations for the protection of prisoners' rights* (CNDH, Rabat 2012) p 6

has a policy of compulsory trial attendance in defined circumstances.[140] The British Foreign Service was criticised by the House of Commons because the quality and type of services that were made available to prisoners varied from post to post and among staff.[141]
Various countries inform their citizens via the internet of what to do when arrested abroad and what to expect from the Ministry of Foreign Affairs and diplomatic missions. The text, often published on official websites, varies from supportive, such as: 'we will do everything in our power to assist nationals who are arrested or in prison overseas' [142] to realistic: 'we cannot get you out of prison' [143] and 'we cannot give you better treatment than what is given to local people in prison'[144], to honest: 'the precise nature of services may vary, depending on individual circumstances in a particular case'[145], to sympathetic: 'consular staff are there to assist you. They are not judgmental. It is the task of the local courts to decide on your innocence or guilt. Even if you are found guilty, consular officials will continue to assist you and you should not feel embarrassed in your dealings with the mission'.[146] So, the extent to which FNPs are able to receive consular assistance depends in practice heavily on the willingness and resources of the country of origin.

3.4.1.6 Resettlement activities

'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.'
Article 10.3 - ICCPR

FNPs are often refused participation in resettlement activities as a result of their foreign status and the likelihood that they will not remain in the country of detention after release.[147] One of the reasons is that prison authorities often have limited resources which they do not

140 Katerina Mantouvalou, *Consular Assistance and Trial Attendance: A Comparative Examination of the American, Australian, British, Dutch and German Ministries of Foreign Affairs* (Fair Trials International, London 2009) p 31
141 Foreign Affairs Committee, *Support for British nationals abroad: The Consular service* (House of Commons Fifth Report of Session 2014-15) p 51
142 Australian Government Department of Foreign Affairs and Trade, *Arrested or jailed overseas* (DFAT, Barnton 2014) p 2 http://smartraveller.gov.au/tips/arrested-or-jailed-overseas.pdf
143 UK Foreign & Commonwealth Office, *In prison abroad* (Consular Directorate, London 2012) p 5 www.gov.uk/government/uploads/system/uploads/attachment_data/file/35521/in-prison-abroad.pdf
144 Consulate General People's Republic of China Vancouver, *Guide to China's Consular Protection and Services Overseas* (2003)
145 US Department of State, *Assistance to U.S. Citizens Arrested Abroad* (Travel State Government) http://studentsabroad.state.gov/emergencies/arrestedabroad.ph
146 South African Department on International Relations & Cooperation, *Advice to South African Citizens in the Event a South African is Arrested or Jailed Abroad* (International relations & Cooperation) www.dfa.gov.za/consular/arrest.htm
147 Tonia Chachia and Mark F. Montebello, 'Malta', Frieder Dünkel, Andrea Gensing and Christine Morgenstern 'Germany' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 610-611, p 375

want to invest in prisoners who will not be resettled in their society. The fact that FNPs are normally not allowed to spend the last months of their sentence in a more open setting, as seen in section 3.4.1.2, with its focus on reintegration might be another reason why FNPs are not able to participate in activities to prepare them for their reintegration into society. This situation is not in line with the ICCPR obligation, as mentioned in the quote above, that the essential aim of the treatment of prisoners is their reformation and social rehabilitation. The Dutch High Court ruled that FNPs should not be excluded from reintegration activities because the Dutch Penitentiary Principles Act states that prisoners should, as much as possible, be prepared for 'reintegration into the community' and interpreted this as not necessarily into the Dutch community.[148] However, the situation did not change and therefore the CPT requested the Dutch authorities 'to review the programme of activities available to FNPs, particularly in respect of education, vocational training, and re-socialisation activities, with a view to ensuring that they are not disadvantaged in comparison with the general prison population in the Netherlands'.[149]

The practice of excluding FNPs from re-integration activities is not in the spirit of the non-discrimination principle of the ICCPR.[150] Nor is it in the spirit of the basic principle of the Council of Europe Recommendation concerning foreign prisoners.[151] Rule 35 of this Recommendation further stresses that prison authorities should prepare FNPs for release 'in good time' and 'in a manner that facilitates their reintegration into society'.

As mentioned in section 3.3.4 the prison transfer agreements were adopted to facilitate the social rehabilitation of foreign national offenders. Whether the three EU Framework Decisions have a positive impact on the resettlement of prisoners has not been studied yet. The main reason is that a large majority of the EU Member States have not yet implemented the Framework Decisions.

3.4.1.7 Immigration and deportation

FNPs accused of or sentenced for a serious offence run the risk of deportation to their country of origin, once they have finished their prison sentence. Uncertainties about their immigration status can be very stressful for FNPs.[152] This is particularly true in countries, such as the United States of America, where long-term residents may be deported at the end of their sentence, even if they do not have ties to the country of origin.[153] After completing their sentence those being deported are normally transferred to an immigration removal center, where they must wait until their papers are ready before they can be removed from the country. It can occur that the country of origin does not wish to receive the individual

148 Hoge Raad decision NJ 1987 405, 16 January 1987, 405
149 CPT Report visit The Netherlands (2011) §36
150 Article 26 ICCPR
151 Rule 9 Council of Europe Recommendation CM/Rec(2012)12 concerning foreign prisoners
152 HM Inspectorate of Prisons, *Foreign national prisoners: a thematic review* (HMIP, London 2006) p 14
153 Chris Flood, *Report on Irish Prisoners Abroad* (Irish Prisoners Abroad, 2007) p 61

and this can lead to prolonged detention.[154] It is also not uncommon for FNPs to continue their stay in prison after the completion of their sentence because they do not have funds to pay for their return ticket or accommodation whilst waiting for their deportation.[155] During a visit to Malta in 2009 the UN Working Group on Arbitrary Detention experienced that the 'rules of release on bail were not being applied by courts equally to Maltese citizens and foreigners alike'.[156] In the same year the Working Group visited Senegal where they were concerned about the extensive usage of administrative detention of foreigners at police stations after they had served their sentence. As a result of administrative and logistical problems FNPs could not be deported and had to wait sometimes for years.[157] For this reason the Council of Europe's Recommendation concerning foreign prisoners urges countries to determine the legal status and the situation of FNPs 'as early as possible' during the sentence in order to ensure clarity.[158]

3.4.1.8 Aftercare

'The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.'

Rule 64 – SMR

Whether foreign nationals who are released can make use of aftercare facilities depends on their individual situation. Those who will remain in the country of detention after release may be eligible to receive aftercare. Having neither a residence permit, nor residence, nor language skills can reduce the chances of receiving support after release.[159] Whether FNPs who return to their country of origin can receive or apply for support is hardly researched. It seems that the theme of aftercare is also overlooked in reports by monitoring bodies. There are a few organisations which provide assistance, such as the non-governmental

154 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 83

155 UN Working Group on Arbitrary Detention, Report of mission to Senegal (2009) A/HRC/13/30/Add.3 §68 / 1st Annual report UK National Preventive Mechanism (2011) p 21, 27 / Human Rights Watch Lebanon, Lebanon: Free Foreign Prisoners When Sentences End (2010) http://www.hrw.org/news/2010/02/25/lebanon-free-foreign-prisoners-when-sentences-end

156 UN Working Group on Arbitrary Detention, Report of mission to Malta (2009) A/HRC/13/30/Add.2 §19 p 6

157 UN Working Group on Arbitrary Detention, Report of mission to Senegal (2009) A/HRC/13/30/Add.3 §68-69 p 14

158 Rule 35.2 (a) Council of Europe Recommendation CM/Rec(2012)12 concerning foreign prisoners

159 Piret Liba, 'Estonia', Sonata Malisauskaite-Simanaitiene, 'Lithuania' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 279, 570

organisations Prisoners Abroad[160] and Care for Overseas Prisoners in the United Kingdom.[161] The lack of aftercare following release is not in line with rule 64 of the SMR which underlines that governmental or private agencies should be capable of lending the released prisoner efficient after-care. The Council of Europe Recommendation concerning foreign prisoners also states that 'efforts shall be made, if the prisoners consent, to contact the authorities in the State to which they are to be sent with a view to ensuring support both immediately upon their return and to facilitate their reintegration into society'.[162] 'Where foreign prisoners are to remain in the State in which they were held after release, they shall be provided with support and care by prison, probation or other agencies which specialise in assisting prisoners.[163]

3.4.2 Language skills

Not being able to speak, understand or read the national language of the country of detention has implications for FNPs. This section provides insight into the consequences experienced by FNPs with regards to their situation in prison, their legal case and communication with others.

3.4.2.1 Understanding rules, rights and procedures

'Foreign prisoners shall be informed, in a language they understand, about their right to legal advice on matters affecting their detention and status'.
Rule 21.1 – CoE Rec (2012)12 concerning foreign prisoners

One of the consequences of the language obstacle is that many FNPs are not fully aware of the prison rules, their own rights and legal proceedings in the country of detention.[164] According to research literature, FNPs face unique disadvantages when left to navigate a foreign country's legal system.[165] Additionally, monitoring bodies are critical of the failure of authorities to set out the rules clearly to FNPs.[166] According to the SPT this situation increases the probability of human rights violations.[167] The SPT therefore encourages authorities to provide information on the rights of prisoners in a clear and simple language and to train

160 Prisoners Abroad supports Britons and their families during and after imprisonment overseas (www.prisonersabroad.org.uk).
161 COP is a Christian charity campaigning for the welfare of FNPs (www.careforoverseasprisoners.org).
162 Rule 35.4 Council of Europe Recommendation CM/Rec(2012)12 concerning foreign prisoners
163 Rule 35.3 CoE Rec(2012)12
164 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 83
165 John Quigley, William J. Aceves and S. Adele Shank, *The Law of Consular Access – a documentary guide* (Routlegde Research, 2010) p 19
166 NPM Report Estonia (2010) p 52, NPM Report Czech Republic (2006) p 11, NPM Report Albania (2008-2010) p 36, NPM Report Georgia (2010) §29 www.ohchr.org/EN/HRBodies/OPCAT
167 SPT 5th Annual Report (2011) §56

staff to inform those deprived of their liberty in a language they can understand.[168] The CPT further argued that FNPs are placed in an 'inferior position' because they have to rely on other prisoners for information about the prison regime and rules.[169] The CPT expressed in its reports reservations towards using fellow prisoners as interpreters during disciplinary hearings. It stated that 'if, in exceptional cases, it was necessary to use a fellow prisoner, it is important to receive the consent of the prisoner and to document this'.[170] The CPT discovered a good practice during a visit to the United Kingdom in 2008. The delegation observed that a dedicated *foreign national officer*, a FNO, was appointed to meet with new FNPs and to provide them with advice and to serve as a point of reference.[171] The CPT was also positive about the fact that the Danish prison authorities provide guidelines for prisoners in 19 foreign languages. These guidelines were available via the Prison Service's intranet so prison staff could print them out whenever needed.[172]

Freedom of information is regarded by the UN as a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated.[173] It is therefore not surprising that the right of access to information is laid down in the ICCPR and that the SMR stipulates that prison authorities are obliged to inform prisoners about the rules and rights of prisoners.[174] No reference is made however to those who do not understand the language. The British organisation Fair Trials International found EU Member States to be in violation of the rights of liberty and fair trial in 640 criminal cases brought to their attention in the period 2009-2013.[175] In 10% of these cases FNPs were denied information about their rights.

3.4.2.2 Information about arrest, charges and assistance of an interpreter

> *'To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him (..) and to have free assistance of an interpreter if he cannot understand or speak the language used in court'.*
>
> **Article 14.3 a and f - ICCPR**

As a result of no or a poor command of the national language and lack of access to an interpreter FNPs often do not understand the reasons for their arrest and the charges which are made against them.[176] During a visit to Turkey in 2006 the UN Working Group on Arbitrary

168 SPT Report visit Paraguay (2009) §77
169 CPT Report visit Greece (2009) §150
170 CPT Report visit Denmark (2008) §66
171 CPT Report visit United Kingdom (2008) §81-82
172 CPT Report visit Denmark (2008) §73
173 UN Resolution 59 (I) Calling of an International Conference on Freedom of Information (1946) p 95
174 Article 19.2 ICCPR, Rule 35.1 SMR
175 Fair Trials International, *Fair Trials International and JUSTICE Response to the Balance of Competences Review on police and criminal justice* (FTI, London 2014) p 8
176 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 82

Detention was concerned that the vulnerability of FNPs was exacerbated by the scarcity of effective interpreters.[177] The SPT has also made comments on the lack of interpreters. In a report to Sweden, the SPT repeated the conclusion of a report by the Swedish National Council for Crime Prevention (Brottsförebyggande rådet) that the lack of adequate interpretation is seen as one of the major reasons why FNPs do not enjoy equal procedural rights.[178] According to the SPT every person who does not understand the language where he or she is arrested or detained should be provided with 'free assistance of an interpreter in all cases where he or she gives a statement to or is questioned by the police, is heard by the court or wishes to communicate with his/her defense counselor in connection with his/her case'.[179] Also the CPT came across many examples of FNPs who had not benefited from the services of an interpreter. As a result the CPT urged prison authorities to take effective steps to ensure that FNPs are 'promptly provided' with the services of an interpreter and that FNPs should not be requested to sign any statements or other documents without this assistance.[180] The French NPM revealed that interpreters are often reluctant to come to French prisons because of the long period required for payment of their services.[181]

In practice the right to translation is also often violated.[182] In 2008 the European Court of Human Rights (ECtHR) ruled in the case *Ladent v. Poland* that Poland had violated the European Convention by failing to inform the French national promptly and in a language which he understood of the reasons for his arrest and the charges against him.[183] In the case *Baytar v. Turkey* the ECtHR held that there had been a violation of the right to the assistance of an interpreter when the police without the assistance of an interpreter questioned Mrs. Baytar while she did not have a sufficient command of the Turkish language.[184]

As mentioned in section 3.3 the EU adopted the Directive to ensure that suspects or accused persons are able to obtain interpretation in their own language in all courts throughout criminal proceedings and when receiving legal advice.[185] Fair Trials International found that in 20% of the 640 cases brought to them FNPs were denied access to an interpreter or translations of key documents and in 10% of the cases FNPs were not informed about the reasons for their arrest.[186]

---

177 UN Working Group on Arbitrary Detention, Report of mission to Turkey (2006) A/HRC/4/40/Add.5 §79 p 20

178 SPT Report visit Sweden (2008) §82

179 Ibidem §83

180 CPT Report visit Poland (2009) §31, CPT Report visit Serbia (2009) §30

181 Contrôleur Général des Lieux de Privation de Liberté, *Activity Report 2012* (CGLPL, Paris 2013) p 154

182 Paolo Balbo, 'Italy' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 499

183 Ladent v. Poland (Application no. 11036/03) ECtHR 18 March 2008

184 Baytar v. Turkey (Application no. 45440/04) ECtHR 14 October 2014

185 Directive 2010/64/EU L280

186 Fair Trials International, *Fair Trials International and JUSTICE Response to the Balance of Competences Review on police and criminal justice* (FTI, London 2014) p 8

3.4.2.3 Legal support

'Suspects or accused persons shall have access to a lawyer without undue delay'.
Article 3.2 - European Union Council Directive 2013/48/EU Access to a lawyer[187]

Access to a lawyer is an important right for those in detention because it helps prisoners: to build up a technical defence; to exercise their rights and to deter authorities from inflicting ill-treatment.[188] The legally binding ICCPR requires that in the determination of a criminal charge everyone is entitled to receive assistance from a lawyer.[189] Being unable to communicate with a lawyer due to a language barrier has negative consequences for FNPs. As a result of this FNPs, according to research literature, in general do not receive sufficient legal support.[190] The SPT also came across FNPs without adequate facilities to prepare their legal cases.[191] The SPT considered their defence rights as 'fragile', especially when taking into consideration the small number of lawyers trained in foreign national law.[192] According to the Moroccan National Council on Human Rights, the fact that FNPs are not provided with legal assistance diminishes their chances of receiving a fair trial.[193] The SPT therefore requests that countries guarantee that a pro bono lawyer be present from the earliest stages of detention, including during police interrogations.[194] Sometimes lawyers are not available at all. During a visit to Bahrain the UN Working Group on Arbitrary detention met FNPs who had been sentenced without a lawyer present.[195]

Like other prisoners who lack the means to hire a lawyer of their own choice, FNPs can apply in many countries for a pro-bono lawyer. The chance that this pro-bono lawyer is able to communicate in the same language as the FNP and has expertise in immigration issues,

---

187 EU Member States have until 27 November 2016 to implement this Directive.

188 5th Annual Report SPT (2012) §77, Council of Europe, *CPT Standards* (CPT/Inf/E (2002) 1-Rev. 2013) §37 p 6

189 According to the ICCPR State Parties are obliged to ensure that '*In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (Article 14.3 b) (c) To be tried without undue delay (Article 14.3 c) (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;' (Article 14.3 d)*

190 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 79

191 SPT Report visit Maldives (2007) §176

192 Contrôleur Général des Lieux de Privation de Liberté, *Activity Report 2012* (CGLPL, Paris 2013) p 167

193 Conseil National des Droits de L'Homme (CNDH), Prison Crisis: a shared responsibility – 100 recommendations for the protection of prisoners' rights (CNDH, Rabat 2012) p 6

194 SPT Report visit Paraguay (2010) §89, Council of Europe, *CPT Standards* (CPT/Inf/E (2002) 1-Rev. 2013) §19 p 15, CPT Report visit Bulgaria (2010) §22

195 UN Working Group on Arbitrary Detention, Report of mission to Bahrain (2001) E/CN.4/2002/77/Add.2 §94 p 26

which are often connected to cases with FNPs, is slim. In order to address this issue the Vienna Convention entitles consular staff to arrange for the legal representation of their national who is detained abroad.[196] Consular staff at Dutch embassies are in practice often reluctant to provide names of lawyers because they do not want to be held responsible for the quality of the legal work.[197]

3.4.2.4 Social inclusion within prison

'Idleness and isolation of FNPs should be overcome'
Pope Benedict XVI, Council of Europe Conference 2012[198]

Having limited or no understanding of the national language exacerbates all other difficulties faced by FNPs.[199] Not being able to communicate properly can have severe consequences and can make life in prison more difficult.[200] The absence of a common language does not only hinder communication between FNPs, staff and other prisoners but it is also seen as the root cause of feelings of isolation.[201] The CPT confirmed that communication difficulties contribute to a certain 'sense of isolation' among FNPs and to potential tension with prison staff.[202] It also leads to not being aware of events taking place; to misunderstandings; to being unable to arrange various matters and to exclusion from activities. For example in many countries, such as France, requests of prisoners to see a doctor, a religious person or a lawyer have to be made in writing and in the language of the country of detention and this represents a challenge for foreigners.[203] Language problems are seen by the Asian and Pacific Conference of Correctional Administrators (APCCA) as the main problem for FNPs.[204] Similarly, the study by the UK Inspectorate of Prisons confirmed that language is one of the three main problems faced by FNPs.[205]

---

196 Article 36 1 c) Vienna Convention on Consular Relations
197 IOB, *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2010 nr. 338) p 70
198 Speech Pope during the audience Directors of prison administrations conference on 21 November 2012 http://press.catholica.va/news_services/bulletin/news/30081.php?index=30081&po_date=22.11.2012&lang=en#TESTO
199 Hindpal Singh Bhui, *Race & Criminal Justice* (SAGE Publications Ltd, 2009) p 159
200 Sonja Snacken, *Buitenlanders in de Belgische gevangenissen: knelpunten en mogelijke oplossingen* (Koning Boudewijnstichting, Brussel 2004) p 51-53
201 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 83
202 CPT Report visit Armenia (2010) §78
203 F.V1 (Interview with volunteer (V) nr. 1 (1) in France (F)) see Annex 2 with respondents.
204 APCCA, *Conference notes of the 21st Asian and Pacific Conference of Correctional Administrators* (APCCA Chiang Mai 2001) p 12-17
205 HM Inspectorate of Prisons, *Foreign National Prisoners: A thematic review* (HMIP, London 2006) p 5

3.4.2.5 Participation in prison activities

'FNPs should have the same access as national prisoners to education, work and vocational training.'
Rule 1 - UN Recommendation on the Treatment of Foreign Prisoners

FNPs are sometimes not able to participate in work, education and other activities which require language skills.[206] The CPT noticed during visits to Malta, Bulgaria and Armenia that FNPs were excluded from work, that FNPs had no programme of activities worthy of mention and that no efforts were made to provide them with any form of occupation adapted to their needs.[207] It should be stated that in general there is a lack of purposeful activities offered to prisoners, including to FNPs.

The CPT also noticed activities that were organised specifically for FNPs, such as language courses in Albania and Austria.[208] FNPs are however often excluded, as mentioned above, from activities which focus on resettlement in society because they are expected to leave the country after release.[209] The inability to attend certain courses, for example those that address offending behaviour, can be also a disadvantage in applying for parole or conditional release. In 2012 the European Court of Human Rights ruled that Germany had violated the rules in the case of *Rangelov v. Germany*, Rangelov was not allowed to receive social therapy as a result of his Bulgarian nationality.[210]

3.4.2.6 Interaction with prison staff and fellow prisoners

'Staff who are to work with specific groups of prisoners, such as foreign nationals (…), shall be given specific training for their specialised work'
Rule 81.3 - European Prison Rules

The fact that communication difficulties and cultural differences can hamper contact between FNPs and prison staff has been noticed by monitoring bodies on numerous occasions. The SPT came across tensions and violence among prisoners and in particular between certain groups of prisoners. In Benin tensions occurred for example between national prisoners and some FNPs, particularly those from neighbouring states.[211] When the CPT visited Austria, the members of the delegation were struck by the high proportion of FNPs and noted that this situation gave 'obvious' rise to various problems, in particular

206 Sonja Snacken, 'Belgium' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 143
207 CPT Report visit Malta (2001) §59, CPT Report visit Bulgaria (2008) §79, CPT Report visit Armenia (2010) § 77
208 CPT Report visit Albania (2010) §57, CPT Report visit Austria (2009) §76
209 Tapio Lappi-Seppälä, 'Finland' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 308
210 Rangelov v. Germany (Application no. 5123/07) 22 March 2012
211 SPT Report visit Benin (2008) §286

that of communication between FNPs and staff.[212] Given the scale of the problem, the CPT invited the Austrian authorities to introduce language courses for a selection of prison staff. The CPT was further critical in Greece about the fact that prison staff were not recruited from diverse backgrounds while nearly 50% of the prison population consists of FNPs.[213] The CPT recommended that the Greek authorities attract multicultural staff and appoint 'foreign national liaison officers' who have an understanding of the culture and language of the main groups in the prison. Also in Armenia and Spain the CPT requested the authorities to carefully select prison staff working in direct contact with FNPs and to invest in specialised training such as inter-cultural awareness as well as conflict prevention, in order to minimalise reverting to the use of force against FNPs.[214]

3.4.3 Distance from family

Being detained abroad entails being far from family and friends for many FNPs. This section explores the consequences of the physical distance from relatives for FNPs. The topics are: contact with family; support and ability to organise resettlement, and the impact of incarceration on the relatives of prisoners.

3.4.3.1 Contact with family

'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence'

Article 17.1 – ICCPR

FNPs often lack social support from their relatives because contact is restricted. First of all it is difficult for relatives to carry out a visit because it is complicated, time-consuming and costly. Making contact via telephone is also hampered because most prison authorities do not accept incoming calls and for prisoners it is not always possible to make an international phone call. Long-distance calls are not only expensive but telephones are not always available, there are different time zones and sometimes the foreign prisoner is required to speak in a language which can be understood by staff.[215]

This situation is also confirmed in reports by monitoring bodies. In 2006 the UN Working Group on Arbitrary Detention was concerned about a procedural obstacle regarding contact between FNPs in Turkey and their families at home. FNPs were only allowed to call one number in their home country and the diplomatic mission of their home country has to certify to the Turkish that this number actually belongs to a family member of the detainee. The

212 CPT Report visit Austria (2009) §110

213 CPT Report visit Greece (2009) §121

214 CPT Report visit Armenia (2010) §78, CPT Report visit Spain (2012) §12

215 Per Škvain, 'Czech Republic', M. Akritidou, A. Antonpoulou and A. Pitsela 'Greece', Pascal Décarpes 'France' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 195, p 198, p 329, p 421

UN Working Group concluded that 'many consulates apparently fail to cooperate with this procedure'. As a result, detainees from those countries are simply deprived of all possibility of reaching their family by phone'.[216] Both the SPT and the CPT received complaints from FNPs about their lack of telephone access.[217] FNPs in Sweden were prevented from calling their families because they had to obtain clearance for telephone numbers by providing a proof of a clear criminal record for relatives they wished to call. According to the SPT this situation causes more resentment than any other aspect of life in prison because these prisoners rarely receive visits from their families. The CPT emphasised the need for some flexibility with regards to the application of rules on visits and telephone contacts vis-à-vis prisoners whose families live far away.[218] The CPT advised prison authorities to bear in mind the 'special needs of this category of prisoner' and 'to allow FNPs accumulated visiting time and/or more possibilities to make a telephone call'.[219] The CPT invited the Norwegian authorities to introduce low-cost international phone-call possibilities for FNPs.[220]
So, in short, prison authorities do not always take into consideration the difficulties faced by FNPs in maintaining contact with their families and the common consequences of feeling lonely, distressed and isolated.[221]

3.4.3.2 Support and ability to organise resettlement at home

Besides emotional distress, restricted contact with relatives can also lead to a lack of material support. The US Department of State Human Rights Reports on countries reveal that prisoners in many countries, especially in Africa and South America, have to rely on their families to receive food, money, medicines and clothing.[222] A lack of material support from relatives can have severe implications for the health and safety of FNPs. The Commissioner for Human Rights from Azerbaijan reported in its NPM report to the SPT that FNPs complained about the fact that they had to pay bribes to prison staff in order to receive money sent by their families.[223]
Another consequence of hampered contact with family members is that it is difficult for FNPs to organise matters at home immediately after arrest and to start preparing for release by making the necessary arrangements at home.[224] Restricted contact with family is seen by

---

216 UN Working Group on Arbitrary Detention, Report of mission to Turkey (2006) A/HRC/4/40/Add.5 §79 p 20
217 SPT Report visit Sweden (2009) §73, CPT Report visit Sweden (2003) §72 and CPT Report visit Georgia (2010) §111
218 2nd General Report CPT (1992) §51, CPT Report Armenia (2010) §79
219 CPT Report visit Austria (2004) §108
220 CPT Report visit Norway (2007) §85
221 HM Inspectorate of Prisons, *Foreign National Prisoners: A Follow Up report* (HMIP, London 2007) p 15
222 US Department of State, *Human Rights Reports 2013* (2014) www.state.gov/j/drl/rls/hrrpt/2013/
223 NPM Report Azerbaijan (2009-2010) p 58
224 Hindpal Singh Bhui, *Race & Criminal Justice* (SAGE Publications Ltd, 2009) p 159

FNPs in the UK, together with the issue of immigration, as the most serious and prevalent issue they face. Particularly women, who are often the carers for children, felt this.[225]

3.4.3.3 Relatives of prisoners

In research literature it is known that families of prisoners encounter a wide range of difficulties.[226] The situation is aggravated when the relative is detained abroad. First of all, families are not always informed immediately about the arrest of their relative and thus the search for their relative is frightening and painful. As with FNPs the language obstacle and ignorance of the legal system and procedures in the country of detention make it difficult for them to know what is going on. They also face huge financial demands as many find they have to pay for the legal defence of their relative as well as sending money to their relative for basic necessities. According to the CEP[227] Special Interest Group Foreign Nationals, families can sink into debt as they can also no longer rely on the income earned by their partner.[228] Contact with their relative is also hampered. As mentioned above, many families cannot afford to visit their relative in prison abroad and contact via telephone and mail is difficult. Research carried out in the UK found that 40% of families had not been able to visit their relative at all since the arrest.[229] The vast majority of prisoners' relatives cannot cope with the situation and feel stressed, worried and in some cases totally devastated.[230] Many suffer from health problems and those with children often experience problems at school and with their behaviour. Furthermore, they often feel that they receive little support from any agency in their home country. Section 8.3.7 provides insight in how relatives of Dutch prisoners experience the detention abroad and the consular assistance that is being provided.

3.4.4 Cultural and religious differences

Being detained in a foreign country with a different culture and religion can have an impact on FNPs. This section looks into the consequences on: culture; religion; food; cell allocation and size; and clothing and hygiene.

---

225 HM Inspectorate of Prisons, *Foreign National Prisoners: A thematic review* (HMIP, London 2006) p 5

226 Creasie Finney Hairston, *'Prisoners and their families'* in Jeremy Travis and Michelle Waul, *Prisoners once removed. The impact of incarceration on re-entry of Children Families and Communities* (The Urban Institute Press, 2003) p 259-260

227 CEP is the abbreviation of the European Organisation for Probation.

228 The Special Interest Group consist of organisations in Europe active in the field of FNPs, see for information www.cepprobation.org/page/79/foreign-national-prisoners

229 Chris Flood, *Report on Irish Prisoners Abroad* (Irish Prisoners Abroad, 2007) p 26

230 Special Interest Group National Prisoners, *families* (www.cepprobation.org/page/86)

3.4.4.1 Culture

Prisons are melting pots of different nationalities, cultures and religions. The Belgian prison population consists for example of more than 100 different nationalities and the British prison population consists of over 170.[231] The consequence of having so many different nationalities is that there are many different cultural backgrounds and therefore different views on religion, food, behaviour and crime, which can create tensions among prisoners.[232] Cultural differences can also lead to prisoners feeling lonely or isolated.[233] Cultural differences and different dietary requirements were regarded by the 21st Asian Conference of Correctional Administrators (APCCA) as the main points of concern when dealing with FNPs.[234]

3.4.4.2 Religion

'Everyone shall have the right to freedom of thought, conscience and religion.'
Article 18.1 - ICCPR

Although FNPs are entitled to practice their religion it is often not possible to be assisted by ministers of their faith. Access to a religious representative of one's own faith or to worship according to its religious requirements is in general only possible when the religion is also adhered to in the country of detention.[235] Provisions by prison authorities for cultural and religious dietary requirements and with regard to clothes and personal hygiene vary and depend on financial resources available. In many economically developed countries prison authorities take into consideration the cultural and religious needs of FNPs and they are able to make a choice from several types of meals. The UK Inspectorate of Prisons reported that the overall level of discriminatory treatment on the basis of religion was low in British prisons but that negative perceptions in relation to Muslims and their treatment were prevalent. The stereotyping, as a result of the wider political climate, had a direct impact on Muslims and as a result some were hesitant to observe their faith.[236] One interviewed prisoner explained: 'I would like to grow a beard to be closer to my religion, but I would get judged – called a

231 Sonja Snacken, 'Belgium' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 134 / HM Inspectorate of Prisons, *Foreign National Prisoners: A thematic review* (HMIP, London 2006) p 3

232 Sonja Snacken, *Buitenlanders in de Belgische gevangenissen: knelpunten en mogelijke oplossingen* (Koning Boudewijnstichting, Brussel 2004) p 53-55

233 CEP Special Interest Group Foreign National Prisoners (www.cepprobation.org)

234 APCCA, *Conference notes of the 21st Asian and Pacific Conference of Correctional Administrators* (APCCA Chiang Mai 2001) p 14

235 Barbara Stando-Kawecka, 'Poland', Tímea Szabó and others, 'Hungary' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 675, p 439

236 Hindpal Singh Bhui, *Race & Criminal Justice* (SAGE Publications Ltd, 2009) p 164

terrorist, so I don't'.[237] Religious observance for FNPs has not been a point raised frequently by monitoring bodies. In Armenia the CPT requested the authorities however to provide for FNPs access to 'suitable areas' where they can practice their religion.[238]

3.4.4.3 Food

'The religious precepts and customs of foreign prisoners should be respected, with reference, above all, to food and working hours'
Rule 5 - UN Recommendation on the Treatment of Foreign Prisoners

The religious and cultural dietary requirements of FNPs are often not taken into consideration by prison authorities.[239] In fact, there are many countries where prison authorities are not able to provide prisoners with a nutritious daily meal at all.[240] With regards to the situation in the EU, prisoners receive daily food. A worrying situation has however occurred in Greek prisons where, due to the financial crisis, the state budget for many prisons decreased to a minimum leading to hundreds of detainees being malnourished in 2012.[241] As mentioned above, the fact that prisoners in many countries depend on their families to provide food or to supplement their diet by bringing food into the prison or by sending money is a disadvantage for FNPs.

3.4.4.4 Allocation and cell size

'The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.'
Rule 1 - UN Recommendation on the Treatment of Foreign Prisoners

Where prisoners are detained depends on various factors, such as the area where the person is arrested, the location where the investigation is carried out and/or where the court is located dealing with the case, the status of the prisoner (pre-trial or sentenced), level of required security, and availability. In general, FNPs are not allocated to special prisons. There are however prisons where proportionately more FNPs are located, for example in prisons in or close to the capital city or close to an airport. In France a quarter of all FNPs are allocated to one of the three big Parisian prisons.[242] In the United Kingdom female FNPs

---

237 HM Inspectorate of Prisons, *Foreign National Prisoners: A thematic review* (HMIP, London 2006) p 12
238 CPT Report visit Armenia (2010) §77
239 CPT Report visit Poland (2009) §54
240 US Department of State, *Human Rights Reports 2013* (2014) www.state.gov/j/drl/rls/hrrpt/2013/
241 Katerina Nikolas, 'Greek prisons running out of food' *Digital Journal* (May 30, 2012) http://digitaljournal.com/article/325718
242 Pascal Décarpes, 'France' in in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 325

are grouped in four prisons and male FNPs are accumulating in prisons such as The Mount and The Verne.[243]

Overcrowding of prisons leads to restricted living space, poor living conditions and sanitation and less time outdoors.[244] FNPs are not excluded from this practice.[245] The CPT noticed for example six FNPs being held in an Armenian cell of 13 m^2 and therefore urged the authorities to change this situation.[246] The European Court of Human Rights ruled in the case of *Ananyev and others v. Russia*, that Russia violated the rules by detaining Mr Ananyev and others in very small cells.[247] Mr. Ananyev's cell only measured 15 square metres but featured 13 sleeping places.

3.4.4.5 Clothing and hygiene

Respecting one's personal hygiene in a prison environment with all its different religions and cultures can create tensions and conflicts.[248] There is no special reference in the SMR regarding clothing or respecting one's personal hygiene in connection to religion and culture. Rule 17.1 states however that 'clothing shall in no manner be degrading or humiliating'. The obligation to wear prison clothing and footwear can be problematic for FNPs when they are in conflict with religious requirements. Having facial hair and wearing a religious headdress such as turbans and headscarves often depends on the rules of the prison. The CPT criticised Armenia for the fact that FNPs had to pay a fee to staff to take a shower.[249]

3.4.5 Vulnerability

The previous section shows that FNPs encounter various difficulties during their detention abroad. It furthers proves that the majority of difficulties that FNPs face are addressed by international human right rules and standards but that in practice these rules are not applied properly by the prison authorities. It seems that, despite the fact that most prison populations contain a large number of FNPs, prison authorities do not have a special policy to address the difficulties which FNPs face. Nor do judicial authorities, organisations and communities seem aware of their particular situation.[250]

---

243 Francesca Cooney, 'Double Punishment: The Treatment of foreign national prisoners' (January 2013) Prison Service Journal No 205 p 46

244 Roy Walmsley, 'Prison health care and the extent of prison overcrowding' (2005) International Journal of Prisoner Health, Vol. 1 Iss: 1 p 3-12

245 J.K. Singer, D.K. Das and E.M. Ahlin, *Trends in Corrections Interviews with Corrections Leaders Around the World,* (CRC Press, Boca Raton 2013) p xxix-xxxi

246 CPT Report visit Armenia (2010) §76

247 Ananyev and others v. Russia (Application no. 42525/07; 60800/08) ECtHR 10 April 2012

248 NPM Report Armenia (2009) p 11

249 CPT Report visit Armenia (2010) §63

250 Hindpal Singh Bhui, *Going the Distance: Developing Effective Policy and Practice with Foreign National Prisoners* (Prison Reform Trust, London 2004) p 22

Consequently, FNPs are placed in a vulnerable position. This is confirmed in reports by independent monitoring bodies. According to the UN Working Group on Arbitrary Detention, FNPs are 'in a particularly vulnerable situation in most if not all countries'.[251] The UN Committee Against Torture stated that 'although all those in detention form a vulnerable group, some groups suffer particular vulnerability, such as women, juveniles, members of minority groups, foreign national prisoners...'. Expertise in relation to such vulnerability is needed in order to lessen the likelihood of ill-treatment.[252] The Guiding Principle of the SPT is that '...some groups suffer particular vulnerability, such as women, juveniles, members of minority groups, foreign national prisoners...'.[253] Also the CPT is 'attentive to the particular problems that might be encountered by certain specific categories of prisoners, for example: women, juveniles and foreigners.'[254]

It is promising that Member States of the Council of Europe adopted the Recommendation (2012)/12 concerning foreign prisoners. In the commentary of the Recommendation it is stated that Member States acknowledge the vulnerable situation of FNPs; that they want to alleviate 'any possible isolation' of FNPs with a view to their social reintegration and to take into consideration their special needs in order to provide them with 'opportunities equal to those of other prisoners'. In order to achieve 'substantive equality' authorities are requested to take additional steps in order to combat possible discrimination against FNPs and to meet their specific social and personal needs.[255]

3.5 Special needs of FNPs

The previous section described the situation of FNPs as vulnerable because of the difficulties they face; the lack of concern for their legal rights and the lack of attention and specialised policies from authorities, organisations and communities to address their vulnerable situation. The aim of this section is to identify the different needs of FNPs according to the research literature. These identified needs will be used in chapter 9 as a point of reference for verifying whether consular assistance, as provided by the Netherlands to Dutch nationals detained abroad (Dutch FNPs), has a positive impact on these needs.

The UNODC identified various needs of FNPs, starting with the need not to be disadvantaged in the criminal justice system; to be not excluded from non-custodial measures and to have

---

251 UN Working Group on Arbitrary Detention, Report of mission to Turkey (2006) A/HRC/4/40/Add.5 §79 p 20

252 Committee Against Torture, *Annual CAT report 2010-2011* (UN A/66/44) p 242

253 Subcommittee on Prevention of Torture, Fourth Annual Report of the SPT (UN, CAT/C/46/2) §107 (j) p 23

254 Council of Europe, *CPT Standards* (CPT/Inf/E (2002) 1-Rev. 2013) §52 p 18

255 Council of Europe, *Commentary to Recommendation CM/Rec(2012) concerning foreign prisoners* (CM(2012)108 ad) p 1

access to justice.[256] Other needs are to maintain contact with the outside world, make contact with the diplomatic mission and to participate in prison activities, including activities that focus on their reintegration. The British HM Inspectorate of Prisons reported that FNPs are in need of the ability to make contact with their families; to receive clarity on immigration issues and to overcome the language barrier.[257] The report revealed that there was a strong link between the inability to communicate and social isolation, mental health problems and self-harm.[258]

The British non-governmental organisation Prisoners Abroad has a differentiated approach towards the needs of British FNPs. The organisation has categorised the prisoners' needs per type of country, ranging from developing countries, industrialised countries where English is spoken to industrialised countries where English is not the main language. In developing countries, where prison authorities are often not able to provide prisoners with food, drinking water and sometimes medicines, FNPs are in need of money in order to stay alive. Very often they have to buy a place to sleep and pay for their own security. Prison is regarded as a life-threatening experience especially for those who do not speak the language nor understand the culture. FNPs held in industrialised English-speaking countries may not suffer from shortages of food or clean water, but they are likely to experience the usual isolation of imprisonment. Even though these British FNPs have been resident in the country of detention prior to their arrest, they may sometimes be deported after serving their time. For this group it is difficult to rebuild their life after prison in a country in with which they often do not have any ties. In industrialised countries, where English is not spoken widely, British FNPs are often socially isolated and not able to participate in work, education or rehabilitation programmes due to the lack of a shared language.[259]

According to the British Prison Reform Trust, the most important need of FNPs is becoming aware about the workings of the criminal justice system in the country of detention and understanding the prison procedures and rules.[260] Also, the CEP Special Interest Group regards the problem of access to information in one's own language as 'probably the most critical issue affecting foreign prisoners around the world'.[261] Those who might be deported after their sentence are also in urgent need of information and access to legal and immigration advice according to the Prison Reform Trust. A British Prison Service survey revealed that only one third of FNPs in nearly 90 prisons received information on

256 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 80, 88

257 HM Inspectorate of Prisons, *Foreign National Prisoners: A thematic review* (HMIP, London 2006) p 62-63

258 Inspectorate of Prisons, *Foreign National Prisoners: A Follow Up report* (HMIP, London 2007) p 13

259 Prisoners Abroad, 'Creativity behind bars: reducing isolation' (23 May 2014) http://www.prisonersabroad.org.uk/news/292/59/

260 Prison Reform Trust, *Forgotten Prisoners – The Plight of Foreign National Prisoners in England and Wales* (PRT Briefing, London May 2004) p 4-5

261 Special Interest Group on Foreign Nationals, 'Legal issues' (2014) www.cepprobation.org/page/85

immigration issues.[262] Prisoners Abroad identified the main obstacles for Irish FNPs as: 'isolation, communication, cultural appreciation and lack of information with regard to legal procedures and fundamental rights.[263] The compilation of national studies into FNPs in the EU identified a number of needs to prevent social exclusion.[264] Sonja Snacken pleaded for 'an adequate prison regime, emphasizing educational programmes, national language courses, access to foreign language books and systematic preparation for their release or expulsion' to prevent foreign nationals for becoming 'totally isolated and disappearing from the notice of prison staff, with all risks this may entail'.[265]

On the basis of comments in research literature and reports on FNPs, this thesis identified five main needs. Although some of these needs apply as well to other prisoners, they have a specific FNP dimension. The first need is to feel safe, to be treated humanely and not to suffer discrimination; this is labelled in this thesis as *well-being and treatment*. The second special need is to be aware of legal proceedings and rights, including the right to make contact with the diplomatic mission, and is called *awareness of legal proceedings and rights*. The third special need is about the ability to maintain *contact with the outside world and family.* The fourth special need is *social inclusion within the prison*, be able to take part in activities, to have access to religious and medical care and interaction with prison staff and other prisoners. The last special need, which is hardly mentioned in research literature, is about *preparation for release and resettlement*. It relates to their ability to prepare for release during detention and to receive support in resettling after release in the country of origin.

Special needs of foreign national prisoners

- Well-being and treatment
- Awareness of legal procedures and rights
- Contact with the outside world and family
- Social inclusion within the prison
- Preparation for release and resettlement

262 L. Punter, 'Foreign Nationals Survey' (unpublished) in Prison Reform Trust: *Forgotten Prisoners – The Plight of Foreign National Prisoners in England and Wales* (PRT Briefing, London May 2004) p 4

263 Chris Flood, *Report on Irish Prisoners Abroad* (Irish Prisoners Abroad, 2007) p 26

264 A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel in *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 78-88

265 Dirk van Zyl Smit, Sonja Snacken*, Principles of European Prison Law and Policy – Penology and Human Rights* (Oxford University Press, Oxford 2009) p 187

These identified five special needs of FNPs are used, as mentioned in the introduction, to verify whether they correspond with the experiences of Dutch FNPs (chapter 7) or whether there are different or new insights. These needs are also used to measure whether consular assistance, as received by Dutch nationals in foreign detention, has an impact on these needs (chapter 9).

It is noteworthy to mention that many of these needs are tackled by specific international binding human rights law.[266] This means that when FNPs are not able to exercise these rights, for example because States do not address the needs of FNPs properly, States are not complying with their international obligations. See chapter 11 for a reflection on this situation.

266 *Well-being and treatment* (Article 10.1 ICCPR), *Awareness of legal proceedings and rights* (Article 9.2 and Article 14.3 f) ICCPR), *Contact with the outside world and family* (Article 17.1 ICCPR), *Social inclusion within the prison* (Rule 2 UN Recommendation on the Treatment of Foreign Prisoners) and *Preparation for release and resettlement* (Article 10.3 ICCPR).

Figures that have been presented in this chapter show that nearly half a million foreign nationals are detained worldwide. This means that on average prison populations consist of 5% FNP. Explanations for the presence of FNPs are indeed globalisation, as mentioned in the first chapter, but also a combination of an increased risk of detection, disadvantages in the judicial system, not being considered for non-custodial measures due to the risk of absconding and more punitive sanctions due to a foreign appearance and lack of language skills.

This chapter further demonstrates that there are legally binding rights that try to tackle one of the difficulties which FNPs face: the language obstacle. States are obliged to inform prisoners promptly and in detail in a language he or she can understand about the charges and to provide free assistance of interpreters in court. The right of FNPs to contact their consular authorities about the detention is not legally binding but universally accepted and laid down in other legislation. Although consular authorities are entitled to provide consular assistance they are not obliged to do so. It is a matter for government policy. See chapter 5 for insight into how the Netherlands has interpreted this and chapter 8 for what has been achieved in practice. Taking into consideration the difficulties which FNPs face and the general lack of policies of prison authorities to address the specific FNP needs one can conclude that FNPs are placed in a vulnerable position

In this chapter the issue of FNPs has been described from a general perspective and based on secondary sources. There is however no information about their personal background. The next chapter will give Dutch FNPs a face by looking into their personal characteristics and by exploring where and why they are detained abroad. Chapter 7 will provide insight in how they actually experience their detention abroad.

CHAPTER 4

DUTCH NATIONALS IN FOREIGN DETENTION

4.1 Introduction

The previous chapter describes the general situation of FNPs according to existing knowledge. Little is however known about the background and personal characteristics of FNPs. This chapter sheds light on Dutch nationals in foreign detention (Dutch FNPs).[1]

4.2 Statistics

Despite the relatively small population of the Netherlands, there are many Dutch nationals who are detained abroad. Compared to other countries the Netherlands might even be the leader. What lies behind this dubious honour? This section looks at numbers and trends, detention countries and also at explanations for the fact that so many Dutch nationals are in foreign detention.

4.2.1 Numbers

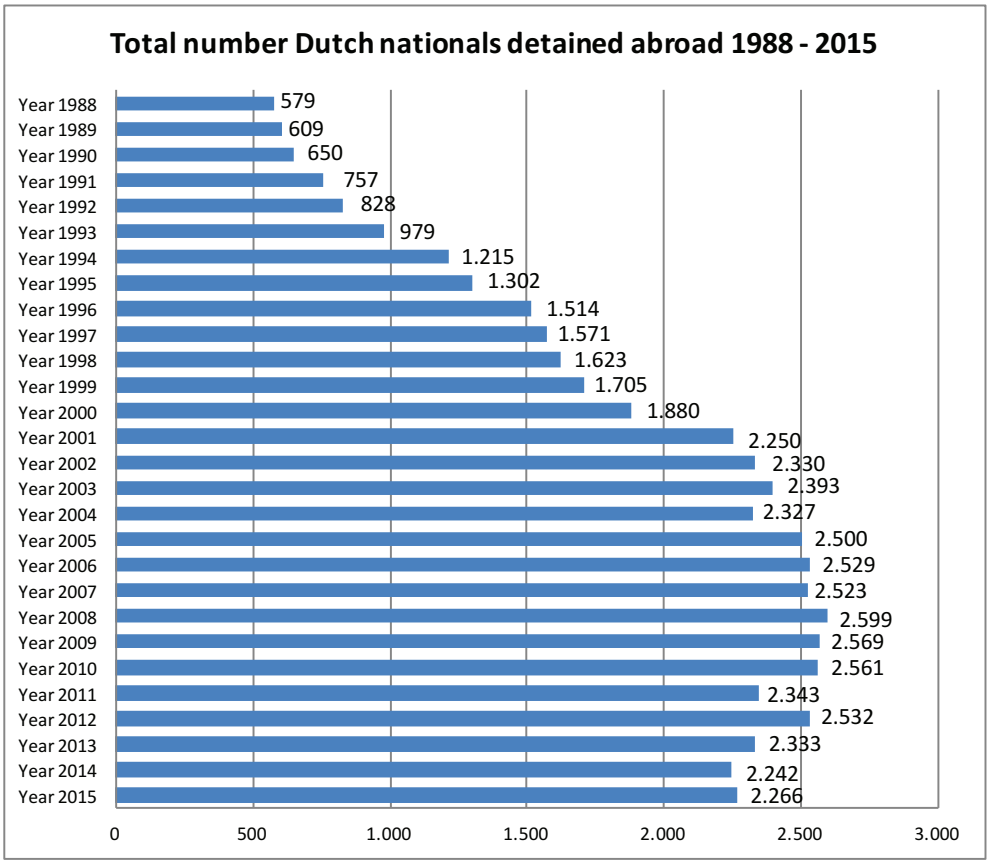
In 2015 a total of 2,266 Dutch nationals were detained abroad.[2] Over recent decades the total number of Dutch nationals in foreign detention has exploded. Over the last 25 years the total number of Dutch FNPs quadrupled: from 579 in 1988 to 2,262 in 2015.[3] This is a staggering average growth of nearly 6% per year. It seems however that the growth of the total number of Dutch prisoners has stabilised and there are recently also signs of a slight decrease. The highest total number of prisoners (just over 2,600) was reached at the time the questionnaires for this thesis were sent out in May 2008. The average flow per year is around 800 prisoners. The graph below represents an overview of the total number of Dutch FNPs per year. It clearly shows a boom in numbers, a stabilisation between 2002 and 2012 and a decrease since 2012.

1 To avoid long sentences Dutch nationals detained abroad are mentioned as Dutch FNPs, or 'Dutch prisoners' or 'prisoners'. In case 'prisoners' refers to prisoners in Dutch prisons, instead of foreign prisoners, this is mentioned.

2 Ministerie van Buitenlandse Zaken, *Jaarlijkse rapportage over Nederlandse gedetineerden in het buitenland* (DCM, Den Haag 8 June 2015) p 2

3 The figures are provided by the Consular Affairs and Migration Policy Department of the Dutch Ministry of Foreign Affairs.

Graph 4.1 Total number of Dutch FNPs (1988-2015)[4]



Source: Ministry of Foreign Affairs

4.2.2 Trends

'The rise of Dutch nationals in foreign detention has been dwindling. However, more and more do Dutch nationals realise that sentences for drug trafficking are high abroad.'

Peter Middelkoop, Epafras in interview Radio Wereld Omroep 9 December 2009

During the last 25 years there have been years of very substantial growth: from 1993 to 1994 and from 2000 to 2001. In the first period the number of registered prisoners grew from 979 in 1993 to 1,215 in 1994, a growth of 24%. Unfortunately it is not possible to clarify this first sharp increase. This has also to do with the fact that there is no information available about the number of prisoners per detention country in the relevant period.

The second relatively strong increase took place between 2000 and 2001: from 1,880 to 2,250 registered Dutch prisoners. This rise can be explained by the fact that Dutch nationals

4 Before 2011 the stock-data differ per year.

in foreign detention came into the spotlight as a result of a television documentary and a critical report by the national Court of Audit (see section 5.2.2 and 5.2.4).[5] Due to this media attention, Dutch FNPs and their families were likely to become more aware of their entitlement to inform the diplomatic mission about their detention or missing relative abroad and the possibility to receive consular assistance. The fact that in 2000 the Minister of Foreign Affairs announced a monthly financial allowance for Dutch nationals detained outside the EU might have been also an incentive for Dutch prisoners to inform the diplomatic mission about their detention. From 2005 to 2010 the growth stabilised and in the last years there has been a slight decrease.

The fact that the number of Dutch FNPs has quadrupled stands in contrast to the modest increase in the total number of inhabitants in the Netherlands during this period.[6] There are however similarities between the increase of Dutch FNPs compared to the increase of the total number of prisoners detained in the Netherlands. The total prison population in the Netherlands nearly tripled: from 7,397 in 1992 to 20,007 in 2004. In recent years the total number decreased considerably, to 12,638 in September 2013.[7] This decline is, according to the Research and Documentation Centre (WODC) of the Dutch Ministry of Security and Justice, partly due to a more extensive use of non-custodial sanctions and broader efforts to tackle the problem of habitual offenders.[8]

4.2.3 Detention countries

Dutch nationals are imprisoned all around the world. In 2013, Dutch nationals were detained in nearly 100 different countries. Despite the fact that the total number of Dutch prisoners remained stable in recent years, the total number of countries in which they are detained increased considerably. The number of countries increased from 57 in 1995, the year in which the Ministry started to count the different countries, to 102 in 2015. During this period there are in total 38 countries where Dutch nationals have been detained on a continuous basis.[9] Annex 4 provides an overview of the number of Dutch FNPs per country in the period 1995-2015.

---

5 Algemene Rekenkamer, *Gedetineerdenzorg buitenland* (2000-2001 27430 nr. 1-2) p 5

6 The total number of inhabitants grew from 14,7 million in 1988 to 16,8 million in 2013, a growth of 14%.

7 See World Prison Brief, the Netherlands from 7,397 (1992), 11,886 (1995), 13,333 (1998), 15,246 (2001), 20,075 (2004), 18,103 (2007), 15,235 (2010) to 12,638 (2013). Until 2007 this figure includes the number of irregular migrants in detention centers.

8 A. Sonnenschein, *Trendwatch - Introductie en eerste resultaten van een instrument ter verbetering van justitiële capaciteitsramingen* (WODC Cahier 2011-4, Den Haag 2011) p 45

9 These countries are Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, France, French Guyana, Germany, Hungary, Indonesia, Ireland, Italy, Japan, Luxembourg, Morocco, Norway, Panama, Peru, Poland, Portugal, Romania, Spain, Surinam, Sweden, Switzerland, Thailand, Trinidad & Tobago, Turkey, United Kingdom, United States of America and Venezuela.

4.2.3.1 Popular detention countries

The countries that detain relatively large numbers of Dutch nationals are Germany, Spain, France, Dominican Republic, Peru, United Kingdom, Italy, Belgium, United States and Brazil. The country in which, by far, the most Dutch nationals are detained is Germany. This high number probably has to do with the fact that Germany is the largest neighbour of the Netherlands and that it is visited relatively frequently by Dutch citizens. Most Dutch nationals are detained in prisons in the area around Düsseldorf, a city that is relatively close to the Dutch border. The fact that the number of Dutch prisoners in Belgium, France, Italy, Spain, and the United Kingdom is high and has remained stable over the years, can be explained by the fact that these countries are located in relatively close proximity to the Netherlands; they are popular holiday destinations and transit countries for international flights.

The high number of Dutch prisoners in Brazil, the Dominican Republic and Peru, mostly connected with drug related crimes, is a relatively new phenomenon. The numbers of Dutch prisoners in these countries fluctuate considerably. From 1995 to 2015, the number in for example the Dominican Republic rose from 3 people to 77, from 4 to 71 in Peru, and from 20 to 47 in Brazil. The introduction of direct flights between the Netherlands and South American countries is a possible explanation of this large increase. Also in Suriname the number of Dutch prisoners increased rapidly: the total number nearly tripled from 69 in 1999 to 302 in 2001. The reason why the number has decreased sharply to 37 Dutch prisoners in 2015 has not been studied but is likely related to very strict border controls on direct flights between Paramaribo, the capital of Suriname and Amsterdam Schiphol airport.

4.2.3.2 EU vs non-EU

A large majority of Dutch FNPs are detained in EU countries. On April 1st 2015, 64% (n=1,439) of the Dutch FNPs were detained in the EU.[10] The top 5 countries are Germany (n=499), Spain (n=229), France (n=203), United Kingdom (n=161) and Belgium (n=121). The total number of Dutch FNPs in the EU is slowly decreasing. In 1995 more than three quarters of them were detained in EU countries (or countries that would become a member state of the EU) and this percentage decreased to 65% in 2005 and to 64% in 2015. This trend is an indication of the future and it might lead to a situation where a minority of Dutch FNPs is detained in the EU. This situation will be further reinforced as a result of the EU policy that FNPs from EU countries will be transferred to their country of origin after they receive their final sentence in the EU country of detention.[11]

In April 2015, 36% (n=827) of Dutch nationals were detained outside the EU. The highest number were detained in Turkey (n=94) and the second highest number in the Dominican Republic (n=77), closely followed by the United States of America (n=76). Other countries

10 Ministerie van Buitenlandse Zaken, *Jaarlijkse rapportage over Nederlandse gedetineerden in het buitenland* (DCV/CA-494/2015, Den Haag 8 June 2015) p 2

11 EU Council framework Decision 2008/909/JHA http://db.eurocrim.org/db/en/doc/1188.pdf

with a high number of Dutch prisoners are Peru (n=71), Morocco (n=50) and Brazil. The region in the world outside the EU in which the largest group of Dutch prisoners is detained is South America. This is a rather recent development and the numbers are far from stable.[12] Figures for the other regions remained rather stable in the period 1995 to 2015.

The Ministry of Foreign Affairs does not register the trial status (pre-trial or sentenced) of Dutch FNPs.

4.2.4 International context

As mentioned in section 3.2.1, the vast majority of countries keep records of FNPs in their own prisons and publish figures via the World Prison Brief. There is however not a tradition of publishing figures on the number of nationals who are detained abroad. Only a handful of countries provide data on the number of their nationals in foreign detention. When comparing these figures it is striking to see that the number of Dutch prisoners is very high in comparison to other countries. It is approximately similar to the total number of British FNPs (2,758).[13] This is surprising because the British national population is nearly four times the size of the national population in the Netherlands. Also compared to other neighbouring countries, the number of Dutch FNPs is high both in absolute and in relative terms in comparison to the national population. In 2004 in total 1,800 French FNPs were detained abroad and 1,500 German citizens.[14] Both the French national population and the German national population are much bigger than the national population in the Netherlands.[15] In 2007 in total 453 Belgium citizens were detained abroad, that is less than one fifth of the total number of Dutch FNPs in that year.[16]

4.2.5 Explanations

There are a number of reasons that might explain the high number of Dutch FNPs in comparison to other countries. Over the last two decades around three quarters of the Dutch nationals have been detained for drug-related crimes. Producing, trading, distributing and smuggling drugs are apparently seen by some Dutch nationals as a lucrative and 'acceptable' business. How this situation has arisen can be explained by the special role of the Netherlands with regards to drugs.

---

12 In 1995 less than 5% of Dutch FNPs were detained in South America. The percentage increased to nearly 20% in 2000 and to 25% in 2010. In April 2015 the number decreased to 11%.

13 House of Commons, *Prisoners: Foreign Nationals* (Column 643 W, 3 July 2013)

14 Frank Miedema, Sabine Stoltz, *Vast(gelopen) in den vreemde. Een onderzoek naar het hoge aantal Nederlanders in buitenlandse detentie* (WODC, Den Haag 2008) p 2

15 National population of France (65 million), Germany (81 million) and the Netherlands (17 million) in 2013.

16 The Belgian national population is 11 million compared to the Dutch national population of 17 million.

First of all the Netherlands is internationally known (or notorious) for its tolerant approach to soft drugs. It is common knowledge that there are many so-called *coffee shops* in Amsterdam and elsewhere where people, often tourists, do not drink coffee but buy soft drugs. Possession of drugs is illegal but possession of maximum 5 grams marijuana, or 1 XTC-pill, for personal use is tolerated and therefore not prosecuted. Secondly, the Netherlands is internationally regarded as a good transit country due to its well-developed infrastructure, good connections by air, road and sea and relatively open borders within the European Union. Furthermore the social and colonial links with countries producing drugs, such as Surinam, Morocco, Turkey and overseas territories of the Kingdom of the Netherlands, make the Netherlands both a distribution and transit country for drugs. According to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) the Netherlands play a major role as a drug market and as a transit country for heroin and cocaine.[17] The Netherlands is the endpoint of a drugs route from the Balkans and it is a distribution country for drugs to and from other countries. Lastly synthetic drugs, in particular ecstasy-group substances and amphetamines, are manufactured in the Netherlands. According to the United Nations Office on Drugs and Crime (UNODC) the Netherlands and Belgium are considered the main production countries for ecstasy in Europe.[18] It is possible that custom authorities pay special attention to Dutch nationals as they cross borders as a result of the profile of the Netherlands as an important transit and production country for drugs and its tolerant approach towards drugs. Indeed the fact that so many Dutch nationals are suspected or sentenced for a drug related crime justifies strict controls by border authorities.

4.3 Personal characteristics

What are the personal characteristics of this large group of Dutch FNPs? In order to put their characteristics into a context, reference is made, where applicable, to the situation of prisoners in Dutch prisons.

4.3.1 Gender

The majority of Dutch prisoners in foreign detention are male. According to the figures of the Ministry of Foreign Affairs from 2013, in total 88% of them are male, 12% are female and for 1 person the gender is unknown. These percentages have not changed over the years and they correspond also with the outcome of the prisoners' questionnaire for this thesis. An interesting finding is that the percentage of Dutch female FNPs is double the size of the percentage of females in Dutch prisons: 12% vs 6% respectively.[19] The high average percentage is influenced by the extremely high percentage of female prisoners in a number of South American and Caribbean countries. Detention in these countries is practically all

17 EMCDDA, *Country overview the Netherlands* www.emcdda.europa.eu/publications/country-overviews/nl

18 UN Office on Drugs and Crime, *World Drug Report 2011* (UN, New York 2011) p 38

19 Dienst Justitiële Inrichtingen, *Gevangeniswezen in getal 2006-2010*, (DJI, Den Haag 2011) p 26

related to drug crimes. The over-representation of female prisoners in certain regions of the world correlates with research findings of this thesis. The female prisoners that filled out the questionnaire are significantly more often detained outside the EU than inside the EU. They are vastly overrepresented in countries such as Venezuela, Dominican Republic, Brazil and Argentina.

4.3.2 Age and marital status

The average age of Dutch FNPs is 41 years.[20] This is a striking difference compared to the average age of prisoners in Dutch prisons, which is 34 years, seven years younger.[21] There are two main explanations for this difference. First of all very young people are less likely to travel abroad and secondly the length of imposed prison sentences, in particular with regards to drug crimes, is abroad often longer compared to the Netherlands and therefore prisoners become older. More than three-quarters of Dutch nationals detained abroad are between 20 and 50 years old. There is furthermore a fairly equal distribution between the age categories: 20 to 30 years, 30 to 40 years and 40 to 50 years. Each age category consists of around one quarter of the total number of prisoners.
In 2013 there was, according to the figures of the Ministry of Foreign Affairs, only one prisoner detained abroad who is below the age of 20 and there are 162 persons older than 60 years. The reason that the Ministry monitors the age of prisoners is that it is their policy to provide additional assistance to minors and to elderly prisoners. It is likely that, as a result of the aging of the general population, there will be more elderly prisoners in the future. Dutch female FNPs are on average 5 years younger than Dutch male FNPs. This difference is significant.
The Ministry does not actively register the marital status of Dutch nationals in foreign detention. According to the outcome of a study which was carried out on behalf of the Ministry, 41% of the prisoners were not married, 25% were not married but had a partner, 21% were married and 13% were divorced or widower and in total 70% had (dependant) children.[22]

4.3.3 Country of birth and nationality

In 2007 more than half (57%) of Dutch FNPs were not born in the Netherlands. This high percentage can be explained by the fact that Dutch citizenship is determined by birth to at least one Dutch parent, irrespective of the place of birth. Further, many prisoners were born in one of the countries of the Kingdom of the Netherlands (Aruba, Curaçao, Sint Maarten) or in one of the Dutch municipalities (Bonaire, Sint Eustatius and Saba). Other 'popular'

---

20 Frank Miedema, Sabine Stoltz, *Vast(gelopen) in den vreemde. Een onderzoek naar het hoge aantal Nederlanders in buitenlandse detentie* (WODC, Den Haag 2008) p 30
21 G.D. Mol, I. Henneken-Hordijk, *Gedetineerd in Nederland 2007* (DJI, Den Haag 2008) p 41
22 Frank Miedema, Sabine Stoltz, *Vast(gelopen) in den vreemde. Een onderzoek naar het hoge aantal Nederlanders in buitenlandse detentie* (WODC, Den Haag 2008) p 42

countries of birth are Surinam[23], Turkey, Morocco and the Dominican Republic. See section 5.2.1 for information about Dutch citizenship and eligibility to receive consular assistance.

Dual nationality

With regards to nationality the figures are different. According to the Ministry of Foreign Affairs 25% of the prisoners who are eligible to receive consular assistance have dual nationality, which means that they have another nationality besides the Dutch nationality.[24] Sometimes this other nationality is the nationality of the country of detention. A large majority of Dutch prisoners in Morocco have for example also Moroccan nationality. In countries such as Morocco and Turkey, it used to be problematic for the Dutch diplomatic mission to make contact and to provide assistance to persons with dual nationality because the national authorities did not accept that their citizens have obtained a second nationality.[25] The phenomenon of a majority of prisoners not actually having been born in the Netherlands differs slightly from the situation in Dutch prisons. A small majority (56%) of these prisoners were born in the Netherlands.[26] Similar to those detained abroad, a considerable group is born in one of the overseas countries of the Kingdom of the Netherlands. Other common countries of birth are Surinam, Morocco and Turkey.

Cultural background

In the questionnaire, prisoners were asked about their cultural background. It turns out that, despite the fact that fewer than half of the Dutch FNPs were born in the Netherlands, a majority (55%) of the prisoners regard their cultural background as Dutch. This means that although their country of birth was not the Netherlands they feel or consider themselves Dutch. Frequently mentioned non-Dutch cultural backgrounds in the questionnaire were the cultural background of the overseas countries of the Kingdom of the Netherlands such as Suriname, Morocco and Turkey.

4.3.4 Education

Prisoners were asked in the questionnaire about their highest educational degree or level. It turns out that one in eight prisoners has not finished any kind of education and a similar group has only finished primary school. The educational background of prisoners detained in the Netherlands is somewhat different. Compared to Dutch FNPs, there is a bigger group of prisoners in Dutch prisons who have not finished any kind of education or who have only

23 Suriname is a former colony of the Netherlands that achieved independence in 1975.

24 Ministerie van Buitenlandse Zaken, *Jaarlijkse rapportage over Nederlandse gedetineerden in het buitenland* (DCV/CA-494/2015, Den Haag 8 June 2015) p 2

25 M.CS1, M.CS2, T.CS1

26 The figure, which does not include the number of irregular migrants in Dutch detention centres, dates from 1st of January 2013 and was provided by the Dutch National Agency of Correctional Institutions (DJI) in April 2013.

finished primary school.[27] This means that Dutch prisoners detained abroad have a slightly higher educational background compared to those in the Netherlands. Only a handful of prisoners, both in the Netherlands and detained abroad, has finished an academic study.

4.4 Crime and punishment

Dutch FNPs are accused of or sentenced for various types of crime and the figures from the Ministry show that the most common offence is related to drugs. This section explores the reasons why Dutch nationals are detained abroad, the sentence length, the motive, whether they are guilty or not and whether they are recidivists.

4.4.1 Types of crime

According to the Ministry of Foreign Affairs in total 56% of Dutch FNPs were detained in connection to drugs in 2015.[28] This percentage has been even higher in the recent past. Over the last two decades the percentage of prisoners detained abroad for drug-related crimes fluctuated between 75% and 83%.[29] No studies have been carried out yet to explore this sudden decrease. It is possible that stricter or even 100% custom controls for so called risk-flights between the Netherlands and Central and Southern American countries contributed to this considerable drop in numbers. Another explanation might be preventative campaigns by the Ministry of Foreign Affairs such as informative documentaries on Dutch television highlighting the deplorable situation of individual Dutch prisoners (see section 5.3.1.1).
Despite the decrease in the number of prisoners detained for smuggling cocaine, ecstasy and cannabis, the numbers remain still high in a number of countries. These countries are for example Bolivia and Cuba (both 100%), the Dominican Republic (93%), Ecuador (92%) and Brazil (86%). It seems that countries geographically closer or next to the Netherlands, such as Belgium, Germany, France and the United Kingdom, have relatively fewer Dutch prisoners for drugs offences. Other offences, of which they are accused or for which they are sentenced, range from property crimes (with or without violence), vandalism, traffic violations, fraud, sexual offences against minors, murder and armed robbery.[30]
A study reveals that there is no strong link between the type of crime committed in the Netherlands by FNPs and the crime committed abroad.[31] Of those who had been accused or convicted abroad for a drug-related crime and who had been previously convicted in the Netherlands, only one in four had a previous conviction related to drugs.

---

27 G.D. Mol, I. Henneken-Hordijk, *Gedetineerd in Nederland 2007* (DJI, Den Haag 2008) p 41
28 Ministerie van Buitenlandse Zaken, *Jaarlijkse rapportage over Nederlandse gedetineerden in het buitenland* (DCV/CA-494/2015, Den Haag 8 June 2015) p 2
29 Tweede Kamer, *De Nederlandse vertegenwoordigingen in het buitenland* (1992-1993, 23238 nr. 1) p 5 / annual overviews numbers by Ministry of Foreign Affairs.
30 Frank Miedema, Sabine Stoltz, *Vast(gelopen) in den vreemde. Een onderzoek naar het hoge aantal Nederlanders in buitenlandse detentie* (WODC, Den Haag 2008) p 34
31 Ibidem p 38

4.4.2 Detention period

The time Dutch prisoners spend in foreign detention varies considerably. At the time they filled in the questionnaire roughly one third had been in detention for less than 1 year, one third for between 1 and 3 years and one third for more than 3 years. This is far longer than the average detention length in the Netherlands of 115 days (4 months).[32] The time prisoners have to spend in prison depends on various factors and is often a reflection of the punitive approach of the justice system of the country of detention. Half of the prisoners in the category longer than 3 years had already spent more than 5 years in prison. According to letters from prisoners, it sometimes occurs that prisoners have to remain in prison after having served their sentence as a result of a lack of attention from prison authorities or overly bureaucratic administrative procedures.[33]

More than one third of the prisoners are expected to remain in detention for a further year, another third between 1 and 3 years and the last group for a period longer than 3 years. It is interesting to note that despite the fact that one third of the prisoners were in pre-trial detention (see below) practically all had a rather clear view of how long they had to stay in detention. Only a small number of prisoners indicated in the questionnaire that they had no clue. Apparently most of them already had an estimation of the type and length of sentence they would receive.

Pre-trial vs sentenced

As mentioned in section 2.4.1.2 of chapter 2, roughly one third (31%) of Dutch FNPs were awaiting trial and two-thirds (62%) had already received their sentence. There is also a considerable group of prisoners (7% n=43), who were not counted as either pre-trial or sentenced, that were unclear about their status. It is possible that those prisoners had already received a sentence but that they appealed and therefore were awaiting a new decision from the court. Dutch nationals are significantly more often in pre-trial detention in EU countries than in countries outside the EU (37% EU vs 27% non-EU). The study *Pre-trial detention in the European Union* confirms that pre-trial detention is in the EU often not used in a proportionate manner and that foreigners are more likely to end up in pre-trial prison.[34]

4.4.3 Motives

What are the motives of Dutch nationals who get involved in crime abroad? The Scientific Research and Documentation Centre (WODC) of the Ministry of Security and Justice analysed reasons for arrest in 2007.[35] In total 188 Dutch FNPs were questioned via a

32 Dienst Justitiële Inrichtingen, *Gevangeniswezen in getal 2006-2010*, (DJI, Den Haag 2011) p 40
33 S.L4 (letter is undersigned by five Dutch prisoners)
34 A.M. van Kalmthout, M.M. Knapen and C. Morgenstern, *Pre-trial Detention in the European Union* (Wolf Legal Publishers, Nijmegen 2009) p 13
35 Frank Miedema, Sabine Stoltz, *Vast(gelopen) in den vreemde. Een onderzoek naar het hoge aantal Nederlanders in buitenlandse detentie* (WODC, Den Haag 2008)

questionnaire. The study showed that two thirds of the prisoners indicated that they had problems before they were arrested. Of this group, one in three had financial problems and the other prisoners suffered from problems relating to relationships, housing[36], alcohol/ drug and/or gambling addiction and mental and/or physical health.[37] Those who claimed to have financial problems had an average debt of €23.500.

The need to pay debts was seen by nearly half of the prisoners as the main reason for smuggling drugs. Others explained that they had committed crimes in order to help their family, to get a *kick*, or to get out of a temporary crisis. There were also prisoners who felt forced by others to smuggle drugs in order to avoid their family being harmed or sexually abused.

In interviews for this thesis many prisoners explained that by smuggling drugs they wanted to earn *quick* money.[38] The fact that they were caught was the result of an underestimation and/or a miscalculation of risks.[39] Some of the prisoners candidly admitted in interviews that they had smuggled drugs successfully before and that this time they just had bad luck.[40]

Three quarters of prisoners arrested for drug offences indicated in the WODC-study that they had no idea of the risks of smuggling drugs.[41] A large majority further claimed that they had not been aware beforehand of the severe punishments for drug related crimes in the country of detention. Therefore the length of the sentence was regarded by prisoners as far longer than anticipated. The fact that so many Dutch nationals were not well informed about the severity of punishments for drug-related crimes in other countries might be explained by the Dutch approach to drugs (section 4.2.5). The suggestion by the WODC that the government should inform citizens better of the risks of smuggling drugs and about the punitive measures of other countries was supported by prisoners.[42] The Ministry launched a media campaign and broadcasted on television documentaries about detention abroad in 2010.[43]

4.4.4 Guilty?

Studies conducted of 100 personal files of Dutch nationals in foreign detention by the WODC revealed that a majority (58 persons) had pleaded guilty to their offence. This does not however automatically mean that they indeed committed the offence or that others were not guilty. Pleading guilty can be done for strategic reasons. First of all it can, in some

36 In total 10% of the prisoners had no permanent home address at the time of their detention abroad.

37 Frank Miedema, Sabine Stoltz, *Vast(gelopen) in den vreemde. Een onderzoek naar het hoge aantal Nederlanders in buitenlandse detentie* (WODC, Den Haag 2008) p 53

38 A.P2, B.P6, B.P11, G.P12

39 F.R2, V.EXP1

40 G.12, B.P6

41 Frank Miedema, Sabine Stoltz, *Vast(gelopen) in den vreemde. Een onderzoek naar het hoge aantal Nederlanders in buitenlandse detentie* (WODC, Den Haag 2008) p 58

42 Ibidem p 80-81

43 The television documentary *Foreign bars* (translation of *vreemde tralies*)

countries, lead to a reduction in the sentence length. Secondly, the detention conditions and the level of freedom to move around are in general less favourable during pre-trial detention. Furthermore, it can help to speed up a transfer to the Netherlands. Requesting a prison transfer to the home country is only possible after the person is awarded a final sentence and options to appeal are exhausted.

4.4.5 Recidivism

According to most (85%) Dutch FNPs who were questioned for this thesis, it was allegedly their first time in foreign detention. Whether or not this is correct is difficult to verify due to the fact that the Ministry of Foreign Affairs does not keep records of this nature. In the archive of the Ministry and also at the Dutch Probation Service some names of prisoners appear over different time periods in different countries of detention.
Prisoners were also asked whether they had been detained previously in a Dutch prison. One in three prisoners responded positively to the question. This outcome might (also) be optimistic, especially when taking into account the results of the WODC study. WODC was authorised to link the database of the Ministry of Foreign Affairs, with information about individual prisoners, with the database OBJD[44] of the Ministry of Security and Justice in order to verify whether there had been previous convictions. It turned out that 70% of the Dutch FNPs had been previously convicted in the Netherlands. This percentage forms a large discrepancy with only one in three prisoners who claim to have been in a Dutch prison before. It should however be noted that a conviction does not automatically result in a custodial sentence.

The conviction could also result in a fine or a non-custodial sentence or a custodial sentence which is not enforced. And for that reason the conviction does not lead to imprisonment. Another explanation for this discrepancy can be that, despite the fact that the questionnaire was anonymous and could be sent in a closed pre-paid envelope to Tilburg University, the questioned prisoners were not willing to provide this kind of information.

The next chapter explores why Dutch nationals in foreign detention receive attention and support from the Netherlands. It provides insight into the different organisations that are involved and what they aim to achieve.

44 Database with judicial information (Onderzoeks- en Beleidsdatabase Justitiële Documentatie)

CHAPTER 5

CONSULAR ASSISTANCE TO DUTCH FNPs

5.1 Introduction

States have the right to provide consular assistance to their nationals who are detained abroad. Under existing international law States are however not legally obliged to actually provide consular assistance. This means that States have a large amount of discretion as to whether they provide assistance or not. As mentioned in chapter 3, in practice many FNPs do not receive consular assistance from their diplomatic mission during detention abroad. Contrary to this situation The Netherlands provide consular assistance to Dutch FNPs. This chapter explores who is entitled to receive it; how assistance has developed in recent decades; on which principles consular assistance is based; and whether Dutch nationals are entitled to receive consular assistance. The chapter gives further insight into the organisations that provide assistance to Dutch nationals in foreign detention, what they seek to achieve and whether it aims to address the detention experience, special needs and resettlement of prisoners. This information is used as a reference in chapter 8 and 9 to verify whether the organisations achieve their aims in practice.

5.2 Context of consular assistance

'Under existing international law, states are not formally required to provide consular assistance to their nationals in foreign countries, although they do have the right to do so.'[1]

Dutch Minister of Foreign Affairs in letter to Parliament, 2002[2]

5.2.1 Dutch citizenship

Those who are regarded by Dutch law as Dutch citizens are eligible to receive consular assistance from the Netherlands. Dutch citizenship is primarily based on the principle of *jus sanguinis* (right of blood). This means that citizenship is determined by birth to at least one Dutch parent, irrespective of the place of birth. Children born in the Netherlands to two foreign parents do not automatically acquire Dutch citizenship at birth. Dutch citizenship can only be acquired when special criteria are met. Despite the fact that the Kingdom of the Netherlands consists of four different countries there is only one category of citizenship that is distinguished in Dutch nationality law and that is Dutch nationality.[3] This explains why, as described in section 4.3.3, in 2007 more than half of the Dutch FNPs were not born in the Netherlands.

---

1 Original text: *Naar het huidige volkenrecht bestaat geen formele plicht voor staten om hun burgers in den vreemde consulaire bijstand te verlenen. Er bestaat wel een volkenrechtelijk recht van staten om eigen burgers consulaire bijstand te verlenen.*

2 Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 16) p 2

3 The four parts of the Kingdom are Aruba, Curaçao, the Netherlands and Sint Maarten. The Netherlands is located in Europe, except for its three special municipalities (Bonaire, Sint Eustatius and Saba) that are located in the Caribbean, as are the other countries. In total 12% of Dutch nationals detained abroad are born in one of these countries.

Besides Dutch citizens the Ministry of Foreign Affairs also considers certain groups as eligible for receiving consular assistance such as persons with dual (or multiple) nationality.[4] It occurs that foreign authorities do not accept dual nationality and therefore do not allow consular staff to provide assistance according to the Vienna Convention on Consular Relations. The Netherlands had to reach for example a bilateral agreement with Morocco in order to provide consular assistance to Dutch prisoners who also had Moroccan nationality.[5] Dutch citizens with dual nationality and who are detained in a third country are eligible to receive consular assistance irrespective of the passport they travelled on. In such cases, consular staff consult the embassy of the other nationality of the prisoner, and jointly decide which embassy is more able or willing to provide assistance. Non-Dutch nationals with a valid residence permit for the Netherlands or persons with a refugee passport[6] can receive restricted consular assistance.[7] In compliance with EU legislation, the Ministry of Foreign Affairs also provides consular assistance to EU nationals if their country of origin is not represented in a particular location.[8] In these cases EU nationals receive the same consular assistance as nationals.[9]

5.2.2 Historical context

Over the years, Dutch nationals in foreign detention have been in the public eye in the Netherlands. It seems that the difficult prison conditions abroad and the lack of proper assistance from the Netherlands has been a trigger for parliamentarians to request the development of standards for consular assistance and a pro-active approach by the Ministry of Foreign Affairs.[10] It is interesting to note that this request has been supported by politicians from practically all political parties.

Before 1988 the numbers of Dutch FNPs were relatively low and embassies were able to provide consular assistance by visiting prisoners and, if necessary, giving prisoners material and judicial support. When the numbers of Dutch FNPs started to increase rapidly the

4 Dual or multiple nationality is a person's citizenship status, in which a person is concurrently regarded as a citizen of more than one State under the laws of those States.

5 Katerina Mantouvalou, *Consular Assistance and Trial Attendance: A Comparative Examination of the American, Australian, British, Dutch and German Ministries of Foreign Affairs* (Fair Trials International, London 2009) p 16

6 A refugee passport is issued to aliens who have been accorded refugee status, or who have a mandate declaration issued by the UN High Commissioner for Refugees in The Hague, and who are in possession of a valid Dutch residence permit.

7 The Dutch diplomatic mission redirects in principle to other agencies that might provide assistance.

8 Consular assistance by the Netherlands to EU nationals has not been researched in this thesis.

9 Katerina Mantouvalou, *Consular Assistance and Trial Attendance: A Comparative Examination of the American, Australian, British, Dutch and German Ministries of Foreign Affairs* (Fair Trials International, London 2009) p 25

10 The fact that foreign nationals detained in Dutch prisons for criminal reasons have not received considerable attention might be related to the assumption that the physical conditions and treatment of prisoners are in general of a satisfactory standard.

diplomatic missions could not keep pace. This situation came to light thanks to the Zembla documentary *Forgotten prisoners* that was broadcast on national television.[11] The eruption of media attention resulted in the quick statement by the Ministry that consular assistance to Dutch FNPs was considered as one of the 'core tasks' of the Ministry of Foreign Affairs.[12] The Ministry made further a commitment in Parliament that Dutch FNPs would receive sufficient assistance.

In 2000 the Court of Audit published a critical report about the content of the assistance, which highlighted a number of shortcomings. In a response to the report the Ministry introduced general standards for assistance. These standards included for example prisoners receiving information on legal rights and procedures, a monthly allowance of €30 for those detained outside the EU[13] and visits from volunteers.[14] The Ministry further invested in training of consular staff. In 2005 the Court of Audit published a follow-up report. Its main conclusion was that the formulation and implementation of consular standards had led to improvements. However some criticism remained. As a result the Ministry adopted a policy of visiting Dutch FNPs twice per year and introduced a small budget per prisoner to purchase necessities such as medicines.[15]

The presence of the International Office of the Dutch Probation Service and the religious foundation Epafras enabled the Ministry to provide additional assistance to Dutch nationals in foreign detention via volunteers and chaplains. The presence of these two organisations also contributed to the visibility of this particular group of prisoners who are normally out of sight. Epafras in particular has steered the public debate by contacting and informing politicians. The fact that the International Office has been less involved in lobbying activities might be related to the fact that the organisation is part of the Probation Service, which falls under the political responsibility of the Ministry of Security and Justice.

In 2011 the hanging of a Dutch-Iranian woman sparked criticism in Parliament about the lack of consular assistance she received. The Minister therefore promised to finance legal support for those who are, or who are likely to be, sentenced to death.[16]

---

11 Volkskrant, 'Buitenlandse Zaken moet meer zorg besteden aan gevangenen' *De Volkskrant* (Amsterdam, 20 March 1998)

12 Tweede Kamer, *Brief minister van Buitenlandse Zaken aan Tweede Kamer* (1997-1998, 25203 nr. 5)

13 Dutch FNPs in Iceland, Norway and Switzerland do not receive a monthly financial allowance.

14 Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203, nr. 16) p 4-6

15 Algemene Rekenkamer, *Gedetineerdenzorg buitenland* (2000-2001, 27430 nr. 1-2) p 5 / Algemene Rekenkamer, *Gedetineerdenbegeleiding Buitenland* (2004-2005, 30010 nr. 1) p 5-9

16 Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 2011* (2010-2011, 32500 V nr. 165) p 2 / In 2015 two Dutch nationals detained in Indonesia are on death row.

5.2.3 Basic principles of consular assistance

'Consular assistance to Dutch nationals is one of the core tasks of the Ministry of Foreign Affairs and assistance to those in foreign detention is an important focal point.'[17]

Letter to Parliament by Minister of Foreign Affairs, 2001[18]

In order to address the difficult situation of Dutch nationals in foreign detention the Ministry decided to found their assistance on two basic principles. A commitment to these two basic principles has been communicated clearly in Parliament. The first basic principle concerns monitoring the correct application of the rules by the country of detention and making sure that Dutch prisoners receive all opportunities provided for by national law.[19] The Ministry respects however the principle of national sovereignty and therefore it will not interfere in the internal affairs of the country of detention, provided that the national rules are applied correctly. The second basic principle relates to monitoring whether Dutch nationals are held under humane prison conditions. The starting point is that the country of detention is responsible for providing humane conditions and treatment but in case the conditions are not humane and according to international standards the Ministry can bring this to the attention of local authorities.[20]

These two principles are significant and meaningful. It is however clear that the limitation 'no interference in internal affairs' in the first basic principle is in conflict with the responsibility of the second principle to bring examples of inhumane treatment and poor prison conditions to the attention of the local authorities. The consequence can be that the Netherlands does not adhere to the second principle in order not to harm the interests of the Netherlands. Addressing problems with foreign authorities is generally not considered beneficial to foreign relations.

5.2.4 Adherence to basic principles

The two basic principles imply that the Ministry commits itself to verify or monitor whether foreign authorities correctly apply the country's laws with regard to Dutch FNPs and whether they are treated according to the rules. These principles create high expectations about the monitoring role of the Ministry.

---

17 Original text: *Het consulaire beleid is een van de kerntaken van het Ministerie van Buitenlandse Zaken. Daarbinnen heb ik sinds mijn aantreden de begeleiding van Nederlandse gedetineerden in het buitenland als een belangrijk aandachtspunt gezien.*

18 Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 15) p 1

19 Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 1989* (1988-1989, 20800 V nr. 156) p 1-2

20 Original text: *Wel kan Nederland ertoe besluiten de (lokale) autoriteiten aan te spreken op een menswaardige behandeling van de gedetineerden.*

In the booklet *Arrested abroad* that is given to prisoners and their families, the Ministry presents itself as a mediator.[21] If prisoners experience violations of the rules, they are advised to inform the Dutch diplomatic mission. They are advised however, to first lodge a complaint with the prison authorities.[22] In a former edition of the booklet, Dutch FNPs were informed that they had to make clear in their complaint to the diplomatic mission that they were treated worse than other prisoners. So, should other prisoners also have been held in inhumane conditions or treated badly, the Dutch diplomatic mission would not interfere. This former advice, which has been deleted in the version of 2014, entailed the Ministry not taking into consideration the fact that FNPs experience additional difficulties as a result of their foreign status. It further demonstrates that the Ministry ignored the fact that many prisons do not have a properly functioning complaints mechanism; prisoners are often not aware of how to file a complaint and/or are not willing to file a complaint because they fear reprisals from prison staff or they do not have confidence in the independence of the complaint body.[23]

In the report by the Dutch Court of Audit in 2000[24] and the IOB-evaluation in 2011 it was mentioned that the Ministry lacked adherence to the first and second basic principles. Both evaluations came to the conclusion that in practice consular staff do not verify whether foreign authorities correctly apply the country's laws with regards to Dutch FNPs and whether they are treated according to the rules. Consular staff are, further, cautious and reticent in reminding local authorities about their obligation to treat prisoners humanely and to hold them in decent prison conditions.[25] Other reasons are that some diplomatic missions regard their influence and room for manoeuvre as rather limited, some have other political, economical, cultural and social interests at stake and sometimes consular staff are reluctant to interfere because they want to protect prisoners by avoiding repercussions from prison staff.[26] The Minister of Justice confirmed that formal and visible diplomatic démarches on behalf of Dutch FNPs are rare.[27] Consultation and coordination with EU counterparts on prison issues are uncommon too.[28] For comments on this schism see section 8.4 and section 9.4.2.

---

21 http://www.rijksoverheid.nl/onderwerpen/noodgevallen-in-het-buitenland/documenten-en-publicaties/brochures/2011/10/11/gearresteerd-in-het-buitenland.html p 6

22 Ministerie van Buitenlandse Zaken, *Gearresteerd in het buitenland* (Ministerie van Buitenlandse Zaken, Den Haag July 2014) p 12

23 CPT Report visit Latvia (2007) §100, CPT Report visit Georgia (2007) §100

24 Algemene Rekenkamer, *Gedetineerdenzorg buitenland* (2000-2001, 27430 nr. 1-2) p 5

25 IOB, *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2011 nr. 338) p 22

26 IOB, *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2011 nr. 338) p 22

27 Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 16) p 4

28 IOB, *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2011 nr. 338) p 74

In October 2014 the Minister of Foreign Affairs informed Parliament about a new policy that replaces the standard visit to prisoners with tailor-made assistance that is based on the detention situation and the situation of the individual prisoner.[29] For a reflection on this new policy see section 11.5 in chapter 11.

5.2.5 Entitlement to consular assistance

Dutch nationals in foreign detention are, like other FNPs, entitled according to Article 36 of the Vienna Convention on Consular Relations, to inform their diplomatic mission of their detention and to receive consular assistance.[30] The position of the Netherlands is that, despite this entitlement, Dutch FNPs have no right to claim consular assistance from the Dutch authorities nor can they derive rights from it. Unlike in other countries, such as Germany, Finland and Sweden, there is no Consular Act which obliges the Dutch authorities to provide assistance in cases of emergency.[31] This section explores, by looking at the formal position (words) and the position in practice (deeds) of the Ministry of Foreign Affairs, whether consular assistance could be considered as a legal right or a favour. The question will be, on the basis of the outcome of this thesis, raised again in chapter 11.

5.2.5.1 Formal position

The basic assumption for the Dutch Ministry of Foreign Affairs, which has been shared with the Dutch Parliament, is to determine on a 'case-by-case basis' and by taking into consideration 'all relevant facts and circumstances' when deciding whether consular assistance is provided to Dutch FNPs.[32] This rather non-committal approach has been challenged in a Dutch court.

In 2004 the ex-prisoner Hans van Dam brought a case to the The Hague court because he claimed the right to receive consular assistance. The court stated that the Dutch State is not obliged to provide assistance to FNPs.[33] The State is however requested to monitor whether the rules in the country of detention are applied correctly and to appeal to the authorities in case the prison conditions are inhumane. So the court left it open to the Ministry to decide the actions and measures to be taken, depending on the circumstances of the case and the political situation. This means that although the State is not obliged to provide consular assistance it retains the responsibility to monitor the situation of the prisoner and to appeal to foreign authorities in case international human rights law is broken. The approval of this policy by the Ministry has been confirmed by the Dutch National Ombudsman in 2006 in a

29 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2014-2015, 3001021 nr. 21)

30 The Netherlands ratified the Vienna Declaration on Consular Relations in 1985.

31 Frieder Dünkel, Andrea Gensing and Christine Morgenstern, 'Germany' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 388

32 Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 16) p 2

33 Gerechtshof 's Gravenhage GHSGR:2004:AR748, 02/43, 25 November 2006

complaint by an ex-prisoner who had been detained in Spain under deplorable conditions.[34] The Ombudsman clarified that, due to the different circumstances abroad, it is left to the consideration of the Minister of Foreign Affairs which kind of assistance should be provided to Dutch FNPs. The fact that the consulate had addressed the poor prison conditions of this particular prisoner on numerous occasions with the prison authorities was seen as sufficient.

5.2.5.2 Position in practice

Despite this cautious and reserved government approach, in practice the Ministry of Foreign Affairs is able and willing to provide consular assistance to all Dutch FNPs. So, although prisoners cannot claim any rights, they can receive assistance if they wish.[35] Consular assistance could therefore be regarded as customary law instead of a favour. This position is supported by the fact that consular staff at the Ministry of Foreign Affairs and at the diplomatic missions are instructed and trained to provide consular assistance to prisoners and that they are guided by a *Consular Manual* which describes in detail the different types of assistance which can be provided. Another confirmation is the fact that consular assistance is not only provided by the Ministry of Foreign Affairs but, for more than three decades, also by staff and volunteers from the International Office of the Dutch Probation Service and staff and chaplains from the religious foundation Epafras. And above all, a former Minister of Foreign Affairs has described consular assistance as one of the core tasks of the Ministry and stated that the situation of those in foreign detention is an important focal point.[36] For an analysis of this position of the Ministry of Foreign Affairs with regards to the entitlement to consular assistance see chapter 11.

5.3 Organisations which provide consular assistance

In the Netherlands there are three main organisations which for decades have been providing assistance to Dutch FNPs. These are the Consular Affairs and Migration Policy Department of the Dutch Ministry of Foreign Affairs and the Dutch diplomatic missions[37]; the International Office of the Dutch Probation Service[38]; and the religious foundation Epafras. As mentioned in the introductory chapter the activities of these three organisations are encompassed

34 Nationale Ombudsman, *Rapportnummer: 2006/0098* (Den Haag, 20 March 2006) p 10

35 Niels M. Blokker and N. J. Schrijver, *Netherlands Yearbook of International Law* (T M C Asser Institute, Den Haag 2005) p 228 / Algemene Rekenkamer, *Gedetineerdenzorg buitenland* (2000-2001) 27430 nr. 1-2 p 10

36 Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 15) p 1

37 The term *missions* refers to Dutch representations in foreign countries such as embassies, consulates, consulates-general and honorary consulates.

38 The term 'International Office' is a translation of the official name 'Bureau Buitenland'. Since the International Office is part of the Dutch Probation Service this term is used in the following chapters.

under the term *consular assistance*. The assistance that Dutch FNPs receive in practice from these three organisations is analysed in chapter 8.

Ministry of Foreign Affairs
International Office of the Dutch Probation Service
Religious foundation Epafras

Besides these three organisations there are two other organisations which provide support. The division IOS[39] at the Dutch Custodial Institutions Agency, which is part of the Ministry of Security and Justice, provides assistance during the transfer of sentenced persons under the Enforcement of Criminal Judgments (Transfer) Act. Since the transfer of Dutch FNPs falls outside the scope of this thesis this issue is not explored further. The non-governmental organisation Prison Law[40], which provides legal support and advice to Dutch FNPs, has been provided with funding by the Ministry of Foreign Affairs since 2012.[41] Assistance by Prison Law has not been part of the evaluation because it only recently started to provide legal assistance on a larger scale.

5.3.1 Ministry of Foreign Affairs and diplomatic missions

Within the Ministry, the Consular Affairs and Migration Policy Department (DCM)[42] is responsible, in cooperation with the diplomatic missions, for providing services to Dutch nationals abroad, including those who run into trouble.[43] The general aim of the Ministry, when providing consular assistance to Dutch FNPs, is to contribute to their well-being.[44] Or to put it more explicitly according to the two basic principles: to protect their rights and to soften the circumstances in which they find themselves.[45] This shows that the Ministry likes to influence the detention situation of Dutch FNPs in a positive way and to address prisoners' needs. This is in theory very much in line with the first and second hypotheses. It is further interesting to notice that the general policy of the Dutch government, to stimulate the resettlement of ex-prisoners, is not included in the general aim of the Ministry (see chapter 6).[46]

---

39 Afdeling Internationale Overdracht Strafvonnissen
40 www.prisonlaw.nl
41 Tweede Kamer, *Gedetineerdenbegeleiding Buitenland* (2011-2012, 30010nr. 18) p 1
42 DCM is abbreviated as *consular department*.
43 See Annex 5 for overview of Dutch diplomatic missions around the world.
44 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2011-2012, 30010 nr. 18) p 1
45 Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 1989* (1988-1989, 20800 V nr. 156) p 1
46 www.rijksoverheid.nl/onderwerpen/recidive/verminderen-recidive

5.3.1.1 Activities

Consular assistance is provided by the Ministry through different activities to those who are eligible and willing to receive it. Once the Ministry is informed about an arrested or detained person, consular staff verify whether the person is eligible to receive consular assistance by checking the status of the person in the central municipal administration.[47] If the person is eligible he or she will be contacted and visited by consular staff. However, Dutch FNPs are not obliged to receive assistance.

Personal visits by consular staff are considered the backbone of consular assistance. The standard frequency of visits is twice per year, irrespective of whether the Dutch FNP is detained in or outside the EU or in pre- or post-trial detention. As a result of the government-wide approach to reduce costs and the closing down of diplomatic missions, the Ministry announced on several occasions that it would depart from the standard of two visits per Dutch FNPs.[48] The Ministry has been exploring how to make consular assistance more tailor-made by varying the types of assistance depending on the personal situation of the prisoner and on the prison conditions in the country of detention.[49] In October 2014 the Ministry announced that the standard frequency of two visits per year will be reduced to only one visit in case the detention conditions are in line with international standards and the prisoner is doing fine.[50] See for comments on this new policy chapter 11.
In 2013, consular staff carried out in total 4,849 visits, this is on average just over two visits per prisoner per year.[51] The questionnaire that was sent to Dutch diplomatic missions revealed that per diplomatic mission Dutch nationals are detained in on average seven prisons. Nearly half of these prisons are located more than two hours' travel distance from the diplomatic mission. This means that consular staff have to travel long distances in order to visit Dutch FNPs.
During these visits consular staff is expected to monitor the situation of the individual prisoners by discussing specific topics such as detention conditions, treatment by staff, health, criminal case, contact with family and whether there are specific needs. Relatively small concerns of individual prisoners are addressed on a local level with the prison authorities. However, when the prison conditions are inadequate and/or there are human

47 Gemeentelijke Basis Administratie (GBA)
48 'Diplomaten gaan gedetineerden minder bezoeken' *De Telegraaf* (Amsterdam, 1 October 2013) / Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 2014* (2013-2014, 33750 V nr. 10) p 40
49 Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 2014* (2013-2014, 33750 V nr. 10) p 41
50 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2014-2015, 3001021 nr. 21) p 4
51 4,849 (visits): 2,311 (prisoners) = 2.1 visits

rights violations it is not common practice that this is discussed with the national authorities or that silent diplomacy is used.[52]

In order to inform prisoners and their families about detention abroad the Ministry developed a booklet *Arrested abroad* with general information and advice. For a total of 27 countries where a relatively high number of Dutch prisoners are detained, the special booklet *Arrested in… (name of country)* is produced containing information about the legal system and legal procedures of the country of detention and translations of legal terminology and basic phrases.[53] In order to prevent travellers from smuggling drugs the Ministry posts information on the government website[54] and has financially supported a television documentary *Foreign Bars*[55] which tells the stories of Dutch nationals. When necessary the Ministry can seek cooperation from a confidential lawyer to provide an external assessment of a certain criminal case.[56] With regards to attending the trial, consular staff members have considerable autonomy to decide whether they will attend the trial of a Dutch prisoner or not.[57] In special cases consular staff do attend trials. According to a study by the British organisation Fair Trials Abroad, consular staff attend trials only when there is media interest, when the sentence is severe or when there is personal involvement/interest and pressure from ambassadors and family members.[58]

5.3.1.2 Monthly allowance and material support

The Ministry provides Dutch nationals detained outside the EU[59] with a monthly allowance of €30. The allowance is normally handed out during the visit or transferred to the prison savings account of individual prisoners. It was introduced to help prisoners to obtain basic welfare necessities such as toiletries, medicines, telephone cards, stamps and food. Despite the fact that the allowance represents a very large sum of money for some countries and for others a very low one, the Ministry decided not to link it to a regional cost-of-living index. In 2015 the number of countries where prisoners can receive a monthly allowance

52 Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 16) p 4

53 These countries are: Argentina, Australia, Austria, Belgium, Brazil, Colombia, Denmark, Dominican Republic, Ecuador, France, Germany, Italy, Ireland, Japan, Morocco, Norway, Peru, Poland, Portugal, Spain, Surinam, Thailand, Venezuela, Sweden, Turkey, United Kingdom and the United States of America at: http://www.burgerservicenummer.org/onderwerpen/noodgevallen-in-het-buitenland/gearresteerd-in-het-buitenland

54 www.rijksoverheid.nl/onderwerpen/wijs-op-reis/drugs-in-het-buitenland / www.drugssmokkel.nl

55 Translation of *Vreemde tralies*

56 Tweede Kamer, *Rechtsbijstand* (2009-2010, 31753 nr. 16) p 2

57 Katerina Mantouvalou, *Consular Assistance and Trial Attendance: A Comparative Examination of the American, Australian, British, Dutch and German Ministries of Foreign Affairs* (Fair Trials International, London 2009) p 17

58 Ibidem p 17

59 Except for Iceland, Norway and Switzerland.

was reduced considerably.[60] Diplomatic missions also have a small budget of €7.50 to €15 per prisoner per month to purchase necessities for prisoners. Furthermore, it is common that consular staff take with them used books, magazines and newspapers in Dutch on the prison visit.[61]

5.3.1.3 Transfer

The Ministry of Foreign Affairs has little to do with prisoner transfers but consular staff are requested to inform Dutch FNPs where there are transfer options after prisoners receive their final sentence. Prison transfers are coordinated by the Ministry of Security and Justice. Prison transfer procedures are labour intensive, time-consuming and bound by strict criteria.[62] Normally it takes six to twenty months before a prisoner is transferred to the Netherlands.[63] On an annual basis around two hundred Dutch nationals in foreign detention are transferred to the Netherlands.[64] This number is likely to increase because the EU Council Framework 2008/909/JHA has been implemented.[65] In preparation for release diplomatic missions can provide practical assistance like arranging for a valid travel document.

5.3.1.4 Consular staff

At DCM in The Hague there are around 25 staff members of whom half are regional case managers. Each case manager is responsible for a certain region of the world and stays in direct contact with the diplomatic missions in this region. Case managers spend on average 60% of their time on providing assistance to Dutch FNPs.[66] There are just over 100 Dutch diplomatic missions around the world (see Annex 5) which are staffed by civil servants and by locally recruited staff. Consular staff based at foreign missions spend on average 9½ hours per week on providing assistance to Dutch FNPs.[67]

---

60 Besides EU countries, Iceland, Norway and Switzerland are not included anymore Andorra, Australia, Canada, Japan, Liechtenstein, Monaco, New Zealand, San Marino, Singapore and Vatican-city.

61 A.CS1, B.CS1, G.CS1, M.CS4, P.CS1, S.CS3, T.CS2, UK.CS1, US.CS1

62 An important criterion is that prisoners must have at least 6 months remaining on their sentence to be eligible. The Dutch National Ombudsman requested the Minister of Security and Justice in writing (13 March 2014, 2013.09734) to lower this to 4 months.

63 Dienst Justitiële Inrichtingen, *Procedure WOTS en WETS* (DJI, February 2012) p 1

64 This is around 8% of the total number of Dutch nationals in foreign detention.

65 Council of the European Union, *Implementation of the Council Framework 2008/909/JHA* (6345/3/12 Rev 3 2012)

66 Tweede Kamer, *Brief minister van Buitenlandse Zaken aan Tweede Kamer* (2008-2009, 30010 nr. 15) Calculation date is 6 March 2009.

67 According to figures by the Ministry of Foreign Affairs as obtained for the IOB research (2010).

5.3.1.5 Funding and cooperation

The annual budget for DCM is €53 million and around €7.5 million is spent by the Ministry on providing assistance to Dutch FNPs.[68] Part of the budget is allocated to the International Office and Epafras. There is regular contact between consular staff at DCM and diplomatic missions with staff and volunteers of the International Office and with staff and chaplains of Epafras. Four times per year the representatives of these organisations meet in a tripartite meeting to discuss ongoing business.[69] On a regular basis the Ministry organises regional conferences for staff, volunteers and chaplains to provide (additional) training, to enhance cooperation and to discuss new developments.

Half of the diplomatic missions that participated in the questionnaire and have volunteers from the Probation Service in their region indicate that this reduces the workload and ameliorates the relationship with the prisoner.[70] It also enables the diplomatic mission to better inform the Ministry about the situation of individual prisoners.

5.3.2 International Office of the Dutch Probation Service

Volunteers, who mean a lot to our compatriots detained abroad,
(…) form sometimes the only lifeline with their motherland.'
Sjef van Gennip, Director General of the Dutch Probation Service[71]

The International Office (official name *Bureau Buitenland*) is part of the Dutch Probation Service that promotes the rehabilitation of prisoners in the Netherlands.[72] The Probation Service is state-funded and falls under the political responsibility of the Ministry of Security and Justice.[73] The International Office, which is located at the headquarters of the Probation Service in Utrecht, consists of fifteen members of staff and around 300 volunteers who are based in over 50 countries.[74] The general aim of the International Office is to provide Dutch FNPs with information and advice and to prepare them for their resettlement in the

---

68 Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 2014* (2013-2014, 33750 V nr. 1) p 3

69 Recently it became a four-party meeting with the involvement of Prison Law.

70 IOB, *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2011 nr. 338) p 83

71 Hans van Kooten, *Eyes and Ears- Liaison Office for Dutch Prisoners Abroad and International contacts* (Reclassering Nederland, Utrecht 2005) p 9

72 International Office, *Probation doesn't stop at the border – About the work of the International Office, brochure by the Dutch Probation Service* (Reclassering Nederland, Utrecht 2013) p 3 / The Dutch Probation Service consists of three private probation organisations: the Dutch Probation Foundation (for prisoners), Social Rehabilitation of Addicted Offenders (SvG) and the Salvation Army.

73 G. Ploeg, `The Netherlands' in: A.M. van Kalmthout, J.T.M. Derks, *Probation and Probation Services, A European Perspective* (Wolf Legal Publishers, Nijmegen 2000) p 384

74 Based on figures provided by the International Office of the Dutch Probation Service in July 2015.

Netherlands after release in order to avoid recidivism.[75] This aim is concrete and, on paper, very much in line with the third hypothesis of this thesis.

5.3.2.1 History

The International Office was established in the early 1970's as a result of two initiatives.[76] The first initiative came from probation workers who worked in border regions and who started to visit Dutch nationals who were detained in Belgium and Germany close to the Dutch border. The second initiative came from two Dutch clergymen who provided pastoral care to Dutch nationals in France and Spain and who were confronted with an increase in Dutch FNPs. Monsignor Dellepoort in Spain frequently visited Dutch FNPs in Spanish prisons. Since many of them were involved in drugs crimes he received the nickname *Father of Hashish*.[77] In France, Father Burm was in charge of the Mission Hollandaise, an organisation that supported Dutch nationals in France, and became involved in providing support to Dutch FNPs. Both clergymen added greatly to the awareness of the growth of the number of Dutch FNPs.[78] At that time the Ministry of Justice subsidised the travel expenses of both clergymen.

After the first period of pioneering, the establishment of the International Office was announced during a press conference on 4 June 1975.[79] The office was set up as a joint enterprise of the Probation Service and the Ministry of Justice. The reason for starting this new organisation was, according to the founder, Nico Van Zelst, the high number of Dutch FNPs detained under miserable conditions abroad and the fact that consular staff were not prepared to provide assistance as many of them felt ashamed of their compatriots.[80] The International Office was apparently established to fill a gap left by the Ministry of Foreign Affairs.[81] It is also interesting to see that the original aim of the International Office was focussed on the well-being of the prisoner rather than their resettlement or the reduction of recidivism. See, for a reflection on this, section 11.4.3.

---

75 Bureau Buitenland, *Bureau Buitenland - Reclassering houdt niet op bij de grens* (Bureau Buitenland, Utrecht) p 3 www.reclassering.nl/buitenland/bureau-buitenland There are two other aims which do not address Dutch FNPs directly. These are organising, coordinating and giving advice on transfers of sentences within Europe and the Netherlands, and to advocate international cooperation in the field of probation in order to improve rehabilitation practices.

76 Dossier Dutch Probation Service at 's-Hertogenbosch City Archives.

77 Hans van Kooten, *Eyes and Ears - Liaison Office for Dutch Prisoners Abroad and International contacts* (Reclassering Nederland, Utrecht 2005) p 13

78 Ibidem p 13

79 Bureau Buitenland, 'Start Bureau Buitenland' *Vereniging van reclasseringsinstellingen* (press release 4 June 1975)

80 Hans van Kooten, *Eyes and Ears - Liaison Office for Dutch Prisoners Abroad and International contacts* (Reclassering Nederland, Utrecht 2005) p 18

81 Bureau Buitenland, 'Start Bureau Buitenland' *Vereniging van reclasseringsinstellingen* (press release 4 June 1975) p 2

The Ministry of Foreign Affairs agreed within a week after the launch to report each new arrest. At that time the International Office consisted of one coordinator and one secretary. It is further interesting to note that the original task of the International Office did not consist solely of providing assistance to Dutch FNPs, it also entailed cooperation between the different probation organisations in Europe and providing assistance to foreigners in Dutch prisons.[82] The cooperation with other organisations in Europe is formalised in the CEP Special Interest Group on Foreign Nationals.[83] The task of providing assistance to foreign nationals in Dutch prisons has never been undertaken due to restricted manpower and limited funds.

5.3.2.2 Activities

Dutch FNPs can receive assistance from the International Office if they wish; there is no obligation, nor is it commissioned by judicial authorities in the country of detention.[84] The main activity of the International Office is regular visits to prisoners by volunteers. To ensure a social and counselling character, Dutch FNPs are visited during pre-trial detention every four weeks and during post-trial detention every six to eight weeks.[85] The policy of visiting pre-trial prisoners more frequently is connected to the assumption that at the beginning of detention prisoners have to arrange many practicalities at home to avoid even bigger problems after release.[86] The fact that in 2013 a total of 4,661 visits were carried out to 1,501 prisoners, on average less than one visit per three months, means that the International Office does not adhere to its visiting norm.

Prisoners who wish to receive assistance have to give written permission and to fill out an application form, which contains questions on their personal background and situation with regards to housing, work and income, education, health, debts, social situation and reason for arrest. Staff of the International Office in Utrecht use this information to make a first analysis of the needs and type of assistance likely to be necessary.[87] The focus in the first period is on issues that need to be addressed in the Netherlands in order to avoid disproportionate

---

82 Dossier Dutch Probation Service is available at the 's-Hertogenbosch City Archives.

83 www.cep-probation.org/page/79/foreign-national-prisoners

84 The situation is contrary to the general situation in the Netherlands where activities by the Probation Service are only provided within a so-called 'judicial framework', which means that it is imposed by Dutch judicial authorities, such as the public prosecutor, the judiciary or the National Agency of Correctional Institutions. This means that (ex-)prisoner who will be released conditionally are obliged to participate.

85 Bureau Buitenland, *Gezocht: vrijwilligers – Reclasseringsvrijwilligers maken zich sterk voor Nederlanders in buitenlandse detentie* (Bureau Buitenland, Utrecht March 2013) p 4 / Radio Nederland Wereldomroep, 'Ambassade Dublin zoekt vrijwilligers voor cel-bezoek' (19 August 2009) http://internationaljustice.rnw.nl/nederlands/article/ambassade-dublin-zoekt-vrijwilligers-voor-cel-bezoek

86 Information based on talks with director and regional coordinators International Office.

87 Epafras, 'Bureau Buitenland – Alarmcentrale voor gedetineerden' (2010) Gezant uit Nederland (number 3, Utrecht 2010) p 7-9

damage as a result of the detention. Regional coordinators make the assessment and they monitor the situation of prisoners in their caseload via a central database which contains information on: personal details; visits by volunteers; needs assessment; conversations with relatives and correspondence with authorities.
Around six months before the actual release date the regional coordinator starts to identify, in consultation with the prisoner, the volunteer and sometimes with the contact-person at home, the resettlement needs of the prisoner. Topics such as housing and income are addressed in an individual return plan of the prisoner. In order to inform prisoners about resettlement in the Netherlands, the International Office has developed a 'Return brochure'.[88]

Other activities by the International Office include providing pre-trial prisoners, when it is assumed to be beneficial for their legal case, with an informative social inquiry report on their behaviour, criminal history and personal circumstances. This social inquiry report is developed by a probation worker from their own region and it describes the circumstances before the prisoner was arrested. The report is tailored by the Probation Service to what courts in the country of detention regard as important and might have a positive impact on the verdict.
Prisoners who are allowed to receive study material in prison and who have a sentence of at least six months can apply to follow a course provided by the foundation Educatie Achter Buitenlandse Tralies (EABT).[89] Homework by prisoners, which they can send via free postal mail, is reviewed by volunteers. Prisoners can obtain certificates and if the course has not been completed during their detention they can do so after release.

5.3.2.3 Volunteers

Volunteers are considered to be the 'overseas wing' or 'eyes and ears' of the International Office.[90] In line with the increase of Dutch FNPs the number of volunteers increased, from 63 in 1997, to 320 in 2015.[91] There are volunteers active in around 50 countries and more than half of them are active in one of the EU countries. Volunteers are recruited by the International Office in close cooperation with the diplomatic mission.[92] Despite the voluntary status of the function there are certain criteria that an applicant needs to meet before becoming a volunteer. Applicants must demonstrate that they do not have a criminal

88 Bureau Buitenland, *Straks terug naar Nederland? Regel het nu!* (Bureau Buitenland, Utrecht March 2013)
89 The translation of EABT is *Education Behind Foreign Bars*. Since 1997 EABT offers several studies and language courses free of charge to Dutch FNPs.
90 Hans van Kooten, *Eyes and Ears - Liaison Office for Dutch Prisoners Abroad and International contacts* (Reclassering Nederland, Utrecht 2005) p 11
91 See Annex 6 for an overview of the number of volunteers per country.
92 Bureau Buitenland & Buitenlandse Betrekkingen, *Vrijwilliger voor de Nederlandse Reclassering* (Bureau Buitenland, January 2006) p 12

record and can work with privacy-sensitive data.[93] They need to have time at their disposal to carry out visits on a regular basis and to draw up a report after each visit. Furthermore, they should have good communication skills and be able to stimulate the social resettlement of prisoners because the visits should entail more than only 'friendly visiting'.[94]
New volunteers receive on the job training from other volunteers and by talking to consular staff and the regional coordinator of the International Office responsible for their region. There is a handbook on the work of volunteers and the International Office organises, in cooperation with diplomatic missions, regular regional conferences to discuss new developments and to train volunteers, in, for example, motivational interviewing.[95] In order to keep volunteers informed of the latest news, the International Office publishes a digital newsletter (*Morse*) a few times per year. Access to prisons by volunteers is generally arranged by consular staff from the diplomatic mission. In many countries official permission is required to visit prisons. In some countries volunteers receive an official badge showing that they work on behalf of Dutch authorities. The travel costs of volunteers are reimbursed by the International Office and they are covered by personal liability insurance.

5.3.2.4 Funding and cooperation

The International Office receives funding from the Ministry of Foreign Affairs and the Ministry of Security and Justice to provide assistance to Dutch FNPs.[96] Activities carried out on behalf of the Ministry of Foreign Affairs focus on providing assistance to Dutch FNPs and on establishing and maintaining a worldwide network of Dutch speaking volunteers to complement the activities by consular staff.[97] Activities related to the prevention of recidivism are financed by the Ministry of Security and Justice.[98] The International Office receives further support from the foundation EABT which coordinates and supervises the studies of Dutch FNPs with around twenty volunteers and fifteen teachers.[99] In the past there were around eleven volunteers who corresponded with prisoners, but this type of assistance was handed over to the non-governmental organisation Humanitas in 2013.[100]
The main partners of the International Office are the Ministry of Foreign Affairs and Epafras. The regional coordinators, who are responsible for around 150 to 200 Dutch FNPs in a certain region or country, work directly with case managers of the Ministry of Foreign Affairs, with

93 Ibidem p 9
94 Bureau Buitenland, *Reclassering houdt niet op bij de grens – alles over het werk van Bureau Buitenland* (Reclassering Nederland, March 2013) p 5
95 The course 'motivational interviewing' was provided by regional case managers during regional conferences in 2011.
96 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2008-2009, 30010 nr. 15) p 2
97 Ministry of Foreign Affairs, Internal communication (berichtenverkeer) from consular department to diplomatic missions, 26 March 2009
98 Tweede Kamer, *Reclasseringsbeleid* (2003-2004, 29270 nr. 1) p 4
99 O8
100 Humanitas is a nonprofit association which aims to support people who temporarily cannot manage on their own.

consular staff at diplomatic missions, and with volunteers and chaplains of Epafras who are active in their region.

5.3.3 Religious foundation Epafras

'A man is always more (in a positive sense) than what he has done wrong. Each person is valuable.'
Slogan Epafras

Epafras is a religious foundation which provides pastoral assistance to Dutch FNPs.[101] The name Epafras comes from the biblical figure Epaphras.[102] The foundation is based in Utrecht and consists of four members of staff and a network of around forty-five chaplains who work in around seventy countries.[103] The aim of Epafras is to guarantee that Dutch FNPs can receive spiritual and diaconal support.[104] By providing religious assistance Epafras gives concrete expression to the biblical message of love to one's fellow man: each person is valuable. Chaplains of Epafras are inspired by the words of Jesus, but they do not visit prisoners in order to convert or evangelise them. The foundation provides assistance to all prisoners who indicate that they wish to receive it, including those of other religious faiths or non-believers.[105] Epafras' aim fits in theory with the general well-being of the prisoner and is connected to all three hypotheses mentioned in the first chapter.

5.3.3.1 History

The ecumenical Christian foundation Epafras was established on the initiative of reverend Joop Spoor in 1984. Reverend Joop Spoor was employed as a prison chaplain by the Dutch Ministry of Justice and he worked in Dutch prisons. In the early eighties he started to visit Dutch FNPs in Sweden in his free time.[106] When visiting FNPs in other countries he became convinced of the necessity to provide spiritual assistance in a more structured way. It was the gesture of the Ministry of Justice to allow reverend Spoor to dedicate his time to working with Dutch FNPs which led to the establishment of Epafras. In the first years a number of other chaplains, many of whom worked in Dutch prisons, also started to visit Dutch FNPs in their free time on behalf of Epafras.

---

101 www.epafras.nl

102 Epaphras was a Christian preacher who came into contact with Apostle Paul and who became a follower of Jesus Christ. When Apostle Paul was imprisoned in Rome Epaphras became his loyal visitor and he remained with him as a 'fellow prisoner'. Paul wrote in prison a 'Letter to the Colossians' where he mentioned that Epaphras was with him (Colossians 4:12, Philemon 1:23)

103 Chaplains are not granted access to prisons in Algeria, China, Egypt and Turkey.

104 Based on figures provided by Epafras in July 2015.

105 www.epafras.nl/235-wat-doen-wij.html

106 Hans van Kooten, *Eyes and Ears - Liaison Office for Dutch Prisoners Abroad and International contacts* (Reclassering Nederland, Utrecht 2005) p 65

The issue of consular assistance to Dutch FNPs came into the spotlight when the Zembla documentary *Forgotten prisoners* was broadcasted on television in 1998. It was reverend Spoor who had taken a journalist and a television reporter to India to visit one of the persons who allegedly received poor consular assistance.[107] As a result of the commotion caused in the media and Parliament, as mentioned in section 5.2.2, the Minister of Foreign Affairs promised to intensify consular assistance by encouraging the use of volunteers. Epafras also benefitted from this and received ƒ150.000[108] and a guarantee of continued financial support from the Ministry of Foreign Affairs.[109] Until that time Epafras had been dependent on donations from churches and the Ministry of Justice, which paid the salary of reverend Joop Spoor. Since 1999, the annual funding from the Ministry of Foreign Affairs has increased gradually.[110] The reason for this increase was very often the result of interventions and amendments by various members of Parliament.[111] It is of note that the attention did not only come from Parliamentarians from Christian-democratic political parties but also from Parliamentarians from Liberal and Social-democratic parties. The retirement of reverend Spoor in 2008 marked the beginning of a new era of Epafras with an increase in funding from the Ministry of Foreign Affairs, a larger network of chaplains and enhanced relationships with their main partners: the Ministry of Foreign Affairs and the International Office of the Dutch Probation Service.[112] The guarantee of continued financial support from the Ministry led however not only to an increase in the number of visits but also fuelled internal discussion about the importance of remaining independent and continuing to respect the core mission.[113]

5.3.3.2 Activities

Epafras provides assistance to Dutch FNPs upon request. There is, like with assistance of the International Office and the Ministry, no obligation. Those who wish to receive assistance can indicate this on a special form. Epafras has developed a number of activities in order to

107 Ibidem p 66
108 Circa €70,000
109 Tweede Kamer, *Vaststelling van de begroting van de uitgaven en de ontvangsten van het Ministerie van Buitenlandse zaken (V) voor het jaar 2000* (1999-2000, 26800 V nr. 32) p 2449
110 Tweede Kamer, *Vaststelling van de begroting van de uitgaven en de ontvangsten van het Ministerie van Buitenlandse zaken (V) voor het jaar 2001* (2000-2001, 27400 V nr. 2) p 91 / Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 15) p 5
111 Tweede Kamer, *Vaststelling van de begroting van de uitgaven en de ontvangsten van het Ministerie van Buitenlandse zaken (V) voor het jaar 2008* (2007-2008, 31 200 V nr. 10)
112 Tweede Kamer, Gedetineerdenbegeleiding buitenland (2008-2009, 30010 nr. 11)
113 Epafras, *Algemeen beleidsplan van stichting Epafras 2008-2012: 'Verba volant, scripta manent'* (Epafras, Utrecht October 2008) p 5

reach out to Dutch FNPs. The two main activities are: visiting and counselling of prisoners by chaplains and publishing the magazine *Gezant uit Nederland*.[114]

During the personal visits, chaplains try to address the spiritual needs of prisoners. The confidentiality of conversations is guaranteed and Epafras respects the individuality and privacy of prisoners.[115] The policy of Epafras is to visit Dutch FNPs detained outside the EU twice per year and those inside the EU at least once per year.[116] Despite the increased budget and increase in the number of chaplains since 2008 this visiting norm remains challenging, especially in countries in close proximity to the Netherlands, such as Belgium, Germany and the United Kingdom.[117] In 2013 chaplains carried out 1,801 visits to in total 1,236 prisoners.[118]

The full colour magazine *Gezant* is published four times per year and distributed by the Ministry of Foreign Affairs to all Dutch FNPs.[119] The purpose is to inform prisoners about cultural, political and sporting matters; to give practical advice through informative articles on subjects that relate to their situation; to give insight into the detention experiences of others and to give them the opportunity to find pen pals or to send letters.[120] Other activities by Epafras include maintaining contact with relatives of prisoners in the Netherlands; providing prisoners with Bibles, diaries, dictionaries and other reading materials; sending out postcards at Easter[121]; corresponding with prisoners[122]; delivering a present to a child on behalf of an imprisoned father or mother; providing financial support to prisoners who are in urgent need and redirecting prisoners to organisations that can provide assistance and aftercare.[123]

5.3.3.3 Chaplains

Epafras coordinates a network of around forty-five chaplains who support the Christian ecumenical identity of the foundation and who work on a voluntary basis.[124] The number

---

114 The translation of *Gezant uit Nederland (*abbreviated in the text to *Gezant)* is *Envoy from the Netherlands*.

115 E2

116 E1 / Epafras, *Pastoraal beleidsplan: Ver-reikend Omzien Naar Elkaar* (Epafras, Utrecht 2008) p 3

117 This has to do with the fact that in these countries there is a relatively high number of Dutch prisoners and a high turnover rate.

118 Based on numbers received from Epafras in 2014.

119 In 2015 the name *Gezant* changed into *Comeback*.

120 The editors of the magazine are staff from Epafras, a regional coordinator of the International Office and editors of a small Dutch media company.

121 Epafras sends annually between 8,000-10,000 Easter-cards to Dutch FNPs. This activity was initiated by the project *Kerk in Actie* (Church in Action) by the Protestant Church in the Netherlands. Before Easter, these cards are sold to churchgoers who are asked to write a message for prisoners in and outside the Netherlands.

122 Epafras has around ten correspondent-volunteers who write regularly to prisoners.

123 Epfaras, *Gevangen in het Buitenland? Dan ben je ver van huis!* (Epafras, Utrecht) p 6 www.epafras.nl

124 Epafras, *Pastoraal beleidsplan: Ver-reikend Omzien Naar Elkaar* (Epafras, Utrecht 2008) p 6

of chaplains rose from 17 in 2002, to 43 in 2015.[125] The majority of chaplains are protestant or Roman Catholic and there are two Islamic spiritual counsellors. Chaplains are, unlike volunteers of the International Office, professionally trained and have generally received ordination by their denomination. Most of the chaplains are based in the Netherlands and have experience in working with vulnerable persons from different layers of society, such as homeless people, drug addicts and/or prisoners. Chaplains are mainly recruited via word of mouth. There are chaplains who are or have been working in Dutch prisons or with the armed forces and some chaplains are active in a local parish.[126]

Working with Epafras requires several competences. First of all the chaplain needs to have completed theological training at academic level or a combination of a similar training and professional experience in spiritual care. Epafras has not developed special training for new chaplains but they receive training on the job by another chaplain and by instruction from staff at Epafras. Each chaplain is allocated their own region or country or a number of countries. The selection of the country is based on the need for a chaplain but also language skills and/or personal interest. After each visit chaplains give a general debriefing to the diplomatic mission in which, with the consent of the prisoner, they can discuss relevant issues with consular staff and/or with the International Office. Twice a year Epafras organises a seminar for chaplains to discuss issues that occur in daily practice. Chaplains are further invited to participate in regional conferences organised by the Ministry of Foreign Affairs in cooperation with the International Office. Chaplains are compensated for their travel and lodging expenses but they do not receive a salary since they carry out the work on a voluntary basis.[127]

5.3.3.4 Funding and cooperation

Epafras receives funding from the Ministry of Foreign Affairs and Ministry of Security and Justice.[128] This has been different in the past. Until 1998 Epafras was mainly dependent on donations from churches and on funding from the Ministry of Justice for the salary of the founder of Epafras. After the documentary *Forgotten prisoners,* the Ministry of Foreign Affairs promised to provide structured financial support to Epafras.[129] Epafras works closely with DCM, the Dutch diplomatic missions and with the International Office of the Dutch Probation Service. Epafras is part of the Council of Churches, a network of associated churches in the Netherlands, and connected with Prison Fellowship International (PFI) and the International Prison Chaplain Association (IPCA).

---

125 Based on information received from Epafras in July 2015.

126 Epafras has not actively recruited Dutch chaplains who live and work abroad.

127 Epafras, *Pastoraal beleidsplan: Ver-reikend Omzien Naar Elkaar* (Epafras, Utrecht 2008) p 5-7

128 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2008-2009, 30010 nr. 15) p 2

129 Tweede Kamer, *Vaststelling van de begroting van de uitgaven en de ontvangsten van het Ministerie van Buitenlandse zaken (V) voor het jaar 2000* (1999-2000, 26800 V nr. 32) p 2449

5.3.4 Key figures

In 2013 the three organisations carried out together in total 11,311 visits; this is on average nearly five visits per prisoner.[130] But what are the costs of these visits and the costs for the other types of assistance that are provided to Dutch FNPs? The same question was asked by Parliamentarians in 2009.[131] The Minister of Foreign Affairs was requested to provide the exact cost per Dutch FNP and came with the following calculation.

On average consular staff spend 34 hours per prisoner per year, of which 8 hours by consular staff in The Hague and 26 hours by staff at the diplomatic missions.[132] The costs for the consular department in The Hague were €1,426,520 in 2009, including staff costs, the cost of training and maintenance of the data system. The costs for diplomatic missions were €3,511,850. Furthermore, the Ministry has an annual budget of €2,000,000 to pay for the activities of the International Office (€525,000) and Epafras (€720,000).[133] The other part of the budget is spend on gifts, requested items and medicines, regional prison conferences, booklets, translations of prison transfer files, information on drug prevention and miscellaneous other things. The Ministry of Security and Justice spends €600,000 in total on grants to the International Office and to Epafras. The total cost for assistance to Dutch FNPs was €7,538,370 in 2009.[134] With, in total at that time, 2,580 Dutch FNPs, this is an average cost of €2,920 per prisoner per year.[135] Not included in the budget is time spent by volunteers and chaplains, because they work on a voluntary basis, the costs of prison transfers and the costs represented by prisoners who serve the remainder of their sentence in a Dutch prison.[136]

Table 5.1 Budget assistance to Dutch FNPs in 2009

Allocation costs	Total
The Hague consular department staff costs	€1,426,520
Dutch diplomatic missions staff costs	€3,511,850
Probation Service (€535,000) Epafras (€720,000), Medicines (€410,000), conferences (€260,000), booklets (€25,000), translations (€20,000), information about drug-prevention (€8,000) and miscellaneous (€32,000)	€2,000,000
Ministry of Security and Justice costs	€600,000
Total costs	€7,538,370
Average cost per prisoner per year	**€2,920**

130 This figure includes 4,849 visits by consular staff; 4,661 visits by the Probation Service and 1,801 visits by Epafras.
131 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2008-2009, 30010 nr. 11)
132 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2008-2009, 30010 nr. 15)
133 Since volunteers and chaplains work on a voluntary basis and free of charge their time is not calculated in the budget.
134 €1,426,520+€3,511,850+€2,000,000+€600,000=€7,538,370.
135 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2008-2009, 30010 nr. 15)
136 These costs are funded by the Ministry of Security and Justice.

5.4 Analysis of consular assistance to Dutch FNPs

Dutch FNPs have no right to claim consular assistance from the Dutch authorities nor can they derive rights from it. The Netherlands recognises however that those in difficult situations should receive proper support, and the Ministry of Foreign Affairs committed itself in Parliament to monitor whether the rules in the country of detention are applied correctly and that Dutch nationals are held in decent prison conditions. Consular assistance could therefore be regarded as customary law. This is supported by the fact that the Ministry is fully organised and equipped to provide assistance in cooperation with the International Office of the Probation Service and the religious foundation Epafras.

The focus of consular assistance seems to be on the well-being of prisoners. Whether the Ministry acts in accordance with the two basic principles and the condition that is laid upon the Ministry by The Hague Court and the National Ombudsman in cases brought to them, is not yet clear. The assumption is that the Ministry is rather reluctant to appeal to foreign authorities in cases where the human rights of Dutch nationals in foreign detention are violated. It is, further, not clear whether the assistance addresses the typical needs of FNPs that are identified in research literature (chapter 3) or whether it contributes to the government's broad approach to stimulate the resettlement of ex-prisoners (chapter 6). Chapters 8 to 9 provide insight into whether the Ministry adheres to the basic principles in practice; whether assistance addresses their needs; and what kind of impact it has on their detention and resettlement.

Reflecting on the founding aims of the International Office of the Dutch Probation Service, it seems that the emphasis has shifted. The main point used to be the welfare of the prisoner and the reduction of damage as a result of detention, but this has been reoriented towards reduction of recidivism. This shift in focus fits well with the general aim of the Probation Service to contribute actively to a safer community by preventing crime. To what extent the International Office is able to provide support in the period after detention is described in the next chapter and evaluated in chapter 9. The main aim of Epafras, which has not changed since its establishment, is to provide Dutch FNPs with spiritual and diaconal support. To what extent this organisation achieves its objective is evaluated in chapter 9.

The next chapter focuses on the resettlement of ex-prisoners in the Netherlands. It explores the measures that are taken by the Dutch authorities during detention and after release, and examines whether Dutch nationals who return from detention abroad are taken into consideration.

CHAPTER 6

RESETTLEMENT IN THE NETHERLANDS

6.1 Introduction

'In the Netherlands offenders receive guidance while returning to society. This is to prevent them from ending up in prison again. But when someone is detained abroad this is not possible. That is why it is sometimes possible for prisoners who are detained abroad to be transferred to the Netherlands.[1]

Custodial Institutions Agency (DJI), website[2]

The purpose and justification of a prison sentence is ultimately to protect society against crime. According to the UN Standard Minimum Rules for the Treatment of Offenders this can only be achieved if the detention is used to ensure, so far as possible, that upon release the ex-prisoner is not only willing but also able to lead a law-abiding and self-supporting life.[3] The resettlement of ex-prisoners into society is a central objective laid down in international and regional human rights instruments.[4]

This chapter provides insight into the resettlement of prisoners in Dutch society, including those who return from detention abroad. Do Dutch nationals who return from detention abroad to the Netherlands not receive guidance, as suggested in the quote above? The chapter ends by exploring elements that are regarded in evidence-based studies as effective in stimulating the resettlement of prisoners. The information is used in section 9.4 to see whether the impact of elements in consular assistance can be placed in this context.

6.2 Resettlement of ex-prisoners in the Netherlands

'While maintaining the character of the custodial sentence or detention order, the carrying out thereof shall be aimed at preparing the person involved as much as possible for reintegration in the community.'

Article 2.2 - Dutch Penitentiary Principles Act

The aim to prepare persons as much as possible for reintegration into society is firmly anchored in the Dutch Penitentiary Principles Act. The focus on successful resettlement, reframed in the aim to reduce recidivism, is also laid down in the coalition agreement of the Dutch government.[5] The successful resettlement of ex-prisoners is therefore a particular concern of the Ministry of Security and Justice, the Custodial Institutions Agency (DJI), the

1 Original text: *In Nederland krijgen gedetineerden begeleiding bij hun terugkeer in de maatschappij. Dit is om te voorkomen dat ze opnieuw in de fout gaan. Maar als iemand in het buitenland vastzit, kan dat niet. Daarom is het soms mogelijk gevangenisstraf uit te zitten in Nederland.*

2 www.dji.nl/Onderwerpen/strafoverdracht-wots-en-wets.aspx

3 Rule 58 UN Standard Minimum Rules for the Treatment of Prisoners (SMR)

4 Rule 10.3 ICCPR, Rule 58 SMR, Basic Rule 6 European Prison Rules (EPR)

5 Coalition agreement, Bruggen slaan - Regeerakkoord VVD – PvdA, 29 October 2012, p 26 / Ministerie van Justitie, *Werken aan recidive reductie* (Ministerie van Justitie, December 2010 Jaargang 2) nr. 8 p 1 / www.reclassering.nl/wie-wij-zijn/missie-en-visie

Probation Service and municipalities in the Netherlands. Although prisoners are considered to remain primarily responsible for their own resettlement, the involved organisations and authorities have agreed to work together in order to ensure a smooth transition into society and the availability of aftercare services. Their cooperation is formally laid down in an agreement by the Ministry of Security and Justice and the Association of Netherlands Municipalities (VNG).[6] A central feature in this cooperation is that the activities which are carried out during and after detention reinforce each other, and that the involved organisations are informed about the needs of prisoners during detention and upon release in a sufficient and consistent manner. In 2013 the State Secretary of Security and Justice underlined that detention should not be seen as an isolated period but that, in order to achieve a successful resettlement, aftercare should tie up with and build on processes that have already been started during detention.[7]

The Dutch Probation Service is a partner in the resettlement of offenders who fall under the responsibility of the Dutch authorities. The Probation Service can be commissioned, by either the Dutch Public Prosecution Service, the judiciary and/or DJI, to diagnose (assess) offenders and to provide these authorities with advice during detention and after release. The Probation Service can further be requested to supervise conditional sanction modalities; to perform behavioural interventions and to monitor community work. The Probation Service does not supervise ex-prisoners unless this is within the framework of a penitentiary programme or conditional release where the judge has imposed special conditions.

6.2.1 During detention

One of the methods used by the Ministry of Security and Justice to stimulate resettlement of prisoners is to start the provision of aftercare during imprisonment. DJI is primarily responsible for preparing prisoners for release during detention.[8] DJI has several opportunities to stimulate the resettlement of prisoners such as providing cognitive behavioral training and courses; allocation of prisoners to a prison close to their home town and screening the basic necessities of prisoners. To facilitate the resettlement activities most prisons have a Re-Integration Centre (RIC), which liaises with municipalities, the Probation Service and other involved partners.[9]

---

6 VNG, Ministerie van Justitie, *Samenwerkingsmodel Nazorg volwassen (ex-)gedetineerde burgers, gemeenten – justitie* (VNG-Ministerie van Justitie, Den Haag 2009) p 5 / Bestuursakkoord Rijk en gemeenten 'Samen aan de slag' (VNG 4 June 2007) p 39-40 / VNG, Ministerie van Veiligheid en Justitie, *'Richting aan Re-integratie - Convenant Re-integratie van (ex-)* gedetineerden' (VNG, 10 December 2014) p 3

7 Tweede Kamer, Brief aangepast Masterplan DJI 2013-2018 (2012-2013 24587 nr. 435 19 June 2013) p 3

8 Tweede Kamer, *Maatschappelijke opvang* (2003-2004 27834 nr. 34 26 May 2004) p 1-5

9 VNG, Ministerie van Veiligheid en Justitie, *'Richting aan Re-integratie - Convenant Re-integratie van (ex-)* gedetineerden' (VNG, 10 December 2014) p 28

The average detention period of prisoners in Dutch prisons is rather short, on average 115 days.[10] As a result, cognitive behavioral training is often not offered because it cannot be completed before release. The focus of DJI is therefore on screening prisoners during the first weeks of detention to identify obstacles that they may encounter upon release in the remit of identity papers, income, accommodation, debts and care.[11] It is the aim of DJI to resolve these difficulties as fully as possible during detention by co-operation with municipalities and other authorities such as the Dutch Probation Service.[12]

6.2.1.1 Screening five basic necessities

In order to increase the chance for a smooth transition into society, DJI and the municipalities have agreed that prisoners who are about to return to society should have at least 80% of their basic necessities taken care of.[13] The following necessities were considered as basic:

Five basic necessities for reintegration

1. Income/work
2. Accommodation
3. Valid proof of identity
4. Debt rescheduling plan
5. Suitable addiction or psychiatric care

To analyse whether prisoners have these five basic necessities, they are screened upon arrival in prison by a Social Services Employee (MMD) of DJI.[14] The MMD files the information of the individual prisoner in the registration system DPAN[15] and informs the municipality where the prisoner is registered about his or her needs. Most municipalities have a central point of contact or coordinator which liaises with DJI and other authorities about offenders who are resident in their municipality. Municipalities have access to DPAN and are responsible for seeing that these issues are addressed properly in co-operation with social welfare organisations which are specialised in housing, debts and/or care.[16] On

10 Dienst Justitiële Inrichtingen, *Gevangeniswezen in getal 2008-2012* (DJI, Den Haag 2013) p 25

11 S. Noordhuizen and G. Weijters, *Derde meting van de monitor nazorg ex-gedetineerden* (WODC Cahier, Den Haag 2013) p 17

12 VNG, Ministerie van Justitie, *Samenwerkingsmodel Nazorg volwassen (ex-)gedetineerde burgers, gemeenten – justitie* (VNG-Ministerie van Justitie, Den Haag 2009) p 12

13 VNG, *Nazorg ex-gedetineerden* (BAOZW/U200902781, 21 January 2010) p 4 / WODC, *De Monitor Nazorg Ex-gedetineerden* (Cahier 2010-4, Den Haag 2010) p 9

14 Medewerker Maatschappelijke Dienstverlening (MMD)

15 DPAN stands for Digitaal Platform Aansluiting Nazorg (Digital Platform for Alignment of Aftercare).

16 VNG, Ministerie van Justitie, *Samenwerkingsmodel Nazorg volwassen (ex-)gedetineerde burgers, gemeenten – justitie* (VNG-Ministerie van Justitie, Den Haag 2009) p 18

the day of the prisoner's release, the MMD sends a document to the municipality with information regarding the most up-to-date status of the five basic necessities.
The Research and Documentation Centre of the Dutch Ministry of Security and Justice (WODC), which monitors the aftercare results of ex-prisoners, reported that nearly 92% of prisoners with a detention period of longer than two weeks were screened by the MMD in 2010.[17] The group that was not screened consisted mainly of foreigners, as a result of language difficulties and lack of a home address. A clarification for this was that ex-prisoners of foreign origin who have legal status but are not registered in a municipality cannot benefit from allowances from a municipality.[18]

The WODC study further mentioned that, despite efforts by DJI to address the basic necessities of prisoners, it remains difficult to diminish the consequences of detention and/or to strive for improvements. With regard to identity papers the percentage of offenders without papers before and after detention remains the same. The percentage of prisoners with an income dropped from 71% before detention to 62% after detention.[19] Upon arrival in prison nearly three quarters (73%) of the prisoners have debts and more than a quarter (29%) received care for an addiction and/or mental health situation.[20] The only basic necessity that showed a minor increase is the percentage of prisoners with accommodation after release. In total 81% of the prisoners have a home before detention and after release this increased to 83%. It is important to mention that before detention most prisoners had a rental home or stayed with family, and after release more prisoners stay with their families and in social care housing. A study by Van Schie revealed that ex-prisoners without a permanent home address in particular experience problems after release.[21]

6.2.1.2 RISC-assessment - plan of action - intervention

As mentioned earlier the Probation Service can be commissioned to assess offenders and to provide judicial authorities with advice. For that reason the Probation Service designed, on the basis of *What Works* (see section 6.4.1) and the *RNR-model* a diagnostic and risk assessment tool called *RISc* (Recidivism Assessment Scales).[22] This tool is used to give an

17 S. Noordhuizen and G. Weijters, *Derde meting van de monitor nazorg ex-gedetineerden* (WODC Cahier, Den Haag 2013) p 10
18 Ibidem p 28-29
19 Of the group with an income before detention 54% received an income from work and 47% from social benefits.
20 For 'debts' and 'care' there are no figures for those who are released (WODC Cahier 2012-2013 p 11)
21 C. van Schie, *Nazorg ex-gedetineerden – Enquête bij PI's en gemeenten* (Centrum Criminaliteitspreventie Veiligheid, December 2012) p 9
22 The RISc is based on the British Offender Assessment System (OASys) and was developed in the context of the policy programme *Reducing Recidivism*.

estimation of the risks, needs and responsiveness of an offender.[23] Based on the outcome of this individual assessment, the Probation Service evaluates which evidenced based intervention is the most appropriate to maximise chances for successful resettlement into society. For each offender a plan of action is drafted, with interventions. The offender can be obliged, for example, to follow a specific course, a behavioural training, or a treatment that is considered by the Dutch Offending Behaviour Programmes Accreditation Panel as effective.[24]

The RISc-assessment is carried out by probation workers who are licensed and trained.[25] The assessment itself is based on a conversation with the offender, documentation, a self-assessment by the offender, and if necessary interviews with, for example, parents, partner and/or employer.[26] The professional judgement of the probation worker is further taken into consideration.

If a conditional sentence or conditional release are under consideration, the Probation Service can advise, on the basis of the RISc-score, how the supervision of the offender will be arranged, what the contact frequency will be and what kind of checks should be implemented.[27] The RISc consists of twelve factors and each factor assesses the risk posed with regards to re-offending.[28] The Probation Service applies four categories to measure the likelihood of recidivism; low (score 0%-20%), medium low (score 21%-40%), medium high (score 41%-60%) and high (score 61%-100%).[29] In 2009 the Probation Service introduced the QuickScan to screen the risks and needs of offenders in a quicker and simpler way than the RISc-assessment.[30]

---

23 Reclassering Nederland, *RISc – informatie voor opdrachtgevers van de reclassering* (Reclassering Nederland, Utrecht 2009) p 1

24 Pauline Aarten, Thijs van der Heijden and Peter van der Laan, *Accreditation of offender programmes – An Overview of accreditation panels and procedures in various countries, Offending behaviour Programmes Accreditation Panel* (Netherlands Institute for the Study of Crime and Law Enforcement, Amsterdam/The Hauge 2011) p 10

25 Mens en Samenleving, 'RISc (Recidive Inschattings Schalen): kans op delictgedrag? (2013) p 1 http://mens-en-samenleving.infonu.nl/diversen/41119-risc-recidive-inschattings-schalen-kans-op-delictgedrag.html

26 L.M. van der Knaap, D.L. Alberda, *De predictieve validiteit van de recidive inschattingsschalen (RISc)* (WODC Cahier 2009-12, Den Haag 2009) p 17

27 A.M. van Kalmthout and L. Tigges, 'The Netherlands' in A.M. van Kalmthout, I. Durnescu (Eds), *Probation in Europe* (CEP, Wolf Legal Publishers Nijmegen 2008) p 695

28 These factors are: criminal history; current crime and crime pattern; accommodation and living; education, work and learning; income and handling money; relationships with partner and (extended) family; relationships with friends and acquaintances; drug use; alcohol use; emotional well-being; thinking patterns / behaviour /skills; and attitude.

29 L.M. van der Knaap and D.L. Alberda, *De predictieve validiteit van de recidive inschattingsschalen (RISc)* (WODC Cahier 2009-12, Den Haag 2009) p 14

30 Reclassering Nederland, *Factsheet Quickscan voor opdrachtgevers van de reclassering* (Reclassering Nederland, Utrecht 2009) p 1

6.2.1.3 Factors with a high correlation to re-offending

The WODC conducted a study of nearly 11,000 offenders in the Netherlands to reveal which RISc-factors have the highest correlation with reoffending.[31] The identified factors are a lack of education; lack of work and training; problematic thinking and behaviour; problematic attitude; difficult relationships with friends and family; and drug misuse. The British Home Office had conducted a similar study earlier with 10,000 prisoners.[32] The factors that were most frequently characterised as problematic, and therefore posing a high risk of re-offending, were the current offence and criminal history of the offender, lack of education, training and employment, problematic thinking and behaviour, lifestyle, and lack of accommodation. More than half of the offenders were diagnosed as having a high risk for re-offending. The results of the British and Dutch study correlate with the findings in the WODC study with regards to a lack of education, training and employment and problematic thinking and behaviour. See section 10.2 as to whether these resemble factors that Dutch FNPs mention as a reason for re-offending.

6.2.2 During conditional / supervised release

The Probation Service can, as mentioned earlier, be requested by the Dutch judicial authorities to supervise conditional release of prisoners when imposed by a judge. Assistance is normally provided on the basis of a RISc-assessment and/or a plan of action. The activities can consist of monitoring whether the conditions are applied during conditional release/ parole (supervision), mediation for work opportunities (public employment service) and facilitating contact with housing agencies and social welfare organisations, for example.[33]
The Probation Service has different ways of supervising ex-prisoners and the degree of monitoring is connected to the risks that the individual ex-prisoner poses.[34] Ex-prisoners can, for example, be obliged to present themselves in person at an office of the Probation Service (Meldplicht), probation officers can visit the ex-prisoner at work or at home, or they can make contact with their social network (relatives, employer) to verify whether the person is complying with the instructions. These instructions and rules are clearly laid down in a monitoring agreement (Toezichtovereenkomst), which is signed by the ex-prisoner.[35] If the rules are violated, the Probation Service can give an official warning or, in the case of a

31 L. van der Knaap, L. Leenarts and L. Nijssen, *Psychometrische kwaliteiten van de Recidive Inschattingsschalen (RISc). Interbeoordelaarsbetrouwbaarheid, interne consistentie en congruente validiteit* (WODC, Den Haag 2007) p 60

32 Gemma Harper and Chloë Chitty (Eds), *The impact of corrections on re-offending: a review of 'what works'* (Harper G and C Chitty, *The impact of correction on re-offending: a review of 'What Works'* (Home Office Research and Statistics Directorate, 3rd edition February 2005) Research Study 291 p 19

33 www.reclasseringnederland.nl/wat-wij-doen/verdachten-en-veroordeelden/uit-de-gevangenis

34 J. Plaisier and S. Pennekamp, *Planevaluatie Reclasserings Toezicht* (WODC, September 2009) p 25

35 Tactus, *Clientinformatie Reclasseringstoezicht* (Tactus, April 2010) p 1-2

severe violation, inform the judicial authorities immediately.[36] Not complying with the rules has consequences for the ex-prisoner and he or she can, in extreme cases, be sent back to prison.[37]

6.2.3 After release

In the past the Dutch Probation Service was primarily responsible for providing assistance to ex-prisoners. In 2004 the responsibility for aftercare was transferred to the municipalities.[38] The idea behind this transfer is that the Ministry of Security and Justice is responsible for the reintegration of prisoners within the judicial setting (in prison/under a conditional sentence) and municipalities are responsible once the prisoner is released.[39] The Probation Service can however be requested, as mentioned earlier, to provide support after release.[40]

So, the responsibility of municipalities to provide aftercare to ex-prisoners is a rather recent development.[41] In order to provide adequate aftercare it was agreed that, as mentioned in section 6.2.1.1, DJI informs municipalities at an early stage about possible lack of basic necessities of prisoners who are about to be released.[42] In practice Dutch municipalities are not always able to provide sufficient aftercare facilities to ex-prisoners.[43] The municipality of Amsterdam is for example not able to provide aftercare to those with a sentence length shorter than one month, while around 25% of all prisoners in the Netherlands fall within this category.[44] Ex-prisoners, especially those without money, encounter problems when they are obliged to look for work in the first four weeks after release before they are allowed to apply for social benefits.[45] In case they are eligible to receive social benefits they have to wait at least another month before they receive financial support. The policy of providing a financial advance during this period differs per municipality.[46] Housing is seen as the most

---

36 R. Poort, *Fundamenten voor toezicht. Over de grondslagen voor de ontwikkeling van reclasseringstoezicht* (Reclassering Nederland, April 2009) p 26

37 http://www.reclassering.nl/wat-wij-doen/verdachten-en-veroordeelden/onder-toezicht

38 Janne Zwemmer, Jan Jager and Jaap A. van Vliet, 'Nazorg in ontwikkeling: werk in uitvoering!' (2007) Proces 2007/3 p 117

39 Miranda Boone, 'Ten geleide – Nazorg en maatschappelijke opvang'(2005) Proces 2005/6 p 216

40 VNG, *Nazorg ex-gedetineerden* (BAOZW/U200902781, 21 January 2010) p 4 / WODC, *De Monitor Nazorg Ex-gedetineerden* (Cahier 2010-4, Den Haag 2010) p 13

41 These responsibilities are partly laid down in the Wet Maatschappelijke Opvang (WMO, Social Support Act), which was implemented in 2007.

42 VNG-Ministerie van Justitie, *Samenwerkingsmodel Nazorg volwassen (ex-)gedetineerde burgers, actualisatie* (VNG-Ministerie van Justitie, Den Haag 2011) p 8-9

43 Inspectie SZW, *Informatie-uitwisseling rondom ex-gedetineerden met multiproblematiek – nota van bevindingen* (ISZW, June 2012) p 6

44 Rekenkamer Amsterdam, *Onderzoeksrapport Nazorg aan gedetineerden een ongemakkelijke keten*, (Rekenkamer Amsterdam, May 2013) p 38

45 O7 In some municipalities this obligation is only for those under 27 years old.

46 PS2-4, O7

problematic need for ex-prisoners because of the lack of accommodation including social housing.[47]

In the Netherlands there are non-governmental and religious or semi-religious organisations which can provide support and shelter to ex-prisoners, such as the foundation Exodus[48], the Salvation Army[49] and Gevangenenzorg Nederland.[50] These organisations work with volunteers and they receive financial means from private donors, municipalities and other authorities.

6.3 Resettlement of Dutch ex-FNPs in the Netherlands

Dutch FNPs can receive, as mentioned in the previous chapter, consular assistance during detention abroad. But to what extent are Dutch ex-FNPs included in provisions for resettlement once they return to the Netherlands after release? This section provides insight into the resettlement activities that are foreseen with regards to Dutch nationals during detention abroad and after their return to the Netherlands.

6.3.1 During detention

Consular assistance to Dutch FNPs is focussed, as described in the previous chapter, on their well-being in prison and on whether their rights are protected. There are activities run by the International Office of the Probation Service which attempt to stimulate their resettlement into Dutch society. The Probation Service analyses for example the needs of Dutch FNPs on the basis of the application form and on the first meeting between the prisoner and the volunteer. Six months before release the regional coordinator of the Probation Service starts, in consultation and cooperation with the prisoner and the volunteer, preparations for return.

The International Office's analysis of the needs of the prisoner can however not be compared with the screening of prisoners in Dutch prisons. Firstly, the content and method of the screening differ. Secondly, because although in principle all prisoners in the Netherlands are screened while in foreign detention, it can only take place with the written consent of the prisoner. Another complication is the fact that the International Office is active in around 50 countries while Dutch FNPs are detained in nearly 100 countries. Thirdly, the screening of Dutch FNPs is carried out by volunteers and not by professionals. Fourthly, the results of the screening are not, or hardly shared with municipalities and other stakeholders.

47 C. van Schie, *Nazorg ex-gedetineerden – Enquête bij PI's en gemeenten* (Centrum Criminaliteitspreventie Veiligheid, December 2012) p 9-11

48 www.exodus.nl

49 www.legerdesheils.nl/nieuwe-start-na-gevangenisstraf

50 www.gevangenenzorg.nl

6.3.2 After release

Organisations which provide consular assistance

Once the Dutch FNP is released the Ministry of Foreign Affairs ceases to provide assistance. In case the ex-FNP stays in the country of detention, the diplomatic mission can offer regular consular services in the same way as to other Dutch citizens. This means that the ex-prisoner does not receive support in returning to the Netherlands. Nor does the Ministry inform municipalities about the return of an ex-prisoner to the Netherlands. The responsibility of the Ministry stops once the prisoner is released. This abrupt ending of assistance is discussed further in chapter 10.

The International Office also does not provide aftercare to ex-prisoners who return from detention abroad. In the past, the International Office could help ex-prisoners via mail and telephone in the first three months after release. This practice was abandoned when funding stopped once municipalities became responsible for aftercare.[51] In practice, it sometimes occurs that staff provide help when they are approached by ex-prisoners who are caught up in bureaucratic formalities.[52] With the consent of the prisoner, the International Office can also pass on information to the mainstream support organisations and municipalities in the Netherlands.[53] The International Office is further, despite its numerous attempts, not connected to the information system which is used in Dutch prisons to inform municipalities about different needs of individual prisoners.[54] The consequence is that the International Office cannot transmit information about the needs of Dutch ex-FNPs to municipalities.

Although Epafras does not provide aftercare, the organisation offers prisoners the opportunity to have a follow-up conversation after release or to make contact with a church. In exceptional cases Epafras also tries to arrange shelter for those ex-prisoners who cannot access housing support.[55]

Municipalities

Municipalities are responsible for providing aftercare to ex-prisoners, including those who return from detention abroad. The fact that municipalities are also responsible for this particular group of ex-prisoners is mentioned in a footnote of an agreement between

---

51 IOB, *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2011 nr. 338) p 70 / The Dutch social support act (Wet Maatschappelijke Ondersteuning (WMO)) led to the transfer of responsibilities of aftercare from the Probation Service to municipalities. The Dutch social support act has been renewed in January 2015.

52 PS5, PS6

53 International Office, *Probation doesn't stop at the border – About the work of the International Office, brochure by the Dutch Probation Service* (Reclassering Nederland, Utrecht 2013) p 5

54 PS6 and consultation with staff in August 2013.

55 E1, E2

the Dutch authorities and municipalities.[56] The footnote stipulates that municipalities should make an agreement with the International Office of the Dutch Probation service to provide aftercare for those who return from detention abroad. In the recent renewal of this agreement Dutch nationals who return from detention abroad were not mentioned at all.[57]

Aftercare organisations

In the Netherlands there are no aftercare organisations specialising in providing tangible support or shelter to ex-prisoners returning from detention abroad. An exception is an office of the Salvation Army at Schiphol airport where prisoners can seek shelter during the day. The foundation Exodus has several houses in different municipalities where ex-prisoners can receive guidance and support from professionals and volunteers.[58] On occasion, the Probation Service arranges, for motivated Dutch ex-FNPs, a room in one of these houses.[59]

6.3.3 Prison transfer

There are Dutch FNPs who are transferred to the Netherlands to serve the remaining part of their sentence in a Dutch prison (see also section 3.4.1.6). The transfer is possible for prisoners in countries that have concluded a multilateral or bilateral transfer agreement. The Netherlands is party to the EU Council Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA[60] for transfers in the EU, and the Council of Europe Convention on Transfer of Sentenced Persons for transfers between Members States of the Council of Europe and eighteen other countries.[61] The Netherlands has concluded, further, a bilateral transfer convention with Venezuela, Morocco and Thailand. In practice the number of prisoners who are transferred on an annual basis is low. The Dutch Ombudsman criticised the Ministry of Justice and Security for these low numbers and for the fact that the Ministry does not take into consideration requests from prisoners with a sentence length of less than six months.[62]

---

56 VNG, Ministerie van Justitie, *Samenwerkingsmodel Nazorg volwassen (ex-)gedetineerde burgers, gemeenten – justitie* (VNG-Ministerie van Justitie, Den Haag 2009) p 13 The text of footnote 12 of this document is: *Over nazorg inspanningen ten aanzien van gedetineerden die terugkeren uit buitenlandse gevangenissen kunnen gemeenten afspraken maken met het bureau buitenland van de reclassering.*

57 VNG, Ministerie van Veiligheid en Justitie, *'Richting aan Re-integratie - Convenant Re-integratie van (ex-)* gedetineerden' (VNG 10 December 2014)

58 www.exodus.nl

59 E1, UK.P3

60 The Framework Decisions, abbreviated in Dutch as *WETS*, define a new legally binding framework with the EU for the transfer of sentenced persons (909), persons with a suspended sentence and/or community order (947) and persons with a suspension from provisional detention (829).

61 This convention is abbreviated in the Netherlands as *WOTS*. The States Parties are Australia, Bahamas, Bolivia, Canada, Chile, Costa Rica, Ecuador, Honduras, Israel, Japan, Korea, Mauritius, Mexico, Panama, Tonga, Trinidad and Tobago and the USA.

62 National Ombudsman, *Letter to Minister of Security and Justice* (2013.09734.001) 5 November 2013 p 5-6

The Ombudsman advised the Ministry of Security and Justice to acknowledge the social rehabilitation aspects of the transfer and to ensure a more custom made approach.[63]

6.4 Studies of 'effective' interventions

'People involved in the justice system have many needs.
But not all of these needs are associated with criminal behavior.'
Andrews and Bonta (2006)

This section provides insight into theories which are generally acknowledged in the Anglo-Saxon world and which to a certain extent are applied in the Netherlands. As seen in this chapter States try to resettle ex-prisoners successfully. Returning to prison after release is regarded as a failure and a waste of time, money and energy. It is negative for the individual, for his or her family, for the prison and judicial authorities and for society in general. The fact that recidivism rates are generally high means that governments are keen on finding effective elements which reduce re-offending in order to save costs and to free up capacity in prisons. The resettlement of ex-prisoners is therefore also a topic that has been studied by academics. This section explores some of the theories about possible key factors that might have a positive impact on successful return to society after detention. As mentioned at the beginning of this chapter this information is used in chapter 9 to see whether the impact of elements in consular assistance can be placed in this context.

It is important to acknowledge that consular assistance to Dutch FNPs is, as seen in the previous chapter, primarily set up from a human rights perspective to influence their well-being. Consular assistance can therefore not be labeled as an official intervention that is focused on the resettlement of the prisoner after release. The term intervention is widely used in penology to evaluate activities aimed at influencing prisoners' behaviour or circumstances in a programmatic and structured way. Consular assistance can however, when received, be considered as a form of unofficial intervention because the activities by the International Office of the Probation Service are developed to stimulate the successful resettlement of prisoners in Dutch society.

6.4.1 *What Works?*

Until 1970, relatively little was known about the success or failure of attempts to resettle offenders in society.[64] At the beginning of the 1970s a growing recognition emerged that an assessment of the effectiveness of interventions should be based on actuarial, evidence-based science and less on professional judgment. The criminologist Martinson undertook a comprehensive review of research literature and assessed which interventions were

63 National Ombudsman, *Letter to Minister of Security and Justice* (2013.09734, 13 March 2014) p 3

64 Jo Hermanns, 'Nieuwe wegen in het terugdringen van recidive?' (2009) Proces (88) 3 p 149

effective and which were not. The results of the study by Martinson were very pessimistic and he announced that very few things have any effect on recidivism.[65] His name became synonymous with the *Nothing Works* doctrine which dominated criminal justice policies in the 1970s and 1980s. The tide turned in the 1990's when the Canadian researchers Andrews and Bonta conducted several meta-analyses which identified that interventions which met certain criteria showed positive results.[66] Andrews and Bonta consistently found that interventions meeting these criteria led to significant reductions in recidivism rates, and they were therefore called the *What Works* principles.

According to these *What Works* principles it is important to assess the risks (*risk-principle*) and needs (*needs-principle*) of the individual offender before providing an intervention. The bigger the risk, how more intensive the intervention should be.[67] Recently, attention has also been paid to a more positive approach*, the Good-Lives-Model*, which aims to strengthen the capacities of offenders instead of focusing only on the risks and needs.[68] Another principle is that the content of the intervention should be suitable to and integrated into the learning style, cognitive capabilities, motivation, personality and cultural background of the individual offender (*responsivity-principle*).[69] Cognitive behavioral therapies are considered to be effective because they can teach offenders new skills and to become, for example, less impulsive or aggressive.[70] Another principle is that the intervention should be carried out by trained professionals in the way it was intended (*integrity-principle*). Monitoring the quality and the consistency of the interventions is therefore considered to be useful.[71] Another element is that there is a strong focus on resettlement and that offenders are supported in the community with employment and housing.[72]

Risk-Need-Responsivity-model

Andrews and Bonta developed on the basis of the *What Works-principles* a so-called *Risk-Need-Responsivity-model* (RNR-model). This model is built to assess and to rehabilitate

65 R. Martinson, 'What works? Questions and answers about prison reform' (1974) National Affairs, Issue 35 p 49

66 D.A. Andrews, J. Bonta and others, 'Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis' (August 1990) Criminology Volume 28 Issue 3 p 369-404

67 R. Poort, *Fundamenten voor toezicht. Over de grondslagen voor de ontwikkeling van reclasseringstoezicht* (Reclassering Nederland, Utrecht 2009) p 14

68 T. Ward and C.A. Fortune, 'The Good Lives Model: Aligning risk reduction with promoting offenders personal goals' (2013) European Journal of Probation Vol 5 (2) p 29-46

69 L.A. Craig, T. A. Gannon, L. Dixon, *What Works in Offender Rehabilitation: An Evidence-Based Approach to Assessment and Treatment* (Wiley-Blackwell, 2013) p 156

70 M.W. Lipsey, 'The Primary Factors that Characterize Effective Interventions With Juvenile Offenders: A meta-analytic Overview' (2009) Victims & Offenders nr. 4 p 124-147

71 Ministerie van Justitie, *Afstemming van gedragsinterventies voor jeugdige delinquenten* (Ministerie van Justitie, Den Haag 2008) p 21

72 G. Harper, C. Chitty, *The impact of correction on re-offending: a review of 'What Works'* (Home Office Research and Statistics Directorate, 3rd edition February 2005) Research Study 291 p 16

offenders.[73] The first principle assess the risk of the offender. It is based on the assumption that criminal behaviour can be reliably predicted and that treatment should match the offender's risk of re-offending. The second principle looks at the needs of the offender and how these can be targeted with the intervention. The focus is on issues in the life of the offender that should be addressed in order to decrease the likelihood of future criminal behaviour. The third principle focuses on the responsivity of the offender, on what his or her personal strengths and/or specific individual factors are that might influence re-integration into society.[74]

6.4.2 *How does it work?*

Despite the growing knowledge of factors which could stimulate the resettlement of ex-prisoners into society, recidivism rates are not decreasing worldwide as expected.[75] Lipsey and Wormith, both representatives of the *What Works* school, concluded that it is important to also look at the setting (*How does it work?*) and the person who provides the intervention (*Who works?*). Interventions should therefore not be analysed in isolation but should be considered in context. These questions however begin to enter into the domain of psychotherapy, which might explain why this topic has not been studied extensively in the justice domain.[76] The interventions in the judicial context are primarily focused on the criminal behaviour and on general principles of *What Works*. There is less interest in how the intervention actually works and the social dynamics.[77] This section provides insight into research literature about how effective interventions work; the qualities of the people who provide effective intervention; the involvement of volunteers in the justice domain; and the impact of volunteers.

Tailor-made

The psychotherapist Wampold compared outcomes of various psychotherapy studies and discovered that three factors play an important role in making an intervention successful.[78]

---

73 D. Andrews and J. Bonta, *The pschygology of criminal conduct* (Anderson Publishing Co, Cincinnati 1998)

74 J. Bonta and D.A. Andrews, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation 2007-06* (Public Safety Canada, 2007) p 1

75 M.W. Lipsey and F.T. Cullen, 'The effectiveness of correctional rehabilitation: A review of systematic reviews' (2007) The Annual Review of Law and Social Science vol 3 p 297-320 / J.S. Wormith and others, 'The rehabilitation and reintegration of offenders: The current landscape and some future directions for correctional psychology' (May 2007) Criminal Justice and Behavior vol 34 no. 7 p 879-892

76 Marie-José Geenen, 'Niet te strikt volgens de regels. Informele professional kan criminele jongere helpen stoppen' (June 2010) Tijdschrift voor sociale vraagstukken no. 6 p 19

77 Ben Rovers, *Ze deugen nergens voor: Het Belief effect in justitiële jeugdinterventies* (Inauguration lecture 9 November 2007) p 11

78 B. E. Wampold, 'Three ways to improve our effectiveness' (American Psychological Association, 2006) p 6

The first factor is that the person[79] who receives the intervention should be engaged in the process. The intervention should be consistent with his or her needs, expectations and hopes for success and the person should feel understood by the person who provides the intervention. In other words the intervention should not be one-size-fits-all but it should take into consideration the individual. An important element is that the person who provides the intervention should be convinced of the effectiveness of it, and he or she should show this implicitly or explicitly to the person who receives it.

Working alliance

The second factor is the positive working alliance between the person who receives the intervention and the person who carries out the intervention. This alliance is more than a relationship formed by being empathic and caring. According to Wampold it is also an agreement about the goals and challenges of the intervention. The acceptance of the person who receives the intervention is therefore very important. If the person does not find the intervention convincing the working alliance will be weak. Wampold added that those who provide an intervention should not be deterred or discouraged if a person finds it difficult to form an alliance. It is his or her contribution, not the contribution to the alliance of the person who receives the intervention that makes the difference.

Monitoring and feedback

The third factor that makes an intervention successful is monitoring the outcome and giving feedback. A study about psychotherapists providing feedback showed that giving systematic feedback leads to increased benefits to patients.[80] Feedback can be used to understand the effectiveness of the intervention and to improve its quality.

6.4.3 *Who works?*

As seen above, the person who carries out the intervention, the so-called 'worker', is more than a mediator between the intervention and the person who receives the intervention. The worker plays an important role in the effectiveness of the intervention. He or she should be convinced about the positive impact of the intervention and the way in which it is being provided.[81] It is therefore important to invest in the quality, motivation and training of workers and to make sure that their opinion is taken into consideration. The ability of the worker to pass on the high expectations about the intervention to the prisoner is seen as a factor for success. Professional cynicism is regarded as an undermining factor of

79 In Wampolds case the 'patient'.

80 M.J. Lambert, C. Harmon and others, 'Providing feedback to psychotherapists on their patients' progress: Clinical results and practice suggestions' (2005) *Journal of Clinical Psychology, vol 61 issue 2* p 165-174

81 A. Menger, 'Wat werkt en wie werkt? Over effectiviteit en professionaliteit in het reclasseringwerk' (April 2010) Maatwerk Vakblad voor maatschappelijk werk nr. 2 p 21

effectiveness.[82] Motivation and high expectations are however seen as an important factor for effective interventions and it is therefore important that workers remain motivated and enthusiastic.[83] According to Wampold the intervention should be customized and tailored rather than a standard intervention which is applied irrespective of the individual. The flexibility of workers to tailor the intervention to a certain degree is therefore necessary. Research also shows that prisoners who feel that they have a certain level of influence over the intervention are less likely to re-offend.[84]

A good working relationship between the prisoner and the person who carries out the intervention is another important factor. Social skills are essential, as is the ability of the worker to get along with different types of people.[85] Being clear and disciplined is important. The character of the relationship should be more than friendly and empathic in order to be effective. The working relationship should also be based on an 'agreement' about set goals and tasks. It is therefore important that the prisoner not only accepts the intervention but that he or she also supports it and is motivated to accomplish it. The dual role for workers, between being empathic and strict, is also seen in other studies as effective. Skeem studied the different working methods of probation workers and identified three types. There are probation workers who mainly focus on control in order to protect the community; probation workers who focus on care in order to rehabilitate prisoners and workers who used both techniques. Skeem discovered that the working method of the last group, the so called hybrid workers, appears to be the most successful in terms of drop-outs.[86] These hybrid workers are better able to manage reluctance of those who receive the intervention, by responding in an understanding way and by looking, in consultation with the prisoner, for adequate solutions. Workers should be open to receiving feedback in order to improve the quality of their work. Those who seek systematic feedback on their own performance are, according to studies, more effective and there are fewer drop-outs.[87] For an analysis of those who provide consular assistance, see section 9.4.1.

6.5 Analysis of resettlement in the Netherlands

Since the successful resettlement of ex-prisoners is one of the main aims of the Dutch government, the Dutch authorities are keen to stimulate the smooth transition of ex-prisoners into society. For that reason the Ministry of Security and Justice works closely

82 Ibidem p 21

83 J. Annison, T. Eadie and C. Knight, 'People first: Probation officer perspectives on probation work' (2008) Probation Journal 55(3) p 259-271

84 Marie-Joseé Geenen, 'Niet te strikt volgens de regels. Informele professional kan criminele jongere helpen stoppen' (June 2010) Tijdschrift voor sociale vraagstukken no. 6 p 20

85 A. Menger, 'Wie werkt? Over het vakmanschap van de reclasseringswerkerker' (2009) Proces (88) nr. 3 p 161

86 J. Skeem and S. Manchak, 'Back to the future: From Klockar's model of effective supervision to evidence based practice in probation' (2008) Journal of Offender Rehabilitation 47(3) p 220-247

87 S. Miller, M. Hubble and B. Duncan, 'Supershrinks, what's the secret of their success?' (August 2008) Psychotherapy in Australia vol 14 nr. 4 p 14

during detention and after release with DJI, the Probation Service, municipalities and aftercare organisations. Since successful resettlement is not easy to achieve, the involved organisations and in particular the Dutch Probation Service integrate elements in their interventions that are considered to be evidenced-based.

This chapter demonstrates that the resettlement of ex-prisoners into the Dutch society is not an inclusive model because nationals who return from detention abroad are excluded. This particular group is in fact overlooked by the authorities. This is remarkable because the Ministry of Foreign Affairs is aware of the difficulties which these prisoners face and has invested considerable time, energy and resources during their detention. The assumption that the responsibility by the Ministry finishes once the prisoner is released is also not in line with the government approach of stimulating the smooth transition of ex-prisoners into society. It is surprising that the International Office has not taken on this role. Especially when taking into consideration that their main aim is to stimulate the resettlement of prisoners. It is also noteworthy that the International Office, which is part of the Dutch Probation Service, hardly seems to work with the evidence-based interventions and tools that are used by the Probation Service in the Netherlands. The topic of resettlement of Dutch nationals in foreign detention will continue to receive attention in subsequent chapters.

The next chapter explores how Dutch prisoners experience their detention abroad.

CHAPTER 7

DETENTION EXPERIENCE OF DUTCH FNPs

7.1 Introduction

'There are few organisations that listen to prisoners in order to know how they feel'.[1]
Letter from prisoner, Portugal[2]

As seen in chapter 3, FNPs are, according to research literature and monitoring bodies, in a vulnerable position because they encounter additional difficulties during detention and prison authorities have little appreciation of their situation. However, little is known about how they actually experience detention. For that reason, Dutch FNPs[3] were questioned about different aspects of their detention.[4] The aim of this chapter is to provide insight into different aspects of their detention, and to verify whether their experiences are in agreement with the findings in research literature and whether there are new outcomes. The detention experience of Dutch prisoners is shaped by the five characteristic needs of FNPs that were identified in chapter 3 on the basis of research literature and reports by monitoring bodies. These needs are: *well-being and treatment of the prisoner; awareness of legal procedures and rights; contact with the outside world and family; social inclusion within the prison; preparation for release and resettlement*. This chapter provides a general overview of the detention conditions and experiences of FNPs by need. When considered important from a substantive point of view, differences in detention conditions and experiences among FNPs in prison in the EU and outside the EU, and among prisoners that are in pre-trial and post-trial detention, are also discussed. A complete overview of the responses to the questionnaire and the test statistics that were used to test for differences in responses is provided in Annex 7. The outcomes of the questionnaire are illustrated and put into perspective by information and quotes from respondents who were interviewed and letters that were received from prisoners. The chapter concludes by analysing whether the difficulties mentioned by Dutch FNPs are in line with the difficulties that are described in the research literature as being generally experienced by FNPs.

7.2 Well-being and treatment of the prisoner

Measuring the first need, the *well-being and treatment* of FNPs, is not straightforward. The well-being of prisoners and the way they are treated depends on a large number of factors which are not all easy to assess. The other four needs also contribute, in one way or the other, to the prisoners' well-being and some of them will also apply with equal force to national prisoners. The need *well-being and treatment* is measured according to three main

1 Original text: *Het zijn weinig organisaties die naar een gevangene te luisteren en om te weten wat een gevangene voelt.*
2 PO.L2
3 The term 'prisoners' is also used and it refers to Dutch nationals in foreign detention (Dutch FNPs).
4 More than 550 Dutch prisoners, detained in over 50 countries, responded to a questionnaire and over 50 Dutch prisoners were interviewed during and after their detention.

topics and each topic has a number of sub-topics. The first main topic is *detention conditions*, because the conditions under which prisoners are detained can have a direct influence on their well-being. The other main topics are *safety*, *discriminatory and ill-treatment,* and *health*.

7.2.1 Detention conditions

'I was lucky because I could stay in a single cell when I was in a remand prison, but there was no toilet in the cell and therefore I had to use a bucket.' [5]
Prisoner, Belgium[6]

It seems that Dutch FNPs are detained under the same physical and hygienic conditions as other prisoners. However, the detention conditions vary from country to country and even from prison to prison, as they depend on cultural, economic, political and social factors. To measure the detention conditions under which prisoners are held, this section is divided into the sub-topics: *cell*, *hygiene*, *food* and *drugs*.

7.2.1.1 Cell

'I slept on the floor on a mattress full of blood stains, there are cockroaches and after six o'clock there is no running water.'[7]
Ex-prisoner, Brazil[8]

Cell occupancy

Two thirds of Dutch nationals in foreign detention share a cell with other prisoners and only one third of them occupies a single cell. Of those who share a cell, nearly half of them share a cell with one other person and the other half share with more than one person.
It should be noted that multi-occupancy cells are a significantly more common practice outside the EU than inside. This means that prisoners in the EU are more frequently detained in a single cell compared to prisoners detained outside the EU (36% EU vs 24% non-EU) and more often in a double cell (39% EU vs 12% non-EU). The percentage of prisoners accommodated with more than 20 people is significantly higher outside the EU than inside the EU (0% EU vs 17% non-EU). This demonstrates that in the EU there are hardly any large dormitories and outside the EU it is more common practice.
The occupancy of cells inhabited by prisoners in pre-trial detention and by sentenced prisoners also differ significantly. It is more uncommon for pre-trial prisoners to have a cell to themselves (26% pre-trial vs 36% sentenced), and they are detained less frequently in a

5 Original text: *Ik had geluk, ik had een eigen cel toen ik in voorarrest zat. Er was echter geen toilet en daarom moest ik een emmer gebruiken.*
6 B.P11
7 Original text: *Je slaapt op de grond, het matras is doorbloed, er zijn kakkerlakken en na zes uur 's avonds is er geen water meer.*
8 BR.EXP1

cell with 10-20 persons (2% vs 4%) or in a cell with more than 20 persons (3% pre-trial vs 7% sentenced). The fact that pre-trial prisoners are more often detained in single cells is probably to avoid contact with other prisoners while the criminal process is under way.

The physical conditions of cells vary by prison and by country but prisoners expressed in interviews and in letters their disapproval of the conditions under which they were detained. Poor sanitation[9], humidity[10], lack of fresh air[11] and lack of privacy[12] are commonly registered complaints. An ex-prisoner who had been detained in Morocco explained that rats entered his cell via a hole in the ground (toilet). At first he had been scared but later on got used to it and laughed about his animal visitors. Dutch prisoners are sometimes required, like other prisoners, to pay for their cell, their bed and sometimes even for electricity.[13]

'We were detained with 36 prisoners in a cell with capacity for 18 prisoners.'[14]
Letter from prisoner, Turkey[15]

Cell size

Many Dutch nationals are detained in cramped conditions. More than one third of them have less than 4 square metres at their disposal. Despite the fact that the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) and the European Prison Rules (EPR) do not prescribe a specific minimum size of cell space per prisoner, the explanatory commentary on the EPR indicates that the CPT considers 4 square meters as a minimum requirement in shared accommodation and 6 square meters for a single cell.[16]
The situation is even worse for those detained outside the EU; it is significantly less common for them to have 4 square metres at their disposal compared to those imprisoned in the EU (29% EU vs 52% non-EU). This shows that more than half of those detained outside the EU are held in overcrowded cells. In interviews prisoners confirmed that overcrowding is a common phenomenon.[17] According to prisoners the cramped detention conditions can lead to tensions, especially when prisoners have to remain in their cells practically all day, leading to deterioration in their physical and mental health.[18]

---

9 CZ.L1, G.L1-3
10 PO.L2
11 G.P2
12 US.V1
13 M.P1, M.P2, T.P5, V.EXP1
14 Original text: *We zaten met 36 in een ruimte voor 18 personen.*
15 T.L1
16 Council of Europe, *Commentary to Recommendation Rec (2006)2 on the European Prison Rules* (Council of Europe Publishing, Strasbourg 2006) p 6. These minimums are related to how much time prisoners actually spend in their cell.
17 BR.EXP1, CY.P1-5, GR.L1, GR.L4, I.V1, S.CS3
18 B.P1, BR.R1

'We stay 23 hours per day in a cell of 4 by 2 metres with 3 people. In case it rains I cannot go outside. Because I do not have other clothes to wear.'[19]

Letter from prisoner, Czech Republic[20]

Time outside cell

The majority of Dutch FNPs are permitted to spend between 1 and 6 hours outside their cell on a daily basis. Only one third are allowed to spend more than 6 hours on a daily basis. Prisoners detained in the EU can spend far less time out of their cell in comparison with prisoners detained outside the EU. This situation might be explained by the fact that cells in the EU are relatively bigger. Another reason is that in countries with a hot climate, often outside the EU, the daily prison routine takes place in the open air.

There are also significant differences between pre-trial prisoners and sentenced prisoners with regard to the number of hours they can spend outside their cell. Pre-trial prisoners are less often allowed more than 6 hours outside their cell in comparison to sentenced prisoners (27% pre-trial vs 42% sentenced). The reason is the difference in regime in pre-trial prisons and in prisons for sentenced persons. The fact that pre-trial prisoners can spend less time outside their cell is likely related to restrictions imposed on them to avoid interference in the legal case. Pre-trial prisoners are often not permitted to communicate with fellow suspects, relatives and/or victims for the same reason.

'I was 14 months in solitary confinement. Even a talk with the pastor was not allowed.'[21]

Letter from prisoner, Sweden[22]

Solitary confinement

In total 5% (n=28) of the prisoners mentioned in the questionnaire that they were not allowed to leave their cell at all. This practice is strictly against the universally accepted norm of at least one hour in the open air per day (Rule 21.1 SMR). It is worth mentioning that 19 of them were detained in the EU, including five prisoners in France and three in Germany. There are as many pre-trial as sentenced prisoners in this group. A Dutch national detained in Sweden indicated that he had spent 14 months in complete isolation during his process and he was not even allowed to speak to a priest.[23] Another prisoner in Austria explained that his time in solitary confinement made him a social wreck.[24]

---

19 Original text: *We zitten 23 uur per dag in onze cel die 4 bij 2 meter meet voor 3 personen. Als het buiten regent dan kan ik niet naar buiten. I heb geen andere kleren om te dragen.*

20 CZ.L1

21 Original text: *Ik heb 14 maanden in isolatie gezeten. Zelfs een gesprek met de dominee was niet toegestaan.*

22 SW.L1

23 SW.L1

24 A.P3

7.2.1.2 Hygiene

'Only two showers per week are allowed'.[25]
Prisoner, Austria[26]

Measuring hygiene includes dealing with the perception of cleanliness. The concept of clean and hygienic standards differs from person to person, from culture to culture and therefore also from prison to prison. Dutch prisoners are in general neutral (score 3.2) about the hygienic conditions in the prison where they are detained in their responses to the different questions about cleanliness in the questionnaire. This outcome is rather surprising because prisons are in general not well-known for their state of cleanliness.
In interviews, however, many prisoners expressed their disapproval of the hygienic state of the prison in which they were held.[27] The explanation is that this neutral score is an average; it is the combination of a slightly positive and a slightly negative score. The neutral overall score might also be related to the fact that a majority of prisoners are able to maintain their personal hygiene and that they can clean their own cell or space. Prisoners in the EU are significantly more positive compared to those detained outside the EU (3.4 EU vs 2.8 non-EU).[28]

Regarding the temperature of the cell, nearly a quarter of the prisoners think that their cell is too cold, and/or too hot and/or too humid. Prisoners are also critical of the poor conditions of other areas like the living area, exercise yard, area for visitors and the kitchen. Prisoners are on average neutral about how frequently they can wash their clothes and positive about how frequently they can take a shower.
Interviewing prisoners created the opportunity to have a closer look at the state of the prison buildings and the hygienic conditions. Due to overcrowding and limited financial means many facilities are over-used and in a bad condition. Some prisoners explained that at the beginning of their detention they had to sleep on the floor and sometimes in shifts.[29] Vermin such as rats and cockroaches are part of the furniture in some prisons.[30] As mentioned above, the conditions under which Dutch FNPs are detained are not different to the conditions under which other, including national prisoners are held. Despite the generalyl poor hygienic conditions Dutch prisoners interviewed appeared to be clean. Most prisoners were permitted to wear their own clothes and these clothes were in general not

25 Original text: *Slechts twee douches per week zijn geoorloofd.*
26 A.P2
27 A.P2, B.P5/6/8/11, D.R1, GH.L2, M.R1, T.P3, S.P1
28 This average score is based on the responses on a combination of 7 rating questions and the answer categories ranged from totally disagree (1) to totally agree (5). An example statement is: "It is clean at my own department. The average is 3.22, which is 'neutral'. Scores range from negative (<2.50), to slightly negative (>2.50 <2.75), to neutral (> 2.75 < 3.25), to slightly positive (score > 3.25 < 3.50) to positive (score >3.50).
29 M.P1, V.EXP1
30 F.L1

filthy. A prisoner detained in Czech Republic mentioned in his letter that his clothes were washed once a week. Since he had no other clothes he had to stay naked in his cell for three hours until his clothes were returned.[31]

7.2.1.3 Food

'Prison food is monotonous. Beans are on the menu every day.'[32]
Prisoner, Turkey[33]

Dutch prisoners receive prison food, but they do not like it in general. Those detained outside the EU are significantly more negative about the prison food compared to those detained in the EU (2.5 EU vs 2.1 non-EU). Outside the EU, prisoners are not only negative about the quality of food but also about the quantity of food. The question whether prisoners suffer from malnutrition was not posed in the questionnaire but in interviews with prisoners it did not seem to be the case. However, prisoners expressed their dissatisfaction with prison food in interviews.[34] The poor quality, small portions, lack of variety and the fact that it was not prepared and/or presented in a hygienic way, contributed to this general negative opinion. Furthermore, they explained that it is difficult for them to adapt to a different diet and cooking culture.[35] In some countries it is normal practice that families bring food to prison to supplement the diet of their imprisoned relative. Dutch nationals generally do not have their families around and can therefore not benefit from this opportunity to receive food. One prisoner in Morocco was grateful that his sister lived close by and brought him food on a regular basis.[36] At other times he asked other prisoners to cook a meal for him. Since cash money was not allowed he used cigarettes as a currency. Many prisoners who are detained outside the EU use the monthly financial allowance (see section 5.3.1.2) they receive from the Dutch embassy to buy water and to supplement their meal with fruit and vegetables in order to stay healthy. Family members sometimes send food packages by mail but this practice is expensive and sometimes the package does not arrive in good order. A sister of a Dutch prisoner in the Dominican Republic found an innovative alternative; she sends seeds via mail so her brother can grow vegetables and fruit for his personal use in the prison garden.[37]

Prisoners, especially those outside the EU, claim that the prison authorities do not take into consideration religious dietary requirements. This finding is in line with the comment in section 3.4.4.2 about difficulties experienced by FNPs relating to religion.

---

31 CZ.L1
32 Original text: *Gevangenisvoedsel is eentonig. Iedere dag staan bonen op het menu.*
33 T.P4
34 A.P2, A.P3. B.P1/5/6/8/11/13, BR.R1, CZ.L1, F.EXP1, GR.L1, M.P1, UK.P5-6, T.P4, T.P5
35 US.V2
36 M.P1
37 D.R1

7.2.1.4 Drugs

'A bottle of mineral water is in prison more expensive than a few grams of soft drugs.'[38]
Ex-prisoner, Morocco[39]

More than two thirds of the prisoners claim that drugs are often used in prison. Sentenced prisoners replied significantly more often that drugs were used in their prison compared to pre-trial prisoners (pre-trial 63% vs sentenced 75%). It is plausible that sentenced prisoners are more aware of this because they spend more time out of their cell than pre-trial prisoners and therefore are more aware of which prisoners are using drugs and where they are bought. With regard to the EU and outside the EU, there are hardly any differences in drug-use as witnessed by prisoners. Drug use in prison seems to be a worldwide phenomenon. As mentioned in section 4.4.1, two-thirds of the Dutch nationals detained abroad are detained in connection with a drug-related crime.
In interviews it became clear that drugs are often more easily available (and less expensive) inside the prison than outside.[40] In order to cope with the situation some prisoners start using hard drugs during detention.[41] Sometimes prison staff supply drugs to supplement their salary.[42]

7.2.2 Safety

'I am afraid of mistreatment by fellow prisoners. I see the movie Midnight Express with my own eyes.[43]
Letter prisoner, Greece[44]

Feeling safe is another difficult concept to measure. For that reason prisoners were asked whether they feel safe, whether they have to watch out for other prisoners or prison staff, whether they are being threatened and if there are places where they feel particularly safe or unsafe. The accumulation of answers to these questions provides a clear picture: the majority of prisoners feel unsafe (score 2.6). They indicate that prisoners are being exploited by other prisoners and that they have to 'watch out' for certain members of staff. Half of the prisoners feel unsafe on their own wing and in the exercise yard. One in three also feels unsafe in their own cell. This last finding means that one third of the prisoners feel unsafe for the longest part of the day.
There are significant differences when looking at the situation in and outside the EU. Prisoners detained outside the EU feel significantly less safe compared to those detained in

38 Original text: *Een fles mineraalwater is in de gevangenis duurder dan een paar gram softdrugs.*
39 M.EXP1
40 B.P7, BR.EXP1, S.P2, V.EXP1
41 BR.EXP1
42 M.EXP1
43 Original text: *Ik ben bang voor mishandelingen door andere gedetineerden. Ik heb hier Midnight-Express (film) met eigen ogen gezien.*
44 GR.L1

the EU (57% EU vs 74% non-EU). They are also more afraid of staff (3.6 EU vs 4.0 non-EU); have to be cautious of staff (3.6 EU vs 4.0 non-EU) and feel unsafe on their own wing (43% EU vs 59% non-EU). These differences are all significant. For those in pre-trial and post-trial detention there is no significant difference with regard to feelings of unsafety. This is interesting because one could expect that prisoners who are relatively 'new' in prison would feel more insecure and unsafe while getting accustomed to the prison environment. On the other hand, sentenced prisoners are more likely to spend more time outside their cell and therefore to have more interaction with other prisoners and staff. This might also explain the fact that sentenced prisoners are significantly more afraid of some members of prison staff than pre-trial prisoners (3.5 pre-trial vs 3.8 sentenced). Prisoners feel particularly unsafe in areas where they are on a continuous basis such as their wing or cell (in the case of shared cells).

Many prisoners confirmed in interviews that they do not feel safe all the time and that they have to be cautious and to 'watch out' for others, including staff, in order to survive in prison.[45] One prisoner in Portugal feels afraid and this is a reason for him to not use drugs because otherwise he is even more prey for others.[46] An ex-prisoner who had been detained in Venezuela explained that he never felt safe because all the time people watch each other and they carry weapons.[47] He further explained that drug wars in society continue in prison and prison staff were often afraid to interfere. An ex-prisoner detained in Brazil said that raids carried out by the military police had terrified her.[48] During these raids the police used violence and sometimes female prisoners were physically abused. A Dutch female prisoner in Turkey felt unsafe because a teacher in prison was sexually harassing her and other prisoners.[49] The wife of a prisoner detained in the Dominican Republic reported that she had never felt so scared as when her husband called her from his mobile phone during a shooting in the prison because he thought it was the last time that he could speak to her.[50] There are apparently also prisons with less violence. A Dutch national detained in Cuba explained in a letter that there were hardly any problems with safety because violence was not tolerated and gangs did not exist.[51] A prisoner in Belgium relayed information about the frequent fights among prisoners and said that prison staff would only intervene if prisoners had been seriously injured.[52] According to a number of prisoners detained outside the EU the monthly financial gift they receive from the Dutch diplomatic mission

45 B.P6, B.P7, BR.EXP1, CY.P1-5, M.P1, M.EXP1, PO.L1, UK.P3, V.EXP1
46 PO.L1
47 V.EXP1
48 BR.EXP1
49 T.P2
50 D.R3
51 Whether he amended what he wrote or that he was anxious that the prison authorities would read his out-going letter is not clear.
52 B.P6

does not always contribute to their safety.[53] On the one hand, they can buy security with it but, on the other hand, it can make them an easy target and can stimulate blackmail.[54] There are also prisoners who seek support from each other and from other foreigners. An ex-prisoner who had been detained in Morocco explained that European citizens protect each other by staying awake in shifts during the night to guarantee that the other prisoners could sleep safely.[55] Another prisoner detained in Belgium said that Dutch prisoners had created their own 'safe area' by keeping an eye on each other and making sure that they were not outnumbered by others.[56]

In total five Dutch prisoners signed a letter written by another prisoner to attract attention to a dire situation in Greek prisons where violence and mistreatment by prisoners and by staff was daily practice.[57] The letter included the original correspondence of the prisoner with the Greek Ombudsman. In this letter the deputy Ombudsman confirmed the 'shortcomings inside the Greek prisons and their lack of compliance with the EU standards'.[58] Prisons can also be dangerous places for visiting consular staff. In November 2007 a Dutch embassy car on its way to a prison in Peru was attacked by ex-prisoners who were aware of the monthly delivery of financial gifts for all Dutch prisoners.[59]

So, Dutch prisoners feel in general unsafe in prison and it seems that this is a consequence of a general feeling of insecurity which might be shared by other prisoners who are not foreigners.

7.2.3 Discriminatory and ill-treatment

'I am not one of 'them' and therefore I am seen as 'not good'.[60]

Prisoner, Austria[61]

Discrimination and ill-treatment of individual prisoners and groups of prisoners is not uncommon in prison. Dutch nationals experience discrimination by prison staff and by fellow prisoners during their detention. Prisoners outside the EU experience significantly more discrimination by prison staff and by fellow prisoners than inside the EU. In general, half (51%) of the prisoners feel personally discriminated against, while this is even higher (61%) for those detained outside the EU. With regard to pre-trial and post-trial detention there are no significant differences.

---

53 D.R1
54 V.EXP1
55 M.EXP1
56 B.P6
57 GL1-3
58 Greek Ombudsman, *Letter to prisoner by Andreas Takis, deputy Greek Ombudsman* (Greek Ombudsman, 206970722 2 April 2008)
59 P.CS1 Ministerie van Buitenlandse Zaken, *Berichtenverkeer* (12 November 2007)
60 Original text: *Ik ben niet een van hen en daarom wordt ik gezien als niet goed.*
61 A.P3

Reasons for discrimination

Prisoners were asked about their perception of the reason for discrimination. According to prisoners the main source of discrimination is nationality. It is interesting to note that a different skin colour is mentioned less than half as frequently by prisoners as a reason for discrimination than nationality. As presented in table 1 below, other reasons for discrimination are religion, type of crime, sexual preference and gender.

Table 7.1 Reasons for discrimination

Reasons for discrimination	%	EU	Non-EU	Pre-trial	Sentenced
Nationality	66%	66%	66%	60%	72% (*)
Skin colour	30%	31%	28%	30%	30%
Religion	17%	23% (*)	8%	20%	17%
Type of crime	10%	7%	14% (*)	14%	9%
Sexual preference	3%	2%	5%	2%	3%
Gender	2%	3%	0%	2%	2%

* = Significant (p-value of the test ≤ .05)

In total two thirds of prisoners see nationality as the main source of discrimination. It is striking that prisoners, irrespective of whether they are detained in or outside the EU, have the same opinion on this topic. One could expect that prisoners detained further away from the Netherlands would indicate this more often than those detained closer to home. Sentenced prisoners feel significantly more discriminated against as a result of their nationality than pre-trial prisoners (pre-trial 60% vs sentenced 72%). It might be that sentenced prisoners have more interactions with other prisoners and staff, and become therefore more aware of discriminatory treatment.

A different skin colour is regarded by prisoners as the second most frequently mentioned reason for discrimination. This outcome was expected by the researcher, especially because a number of Dutch prisoners with a dark skin colour mentioned during interviews that they felt accused by the authorities, from the first moment of arrest, as a result of their foreign looks'[62] Some prisoners explained that standing trial was pointless in their case because they had already been found guilty and it was only to pretend to the outside world that justice was done.[63]

Religion is regarded as the third main reason for discrimination. This form of discrimination occurs significantly more often within the EU than outside. Dutch nationals detained in the EU mention religion three times more often than those detained outside (23% EU vs 8% non-EU). The reason for this discrepancy is not clear. Perhaps Dutch prisoners in the EU have higher expectations that their religious background will be accepted than those in countries far away. This discrepancy was not discussed during interviews.

62 PO.L1, UK.P3

63 B.P9, F.EXP1, G.P8, SW.L1

Despite the strict ban on discrimination and discriminatory treatment of prisoners, as outlined in international binding conventions such as the ICCPR (Rule 2.1) and other international treaties, discrimination occurs in practice. The fact that nationality is regarded by prisoners as the main reason for discrimination, more than skin colour and religion, is noteworthy. Apparently prisoners perceive their national identity more strongly when abroad in a foreign environment.

Positive discrimination and measures to stop discrimination

Being a foreigner in prison does not always need to be a disadvantage, according to a couple of interviewed prisoners. One prisoner in Morocco drew attention to the positive discrimination he experienced as an EU citizen.[64] According to him EU citizens receive better treatment than national prisoners. He explained that he was detained with other EU citizens in a wing with relatively better facilities. He could approach the prison director, who was always willing to seek a solution to any of his problems. However he further added that foreign nationals from African countries could not count on this preferential treatment. In order to avoid the risk of mistreatment, the same Dutch prisoner went to the Dutch embassy in Rabat before reporting himself to the police by whom he was being sought. During interrogations he warned police officers that he had showed his 'unaffected' body to consular staff as a deterrent to beatings which he could later blame on them.[65] Although he felt intimidated when blindfolded in a room with police carrying clubs, he was not physically touched during interrogations. There was also a Dutch prisoner who explained that the British prison authorities had an active policy to stop discrimination. When he filed a complaint about discrimination, it was immediately and effectively taken into consideration by a 'racism team' that was operating on a permanent basis in the prison.[66]

Ill-treatment and torture

Dutch prisoners are sometimes ill-treated and/or even tortured by authorities during arrest, interrogation or detention. This can be by police, prison staff and/or fellow prisoners. The questionnaire omitted questions about mistreatment. Yet some prisoners elaborated in interviews and in letters on practices of ill-treatment and torture.[67] Two prisoners in the Czech Republic and one prisoner in Spain explained in detail how they were physically mistreated by prison staff.[68] One ex-prisoner in Morocco stated that he received electric shocks during interrogations.[69] After his prison transfer to the Netherlands he was diagnosed

64 M.P2
65 M.P2
66 UK.P1
67 CZ.L2, GR.L1, GR.L2, GR.L3, S.L5
68 CZ.L1, CZ.L2, S.L5
69 M.EXP1

with Post-Traumatic-Stress-Disorder. A female ex-prisoner admitted that at the beginning of her detention she had mistreated other prisoners when ordered to do so by a gang.[70]

7.2.4 Health

'I am HIV positive. I need to take medicines at certain set times. Because I am not allowed to keep my medicines I depend on prison staff to bring them. Every day they come at different times.' [71]

Letter from prisoner, USA[72]

Health is one of the main concerns of prisoners during detention. Dutch prisoners are negative about healthcare in prison (score 2.5) and they claim that their health has deteriorated as a consequence of their detention abroad. Although most prisoners are able to visit a medical doctor in prison they are not positive about the quality of the care they receive. The overall satisfaction of prisoners regarding the quality of medical assistance in prison depends on where they are detained. Prisoners detained in the EU are in general neutral about medical care and those detained outside the EU are very negative (2.7 EU vs 2.3 non-EU). This difference is significant. It is possible that the quality of medical care in prison is a reflection of the standard of medical care that is provided in the community. According to the SMR (Rule 22.1) medical services in prisons should be organised 'in close relationship to the general health administration of the community or nation'. The quality of medical care in many EU countries is relatively good compared to other countries in the world and it is therefore not surprising that in the EU the prisoners' satisfaction with medical staff is better evaluated compared to outside the EU. Those in pre-trial are slightly less negative about medical care compared to sentenced prisoners. This might be the result of the common practice that newcomers in prison, mainly pre-trial prisoners, receive a medical check within a few days of their arrival in prison. Another reason is that prisoners' health deteriorates during detention and that sentenced prisoners are likely to have been in detention longer than pre-trial prisoners.

Addressing the issue of health and medical care with Dutch prisoners during interviews often led to drawn-out complaints about long waiting lists[73], the poor quality of medical care[74] and the fact that detainees had become less healthy[75], both physically and mentally, during detention.[76] Despite the fact that Dutch nationals seem to have similar access to

70 BR.EXP1
71 Original text: *Ik ben sero-positief. Ik moet op vaste tijden mijn medicijnen nemen. Omdat ik mijn medicijnen niet bij me mag houden ben ik afhankelijk van gevangenispersoneel. Ze komen alleen iedere dag op een ander tijdstip.*
72 US.L2
73 US.V1, US.L2
74 G.P2
75 GH.R1
76 US.V1, MP.1, B.P6, T.CS1

medical care as national prisoners, they seem to face obstacles in receiving appropriate care. No or poor understanding of the national language and cultural differences result in prisoners experiencing difficulties in receiving appropriate medical care. Prisoners have for example difficulties in communicating their medical complaints or explaining their illness or their personal medical history.[77] Seeking interpretation assistance from fellow prisoners is often necessary but not desired because of privacy reasons. Sometimes specific desirable medicines or treatment are not available, difficult to obtain or not for free.[78] One prisoner used his personal health three times to attract the attention of the authorities to his legal case by going on hunger strike for a few days.[79]

Detention does have a negative impact on the physical health of prisoners but according to many prisoners also on their mental health.[80] The emotional stress, boredom, feeling unsafe and frustration in combination with the lack of attention paid to mental illnesses by medical staff led to cases of self-harm and suicide attempts by certain prisoners.[81] One prisoner wrote in his letter that he thought about ending his life in order to escape his unbearable situation.[82]

7.3 Awareness of legal procedures and rights

The second need of FNPs is *awareness of legal procedures and rights*. As suggested in research literature, the lack of language skills (section 3.4.2) in combination with not knowing the judicial system can mean that FNPs are not aware, or are not fully aware of the prison rules, legal procedures and their own rights. Whether this can be confirmed by the experiences of Dutch prisoners is the main focus of this section. Besides awareness of rules and rights this section looks at whether prisoners are aware of mechanisms to lodge a complaint and whether they received legal support. The main topics are: *clarity of rules and rights*, *punishments and complaints*, *legal support*, *judicial process and interpretation*, and *immigration and deportation*.

7.3.1 Clarity of rules and rights

'The prison authorities do not inform you about prison rules. Your knowledge about the rules is based on hearsay from fellow prisoners'.[83]

Prisoner, Morocco[84]

77 B.P6, US.V1
78 GR.L2, M.P2, S.CS3, PO.L2
79 V. EXP1
80 B.P1, CZ.L1, D.R3, F.L2, PO.L1,T.P3, UK.P5-6
81 B.EXP1, BR.R1, M.R1, M.EXP1
82 CZ.L1
83 Original text: *De gevangenisautoriteiten informeren je niet over de gevangenisregels. The kennis die je hierover hebt komt van horen zeggen van andere gedetineerden.*
84 M.P1

Nearly two thirds of the prisoners (63%) are not, or not sufficiently, aware of the prison rules and about their rights (score 2.7). The consequence is that the prison rules and the rights to which prisoners are entitled are unclear to most Dutch prisoners. This is a worrying finding. This outcome is also irrespective of whether prisoners are detained in or outside the EU, or whether they are in pre-trial or post-trial detention: they are all similarly unaware of the rules. The fact that there are no differences between the variables is peculiar. One would expect that prisoners in the EU are slightly more aware of the rules compared to prisoners detained outside the EU because they are more likely to understand or speak the language of another EU country, such as German, English, French or Spanish. One would also expect that sentenced prisoners, who are likely to be in detention for a longer period, would be more aware of the rules and their rights.

The reason why most prisoners are not aware of the rules and rights is that they are not properly informed by the prison authorities in a language they can understand. Only 18% of the prisoners indicate that they have been informed about the rules by the prison authorities. Prisoners in the EU are more informed than those detained outside the EU (20% EU vs 13% non-EU) as are sentenced prisoners (12% pre-trial vs 20% sentenced).

Also, in interviews it became clear that many prisoners are not made aware of the rules and rights by the prison authorities at all or the rules were in a language they could not understand.[85] The prison rules are often not available in different foreign languages or, when the rules are translated, they are not always handed out to foreigners. Also, prison staff are normally neither able nor willing to explain the rules in a foreign language. In practice, prisoners obtain information by observing and talking to other prisoners.[86] Many prisoners regret the fact that they are not properly informed about the rules upon admission to the prison. Only a handful of prisoners are indifferent. One Dutch prisoner explained light heartedly: 'If I were to receive the prison rules, I'd have no idea what to do with them. Besides, I do not like reading'.[87] There are also examples of good practices. For example in Nicosia prison in Cyprus the prison rules are available in Arabic, English, Greek, Russian and Turkish. In Spanish prisons special information brochures are handed out to prisoners with a summary of the prison rules in Arabic, German and English.[88]

The fact that a large majority of Dutch nationals is not made aware of the rules is a confirmation of the findings in research literature (see section 3.4.2.1), and monitoring bodies report that prison authorities are often not pro-active in informing FNPs. This is not only worrying; it is also against international rules and standards. The EPR (Rule 30.1) requests prison authorities to inform prisoners upon admission 'in writing and orally in a language they understand' of the rules, their rights and their duties in prison. The same is

85 AR.L1, A.P2, B.P11, F.CS1, GR.L2
86 S.P4, S.P1
87 G.P3
88 S.CS3

true for the SMR (Rule 35.1) but the addition 'in a language they understand' is not reflected in the SMR. The reason might be that in the nineteen fifties when the SMR were drafted there were hardly any FNPs. The UN Recommendation for the Treatment of Foreign Prisoners (1985) contains the requirement that prisoners be informed promptly after reception in a 'language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations'.

7.3.1.1 Consular rights

Despite the fact that Dutch prisoners are in general not properly informed of rules and rights, there is one particular right of which most are aware. This is the consular right of FNPs to contact their diplomatic mission. A striking four fifths (82%) are aware of this entitlement. More than one third of them are aware of this right themselves and another one third are informed in prison by other prisoners, prison staff and consular staff while the remainder are informed by lawyers and others such as family or friends. The fact that so many Dutch prisoners are aware of their consular entitlements implies that the content of article 36.1(b) of the Vienna Convention on Consular Relations is widely known. The fact that this entitlement is incorporated in both the SMR (Rule 38.1) and the EPR (Rule 37.1) is likely to contribute to its familiarity.

Failure of prison authorities to inform foreign national prisoners of the prison rules and their rights, as mentioned above, is consistent with the following finding. Only 11% of the prisoners are informed by the prison authority about their consular entitlements. Those detained in the EU are significantly more often informed by the prison authorities compared to those detained outside the EU (13% EU vs 6% non-EU).

7.3.2 Punishments and complaints

You can file a complaint with the monitoring board. But the letterbox of the board is on the wing and staff can read it. If they do not agree they tear the complaint form to bits.'[89]

Prisoner, Belgium[90]

Punishments

Despite the fact that the majority of Dutch prisoners are not properly informed of the prison rules, a large majority of them are aware of what will happen to them should they break the prison rules. Overall, prisoners think that the punishments in prison are too harsh and the authorities, when imposing a penalty, do not take into consideration the personal circumstances of the individual prisoner. They are also of the opinion that prisoners are not punished according to the rules.

---

89 Original text: *Je kan een klacht indienen bij de commissie van toezicht. De brievenbus van de commissie zit echter op de gang en personeel kan het lezen. Als ze het er niet mee eens zijn dan scheuren ze het papier met de klacht doormidden.*

90 B.P9

Complaints

Prisoners are in general not well aware of where to submit a complaint. There is no difference in awareness between detention inside the EU and outside the EU. Sentenced prisoners are, however, more aware of where to file a complaint, probably because they are in detention longer than pre-trial prisoners. Those who know where to file a complaint were asked to explain which authority would deal with their complaint. In many countries the complaint would be sent to either the prison director; to a complaints committee; to a public prosecutor; or to the ombudsman. A handful of prisoners, more often sentenced than in pre-trial and more often in the EU than outside the EU, also mentioned the European Court for Human Rights in Strasbourg. Others would seek advice from the diplomatic mission or lawyer if they had a complaint.

In interviews prisoners also expressed negative views on the various complaints mechanisms. Firstly they were often not aware of where to file a complaint and [91] secondly they spoke negatively about the impact a complaint would have. Several prisoners said that it was useless to file a complaint because nothing would happen and that it could even have negative consequences.[92] A Dutch national in the US explained that filing a complaint would make his life in prison 'hell',[93] because the prison authorities could regard the complaint as a form of protest against their policy. There were also stories about prisoners who, as a result of filing a complaint, were transferred to another part of the prison which was less favourable or experienced a problematic relationship with prison staff. Some prisoners are hampered in submitting complaints because they lack the language skills necessary for writing the complaint.[94] Making themselves heard is in general a strong wish of prisoners, as was demonstrated by the numerous letters sent by prisoners together with their completed questionnaires for this thesis.

According to the SMR (Rule 35.1 and 36) and the EPR (Rule 70) every prisoner should be informed upon admission about how to make a complaint and to make requests to the director or to other competent authorities. The UN Recommendation for the Treatment of Foreign Prisoners urges that 'foreign prisoners should be given proper assistance, in a language they can understand, when dealing with (…) complaints (…)'.
In general, prisoners are not confident about the outcome of their complaint and their expectations are low. It is therefore not surprising that the majority of prisoners have never filed a complaint themselves. Those who had filed a complaint think that the complaint procedures take far too much time and that their complaint was not taken seriously by the

91 A.P3, B.P8
92 B.P11, M.P1, M.P2, T.P2, S.L5
93 US.L3
94 F.V1

prison authorities. The questionnaire did not cover the issue of whether they were afraid to lodge a complaint.

7.3.3 Legal support

'I went on hunger-strike three times in order to attract attention to my legal case.'[95]
Ex-prisoner, Venezuela[96]

Since many Dutch prisoners are not properly informed about the rules and their rights, as mentioned above, it is plausible that they are not aware of their entitlement to seek legal assistance and to receive free legal support in case they have insufficient means.[97] Interviews with prisoners have, however, made clear that in general they receive legal support from either a pro-bono lawyer[98] or a private lawyer of their own choice.[99]
Despite the fact that prisoners have access to a lawyer they are often concerned about the quality of the legal support they receive.[100] It appears to be difficult for prisoners to find a competent and dedicated lawyer with whom they can communicate and who is able to provide adequate assistance.[101] Several prisoners and their relatives complained about paying high fees to lawyers and receiving disappointing support.[102] In some families, savings accounts were used or money was raised among relatives and friends to pay for a lawyer.[103] The wife of a Dutch national detained in Spain had sent all her savings to a prison guard because, according to her husband, it was not possible to send the money directly to the lawyer.[104] Unfortunately the money was never handed over to the lawyer and as a result the husband did not receive any legal support. One other prisoner was however very positive about his lawyer, who provided legal support free of charge because the lawyer felt so ashamed about the miscarriage of justice in his case.[105]
Not being aware of the procedures and customs with regard to lawyers, many Dutch prisoners turn to consular staff for suggestions of trustworthy lawyers. Despite a recommendation in the IOB evaluation, consular staff refrain in practice from providing Dutch FNPs with names

---

95 Original text: *Ik ben drie keer in hongerstaking gegaan (5½ en 3 dagen) om aandacht te krijgen voor mijn zaak.*
96 V.EXP1
97 Article 14.3(d) ICCPR, Rule 93 SMR, Rule 98 EPR
98 Pro-bono lawyers are lawyers who receive a limited amount of money from the State to look after the rights and interests of prisoners who cannot afford to pay for their own legal defence.
99 A.P2, B.P3, CY.P1-5, CZ.L2, G.CS1, G.P1, PO.L1, S.L8, T.CS.1, UK.P3
100 B.P3, BR.R1, I.V1, PO.L1, S.L8, T.P4, TH.CS1, US.V2
101 CZ.L1
102 A.P4, B.P3, BR.R1, I.V1, PO.L1, S.L8, US.L2, US.V2
103 D.R3, F.R1, UK.P1, UK.R1, US.R1
104 S.V1
105 CZ.L2

and contact details of lawyers to avoid involvement and protect their neutrality.[106] The Ministry clarified that this policy was because diplomatic missions have been criticised by prisoners in the past who were not satisfied with the legal support they received because of the high costs and or the outcome of their case.[107] With regard to the payment of legal fees, consular staff advise families to pay for a lawyer after the court case is finished.[108]

In addition to language difficulties, prisoners also find that lawyers have too little time to properly prepare their case and to visit them.[109] This issue was particularly raised by prisoners receiving free legal support.[110] One prisoner in Belgium explained that the first and last time he saw his lawyer was during trial in court.[111] A prisoner in Turkey said that her lawyer was not even present during the court case.[112] A lawyer in Belgium omitted to explain the case from the perspective of his client and requested the prisoner to remain silent during the hearing.[113] Another issue is that many lawyers are specialised in criminal law but very often they have less expertise in complex cases of foreigners, which can entail immigration and/or transfer issues. As one mother of a Dutch FNP described it: 'lawyers sell hope but what they really do is create false hope and that is not beneficial for the prisoner nor their families'.[114] In despair she had said to the lawyer: 'I want justice and truth' and his response was: 'You are living in a fantasy world, Madame'.

7.3.4 Judicial process and interpretation

'I had an interpreter during my trial.
The problem is however that you can only capture 40% of what has been said.'[115]
Letter from prisoner, Czech Republic[116]

Dutch nationals experience difficulties in understanding the legal procedures and the way their case is handled. Sometimes they feel that the legal system does not protect them and that the judicial authorities do not respect the principle that a prisoner is innocent until proven guilty.[117] Several prisoners are disappointed by the legal system and feel frustrated

106 The Minister of Foreign Affairs was advised by the IOB to provide prisoners with a list of names and contact-details of lawyers in the country of detention. IOB, *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2011 nr. 338) p 78
107 CSH1, CSH2
108 CSH.4, G.CS1
109 B.EXP1, S.P2, S.CS3, T.P4
110 PO.L1, S.L8
111 B.P3
112 T.P2
113 B.P9
114 US.R2
115 Original text: *Ik had een tolk tijdens mijn rechtszaak. Het probleem is echter dat je maar 40% hoort van wat er wordt gezegd.*
116 CZ.L1
117 C.R1, G.P4, G.P5, US.EXP2

by the evidence that was used in their case.[118] One prisoner complained that no evidence from the Netherlands was permitted and no Dutch witnesses were allowed to testify during his trial in the Czech Republic.[119] There are also prisoners who feel that injustice has been done and that they received longer sentences compared to nationals.[120] Some felt forced to plead guilty in order to receive a shorter sentence.[121] Some prisoners and relatives in search of the truth and justice have turned to human rights organisations, the media and the Dutch monarch for support.[122]

The right to receive information 'in a language he understands of the nature of the cause of the charge against him' and to receive assistance from an interpreter during trial, as enshrined in international legal instruments, such as the ICCPR (Article 9.2 and 14.3 f), SMR (Rule 29.3) and EPR (Rule 38.3) is not sufficiently addressed because there are several constraints. Although prisoners seem to be have a rough understanding of the reason for their detention, the assistance they receive from an interpreter is inadequate. Consular staff from the Dutch diplomatic mission in Madrid explained that interpreters are often not able to translate into Dutch and only translate into English.[123] Requesting a Dutch-speaking interpreter usually results in the trial process being delayed. Prisoners in Spanish prisons are expected to pay for interpretation themselves (€ 50 per half day) and therefore they often refrain from using an interpreter. The lack of interpretation is the reason that the Dutch diplomatic mission in Istanbul regularly hires their own interpreter.[124] The presence of an interpreter during trial is a key concern for consular staff.[125] But even when an interpreter is present during trial it is, as mentioned in the quote at the beginning of this section, still difficult for prisoners to grasp everything that is being said due to the remaining language barrier.

7.3.5 Immigration and deportation[126]

'In the first 10 years after release I am not allowed to go to France. I have no troubles with that.'[127]

Letter from prisoner, France[128]

118 CZ.L2, G.L2, G.P4, G.P8
119 CZ.L2
120 B.P4, B.P9, B.P13, G.V1, F.EXP1
121 B.P8
122 D.R1, F.R1, US.L4
123 S.CS3
124 T.CS1
125 CSH4
126 As mentioned in chapter 2, the topics prisoner transfer agreements, immigration and deportation are not studied in this thesis and therefore fall outside its scope.
127 Original text: *Ik mag de komende 10 jaar niet meer in Frankrijk komen. Lang geen moeite mee.*
128 F.L2

Dutch FNPs can be deported like other foreign nationals as mentioned in section 3.4.1.7. There were a couple of prisoners who stated in interviews that they were not sure what the implications of their deportation would be.[129] Perhaps they would be allowed to return to the country of detention, or access would be denied for a couple of years or even for the rest of their life. So, the finding in research literature that uncertainties about immigration and deportation lead to feelings of anxiety was confirmed in interviews with Dutch FNPs and ex-prisoners. One ex-prisoner expressed his sincere grief that he had been deported from the USA and is not allowed to return, as his two sons were still living there with his ex-wife.[130] He said that this situation left a 'hole in his heart'.

7.4 Contact with the outside world and family

'Please call my wife and tell her that I am still alive and that I am detained in Norway and that I love her.'[131]

S.O.S. note on questionnaire from prisoner in pre-trial detention, Norway[132]

The third need is *contact with outside world and family*. In section 3.4.3 it is mentioned that detention abroad and physical distance from relatives hampers contact between the FNP and the outside world and in particular their family. This section focuses on the experiences of Dutch prisoners with regards to *contact with the outside world* and the *means of contact*.

7.4.1 Contact with the outside world

There are many problems with visits (visits needs to be arranged via court) and I have not seen my family and friends for over 1½ years.[133]

Prisoner, Italy[134]

Nearly nine out of ten (87%) Dutch prisoners are able to communicate with their relatives. This demonstrates that most prisoners, despite their detention abroad, find a way to make and maintain contact with the outside world. One would therefore expect that prisoners would be positive about their ability to make contact, but that is not the case (score 3.0).

So, although most prison authorities allow prisoners to make contact, as prescribed by both the SMR (Rule 37) and the EPR (Rule 24), in practice it appears to be difficult for Dutch FNPs to establish and maintain contact with the outside world. Prisoners detained in the EU are

129 B.P2, F.L2, UK.P6, US.R2
130 US.EXP2
131 Original text: *Bel aub mijn vrouw op en zeg haar dat ik nog leef, en in Noorwegen zit en van hun hou.*
132 Prisoner 491 in SPSS-database.
133 Original text: *Met bezoek zijn veel problemen en ik heb mijn familie en vrienden al ruim 1½ jaar niet gezien.*
134 IT.L2

slightly less negative about their opportunities to make contact compared to those detained outside the EU (3.0 EU vs 2.9 non-EU). The reason for this small difference might be that those detained in the EU are closer to home, and making contact and receiving visitors might therefore be less complicated and less expensive. Pre-trial prisoners experience significantly reduced opportunities to maintain contact with families compared to sentenced prisoners (2.8 pre-trial vs 3.0 sentenced). This outcome seems to be connected with the restrictions in making contact with the outside world in order not to disturb the investigation process. Furthermore, sentenced prisoners are allowed to spend more time out of their cell and have therefore more opportunities to make for example a phone call and are also more likely to work and therefore have money to spend on stamps and telephone cards.

7.4.1.1 First contact after arrest

As can be seen in the quote at the beginning of this section it sometimes occurs that prisoners are not allowed or not able to contact someone to inform him or her about the arrest.[135] During pre-trial detention prisoners are not always allowed to call or even to notify someone directly after arrest.[136] Some prisoners explained that they had to wait a couple of months before they could make a telephone call, and sometimes their families were informed by a social worker, for example.[137] An ex-prisoner explained that his first chance to inform his family came from the judge during trial and he was allowed to phone during the court session.[138] Prisoners in French prisons receive four envelopes with a stamp to contact their relatives. Since the stamps can only be used nationally the envelop returns to the prison without being delivered to their relatives in the Netherlands.[139]

Not all prisoners make contact after arrest. One prisoner hesitantly admitted that he did not dare to call his family because they warned him about the consequences of his criminal behaviour.[140] Another prisoner who lost his family during the civil war in Burundi and had received refugee status in the Netherlands had no one to make contact with.[141]

7.4.1.2 Contact with diplomatic mission

As mentioned in section 7.3.1.1, more than four fifths of Dutch nationals are aware of their right to contact their diplomatic mission when in foreign detention. A similarly large group actually made contact with consular staff at the Dutch diplomatic mission in their country of detention. This means that prison authorities respect the entitlement of FNPs to contact their diplomatic mission and that contact is being facilitated. Only a small group was not

135 UK.P5, UK.P6
136 Prisoner 491 in SPSS-database.
137 A.P1, A.P3, B.P11, B.P14, SW.L1
138 G.EXP1
139 F.V1
140 UK.P4
141 UK.P3

able to make contact because they were not allowed by the authorities, had no contact-details of the diplomatic mission or had no money to make a phone call or to write and send a letter. The practice of prison authorities informing the diplomatic mission about the detention of a foreign national without the consent of the prisoner was not researched.

7.4.1.3 Contact with lawyer

Making contact with a lawyer is not always easy for Dutch prisoners. Half of them indicate that they do not have a sufficient opportunity to make contact with their lawyer. Those who experience a lack of opportunity are significantly more often detained outside the EU than inside the EU (3.3 EU vs 3.0 non-EU). As mentioned in section 7.3.3 it occurs that lawyers only sporadically visit their clients and that there is very little contact during the preparation of the criminal case.

7.4.1.4 Contact with family

> *'My daughter called me in the middle of the night because she feared for her life when the military police raided her cell block. Not being able to do something for your child in need is horrible.'*[142]
>
> **Mother of a prisoner, Brazil**[143]

As seen above, nearly all prisoners can make contact with family or friends, but establishing contact is not always easy. Prisoners are not satisfied with the opportunities and facilities available for making contact with their families. They think that the facilities are insufficient and there is a lack of privacy during telephone conversations and visits. This is confirmed in interviews.[144] Prisoners also explained during interviews that not being able to see and speak to relatives on a regular basis is one of the most difficult issues which they face during detention abroad. Also relatives described the physical distance and their powerlessness or inability to change the situation, as very difficult.[145] The level of suffering depends on their relation to the prisoner, and on the detention situation but, regardless, it leads to a mix of strong emotions, from feeling worried[146]or uncertain[147] to anger[148] and powerlessness[149]. Besides the impact of physical distance, the detention also commonly has severe financial consequences, especially when the prisoner is the breadwinner and there are dependent

142 Original text: *Mijn dochter belde me in het midden van de nacht omdat ze voor haar leven vreesde. De militaire politie was haar afdeling binnengevallen. Niets kunnen doen voor je kind in nood is vreselijk.*
143 BR.R1
144 G.P2, G.P3, G.EXP1, G.V1.US.V1, T.L1
145 BR.1, C.R1, D.R1-4, F.R1-3, G.R1, M.R1, UK.R1, US.R1-2
146 B.R1, F.R1
147 B.R1
148 F.R3
149 US.R2

children.[150] The detention of their child was considered by a couple of mothers to be one of the most painful and difficult experiences in their life. As mentioned in section 7.3.3, there are families that use all their money to pay for a lawyer, including savings.
So, the physical distance from family means prisoners often lack social, material and emotional support. It is therefore not surprising that the UN Recommendation on the Treatment of Foreign Prisoners (Rule 8) urges authorities to facilitate contact between foreign prisoners and their families 'by providing all necessary opportunities for visits and correspondence'.

7.4.1.5 No contact

As mentioned above, nearly all Dutch nationals can make contact with their relatives and thus with the outside world. However, there exists a minority, one prisoner in ten, who for various reasons does not make contact. Of this group around one fifth has no one to make contact with; around one fifth does not want to make contact and another fifth is not allowed by the prison authorities to make contact. This means that in total 18 out of the 584 prisoners who were questioned were prohibited from contact with the outside world by the prison authorities. Unfortunately they were not asked in the questionnaire why they were prevented from making contact, but it is possible that they were not allowed to do so in order to avoid interference in the investigation process. Concerning those who are not able to make contact, it occurred significantly more often outside the EU than inside the EU that prison authorities restricted or did not allow prisoners to make contact (6% EU vs 33% non-EU). Some prisoners explained that they were only allowed to communicate if they used a language which can be understood by the authorities.[151]

7.4.2 Means of contact

The two means most commonly used by Dutch FNPs to make contact with the outside world, and in particular with their families, are letters and the telephone. Three quarters of those who can make contact communicate via letters and two-thirds via telephone. Only one third of the prisoners receive visits from relatives.

7.4.2.1 Letters

'Letters are opened, translated and read by the authorities.
In case the content is ok the letter is send to the Netherlands'.[152]
Relative, Croatia[153]

150 D.R3, F.R2, F.R3, G.R1
151 G.P2, G.P3, G.EXP1, G.V1
152 Original text: *Brieven worden geopend, vertaald en gelezen door de autoriteiten. Indien de inhoud ok is dan wordt het doorgestuurd naar Nederland.*
153 C.R1

Letters are the most frequently used communication method. Three quarters of the prisoners maintain contact with the outside world via letters. This is a considerable group, especially taking into consideration the fact that letters are often censored by the prison authorities, some prisoners are illiterate, that postal services can be unreliable and that letters often take a long time to arrive.[154]
Prisoners detained in the EU use letters more often than those detained outside the EU. This difference (83% EU vs 59% non-EU) is significant and therefore surprising. One would expect letters to be more frequently used by those detained outside the EU due to expensive telephone costs. More reliable postal services in the EU, the fact that prisoners in the EU spend less time outside their cell and have therefore fewer opportunities to make a phone call and the strict ban on mobile telephones in prisons in the EU might explain this difference.

E-mail

It is interesting to note that nearly one in ten prisoners detained outside the EU can make use of e-mail. This difference is significant and prisoners in the EU are not allowed to make use of e-mail. One prisoner in the US indicated in his letter that he could use a personal e-mail account to write e-mails.[155] This form of communication is being introduced in US prisons.[156]

7.4.2.2 Telephone

> *'Making a phone call to the Netherlands (from the US) is difficult because prisoners can solely call phone numbers in the US, Canada and Mexico. It is therefore necessary to use an illegal detour'.* [157]
>
> **Relative of prisoner, USA**[158]

The telephone is the second most frequently used communication method. Those who are detained outside the EU use the telephone significantly more often compared to those detained in the EU (61% EU vs 78% non-EU). Prisoners detained outside the EU can in fact use the telephone more frequently than they can write letters. One would expect the opposite because long-distance telephone calls are expensive and complicated to organise due to different time zones. This surprising outcome can be explained by the fact that prisoners outside the EU have more time out of their cell and have therefore more opportunities to use a telephone. Furthermore, it is not uncommon in countries outside the EU for prisoners to have a mobile phone legally, but more probably illegally, in their possession. Mobile

154 A.P3, BR.EXP1, C.R1, D.R3, G.V1, UK.L2
155 US.L3
156 US.V2
157 Original text: *Bellen is lastig omdat je alleen naar VS, Canada en Mexico kunt bellen. Daarom bellen via een illegale omweg.*
158 US.R1

telephones are in general strictly forbidden in prisons in the EU. Sentenced prisoners use the telephone significantly more often compared to those in pre-trial detention (pre-trial 57% vs 72% sentenced). This can be explained by the restrictions in communication during the investigation process and, further, pre-trial prisoners are less likely to do prison work and therefore to have money to buy a telephone card.

How frequently prisoners can use a telephone depends on the prison rules, the amount of time that prisoners are allowed to spend outside the cell, the availability of telephones and last but not least the cost of telephone calls.[159] In practice, it is not always easy to get access to a telephone. A prisoner in the US explained that his wing with in total 40 prisoners had access to three telephones during one hour of the day.[160] A prisoner in Portugal had, together with 60 other prisoners, access to two telephones during a period of three hours per day.[161] The same prisoner mentioned that contact with his family in Curaçao was further hampered because the prison authorities did not take into consideration the five hour time difference between Portugal and Curaçao. In some countries the total number of telephone numbers that prisoners can dial is restricted.[162] The authorities check each phone number beforehand and this verification process can take weeks. The prison authorities in Turkey seek assistance from the Dutch diplomatic mission to verify the three telephone numbers which each prisoner wishes to call.[163]
There are sometimes also technical difficulties. A prisoner in the United States could not phone directly to the Netherlands, as it was only possible to make a call within the USA or to Canada or Mexico. The only way he could make an overseas call was by using a third number in the USA. This practice is illegal and carried a sentence of 30 days in solitary confinement.[164] However, he took the risk as otherwise he had no chance of speaking to his family. A prisoner in the United Kingdom received from the authorities a free monthly 5-minute telephone call to the Netherlands.[165]

159 B.P12, B.P13, F.V1, UK.P5, UK.P6, US.V2
160 US.L3
161 PO.L2
162 T.CS1, T.L1, T.P1
163 T.CS1
164 US.EXP1
165 UK.P4

7.4.2.3 Visits

'Visits are hampered by the rule that visitors have to show a certificate of good conduct before entering prison. Obtaining this certificate in the Netherlands is costly (€35) and time-consuming (6 weeks), while in Belgium it is free of charge and easy to obtain.'[166]

Prisoner, Belgium[167]

Only one in three prisoners receives visits from relatives while detained abroad. This outcome might be expected but it means that only a very small group is actually visited by someone. Those detained in the EU receive visits more frequently in comparison to those detained outside the EU (35% EU vs 24% non-EU). This outcome can be explained by the fact that visiting a relative who is detained in the EU is likely to be less complicated, expensive and time consuming than visiting a relative detained overseas. There is hardly any difference with regard to visits to pre-trial prisoners and sentenced prisoners.

From a practical point of view, visits are not easy to organise. Both visitors and prisoners must find out which bureaucratic procedures they have to follow to obtain permission for the visit. As mentioned in the quote above, people who wish to visit their relative in a Belgian prison are obliged to provide a recent certificate of good conduct. If even a close family member visitor has a criminal record they are not allowed to visit the prison.[168] The consequence of this rule was that one prisoner had not seen his child for two years because the mother of his child, his ex-girlfriend, could not provide a certificate of good conduct.

Furthermore, visiting a relative abroad can be expensive and time-consuming. Several prisoners, even those who were detained close to the Netherlands, explained that their families could not visit them due to shortage of money and/or lack of transport.[169] Besides the journey to the prison, a visit can entail long hours of waiting. In the US a prisoner applied for an extra visit when his family came to visit him and this was granted by the prison authorities.[170] But it also occurs that visitors have to wait for a whole week before they can schedule another visit of an hour or less.[171] Another obstacle is that in some countries, for example Germany, pre-trial prisoners are obliged to communicate with their relatives in a language which can be understood by the police officer or prison staff present.[172] A female prisoner who had been detained in Brazil with many other Dutch girls explained that not one of them had received a visitor, except for one mother who came to collect her daughter's baby because the baby was no longer allowed to stay in prison.[173]

166 Original text: *Bezoek is lastig omdat bezoekers een verklaring van goed gedrag moeten tonen. Deze verklaring is duur (€35) en het duurt lang voordat het klaar is (6 weken), terwijl in Belgie is het gratis en zo klaar.*

167 B.P2, B.P3, B.P6

168 B.P3

169 B.P2, BR.EXP1, F.L1, G.R1, V.EXP1

170 US.R2

171 T.P1, T.P2

172 G.P2, G.P3, G.EXP1, G.V1

173 BR.EXP1

As mentioned in section 7.4.1.4 there are, besides these practical and economic obstacles to carrying out a visit, also emotional aspects. Visits are very much appreciated but a visit can be also very emotional for both prisoners and their relatives.[174] A visit confronts them with what they miss most in life and it makes their detention even more painful. The idea that their loved ones would see them in degrading circumstances, that they cannot, or can hardly make physical contact, and that they have to say good-bye after the visit are for prisoners reasons for refraining from family visits.[175] There are imprisoned fathers who even tell their children that they are working abroad and that this is why they are unable to see them.[176] Relatives of prisoners also indicate that, although they are very happy to see their imprisoned relative, it is extremely difficult to leave them in prison.[177]

7.5 Social inclusion within the prison

'I like to work but I have not yet secured a job.
Some people arrived later in prison than me and are already working. That is frustrating.'[178]
Prisoner, Germany[179]

Measuring to what extent prisoners are socially included within the prison is, like measuring the well-being of the prisoner, not easy. The degree to which prisoners are able to participate equally in prison life with national prisoners depends on various factors. While the questionnaire contains questions as to whether FNPs are socially included within prison it does not ask them the reasons for non-involvement. This omission was remedied by giving the topic of social inclusion within prison a prominent place in interviews with ex-prisoners. The need for prisoners to be socially included within prison is based on the following four topics: *activities; religious care; interaction with prison staff* and *interaction with fellow prisoners*.

7.5.1 Activities

'Many prisoners run a kind of business in the prison or sell articles like cigarettes or pieces of fruit.
To own a shop you have to obtain a license from the prison director and pay weekly taxes.'[180]
Letter from prisoner, Mexico[181]

---

174 D.EXP1,F.R2, US.R1
175 F.V1, A.V1
176 B.P1, B.P13, M.P2
177 US.R1, US.R2
178 Original text: *Ik hou ervan om te werken maar ik heb nog geen baan. Sommige mensen kwamen later dan ik in de gevangenis en zijn nu al aan het werk. Dat is frustrerend.*
179 G.P3
180 Original text: *Veel gedetineerden hebben een eigen zaakje of verkopen dingen zoals sigaretten of stukjes fruit. Om eigenaar te zijn van een winkel moet je een vergunning hebben van de directeur en wekelijks moeten je heffingen betalen.*
181 MX.L1

Half of the Dutch prisoners work and/or attend an educational class in prison. This seems considerable but it means that the other half have nothing to do. Especially when it is taken into consideration that only half of the prisoners had access to a library and that only two thirds played sports. It is therefore not surprising that this lack of involvement in activities is also reflected in the overall dissatisfaction; two thirds of the prisoners are very negative about their participation in activities during detention (score 2.4).

7.5.1.1 Work

'I sew in my cell, day in day out, Teddy bears'.[182]
Letter from prisoner, USA[183]

Exactly half of the Dutch FNPs are engaged in prison work and a quarter of them are obliged to do so. Sentenced prisoners are significantly more often involved in work than pre-trial prisoners (34% pre-trial vs 58% sentenced). This outcome is in line with the policy of many prison authorities that sentenced prisoners are obliged to work. It also corresponds with the fact that investigating judges often do not allow pre-trial prisoners to take part in activities. That not all sentenced prisoners work is related to the fact that work is not always available or that there are waiting lists.

Earning money is the most frequently mentioned reason for prisoners to work. Other reasons are that they like to be occupied during the day and to be outside the cell. Those detained in the EU indicate significantly more that they like to work in order to earn money than those detained outside the EU (68% EU vs 39% non-EU). This outcome might be connected to the fact that prisoners detained in EU do not receive a monthly financial allowance from the Dutch embassy, while Dutch prisoners outside the EU do (see section 5.3.1.2). Prisoners detained in the EU also mention more frequently that they like to work in order to make contact with other prisoners (20% EU vs 10% non-EU). This outcome is also not surprising because prisoners detained in the EU are allowed less time outside their cell; the language obstacle might be less apparent and they are more often detained on their own compared to prisoners detained outside the EU.

In interviews Dutch ex-prisoners were asked whether their foreign status is of influence with regard to their involvement in work. They indicated that they are in general not excluded from work but work is not always available, and due to insufficient language skills they sometimes remain on the waiting list longer than national prisoners.[184] Prisoners are involved in various types of work, ranging from working in the kitchen,[185] laundry,[186] metal

182 Original text: *Ik zit in mijn cel en naai dag in dag uit Teddyberen.*
183 US.L3
184 A.P3, B.P5/6/7/10/11/12/13/14, F.L1, G.P4, G.P8, T.P2, UK.P1, UK.P2, UK.R1, US.L3, V.EXP1
185 B.P13, T.P2, VEXP1
186 UK.P1

workshop (making prison bars!),[187] to cleaning,[188] and assisting teachers[189] or librarians[190] if they can communicate in the national language of the country of detention. Despite the fact that the type of work is often simple and monotonous, those who are able to work are generally positive about the fact that they have something to do during the day and that they can earn some money.[191] This money is very welcome in buying necessities. One of the striking differences that came out of interviews with prisoners is the fact that wages for work differ.[192] In some countries, for example Germany and Spain, prisoners can earn a reasonable salary to buy things in prison, to save money or to send it to their families at home.[193] There are also countries where prisoners can only earn a small amount of pocket money which is hardly enough to purchase food or buy a telephone card to call abroad.[194] Being involved in work can also have other advantages. One prisoner in Germany explained that because he works he can be released earlier than his official release date because he earns holidays while working and these days are deducted from his total sentence.[195] An ex-prisoner who had been detained in Germany explained that the prison authorities had put half of his salary in a saving account and upon release he received this money. He used it to buy his return ticket to the Netherlands and it helped him in the first months after release to pay for his rent and food.[196]

The fact that half of the prisoners are engaged in work shows that they are in general not excluded from work, as is sometimes suggested in research literature (see section 3.4.2.5). This is even more striking when taking into consideration the fact that one third of the questioned prisoners are in pre-trial detention and therefore not obliged, and sometimes not allowed to work. The situation that FNPs are, like other prisoners, involved in work is in line with the SMR (Rule 71.2) that 'all prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer'. The request in Rule 72 for 'sufficient work of a useful nature' and that work 'will maintain or increase the prisoners ability to earn an honest living after release, seems to be applied less in practice. The outcome that Dutch prisoners are in general able to participate in work is also important because being at work can help prisoners in some countries to obtain the qualification of good behaviour which can lead to the reduction of the prison sentence.[197]

187 G.P8
188 A.P3,UK.R1
189 MX.L1, US.R1
190 B.P12
191 B.P7, US.L3, F.L1
192 According to the interviewed prisoners the wages are in Spain €350 per month, in Germany €260, in Belgium €120 and in France €50.
193 S.P1, G.P4
194 F.L1
195 G.P4 This practice is confirmed in the study by A. Boetticher and J. Feest, 'German Criminal and Prison' in International Penal and Penitentiary Foundation, *Prison policy and prisoners' rights, Proceedings of the Colloquium of the IPPF (IPPF, Wolf Legal Publishers, Nijmegen 2008) p 382*
196 G.EXP1
197 B.P4, F.L2

7.5.1.2 Education, library and sports

'There are no sport facilities. The only thing I can do is push-ups in my room or in the courtyard'.[198]

Letter from prisoner, France[199]

Around half of the prisoners participate or have participated in an educational class or training. More than half of the prisoners visited a library and two thirds of the prisoners played sports. This outcome demonstrates that Dutch FNPs are in general not excluded from these kinds of activities, but that the activities organised by the prison authorities may be limited, and/or not everyone is able or allowed to participate. It is therefore spurious to claim that prison authorities do not respect Rule 1 of the UN Recommendation on the Treatment of Foreign Prisoners that 'foreign nationals should have the same access as national prisoners to education, work and vocational training'. Prisoners detained outside the EU are significantly less involved in sports (75% EU vs 59% non-EU) and also less able to follow an educational class than those detained in the EU (54% EU vs 39% non-EU). Prisoners in pre-trial detention are less able to participate in activities compared to sentenced prisoners but this difference is not significant. It can be explained by the fact, as mentioned before, that pre-trial prisoners are not obliged and sometimes not allowed to interact with others. It is further possible that they are relatively new in prison and therefore had not yet a chance to become involved or are still on a waiting list.

In interviews many prisoners expressed their frustration and boredom as a result of not being sufficiently involved in activities and having to remain in their cell for many hours per day. It seems that this situation is more the result of a general lack of prison activities than that they were excluded from activities. With regard to educational classes one would perhaps expect Dutch prisoners to be excluded from this due to language difficulties but in practice several prisoners took the initiative to provide, for example, literacy classes for other prisoners.[200] In some prisons, for example in Austria, Cyprus, Germany, Spain, Turkey and the United Kingdom, language courses are organised for FNPs to enable them to learn the national language.[201]

7.5.2 Religion

'Every Sunday I play keyboard during the Methodist service.' [202]

Prisoner, UK[203]

198 Original text: *Hier is geen recreatiezaal en sporten (dippen) doe ik daarom in mijn cel of op de luchtplaats.*

199 F.L1

200 MX.P1, UK.P4, US.R1

201 A.P1, G.EXP1, CY.1-5, S.P1, T.P2, UK.V1

202 Original text: *Iedere zondag speel ik keyboard bij de dienst van de Methodist kerk.*

203 UK.P2

Dutch prisoners are able to attend religious services in prison. This practice is in line with the SMR (Rule 42) that 'so far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution'. Dutch prisoners are in general satisfied with the work of the religious representative. The fact that there are no significant differences with regard to those detained in or outside the EU and those in pre- or post-trial detention demonstrates that access to religion is basic right which is respected, irrespective of the country and the status of the prisoner.

Also in interviews, those prisoners who liked to participate in religious activities confirmed that they were satisfied with the opportunities at their disposal to attend religious services and/or to have personal conversations with a religious person in prison.[204] In some countries there are waiting lists for attending church.[205] One prisoner explained in his letter that he stopped going to church because of the strict security control by ten prison guards and the lack of respect from these guards, who were laughing, passing wind, reading newspapers and opening soft drink cans during the service.[206]

7.5.3 Interaction with prison staff

'My knowledge of the German language improved and that has had a positive effect on my relationship with prison staff. The way in which you are treated depends also on your own attitude.'[207]

Prisoner, Austria[208]

The interaction between Dutch prisoners and prison staff is in general not good (score 2.4). Prisoners feel that they are not treated in a 'normal' way by staff and that prison staff are not kind to them. It is therefore not surprising that satisfaction with prison staff is low. The language obstacle is the main reason given for this hampered contact. There are two other issues that have a negative effect: safety and discrimination. As mentioned in section 7.2.2, many prisoners feel unsafe in the presence of prison staff and that they have to be 'cautious' with certain prison guards. More than half of them feel discriminated against by prison staff. Those detained outside the EU are significantly less satisfied with prison staff compared to those inside the EU (2.7 EU vs 2.1 non-EU). It is likely that language and cultural behaviour is more frequently an obstacle further from the Netherlands. There is hardly any difference with regards to satisfaction with prison staff for those in pre-trial detention and those who are sentenced.

---

204 A.P3, F.V1, O.9, S.P1, UK.P2

205 A.P2, F.V1

206 US.L3

207 Original text: *Mijn kennis van de Duitse taal is verbeterd en dat heeft een positief effect op mijn omgang met personeel. De manier waarop je wordt behandeld is ook afhankelijk van je eigen houding.*

208 AP.2

The negative feeling about the interaction between prison staff and prisoners was also reflected in interviews.[209] Prisoners experience difficulties in making contact with prison staff and this has to do with the language obstacle but also with the unwillingness to 'understand' each other and to show mutual respect.[210] Several prisoners feel treated as a 'number' rather than a 'human being'.[211] The considerable time prisoners have to spend in their cell and the limited time available for staff to interact with individual prisoners can be seen as a reason for not having a good relationship. Some prisoners claimed that they are discriminated against by prison staff (see section 7.2.3) as a result of their nationality, skin colour and religion.[212] Others admitted that their difficult relationship with prison staff was also a reflection of their own behaviour and the amount of respect they gave to staff.[213] In other words, prisoners themselves influence the way in which they are treated. For prisoners in pre-trial detention it is difficult to build a steady relationship with staff because they have so little time outside their cell. One pre-trial prisoner in Belgium explained that there was no form of communication between himself and prison staff because staff communicated in a 'one-dimensional' way, by saying words like 'food', 'visitor' or 'lawyer'.[214] Some prisoners see learning the language of the country of detention as an investment because it has a positive effect on their contact with staff.[215]

7.5.4 Interaction with fellow prisoners

'We are surrounded by drug addicts, murderers and mentally ill people. Half of the prisoners are mentally insane '[216]

Female prisoners, UK[217]

Dutch prisoners are generally neutral about their contact with fellow prisoners (score 3.0). Many prisoners get along well with fellow prisoners and two thirds of the prisoners are able to communicate with other prisoners. It is interesting to see that the language obstacle forms less of a hindrance compared to the interaction with prison staff.

Prisoners detained in the EU are a little more positive about their interaction with other prisoners compared to prisoners detained outside the EU (3.1 EU vs 2.9 non-EU) and they get along better (3.7 EU vs 3.1 non-EU). This significant difference can be explained by the fact that prisoners are more likely to understand the national language of an EU country like English, German or French which are learned at school. The fact that there is no significant

209 A.P2, A.P3, B.P2, B.P9, B.P12-13, CZ.L1-2, F.L1, G.P1, PO.L1, S.P1
210 A.P3, A.P4, CZ.L2, US.R2
211 A.P3, A.P4, B.P2, CZ.L1, G.P9T.P4, UK.P1
212 CZ.L2, S.L5, US.R2
213 B.P8, B.P13, G.P7, F.L1, S.P2
214 B.P5
215 B.P2, F.L1, S.P1
216 Original text: *We zitten hier tussen drugsverslaafden, moordenaars en gestoorden. De helft is geestelijk niet in orde.*
217 UK.P5-6

difference with to pre-trial and sentenced prisoners is remarkable because one would expect that sentenced prisoners would be able to spend more time outside the cell and therefore have more time to build relationships with other prisoners. Perhaps having more time together does not always have a positive effect on the relationship. Prisoners are not positive about the level of respect amongst prisoners. Those detained outside the EU are significantly less positive about this than those detained in the EU (2.8 EU vs 2.4 non-EU).

Interviewing prisoners about their interaction with other prisoners resulted in mixed accounts. Some prisoners got along very well with other prisoners and others preferred to remain silent and to avoid interaction with fellow prisoners.[218] Prisoners have however the tendency to seek the company of other Dutch prisoners or other FNPs.[219] In order to survive in prison, prisoners are creative in finding alternative ways to communicate, for example by using sign language. Prisoners regard a good relationship with other prisoners as very important in order to survive in prison. It helps them to obtain information about prison life[220], to avoid social isolation, to obtain food and products[221], to receive protection against other prisoners[222] and to keep their morale high.[223] There are also prisoners who are reluctant to make contact with others because they do not like being involved with 'criminals'.[224] There are also Dutch nationals who could not resist the pressure of becoming member of a gang.[225] The lack of privacy and being with other people 24 hours per day are regarded by prisoners as difficult.[226]

7.6 Preparation for release and resettlement

'I know that I have to arrange a lot of things for my return but I cannot do anything from here.' [227]

Prisoner, Belgium[228]

Preparing for release and resettlement is the fifth and last general need. However, this need receives little attention in research literature and it is hardly addressed in international rules. This section looks into the *reintegration activities* during detention, the opportunity to go on *prison leave and release*, and *aftercare*. It concludes by looking at the expectations of Dutch nationals about their future. Information about the resettlement of several ex-

218 B.P2, F.L2, UK.P2
219 B.P6, CY.P1-6, M.EXP1, UK.P4
220 Sp.1, VK.P4
221 M.P1
222 B.P6
223 M.EXP1, UK.P5-6
224 T.P5, UK.P3, UK.P4, US.R1
225 V.EXP1
226 G.P3, US.EXP1, US.V1
227 Original text: *Ik weet dat ik veel moet regelen voor mijn terugkeer maar ik kan niets vanuit hier doen.*
228 B.P8

prisoners who returned to the Netherlands after detention abroad can be found in section 10.3 of chapter 10.

7.6.1 Reintegration activities

Nearly two thirds of prisoners do not receive support from the prison authorities to prepare for their resettlement into society. It is therefore not surprising that 82% of them feel neither capable nor prepared to return to society after release. Prisoners are not satisfied about this situation at all (score 2.3).

As seen in section 7.5.1, most prisoners would like to become more involved in activities while in prison but the activities are limited and prisoners are sometimes not able to participate in activities, including reintegration activities. It turns out that only one third of prisoners can participate in an activity focused on resettlement. This low outcome can be partly explained by the fact that not all Dutch prisoners are already focussed on resettlement. Around one third of them are still in pre-trial detention.
Those detained outside the EU significantly more often receive no support with resettlement (4.0 EU vs 4.2 non-EU) and have fewer opportunities to participate in reintegration activities than those detained in the EU (38% EU vs 30% non-EU). Prisoners in pre-trial detention are also slightly more negative than sentenced prisoners about their ability to follow an integration course (31% pre-trial vs 37% sentenced). This can be explained by the fact that pre-trial prisoners are not likely to be already involved in reintegration programmes.

Table 7.2 Reintegration

Reintegration	%	EU	Non-EU	Pre-trial	Sentenced
Prisoner can follow a reintegration course	35%	38%	30%	31%	37%
Prisoner feels prepared for return to society	18%	20%	19%	18%	19%

In letters and interviews prisoners confirmed their dissatisfaction with their inability to prepare for release and resettlement in society.[229] It is probably more than just a feeling of dissatisfaction; it makes prisoners feel anxious and upset because they feel that they are not prepared for or capable of making a successful return.[230]

7.6.2 Prison leave and release

'According to the law I should have been home for already 3 months.'[231]
Letter from prisoner, Czech Republic[232]

229 S.L4, S.L8, S.P2, T.L1
230 B.V1, UK.V1
231 Original text: *Ik had al 3 maanden thuis moeten zijn volgens de Tsjechische wet.*
232 CZ.L2

One method frequently used by prison authorities to prepare prisoners for life after release is to grant them prison leave. Dutch nationals are in general not allowed to make use of prison leave schemes. This might be the result of not having a permanent address in the country of detention and because courts wish to avoid the risk of escaping. Only 4% of prisoners who participated in the questionnaire were granted prison leave. Most of them were detained in the EU (6% EU vs 2% non-EU). This difference is significant. Although the question was not posed to them in the questionnaire, it is possible that the reason this 4% were allowed to go on prison leave is that they have family ties or even a home in the country of detention, which is more likely in the EU than outside the EU as a result of the open border policy.

In interviews with prisoners it became clear that the lack of reintegration activities and the lack of conditional leave are perhaps not what perturbs them most; rather it is the fact that they have limited opportunity to make practical arrangements for their own resettlement.[233] First of all they encounter problems in obtaining practical information and contact details from organisations in the Netherlands which can be helpful for their return. Secondly it is, as mentioned in section 7.4.1, difficult and expensive for prisoners to make contact with the outside world. Neither being granted prison leave nor being transferred, unlike national prisoners at the end of the sentence, to a more open prison setting with more opportunities to prepare for release is also seen as a hindrance.[234] One interviewed prisoner in Belgium said that he had lodged, without success, a complaint about the fact that his request for prison leave was not honoured although he could stay with his cousin who lived in Belgium.[235] Going on prison leave is an important opportunity to find a job and a house. Without secure accommodation and work, prisoners are not considered for conditional release. Foreign prisoners are disadvantaged because they do not receive permission to go on leave. Prisoners perceive this situation as unfair.[236] An alternative measure to prepare a prisoner for release is the already mentioned practice in German prisons that half of the salary for prison work is put aside in a bank account and handed over upon release. The prisoners who received this sum used it to buy a ticket home to the Netherlands and to begin rebuilding their lives immediately after release.[237]

Several prisoners, including those with a determinate sentence, said during interviews and in letters that they did not know the date of their release.[238] The release date can depend on a number of conditions such as national policies on early release; the behaviour of the

233 B.P2, B.P8
234 B.P2, B.P5, D.R2, G.EXP1, S.L8
235 B.P5
236 B.P2, B.P4, B.P12, B.P13
237 G. EXP1, G.EXP2
238 CZ.L2

prisoner; the time spent waiting trial; the opinion of a parole board[239]; and the requirement to pay a fine. In practice, it occurs that prisoners are detained beyond the length of their actual sentence.[240]

7.6.3 Aftercare

'I applaud plans which foresee support for foreign prisoners (upon release)'[241]
Letter from prisoner, Cuba[242]

Whether Dutch ex-prisoners actually receive aftercare upon return to the Netherlands has not been studied since prisoners were questioned during their detention. The questionnaire included, however, questions about their expectations and needs for aftercare. In interviews with ex-prisoners and others the topic of aftercare was discussed. It became clear that aftercare is not straightforward and many administrative obstacles need to be overcome to apply for support.[243] See for more information chapter 10.

7.6.4 Expectations of the future

'If you end up here (a foreign prison) you will never do something 'wrong' again.'[244]
Prisoner, Austria[245]

Although a large majority of Dutch prisoners do not feel prepared for their return to society (score 2.3), their outlook on life after prison is very different. Notably, prisoners have very high expectations for their future (score 3.8). More than four out of five prisoners think that they will not commit a crime in the future. So, most prisoners expect to make a new start after release.

It is interesting to note that the country of detention or the phase of detention (pre-trial or post-trial) does not make a difference in their expectations for the future. Most prisoners think that society will give them a 'fair chance' upon release.

The high expectations of their own future were also echoed in interviews.[246] The lack of opportunities to prepare for release during detention, and uncertainties about their future also made some prisoners (more) realistic.[247]

---

239 B.P4, B.P7, US.L3
240 S.L4 (signed with five other Dutch prisoners), CZ.L2, F.L2, V.EXP1
241 Original text: *De plannen om een buitenlandse gedetineerde op te vangen en alle mogelijke hulp te bieden juich ik toe.*
242 CU.L1
243 CU.L1, CZ.L1, F.L5-6, G.L3-4, PO.L1-2,S.L1, S.L8-9
244 Original text: *Als je hier beland (in buitenlandse gevangenis) dan doe je nooit meer iets fout.*
245 A.P2
246 A.P2, B.P9, UK.P3
247 GR.L1, GR.L2

7.7 Analysis of detention experience

This chapter shows that Dutch nationals in foreign detention encounter, as suggested in the research literature and in reports by independent monitoring bodies, various difficulties. The most striking finding is that more than half of them feel discriminated against. Those detained outside the EU experience discrimination significantly more often than those detained in the EU. In total two thirds of the prisoners consider their foreign nationality to be the main source of discrimination. This outcome is slightly different from the finding, mentioned in chapter 3, of the study by the British HM Inspectorate of Prisons that discrimination is seen as the result of 'intolerance of language or cultural difference'.[248] Both factors can however be regarded as a direct consequence of a foreign nationality. It is noteworthy that some prisoners also experienced positive discrimination and that FNPs from EU countries seek support from each other.

The discriminatory treatment is visible in connection with their foreign status (not being able to go on prison leave or to participate in re-integration activities); lack of language skills (hardly informed about rules, rights and procedures, insufficient access to an interpreter, poor legal support and medical care); distance from family (restricted contact and difficulties in organising things at home): and to a lesser extent cultural and religious differences. The assumption in the research literature that FNPs are excluded from participation in activities cannot be confirmed on the basis of this chapter. Half of the Dutch nationals work.
The table below presents schematically whether the findings of this study correspond to the findings in research literature and reports by monitoring bodies. It is clear that prison authorities are not aware, able or capable of addressing the particular difficulties that FNPs face. In that sense prison authorities do not comply with legally binding international human rights standards.
Further, it can be concluded that except for access to consular assistance there is evident vulnerability of Dutch FNPs as a result of their foreign status, lack of language skills, distance from family and to a lesser extent cultural and religious differences.

248 HM Inspectorate of Prisons, *Foreign National Prisoners: A thematic review* (HMIP, London 2006) p 9

Table 7.3 Comparison of findings in thesis and FNP findings in literature

Foreign Status			
Topic	**FNP in literature**	**Thesis**	**Commentary**
Alternative sanctions	Exclusion		Unable to verify because the Dutch FNPs were already in prison.
Prison leave	Exclusion	Confirmed	Only 4% of Dutch FNPs were granted prison leave (Section 7.6.2)
Treatment	Discrimination	Confirmed	More than 50% of the Dutch FNPs experienced discrimination. Main source is nationality. (Section 7.2.3)
Access to consular authorities	Poor access	Not confirmed	Four fifths of Dutch FNPs are aware of the possibility of making contact and similarly make contact with the Dutch diplomatic mission. (Section 7.4.1.2)
Availability of consular assistance	General lack of assistance	Not confirmed	Dutch FNPs receive consular assistance (Chapter 8).
Resettlement activities	No or poor participation	Confirmed	Nearly two thirds of Dutch FNPs cannot participate in re-integration activities. (Section 7.6.1)
Immigration and deportation	Uncertainties about status	Confirmed	Interviewed Dutch FNPs expressed their anxiety and uncertainty about their status once they finished their sentence. (Section 7.6.2)
Lack of language skills			
Topic	**FNP**	**Dutch FNPs**	**Commentary**
Awareness of rules, rights, procedures	Poor understanding	Confirmed	In total 63% of Dutch FNPs are not aware of rules, rights and procedures and only 18% are informed by prison authorities (Section 7.3.1).
Information about arrest, assistance of interpreter	Lack of access to information and interpretation service	Confirmed	The assistance from interpreters is in general not adequate (Section 7.3.4).
Legal support	Insufficient support	Confirmed	Prisoners are concerned about the quality of the legal support they receive (Section 7.3.3).
Medical care	Difficult to explain illness and to b informed about medicines	New	Prisoners experience difficulties when explaining their illness and when receiving information about medicines and treatment. Translation by other prisoners leads to a lack of privacy (Section 7.2.4).
Social inclusion	No or restricted participation in activities	Partly confirmed	Half of the Dutch FNPs can work. Around half can follow or have followed educational courses. Two fifths go to the library and one third can play sports (Section 7.5.1). The general lack of activities and/or lack of facilities seem to be the reason for restricted participation rather than exclusion.
	Poor relationship with prison staff	Confirmed	The interaction between Dutch FNPs and prison staff is in general not good. (Section 7.5.3).
	Poor interaction with prisoners	Partly confirmed	Communication with other prisoners is less complicated than with prison staff. Prisoners are in general 'neutral' towards their interaction with other prisoners. (Section 7.5.4).
Distance from family			
Topic	**FNP**	**Dutch FNPs**	**Commentary**
Contact with family	Restricted	Confirmed	Nearly all Dutch FNPs have made contact with family but contact is restricted. (Section 7.4.1.4)
Support in organising resettlement at home	No/poor support and difficulties in organising things at home	Confirmed	Nearly two thirds of the Dutch FNPs do not receive support from the prison authorities with their resettlement. (Section 7.6.1)
Relatives of prisoners	Difficult situation	Confirmed	Dutch FNPs receive hardly any visits from relatives. The communication facilities are not sufficient and there is a lack of privacy. (Section 7.4.1.4)

Cultural and religious differences			
Topic	**FNP**	**Dutch FNPs**	**Commentary**
Culture	Isolation	Confirmed	Dutch FNPs experience social exclusion. (Section 7.5 and section 7.2.3)
Religion	Difficulties in practicing religion	Partly confirmed	Religion is seen by Dutch FNPs as the third main reason for discrimination. Dutch FNPs are however satisfied with their ability to practice their religion (Section 7.5.2).
Food	No attention to cultural/religious requirements	Partly confirmed	More than half of the prison authorities take into consideration religious dietary requirements (Section 7.2.1.3).
Allocation and cell size	Sometimes special FNP prisons and overcrowding	Partly confirmed	Dutch FNPs are allocated in the same prisons and cells as national prisoners (Section 7.2.1). Multi-occupancy cells are common practice and the conditions are cramped.
Clothing and hygiene	Lack of respect for religious requirements	Not confirmed	Dutch FNPs can wear their own clothes. Despite the generally poor hygienic prison conditions, prisoners are able to maintain their personal hygiene. (Section 7.2.1.2)

The next chapter provides insight into the kind of consular assistance Dutch nationals receive from the Netherlands.

CHAPTER 8

EVALUATION OF CONSULAR ASSISTANCE

8.1 Introduction

The purpose of this chapter is to evaluate the assistance that Dutch nationals receive from the Netherlands while detained abroad. The chapter starts by providing insight into the kinds of assistance these prisoners receive in practice and which types of assistance they themselves regard as most important. Where applicable, the differences are pointed out between prisoners that are detained inside or outside the EU, and between pre-trial and sentenced prisoners. The actual responses to the questionnaire and the test statistics that were used to test for the differences in responses are provided in Annex 8. To avoid superfluous usage the term Dutch Ministry of Foreign Affairs is abbreviated to 'Ministry', the term International Office of the Dutch Probation Service to 'Probation Service' and the religious foundation Epafras to 'Epafras'.

8.2 Received assistance[1]

'I am proud to be Dutch because 'they' do not forget us.' [2]

Prisoner, United Kingdom[3]

From the 584 Dutch prisoners that responded to the questionnaire only 6% (n=37) indicated that they had not received any kind of assistance from the Netherlands. Of the group who received assistance 29% received assistance from one organisation, 43% from two organisations and 28% from all three organisations. As displayed in graph 8.1 of the total group of prisoners, a large majority (88% n=497) received assistance from the Ministry, more than half (52% n=302) from the Probation Service and two-fifths (40% n=235) from Epafras.[4]

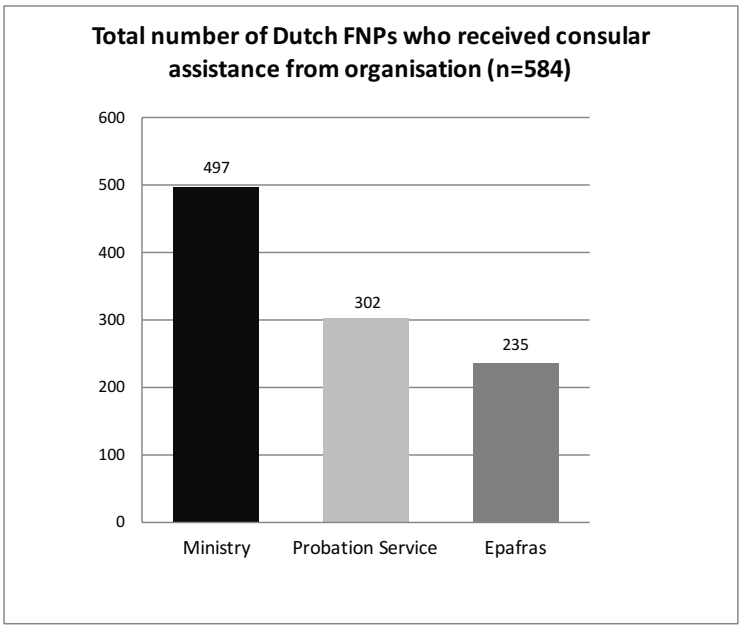
1 Assistance from the Ministry, Probation Service and Epafras are, as described in section 1.5 of chapter 1, all considered as consular assistance.

2 Original text: *Ik ben trots om Nederlands te zijn omdat ze ons niet zijn vergeten.*

3 UK.P5

4 In total 278 prisoners received assistance from the Ministry and the Probation Service, 218 prisoners from the Ministry and Epafras and 148 prisoners from the Probation Service and Epafras. In total 123 prisoners received assistance solely from the Ministry, 12 prisoners solely from the Probation Service and 6 prisoners solely from Epafras.

Graph 8.1 Total number of Dutch FNPs who received consular assistance



The fact that 94%[5] of the Dutch prisoners received consular assistance is a remarkable achievement. Especially when taking into account the considerable turnover rate or 'flow' of prisoners and the fact that newly arrived prisoners may not yet have had the chance to inform the Dutch diplomatic mission of their detention to receive assistance.

In total 88% of the prisoners who participated in this research received consular assistance from the Ministry. This demonstrates that consular staff at the Ministry in The Hague in cooperation with consular staff at the Dutch diplomatic mission are able to reach out to the large number of prisoners who are detained in nearly 100 different countries. That more than half (52%) of the prisoners receive assistance from the Dutch Probation Service is also an achievement; in particular when considering that the Dutch Probation Service is active in around 50 countries. It further proves that Epafras was able to reach out to two fifths (40%) of the prisoners. This outcome stands in sharp contrast with the situation, as described in section 3.4.1.5, where FNPs in general lack consular assistance from their diplomatic mission. Also interviews with prisoners and consular staff confirmed that the assistance which they receive stands in contrast to what other FNPs in general receive from their consular authorities.[6]

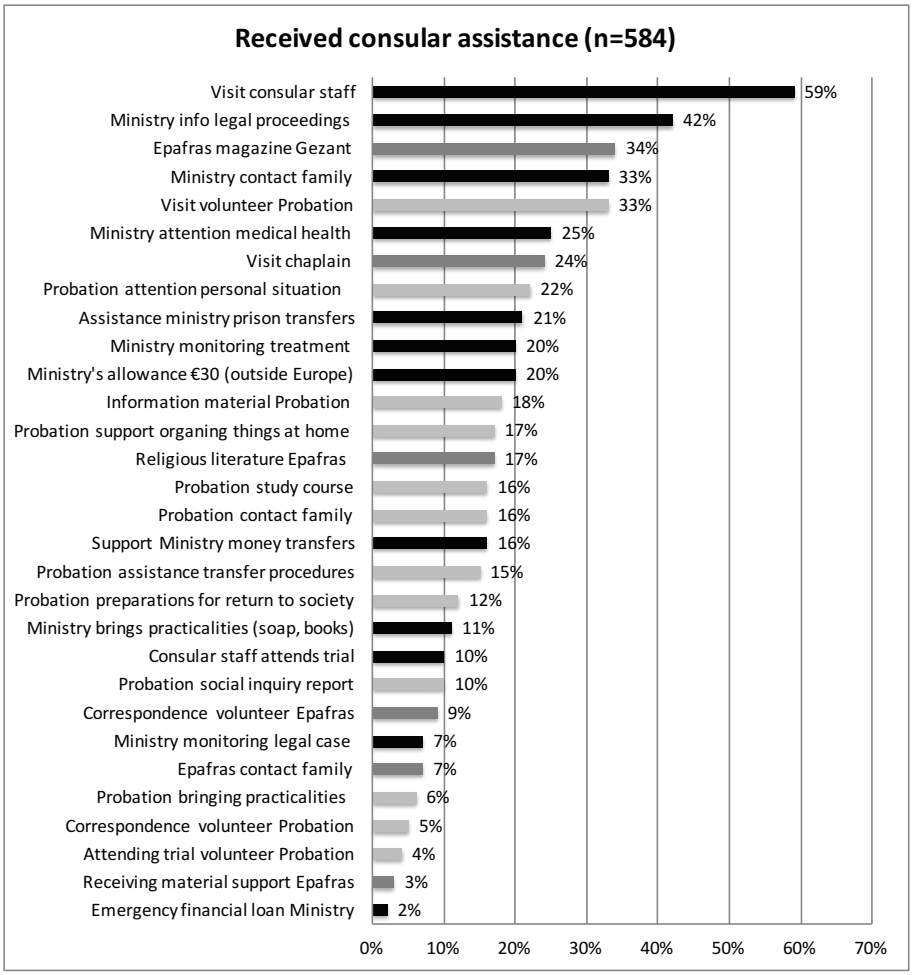
5 In total 492 prisoners responded positively to the question whether they received assistance from the Netherlands, in total 37 responded negatively and 55 did not answer the question but indicated in further questions that they received assistance. These 55 prisoners are therefore included (492+55)/584=0.94)

6 B.P8, BR.R1, CY.P1-5, M.EXP1, O.10, P.CS1, S.CS2, S.CS3, S.P2, US.CS1

8.2.1 Overview

The graph below presents an overview of the different types of assistance which are received by Dutch prisoners. The three most frequently received types of assistance are provided by the Ministry. These activities are: a personal visit by consular staff; information about legal procedures and rights; and contact with the outside world and family. The most frequently provided activities by the Probation Service are a personal visit by a volunteer; information; and receiving support to arrange practicalities at home. Dutch prisoners received most frequently from Epafras the magazine *Gezant* and a personal visit by a chaplain. This section explores the different types of assistance which are received by prisoners. Each organisation has its own colour.

Graph 8.2 Received consular assistance from the Netherlands (n=584)



8.2.2 Personal visit

Three part-time consular staff members visit six times per year around 100 Dutch prisoners in five prisons.'[7]

Consular staff Dutch embassy Lima, Peru[8]

A personal visit by consular staff, volunteer and chaplain are, as mentioned above, the most frequently received type of assistance. In total 74% (n=432) of the prisoners received a visit or visits by one or more organisations from the Netherlands. This is a considerable group and it means that the three organisations are able to make face-to-face contact with individual prisoners.

Of the total group of prisoners who participated in this study 59% were visited by consular staff; 33% by a volunteer from the Probation Service and 24% by a chaplain from Epafras.

This outcome is remarkable when taking into consideration that consular staff are not always located close to the places where prisoners are detained; that the Probation Service is active in 'only' 50 countries and that prisoners first have to give their consent for a visit by a volunteer in writing; and that Epafras carries out visits once to twice per year in around 70 countries , which also requires the prisoner's consent.

The first visit by consular staff is normally used to obtain information on the personal background of the prisoner (situation at home, dependent children, reason for arrest etc.), to share information on legal procedures and to inform the prisoner of what can be expected from consular assistance from the Ministry and, if available, from the Dutch Probation Service and Epafras.[9] Follow-up visits are used to monitor the situation of the individual prisoner and to hear about their worries, health and criminal case. After each visit, a consular staff member drafts a brief report which is filed in the central database Kompas. When necessary, information is shared with the contact person of the prisoner. Consular visits are carried out by one or two members of staff of the diplomatic mission. Normally prisoners are visited on an individual basis but sometimes more prisoners attend the meeting with consular staff.[10] Visits generally take place in a room for lawyers and this means out of both hearing and sight of prison staff. Visits from volunteers and chaplains have a more social character and are more focussed on the emotional and spiritual well-being of Dutch prisoners and their future (section 8.3).[11] The visits carried out by volunteers

7 Original text: *Drie parttime consulaire medewerkers bezoeken zes keer per jaar ongeveer honderd Nederlandse gedetineerden die vast zitten in vijf verschillende gevangenissen.*

8 P.CS1

9 A.CS1, B.CS1, CSH3-4, F.CS1, G.CS1, M.CS3-4, P.CS1, S.CS3-7, T.CS1, T.CS2, UK.CS1, US.CS1

10 P.CS1, US.V1 In these cases consular staff ask prisoners whether they agree and whether they would like to discuss things in private separately.

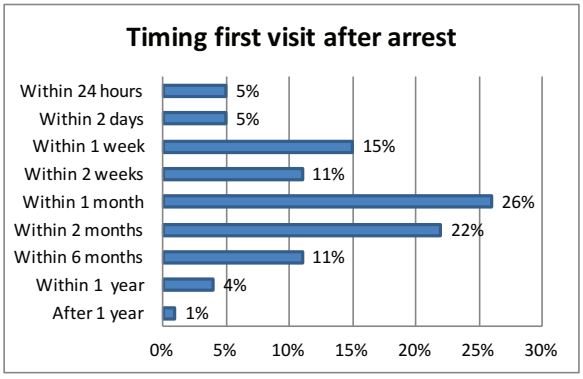
11 A.V1, B.V.1, D.V1, F.V1, G.V1, I.V1, UK.V1, US.V1, C1-6

and chaplains are considered by the prison authorities as an official visit and therefore not deducted from the number of social visits to which a prisoner is entitled to.[12]

8.2.2.1 Timing of first visit after arrest

As mentioned above, in total three quarters of the prisoners were visited. Consular staff visited 25% of them within one week of arrest and 37% within between one week and one month. This outcome proves that more than half of the prisoners are visited rather quickly. Especially when taking into consideration what needs to be arranged before a visit can take place. First of all the diplomatic mission has to be informed of the arrest; consular staff need to check whether the person is eligible to receive assistance; permission needs to be obtained to visit the prisoner, and consular staff (or volunteers) have to find time to travel to the prison and to carry out the visit. Delays in visiting prisoners can easily occur. As mentioned in section 7.3.1, prison authorities do not always inform prisoners directly about their entitlement to contact with the diplomatic mission and/or do not provide facilities to make contact and/or do not give permission for the visit. The first visit is normally carried out by consular staff but it does occur that consular staff ask a volunteer from the Probation Service to carry out the visit if it is more practical;[13] for example, when consular staff are not able to visit a prisoner quickly. The graph below presents the timing of the first visit according to the group of prisoners (n=492) who responded to this question.

Graph 8.3 Timing of first visit after arrest (n=492)



Minors and elderly prisoners

The age group influences the frequency with which the prisoners are visited for the first time.[14] Of the eleven minors (below 18 years) who responded to the questionnaire, two (18%) were visited within 24 hours of arrest compared to 5% of the total group of prisoners.

12 A.V1, B.V.1, D.V1, F.V1, G.V1, I.V1, UK.V1, US.V1

13 Ministerie van Buitenlandse Zaken, Dienstinstructie DCZ/CM (Berichtenverkeer 18-12-2007) PS6

14 (64)=86, p=.035

This practice is in line with the policy of the Ministry of paying special attention to prisoners below the age of 18. The policy of paying special attention to prisoners above the age of 60 was however not reflected in the results for the timing of the first visit. Prisoners above the age of 60 (n=34) were visited within 24 hours in 8% of the cases.

Differences between EU vs non-EU and pre-trial vs sentenced

There are significant differences when looking at the timing of the first visit after arrest for those detained in and outside the EU. Those detained outside the EU receive their first visit significantly more quickly compared to those in the EU.[15] Nearly half of the prisoners outside the EU receive their first visit within one week compared to one in eight prisoners detained in the EU (13% EU vs 48% non-EU). The difference is also remarkable when looking at visits within 24 hours of arrest (2% EU vs 12% non-EU). This outcome demonstrates three main things. First of all that prison authorities are generally prompt in notifying diplomatic missions of an arrest. Secondly that consular staff respond quickly to an arrest and lastly that they are more responsive in visiting those detained outside the EU. This practice might be connected to the fact that prisoners detained outside the EU receive a monthly allowance and therefore consular staff visit these prisons more regularly. There is no value in looking at differences with regard to those in pre-trial and post-trial detention because most of them have been in pre-trial detention at one point.

8.2.2.2 Frequency of visits

As seen in section 5.3, the Ministry, Probation Service and Epafras have set policies with regard to the frequency of visits. The standard frequency of visits by consular staff is twice per year, unless the prisoner is particularly vulnerable.[16] The Probation Service differentiates with regard to status (pre-trial vs sentenced) and Epafras to location (EU vs non-EU). The commitment by these organisations cannot be upheld according to the results of the questionnaire.

In total 78% of those that were visited indicated that they were visited at least twice a year by consular staff from the Ministry. Minors are visited more frequently.[17] However, the Dutch Probation Service is not able to visit pre-trial prisoners every four weeks and

15 (8)=102, p<.001

16 Tweede Kamer, Vaststelling begroting Ministerie van Buitenlandse Zaken voor het jaar 2014 (2013-2014, 33750 V nr. 1) p 40

17 In total 55% of the minors are visited monthly compared to 26% of the adults. Dutch prisoners above 60 were visited monthly in 11% of the cases.

sentenced prisoners every six to eight weeks.[18] Epafras' policy to visit prisoners outside the EU twice a year and those detained inside the EU once per year is not adhered to either.[19]
Dutch nationals detained outside the EU are not only visited more quickly after arrest, they are also significantly more frequently visited by consular staff[20], volunteers[21] and chaplains[22] compared to those detained in the EU. This outcome might correspond, when assuming that prison conditions are harsher outside the EU than in the EU, with the policy of the Ministry to carry out more visits to Dutch nationals who are detained under detention conditions which 'differ' from the situation in Dutch prisons.[23] It is however more likely that it has to do with the fact that those detained outside the EU receive a monthly allowance which is periodically delivered by consular staff at the prison. The delivery of the allowances is often combined with a visit. There are practically no differences in the frequency of visits to prisoners in pre-trial detention in comparison to sentenced prisoners.

8.2.3 Informing prisoners

'*Each prisoner receives from consular staff a personalised letter, based on a standard format with general information and also leaflets.*'[24]
Consular staff Dutch Consulate Istanbul, Turkey[25]

Informing prisoners about the legal procedures in the country of detention is the second most frequently received type of assistance; in total 42% of the prisoners that are supported by the Ministry received this kind of information. This outcome is somewhat disappointing. First of all because this type of assistance is directly linked to the first basic principle on which consular assistance by the Ministry is based: monitoring the correct application of the rules by the country of detention. If prisoners are not made aware of their rights, such as receiving all opportunities provided for by the law (such as access to legal support), it is difficult for them to inform the diplomatic mission about infringements of their rights. Secondly, the Ministry developed a booklet *Arrested Abroad* with general information and advice on legal procedures and rights which could be easily handed out to prisoners.
In total, 18% of the prisoners that are supported by the Ministry receive information from the Probation Service and 22% receive personal attention from a volunteer. Although the

18 In total 43% of the pre-trial prisoners who are being visited by a volunteer are visited monthly and 59% of the sentenced prisoners are visited every six weeks.
19 In total 44% of the prisoners detained outside the EU who are visited by a chaplain are visited at least twice per year and 94% once per year. In total 74% of those detained in the EU that are visited receive a visit at least once a year by a chaplain.
20 (5)=45, p<.001
21 (7)=18, p=.014
22 (4)=23, p<.001
23 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2005-2006, 30010 nr. 5) p 2
24 Original text: *Iedere Nederlandse gedetineerde krijgt een persoonlijke brief, die is gebasseerd op een standaard brief, met daarin informatie en daarnaast ook nog voorlichtingsmateriaal.*
25 T.CS2

percentages are not high, the Probation Service seems to succeed at least in providing assistance in relation to the first goal, to provide prisoners with information and advice during the personal visits.

Dutch nationals receive information about their detention abroad but they are also informed about what is going on in the Netherlands via the magazine *Gezant* from Epafras. The magazine is sent to all Dutch prisoners but only one third (34%) receives it. This low outcome might have to do with the following. First of all it is possible that newly arrived prisoners had not yet had the opportunity to receive it because the magazine is published only quarterly. The second reason can be that the magazine is sent to a certain prison but the prisoners are transferred to another. The third reason could be that prison authorities do not hand out the magazine to prisoners, for example because they do not accept mail which is written in a foreign language. Lastly, postal services can be unreliable.[26]

8.2.4 Contact with family

'Contact with the contact person of the prisoner is via the Ministry in The Hague. Consular staff members have in principle no direct contact with families.[27]

Consular staff, United Kingdom[28]

Only half of the Dutch nationals appoint a contact person with whom the Ministry can keep contact.[29] It is therefore not surprising that only one in three prisoners indicate that the Ministry maintains contact with their family at home. Contact is further restricted because consular staff are not allowed to make contact with a relative without written consent from the prisoner. This regularly leads to difficult situations, for example when family members are in a state of panic and cannot find their son/daughter/partner and seek advice from the Ministry, while members of consular staff are not allowed to say anything.[30] Another explanation is that, as mentioned in section 7.4.1, nearly all Dutch nationals are able to make contact with their families themselves. The third reason is that prisoners are not always aware that members of consular staff can make contact with families.

Around one in six prisoners receives support from the Probation Service in contacting their family and making practical arrangements at home. Regional coordinators, and sometimes also volunteers, are in contact with relatives of prisoners mainly in the beginning and at the end of the detention to arrange practicalities.[31]

---

26 A question about reasons for the poor delivery of the magazine *Gezant* was not posed in interviews with prisoners or consular staff.

27 Original text: *Contact met contactpersonen verloopt via BZ. Zij hebben in principe geen rechtstreeks contact met familie.*

28 UK.CS.1

29 IOB, *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2011 nr. 338) p 251

30 CSH3, CSH4

31 A.V1, M.V1, UK.R1

There are chaplains who make contact with the family of prisoners before traveling abroad and they report back after the visit to inform them about the latest news from their relative.[32] In practice only a small group of prisoners (7%) indicated that they received this kind of assistance.

8.2.5 Monitoring the legal case and attending trials

'Prisoners expect a fair trial when they hear that their case is being monitored, for consular staff it means that they have to ensure that a lawyer and interpreter are (made) available'.[33]
Consular staff, Ministry of Foreign Affairs in The Hague[34]

Another opportunity for the Ministry to verify whether Dutch prisoners can exercise their rights (the first basic principle) is to monitor their legal case and to attend their trial. Only 7% of the prisoners have the impression that their criminal case is monitored by consular staff. This disappointingly low outcome is likely to be the result of consular staff following criminal cases 'from a distance' and because they will not interfere in the legal process of an individual prisoner as long as the local rules are followed. Their main concern is that a lawyer is appointed and that an interpreter is available during trial.[35] For prisoners it appears to be, as also mentioned in the previous chapter, difficult to find a trustworthy lawyer with expertise and with whom they can communicate adequately.[36] Although consular staff could provide a list of names of lawyers, they are in practice reluctant to do so because they have been criticised in the past by prisoners who were not satisfied with the results achieved by the lawyer.[37] A lawyer is hired in exceptional cases when the death sentence might be imposed, when there is a lot of media and political interest or when the prisoner is particularly vulnerable.[38]

In total, 10% of the Dutch prisoners indicated that consular staff attended their trial. According to consular staff, the main reason for attending the trial is to demonstrate the interest of the government to the local authorities and to check whether all pros and cons are equally discussed and that the lawyer gets a fair chance of expressing himself or herself.[39]

---

32 C2-5
33 Original text: *Toezien op de rechtsgang houdt voor gedetineerden in een eerlijk proces terwijl voor BZ betekent dit toezien dat er een advocaat en tolk aanwezig is.*
34 CS4H4
35 CSH2, CSH3, CSH4, F.CS1, F.V1
36 CR1, GH.L1, MP2, PO.L2, USAEXP1
37 IOB, *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2011 nr. 338) p 70
38 CSH2
39 CSH3, G.V1, S.CS3, T.CS2

Social inquiry report

The Probation Service offers to draft a social inquiry report for Dutch nationals in case this can influence their case positively. The reason that social inquiry reports are only used by one in ten prisoners can be explained by the fact that foreign courts do not in general know of or use social inquiry reports to obtain information on the prisoner and about the personal circumstances under which the alleged crime has taken place. Another reason is that, as mentioned in section 4.4.5, many prisoners had a criminal record before their arrest and a new arrest is likely to have a negative impact on the verdict of the court and sentence length. It is therefore not wise to obtain a social inquiry report.

8.2.6 Attention to health

'I sometimes take medicines with me to prison. Prisoners might expect perhaps more and better support but the roads are often bad and the distances are long.'[40]

Consular staff, Morocco[41]

As seen in the previous chapter, prisons are not healthy places and the physical and mental health of prisoners deteriorates during detention. It is therefore not surprising that health care is one of the main concerns of Dutch prisoners. The general aim of consular assistance by the Ministry is to contribute to the well-being of prisoners. One could expect that health care is an important element of this. This study show, however, that three quarters of the prisoners do not experience this type of attention from the Ministry. Does this mean that the Ministry does not pay attention to the medical situation of prisoners? This seems not to be the case.[42] It is general practice that consular staff ask prisoners about their health condition during visits.[43] Based on these visits medical details are reported in the personal files of prisoners. This reporting system enables consular staff in the country of detention and at the Ministry to keep an eye on the health situation. If medical issues are discussed during conversations between prisoners and volunteers or chaplains, these are reported to consular staff and registered as well.[44] When specific medicines are urgently needed and are unavailable in prison, consular staff try to arrange for the medicines to reach the prisoner, often in consultation and cooperation with the family at home and with volunteers and chaplains. Volunteers and chaplains are sometimes asked to hand over medicines in case their visit takes place before the visit by consular staff.[45] The researcher observed for example that the Dutch embassy in Argentina asked a volunteer to hand over specific

40 Original text: *Ik neem soms medicijnen mee. In de beleving van gedetineerden kan de begeleiding altijd beter en meer. Maar de wegen zijn vaak slecht en de afstanden groot.*

41 M.CS4

42 BCS1, E1, GV1, MCS3, MCS4, MP1, MV1, SCS5, UKCS1, USV2, VEXP1

43 The researcher has observed this during visits in Austria, Argentina, Germany, Morocco, Spain, Turkey, United Kingdom.

44 E1, FV1, GV1, MV1, USV2

45 MV1, UKCS1

medicines from the Netherlands to an elderly Dutch national in an Argentinean prison because they were not available in either the prison or indeed in Argentina. In exceptional cases, when health care standards are not adhered to, consular staff try to address this with the authorities.[46] So, despite the fact that many prisoners do not recognise that the Ministry pays attention to their medical health situation, consular staff do try to monitor their situation from a distance and provide assistance when necessary.

8.2.7 Monitoring humane treatment

'Human rights are violated here. I am cut off from the outside world.'[47]
Prisoner, Germany[48]

Only 20% of the prisoners have the impression that the Ministry verifies whether they are detained and treated according to the rules. This outcome is not in line with the policy of the Ministry to monitor whether prisoners are treated humanely and held under decent prison conditions. According to consular staff they keep an eye on the prison conditions and treatment of prisoners via personal visits.[49] A consular staff member in Peru explained that by visiting prisoners on a frequent basis, the Netherlands gives a 'signal' to the authorities.[50] Apparently prisoners do not however experience this 'monitoring activity'.
The lack of adherence by the Ministry to its second basic principle confirms the concluding remarks by the Dutch Court of Audit and the IOB-evaluation, as mentioned in section 5.2.3 and 5.2.4. The researcher however also witnessed Dutch diplomatic missions that invest actively in establishing good relationships with prison authorities, in order to have direct contact in case of emergencies or when problems arise. This is done for example by inviting the head of the prison administration to the national holiday in April and by sending the annual colourful Holland diary with pictures from the Netherlands to the prison governor.[51]

As seen in the previous chapter, Dutch nationals are not always detained in humane prison conditions and treated according to the rules. It is therefore difficult to understand why in practice only in rare cases is 'silent diplomacy' used to address human rights violations with the national authorities.[52] Based on the second basic principle, one would expect that consular staff should hold the authorities responsible if they do not comply with the rules. The fact that Dutch nationals experience more difficulties as a result of their foreign status is

46 B.CS1, FV1, UK.CS1
47 Original text: *De rechten van de mens worden niet in acht genomen. Voor mij is hier de buitenwereld afgesloten.*
48 G.L2
49 CSH4, PS3, TH.CS1
50 P.C1
51 A.CS1, CSH3, S.CS3, US.CS1
52 Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 16) p 4

not regarded by consular officials as an aggravating factor that makes the prison experience, despite equal prison conditions and treatment, more difficult.

8.2.8 Preparing for release and resettlement

'To provide Dutch foreign national prisoners with information and advice and to prepare them for their resettlement in the Netherlands after release in order to avoid recidivism.'[53]
General aim, International Office of the Dutch Probation Service

Despite the fact that prisoners who apply for assistance from the Probation Service can receive assistance with resettlement, only a very limited number (12%) of the prisoners indicated that they received this kind of support. This is a disappointing outcome, in particular in light of the central aim of the Probation Service. It demonstrates that the Probation Service does not, or if it does the prisoners are not aware of it, assess on the basis of the application form the kind of issues the prisoner needs to tackle at home to avoid bigger problems after release for example freezing debts and/or informing authorities and/or the landlord about the detention abroad.[54] In case the prisoner is not able to organise things him or herself the regional coordinator approaches relatives for support. The fact that a brochure with practical advice about resettlement is sent only six months before the foreseen release date might be another explanation for the low outcome.
The opportunity to attend a training course (and subsequently obtain a certificate) is a type of assistance that can be classified as an attempt by the Probation Service to prepare a prisoner for return. However, only one in six prisoners actually follows a course. This relatively low number can be explained by the fact that only sentenced prisoners with a sentence length of at least six months are allowed to follow a course and in some countries, such as the USA, the training material is not allowed into the prison, while in Peru the postal service is very slow.[55] One interviewed ex-prisoner explained that after his release he was able to finish a course which he started during detention.[56]

8.2.9 Differences between EU and non-EU, pre-trial and sentenced

8.2.9.1 Ministry of Foreign Affairs

EU vs non-EU

Generally, being detained in or outside the EU makes no significant difference to receiving consular assistance from the Ministry.[57] The degree to which certain types of assistance are

53 International Office, *Probation doesn't stop at the border – About the work of the International Office, brochure by the Dutch Probation Service* (Reclassering Nederland, Utrecht 2013) p 3
54 PS2-4
55 G.CS1, P.CS1, UK.V1, US.V2
56 F.EXP1
57 (86% EU vs 91% non-EU) (=3p=.111) The exception is however the monthly financial allowance of €30 which is provided only to those detained outside the EU (see chapter 5.3.1.2).

received does however differ. There are five types of assistance received significantly more frequently by prisoners detained outside the EU.

The first one does not come as a surprise. Prisoners detained outside the EU receive the monthly allowance of €30 significantly more often (3% EU vs 61% non-EU). This conforms with the policy of the Ministry to provide monthly financial allowance solely to those detained outside the EU. Secondly, the Ministry also provides assistance by transferring money from relatives. Prisoners detained outside the EU receive this type of assistance significantly more often (10% EU vs 35% non-EU). This is also in line with the situation described in section 7.2.1.1 wherby for those detained outside the EU it is sometimes necessary to pay for their own cell, bed, food, medicines and security. It is therefore likely that they have to rely financially on others to 'finance' their life in prison. Thirdly, prisoners detained outside the EU receive also practical items from consular staff such as toiletries and medicines (8% EU vs 20% non-EU) significantly more often. As seen in chapter 7 the hygienic conditions outside the EU are in general less favourable than those in the EU and basic necessities such as toilet paper and soap are often not provided free of charge.[58] Fourthly, consular staff maintain contact with relatives of prisoners who are detained outside the EU (34% EU vs 46% non-EU) significantly more often. This might be explained by different time-zones which can make it difficult for prisoners to make a phone call during times that their family is awake or at home and the fact that making a phone call is expensive, while making contact via letters might take weeks or months. Finally there are also differences with regard to attendance of trials by consular staff (9% EU vs 16% non-EU). As mentioned in chapter 5, consular staff have considerable autonomy in deciding whether they will attend a trial or not. In interviews with consular staff it became clear that although attending a trial is time consuming it can contribute to the fair treatment of the prisoner because it demonstrates the interest of the Netherlands in the legal case of the prisoner to the local authorities. The practice of attending trials more often of prisoners detained outside the EU is in line with the practice of other actively involved foreign diplomatic missions.[59]

The only type of assistance prisoners in the EU receive significantly more often than those outside the EU is assistance with regard to prison transfers (27% EU vs 16% non-EU). This difference can be explained by the fact that all EU countries are parties to the Council of Europe's Convention on the Transfer of Sentenced Persons and therefore prisoners in the EU are more likely to apply for a transfer to serve the remainder of their sentence in the Netherlands once they receive their final sentence.

---

58 BR.EXP1, I.V1, M.P1, MX.L1, V.EXP1

59 Katerina Mantouvalou, *Consular Assistance and Trial Attendance: A Comparative Examination of the American, Australian, British, Dutch and German Ministries of Foreign Affairs* (Fair Trials International, London 2009) p 17

Pre-trial vs sentenced

Being in pre-trial detention or in post-trial detention makes in general no significant difference with regard to receiving consular assistance from the Ministry.[60] There is however one type of assistance that is provided significantly more often to sentenced prisoners and that is the monthly allowance of €30 (16% pre-trial vs 27% sentenced). This difference can be explained by the fact that sentenced prisoners are more likely to be longer in detention and therefore have more opportunities to receive it.

The fact that pre-trial prisoners indicate more often - the difference is not significant - that they receive information regarding legal procedures (57% pre-trial vs 45% sentenced) can be explained by the fact that pre-trial prisoners are more likely to be concerned with their legal case and sentenced prisoners are likely to have less interest. Sentenced prisoners are on the other hand probably more focussed on prison transfers, as only sentenced prisoners are allowed to apply for a transfer. This explanation is confirmed by the outcome that sentenced prisoners receive indeed more information on transfers than pre-trial prisoners (18% pre-trial vs 26% sentenced).

8.2.9.2 Probation Service

EU vs non-EU

Being detained in or outside the EU generally makes no significant difference to receiving assistance from the Probation Service.[61] The types of assistance that are received most frequently by prisoners, for instance a visit from a volunteer, are provided as often to prisoners in the EU as outside the EU.

There are however three types of assistance which are received significantly more by prisoners in the EU. The first is the social inquiry report (23% EU vs 10% non-EU). The fact that a social inquiry report is provided twice as often to prisoners in the EU than outside the EU can be explained by the fact that the concept of the 'probation service' is better known inside the EU and therefore it is more likely that such a report is needed. The second type of assistance that is more often provided to prisoners in the EU is information material (36% EU vs 21% non-EU). This has perhaps to do with the fact that there are more specific country booklets from the Ministry for countries in the EU. It is, further, a remarkable outcome that prisoners detained in the EU receive nearly twice as frequently assistance in preparing for a return to society (24% EU vs 13% non- EU) compared to those detained outside the EU. The reason for this significant discrepancy might be that the sentences in the EU are typically shorter and therefore there are more prisoners who are in the last months of their detention and able to start preparing for release in cooperation with the Probation Service. Prisoners outside the EU receive significantly more often essentials, for example soap, medicines, pens and paper, from volunteers (6% EU vs 21% non-EU). This might be connected to the

60 88% pre-trial vs 89% sentenced (=.2 p=.679)

61 45% EU vs 46% non-EU (=.1 p=.798)

fact that the prison conditions are in general of a lower standard outside the EU than inside the EU and therefore are more in need of necessities.

The reason why prisoners in the EU correspond more often with volunteers than those detained outside the EU - the difference is not significant - is not clear (12% EU vs 4% non-EU). The reason for the Probation Service to start working with correspondence volunteers was to stay in contact with prisoners in regions where there were no volunteers. But the majority of volunteers are active in the EU. It might be possible that writing letters, as mentioned in section 7.4.2.1, is in general an activity undertaken more commonly by prisoners detained in the EU.

Pre-trial vs post-trial

Being in pre-trial detention or post-trial detention makes generally no significant difference with regard to receiving assistance from the Probation Service.[62] Both groups receive practically all types of probation assistance equally. This outcome is remarkable because one could expect that their focus on resettlement of prisoners is on sentenced prisoners who are due to be released. The only type of assistance which is provided significantly more to pre-trial prisoners is providing information material (41% pre-trial vs 29% sentenced). This outcome can be explained by the fact that this information about legal procedures is provided mainly at the beginning of detention when the prisoners are not yet tried.

8.2.9.3 Epafras

EU vs non-EU

Those detained outside the EU receive, in general, significantly more often assistance from Epafras than those prisoners detained in the EU.[63] Prisoners outside the EU are also significantly more often visited by a chaplain (40% EU vs 73% non-EU). This difference is in line with the policy of Epafras of visiting Dutch prisoners in the EU once per year and those outside the EU twice per year.

Pre-trial vs post-trial

Being in pre-trial or post-trial detention makes, generally, no significant difference with regard to receiving assistance from Epafras.[64] Although the difference is not significant, sentenced prisoners more frequently receive assistance from Epafras (34% pre-trial vs 46% sentenced) and this might be related to the fact that prisoners outside the EU, who receive significantly more assistance, serve longer sentences due to more strict sentencing policies.

62 56% pre-trial vs 53% sentenced (=.4 p=.525)
63 35% EU vs 55% non-EU (=21 p<.001)
64 (34% pre-trial vs 46% sentenced) (=7p=.009)

8.2.10 Reasons for not receiving assistance

Ministry of Foreign Affairs

A relatively small group (12% n=69)[65] of Dutch prisoners had not (yet) received assistance from the Ministry at the time they filled out the questionnaire. In the questionnaire they were asked if they could explain why. The two most frequently mentioned explanations are that they had either not yet been visited by consular staff (26%) or had not yet been made aware of their right to contact the diplomatic mission (26%). Other reasons were that they could not (15%) or did not want to make contact (8%). Prisoners could also give a self-chosen reason. Difficulty with dual nationality was one of them. The fact that some Dutch prisoners are also nationals of the country of detention results in consular staff not always being allowed by the authorities to provide consular assistance. This used to be the case for example in Morocco and Turkey.[66]

Those who were unable to inform the Dutch diplomatic mission had either no contact details of the mission; were not allowed by the prison authorities to make contact or had insufficient funds to make contact. There were also a few prisoners who preferred not to make contact as they perceived consular assistance as something that would not help them or because they did not wish the Dutch diplomatic mission to become aware of their detention. Only a handful of prisoners did not make contact because they were not planning to return to the Netherlands or because they neither spoke nor "felt" Dutch. It is interesting to mention that although more than half the Dutch nationals in foreign detention were born outside the Netherlands and/or do not all speak Dutch fluently, receiving assistance from Dutch speakers is generally not seen as a reason for not making contact. Only a handful of prisoners did not want to receive a visitor due to fear of communication difficulties.

Probation Service

Around half (46% n=253)[67] of the prisoners had not received assistance from the Probation Service at the time they filled in the questionnaire. This outcome is related to the fact that the volunteers of the Probation Service are active in around 50 countries while Dutch nationals are detained in nearly 100 countries. In total 44% of this group are not aware that they can receive support from the Probation Service. One third (36%) are aware but they indicated that there is no volunteer in their area. There are also prisoners who applied for assistance by sending in a form but who had not yet received a response or a visit from a volunteer. In total 15% of them did not want assistance from the Probation Service and 3%

65 In total 497 prisoners responded positive to the question whether they had received assistance from the Ministry, 69 prisoners indicated that they had not (yet) received it and 18 prisoners did not respond to the question (missings).

66 M.CS1-4, T.CS1-2

67 In total 302 prisoners responded positive to the question whether they had received assistance from the Dutch Probation Service, 253 prisoners indicated that they had not (yet) received it and 29 prisoners did not respond to the question (missings).

were afraid of the Probation Service being informed of their detention. It might be possible that this 'worry' is related to the fact that the organisation is part of an official authority. This concern was however not echoed in interviews. Nevertheless, it is possible that there are prisoners who are consciously not informing the Dutch authorities that they are detained abroad.

Epafras

Three out of five prisoners (58% n=329)[68] did not receive assistance from Epafras when they filled in the questionnaire. It turns out that nearly one in three (32%) of this group is not aware of the existence of Epafras. It is interesting to see that the organisation Epafras is slightly more known to prisoners than the work of the Probation Service (44% are not aware of the Probation Service vs 32% unaware about Epafras). Another reason that prisoners mentioned frequently is that they had not yet been visited by a chaplain (30%). This can be explained by the fact that prisoners are visited only once or twice per year. Nearly a quarter (23%) do not wish to receive assistance because it is 'religious'. Despite the fact that most prisoners, if they wish to do so, are able to practice their religion in prison (see chapter 7.2), only 4% (n=25) of the prisoners do not want to receive assistance from Epafras because they already have access to religious support in prison.

8.3 Appreciation of consular assistance

The previous section demonstrates that Dutch nationals in foreign detention are in general not forgotten by the Netherlands. Most prisoners are visited either by consular staff, volunteers and/or chaplains and receive additional types of assistance. But how do Dutch nationals evaluate the assistance they receive? And what is the opinion of the relatives of prisoners? This section provides insight into how prisoners and their relatives appreciate the assistance and it further includes insight into those who did not receive assistance.

8.3.1 Appreciation of consular assistance by prisoners

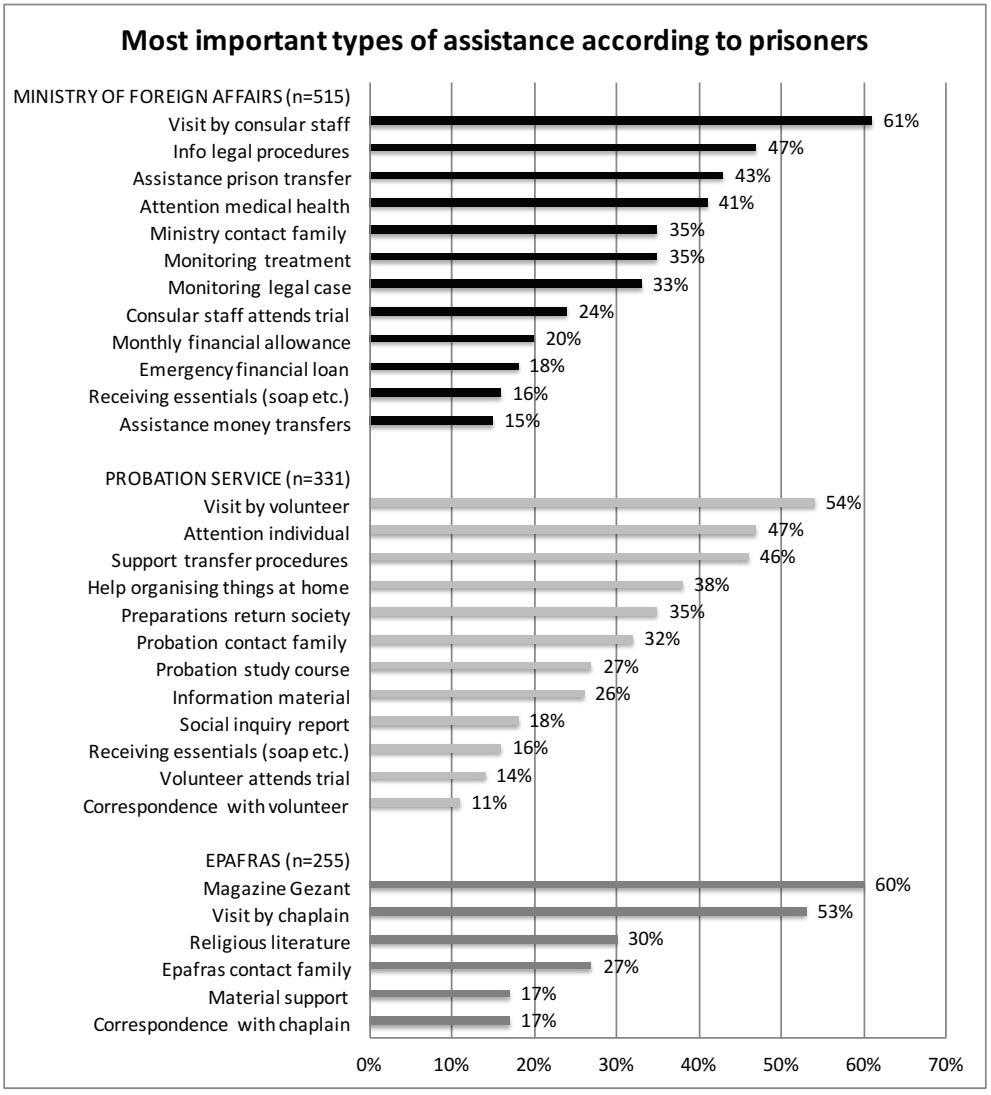
This section starts with an overview of what prisoners who received consular assistance regard as the most important type of assistance they can receive. Prisoners could indicate none, one or several types of assistance. The fact that prisoners indicated in practice several different types of assistance as 'the most important' is an indication of the plurality of their wishes and needs.

With regard to the graph, it is important to notice that although the types of assistance by the three organisations are presented on the same scale, the proportions are different. In

68 In total 235 prisoners responded positively to the question whether they had received assistance from Epafras, 329 prisoners had not (yet) received it and 20 prisoners did not respond to the question ('missings').

total 515[69] prisoners evaluated the assistance by the Ministry, compared to 331 prisoners who evaluated the assistance from the Probation Service and 255 prisoners who evaluated the assistance from Epafras.

Graph 8.4 Most important types of assistance according prisoners



Note: Dutch FNPs could indicate none, one or several types of assistance.

69 In total 497 prisoners responded positively to the question whether they received assistance from the Ministry and 18 prisoners did not respond to this question. In total 515 (497+18) prisoners indicated which type of assistance they regarded as the most important type of assistance they could receive.

The graph above shows that, irrespective of the organisation, the personal visit is very popular. A personal visit by consular staff is regarded by prisoners as the most important type of assistance prisoners can receive from the Netherlands. The second most appreciated type of assistance is the magazine *Gezant,* followed by a personal visit by a volunteer from the Probation Service and a chaplain from Epafras. Information on legal procedures and attention paid to the individual prisoner by the volunteer are both the fifth most appreciated type of assistance. The section below explores per organisation the appreciation of the different types of assistance followed by an overview with regard to EU vs non-EU and pre-trial vs sentenced. The precise figures can be found in Annex 8.

8.3.2 Ministry of Foreign Affairs

'A polite courtesy call is not sufficient, you really need practical support'[70]*.*
Letter from prisoner, Czech Republic[71]

Dutch prisoners who receive assistance from the Ministry are overall very satisfied with the assistance they receive (score 3.6). Prisoners were asked in the questionnaire to point out which type of assistance from the Ministry they considered as 'the most important'. From a list of 12 different types of assistance prisoners pointed out on average 3.9 types (SD=3.2). The five most frequently mentioned types of assistance by the Ministry are a personal visit; information about legal procedures; information on transfer procedures; attention to medical status and (with a similar score) maintaining contact with family at home and monitoring the treatment of prisoners. This section provides insight into these most valued types of assistance.

Personal visit by consular staff

Dutch nationals regard a personal visit from a member of the consular staff as the most important type of assistance they can receive from the Ministry. In fact, in total 61% of the prisoners see this visit as the most important type of assistance they can receive from the Netherlands. This outcome was also reflected in interviews.[72] Prisoners highly appreciate a personal visit because it gives them the opportunity to have a personal conversation about a wide range of issues, ranging from their health, situation at home, and situation in prison (detention conditions and treatment) to the process of their legal case. During these visits prisoners can also ask questions, share their worries and seek advice and support. The visits are at the same time seen as a welcome distraction from prison life where prisoners can

70 Original text: *Het is niet alleen belangrijk, dat je een beleefdheid sociaal bezoekje krijg van de ambassade, nee je hebt daadwerkelijk hulp nodig.*
71 CZ.L1
72 A.P1-4, B.EXP1, CSH.3, CY.P1-5, F.CS1, F.V1, F.R1, G.EXP1, G.P3, G.R1, M.P2, M.SC4, PO.L1, S.CS5, S.P1-2, T.P2, T.P4, UK.L2, US.EXP2, US.R1

speak, in private, in their mother tongue.[73] Several prisoners felt proud that the Netherlands does not forget their nationals who are detained abroad.[74] Two female prisoners in Cyprus explained that attention from the Dutch authorities to their situation is beneficial since 'a different pair of eyes helps'.[75] There are, however, also prisoners who are less positive and who even decline visits by consular staff because they have the feeling that consular staff cannot do anything for them.[76] One prisoner mentioned the fact that he regretted that the visit was not announced beforehand because it meant that he was unprepared and only thought of questions he would like to ask once he had returned to his cell.[77]

Information about legal procedures

Being informed of legal proceedings in the country of detention is regarded by nearly half (47%) of the prisoners as the most important type of assistance they can receive from the Ministry. This outcome does not come as a surprise because the previous chapter revealed that two thirds of the prisoners are not or are insufficiently made aware of the rules and their rights by the prison authorities. It confirms therefore the need of foreigners to be informed about the rules, their rights and legal procedures in a language they can understand (see section 11.2.2.1). It is therefore important that the Ministry provides information, because when the authorities fail to set out the rules clearly to prisoners it increases the probability of human rights violations.[78]

Information on transfer procedures

In total 43% of the prisoners regard information on transfer procedures as important. This is a considerable group, especially when taking into consideration that there are many countries outside the EU where the Netherlands has no bilateral or multilateral transfer-agreement. The outcome is also an indication that many Dutch prisoners are interested in being transferred to serve the remainder of their sentence in the Netherlands.

Attention to health

Consular staff pay attention to the medical situation of prisoners during the personal visit and if necessary they can give prisoners medicines that are not available in prison. A large group of prisoners (41%) regard this type of assistance as one of the most important types of assistance that the Ministry can provide.

---

73 B.EXP1.B.V1, US.V1
74 A.P1-2, UK.P5, UK.P6
75 CY.P1, CY.P2
76 BR.EXP1, GH.L1, I.L2, M.EXP1, PO.L1, UK.P5, UK.P6
77 T.L1
78 SPT 5th Annual Report (2011) §56

Contact with family

One third (35%) of the prisoners regard the fact that the Ministry keeps in contact with a relative as the most important type of assistance they can receive. As seen in the previous chapter, prisoners experience difficulties, especially those in pre-trial detention, in making contact with their families when the need arises.

'It is disappointing that when you inform consular staff about this (ill-treatment) they always give the same answer, that the embassy is not allowed to interfere with what is happening in prisons.'[79]
Letter from prisoner, Portugal[80]

Monitoring treatment and legal case

It is interesting to see that prisoners do not regard the proclaimed basic principles of the Ministry for consular assistance as the most important type of assistance they can receive from the Ministry. Only one in three prisoners regards monitoring their treatment in prison and their legal case in this way. This outcome is likely to be related to the fact, as seen in section 8.2.5 and 8.2.7, that a large group of prisoners are not under the impression that the Ministry monitors their detention situation and legal case, and they might therefore have low expectations. The main reason why prisoners are disappointed is that the Ministry is not willing to look into the content of their criminal case and respects the legal proceedings in the country of detention, even if the rules are not applied according to fair trial standards.[81] It is only in special cases when there are peculiarities that members of the consular staff have direct contact with lawyers to discuss the progress of a case.[82]

Luckily the Embassy provided me with 10 stamps, paper, an envelope and pen. Also, they gave me two (old) newspapers. I was very happy because I have nothing here.[83]
Letter from prisoner, Czech Republic[84]

Monthly allowance €30 and receiving essentials (soap, books, medicines)

It is interesting to note that only one fifth of the prisoners regard the monthly financial allowance and receiving for example medicines and toiletries as the most important type of assistance from the Ministry. This is an interesting outcome because it proves that prisoners regard material and financial support as being of lower importance than, for example, a

79 Original text: *Jammer is dat wanneer men de consulaire medewerkster op de hoogte zet van al deze dingen dat ik altijd hetzelfde antwoord te horen krijgt. Dat de Nederlandse ambassade zich niet mag bemoeien met wat er in de gevangenissen gebeurt.*
80 PO.L1
81 CU.L1, GR.L1, US.EXP2
82 CSH2, E.1, T.CS1-2
83 Original text: *Gelukkig heb ik van de ambassade 10 postzegels, schrijfpapier, envelop, pen. En oh ja, twee 2 kranten (oud) waar ik wel heel blij mee was, ik heb niets hier.*
84 CZ.L1

personal visit. This outcome is particularly interesting, taking into consideration that many prisoners started to become involved in crime due to lack of money and above all the poor conditions under which prisoners are detained.

8.3.3 Probation Service

'I'd like to prepare myself for resettlement but I do not even have information about how to do this'. [85]

Letter from prisoner, Turkey[86]

Dutch nationals who receive assistance from the Probation Service are very satisfied overall (score 3.4) and they value on average 3.7 out of the 12 types of assistance as most important (SD=3.1). The five most frequently mentioned types of assistance that prisoners regard as the most important are a visit by a volunteer; attention to their personal situation; assistance during transfer procedures; assistance with organising things at home and preparations for return to society. This section explores these five types of assistance.

Personal visit and attention from a volunteer

In total 54% of the prisoners regard a visit as the most important type of assistance they could receive from the Probation Service, followed by attention to their personal situation (47%). This positive outcome was confirmed in interviews with prisoners and their relatives.[87] Prisoners highly appreciate that someone who shows a real interest in them comes to visit them on a regular basis. Thanks to regular visits, volunteers can monitor closely how the prisoner is doing and whether they have special needs.[88] The high frequency of visits also means that a relationship of trust is built between the prisoner and the volunteer. One ex-prisoner described his volunteer as his lifeline in surviving in prison.[89] Also, relatives welcome the fact that their imprisoned relative is being visited and that they are kept informed in case there are difficulties.[90] Through regular visits, the volunteers become a regular in prison and therefore acquainted with the local customs and procedures.

The positive effect can be explained by the fact that the Probation Service trains volunteers to have not only friendly but also constructive talks with prisoners. Especially during the first visits the volunteers identify, in cooperation with the prisoner, practical issues that need to be addressed (for example at home) and provide them with information and advice. During detention the focus of the conversation shifts and the volunteers try to stimulate prisoners

85 Original text: *Ik zou me graag willen voorbereiden. Maar ik heb zelfs geen informatie hoe ik het kan doen.*

86 T.L1

87 AR.L1, B.EXP1, B.P10, B.P11, BR.R1, D.V1, F.L2, F.V1, I.V1, M.EXP1, M.P2, S.P1-2, UK.P5-6, US.L2, US.L3

88 PS1-6, A.V1, B.V1, D.V1, F.V1, G.V1, M.V1, S.V1-7, UK.V1, US.V1, US.V2

89 M.EXP1

90 D.R3, F.R1, F.R2

to think about their own behaviour and its consequences.[91] One volunteer described her role as 'signpost'.[92] The advice and support that is provided during the visit, and attention to the personal situation of the prisoner correlate with the first main aim of the Probation Service: to give information and to provide prisoners with advice.

Support transfer procedures

Providing information about transfers is not typically an activity provided by the Probation Service but since many prisoners have questions about this it is understandable that they seek information from those who visit them on a regular basis. In total 46% of the prisoners see this as one of the most important activities of the Probation Service.

Organising things at home and contact with family

Around one in three (38%) prisoners regard support from the Probation Service in organising things at home and contact with family (32%) as the most important. The fact that regional coordinators and sometimes volunteers directly make contact with family at home in order to inform them of updates or to provide assistance is appreciated.[93] One ex-wife of a prisoner admitted that she was jealous of the visits to her ex-partner as she was also very much in need of support since she was left on her own with young children and all the troubles resulting from his detention.[94]

Preparations for return to society and receiving information material

Only one in three (35%) prisoners regard support in preparing for resettlement as the most important type of assistance, and only one in four (26%) view receiving information material as the most important. This outcome is peculiar because both types of assistance are directly linked to the aims of the Probation Service: to provide prisoners with information and advice and to prepare them for successful resettlement into the Netherlands in order to avoid recidivism. These low scores seem to be the result of the policy of the Probation Service in starting to prepare prisoners for return to society at a very late stage. Several volunteers admitted during interviews that they felt uncomfortable providing prisoners with advice upon return because they were not well aware about the complex procedures for reintegration into Dutch society.[95] One ex-prisoner explained that she would have liked to obtain more practical information because it could have facilitated her resettlement in the Netherlands.[96] The lack of attention for those who return after detention abroad to the Netherlands was also criticised by volunteers during interviews, and volunteers indicated

91 A.V1, D.V1, G.V1, PS1, PS2-5, PS6, S.V1-7, UK.V1, US.V1, US.V2
92 B.V1
93 D.R3, F.R1, F.R2, M.R1
94 F.R2
95 B.V1, G.L2, G.V1, S.V1-7, UK.P5-6, UK.V1, US.V1
96 B.EXP1

that it could be also considered as a waste of their energy and well-intended efforts to visit prisoners and to provide assistance.[97]

8.3.4 Epafras

'I received a birthday-card from Epafras. It shows that somebody is still thinking about you and that makes you happy. It also means that you are stimulated to do something with your life.'[98]

Prisoner, Belgium[99]

Dutch nationals who receive assistance from Epafras are very satisfied about the assistance they receive (score 4.1) and they regard 2.0 out of 6 types of assistance as most important (SD=1.6). The five most frequently mentioned types of assistance that are considered to be 'the most important' are the magazine *Gezant;* a visit by a chaplain; receiving religious literature, maintaining contact with family at home and (with the same score) material support and correspondence with a volunteer.

Magazine Gezant

The quarterly magazine *Gezant* is very popular, even more so than a personal conversation with a chaplain. The magazine comes after the personal visit by consular staff as the next most popular type of assistance that Dutch nationals can receive from the Netherlands. This positive outcome was also reflected in interviews with prisoners and others involved. The content of the magazine is well suited to the interests of prisoners.[100]

Visit by chaplain

Just over half (53%) of the Dutch prisoners qualify a personal conversation with a chaplain as the most important type of assistance they can receive from Epafras. It is very clear that a personal visit by a chaplain is very much appreciated by prisoners and this is also confirmed in interviews.[101] The professional background of chaplains, their interpersonal skills, expertise and above all their optimistic outlook on prisoners (that they are more than their crime) is appreciated by prisoners and it results in open and constructive conversations. One ex-prisoner explained that he first had declined assistance from Epafras because he did not feel guilty. But after two years in prison he had his first conversation with a chaplain.

97 A.V1, UK.V1, US.V1

98 Original text: *B-day kaart Epafras. Het geeft je een zekere waardering van andere gedetineerden en personeel. Er wordt nog aan je gedacht het maakt je blij. Het betekent ook dat je wordt aangezet om wat met je leven te doen.*

99 B.P10

100 B.EXP1, F.V1, G.EXP2, M.P1, NY.CS1, S.P2, V.EXP1, UK.V1, US.CS1

101 BR.EXP1, F.V1, M.CS4, P.CS1, S.CS3, S.CS4, US.EXP2

Literature

One in three (30%) prisoners regard receiving religious literature as the most important type of assistance they can receive. During visits, chaplains hand out religious books and magazines. Upon request Epafras also send Bibles to prisoners.

Maintaining contact with family / material support and correspondence with chaplain

More than a quarter (27%) of the prisoners regard maintaining contact with their family as the most important type of assistance. Around one in six prisoners (17%) regard material support and correspondence with a chaplain as very important.

8.3.5 Differences between EU vs non-EU and pre-trial vs sentenced

'It is ridiculous that you do not receive €30 when you are detained in the EU. You need money irrespective whether you are in China or in the Czech Republic. Within the four walls of your cell you have no idea in which country you are.'[102]

Letter from prisoner, Czech Republic[103]

This section explores whether there are differences in the appreciation of assistance by those detained in or outside the EU and those in pre-trial or post-trial detention.

8.3.5.1 Ministry of Foreign Affairs

Dutch nationals detained outside the EU regard a wider range of types of assistance by the Ministry as 'the most important' compared to those detained in the EU.[104] The difference is significant.[105] The assumption made by the Dutch Minister of Foreign Affairs that consular visits are more important to prisoners detained in countries further away from the Netherlands might therefore be true.[106] There are four types of assistance which are significantly more often mentioned by prisoners detained outside the EU as the most important. These are the monthly allowance (13% EU vs 22% non-EU); attention to health (36% EU vs 49% non-EU); receiving essentials such as soap, books, medicines (13% EU vs 22% non-EU) and monitoring the legal case (30% EU vs 40% non-EU). The only type of assistance which is significantly more often mentioned by prisoners detained in the EU is assistance with regards to prison transfers (59% EU vs 46% non-EU). As mentioned in section

---

102 Original text: *Het is toch belachelijk dat je buiten Europa wel € 30 kan krijgen en binnen Europa niet. Je hebt die financiële hulp in het buitenland nodig of je nu zit in China of in Tsjechië, binnen die 4 muren, weet je echt niet, welke land je bent.*

103 CZ.L1

104 Prisoners in the EU identify on average 3.6 out of 12 types of assistance as the most important (SD=3.0) compared to 4.4 types of assistance by those detained outside the EU (SD=3.4)

105 t(512)=-3, p=.006.

106 Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 16) p 5

8.2.9.1 this type of assistance is also significantly more provided to prisoners in the EU and this is connected to the existence of transfer treaties within the EU.

Dutch nationals in pre-trial detention value consular assistance to the same degree as those who are already sentenced.[107] For example, a visit by consular staff is appreciated regardless of whether the prisoner is in pre-trial detention or has already been sentenced. There is however one type of assistance that is significantly more appreciated by pre-trial prisoners and that is consular staff maintaining contact with family at home (41% pre-trial vs 32% sentenced). An explanation for this is that it is not unusual for judges to restrict pre-trial prisoners from making contact with the outside world during the legal process at this stage. Also, prison authorities may prohibit prisoners from making telephone calls to family at home until the telephone number has been screened.

8.3.5.2 Probation Service

Dutch nationals in the EU regard a greater number of different types of assistance provided by the Probation Service as 'the most important forms of assistance' than prisoners detained outside the EU. The difference is however not significant.[108] It is interesting to note that the opposite is true for assistance from the Ministry. There are a couple of reasons that might explain this discrepancy. It is possible that assistance from an official body such as an embassy has more impact for those who are detained far away from the Netherlands. Possibly the activities of the Probation Service were more focussed on the needs of prisoners in the EU since the organisation originated in countries proximate to the Netherlands. The fact that volunteers are especially active in the EU can also play a role. There is one type of assistance which is appreciated significantly more often by prisoners in the EU and that is receiving assistance during transfer procedures. The outcome that Dutch nationals detained in the EU are significantly more satisfied overall with the activities of the Probation Service than prisoners detained outside the EU might be related to the explanations above.
Dutch nationals in pre-trial detention do not regard more types of assistance by the Probation Service as 'the most important' than those who are sentenced.[109] There is only one activity that is mentioned significantly more often by pre-trial prisoners and this is the receiving of information materials (24% pre-trial vs 23% sentenced).

107 Pre-trial prisoners identify on average 4.1 types of assistance as the most important compared to 3.9 types of assistance by sentenced prisoners (t(478)=-.7, p=.482).

108 Prisoners in the EU identify on average 4.0 out of 12 types of assistance as the most important (SD=3.1) compared to 3.3 types of assistance by those detained outside the EU (SD=3.2) (t(328)=2, p=.068)

109 Pre-trial prisoners identify on average 4.2 out of 12 types of assistance as the most important (SD=3.3) compared to 3.6 types of assistance by sentenced prisoners (SD=3.0) (t(300)=1.8, p=.071)

8.3.5.3 Epafras

Dutch nationals detained in the EU regard on average the same number of activities by Epafras as 'the most important' compared to prisoners detained outside the EU.[110] This outcome is interesting because Epafras focuses on non-EU countries and one could therefore expect a significant difference. Visits by chaplains are however significantly more often mentioned by prisoners detained outside the EU than inside the EU as the most important type of assistance (44% EU vs 65% non-EU). The reason is likely to be that prisoners who receive more visits can build a more personal relationship. With regards to overall appreciation, prisoners detained outside the EU are more satisfied than those detained in the EU.

Pre-trial prisoners identified the same average number of activities by Epafras as 'the most important' compared to sentenced prisoners.[111] Sentenced prisoners however mention a visit from a chaplain more often (44% pre-trial vs 59% sentenced) as the most important type of assistance compared to pre-trial prisoners. This difference can be explained by the fact that sentenced prisoners are likely to be in detention longer than pre-trial prisoners and therefore have more opportunity to build a relationship with the chaplain.

8.3.6 Appreciation by prisoners who receive assistance from all three organisations

The above-mentioned measurements are based on those who receive assistance from one particular organisation. This section explores the appreciation of those who receive assistance from all three organisations (n=139). The type of assistance that these prisoners regard as 'the most important' are a personal visit by consular staff, the magazine *Gezant*, a personal visit by a volunteer of the Probation Service, a visit by a chaplain, and information about legal proceedings in the country of detention.

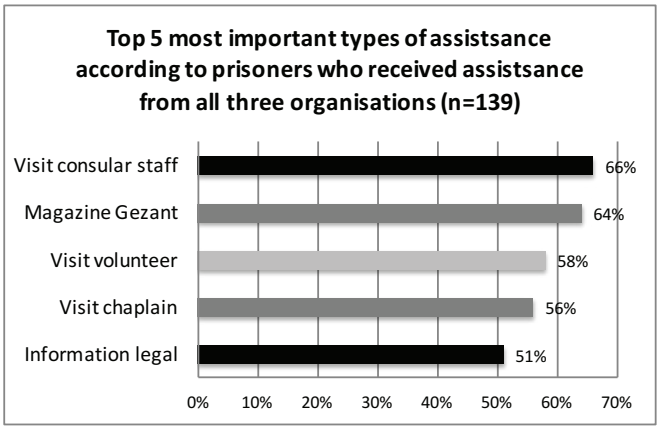
Of these 139 prisoners there are 46 who received a personal visit from representatives of these three organisations. What are the types of assistance this particular group regard as 'the most important'? It is interesting to see that their top 5 is different compared with the 139 prisoners. The types of assistance these 46 prisoners regard as the most important are personal visits. It is noteworthy that the most valued type of assistance is not a visit by consular staff but a personal visit by a volunteer from the Probation Service. In second place is a visit by consular staff and in third place a visit by a chaplain of Epafras. They further appreciate the magazine *Gezant* and that the volunteer pays attention to their well-being. This outcome demonstrates that those who receive a visit actually appreciate it even more, in fact much more.

---

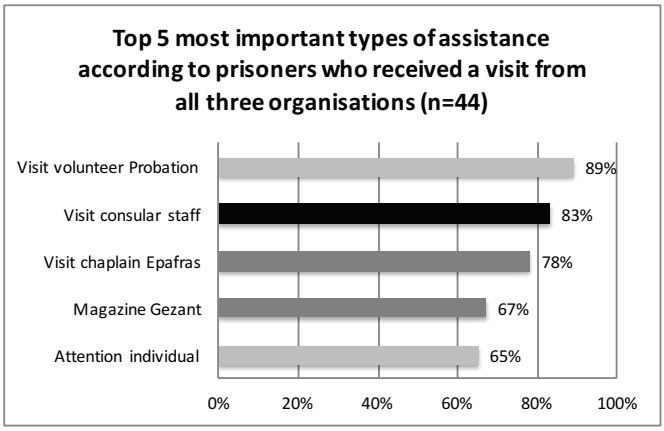
110 Prisoners detained in the EU identify on average 2.0 out of 6 types of assistance as the most important (SD=1.6) compared to 2.0 types of assistance by those detained outside the EU (SD=1.5) (t(253)=.0, p=.986).

111 Pre-trial prisoners identify on average 2.1 out of 6 types of assistance as the most important (SD=1.6) compared to 2.1 types of assistance by sentenced prisoners (SD=1.5) (t(233)=.01, p=963)

Graph 8.5 Top 5 most important types of assistance according to prisoners who received assistance from all three organisations.



Graph 8.6 Top 5 most important types of assistance according to prisoners who received a visit from all three organisations.



8.3.7 Appreciation of assistance by relatives of prisoners

'We received a short telephone call directly after arrest. It was on a Sunday. The family was completely upset and we had no clue where to find him and what to do.'[112]
Relative of prisoner, United Kingdom[113]

As well as the questionnaire that was sent out to Dutch prisoners a questionnaire was distributed to relatives of prisoners. Families of prisoners were asked which kind of

112 Original text: *We kregen een kort telefoontje direct na zijn arrestatie. Het was op een zondag. De familie was overstuur. Je weet dan niet waar hij is en wat je kan doen.*

113 UK.R1

assistance they personally would appreciate most for their relative and whether they were satisfied with the assistance their relative received.

8.3.7.1 Most important types of assistance

Relatives were asked which kind of assistance they would regard as the most important for their relative.[114] Of a total 274 relatives who filled in the questionnaire 249 responded to this question. It is interesting to see that the results are reasonable in line with the outcome of the questionnaire that was filled in by prisoners.

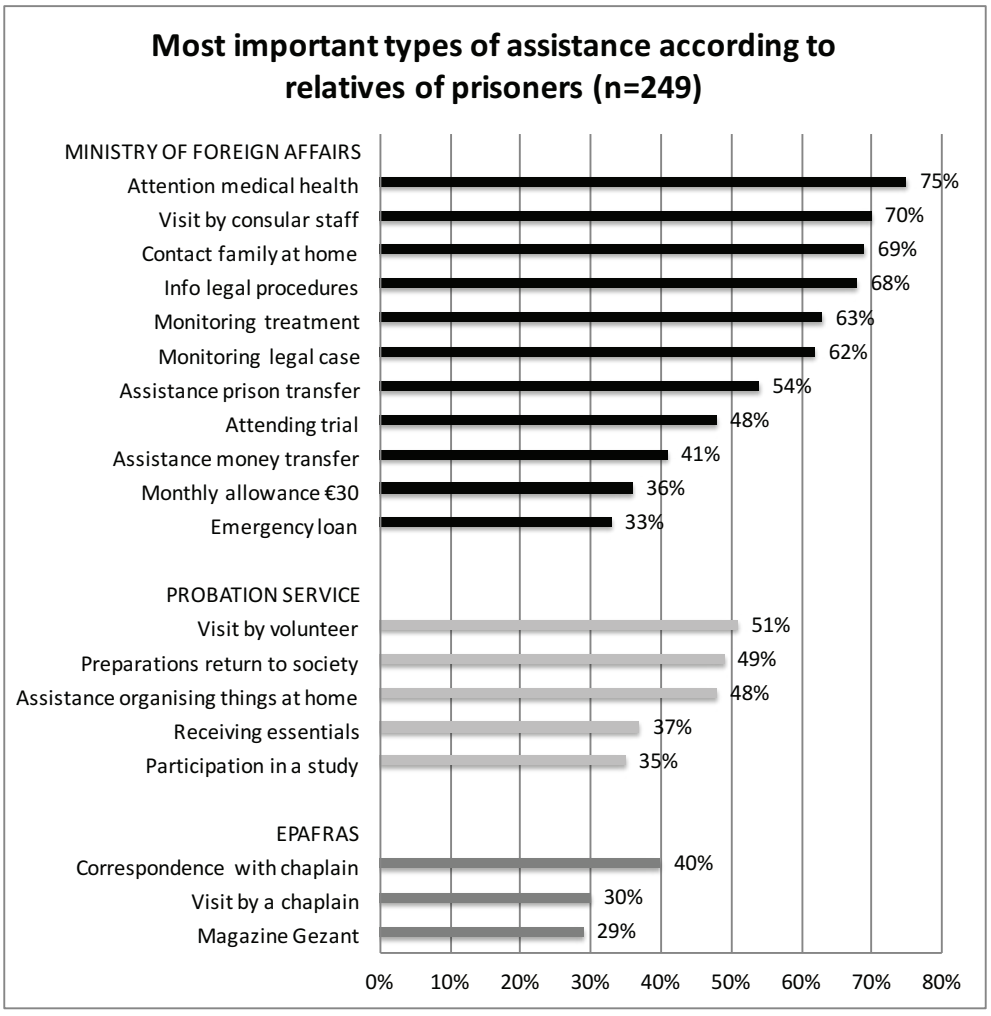
The exception is however that attention to the health situation is the most appreciated kind of assistance. Apparently families are worried about the medical situation of their relative. Their worries are not unfounded since, as mentioned in the previous chapter, the health of a large majority of prisoners deteriorates a result of their detention.

A personal visit by consular staff directly after arrest, appreciated by prisoners as the most important type of assistance, is also very much appreciated by their families. The second and third most important types of assistance are: keeping families informed about the well-being of their relative and receiving information on legal procedures in the country of detention. Relatives further appreciate consular staff monitoring whether their relative is being treated humanely, how their legal case is progressing and whether the rules are applied correctly. As mentioned in section 8.2.5 and 8.2.7, these types of assistance are seen as very important but in practice they are infrequently applied according to prisoners although the Ministry regards them as the 'basic principles' of assistance.

It is noteworthy that relatives of prisoners indicate less frequently types of assistance provided by the Probation Service and in particular by Epafras. This outcome can be explained by the fact that both the Probation Service and Epafras are not active in all the countries where Dutch nationals are detained and the organisations have less visibility than the Ministry. It is however clear that relatives particularly appreciate support from the Probation service that focuses on the practical aspects of their return to the Netherlands after release. The high appreciation of prisoners for personal visits by a volunteer of the Probation Service and a chaplain are not reflected in the appreciation of relatives of prisoners.

114 The list with an overview of the types of assistance by the three organisations lacks a few types of assistance.

Graph 8.7 Most important types of assistance according to relatives of prisoners



Note: Relatives of Dutch FNPs could indicate none, one or several types of assistance.

8.3.7.2 Assistance to prisoners

'They do a good job. They try to do what they can. But what they can do is often not a lot.'[115]

Relative of prisoner, USA[116]

Relatives of prisoners are, despite the assistance provided by the Ministry, Probation Service and Epafras, rather critical about the overall support from the Netherlands. Only one third of the relatives were satisfied with the work of the Ministry of Foreign Affairs, one quarter was neutral, one third was not satisfied and the others have no opinion.

115 Original text: *Ze doen het goed. Ze doen hun best maar ze kunnen vaak niet veel.*

116 US.R2

In interviews with relatives these critical remarks were echoed but more emphasis was put on their appreciation for the fact that consular assistance was provided.[117] Families are in particular thankful when their relative is visited and when they themselves are kept informed, in particular about their mental and physical health.[118] The negative comments were in particular aimed at the Ministry and to a lesser extent the Probation Service.[119]
An explanation for this criticism can be found in the high expectations that relatives have of assistance from the Netherlands. The questionnaire revealed that two-thirds of families and friends expect that their relative in prison will receives support and that they themselves will receive support too, in particular from the Ministry.
It seems that the expectations about the role of the diplomatic mission and/or the Ministry and what consular staff can do, and does achieve in practice can lead to disappointment.[120]
Detention of a relative is regarded by families as very emotional and stressful, especially at the beginning of the detention when there are a lot of uncertainties and they do not know whom to turn to.[121]
The fact that expectations play a role in the satisfaction of families is also seen with regard to assistance from the Probation Service. One relative said: when you hear Probation Service you think about a professional and well-established organisation and that support can be expected, but that turned out to be an illusion.[122] Others were however very positive about the fact that volunteers visited their relatives on a regular basis; that they sometimes kept families up to date; and that volunteers and regional coordinators advised them about things to arrange like freezing debts and insurances.[123] With regard to Epafras one mother said: expectations were high about the role of the Ministry but non-existent for Epafras because I was not aware of this organisation beforehand.[124] This might also explain why several relatives were rather enthusiastic about Epafras in general and the fact that Epafras made the effort to inform families before and after visits.[125]

8.3.7.3 Assistance to relatives

'You have to ask for it, and then they keep you informed.'[126]
Relative of prisoner, Dominican Republic[127]

---

117 D.R1, D.R3, F.R1, F.R2, F.R3, G.R1, GH.R1, UK, R1, US.R2
118 BR.R1, D.R1, D.R3, F.R1, F.R2, F.R3, F.R2, G.R1, GH.R1, UK.R1, US.R1, US.R2
119 C.R1, G.R1, UK.R1, US.R1, US.R2
120 CSH3, CHS4, D.R3, UK.R1, US.R2
121 BR.R1, F.R2, F.R3, UK.R1, US.R2
122 G.R1 Original text: *Bij Reclassering denk je aan een professionele en bestaande organisatie en dat er dus hulp komt, maar dat bleek een illusie.*
123 B.R1, D.R2, F.R1-3, UK.R1
124 US.R2
125 D.R1, F.R2, GH.R1, US.R2
126 Original text: *Je moet er wel zelf om vragen, dan houden ze contact.*
127 D.R1

As mentioned above, relatives of prisoners place great importance on information about their child/parent/friend in prison. They are eager to be informed of the latest news. In total, 96% of the relatives like to be informed about: the personal situation of the prisoner; what the Ministry can and cannot do; the reason for arrest; and contact details for the prison. According to the results of the questionnaire, only half of the relatives were informed by consular staff of the whereabouts of the prisoner and the situation that they were in. This might explain why the other half of the relatives are not satisfied with the information that is being provided by consular staff. Although families can also collect information via the website of the Ministry and via the booklet *Detained abroad* they apparently prefer the personal approach. In practice three quarters of the families stay in direct contact with their relative in prison.

Dissatisfaction with the level of information provided might also be connected with the outcome of interviews according to which relatives need to be pro-active in obtaining information and don't always feel treated correctly by the Ministry. Some relatives feel that consular staff treat them as if they were criminals.[128] The communication is in general rather formal and consular staff are often reticent in providing information because sometimes there is no news or the information is classified.[129] There are however many positive exceptions of consular staff, volunteers, regional coordinators and chaplains who are empathetic and who go that extra mile for families.[130] In some countries, family members were guided in finding their way to court and to prison.[131]
In interviews with relatives of prisoners it became clear that they are in a difficult situation and that they experience emotional and financial stress; often this was the case prior to detention as well.[132] One ex-wife of a prisoner with three young children mentioned that she was jealous of the support her ex-partner received because she could use it even more since she had to deal with all the problems as a result of his detention.[133]

8.3.8 Indication of appreciation by prisoners who did not receive assistance

A small group of prisoners had not (yet) received assistance at the time of completion of the questionnaire. They were however also asked to indicate which kind of assistance they would regard as the most important. The outcome is interesting. Those who do not receive assistance regard fewer activities as 'the most important' compared to those who

128 BR.R1, C.R1, UK.R1, US.R1
129 CSH3, CHS4
130 BR.R1, C.R1, D.R2, F.R2, G.R1, GH.R1, UK.R1, US.R2
131 UK.R1
132 F.R1, F.R2, F.R3, G.R1, M.R1
133 F.R3

do receive assistance.[134] The discrepancy in appreciation is most apparent with regard to a personal visit. Only one third of prisoners who do not receive assistance regard a visit by consular staff as the most important compared to nearly two thirds of prisoners who actually receive assistance. The same is true with regard to a visit by a volunteer and a chaplain. Prisoners who do not receive assistance qualify support with regard to transfer procedures, information on legal procedures and attention to their health as the most important forms of assistance.

8.4 Analysis of consular assistance

The previous sections showed which types of assistance prisoners receive and which types of assistance they, and their relatives, value most frequently as the 'most important'. This section analyses the assistance that is being received, whether this is in line with the main objectives of the organisation and whether there are overlapping activities and discrepancies between the assistance they receive and what prisoners regard as essential.

8.4.1 Overlapping activities

'The activities by consular staff and volunteers are complementary to each other'[135]
Consular staff, France[136]

The different types of assistance aimed at benefitting Dutch prisoners show at first glance a considerable degree of overlap, in particular with regard to the personal visit but also with regard to providing information and contact with family at home. The risk of overlapping activities is that it can lead to a waste of energy and financial resources and confusion; friction among those who provide assistance; and the risk that prisoners can become confused and detached.

The existence of a certain overlap in activities is, according to the researcher, to a certain extent inevitable, deliberate and even desirable. It is inevitable because for example a personal visit is the only possibility to meet face-to-face with a prisoner. However, the content of the conversation differs per organisation.[137] Overlap of certain activities is also done deliberately. As seen in section 5.3, the different types of assistance by the three organisations have been developed over the years in consultation with each other and shared during regional conferences and via internal communication and meetings. The activities are therefore rather clearly defined, fine-tuned with each other and communicated

134 Those who do not receive assistance identify 3.2 out of 12 types of assistance by the Ministry as the most important (SD=3.5) compared to 3.9 of those who receive assistance. With regards to assistance from the Probation Service it is 3.6 out of 12 (SD=3.1) compared to 3.7 and 1.7 out of 6 (SD=1.6) compared to 2.

135 Original text: *Het werk van de ambassademedewerker en die van de vrijwilliger zijn complementair aan elkaar.*

136 F.CS1

137 CSH3, CHS4, C.1-6, E1, PS1, PS2-5

to prisoners, both orally and in writing.[138] Overlap of activities is also seen as desirable because reaching out to prisoners is time-consuming and costly and therefore consular staff appreciate volunteers bringing essentials and medicines to prisoners, for example, because volunteers visit prisoners on a more frequent basis.[139] The practice of reporting back to the diplomatic mission after the visit shows that the different organisations try to maximise the benefits of a personal visit. Comments from volunteers and chaplains are added to the personal file of the prisoner in the central data system Kompas and if necessary, followed up by consular staff.[140] For example, when a chaplain hears during a visit that a prisoner is in need of certain medicines he or she will inform the diplomatic mission about this. If consular staff can obtain these medicines they can ask a volunteer, when active in the region, to give the medicines to the prisoner during the next visit if this visit is planned earlier than the visit by consular staff.[141]

Interviewed Dutch prisoners do not seem concerned about a certain overlap of activities.[142] Prisoners can be confused at first sight about the role and background of the visitor, but during the conversation it becomes clear whether the visitor is consular staff, a volunteer or a chaplain.[143] According to the former interim director of Epafras this confusion occurs more often between consular staff and volunteers than with chaplains.[144] Confusion also stems from the fact that prison authorities do not always announce a visitor correctly or because the volunteer or chaplain use the term diplomatic mission instead of Probation Service or Epafras because these terms/names are not well known.[145] Furthermore, prisoners are in general informed of the role and different activities carried out by the organisations that are active in their country and they are able to distinguish between the different organisations.[146]

8.4.2 Consonances and discrepancies

To what extent are the three organisations able to achieve the aims of their organisation and address the issues which Dutch prisoners regard as the most important? The types of assistance which prisoners greatly appreciate and which are, according to them, not sufficiently received (greatest negative discrepancies) are a personal visit by a chaplain, receiving support about transfer to the Netherlands from the Probation Service and a visit by a volunteer from the Probation Service. Remarkably there are no activities that are not considered of interest to prisoners (no positive discrepancies).

---

138 CSH2 Ministerie van Buitenlandse Zaken, *Gearresteerd in het Buitenland* (Ministerie van Buitenlandse Zaken, Den Haag July 2014)
139 A.CS1, S.CS3, S.CS4-7, UK.CS1
140 A.CS1, B.CS1, CSH3-4, E1, P.CS1, PS.6, S.CS3, UK.CS1
141 Observation of researcher while accompanying a volunteer in Ezeiza prison in Argentina in 2005.
142 A.CS1, A.V1, B.CS1, CSH4-5, E1,E2, P.CS1, PS1, PS6, S.CS3
143 F.CS1, PS1
144 C6
145 P.CS1, US.V1
146 B.EXP1, F.CS1, P.CS1, TH.CS1

Ministry of Foreign Affairs

A visit by consular staff, the type of assistance seen as the most important, is also the type of assistance that prisoners receive most frequently. The fact that there is hardly any discrepancy (61% most important vs 59% received) is a compliment to the work of the Ministry and a signal that the Ministry is able to address the most important need of prisoners. This outcome makes the announcement by the Ministry that it will carry out fewer visits, or perhaps only one visit per prisoner, as mentioned in chapter 5, even more questionable (see also chapter 11).

There are also discrepancies. Discrepancies are particularly visible with regard to activities related to the basic principles of consular assistance: monitoring the treatment of prisoners and their legal case. One in three prisoners regards attention from consular staff to their legal case as very important while in practice only a small group of prisoners are under the impression that their case is being monitored by consular staff (33% most important vs 7% received). This discrepancy was brought up by the researcher in interviews with consular staff and they clarified that it is partly to do with the fact that the legal case is also monitored out of sight of the prisoner.[147] Consular staff are informed about the situation through updates from volunteers after each visit; by checking whether a lawyer and interpreter are involved and, in special cases, by contacting the lawyer directly or by hiring a trusted lawyer. One in three prisoners regards attention from consular staff for their treatment in prison as very important (35% most important vs 20% received). This discrepancy was brought up as well. Consular staff indicated that they supervise individual prisoners out of their sight, for example by looking at reports on visits from volunteers and from chaplains and by talking to them.[148] Consular staff, however, do not monitor the general situation in prison and do not check whether the international and national human rights of prisoners are respected. The lack of adherence by the Ministry to its two basic principles often leads to unfulfilled expectations and disappointments.[149]

There is also a discrepancy with regard to information about prison transfers (43% most important vs 20% received). This situation might be explained by the fact that prison transfers are not organised by the Ministry of Foreign Affairs but by the Dutch Ministry of Security and Justice in cooperation with the judicial authorities in country of detention.[150] This discrepancy demonstrates however the need for this kind of information, especially after the adoption of the EU Framework Decisions on the transfer of prisoners.

147 A.CS1, B.CS1, CSH3-4, F.CS1, G.CS1, M.CS4, P.CS1, S.CS3-7, TH.CS1, T.CS1-2, UK.CS1, US.CS1
148 TH.CS1, E1-2
149 BR.EXP1, BR.R1, I.L2, PO.L2, US.R2
150 O.1

Probation Service

The Probation Service is, compared to the Ministry, less able to provide activities to a sufficient level. There are several high discrepancies and it is noteworthy that they are connected to the first aim of the Probation Service: to provide prisoners with information and to pay personal attention to their situation. The discrepancy is especially visible with regard to receiving information about transfer procedures (46% most important vs 15% received); attention for the personal situation (47% most important vs 22% received); a personal visit (54% most important vs 33% received) and support in organising things at home (38% most important vs 17% received). A discrepancy is also visible with regard to the second aim of the Probation Service: to prepare prisoners for a successful return to society in order to prevent recidivism. The fact that only 12% of the prisoners receive this kind of assistance should be a strong signal to the Probation Service and the Ministry of Foreign Affairs and Security and Justice which provide funding.

Epafras

The aim of Epafras is to ensure that prisoners receive religious assistance. In practice only 31% of the prisoners receive the magazine *Gezant*, while it is sent to all prisoners, and 60% of the prisoners reqard this as the most important type of assistance they can receive. While 53% of the prisoners regard a personal visit by a chaplain as the most important, in practice only 24% of them can receive a visit. This outcome demonstrates that Epafras, especially with regard to the magazine, has to ameliorate their outreach.

This chapter provides insight into how prisoners and their relatives evaluate the assistance they receive from the Netherlands. Whether prisoners experience the influence of this assistance on their detention experience, and on the needs that were characterised as special needs of FNPs, is evaluated in the next chapter.

CHAPTER 9

IMPACT OF CONSULAR ASSISTANCE ON DETENTION EXPERIENCE AND SPECIAL NEEDS

9.1 Introduction

This chapter provides evidence that may serve to prove or disprove the first two hypotheses of this thesis; that consular assistance, as received by Dutch FNPs, improves their detention experience and that it addresses their special needs. The previous chapter demonstrated that many Dutch prisoners receive consular assistance and that they regard many types of assistance as very important. It further revealed that the assistance does not always address the policy aims of the organisations involved. These findings are important in the Dutch context because they might give input for improvements, but they are perhaps also important in a broader context. The outcome might be useful to also other authorities and organisations that wish to address the difficulties which FNPs face. This chapter explores the impact of assistance on the general detention experience and on the needs that are described in research literature as typical for FNPs. It concludes with an analysis of the impact of the work by the three organisations that provide assistance.

9.2 Impact of assistance on detention experience

Do Dutch nationals who receive consular assistance from the Netherlands experience their detention differently from those who do not receive assistance? In order to measure the impact of assistance, a comparison is made between prisoners who receive assistance from at least one of the three organisations and those who do not receive any assistance at all. It is important to mention that the 'control-group', those who did not receive assistance, is rather small. Only 37 prisoners had not yet received assistance, versus 492 prisoners who received at least one type of assistance. Since the control group is so small, no differences with regard to being detained inside or outside the EU or being in pre-trial or post-trial are considered. The actual responses to the questionnaire and the test statistics that were used to test for the differences in responses are provide in Annex 9.

9.2.1 Overview

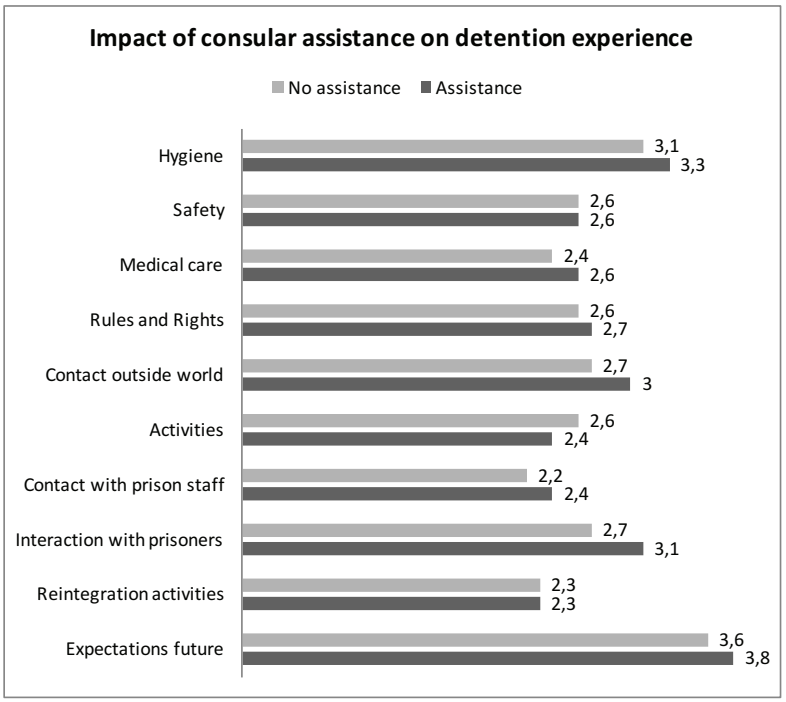
'I was glad that I felt heard. That is important.'[1]
Ex-prisoner, Venezuela[2]

The graph below represents an overview of the impact of assistance on the different topics of the detention experience. The scores are based on topics that are described in chapter 7.[3] The scores demonstrate that prisoners who receive assistance experience their detention as less negative than those who do not receive assistance. The differences are, however, not significant. This is likely to do with the small size of the control group.

1 Original text: *Blij om gehoord te worden, dat is belangrijk.*
2 V.EXP1
3 The number of prisoners who responded to the different questions varies.

It is interesting to see that this positive impact is visible on practically all measured topics except for *activities*. The most positive impact measured relates to interaction with prisoners, contact with the outside world and interaction with staff. A commentary of the results per aspect can be found below the graph.

Graph 9.1 Impact of consular assistance on detention experience



Scores range from negative (<2.50), to slightly negative (>2.50 <2.75), to neutral (> 2.75 < 3.25), to slightly positive (> 3.25 < 3.50) to positive (>3.50).

9.2.1.1 Hygiene

'The embassy brought me clothes because I had no suitable clothing'.[4]
Prisoner, Austria[5]

As mentioned in section 7.2.1.2, Dutch prisoners are in general 'neutral' about hygiene. But prisoners who receive assistance are more positive about hygiene compared to those who do not receive assistance (3.1 no assistance vs 3.3 assistance). This small difference is remarkable because the prison conditions are not likely to be different for those who do not receive assistance. It can however be explained by two types of assistance given by the Ministry. The first is the monthly financial allowance for those detained outside the

4 Original text: *De ambassade heeft kleren gebracht omdat ik geen geschikte kleding had.*
5 A.P1

EU. Prisoners can use this money to buy necessities in respect of their personal hygiene.[6] Diplomatic missions further have a modest budget to buy necessities not provided by the prison authorities such as soap, toothpaste and sometimes clothing, and these are handed out to prisoners during visits.[7]

9.2.1.2 Safety

'Consular staff did not visit us when we complained about the unsafe prison situation, but they came when the military police raided the prison and prisoners, including FNPs, were killed.'[8]
Ex-prisoner, Brazil[9]

Dutch nationals generally feel unsafe in prison.[10] Half of them feel unsafe on their own wing and one in three also feels unsafe in his or her own cell. Prisoners who receive assistance do not feel less unsafe compared to those who do not receive assistance (2.6 no assistance vs 2.6 assistance). The regular visits by consular staff, volunteers and chaplains apparently do not have a direct, positive impact on prisoners' feeling of safety.
Interviews with prisoners and others, however, made clear that the attentions of consular staff and other official visitors give prisoners a certain standing because it shows that they are noticed and that the Dutch authorities have an interest in them.[11] Consular staff further explained that the visits also give a signal to the prison authorities that they should treat the prisoner correctly.[12]

9.2.1.3 Medical care

'Dutch FNPs are often reluctant to use medicines which are prescribed in prison. Since I am a doctor I can give an explanation. One prisoner became able to control his diabetes in this way.'[13]
Volunteer Probation Service, USA[14]

---

6 BR.EXP1, C.R1, M.CS4, M.P2, M.R1, T.P3, V.EXP1, US.EXP2
7 P.CS1
8 Original text: *Het consulaat kwam niet als je hier om vroeg in verband met de onveiligheid. Pas toen er een inval was gedaan door de militaire politie, waarbij ook buitenlandse gedetineerden waren overleden, is het consulaat gekomen.*
9 BR.EXP.1
10 See section 7.2.2.
11 A.P2, A.P3, CY.P1, E1, G.P3, S.P1, T.P5, US.L3
12 P.CS1
13 Original text: *Veelal staan gedetineerden wantrouwig tegenover de medische verzorging in de gevangneis en willen ze vaak ook geen medicijnen aannemen die ze daar krijgen. Ik (gepensioneerd arts) geeft dan een toelichting waardoor gedetineerden vaak toch de medicijnen innemen. Op die manier heeft een gedetineerde zijn suikerziekte weer onder controle.*
14 US.V2

The majority of prisoners think that their health is deteriorating during detention and they are slightly negative about medical assistance they receive in prison.[15] Prisoners who receive assistance are, however, less negative (2.4 no assistance vs 2.6 assistance). This has likely to do with the fact that consular staff, volunteers and chaplains pay attention to the medical situation of Dutch prisoners during the visit.[16] If special attention or medical care is necessary, this is reported to the diplomatic mission. Consular staff and volunteers often bring along medicines which are not available in prison.[17]

9.2.1.4 Rules

'Without information they are literally at the mercy of the French legal system'[18]

Volunteer Probation Service, France[19]

Two-thirds of the prisoners are not, or are not sufficiently, made aware of the prison rules and of prisoners' rights in the country of detention.[20] Those who receive assistance are, however, a little more aware compared to those who do not receive assistance (2.6 no assistance vs 2.7 assistance). This difference is rather small, especially when taking into consideration that nearly half of the prisoners received information about legal procedures and rights from the Ministry. Interviewed prisoners explained that they were made aware about the rules and procedures in writing, via a specially developed booklet, and orally during the first visit(s).[21] Also, volunteers from the Probation Service provide information and advice and they are often aware of the procedures in prison.[22]

9.2.1.5 Contact with the outside world

'The chaplain's visit had made me emotional. It was the first human and meaningful contact in years.'[23]

Ex-prisoner, USA[24]

Dutch prisoners are in general 'neutral' about their ability to maintain contact with the outside world.[25] Nine out of ten prisoners can make contact but they are not satisfied with the opportunities available to them to do so. Those who do receive assistance are, however,

---

15 See section 7.2.4.
16 CSH3-4, M.P1, US.V2
17 B.CS1, FV1, M.CS4, UK.CS1
18 Original text: *Zonder informatie zijn ze letterlijk overgeleverd aan het Franse rechtssysteem.*
19 F.V1
20 See section 7.3.1.
21 A.CS1, B.CS1, G.CS1, CY.CS1, P.CS1, S.CS3-7, TH.CS1, UK.CS1, US.CS1
22 A.V1, F.V1, M.V1, S.V1, UK.V1, US.V1
23 Original text: *Het bezoek van de gezant had me emotioneel geraakt. Het was het eerste menselijke en betekenisvolle contact wat ik in jaren had gehad.*
24 US.EXP2
25 See section 7.4.1.

less negative (2.7 no assistance vs 3.0 assistance). This difference is related to the fact that three quarters of the prisoners are visited by consular staff, and/or volunteers and/or chaplains. These visits represent a connection to the outside world. Secondly, consular staff, regional coordinators of the Probation Service and chaplains from Epafras make contact with the prisoners' family.[26] Furthermore, the magazine *Gezant* provides information on what is going on in the Netherlands and on the situation of other Dutch FNPs. As seen in the previous chapter, receiving a visitor and the magazine *Gezant* are seen by prisoners as the most important types of assistance they can receive and it helps them to maintain contact with the outside world.

9.2.1.6 Activities

As mentioned in section 7.5.1 three quarters of the prisoners are negative about the lack of activities during their detention abroad. Those who receive assistance are, however, less negative about the activities (2.6 no assistance vs 2.4 assistance). This outcome was unexpected, because consular staff and volunteers are often aware of prison activities (such as language courses) and they inform prisoners about the possibilities and advise them how to apply.[27] Dutch prisoners who receive assistance from the Dutch Probation Service have the further opportunity of following a course provided free of charge by the organisation EABT via the Probation Service. Being able to speak the language of the country of detention increases the chances of participating in work and training.

9.2.1.7 Interaction with prison staff

'The frequent visits by consular staff give a signal to prison authorities to treat Dutch prisoners humanely.'[28]

Consular staff, Peru[29]

As seen in the previous chapter, prisoners are negative about their contact and interaction with prison staff. More than half of them feel that they are not treated normally. Those who receive assistance are however considerably less negative (2.2 no assistance vs 2.4 assistance). The impact of assistance, which is the third highest, was greater than expected. It is likely that receiving attention from official bodies has a positive effect on the way Dutch prisoners are treated by staff.[30] It is possible that staff pay extra attention to treating them fairly and humanely. Although not many prisoners can follow a language course via the Dutch Probation Service, it is also likely that this can facilitate communication between the prisoner and prison staff.

---

26 A.CS1, A.V1, B.CS1, B.V1, C.1-6, CY.CS1, E.1, F.CS1, F.V1, F.R1, F.R2, G.CS1, G.V1, M.V1, M.R1, P.CS1, P2-6, S.CS3-7, S.V1, TH.CS1, T.CS1, UK.CS1, US.CS1

27 A.P1, F.V1, F.EXP1

28 Original text: *Het feit dat we de gevangenissen zo vaak bezoeken is een signaal naar de autoriteiten dat ze Nederlanders goed moeten behandelen.*

29 P.CS1

30 C6, M.CS1, P.CS1

9.2.1.8 Interaction with fellow prisoners

'I advise Dutch prisoners to take care of each other (other Dutch FNPs) and to call when there is an emergency.'[31]
Volunteer Probation Service, USA[32]

Prisoners are in general neutral about their contact with other prisoners. It is, however, interesting to see that prisoners who receive assistance are significantly less neutral than those who do not receive assistance (2.7 no assistance vs 3.1 assistance). It is interesting also to note that the impact of assistance on this topic is the highest. Possible explanations that were given in interviews were, as mentioned above, the visible interest of official bodies which means that prisoners are also treated better by fellow prisoners. It might also be the case that consular staff always ask prisoners whom they visit whether there are more Dutch nationals in prison and that they sometimes organise meetings where all Dutch prisoners are present.[33] This provides an opportunity for prisoners to meet other nationals. Receiving a monthly gift from the embassy can also stimulate contact between prisoners because it enables them to buy things from each other. And, as mentioned above, the possibility of following a language course can enable prisoners to learn the language of other prisoners.

9.2.1.9 Reintegration and expectations future

'It would be nice if the Probation Service had more information about aftercare. I have limited knowledge of it and prisoners need this.'[34]
Volunteer Probation Service, Dominican Republic[35]

Dutch nationals are very negative about the lack of reintegration activities in prison and, as mentioned in section 7.6.1, nearly three-quarters of the prisoners feel that they have insufficient opportunity to prepare for their future. Receiving assistance makes no difference (2.3 no assistance vs 2.3 assistance). A more positive outcome was expected since it is the aim of the Dutch Probation Service to focus on resettlement. But as already seen in this chapter, only 12% of the prisoners indeed receive support from the Probation Service to prepare for their reintegration into society.
Prisoners are very optimistic about their future and those who receive assistance are even more positive about their prospects (3.6 no assistance vs 3.8 assistance). In interviews with ex-prisoners, relatives and those who provide assistance, however, it became very clear that

31 Original text: *Ik adviseer gedetineerden om voor elkaar te zorgen en als er iets aan de hand is om te bellen.*
32 US.V1
33 B.EXP1, US.V2
34 Original text: *Het zou fijn zijn als RN meer info had over nazorg. Ik weet daar zelf minder van en gedetineerden hebben er behoefte aan.*
35 D.V1

resettlement is significantly difficult.[36] It might be possible that these high expectations are wishful thinking or based on the false assumption that the assistance they receive will be continued after release in order to facilitate a successful return into society.

9.3 Impact of assistance on special needs

As seen above, consular assistance has overall a positive impact on the detention experience of Dutch nationals in foreign detention. But to what extent does it have an impact on their special needs? And, more precisely, which types of assistance address which particular needs? The needs considered in this thesis are the needs that are identified in research literature as typical of FNPs.[37] Dutch nationals who received assistance were asked in the questionnaire, via statements, whether a particular type of assistance from the Ministry, Probation Service and/or Epafras had an impact on a particular need. Prisoners could indicate the impact by giving a score between 1 and 5 ranging from negative, to slightly negative to neutral, to slightly positive to positive.

The outcome is clear, the needs of Dutch nationals are positively affected by the different types of assistance they receive. The scores range, with the exception of a few questions about social inclusion, from slightly positive to very positive. This is a remarkable outcome. Apparently the three organisations are together able to address all five identified needs.
The types of assistance with the highest impact are: information on legal procedures and prisoners' rights provided by the Ministry *(awareness legal procedures*); the magazine *Gezant* provided by Epafras (*contact with outside world*); and personal visits from the three organisations (*well-being and treatment*).[38]

The section below presents the different types of assistance that have a high impact on the identified needs.[39] The score per type of assistance is visible in graph 9.2 and an overview of all scores can be found in Annex 9. Scores from 3.25 and above are 'slightly positive', and from 3.50 onwards they are 'positive'. There are no significant differences with regard to the variables EU vs non-EU and post-trial vs sentenced, but in case they are remarkable in any way, this is mentioned in the text.[40]

---

36 B.P1, B.P5, B.P8,C.R1, CZ.L2, D.R4, D.R3, F.EXP1, F.V1, F.R2, G.L2, G.P3-4, G.P8-9, G.R1, GH.R1, S.P1, UK.P3, UK.V1, US.V1

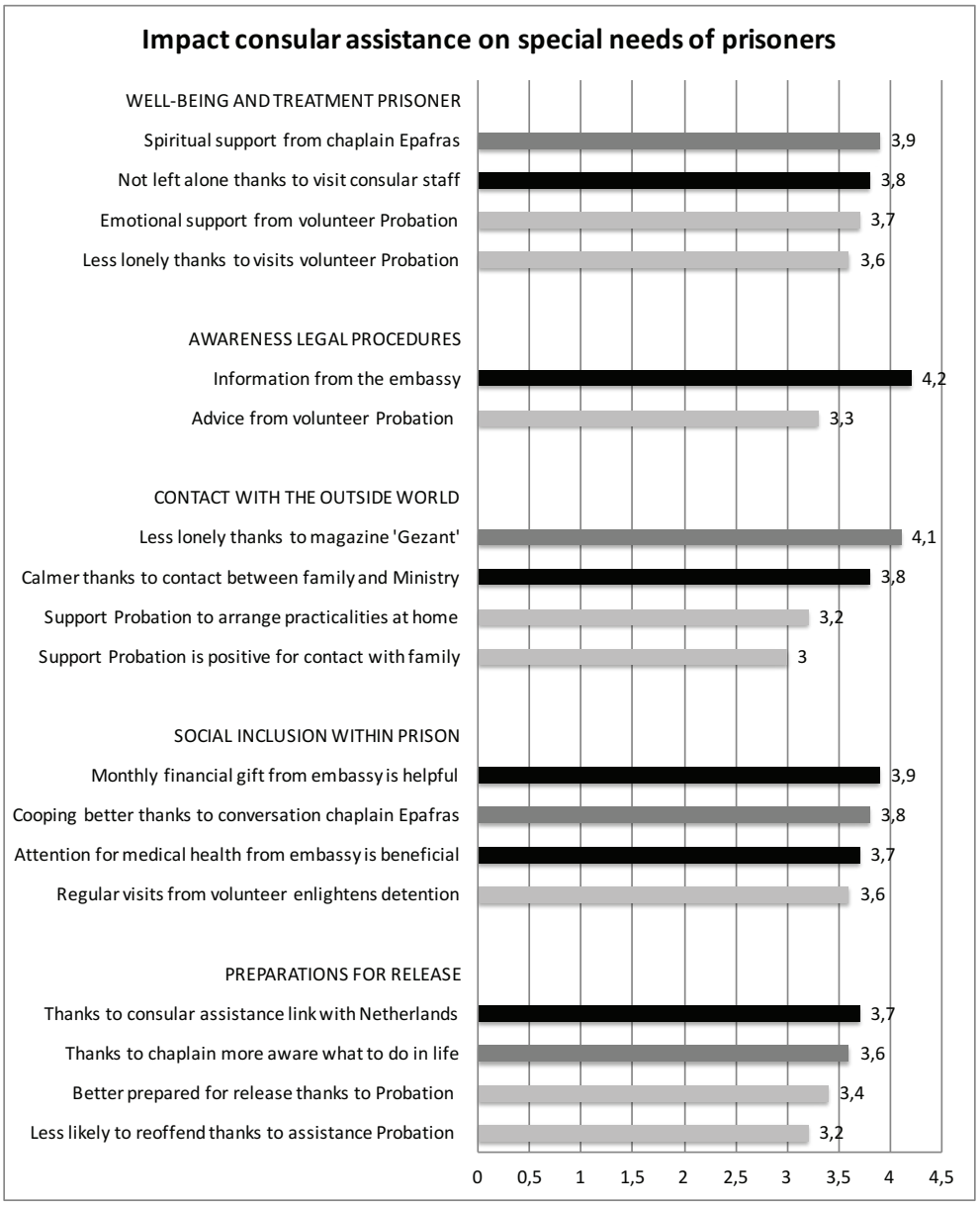
37 These needs are: the *well-being and treatment of the prisoner; awareness of legal procedures and rights; social inclusion within the prison; contact with the outside world and preparations for release and resettlement*.

38 The impact of the monthly allowance on social inclusion is also high (score 3.9) but it is available only to those detained outside the EU.

39 The exception is the need *well-being and treatment of the prisoner* where the sequencing of assistance is followed.

40 Except for the impact of the financial allowance for those who are detained outside the EU.

Graph 9.2. Impact of consular assistance on special needs



Scores range from negative (<2.50), to slightly negative (>2.50 <2.75), to neutral (> 2.75 < 3.25), to slightly positive (score > 3.25 < 3.50) to positive (score >3.50).

9.3.1 Well-being and treatment of the prisoner

Dutch nationals face, as seen in chapter 7, particular difficulties during their detention abroad and this has a negative impact on their well-being and on how they are treated. The previous chapter demonstrated that prisoners regard a personal visit by consular staff as the

most important type of assistance they can receive, followed by a visit from a volunteer and a chaplain. But to what extent does this visit have an impact on the prisoner's well-being and treatment? This study shows that a personal visit is not only very much appreciated but it also has a positive effect on a prisoner's well-being and treatment.

'Me and the other Dutch prisoners were always looking forward to the visit of the chaplain of Epafras.[41]
Ex-prisoner, Brazil[42]

Spiritual support by chaplain

A visit by a chaplain has the highest impact on the well-being of prisoners of all visits (score 3.9). Visits by chaplains give spiritual support. The impact of a visit by a chaplain is regarded by prisoners inside and outside the EU as being the same. This is interesting because of Epafras' policy to visit prisoners outside the EU more frequently than those in the EU. Apparently the frequency of the visits does not make a difference. The fact that sentenced prisoners are slightly more positive about the impact of a visit from chaplain (3.8 pre-trial vs 3.9) might be explained by the fact that sentenced prisoners have more time to reflect on their self and life in general.

As with volunteers of the Probation Service, interviewed prisoners were also positively surprised when they were told that chaplains are not paid to carry out visits.[43]

In interviews several prisoners explained that at first they had hesitated to seek assistance from Epafras and to receive a visit from a religious person, because they were not religious or because they had fears about being converted.[44] Despite this initial hesitance many prisoners were, however, positive about the outcome of the visit.[45] They felt that the chaplain really listened to them and that they could talk freely about their inner thoughts, their fears, regrets, ambitions and also spiritual topics. Chaplains added during interviews that sometimes they pray with prisoners if prisoners feel a need to do so.[46] Apparently the mission of Epafras: to show interest in individual prisoners and to make them feel, despite their imprisonment, worthwhile and not forgotten, came across.

41 Original text: *Andere gedetineerden uit Nederland en ikzelf keken tijden uit naar het bezoek van de gezant van Epafras.*
42 BR.EXP1
43 M.P1-2
44 M.EXP1, UK.P5-6
45 B.P13, G.EXP2, M.P1, S.P2, UK.P3, UK.P5-6, US.R2
46 E1, C1-6

'The embassy cares about their citizens. They look after you.'[47]
Prisoner, Austria[48]

Visits by consular staff

Prisoners were asked whether the visit by consular staff directly after arrest made them feel as if they were not on their own. This is indeed the case (score 3.8). The fact that prisoners are quickly visited by consular staff, as seen in section 8.2.2.1, might also contribute to the fact that prisoners feel that they are not abandoned. Most Dutch prisoners do not have family or friends in the proximity of the prison and therefore a member of the consular staff is often the first person to visit them.
Prisoners in the EU are slightly more positive about the impact of the visit on their feeling of isolation than those detained outside the EU (3.9 EU vs 3.7 non-EU). This might be because prisoners in the EU are significantly more frequently detained on their own in single cells compared to those detained outside the EU (36% EU vs 24% non-EU). With regard to pre-trial and post-trial there is no difference. In interviews, prisoners, as mentioned in section 8.3.2, also highlighted the positive impact of a visit by consular staff.

'The volunteer of the Probation Service was my lifeline'[49]
Ex-prisoner, Morocco[50]

Emotional support and feeling less lonely thanks to visit from a volunteer

Prisoners indicate that assistance from the Probation Service has a positive impact (score 3.7) on their emotional well-being. This outcome supports the finding in the previous chapter, see section 8.3.3, that personal visits by volunteers are very much appreciated. Regular visits from volunteers make prisoners feel less lonely (score 3.6) too. A volunteer described it as follows: 'the deprivation of liberty throws a person back on to him or herself'.[51] The fact that a volunteer visits a prisoner on a regular basis, makes time to have a personal conversation and provides support if necessary, gives prisoners the feeling that volunteers care about them. As mentioned in the previous chapter (section 8.3.6), the prisoners who receive visits from all three organisations appreciate the visit of the volunteer the most. An ex-prisoner who had been detained in Morocco praised the role of the volunteer who came on a monthly basis to see him and other Dutch prisoners. He was also grateful that she had given her mobile number in case of emergencies. Having this number gave him a feeling of

47 Original text: *De ambassade geeft om haar burgers. Er wordt naar je omgekeken.*
48 A.P2
49 Original text: *De vrijwilliger van de Reclassering was mijn reddingsboei.*
50 M.EXP1
51 A.V1 Original text: *Vrijheidsbeneming werpt iemand terug op zichzelf.*

security because if something happened he could call her and he knew that she would come to the prison.[52]

The impact of a visit on the prisoner's well-being is regarded as a little greater by prisoners in the EU compared to those outside the EU (3.7 EU vs 3.6 non-EU). This outcome might be connected to the fact that there are more volunteers active in EU countries and that prisoners in the EU are more frequently detained on their own, which might increase their feelings of loneliness and need for emotional support. It also explains why more prisoners in the EU regard these types of assistance as more important than those detained outside the EU. With regard to those in pre-trial and post-trial detention there is also a difference (3.8 pre-trial vs 3.5). This outcome supports the finding that pre-trial prisoners are more isolated, and therefore more likely to be lonely, than sentenced prisoners, who have more opportunities to interact with other prisoners.

In the course of the interviews the researcher started to become aware that prisoners often did not know that the person from the Probation Service who came to visit them worked on a voluntary basis and was not paid by the Probation Service to do so.[53] Prisoners were positively surprised to hear this and it noticeably made them feel happy.[54] It made them realise that despite their detention there were people whom they did not know beforehand who considered them important enough to visit.[55] This thought of still being valued increased the appreciation for the visit even more. In section 9.4.1 the role and impact of the volunteer will be explored.

9.3.2 Awareness of legal procedures and rights

'The first phase in prison is a confusing period.
We try to be there as soon as possible and to explain what is going on.'[56]
Consular staff, Ministry of Foreign Affairs[57]

As seen in section 7.3.1, three quarters of Dutch FNPs are not properly made aware by the prison authorities of the prison rules and procedures and of their rights. It is therefore not surprising that receiving information about legal procedures is one of the most appreciated types of assistance. But to what extent does information indeed have a positive impact on the awareness of legal procedures and rights of prisoners?

---

52 It is not the policy of the Probation Service for volunteers to provide their contact details but it occasionally occurs.
53 M.P2
54 M.P1-2, S.P1-2
55 CSH2-5, PS.2
56 Original text: *De eerste periode in de gevangenis is erg verwarrend. We proberen er zo snel mogelijk te zijn om uit te leggen hoe het gaat.*
57 CSH3

Information on judicial procedures provided by Ministry

Information supplied by the Ministry on rules, rights and procedures in the country of detention has a big impact (score 4.2) on the awareness of prisoners. It has in fact the highest impact of all types of assistance on a specific need. This positive outcome relates to the existence of the booklet *Arrested abroad* and the booklet *Arrested in… (name of country)*, which is developed for several countries where many Dutch nationals are detained. Also important are the oral explanations about rules and procedures by consular staff during visits, especially when the prisoner is unable to read the text or if they have questions. There are also diplomatic missions, for instance, the consulate in New York, the embassy in Morocco and in Spain, that have a special telephone line which prisoners can call in case of emergency or if they have questions, for example in relation to legal proceedings.[58] This practice is likely to be followed by other diplomatic missions since the Minister of Foreign Affairs announced the introduction of a telephone-helpline for prisoners in October 2013.[59] With regard to the variables EU and non-EU there is a peculiar difference. One might expect that information by the Ministry is of greater value to those detained outside the EU than those in the EU. The opposite is however true (4.3 EU vs 4.2 non-EU). Possibly this is because prisoners are more quickly visited outside the EU and therefore receive oral information more quickly, and there might not be a special booklet for the country of detention.[60] Another reason could be that those outside the EU have more opportunities to become informed by other prisoners because they are less commonly detained on their own. The impact of receiving information on awareness of the rules is in particular felt by pre-trial prisoners (4.3 pre-trial vs 4.2 sentenced) and this can be explained by the fact that they are newer in prison and still focussed on their legal case, and therefore are in need of information.

'A small question for prisoners can grow in prison into a big issue. Therefore it is necessary to provide adequate and speedy advice.' [61]
Volunteer, Germany[62]

58 M.CS3, S.CS3, US.CS1
59 Tweede Kamer, *Modernisering Nederlandse diplomatie* vergaderjaar (2013-2014 32734 nr. 16) p 13
60 The Ministry has developed booklets for twelve EU countries (Austria, Belgium, Denmark, France, Germany, Italy, Ireland, Poland, Portugal, Spain, Sweden, United Kingdom) and fifteen non-EU countries (Argentina, Australia, Brazil, Colombia, Dominican Republic, Ecuador, Japan, Morocco, Norway, Peru, Surinam, Thailand, Venezuela, Turkey and the United States of America).
61 Original text: *Een kleine vraag voor gedetineerden kan in de gevangenis 'groeien' tot een grote kwestie. Het is daarom belangrijk om adequaat en snel advies te geven.*
62 G.V1

Advice from a volunteer

Information and advice from a Probation Service volunteer also has a slightly positive impact (score 3.3) on the prisoner's awareness of legal procedures, knowledge of rights and on their detention experience in general. Dutch prisoners are, according to volunteers, often completely overwhelmed when they arrive in prison.[63] Having someone who comes to see them on a regular basis and who can explain procedures and provide advice during the detention period is seen as beneficial.[64] Volunteers are often asked to provide assistance with, for example, writing a letter, translating papers or for advice about judicial procedures.[65] There is no difference with regard to EU vs non-EU, but those in pre-trial detention identified more frequently the positive impact of advice from the volunteer on their awareness of legal procedures (3.8 pre-trial vs 3.9 sentenced).

9.3.3 Contact with outside world and family

Needless to say, imprisonment has direct consequences on the detainee's ability to make contact with the outside world. Section 7.4 shows that although the majority of questioned prisoners are capable of establishing contact, they are not satisfied with the opportunities they receive to communicate. This study demonstrates that the magazine *Gezant* makes prisoners feel less lonely, and thanks to consular staff making contact with their family at home they feel more calm.

'I read the magazine Gezant from a to z.'[66]
Ex-prisoner, Venezuela[67]

Magazine 'Gezant from Holland'

Prisoners who receive the magazine *Gezant* from Epafras are very positive about its impact (score 4.1) on their contact with the outside world. Thanks to this magazine prisoners are aware of what is going on in the Netherlands and in other countries around the world. In addition to topics spanning politics, sports and showbusiness, the magazine contains items that are of direct concern to prisoners, such as transfer agreements and policies of the Ministry of Foreign Affairs. The magazine also contains letters and stories from other prisoners. The positive impact of the *Gezant* is particularly felt by sentenced prisoners (3.9 pre-trial vs 4.2 sentenced). This significant[68] difference can be explained by the fact that

63 A.V1, B.V1, F.V1, I.V1, US.V1
64 A.P2, A.V1, B.P2, B.P7-8, B.P13, BR.EXP1, F.V1, G.L4, G.P4, G.V1, F.EXP1, M.EXP1, M.P1-2, M.V1, UK.P1, UK.P5-6, UK.V1, US.V1
65 A.V1, B.V1, F.V1, G.V1, M.V1, UK.V1, US.V1.
66 Original text: *De Gezant wordt stuk gelezen.*
67 B.EXP1, F.V1, M.P1, S.P2, V.EXP1, UK.V1, US.CS1
68 (t(209)=-2.3 p=.023)

sentenced prisoners are more likely to be away from home for longer, becoming less aware of what is going on and more lonely.
Interviewed prisoners stated that the magazine enables them to stay informed about what is going on in the world, it makes them realise that they are not alone and it puts their own situation into perspective.[69] One ex-prisoner who had been in Venezuela[70] said 'by reading stories from fellow-prisoners about the conditions under which they are detained I became less despondent about my own situation. It can apparently always be worse'.[71] The magazine *Gezant* also offers prisoners the opportunity to find a pen-pal or a relation by placing an advertisement, and there are prisoners who correspondent with other prisoners in foreign countries.[72]

'Consular staff informed my family about my detention because I was not allowed to do this myself. In a way my family was 'relieved' to hear that I was in detention because they had lost track of me.'[73]
Ex-prisoner, Germany

Contact with relative by consular staff

Dutch prisoners indicated that the fact that consular staff stay in contact with their family has a positive impact (score 3.8) on their ability to stay connected. This has a calming effect on them. The fact that prisoners in pre-trial detention are significantly[74] more positive about the impact of this kind of assistance (4.0 pre-trial vs 3.7 sentenced) can be explained by the fact that pre-trial prisoners have fewer opportunities to make contact.
This positive impact is also echoed in interviews with relatives of prisoners. Being informed is considered as very important because relatives often feel disconnected and deprived of information about how their relative in prison is doing.[75] Information is especially requested at the outset of the detention when the family is not yet aware of the whereabouts of their relative, a situation described as a nightmare.[76] Being informed of the detention is often a shock but some relatives felt relieved at the same time, as their relative was still alive.[77] A

69 B.EXP1, G.EXP2, M.P1, S.P2
70 V.EXP1
71 Original text: *Door verhalen van anderen te lezen en te horen onder welke omstandigheden zij zijn gedetineerd, werd ik milder over mijn eigen situatie. Het kan blijkbaar nog erger'.*
72 B.P13
73 Original text: *Een consulaire medewerker heeft mijn familie moeten informeren over mijn detentie omdat ik het zelf niet mocht doen. Op een bepaalde manier was mijn familie 'opgelucht' om te horen dat ik de gevangenis zat want ik was zoek.*
74 (t(376)=2.4p=.019)
75 BR.R1, D.R1, D.R3, F.R1, F.R2, F.R3, F.R2, G.R1, GH.R1, UK.R1, US.R2
76 BR.R1, G.R1, F.R1, F.R2, UK.R1, US.R1, US.R2
77 BR.R1, G.EXP1, F.R1

mother of a prisoner said about this first period: 'you are desperate, you are crying for help and you do not know where to start'.[78][79]

Some relatives mentioned in interviews that they were not happy about the way the Ministry informed them of the detention, which was too formal and bleak.[80] Receiving bad news is difficult but so is delivering bad news.[81] Consular staff are, however, trained to master difficult conversations.[82] It occurs, in sensitive cases, that relatives are invited to visit the Consular Affairs Department at the Ministry to talk about the detention. These visits are appreciated by relatives of prisoners.[83] In principal, due to time constraints, consular staff only make contact when there is real news about the prisoner, for example, to inform the family about the outcome of a trial, a transfer or an illness.[84] For relatives of prisoners this is sometimes difficult to understand because they feel the need to receive information as often as possible, including when there are no special issues of concern, and they are hesitant to take the initiative to make contact.[85]

'The Netherlands are 'far away' when you are detained and you need to arrange things.' [86]

Volunteer, United Kingdom[87]

Arranging practicalities at home with support from the Probation Service

Dutch prisoners who receive assistance from the Probation Service are neutral (score 3.2) about the impact of this kind of assistance on their ability to arrange practicalities at home. As seen earlier in the previous chapter, prisoners regard support from the Probation Service in settling matters at home as one of the most important types of assistance but, not surprisingly, it has no direct effect on their contact with the outside world.

Contact with family via Probation Service

Dutch prisoners are neutral about whether the Probation Service has a positive impact on their contact with family at home (score 3.2). This statement suggests that contact with family at home improves during detention, which is not logical due to the restricted contact resulting from detention. This suggestion can be confirmed by the outcome that pre-trial prisoners have a higher score compared to sentenced prisoners (3.3 pre-trial vs 3.1 sentenced).

---

78 US.R2
79 Original text: *Je bent hopeloos, je schreeuwt om hulp en je weet niet waar je moet beginnen.*
80 D.R3, F.R3, M.R1, UK.R1, US.R2
81 CSH3-4
82 CHS3-4
83 US.R2
84 A.CS1, CSH3-4, B.CS1, F.CS1, G.CS, S.CS3-7, P.CS1, T.CS1, UK.CS1, US.CS1
85 D.R3, F.R2, F.R3, G.R1, UK.R1, US.R1
86 Original text: *Nederland is ver weg als je in detentie zit en dingen moet regelen.*
87 UK.V1

9.3.4 Social inclusion within prison

Dutch prisoners are, as seen in section 7.5, negative about their social inclusion within prison due to a lack of activities and poor interaction with prison staff. Prisoners are however very clear that consular assistance addresses their need for social inclusion. Different types of assistance from all three organisations have a beneficial effect. Prisoners do not, however, see an impact from the support they receive from the Probation Service on their contact with prison staff, on their detention situation or on their interactions with other prisoners.

'The monthly gift enabled me to stay alive. Without money you are lost in prison'.[88]
Ex-prisoner, Venezuela[89]

Monthly allowance of €30

Prisoners who are detained outside the EU receive a financial allowance from the diplomatic mission. Those who receive this allowance are very positive (score 3.9) about the impact of this gift on their social inclusion within prison because the money is useful.
The reason that the difference with regard to prisoners detained in the EU is significant[90] (3.5 EU vs 4.3 non-EU) is because only prisoners outside the EU are eligible to receive this allowance. The expenditure of this allowance depends not only on the prisoner but also on the country in which the prisoner is detained and on what is provided free of charge by the prison authorities. In some countries the allowance is used to buy 'security' or to buy a mattress or even a place on the floor to sleep.[91] In prisons where the living standards are higher and prisoners do not have to struggle in order to stay alive this money is spend on, for example, telephone cards, extra food, toiletries and cigarettes.

'It is important to give prisoners room to express themselves and to identify what is important in their lives.'[92]
Chaplain, Epafras[93]

Personal conversation with chaplain

Less than a quarter of prisoners are visited by an Epafras chaplain. Those who receive this kind of assistance, irrespective of where they are detained and whether they are in pre-trial or post-trial detention, evaluate this type of assistance as very beneficial for their ability to cope with their personal situation in prison (score 3.8).

88 Original text: *De maandelijkse gift heft me geholpen om in leven te blijven. Zonder dat geld zou ik verloren zijn geweest in de gevangenis.*
89 V.EXP1
90 (t(288)=-5.6 p=.000)
91 B.EXP1, CZ.L1, M.EXP1, T.P1-5, V.EXP1
92 Original text: *Het is belangrijk om gedetineerden de ruimte/mogelijkheid te geven om zichzelf te uitten en om ze te laten nadenken wat echt belangrijk voor hen is in het leven.*
93 C6

The positive impact of a visit on the ability of prisoners to cope better with their situation might also be explained by the fact that chaplains do not judge or tell prisoners what is good or wrong, and this non-judgemental approach might trigger the prisoners to deal with their situation and to restore their own value and self-esteem.[94] The personal attention from the chaplain of Epafras apparently helps the process of coping with this loss of freedom and accepting their situation. According to chaplains, prisoners deal in their own way with the situations they find themselves in, and because the conversations are held on an individual basis the chaplains are able to provide customised assistance. It is not uncommon that after a conversation a prisoner and a chaplain start to correspond via mail in order to continue the conversation.[95]

'My aim is to help prisoners steering through their detention period as much as possible'[96]
Case-manager, Dutch Ministry of Foreign Affairs[97]

Attention to health by consular staff

Prisoners experience a positive impact (score 3.7) from attention paid to their health by the diplomatic mission. They regard this attention as beneficial. Prison is in general an unhealthy environment and coping with stress as a result of the detention affects the detainee's health situation. It is no wonder that the physical and mental health of prisoners, as demonstrated in section 7.2.4, deteriorates during detention. The fact that diplomatic missions have a small budget for buying medicines, in case medicines are not provided by the prison doctor or not available from the prison shop, might also contribute to the fact that the detainees report a positive outcome.

'New prisoners have no clue how things work in the prison'[98]
Volunteer, France[99]

Regular visits by volunteers

Prisoners are positive (score 3.6) about the impact of the regular visits by volunteers because they make their time in prison 'less difficult'. Apparently the regular visits by volunteers help them to cope better with their situation and to get to grips with their new life. The fact that there is someone close by who comes to visit them on a regular basis is reassuring. During visits by volunteers, prisoners can speak in their mother tongue and they can receive advice, practical support and if necessary the volunteer can contact the embassy and/or

94 E1, C1, C2-5
95 C1, C2-5,C6
96 Original text: *Mijn doel is om mensen zo goed mogelijk door hun detentie heen te lozen.*
97 CSH3
98 Original text: *Nieuw aangekomen gedetineerden hebben geen idee hoe dingen in de gevangenis werken.*
99 F.V1

their family. Due to the regularity of visits, often a bond emerges between the prisoner and the volunteer which stimulates a personal relationship.[100] The personal attention shown to the prisoners results in them feeling human and noticed.[101]

9.3.5 Preparation for release and aftercare

Dutch prisoners are, as seen in section 7.6, in general not well prepared for return and reintegration into society and they have high expectations about not reoffending after release. Prisoners were asked whether the different types of assistance they receive address their need to prepare for release. This study shows that both the Ministry and Epafras have a positive influence on preparing prisoners for release but the expected impact of the Probation Service is lacking.

The embassy organised that a troubled ex-prisoner was escorted by a chaplain on his way back to the Netherlands because the airline company did not allow him to fly on his own.'[102]

Consular staff, Thailand[103]

Link with the Netherlands

Prisoners indicated that thanks to the assistance from the diplomatic mission they can maintain a connection with the Netherlands (score 3.7). This connection might be beneficial for their resettlement. According to those who provide assistance it makes prisoners feel that they are not only a prisoner but also a Dutch citizen with intrinsic rights and responsibilities.[104] Their contact with the diplomatic mission can also be beneficial in, for example, arranging for travel documents. Those detained in the EU responded significantly[105] more positively to this statement compared to those detained outside the EU (3.8 EU vs 3.6 non-EU).

'The visit is a signal to prisoners that Epafras believes in them. It strengthens the belief that they can change their behaviour themselves.'[106]

Chaplain, Epafras[107]

100 S.V1-7
101 A.V1, PS2-5
102 Original text: *De ambassade heeft georganiseerd dat een verwarde Nederland werd begeleid door een gezant van Epafras, die op weg naar huis was, want zonder escort mocht hij van de luchtvaartmaatschappij niet meevliegen.*
103 TH.CS1
104 A.V1, E.6, S.V1-7
105 (t(284)=2.3 p=.021)
106 Original text: *Door het bezoek geeft je een signaal af, wij hebben jou niet afgeschreven. Daarom komen we op bezoek. Dit signaal is belangrijk omdat Epafras denkt dat het mogelijk tot gedragsverandering zal leiden hetgeen uit de persoon zelf moet komen.*
107 C.6

Learning about myself

Prisoners are positive about the impact (score 3.6) of spiritual assistance from Epafras on their ability to learn more about themselves and about what they want in life. As mentioned above, chaplains' questions prompt prisoners to think about themselves and their own future. A chaplain explained that during a visit he stimulates prisoners to tell him what is difficult, what has been forgotten and what has been hoped for.[108] In doing this, the chaplain aims for prisoners to gain a better understanding of their own life story, to restore their sense of personal value and faith in themselves, in others, in society and in God. One prisoner explained that the conversation had given him a 'boost'.[109]

'It is difficult to obtain papers when in prison
but the regional coordinator of the Probation Service provides support.'[110]
Prisoner, Belgium[111]

Ability to prepare for the return to society

Prisoners are only slightly positive about the impact of assistance by the Probation Service in addressing their need to prepare for resettlement (score 3.4). One would expect a more positive influence from an organisation that is focussed on the successful resettlement of prisoners in society. This disappointing outcome correlates, however, with the earlier findings in section 8.2.8 and 8.3.3, that prisoners hardly experience ny assistance in their preparations for returning to society and that it is only a couple of months before release that prisoners are informed by the Probation Service about resettlement. Those detained in the EU are a little more positive about the influence of the Probation Service on their resettlement than those detained outside the EU (3.6 EU vs 3.2 non-EU). This significant[112] difference is probably to do with the fact that the majority of volunteers are active in the EU. Also volunteers indicated in interviews that they are not sufficiently prepared to play a role in this process.[113] First of all because many volunteers have been living abroad for a while and therefore lack up-to-date knowledge and expertise on what ex-prisoners will encounter upon return and which aftercare options are available in the Netherlands. Secondly, they are concerned about the fact that the Probation Service has hardly any opportunity to provide assistance to prisoners after their return to the Netherlands. Proper aftercare facilities and a smooth transfer from detention abroad to a return to society would be necessary to

108 C6
109 G.EXP2
110 Original text: *Het is lastig om papieren te regelen wanneer je in de gevangenis zit maar de regionale coördinator (van de Reclassering) helpt me.*
111 B.P8
112 (t(118)=2.0 p=.049)
113 S.V1-7, UK.V1

prevent recidivism. One volunteer explained that the lack of aftercare opportunities in the Netherlands was a 'waste' of his efforts to guide a person in the right direction.[114]
Likelihood of avoiding recidivism thanks to Probation Service

As mentioned above prisoners are only slightly positive about the impact of the work of the Probation Service on their ability to prepare for release. It is therefore not surprising that prisoners are neutral about the influence of assistance by the Probation Service on their chances of re-offending after release (score 3.2).

9.4 Analysis of 1st and 2nd hypothesis

The findings in this chapter show clearly that consular assistance, as received by Dutch nationals in foreign detention, has a positive impact on their detention experience and that it addresses several of their needs. The outcome of this study therefore proves that the first and second hypothesis of this thesis can be upheld.

Does this outcome come as a surprise? Yes and no. Yes, because prisoners who receive assistance are detained under the same conditions as prisoners who do not receive assistance. And no, because one could expect that when a prisoner receives personal attention and assistance from someone or from an organisation outside the prison, it is likely to have a positive effect on their well-being and contact with the outside world. The same applies to providing information material and its positive impact on awareness. A positive impact on social inclusion within prison was, however, not directly envisaged.
Unexpected is the low impact of assistance on preparation for release during detention, when taking into consideration the central aim of the Probation Service.

9.4.1 Impact of those who provide assistance

A positive working alliance is, as mentioned in section 6.4 of chapter 6, an important element in making an intervention effective. The fact that prisoners consider a personal visit as the most important type of consular assistance they can receive and that it has also the highest positive impact on many of their needs underlines this finding in literature. It is very clear that those who carry out these visits are of crucial importance. The role of the visitor is distinctive and it depends on the organisation which the visitor represents. For that reason the role of the person who works is analysed below.

Consular staff

Consular staff are civil servants who are professionally trained to provide consular assistance to prisoners. Interviews with prisoners clarified that they expect consular staff to be officials who provide assistance because it is their duty to do so. Prisoners anticipate therefore

114 UK.V1

that consular staff will keep a certain level of distance in their contact, that they do not become too personal and that they remain professional, courteous and often reticent in their comments.[115] The fact that consular staff are representatives of an official authority, the Royal Embassy of the Netherlands, gives the assistance a certain standing and gives them the feeling that they have not been abandoned by their country.[116] Apparently it is comforting to know that they remain, despite their detention, a Dutch national and that the Dutch authorities keep an eye on them. It gives them a certain protection.

The amount of time that consular staff can spend with a prisoner during a visit seems to be of minor interest to prisoners. Prisoners appreciate the regularity of the visits and the possibility to make contact in case of an emergency. In prisons with many Dutch nationals it occurs that they are visited as a group by consular staff in order to save time.[117] These settings can make prisoners hesitant to discuss personal issues.[118] Another remark is that prisoners are in principle not informed beforehand about the visit by consular staff. Therefore prisoners are often not able to prepare themselves properly.[119] It can occur that they return to their cell after the visit and then suddenly remember what they should have brought up during the conversation or should have shown to consular staff, but by then it is too late. This is regrettable because it normally takes another six months before they are visited again and means that prisoners cannot not benefit as much as they would like to from the opportunity to speak to consular staff. The announced reduction of visits is an undesired development (see section 11.4-6 of chapter 11). It is very important that the Ministry continues to visit prisoners on a regular basis and to signal to foreign authorities that they care about prisoners being treated humanely and held in decent conditions.

Volunteers from the Probation Service

Probation Service volunteers have a different role from consular staff. They perform their activities on a voluntary basis and they regard their work as a charitable act. Prisoners appreciate the personal attention and assistance from the volunteer. Some explained that due to the conversations they felt human again because the volunteer treated them as normal people in a special situation.[120] The fact that there is someone whom they did not know beforehand, who believes in them and thinks that they are worthwhile, makes them feel good (see 9.4.1.4 about the *Belief*-effect).

115 B.P1, B.P13, G.V1, SP1, UK.P5, UK.P6
116 A.P2, A.P3, CY.P1, E1, G.P3, S.P1, T.P5, US.L3
117 B.EXP1, US.V2
118 US.V1
119 T.L1
120 A.P3, A.P4, B.P2, CZ.L1, G.P9T.P4, UK.P1

Chaplains from Epafras

Epafras chaplains are professionals who provide assistance to prisoners on a voluntary basis. They are trained to have meaningful conversations with different kinds of people. Despite the fact that they visit prisoners less frequently than volunteers they are in general able to make a lasting impact. Prisoners often highly appreciate the conversations they have with chaplains.[121] The conversations help them to reflect on their own life, on their strengths and shortcomings. As already mentioned, some prisoners initially felt hesitant to have a conversation with a chaplain because they feared that they were obliged to talk about religion, which is not the case. Prisoners also like the fact that chaplains are non-judgmental, that they take time to listen them and that the conversation is confidential. The latter point in particular makes prisoners feel that they can disclose their personal feelings.

9.4.1.1 *Belief-effect*

'The cordiality and commitment of volunteers is of immeasurable size. It is a sacrifice that I appreciate.'[122]
Letter from prisoner, Argentina[123]

One of the findings of this thesis is the powerful impact of persons who provide assistance on a voluntary basis. Interviews with prisoners made clear that most of them are not aware that the assistance they receive from the Probation Service and Epafras is given on a voluntary basis. An unexpected outcome is that, once prisoners hear this, it places the assistance in a different perspective. Instead of a service they considered the assistance as a gift. This kindness was truly appreciated and some of them were emotionally touched by this.

An explanation for the positive impact of volunteers can be the 'Belief-effect' as described by Rovers. Rovers looked at the social and dynamic aspects of an intervention whereby informal professionals give meaning to what happens.[124] The phenomenon whereby people can actually change situations if they define them as real is known as the Thomas theorem.[125] The Thomas theorem is a fundamental principle of sociology. The phenomenon has been empirically studied by other scientific disciplines and is known under different

121 B.P13, G.EXP2, M.P1, S.P2, UK.P3, UK.P5-6, US.R2
122 Original text: De hartelijkheid en inzet van de vrijwilligers is onmeetbaar groot. Een opoffering die ik waardeer.
123 AR.L1
124 Ben Rovers, *Ze deugen nergens voor: Het Belief effect in justitiële jeugdinterventies* (Inauguration lecture 9 November 2007)
125 Named after the American sociologist W.I. Thomas (1863-1947).

names. In the medical world it is known as the Placebo-effect[126] and in education as the Pygmalion-effect.[127] Rovers suggests that the Belief-effect of interventions could be applied in the judicial context.[128] He argues that the context in which interventions take place in judicial settings are comparable to the medical and educational setting because there is social interaction between those who provide the intervention and those who receive it. There are also other studies about the role of social professionals in the process of stopping criminal behaviour (desistance). A study by Avans Hogeschool revealed that juveniles feel that they themselves are the ones who can stop criminal behaviour, but that they cannot do it completely on their own.[129] In order to refrain from crime they need practical and moral support from others. A push in the right direction by professionals can result in them not re-offending. Juveniles feel stimulated if professionals do not treat them as criminals and when they 'believe' in them.[130] Other aspects that juveniles appreciate are when professionals show real interest in them when, they do a small favour or make an effort for them, when they notice positive behaviour (and not only negative behaviour), when they work not strictly following the rules all the time and when they use humour.[131] Another study into the desistance of criminal behaviour showed that individuals who feel supported by relatives and social professionals have a better chance of resisting temptation and succeeding in leading a law-abiding life.[132]

9.4.2 Reflection

The fact that consular assistance can have a positive impact on prisoners' detention experience and on their special needs is a positive finding of this study. But, this chapter and the previous one show something more. The first one is that assistance which is provided, year in year out, is focused on the satisfaction and general *well-being* of the Dutch prisoner. It is a response to difficulties which prisoners face but it does not address the causes or the roots of these difficulties. The fact that prisoners are detained in degrading conditions,

---

126 Placebos are widely used in the medical world to control treatments. Placebos are simulated or medically ineffective treatments intended to deceive the patient. The patient believes he or she receives treatment that changes their medical condition. This belief may produce a subjective perception of a therapeutic effect, causing the patient to feel that his or her condition has improved.

127 The Pygmalion-effect is the phenomenon that the greater the expectation placed upon people, often children, or students and employees, the better they perform. It is also a self-fulfilling prophecy. People who internalize a negative label, or those with a positive label, will succeed accordingly.

128 Ben Rovers, *Ze deugen nergens voor: Het Belief effect in justitiële jeugdinterventies* (Inauguration lecture 9 November 2007) p 15

129 Marie-José Geenen, *Stoppen is afzien. Welke betekenis geven jongeren aan professionals in het proces van stoppen met criminaliteit?* (Avans Hogeschool, January 2010) p 34

130 Ibidem p 74

131 Ibidem p 42-43

132 Shadd Maruna, *Making Good: How ex-convicts reform and rebuild their lives* (Apa books, Washington DC 2001)

are treated inhumanely and do not get a fair trial is not addressed specifically, and neither are the special difficulties which FNPs face. As long as the visits are carried out and the information (and outside the EU the financial allowance) is provided, the organisations consider their task to be finished, as if it is a 'tick the box-exercise'. It further elucidates that there is no preventive element in the assistance. The causes of the difficulties which prisoners face are left untouched. Even if the difficulties are directly connected to failure to adhere to international, legally binding rules. As a result, improvements in the underlying situation cannot be expected. In the opinion of the researcher, consular assistance can and should be more than a drop in the ocean.

The reason for this reactive approach by the Ministry of Foreign Affairs and the other organisations involved is that they consider prison conditions, treatment of prisoners and trial procedures as internal affairs of the country of detention and therefore out of bounds. From a human rights perspective one could, however, expect that a country could and should not remain silent when the situation of nationals in foreign detention, and prisoners in general, is degrading and internationally binding rules are being violated. As mentioned in section 5.2.4, the Ministry promised in Parliament to monitor whether Dutch prisoners are treated humanely and receive all opportunities provided for in national law. Also the National Ombudsman and The Hague Court expect the Ministry to intervene when Dutch nationals are held in inhumane prison conditions, when they are not treated according to international and national rules and standards, or do not receive a fair trial. One could therefore expect the Ministry to take a firmer position and not to turn a blind eye to their broader situation and to the difficulties which they face. It is also for economic reasons beneficial for the Ministry to inform the foreign authorities about shortcomings which should be addressed by them rather than that the Ministry takes on that role. For the continuation of this reflection, see chapter 11.

The next chapter will look into the expectations of Dutch prisoners about their resettlement, and the experiences of ex-prisoners who return to the Netherlands after detention abroad.

CHAPTER 10

RESETTLEMENT OF DUTCH ex-FNPs

10.1 Introduction

'Support ends at the border and after that there is darkness.'[1]
Chaplain Epafras[2]

This chapter provides evidence that may serve to prove or disprove the third hypothesis: whether consular assistance contributes to the resettlement of Dutch national prisoners. This chapter is based on information about their expectations concerning resettlement when they are still in prison and on interviews with fifteen ex-prisoners who returned to the Netherlands. It further analyses whether consular assistance, as received by Dutch nationals during detention abroad, is in line with activities undertaken by the Dutch authorities to stimulate the resettlement of ex-prisoners.

10.2 Expectations upon return to the Netherlands

A large majority (86%) of the prisoners expect to return to the Netherlands after release from detention abroad. Only 3% of them are planning to stay in the country of detention, another 3% are going to another country and others (8%) do not yet know where to go. This section provides insight into the expectations of prisoners upon release: what are their expected needs, how do they envisage addressing these needs and which reasons do they mention for preventing recidivism.

10.2.1 Expectation figures

Combining the facts that there is an annual flow of around 750 Dutch nationals returning from detention abroad and that 86% of them are planning to return to the Netherlands, around 650 prisoners return annually to the Netherlands.[3] That is on average more than twelve per week. Half of them intend to go to Amsterdam (23%) or Rotterdam (21%). Other popular places are The Hague (7%) and Utrecht (5%). This means that both Amsterdam and Rotterdam receive around three prisoners in their municipality on a weekly basis.

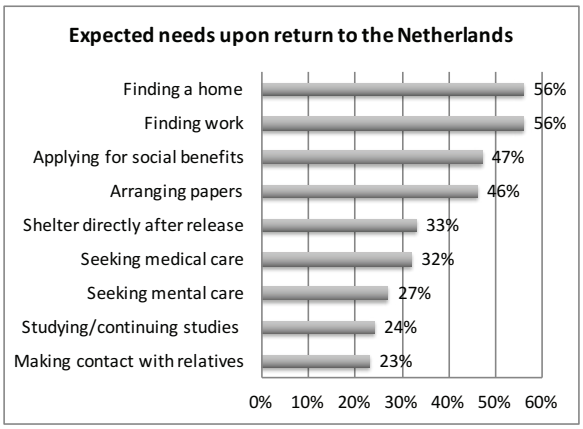
10.2.2 Expectation needs

'Prisoners are often institutionalised and release is experienced therefore as a big shock.'[4]
Volunteer, United Kingdom[5]

1 Original text: *Hulp houdt nu op bij de grens en daarna is het duister.*
2 C6
3 This estimate is based on 2,266 prisoners of whom around 1/3 will be released on an annual basis. This is around 750 ex-prisoners per year x 86% = 645.
4 Original text: *Gedetineerden zijn vaak jarenlange 'institutionlised' en dan is vrijlating een enorme schok.*
5 UK.V1

Dutch prisoners indicated in the questionnaire that they have a long list of needs upon release and return to the Netherlands. It is noteworthy that there are hardly any differences in needs for those detained in or outside the EU or those in pre-trial or post-trial detention. The four most frequently mentioned needs are housing, work, applying for social benefits and arranging official documents. Graph 10.1 below presents an overview of the expected needs of prisoners who are planning to return to the Netherlands, upon their return. When analysing these needs it is important to take into consideration that annually more than 650 prisoners return to the Netherlands.

Graph 10.1 Expected needs upon return to the Netherlands



The graph demonstrates clearly that upon return to the Netherlands more than half of prisoners need to find accommodation. Of this group a large majority have to find a home or shelter directly after their arrival in the Netherlands because they cannot stay with family or friends.

For half of the prisoners, finding a job after release is also a necessity. Since finding a job is not likely to be arranged directly after release it is not surprising that nearly half of the prisoners indicate that they need to apply for social benefits. Arranging official papers is also a necessity for half of them. Other needs are connected to healthcare and establishing contact with family. Nearly one in three prisoners needs to receive medical assistance and a smaller group needs psychological care. Those who are detained outside the EU are significantly more in need of medical treatment compared to prisoners detained in the EU (29% EU vs 39% non-EU).[6] This is likely to be related to the quality of healthcare in countries outside the EU, as mentioned in section 7.2.4. One in four prisoners feels a need to re-establish contact with their family.

As mentioned in section 6.2.1.3, the WODC and the British Home Office studied factors with the highest correlation with reoffending. These common factors are a lack of education,

6 (1)=5 p=.021

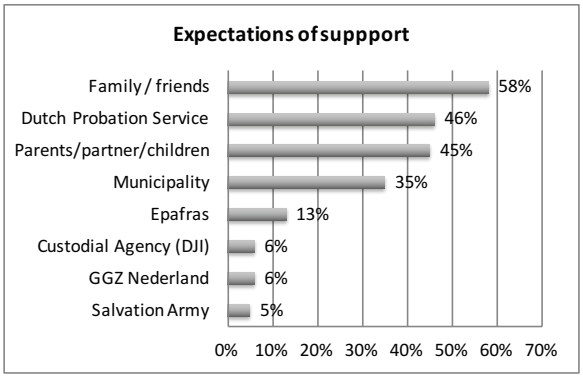
training and employment and problematic thinking and behaviour. Taking into consideration the list of expected needs of prisoners upon return this is a correlation which should not be neglected.

10.2.3 Expectations of support

'I was lucky because I could stay with my mother in the first days after release. Therefore I did not have to find money and food immediately.'[7]
Ex-prisoner, Belgium[8]

Prisoners were asked in the questionnaire the extent to which they are planning to address their needs themselves or if they expect assistance from others. A staggeringly large majority of prisoners (77%) expects assistance from others after release. But who are exactly these 'others'? More than half of them expect support from their inner circle, their family and friends. Nearly half of the prisoners expect support from the Probation Service, while in practice they do not provide assistance. Prisoners also have high expectations with regard to support from municipalities. Those detained outside the EU expect significantly more support than those detained in the EU (75% EU vs 83% non-EU).[9] For those in pre-trial or post-trial detention there are no significant differences in expectations of support.

Graph 10.2 Expectations of support



10.2.4 Recidivism

As seen in section 7.6.4, prisoners are very optimistic about their future. In total, 85% of them do not expect to come into contact with the criminal justice system again. Whether this means that they do not expect to commit another crime in the future is not clear. It is, however, clear that 15% of them already know that they will re-offend after release. Those

7 Original text: *Ik had mazzel dat ik de eerste dagen bij mijn moeder kon logeren. Daardoor hoefde ik niet direct op zoek te gaan naar geld en voeding.*
8 B.EXP1.
9 (1)=4 p=.049

detained outside the EU have even higher expectations of their chance of reoffending than those detained in the EU (14% EU vs 17% non-EU) and sentenced prisoners have similarly high expectations (12% pre-trial vs 17% sentenced). The differences are not significant. There are no figures available on the expectations of prisoners in the Netherlands about their chances of recidivism.

10.2.4.1 Factors that may lead to recidivism

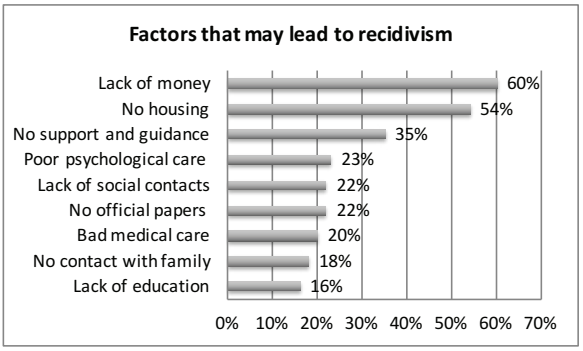
'In the first period after release I slept in my car because I was homeless.'[10]
Ex-prisoner, France[11]

In the questionnaire prisoners were asked to indicate which factor(s) may lead to recidivism in general. The most frequently mentioned factors are: a lack of money, no housing and no support and guidance from others. More than half of them regard a lack of money and no housing as the main reason for reoffending. Other issues mentioned frequently are: poor psychological care; poor family contact; a lack of social contacts; no official papers (no registration with a municipality); poor medical care; no education; addiction; and simply 'no alternative'.

It is striking that these reasons largely overlap with the factors that were identified by a British and Dutch study as correlating highly with re-offending. These factors are a lack of employment (no money), no housing, no support and guidance from others and (difficult) relationships and (problematic) attitudes (lack of social contact). There is, however, one particular need, the need for official papers (22%), which was not mentioned in these studies. It is possible that this issue is less problematic for those who are detained in their own country, but it shows that Dutch FNPs have slightly different or, more likely, additional needs. Exactly half of those detained outside the EU regard no support from others after release as a reason for becoming a recidivist, compared to a quarter of the prisoners detained in the EU (27% EU vs 50% non-EU). This difference is significant.[12] Another significant difference is with regard to the lack of good mental health care. Nearly one third of the prisoners in the EU regard this as a reason for recidivism compared to around one tenth of those detained outside the EU (30% EU vs 11% non-EU).[13] There are no significant differences with respect to pre-trial and sentenced prisoners.

10 Original text: *In de eerste periode sliep in de auto omat ik dakloos was.*
11 F.EXP1
12 (1)=6 p=.014
13 (1)=5 p=.023

Graph 10.3 Factors that may lead to recidivism

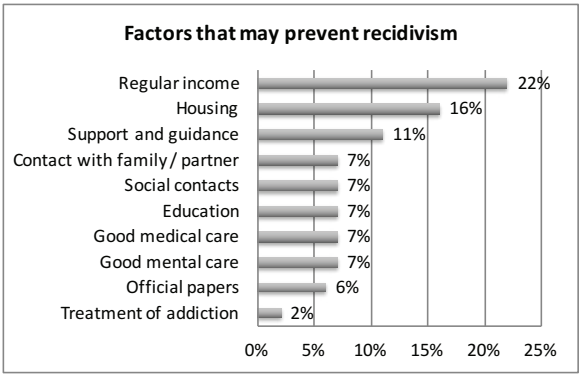


10.2.4.2 General reasons for avoiding recidivism

'If I had not been addicted then it would not have happened.'[14]
Ex-prisoner, Germany[15]

Prisoners were further asked to list the most important reason (or reasons) deterring prisoners in general from recidivism. The three most frequently mentioned answers in order of importance are: a regular income; a home; and support and guidance from others. These issues are exactly in line with the three issues most frequently mentioned by prisoners as reasons, for becoming a recidivist when not addressed properly. The table below provides an overview of the deterrents to avoid recidivism.

Graph 10.4 Factors that may prevent recidivism



There are no significant differences between those detained inside and outside the EU with regard to the reasons to avoid recidivism. Sentenced prisoners mentioned, however,

14 Original text: *Als ik niet verslaafd was geweest dan zou het nooit zo ver zijn gekomen.*
15 G.EXP1

significantly more frequently a regular income[16] (16% pre-trial vs 25% sentenced) and housing[17] (10% pre-trial vs 19% sentenced) than sentenced prisoners.

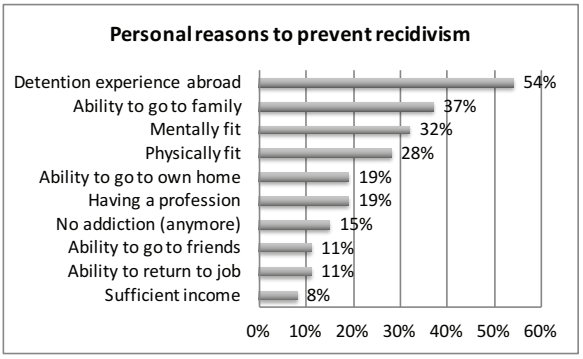
10.2.4.3 Personal reasons to avoid recidivism

'At the beginning it was very tempting to start smuggling again but my detention experience was a good deterrent.'[18]
Ex-prisoner, Brazil[19]

Dutch prisoners were asked to identify factors that would prevent them personally from reoffending. Prisoners could identify one or more reasons that would help avoid recidivism in their own case. Instead of choosing one factor, most prisoners identified a combination. Surprisingly, the most frequently mentioned factor is their detention experience abroad. More than half of the prisoners identified this as the most important factor for not becoming a recidivist. It was mentioned significantly more frequently by sentenced prisoners than prisoners in pre-trial detention (48% pre-trial vs 61% sentenced).[20] The difference can be explained by the fact that sentenced prisoners are more likely to have been in detention for a longer period in comparison to pre-trial prisoners and therefore to have more of an appreciation of the detention experience. The second most frequently mentioned personal reason for avoiding re-imprisonment is the prisoner's ability to return to his or her family. This is the case for more than one third of the prisoners. Other factors mentioned are the prisoner's mental and physical fitness. Prisoners detained in the EU mentioned significantly more frequent as a reason, that they are not addicted any more (17% EU vs 10% non-EU).[21] Only 19% of the prisoners indicated that they could return to their own home, 11% had a job upon return and 8% had sufficient income. This sounds promising but the low numbers show that this is a worrying outcome. It is worrying because it confirms that many prisoners have considerable needs upon return.

16 (1)=6 p=.016
17 (1)=8 p=.006
18 Original text: *In het begin was het erg verleidelijk om weer te gaan smokkelen maar mijn detentie-ervaring hield mij daar van af.*
19 BR.EXP1
20 (1)=7 p=.008
21 (1)=5 p=.026

Graph 10.5 Personal reasons to prevent recidivism



10.3 Resettlement of Dutch ex-FNPs

The previous sections looked into the expectations of Dutch prisoners for their resettlement in the Netherlands. But how do Dutch ex-prisoners experience their return to the Netherlands after detention abroad? Information in this section is based on interviews with ex-prisoners, relatives of prisoners, those who provide assistance, and on talks with representatives of municipalities.

10.3.1 Experiences of ex-prisoners, relatives and others

'I need help but I cannot receive it. Is there no duty to care?'[22]

Ex-prisoner, Morocco[23]

It appears to be very difficult to resettle after detention abroad. Ex-prisoners have to overcome many obstacles, especially in the first period after their release, in order to resettle in society.[24] The obstacles they encounter are mainly connected, as envisaged by prisoners in the questionnaire, with lack of income (work/applying for social benefits); housing and arranging official papers.

The needs that were mentioned in the questionnaire (see section 10.2.2) correlate with the needs expressed in interviews.[25] One important need that was not included in the questionnaire but often mentioned in interviews and cited as a contributing factor to imprisonment, is money.[26] Without money it is difficult to resettle after release. Thinking about returning to society can be frightening for prisoners.[27] Although they might be

22 Original text: *Ik heb hulp nodig maar ik kan geen hulp krijgen. Is er geen zorgplicht?*
23 M.EXP1
24 B.EXP1, BR.EXP1, F.EXP1, G.EXP1, G.EXP2, M.EXP1, US.EXP1, US.EXP2, V.EXP1
25 B.EXP1, BR.EXP1, F.EXP1, G.EXP1-2, M.EXP1, US.EXP1, US.EXP2
26 A.P2, B.P6, F.R2, D.R2
27 A.V1, B.V1, F.V1, S.V1-7, UK.V1

anxious to leave prison, at least life inside the prison walls is simple and straightforward. Going back to 'normal' life implies that they have to arrange many things themselves and that they need to overcome various obstacles.[28] There were also prisoners who feel afraid and worried, especially those who have limited ties to the Netherlands.[29] Ex-prisoners confirmed in interviews that the first weeks and months after release are the most daunting and challenging because in that first period they have to get things back on track.[30] One ex-prisoner explained that he had become very nervous and that he was too scared to let the dog out in the evening.[31]

Expectations that family and friends would provide support, as mentioned in section 10.2.3, were confirmed in interviews. Several ex-prisoners had to go back to their parents or stay with friends although before their detention they had been living on their own.[32] The expectations of prisoners for support from official organisations, like the Probation Service, were not fulfilled (see also section 10.2.3).

For those who were transferred to a Dutch prison to serve the remaining part of their sentence in the Netherlands, were more positive about their resettlement. They experienced support from the prison for their reintegration and were able to adapt slowly to life outside prison by going on weekend leave.[33] However, one ex-prisoner was happy that he was not transferred to the Netherlands because otherwise he would have received a criminal record.[34] According to those who provide assistance, like volunteers and chaplains, the transition from detention to society is too complicated. Prisoners have often become institutionalised and release can be considered as a big 'shock'.[35]

10.3.2 Municipalities and aftercare

Municipalities are, as mentioned in section 6.3.2, responsible for providing aftercare to ex-prisoners who are registered in the central municipal administration (BRP).[36] This includes those who return from detention abroad. However in practice there are two main difficulties. The first is that municipalities are not aware, or not sufficiently made aware about this particular group of prisoners and not well organised to provide support. This has to do with the fact that, as described earlier, municipalities are often not informed about the detention abroad of their resident. The Probation Service can in theory, with the consent of the prisoner, pass on information to his/her municipality and to the mainstream support

28 A.V1, B.V1, F.V1, S.V1-7, UK.V1
29 UK.P4
30 B.EXP1, BR.EXP1, F.EXP1, G.EXP1/2, M.EXP1, US.EXP1/2, V.EXP1
31 US.EXP1
32 B.EXP.1, G.EXP1-2, V.EXP1, US.EXP1
33 F.EXP1, G.EXP1, M.EXP1
34 US.EXP1
35 A.V1, C6, E1-2, UK.V1
36 BRP stands for Basisregistratie Personen, formally known as GBA.

organisations in the Netherlands.[37] But in practice the information is not always passed on, for example when, the date of release was not known beforehand and the prisoner is released earlier than expected.

The second difficulty is that the BRP deregisters persons when they are not present in the municipality for longer than eight months.[38] This means that ex-prisoners, as a result of their detention abroad, are often not registered anymore as resident in their municipality. Without a registration in a municipality it is not possible to obtain a personal public service number (BSN). A BSN is required in order to be permitted to work, open a bank account, to make use of healthcare (a doctor or hospital) and to obtain an identity card or passport.[39] For those without sufficient financial resources, it is also not possible to apply for housing, social benefits[40] or support from aftercare organisations.[41]
In order to reregister in the BRP it is necessary to show the municipality valid proof of a home address. But without accommodation, money and/or support from others this is very difficult. In the event of an ex-prisoner having nowhere to live, he or she can go to one of the four big cities (Amsterdam, Rotterdam, The Hague or Utrecht) which provide shelter to homeless people.[42] In practice, the organisations that provide shelter often have only a limited number of places and limited funds available and it is therefore not easy for this particular group of prisoners to get access.[43]
Once an ex-prisoner manages to register it is possible to apply for social benefits but there is another obstacle. When the application is honoured there are two thresholds of 28 days before receiving (financial) support. The first one is called the 'search-period'[44] where those who apply for social benefits are required to prove that they are seriously looking for a job during a period of 28 days.[45] The second threshold is that it takes another 28 days before the first payment of social benefit is disbursed.[46] This means that ex-prisoners will not have financial means or accommodation in at least the first month after release. Taking into consideration the needs of this particular group and the fact that the majority of them

37 International Office, *Probation doesn't stop at the border – About the work of the International Office, brochure by the Dutch Probation Service* (Reclassering Nederland, Utrecht 2013) p 5
38 www.rijksoverheid.nl/onderwerpen/persoonsgegevens/vraag-en-antwoord/wanneer-moet-ik-mij-in-de-gba-laten-inschrijven-en-uitschrijven.html
39 V.EXP1
40 Wet Werk en Bijstand (Work and Social Assistance Act) (WWB) for those with insufficient financial resources to meet their essential living costs. Social assistance which bridges the period until the person finds a job.
41 O.7
42 M. Tuynman, M. Planije, *Monitor Plan van Aanpak Maatschappelijke Opvang* – rapportage 2011 (Trimbos Instituut, Utrecht 2013) p 1-123
43 O.7
44 Translation of 'zoektijd' or 'inspanningsperiode'.
45 The threshold is for persons below the age of 27. See: www.werk.nl.
46 Article 52 §1 Wet Werk en Bijstand

depend on support from others, this is not a good starting point for successful resettlement in the Dutch society.

10.3.3 Organisations which provide consular assistance

As mentioned in section 6.3.2, once the prisoner is released from detention abroad, he or she is no longer entitled to receive assistance from the three organisations that provide consular assistance during detention. Beside incidental support from the diplomatic missions for organising transportation, prisoners are indeed left alone. This situation is remarkable because officially the Probation Service can play a role in aftercare. Footnote 12 in the former agreement between the government and municipalities to stimulate the resettlement of ex-prisoners includes the opportunity for municipalities to seek support from the International Office with regard to those who return from detention abroad.[47] In the new agreement no reference is made to this at all.[48] Taking into consideration the difficulties which prisoners face upon return to the Netherlands, the general aim of the Probation Service and their expertise, it would be logical that the Probation Service would be pro-active after release.

An active approach after detention also fits with the general objective of the government to reduce recidivism by offering a personalised and comprehensive approach based on cooperation with the prisoner during detention and after release.[49] This approach ensures that the activities carried out by the different organisations before, during and after detention reinforce one another.

10.3.4 Prognosis for recidivism

'I am cross with the Probation Service for their barbaric reception of Dutch ex-prisoners'[50]
Volunteer, United Kingdom[51]

There are no figures available concerning the resettlement of Dutch nationals who return to the Netherlands from detention abroad. The reason is that the Probation Service does not register the re-offending rates of this particular group of ex-prisoners. Nor does the WODC include this group in its annual recidivism research in the Netherlands. However in 2011 the International Office of the Probation Service, in cooperation with Hogeschool Utrecht, began a study into the reasons why Dutch nationals who are detained in a number

47 VNG, Ministerie van Justitie, *Samenwerkingsmodel Nazorg volwassen (ex-)gedetineerde burgers, gemeenten – justitie* (VNG-Ministerie van Justitie, Den Haag 2009) p 13

48 VNG, Ministerie van Veiligheid en Justitie, *'Richting aan Re-integratie - Convenant Re-integratie van (ex-)* gedetineerden' (VNG 10 December 2014)

49 VNG, Ministerie van Justitie, *Samenwerkingsmodel Nazorg volwassen (ex-)gedetineerde burgers - actualisatie 2011* (VNG–Ministerie van Justitie, Den Haag 2011) p 8-9

50 Original text: *Ik ben boos op de Reclassering vanwege het barbaarse ontvangst in van ex-gedetineerden in Nederland.*

51 UK.V1

of countries for drug-related offences desist from crime. The outcome is not yet known.[52] It is therefore not possible to give a prognosis of recidivism rates for those who return from detention abroad. An indication is given, however, by the outcome of the question in the questionnaire as to whether prisoners would expect to re-offend after release. In tota,l 15% of the prisoners indicated this. Although the differences are not significant it is interesting to see that prisoners detained outside the EU assess their chance of recidivism higher than those detained in the EU (14% EU vs 17% non-EU), and the same is true for sentenced prisoners (12% pre-trial vs 17% sentenced).

10.4 Analysis of 3rd hypothesis

There are no figures available about the resettlement of ex-prisoners who return from detention abroad to the Netherlands. It is therefore not possibly to verify whether receiving consular assistance contributes to the successful resettlement of this group of ex-prisoners. The third hypothesis of this thesis can therefore not be upheld on the basis of information in this chapter.

Despite the lack of figures about recidivism it is, however, possible to comment on the resettlement of this particular group. The previous two chapters demonstrated that preparations for release are a weak point in the assistance received by Dutch national prisoners. This chapter clearly shows that prisoners have a long list of needs which they expect to address upon return to the Netherlands. As mentioned in 10.2.2, these needs have a striking correlation with needs that are considered in research literature to be indicators for recidivism. Prisoners also have high expectations of receiving support from others with their resettlement. The fact that nearly half of them expect to receive assistance from the Dutch Probation Service is striking, especially when taking into consideration that the Probation Service does not provide this kind of assistance. The sudden termination in assistance once the prisoner is released from prison is contrary to findings in research literature that the first period after release is regarded as the most difficult period for refraining from reoffending because of the significant needs of ex-prisoners.[53] The likelihood that an ex-prisoner commits a new crime is highest in the first days, weeks and months after release.[54] Studies have shown that providing supervision and services in the period immediately following release is the best way to avoid recidivism.[55] Interviews with ex-prisoners demonstrate that the poor handover of information to municipalities and the lack of guidance in the resettlement process have no positive effect on their resettlement.

---

52 In November 2014.

53 Vera Institute of Justice, *The first month out: post-incarceration experiences in New York City* (Vera Institute of Justice, New York 1999) p 1-35

54 R. Rosenfeld, J. Petersilia and C. Visher, 'The First Days After Release can Make a Difference' (June 2008) Corrections Today p 87

55 National Research Council, *Parole, Desistance from Crime, and Community Integration* (National Research Council, 2007)

This thesis demonstrates that the Dutch authorities overlook Dutch nationals who return to the Netherlands after release from detention abroad. This omission is astonishing, first of all because of the contrast between the investment of time and public money by the Netherlands in this particular group of prisoners during detention abroad and the lack of attention after release, despite a common understanding in the Netherlands that guidance after release is necessary to ensure a smooth transition into society. Secondly, this omission is strange because reduction of recidivism rates is one of the general aims of the Dutch government, to which the Ministry of Foreign Affairs belongs. Therefore one would expect the Ministry to ensure that this element of assistance is addressed adequately during detention and after release. From a preventive point of view this would be beneficial in avoiding ex-prisoners becoming detained again abroad. The third reason is that the issue of resettlement, despite the involvement of the International Office of the Probation Service, is not sufficiently addressed during detention and is hardly existent at all after release. This shortcoming is difficult to understand, given the central aim of the Probation Service, its investments during detention and their awareness of the difficulties which ex-prisoners face upon release. The current situation proves that none of the involved organisations and authorities actually feels responsible for the resettlement of this particular group of prisoners. The fact that ex-prisoners are often automatically deregistered from their municipality creates bureaucratic difficulties and is an additional hampering factor in their reinclusion in society.

In the following chapter the findings of this thesis are used to reflect on the human rights situation of Dutch FNPs and foreign national prisoners in general.

CHAPTER 11

THE HUMAN RIGHTS PROTECTION OF FNPs

'To deny people their human rights is to challenge their very humanity'
Nelson Mandela in speech to American Congress, 26th June 1990

11.1 Introduction

In this chapter the outcomes of this thesis are used to reflect on the situation of Dutch foreign national prisoners from a human rights perspective. It starts by verifying whether their treatment is in compliance with the basic human rights that are formulated in the internationally binding rules that were mentioned in section 3.3 of chapter 3. These include the UN International Covenant on Civil and Political Rights, the European Convention on Human Rights (ECHR), the UN Recommendation on the Treatment of Foreign Prisoners and the Council of Europe Recommendation CM/Rec(2012)12 concerning foreign prisoners.[1] Secondly, it reflects on the extent to which Dutch authorities protect the basic human rights of foreign nationals in their own prison population. Thirdly, it explores whether consular assistance by the Netherlands contains elements to protect the basic human rights of Dutch FNPs. Fourthly, it comments on the implications of the proposed new policy by the Dutch Ministry of Foreign Affairs and it concludes by asking whether it is necessary to codify the right to consular assistance.

11.2 FNPs and human rights

FNPs are in a vulnerable position, as described in chapter 3, which is based on research literature, and confirmed by the findings in chapter 7. As a consequence, they experience disadvantages on multiple levels. Whether these disadvantages can be identified as infringements of their basic human rights is explored in this section. It further looks into the role and responsibilities of prison authorities with regard to the human rights protection of FNPs and the opportunities for consular authorities to protect their nationals in foreign detention through consular assistance. The consequence of imprisonment is the deprivation of liberty. The loss of liberty should, for those who are sentenced, therefore be regarded as the punishment. It is, however, important to underline that although the imprisonment forms an obstacle to the enjoyment of other rights it should not mean that these other rights are also denied.[2] As mentioned by Coyle in his Handbook for prison staff 'one of the greatest tests of this respect for humanity lies in the way in which a society treats those who have broken, or are accused of having broken, the criminal law.'[3] The treatment of marginalised groups such as FNPs is perhaps the ultimate test.

---

1 The text of both recommendations can be found in Annex 11.
2 Principle 5 UN Basic Principles for the Treatment of Prisoners, Rule 57 SMR, Rule 2 EPR
3 Andrew Coyle, *A Human Rights Approach to Prison Management - Handbook for prison staff* (International Centre for Prison Studies, London 2002) p 15

11.2.1 Role of the authorities in the protection of human rights

Respect for the inherent dignity of all human beings is one of the fundamental values of society. The legal protection for the individual against state interference, now termed human rights, used to be largely a matter for domestic law.[4] The excesses of totalitarianism before and during the Second World War led to international determination to cooperate and to establish a shared approach to human rights. A main feature in the establishment of these human rights instruments is the protection for personal integrity and the obligation on states *not* to interfere in the personal life of individuals. At the same time states have the *positive obligation* to ensure that certain preconditions are shaped to enable individuals to exercise their basic human rights (see section 11.2.3). In the case of, it means that states are obliged not to torture prisoners (a negative duty) and to ensure that prisoners are treated humanely and receive a fair trial (a positive duty).[5] Several human rights instruments, such as the ICCPR and the ECHR, are legally binding on all States that have ratified or acceded to them. This means that States are obliged to implement the legally binding rules in domestic law and to ensure that domestic practices are in line with the rules and available to everyone within their jurisdiction. Principles in human rights instruments that are *soft law* must be considered as authoritative too because they have become *customary international law*. Firstly because they were approved by the UN General Assembly; secondly because they are internationally accepted and lastly because they have been largely affirmed in international and regional case law.[6] This statement is reinforced by the fact that decisions by the European, African and Inter-American Courts of human rights are unconditionally and legally binding on the States party to the case in which they are rendered.[7]

11.2.2 Infringements of basic human rights

It is possible that some of the obstacles encountered by FNPs have a direct link with the lack of protection of their basic human rights. This section explores whether in the case of Dutch FNPs human rights instruments that are agreed by the international community in order to protect their rights are adhered to in practice. The research is based on results

4 Jim Murdoch, The treatment of prisoners – European standards (Council of Europe publishing, Strasbourg 2006) p 16

5 Piet Hein van Kempen, 'Positive obligations to ensure the human rights of prisons' in: Peter J.P. Tak, Manon Jendly, eds, *Prison policy and prisoners' rights. The protection of prisoners' fundamental rights in international and domestic law* (Wolf Legal Publishers, Netherlands 2008) p 21

6 Piet Hein van Kempen (2008) p 24, Michael Reilly, *Standards for the Inspection of Prisons in Ireland* (Inspectorate of Prisons, Ireland 2009) p 8

7 Article 46.1 European Convention on Human Rights, Article 68.1 American Convention on Human Rights, Article 30 Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights.

of a questionnaire that was returned by 584 Dutch nationals detained in 54 countries and interviews that were held with over 150 respondents.[8]

11.2.2.1 Information and translation

The recognition of human dignity begins once the person is deprived of their liberty by the national authorities.[9] Surrendering one's freedom and self-determination can be experienced as intimidating and dehumanising.[10] This feeling is likely to be reinforced when one does not understand the language of the country of detention. To enable prisoners to understand the rules and procedures, the authorities are requested to provide them with written information once they are deprived of their liberty.[11] The 14th principle of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles) stipulates that 'a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information…'.[12] Also, the UN Recommendations on the treatment of Foreign Prisoners state that FNPs should be informed, in a language they understand, of the prison regime and regulations.[13] It is promising that the request to provide prisoners with information 'in the most commonly used languages'[14] has been included by the UN Commission on Crime Prevention and Criminal Justice in a draft text for the new SMR.[15] The European Prison Rules and the Council of Europe Recommendation concerning Foreign Prisoners mirror this by providing that 'at admission, and as often as necessary afterwards, all prisoners shall be informed in writing and orally in a language they understand of the regulations governing

---

8 Interviews were held with 48 Dutch FNPs detained in eight countries, 11 ex-prisoners, 15 relatives of prisoners, 22 consular staff in 12 countries, 5 consular staff members at the Ministry of Foreign Affairs, 17 volunteers and 6 staff members of the International Office of the Dutch Probation Service, 6 chaplains and 2 staff members of the religious foundation Epafras and 11 representatives of involved organisations. See for more information about the methodology chapter 2.

9 Since the data for this thesis has been collected from Dutch nationals in foreign prisons, the focus is on the deprivation of liberty in prisons rather than in police cells.

10 Council of Europe, Commentary to Recommendation CM/Rec(2012) 12 concerning foreign prisoners (CM(2012)108 add) p 9

11 Rule 35.1 UN Standard Minimum Rules for the Treatment of Prisoners (SMR), Principle 13 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles)

12 Principle 14 UN Body of Principles

13 4th hyphen UN Recommendations on the Treatment of Foreign Prisoners (1985) (UN Rec(1985))

14 Rule 55.1 draft resolution on the new UN Standard Minimum Rules for the Treatment of Prisoners.

15 On 21st of May 2015 the UN Commission on Crime Prevention and Criminal Justice adopted a draft resolution recommending for adoption by the General Assembly a new version of the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

prison discipline and of their rights and duties in prison'.[16] In short, FNPs should be made aware about their rights and about the detention rules in a language they can understand. Whenever 'necessary', the services of an interpreter should be used.[17]

The daily practice is however different. Given the safeguards enshrined in legislation it is worrying that, as described in section 7.3.1, nearly two-thirds of the Dutch FNPs have not been made aware of the rules and their rights by the prison authorities. In interviews prisoners explained that prison staff were normally not able or not willing to explain the rules in a foreign language. The consequence of this situation is that nearly two-thirds of the Dutch FNPs are not, or are not sufficiently, aware of the prison rules and their rights. The general lack of knowledge among Dutch FNPs places them in a vulnerable position. The absence of information about prison rules and prisoners' rights, in combination with the lack of translation into other languages, demonstrates that prison authorities are not adhering to what is agreed internationally in various human rights instruments.[18] The requirement to use the services of an interpreter whenever necessary seems to be neglected by the prison authorities.

The EU acknowledges the importance of suspected and charged individuals being informed of the rules and their rights in order to avoid the protective value of rights being ineffective in practice.[19] In order to achieve common minimum standards of procedural rights in criminal proceedings the EU adopted Directives, which are legally binding and directly applicable in EU Member States. The aim is to ensure that the basic rights of suspects and accused persons, in particular those of foreign origin, are sufficiently protected. In 2012 the EU adopted a Directive which gives arrested persons the right to receive information about their rights via a *Letter of Rights*.[20] Those who cannot read the information should be informed orally and receive a translation of the *Letter of Rights* in a language they can understand. This is a positive development but research shows that FNPs cannot yet benefit from this *Letter of Rights*.[21] The reason is that this Directive has not been fully implemented by EU States. An explanation for why the provisions of the Directive have not yet been made available in national law or in practice is that the Directive entered into force rather recently.[22]

16 Rule 30.1 European Prison Rule (EPR) and Rule 15.1 Council of Europe Recommendation CM/Rec(2012)12 concerning foreign national prisoners (CoE Rec(2012)12)

17 Rule 51.2 SMR, Principle 14 UN Body of Principles, Rules 38.3 and 59 e) EPR

18 Rule 51.2 SMR, Rule 38.3 EPR

19 Taru Spronken, *EU–Wide Letter of Rights in Criminal Proceedings: Towards Best Practice* (University Maastricht and Bundesministerium der Justiz, July 2010) p 7

20 EU Directive 2012/13/EU on the right of information in criminal proceedings OJ L142

21 Fair Trials International, *Fair Trials International and JUSTICE Response to the Balance of Competences Review on police and criminal justice* (FTI, London 2014) p 8

22 EU Member States have to comply with the Directive by 2 June 2014 (article 11).

The fact that FNPs are insufficiently or not at all informed by prison authorities can have direct consequences for two important entitlements of FNPs. The first one is making contact with their consular authority in the country of detention.[23] The *competent* authority, in many cases the prison authority, should, upon request of the foreign national, contact the consular post to notify them about the detention. The fact that this notification can only be done upon the request of the foreign prisoner implies that the FNP has to be *actively* informed about this entitlement by the competent authorities. The fact that this contact should be established *without delay* means that this should be done as soon as possible after admission. In practice, as mentioned in section 7.3.1.1, only 11% of the Dutch FNPs have been made aware by prison authorities about their consular entitlements and this confirms the lack of information FNPs receive. It is itself an infringement of Rule 36.1 b) of the universally accepted Vienna Convention on Consular Relations.
The second entitlement is the right of FNPs to request a prison transfer to his/her country of origin if the country of detention is part of a multilateral or bilateral transfer agreement.[24] For that reason FNPs should be informed of transfer possibilities. In case the foreign national is an EU citizen and his/her country has implemented the EU Framework Decision 2008/909 (see section 3.3.4), this information is also important because the prisoner may be transferred without his/her consent.

11.2.2.2 Right to assistance of a lawyer and an interpreter

There are legally binding rights to protect prisoners, including foreigners, in the judicial process. These rules are established to ensure that 'all persons shall be equal before the courts'.[25] States are obliged to inform those who are arrested 'promptly and in detail in a language which he understands of the nature and cause of the charge against him'[26] and to give them 'free assistance of an interpreter if he cannot understand or speak the language used in court'.[27] In practice, however, Dutch FNPs experience difficulties in receiving adequate and/or free assistance from an interpreter during criminal proceedings, particularly if they require translation into Dutch or when they require the services of an interpreter (see section 7.3.4). Even in cases when they do receive the assistance of an interpreter during the court case it is difficult for them to understand what is precisely going on in court because they are not acquainted with the judicial procedures, do not grasp

23 Article 36 1 b) Vienna Convention on Consular Relations (VCCR), Rule 38.1 SMR, Principle 16.2 UN Body of Principles, Rule 37.1 EPR, Rules 24.1 and 24.2 CoE Rec(2012)12
24 Rule 37.5 EPR, Rule 15.3 CoE Rec(2012)12
25 Article 14.1 ICCPR, Articles 10 and 11 Universal Declaration of Human Rights (UDHR), Articles 3, 7 and 27 African Charter on Human and Peoples' Rights (Banjul Charter), Articles 3, 8, 9 and 10 American Convention on Human Rights (ACHR), Article 6 European Convention on Human Rights (ECHR)
26 Article 14.3 a ICCPR
27 Article 14.3 f ICCPR

everything that has been said via translation and because the translation is not always in Dutch but in another language like English.
The EU has recognised the existence of these disadvantages and has therefore adopted a Directive on the right to interpretation and translation.[28] This Directive gives suspects and/or accused persons the right to receive interpretation in their own language in all EU courts throughout criminal proceedings and when receiving legal advice. As with the earlier mentioned EU Directive to provide information about rights, this Directive has not yet been fully implemented. As a result, many FNPs are denied access to an interpreter or have no translations of key documents.[29] This situation shows that EU Member States are not yet able to adhere to their own rules.

Prisoners should receive 'adequate time and facilities to prepare for the defence and to communicate with a lawyer of their choice'[30], and be able 'to defend themselves in person or through a lawyer and to have (free) legal assistance'.[31] These safeguards are, however, according to Dutch FNPs, not well adhered to in practice (see 7.3.3). Although most Dutch FNPs have been in contact with a lawyer they are often concerned about the quality of the support and the communication difficulties they experience. Sometimes the first meeting with the lawyer takes place in the courtroom, which leaves insufficient time for an adequate preparation of the defence. So, the lack of knowledge and understanding of legislation, legal procedures and lack of proper legal support places FNPs in a disadvantaged position. Studies further demonstrate that foreigners receive differential treatment in courts.[32] For example in the Netherlands are those with a foreign appearance and who are unable to speak the language receiving more commonly a prison sentence compared to nationals.[33] Against this background it is possible to state that despite the opportunities, which FNPs in general receive for legal assistance and interpretation in court, they are not 'equal before court'. This means that the basic rights of FNPs with regard to a fair trial are not adequately protected and therefore infringed.

28 Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings OJ L280

29 Fair Trials International, *Fair Trials International and JUSTICE Response to the Balance of Competences Review on police and criminal justice* (FTI, London 2014) p 8

30 Article 14.3 b ICCPR, Rule 23.2 EPR

31 Article 14.3 d ICCPR, Rule 93 SMR, Rule 23 EPR, Rule 21 CoE Rec(2012)12

32 UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009) p 81 / D. Steffensmeier and Stephen Demuth, 'Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?' (2000) American Sociological Review Vol. 65 No. 5 p 705

33 H. Wermink, J. de Keijser and P. Schuyt, 'Verschillen in straftoemeting in soortgelijke zaken. Een kwantitatief onderzoek naar de rol van specifieke kenmerken van de dader' (2012) Nederlands Juristenblad edition 11 p 726-733

11.2.2.3 Prohibition of ill-treatment

The fact that 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'[34] and that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'[35] is reflected in many international human rights instruments.[36] Whether a prisoner feels treated humanely or not depends on a range of different factors. For that reason several aspects have been selected to measure whether prison authorities treat prisoners humanely.

The first aspect is safety. This thesis shows clearly that the majority of Dutch FNPs do not feel safe in prison. Those detained outside the EU feel significantly more unsafe. In interviews prisoners explained that they have to be cautious and to watch out for others, including prison staff, in order to survive. Whilst the questionnaire did not contain questions about torture and other forms of ill-treatment, the topic came up in interviews and letters. Several Dutch FNPs indicated that they were physically and psychologically maltreated by police officers and prison staff. The practices included, for example, the use of electric shocks during interrogations by the police. These practices can, according to the jurisprudence of the ECtHR amount to torture and other forms of ill-treatment.[37]

Discrimination is another aspect of treatment. According to international human rights instruments 'all persons are equal before the law (…) and discrimination, including on the ground of nationality, is prohibited'.[38] The daily reality is however completely different. A staggering half of the Dutch FNPs feel they have been discriminated against (see section 7.2.3). Those detained outside the EU feel they have been more significantly discriminated against than those within the EU. It is interesting to note that irrespective of the country of detention, two-thirds of the Dutch FNPs indicated that the main source of discrimination was their foreign nationality. Other less frequently mentioned reasons for discrimination were colour of skin, religion and type of crime.

The third aspect is communication. The interaction between prison staff and prisoners has a direct consequence for how prisoners feel and how they are treated. To this end prison management is requested to encourage staff to communicate in a constructive manner with prisoners.[39] Dutch FNPs are however negative about the daily interaction and communication with prison staff. The language barrier is according to them an important reason for the hampered relationship (see section 7.5.3). It is interesting that Dutch FNPs

---

34 Article 10.1 ICCPR

35 Rule 7 ICCPR

36 Article 5 UDHR, Article 6 Inter-American Convention to Prevent and Punish Torture, Article 2 ECHR, Rule 1 SMR, Rule 1 EPR, Rule 3 CoE Rec(2012)12

37 Lyapin v. Russia (Application no. 46956/09) ECtHR 24 October 2014, Korobov v. Ukraine (Application no. 39598/03) ECtHR 21 October 2011, Shishkin v. Russia (Application no. 18280/04) ECtHR 7 October 2011

38 Article 26 ICCPR, Article 7 UDHR, Article 1 Convention against Torture, Rule 6.1 SMR, Rule 13 EPR, Rule 7 CoE Rec(2012)12

39 Rule 48 SMR, Rule 74 EPR, Rule 38 CoE Rec(2012)12

feel less negative about their interaction with fellow prisoners. An explanation might be that prison populations often consist of FNPs and they speak different languages. Dutch FNPs revealed in interviews that they seek each other's company (and protection) and that of other foreigners. Whether there is discrimination with regard to the participation of FNPs in prison activities is not clear. Half of the Dutch FNPs that participated in this study indicated that they were engaged in work or other activities like education. This means that the other half is not. The main reason seems to be a general lack of activities in prison rather than FNPs being excluded.

The above discussion allows us to draw the conclusion that prison authorities are not sufficiently ensuring that the right of FNPs to be treated humanely is fully respected. To what extent this differs from the treatment of other prisoners has not been studied. Nevertheless it is clear that prison authorities do not pay sufficient attention to the difficulties FNPs face as a result of their foreign nationality, language barriers and distance from relatives. This leads to the conclusion that the basic human rights with regard to the treatment of FNPs are often trespassed. Furthermore it is important to mention that humane treatment may also depend on issues which those not imprisoned might describe as 'little things' and which are not specifically enshrined in human rights instruments. For example: being called by the first name; receiving personal attention; or a small favour from a member of the prison staff. Prisoners very often feel that they are reduced in prison to being treated as a number rather than an individual human being. This situation is one of the explanations for the positive impact of being visited by someone from the Netherlands (see section 11.4.5).

11.2.2.4 Prison conditions

Prison authorities are requested to provide adequate prison conditions. The accommodation 'shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation'.[40] It is however an understatement to claim that prison conditions worldwide are generally poor. The ECtHR has ruled in certain cases that the prison conditions amounted to degrading treatment.[41] Many Dutch FNPs are detained in cramped conditions. More than half of those detained outside the EU have less than 4 square metres at their disposal, which is against European standards (see 7.2.1.1).[42] It is further important to take into consideration that the prison conditions do not only vary by country but also by prison and that this situation also applies to other prisoners. According to the best available figures, half of the prisons

40 Rule 25 UDHR, Rule 10 SMR, Rule 4 EPR, Rule 18.1 CoE Rec(2012)12

41 For example: Kalashnikov v. Russia (Application no. 47095/99) ECtHR 15 June 2002, Modârcâ v. Moldova (Application no. 14437/05) ECtHR 10 May 2007, Vasilescu v. Belgium (Application no. 64682/12) ECtHR 25 November 2014

42 UN Committee Against Torture, Concluding observations on the fifth periodic report of Estonia (CAT/C/EST/CO/5 2013) p 6 / Council of Europe, *Commentary to Recommendation Rec(2006)2 on the European Prison Rules* (Council of Europe Publishing, Strasbourg 2006) p 6

in the world are overcrowded.[43] This situation undermines the basic human rights of prisoners.

11.2.2.5 Contact with family

According to international human rights instruments, no one shall 'be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence'[44] and everyone should receive protection of the law against such interference or attacks'.[45] In a prison setting, this requires that the authorities provide facilities to ensure that prisoners can make and maintain contact with their families. Prisoners are therefore 'allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits'.[46] For FNPs, making and especially maintaining contact with their families is difficult due to the physical distance and the financial costs involved. Although most Dutch FNPs are able to make contact, they expressed dissatisfaction about the possibility of maintaining contact and the lack of privacy. Dutch nationals in pre-trial detention in Germany explained in interviews that they were obliged to speak in German with their relatives. These visits took place in the presence of a member of staff. This practice is not in line with international regulations.[47] The general application of this rule without the opportunity to consider the individual case is considered as an infringement of the rules. The European Court of Human Rights has confirmed this in the case *Nusret Kaya and Others v. Turkey*.[48] Two-thirds of the Dutch FNPs do not receive visits from their families and friends. For many prisoners the lack of regular contact with their loved-ones is one of the most difficult aspects of their detention.

Although Dutch FNPs are enabled to make contact with their families, the prison authorities do not or do not sufficiently take into consideration the specific difficulties they face while making contact. The Council of Europe therefore requests States, in order to alleviate the potential isolation of FNPs, to pay special attention to the 'maintenance and development of their relationships with the outside world' and to ensure that they have 'equivalent access' to communication facilities compared with other prisoners.[49] With regard to visits, the Council of Europe prescribes that visits from relatives who live abroad 'shall be arranged in a

---

43 The occupancy figures which the World Prison Brief receives from the prison authorities are a calculation of the total number of prisoners per country divided by the official prison capacity. www.prisonstudies.org/highest-to-lowest/occupancy-level

44 Articles 17.1 and 23.1 ICCPR, Articles 12 and 16.3 UDHR

45 Article 17.2 ICCPR

46 Rule 37 SMR, 5th hyphen UN Rec (1985), Rule 24 EPR, Rule 22 CoE Rec(2012)12

47 Article 27 ICCPR 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'.

48 Nusret Kaya and Others v. Turkey (Applications no 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08) ECtHR 8 September 2014

49 Rule 22.1 and Rule 22.3 CoE Rec(2012)12

flexible manner, which may include allowing prisoners to combine their visit entitlements'.[50] A flexible visiting regime would be helpful, as illustrated by the story of an Italian prisoner in a Dutch prison. His elderly parents, who travelled by car from Italy to the Netherlands to visit him, were denied a visit due to their name having been misspelt in the visiting book.[51] Clearly if there were not legally binding rules, there were certainly compelling humanitarian reasons for the Dutch prison authorities to show more flexibility and understanding in this case rather than make the parents wait another week in order to visit their son for one single hour. It is this humanitarian approach that prison authorities around the world so often lack and, as evidenced by the present research, the FNPs, because of their vulnerable status, suffer from this more acutely than other prisoners.

11.2.2.6 Medical care

Prison authorities are obliged to provide prisoners with adequate medical care and to ensure that prisons have the services of at least one qualified medical officer.[52] There is, further, a general principle that the quality of care should be equivalent to the care that is provided for the general public in the country.[53] The medical service should therefore be organised in 'close relationship to the general health administration in the community'.[54] Dutch FNPs have access to medical care but they were not positive about the quality of the medical care they receive. This is especially the case for those detained outside the EU. The lack of proper medical care is one of the main concerns of Dutch FNPs and they claim that their health deteriorates as a result of the detention. The medical care that they receive is apparently inadequate. It is therefore possible to conclude that the principle of 'equivalence of care' is not adhered to in practice. To facilitate the special needs of FNPs the Council of Europe requests of prison authorities that attention be paid to the use of an interpreter and to cultural sensitivities when providing medical assistance.[55]

50 Rule 22.5 CoE Rec(2012)12

51 Femke Hofstee-van der Meulen, 'Gedetineerde buitenlanders in Europees perspectief' in: 'E.R. Muller, P.C. Vegter, *Detentie – Gevangen in Nederland* (Kluwer, Alphen aan de Rijn 2009) Inspectie Sanctietoepassing, *Voeding ingeslotenen* (ISt, 2011) p 11

52 Rules 22, 25, 26 SMR, Rules 39-47 EPR, Rule 31 CoE Rec(2012)12 See also the dissertation of Mireille Hagens, *Toezicht op menswaardige behandeling van gedetineerden in Europa – Een onderzoek naar de verhouding tussen het EHRM en het CPT bij de effectuering van het folterverbod* (Wolf Legal Publishers, 2011) p 220

53 Rule 22.1 SMR, Rule 40.1 EPR, Rule 10 Council of Europe Recommendation No. R(87)71 concerning the ethical and organisational aspects of health care in prison

54 See also the Health In Prisons Programme (HIPP) of the UN World Health Organisation (WHO) which facilitates links between prison health and public health systems to improve the quality of medical care in prisons at: www.euro.who.int.

55 Rule 31.4 and Rule 31.5 CoE Rec(2012)12

11.2.2.7 Religious care

The right to practice one's religion or belief normally requires that the authorities do not interfere with an individual's private life.[56] In prison, the authorities are, however, expected to take an active approach by providing places for worship, services and personal visits by religious representatives and by taking into consideration religious dietary requirements.[57] Dutch FNPs are in practice able to attend religious services and to have personal conversations with religious persons in prison. This means prison authorities provide prisoners with opportunities to worship. Prison authorities, in particular those outside the EU, do not, however, sufficiently take into consideration the religious dietary requirements of prisoners, such as providing Halal food to Muslim prisoners.

11.2.2.8 Resettlement

According to international human rights instruments 'reformation and social rehabilitation' of prisoners are 'the essential aim of their treatment'.[58] The resettlement of FNPs is however a topic which prison authorities hardly address. This research shows that nearly two thirds of the Dutch FNPs do not receive support from the prison authorities to prepare for their resettlement. Those detained outside the EU receive significantly less support and fewer opportunities to participate in reintegration activities than those detained in the EU. As a result many prisoners are worried and feel unprepared for their release (see section 7.6). The present research shows that only 4% of the Dutch FNPs are granted prison leave. This leave is mostly used to make practical arrangements for after release. This reality is strong evidence of the little regard that prison authorities have for the resettlement needs of Dutch FNPs, as if resettlement is not their responsibility because the prisoner will return to another society. Prison authorities are clearly unaware that even simple things such as making a telephone call or making a copy of an official document are difficult to achieve in a prison setting, especially when you are a foreigner whoneeds to obtain information from abroad. This situation infringes the basic human rights of FNPs. It is, further, not in line with the purpose and justification of a prison sentence, which is to protect society against crime by ensuring that all prisoners are enabled to lead a law-abiding and self-supporting life after release.

11.2.2.9 Alternatives to custodial sentences

Although the topic 'alternatives to custodial sentences' falls outside the scope of this thesis, (this research is focussed on those in detention) is it important to underline that detention should only be used when 'strictly necessary' and as a measure of 'last resort'.[59] This implies

---

56 Article 18 UDHR, Article 18.1 ICCPR

57 Rule 41 SMR, 3rd hyphen UN Rec (1985), Rule 29 EPR, Rule 30 CoE Rec(2012)12

58 Article 10.3 ICCPR, Rules 58 and 80 SMR, Rules 6 and 107 EPR, Rules 9 and 29.2 CoE Rec(2012)12

59 4th hyphen EPR, Rule 5 CoE Rec(2012)12

that FNPs should be considered for the same range of non-custodial sanctions or measures as national offenders.[60] Studies that have been mentioned in section 3.4.1.1 show, however, that FNPs are in practice not considered for alternative sentences, for example because they do not have a permanent home address in the country of detention and therefore the judges regard the risk of fleeing to another country as high. This situation is, however, not in line with the request from the Council of Europe that foreign status in itself be not considered 'sufficient to conclude that there is a risk of flight'.[61] The fact that FNPs are routinely excluded from consideration for non-custodial sanctions and measures should be considered as an infringement of basic human rights. The fact that non-custodial sanctions and measures can be executed in another state according to international agreements is a good alternative to pre-trial detention.[62]

11.2.2.10 Conclusions

The research carried out within the remits of the present thesis reveals a number of significant shortcomings in the treatment of Dutch FNPs, which allows one to conclude that several basic human rights are not sufficiently protected by the authorities of the country of detention. This leads to the conclusion that States are not able to fulfil their international positive obligations. The present research has established that the following nine main human rights of Dutch FNPs have been infringed:

60 2nd hyphen UN Rec (1985), Rules 4 and 14.1 CoE Rec(2012)12, CoE, Commentary Rec(2012)12 p 7

61 Rule 13.2 b) CoE Rec(2012)12

62 European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (1964, CETS 051), the EU Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and the EU Council Framework Decision 2009/829/JHA.

Infringements of the basic human rights of Dutch FNPs

1. Right to receive information about prison rules and the rights and duties of prisoners in a language the prisoner can understand;
2. Right to be informed about consular entitlements;
3. Right to be equal before the courts and to be informed promptly and in detail in a language the prisoner can understand about the charges;
4. Right to receive free assistance of an interpreter if s/he cannot understand or speak the language used in court;
5. Right to receive legal assistance;
6. Right to be treated with humanity and with respect for the inherent dignity of the human person;
7. Right not to be discriminated against (including on grounds such as national origin and language), and to receive effective protection against discrimination;
8. Right to have no unlawful interference with his/her privacy, family and correspondence;
9. Right to receive treatment that is aimed at reformation and social rehabilitation.

Although the reasons behind the failure of States to fully respect the rights of FNPs was not the focus of the present research, the depth of the study nevertheless allow some suggestions to be made as to the causes of the failure. Firstly, the prison authorities do not sufficiently appreciate the scale of the impact that being unable to communicate in the language of the country has upon those in foreign detention. The present research indicates that lack of language skills is the root cause of many problems and human rights infringements, such as an inadequate understanding of prison rules and prisoners' rights, poor interaction with prison staff, being discriminated against, lack of access to legal and other services and feelings of isolation. The prison authorities should therefore inform prison staff about the particular challenges which FNPs face and teach them ways to tackle their specific needs.

Secondly, prison authorities fail to recognise FNPs as a homogenous group with similar needs, akin to such other groups as female prisoners and juveniles. Arguably this failure results from the fact that FNPs represent a mix of different nationalities, different languages, religions and cultures and, also different appearances. This makes it difficult for the prison authorities to view them as one, vulnerable group. The diversity of the FNPs also makes it complex for the prison authorities to take into consideration their specific needs and to give full effect to the specific human rights of FNPs.

Thirdly and finally, the law enforcement authorities often have inadequate knowledge and understanding of FNPs' basic human rights, which significantly inhibits and even prevents their proper implementation. Law enforcement staff should, however, be informed about

human rights instruments and provisions for special groups of prisoners.[63] The research by Bhui in six London prisons is an example of the lack of effective implementation of international human rights instruments by prison authorities. This research established that despite the large foreign national populations in all six prisons, none of the prisons had a coherent strategy to meet the particular needs of FNPs.[64] Bhui concluded that the other essential aspects of the care of FNPs remained marginal and dependent on the energy and commitment of individual prison staff, who commonly had little time or dedicated resources.[65] The conclusion of Bhui can be confirmed by the outcome of this thesis. Prisons do not have special FNP strategies and there is no guidance from the prison administration to ensure that the specific needs and rights of FNPs are addressed. An example of this was the situation in Her Majesty's Prison Maidstone in the south of the United Kingdom. This prison was a designated 'foreign nationals' prison but no translations of the prison rules were available.

11.2.3 Responsibility of States

The previous section shows clearly that a number of basic human rights of foreign nationals are routinely violated during their detention abroad. This leads to the question of whether the country of detention can and should be held responsible for failing to provide sufficient protection. The next question is to what extent foreign authorities can or should play a role in providing protection and ensuring that the basic human rights of their nationals detained abroad are protected. This section does not pretend to explore in detail the issue of state responsibility because it cannot do justice to the complexity of the topic. It is, however, an attempt to touch upon the issue of state responsibility.

The state in itself is an abstraction that does not act or fail to act. States carry however responsibility for the actions of law enforcement officials, such as police and prison staff. As mentioned in section 11.2.1, states have committed themselves to fulfil not only national but also international legal obligations to respect the human rights of those on their territory. Consequently, a state can be held responsible for human rights violations within its territory and subject to its jurisdiction.[66]

Before embarking upon this issue it is pertinent to explore why states should acknowledge that it is their duty to change the attitude towards FNPs and ensure that their rights are respected. Prison authorities have these duties both to the foreign nationals in their prison population and to authorities representing their interests.[67] Prisons are institutions that should contribute to the public good, like schools and hospitals. Those inside prison should

63 Rule 10.1 Convention Against Torture, Rule 47 UN Standard Minimum Rules for the Treatment of Prisoners, Rule 83 European Prison Rules, Rule 39.5 CoE Rec(2012)12 concerning Foreign prisoners

64 Hindpal Singh Bhui, *Race & Criminal Justice* (SAGE Publications Ltd, 2009) p 165

65 Ibidem p 166

66 Article 2.1 ICCPR

67 Commentary Rec(2012)12 p 13

be there as punishment and not *for* punishment. This means that, as mentioned before, the deprivation of liberty should be the punishment and prison authorities should therefore continue to respect the other basic human rights. By ratifying international and regional human rights treaties, conventions, covenants and rules, States have morally and legally committed themselves to allow all rights to everyone present within their territory on equal footing. This includes the national and foreign prisoners in its prisons. It is about non-discrimination and equal treatment in the fullest sense, which means that FNPs sometimes require special treatment in order to be put on an equal footing with others.

11.2.3.1 National

The Ministry that is responsible for the penitentiary institutions can be held responsible for what it does or, perhaps more applicable in the case of FNPs, fails to do. Parliamentary and media control are two powerful factors that can hold the Minister and/or the government accountable for adherence to the international and national prison rules and standards. Reports by inspection bodies and human rights organisations about the treatment of foreign prisoners can also lead to discussions in parliament.[68] The media can pick up stories and can fuel the discussion. As a result, the Minister can be requested to develop or change policies to ensure that the basic rights of foreign national prisoners are respected and that policies are effectively implemented (see section 11.3 for the situation in the Netherlands). Not only the Minister responsible for the penitentiary institutions but also the Ministry of Foreign Affairs can be held accountable for not providing sufficient consular assistance to nationals in foreign detention, as was the case in the British House of Commons in 2014.[69] It should be noted that, especially during election periods, the call for better protection of the human rights of those who are accused or sentenced for a criminal offence is not popular topic.

National monitoring mechanisms

In many countries the penitentiary act or legislation prescribes, conforming with international human rights instruments, that all penitentiary institutions are subject to regular government inspection and independent monitoring.[70] The aim of this oversight is to assess whether the penitentiary institutions are administered in accordance with the requirements of national and international law. The inspection and monitoring bodies are expected to make their findings public. Individual prisoners are furthermore entitled to

68 Debate in the Dutch Parliament on Dolmatov case in the Netherlands on April 18, 2013.

69 Foreign Affairs Committee*, Support for British nationals abroad: The Consular Service* (House of Commons, Fifth Report of Session 2014-15) p 49-58

70 Rules 36.2 and 55 SMR, Basic Principle 9 and Rule 92-93 EPR

make requests or complaints to the director of the institution and/or an authority which represents them.[71]

States that ratify the UN Optional Protocol to the Convention Against Torture (OPCAT) are requested to appoint or to designate a National Preventive Mechanism (NPM) to prevent torture and other forms of ill-treatment in places where people are deprived of their liberty on the State's territory.[72] The NPMs are expected to publish annual statements about the situation in places where people are deprived of their liberty, including whether torture and ill-treatment can be prevented.[73] The establishment of national monitoring mechanisms is an innovative way to ensure that States are continuously reminded at national level of shortcomings and what should be achieved to prevent torture and other forms of ill-treatment. In several NPM reports the prison authorities have been reminded about the difficulties which FNPs experience. For example with regards to the lack of translation of the prison rules and prisoners' rights[74] and the shortage of interpreting services in prison and in court.[75] For that reason the Norwegian NPM advised the prison authorities to pose newly admitted prisoners with insufficient Norwegian language skills the question 'do you need an interpreter?' in several languages. Prison staff should register information about the offer and usage of an interpreter.[76] The Macedonian NPM advised the authorities to register in the files of FNPs whether they had been informed and enabled to make contact with their diplomatic mission.[77] The restriction of access to contact with the outside world is a topic that is mentioned in certain reports.[78] Prisoners in Georgia are allowed

71 Rule 36 SMR, Rule 70 EPR, UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

72 In April 2015 in total 60 States designated or appointed a National Preventive Mechanism (NPM).

73 The NPM-reports are available at: www.ohchr.org/EN/HRBodies/OPCAT/Pages/AnnualreportsreceivedfromNPM.aspx

74 NPM Albania, *Annual report 2013* (Republic of Albania People's advocate) p 60, NPM Armenia, *NPM report* (Human Rights Defender, Yerevan 2009) p 20, Norwegian NPM, *SOM The Parliamentary Ombudsman's National Preventive Mechanism Doc 4.1 (2014-2015)* (Parliamentary Ombudsman for Public Administration Norway, 2015) p 24, NPM Slovenia, *Implementation of the duties and powers of the NPM in 2013* (Human Rights Ombudsman of the Republic of Slovenia, June 2014) p 87, 105, NPM Ukraine, *Monitoring of custodial settings in Ukraine: Status of implementation of the national preventive mechanism Report for 2013* (Parliament Commissioner for Human Rights, Kyiv 2014) p 106, NPM Ukraine, *Monitoring of custodial settings in Ukraine – Report for 2013* (Parliament Commissioner for Human Rights, 2014) p 106

75 NPM United Kingdom, Monitoring places of detention *Fourth Annual Report 2012-12* (NPM, March 2014) p 20, Bulgarian NPM, *Annual Report of the Ombudsman of the Republic of Bulgaria in the Capacity of National Preventive Mechanism* (Ombudsman of the Republic Bulgaria, 2013) p 42

76 NPM Norway, *Report 2014-2015* p 44

77 NPM Macedonia, *Annual report 2012* (Ombudsman National Preventive Mechanism, May 2013) p 284

78 NPM Ukraine, *Report for 2013* (Parliament Commissioner for Human Rights, Kyiv 2014) p 108,

to make international phone calls only on two days per week.[79] For that reason the Georgian NPM regarded the authorisation of video visits through audio-visual contact as a positive development.[80] Problematic interaction between prison staff and FNPs as a result of communication difficulties has also been noticed.[81] The practice that FNPs are often excluded from prison leave and early release was confirmed in the report by the Danish NPM.[82] The consequence is that it is even harder for FNPs to prepare for their return and to renew for example their residence permit.[83] Whether or not the prison administration will pick up on the comments and recommendations made by NPMs concerning FNPs is not clear. It is, however, promising that the Norwegian NPM informed the prison authorities in their first annual report that the conditions faced by vulnerable groups such as FNPs will become their focus of attention. The NPM announced that it is starting to verify which measures are being taken by the prison authorities to counteract the harmful effects of their isolated situation.[84]

11.2.3.2 International

Countries can also be held responsible internationally when they fail to implement effectively the international human rights treaties which they have ratified. The 168 countries that ratified the ICCPR are for example requested to submit reports to the UN Human Rights Committee (CCPR). 'Regularly', usually every four years, these countries have to report in writing on the extent to which the articles of the ICCPR are implemented nationally. The Human Rights Committee examines each report and addresses its concerns and recommendations to the State party in the form of 'concluding observations'.[85] Until now the situation of FNPs has not received special attention in these reports.[86] Yet the CCPR has made general remarks about: poor detention conditions; overcrowding and lengthy pre-trial detention; poor access to justice; and excessive use of force by law enforcement officials.[87]

---

79 NPM Georgia, *Human Rights in Closed Institutions Report of National Preventive Mechanism of Georgia* (Public Defender (Ombudsman) of Georgia, 2013) p 23

80 NPM Georgia, p 22

81 NPM Ukraine, p 108

82 NPM Denmark, *Annual report 2013* (Danish Parliamentary Ombudsman, Copenhagen 2014) p 61

83 Le Contrôleur Général des Lieux de Privation de Liberté, *Annual report 2013 (*CGLPL, France 2014*)* p 71, 172

84 NPM Norway, *SOM The Parliamentary Ombudsman's National Preventive Mechanism Doc 4.1 (2014-2015)* (Parliamentary Ombudsman for Public Administration Norway, 2015) p 20

85 The recommendations of the Human Rights Committee are not enforceable upon States.

86 http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx

87 CCPR, *Concluding observations on the initial report of Haiti* (CCPR, 21 November 2014) p 5, CCPR, *Concluding observations on the second periodic report of Burundi* (CCPR, 21 November 2014) p 5-6, CCPR, *Concluding observations on the second periodic report of Malta* (CCPR, 21 November 2014) p 4-6, CCPR, *Concluding observations on the initial report of Montenegro* (CCPR, 21 November 2014) p 4-6, CCPR, *Concluding observations on the fourth periodic report of Georgia* (CCPR, 19 August 2014) p 4-5

In order to create a better understanding of cultural differences and to ban racial profiling, the CCPR advised the United States of America and Japan to train law enforcement staff on these issues.[88] In addition to the reporting procedure, the Human Rights Committee can also consider inter-state complaints.[89] This means that State parties are allowed to complain to the Human Rights Committee about another State party that is not adhering to the rules. This procedure has not yet been used. Also individuals can, when the State has ratified the First Protocol of the ICCPR, file a complaint against a State. In order to do so the individual has to comply with formal requirements of admissibility, for example exhausting first all domestic remedies.[90] The decisions by the CCPR in individual complaints are an authoritative interpretation of the ICCPR; they can contain recommendations to the State party but they are not legally binding upon the States. Except for complaints by individuals about *non-refoulement*, there were no complaints by former FNPs about inhumane treatment and conditions.

States that have ratified the Convention against Torture are obliged, as with the ICCPR, to submit every four years a report to a committee (the Committee Against Torture, CAT). Additionally, the CAT can receive reports about the State from other parties: (non-) governmental (human rights) organisations, academics and legal practitioner associations. The reports are periodically discussed in the presence of the State and afterwards the CAT publishes its 'concluding observations' with recommendations to the State on how to improve the implementation of human rights. The situation of FNPs has on occasion been mentioned in reports that have been submitted to CAT and in the CAT 'concluding observations'. One such instance was a remark by the CAT about the practice in Estonia that prisoners wear name badges that include information about their proficiency in the Estonian language. Some members of CAT considered this to be discriminatory and humiliating.[91] The reason why they thought so was unfortunately not mentioned. One could argue that prison staff and FNPs consider this as a practical way to provide/receive special support. In the concluding observations CAT frequently reminds States what they should do or refrain from doing with regard to prisoners. States should for example 'take effective measures to guarantee that all persons deprived of their liberty are afforded, by law and in practice, all the fundamental legal safeguards from the outset of their detention'. In addition to the reporting procedure, the CAT can also consider individual complaints or communications from individuals claiming that their rights under the Convention have been

88 CCPR, *Concluding observations on the sixth periodic report of Japan* (CCPR, 19 August 2014) p 7, CCPR, *Concluding observations on the fourth periodic report of the United States of America* (CCPR, 22 April 2014) p 4

89 Article 41 ICCPR

90 Several complaints brought to the CCPR were submitted by, or on behalf of, (ex-) prisoners. In April 2015 the CCPR had received 1396 complaints. In 850 cases the CCPR decided that there was a violation of the ICCPR and 388 cases were pending. www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx

91 Committee Against Torture, Concluding observations on the fifth period report of Estonia (CAT/C/EST/CO/5 2013) p 7

violated[92], undertake inquiries[93] and consider inter-state complaints.[94] Over the years, several individual FNPs have submitted complaints to the CAT. Most of them are about their disagreement with the fact that they are or will be returned/expelled/extradited to another State where there is 'substantial grounds for believing that (they) would be in danger of being subjected to torture'.[95] In a response to a complaint from a US-citizen who had been detained in Turkmenistan it was confirmed that FNPs are entitled to notify their consular authorities.[96] Since the CAT inquiry procedure is confidential, it is not possible to verify whether the situation of FNPs has been monitored.

In 2006 the UN further created the Universal Periodic Review (UPR) to provide insight into the human rights situation in countries.[97] The UPR gives States the opportunity to declare what actions they have taken to improve human rights situations in their countries and to fulfil their human rights obligations. In that same year the UN OPCAT[98] entered into force, which led to the establishment of the Subcommittee on Prevention of Torture (SPT) that is mandated to visit places where persons are deprived of their liberty in countries that ratified OPCAT. The aim of the SPT, like the NPM, is to prevent torture and other forms of ill-treatment. The SPT visit reports are confidential but can, with the approval of the State, be published. In the annual report of 2013 the SPT described FNPs as a 'vulnerable' group'. The European equivalent of the SPT, the European Committee for the prevention of Torture (CPT), has described the difficult situation of FNPs in several reports. The CPT's comments have been mentioned frequently in chapter 3. The European Court of Human Rights (ECtHR) in Strasbourg, another important guardian of human rights, has ruled in several cases that the rights of foreign national prisoners were violated (see also section 11.2.2 and chapter 3).[99]

11.2.3.3 Diplomatic protection

The State to which a foreign national prisoner belongs has the right for its national to be treated in conformity with internationally agreed human rights standards. In case the rights of the national have been violated, the State can stand up and insist on restoration of their

---

92 Article 22 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

93 Article 20 Convention against Torture

94 Article 30 Convention against Torture

95 Article 3 Convention Against Torture. Complaints from: Canada-Iran, Monaco-Brazil, Egypt-Sweden, Netherlans-Sri-Lanka etc.

96 UN Human Rights Committee, USA-Turkmenistan Komarovski (CCPR/C/93/D/1450/2006) 5 August 2008 p 7

97 Adoption of Resolution 60/251UN by the General Assembly on 15 March 2006

98 In February 2015 in total 76 State ratified OPCAT.

99 Ladent v. Poland (Application no. 11036/03) ECtHR 18 March 2008, Dougoz v. Greece (Application no. 40907/98) ECtHR 6 March 2001, S.D. v. Greece (Application no. 53541/07) ECtHR 11 June 2009, Rangelov v. Germany (Application no. 5123/07) 22 March 2012, Baytar v. Turkey (Application no. 45440/04) ECtHR 14 October 2014

rights. When a State exercises their diplomatic protection this is done on behalf of the State and not as a representative of a national. This is because the right of the State has been violated and by exercising diplomatic protection it can effectuate its own right. The State is however not obliged to use diplomatic protection. It is important to mention that a State can only be held responsible when the national individual has exhausted all local remedies and he/she has not been granted redress. The reason is that the foreign national can obtain restoration of their rights within the State. Until the prisoner has exhausted the local remedies the claim by the country of origin is inadmissible.

So, States are allowed to interfere on behalf of their nationals who are or have been detained abroad. The question is, however, will a State interfere or refrain from interfering when the basic human rights of their nationals are being violated during their detention abroad? There are a range of possible answers: a State may be ambivalent towards whether States respect the basic human rights of prisoners and how they treat their nationals in prison. It is also possible that a State is not aware of how its nationals are being treated in foreign detention, due to lack of information. Another possibility is that the treatment of nationals in foreign detention does not give rise to serious concerns. Taking into consideration the findings in chapter 7, this argument can be easily challenged. It can, rather, be that States do not consider it 'appropriate' to criticise another State. The fact is that the provision for inter-state complaints, as provided for by the ICCPR and the Convention of Torture, has never yet been invoked. Openly criticising another country might harm diplomatic relations and have economical consequences too. It is also possible that States refrain from exercising diplomatic protection because they are aware that the detention situation in their own penitentiary institutions also does not meet human rights standards. All in all, it is likely that a combination of factors prevent States from openly seeking redress when the basic human rights of their nationals in foreign detention are infringed.

With regard to the local remedies rule, it is questionable to what extent a former FNP can be expected to exhaust all local remedies. FNPs are, as mentioned in section 7.3.1 and 7.3.2, often unaware of the rules and procedures in prison and sceptical about the effect of filing a complaint during their detention because the prison authorities could see it as a form of protest. It could therefore have negative consequences for the prisoner. Filing a complaint further requires the ability to write in the language of the country of detention, a skill which many FNPs lack. Furthermore, according to prisoners, the complaints mechanisms in prisons are slow and lack the requisite impartiality. Another complication is that bringing a complaint to a local court in the country of detention is a challenge in terms of legal costs, locating the requisite knowledge of procedures and finding the facilities in prison to file a complaint. For former FNPs it might be less complicated to exhaust the local remedies but it is likely that they do not want to put time, energy and resources into this because the potential benefit to them personally is insufficiently tangible. All of this points to the fact that

it is very difficult for FNPs, and perhaps nearly impossible to comply with the 'exhaustion of local remedies' rule. It is therefore unfair to lay this condition upon those who are in prison. Consequently it is necessary that the local remedies rule should not be applicable to them. The exhaustion of local remedies can be omitted if it is clear from the beginning that it is has no chance of success and the use of local remedies is then 'obviously futile'.[100]

In theory, when FNPs claim that their basic rights have been violated the State can be held liable. But how can the State undo the injustice that has been done? The damage experienced by the FNP as a result of the infringement of his/her rights is irrevocable and therefore restoration is not possible. The State can however compensate the prisoner and/or offer reparation or satisfaction. In case the FNP has exhausted all local remedies and the highest court has ruled that the prisoner's claim is not a violation of the international human rights rules. What can the FNP do? The answer is simple: nothing. The country of origin can take it over. It is at the discretion of the country whether it will or will not take responsibility. In the case of the LaGrand brothers, Germany brought a case against the United States before the International Court of Justice (ICJ).[101] The United States failed to inform the two German LaGrand brothers about their right to contact their consular authorities. After having learned of their right the LaGrand brothers contacted the German consulate. This was a decade after the murder they committed and eight years after their conviction. The brothers appealed their sentences and convictions on the grounds that they were not informed of their right to consular assistance, and that with consular assistance they might have been able to mount a better defence. Because diplomatic efforts failed to cancel the execution of one brother, Germany brought the case to the ICJ. The German government claimed that because the LaGrand brothers were not informed of the possibility of consular notification, Germany suffered additional legal injury by being denied its right to provide diplomatic protection in respect of individual legal injuries suffered by the brothers. Furthermore Germany requested the Court to issue provisional measures of protection to ensure that the other brother would not be executed pending the proceedings. Although the Court called directly on the United States to take all measures to prevent the execution from taking place the other brother was executed on the same day. Shortly after the second execution the ICJ issued a binding judgment in the LaGrand case. The court held that the United States had breached its obligations to Germany under the Vienna Convention and that it should present an apology for this breach.[102] The United States assured Germany that the violation of the Vienna Convention would not be repeated, by implementing measures

100 P.H. Kooijmans, *Internationaal publiekrecht in vogelvlucht* (Wolters-Noordhoff Groningen, 1994) p 118

101 ICJ, Reports of judgments, advisory opinions and order – LaGrandcase (Germany v. USA) 27 June 2001 §123 p 50

102 Article 36.1 a) and c) Vienna Convention on Consular Relations

to comply with its obligations under that provision.[103] In 2004 the ICJ ruled again that the United States breached its obligation by not allowing consular staff from Mexico to meet their nationals in American prisons. In this case the ICJ elaborated on the inter-relationship between the rights of the individual and the country of origin. The ICJ stated that 'Violations of the rights of the individual under article 36 may entail a violation of the rights of the sending State'.[104]

Holding a State accountable for infringing the rights of a national in foreign detention can be effected, as seen above, via bringing a case to court or to filing a complaint. States can also use other, perhaps more diplomatic, methods to settle international disputes in a peaceful way.[105] States can, for example, use their consular functions to settle their concerns with another State. This consular entitlement gives States a powerful tool to address human rights infringments. Since consular staff from the diplomatic mission receive free access to prisons where nationals of their country are detained, it is possible to obtain first-hand information regarding the treatment of their nationals and whether the basic human rights of FNPs are respected and adhered to in practice. In the case of an infringement, States can address concerns to the prison authorities and/or the country of detention. Attention paid by consular staff to the situation of FNPs might increase awareness of the additional difficulties which FNPs encounter and may lead to improvements. The fact that there is no limitation on the number of contacts and visits by consular staff means that States, if they have the capacity, can in principle monitor the situation closely and verify whether improvements have been made. If States respected the specific human rights of FNPs there would be no need for States to use their consular entitlements and to provide assistance to their nationals in foreign detention. Unfortunately this scenario has not yet been reached.

11.2.4 Safeguards

As mentioned in section 11.2.2.10 prison authorities do not or are not sufficiently able to protect the human rights of FNPs. This conclusion might also be applicable to prisoners in general. In contrast to those detained in their country of origin, FNPs have one particular asset and that is that they can receive consular assistance. Although FNPs do not have the right, as mentioned before, to claim consular assistance, they can receive it when their consular authorities provide it to them. And, as demonstrated in this thesis, consular assistance can be beneficial for FNPs. It can have a positive impact on their detention experience and special needs (see chapter 8 and 9). But can or should consular assistance

103 Frederic L. Kirgis, *World Court Rules Against the United States in LaGrand Case Arising from a Violation of the Vienna Convention on Consular Relations* (The American Society of Civil Law, July 2001) p 1-2

104 International Court of Justice, Avena case (Mexico v. USA) 31 March 2004

105 Article 2.3 Charter of the United Nations. Article 33 Charter of the United Nations mentions 'negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements'.

be more than that? Can consular assistance become a safeguard that protects FNPs from infringements of their rights?

To explore whether consular assistance can become a human rights safeguard it is important to check whether this would fit in with the content of assistance as envisaged in the VCCR. Article 36.1 c of the VCCR states that the State is entitled to 'visit, converse and correspond with the national who is deprived of his liberty and to arrange for his legal representation'. This means that countries have a certain degree of flexibility in what kind of assistance they provide. This thesis demonstrates that it can consist of various types of assistance and that it can even be provided, when arranged by consular authorities, by non-consular staff. The opportunity that the consular staff have to provide assistance places them in a very good position to monitor the detention situation and treatment of their nationals, and to verify whether their basic rights are being respected. The opportunity to arrange for his/her legal representation shows furthermore that consular staff are expected to ensure that their nationals receive sufficient protection from the law. But how can consular staff protect the basic rights of FNPs by providing consular assistance?
It is first of all important that consular staff become acquainted with the rights of prisoners and FNPs in particular. Secondly consular staff need to obtain information about the situation of their nationals from different sources. This can be done through prison visits, via personal conversations with prisoners, by attending trials and by for example speaking to representatives of monitoring bodies. By evaluating the situation according to the list of basic human rights consular staff can make an assessment about which general rights of prisoners and which particular FNP rights are infringed. Thirdly, consular staff can inform prison authorities, and also judicial authorities[106], about concerns; remind them of their (inter)national commitment to adhere to the rules and discuss how these can be tackled adequately. Through follow-up visits consular staff can inform the authorities about progress that has been made. This low-key and preventive approach will contribute to the creation of awareness of the difficulties which FNPs face during detention with regard to criminal proceedings, and is hopefully an incentive to address the infringements of their basic rights. To guide consular staff in the world of prisoners' rules and rights during detention and with regard to their trial, the following basic human rights provisions have been compiled which include particular provisions for FNPs. These rules, of which many are applicable to prisoners in general too, is a first exploration and hopefully an incentive to take a closer look at the different human rights instruments and prison rules and standards that are available.[107]

---

106 Judicial authorities are, according to (a) UN Resolution 1998/22 Status of foreign citizens in criminal proceedings, required to: *Carefully examine whether foreign citizens under criminal prosecution are guaranteed universally recognized rights with regard to criminal prosecution at all stages of proceedings.*

107 For an overview of various human rights instruments see www.prisonwatch.org/prison-rules.html

Basic Human Rights of Foreign National Prisoners

Information

1. Right to receive at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, information in a language he understands of his rights and how to avail himself of such rights;[108]
2. Right to be informed of the reasons for the arrest and of the charges in a language the prisoner can understand;[109]
3. Right to inform a person of one's own choice about the detention;[110]
4. Right to receive information about prison rules and the rights and duties of prisoners in a language the prisoner can understand;[111]
5. Right to be informed about consular entitlements, to make contact with consular authorities and to receive visits and consular assistance;[112]
6. Right to be informed about transfer possibilities to the country of origin;[113]

Fair trial

7. Right to receive legal assistance in criminal proceedings;[114]
8. Right to receive free assistance of an interpreter when the prisoner cannot understand or speak the language used in court;[115-116]
9. Right to be equal before the courts and to be tried without undue delay;[117]
10. Right to be released pending trial, unless a judicial or other authority decides otherwise in the interest of the administration of justice;[118]

108 Principles 13 and 14 UN Body of Principles, Rule 55 CoE Recommendation Rec(2001)10 on the European Code of Police Ethics

109 Article 14.3 a ICCPR, Principle 10 UN Body of Principles, Article 6 EU Directive 2012/13 on the right to information in criminal proceedings

110 Principle 16.1 UN Body of Principles, Rule 15.2 CoE Rec(2012)12, Rule 57 CoE Rec(2001)10

111 Rule 35.1 SMR, 4th hyphen UN Recommendations on the Treatment of Foreign Prisoners (UN Rec(1985)), Rule 30.1 EPR, Rule 15.1 CoE Rec(2012)12

112 Articles 36.1 b and 36.1 c VCCR, Rule 38.1 SMR, Principle 16.2 UN Body of Principles, (e) UN Resolution 1998/22 Status of foreign citizens in criminal proceedings (UN Resolution 1998/22), Rule 37.1 EPR, Rule 24 CoE Rec(2012)12

113 Rule 37.5 EPR, Rule 15.3 CoE Rec(2012)12, Article 4.1 Council of Europe Convention on the Transfer of Sentenced Persons, Article 6.4 EU Council Framework Decision 2008/909/JHA

114 Article 14.3 d ICCPR, Rule 93 SMR, Principles 17 and 18 UN Body of Principles, Rule 23 EPR, Rule 21 CoE Rec(2012)12, Rule 57 CoE Rec(2001)10

115 Article 14.3 f ICCPR, Principle 14 UN Body of Principles, (c) UN Resolution 1998/22

116 UN Resolution 1998/22 requires to the extent possible access of a suitable interpreter in 'his or her native language' 'throughout his or her trial'.

117 Articles 14.1 and 14.3 c ICCPR

118 Principle 39 UN Body of Principles, Rule 5 CoE Rec(2012)

11. Right to be considered for the same range of non-custodial sanctions and measures as other suspects;[119]
12. Right not to be subjected to more severe custodial penalties or inferior prison conditions solely because of foreign nationality;[120]
13. Right to be entitled to full consideration for early release;[121]

Treatment

14. Right to be treated with humanity and with respect for the inherent dignity of the human person;[122]
15. Right to be treated in a way that takes into consideration the particular situation and individual needs of foreign national prisoners;[123]
16. Right not to be discriminated against (including on grounds such as national origin and language) and to receive effective protection against discrimination;[124]
17. Right to have access to the same health care and treatment programmes that are available to other prisoners;[125]
18. Right to freedom of thought, conscience and religion and freedom to manifest this in worship and observance;[126]
19. Right to wear clothes and to maintain personal hygiene in a way that does not offend the cultural or religious sensibilities of the prisoner and to receive food that takes into consideration cultural and religious requirements;[127]
20. Right to have no unlawful interference in his privacy, family life and correspondence and to make contact (also via visits) with family and friends at regular intervals;[128]
21. Right to receive in prison access to interpretation and translation facilities and the possibility to learn a language to facilitate the communication;[129]

---

119 (d) UN Resolution 1998/22, 2nd hyphen UN Rec(1985), Rules 4 and 14.1 CoE Rec(2012)12
120 (b) UN Resolution 1998/22
121 Rule 6 CoE Rec(2012)12
122 Article 10.1 ICCPR, Article 5 UDHR, Principle 1 UN Body of Principles, Principle 1 UN Basic Principles for the Treatment of Prisoners, Article 3 ECHR, Rule 1 SMR, Rule 1 EPR, Rule 3 CoE Rec(2012)12
123 Rule 3 CoE Rec(2012)12
124 Article 26 ICCPR, Article 7 UDHR, Rule 6.1 SMR, Principle 5 UN Body of Principles, Principle 2 UN Basic Principles, Rule 13 EPR, Rule 7 CoE Rec(2012)12
125 Rul 31 CoE Rec(2012)12
126 Article 18.1 ICCPR, Article 18 UDHR, Rule 41 SMR, 3rd hyphen UN Rec(1985), Principle 3 UN Basic Principles, Rule 29 EPR, Rule 30 CoE Rec(2012)12
127 4th hypen UN Rec(1985), Rules 18 and 19 and 20 CoE Rec(2012)12
128 Article 17 ICCPR, Article 12 UDHR, Rule 37 SMR, Principle 19 UN Body of Principles, 5th hyphen UN Rec(1985), Rule 24 EPR, Rule 22 CoE Rec(2012)12
129 Rule 51.2 SMR, Rule 38.3 EPR, Rules 8, 29.1 CoE Rec(2012)12

22. Right to have the same access as national prisoners to education, work and vocational training;[130]
23. Right to make without censorship a request or complaint to the central prison administration, the judicial authority or other proper authorities through approved channels;[131]

Resettlement

24. Right to receive treatment that is aimed at reformation and social rehabilitation to prepare for release into society;[132]
25. Right to be informed as early as possible about their legal status and situation after release;[133]
26. Right to have the consent and the social reintegration of the prisoner taken into account in the decision on transfer to another country;[134]
27. Right to establish relations with outside agencies to receive assistance and support with resettlement after release.[135]

The footnotes in the table above reveal that these basic rights derive from different human rights instruments. The status varies from universal and regional binding rights to universal and regional recommendations. There is one reference to the Recommendations for Foreign prisoners in the UN Model Agreement on the Transfer of Foreign Prisoners from 1985. The attention paid to the basic rights of FNPs in this document is however very limited. It consists of only five recommendations.[136] Considering the large number of foreign prisoners detained in the world and the difficulties they face as a result of prison authorities not respecting their main basic human rights, these UN Recommendations urgently need to be updated. A new and comprehensive set of rules on FNPs should be drafted to protect the human rights of this special group of prisoners. The rules should highlight the specific issues which FNPs encounter and list the basic human rights that correspond to their special needs. The main aim is to ensure that FNPs are treated humanely, receive a fair trial and are enabled to successfully resettle in society after release.

130 1st hyphen UN Rec(1985), Rules 66.1,71 SMR, Rules 26, 28 EPR, Rules 27.1, 29 CoE Rec(2012)12
131 Rule 36.3 SMR, 4th hypen UN Rec(1985), Rule 70 EPR
132 Article 10.3 ICCPR, Rules 58 SMR, Rules 6 and 107 EPR, Rules 9, 29.2 and 35 CoE Rec(2012)12
133 Rule 35.2 a CoE Rec(2012)12
134 Rule 10 CoE Rec(2012)12, Rule 1 UN Model Agreement on the Transfer of Foreign Prisoners, 4th hyphen Council of Europe Convention on the Transfer of Sentenced Persons (1983)
135 Rules 80 and 81 SMR, Rule 107 EPR, Rule 37 CoE Rec(2012)12, Rule 64 Council of Europe Recommendation CM/Rec(2010)1 on Probation Rules
136 See Annex 11 for the full text of the UN Recommendations on Foreign Prisoners and the Council of Europe Recommendation (2012)12 concerning foreign prisoners.

The proposed UN Foreign National Prisoners Rules should become an international legal instrument that comprehensively regulates the treatment of FNPs. It should be a similar instrument as has been adopted by the UN General Assembly for juveniles in detention (Beijing Rules) and for female prisoners (Bangkok Rules). The extensive Council of Europe Recommendation concerning foreign national prisoners (2012) can serve as guidance.

11.3 Foreign nationals in Dutch prisons

Although the focus is on Dutch FNPs it is useful for comparative reasons to have a small section on FNPs in Dutch prisons. This section reflects on the extent to which the Dutch authorities protect the basic human rights of foreign nationals who are detained in the Netherlands. On an average day there are approximately 120 different nationalities represented in Dutch penitentiary institutions. The percentage of foreign nationals in the prison population is 23% in 2013.[137] With a total prison population of 12,638 there are nearly 3,000 FNPs in Dutch prisons.[138] The annual flow is on average 45,000 prisoners and this means that the average prison sentence length is relatively short.

Despite the fact that 23% of the Dutch prison population consists of FNPs the percentage of prisoners with foreign roots is much higher. In 2011 in total 46% of the prisoners were born outside the Netherlands.[139] A considerable group has been born in countries that have a colonial link with the Netherlands such as the Dutch Antilles and Suriname. When compared to prisoners born in the Netherlands, prisoners who have been born outside the Netherlands are more frequently detained in closed prisons and less often in half-open prisons.[140] An explanation put forward by the Dutch Custodial Institutions Agency for this phenomenon is that some of the prisoners with a foreign nationality have no valid residence permit or will lose it and can therefore be expelled after their detention. Another and perhaps more important explanation might be that FNPs are not considered for transfer to a more open regime because they often have no permanent home address in the Netherlands.

Foreign nationals can be detained in all types of penitentiary institutions. But those who will be deported to their country of origin at the end of their sentence are often detained in a special prison. Losing the right to stay in the Netherlands can be imposed on nationals of the

137 The figures have been provided by the Dutch Custodial Institutions Agency to ICPS's World Prison Brief and they were taken on 30th of September 2013. See section 3.2.5.

138 Irregular migrants who are held awaiting their expulsion in immigration detention centres (Schiphol, Rotterdam, Zeist) are not included in this number. Since they are not suspected or accused of a criminal offence they fall outside the scope of this thesis.

139 I. Henneken-Hordijk, A.A. van Gemmert, *Gedetineerd in Nederland 2011* (Dienst Justitiële Inrichtingen, 2014) p 80

140 G.D. Mol, I. Henneken-Hordijk, *Gedetineerd in Nederland 2007* (Dienst Justitiële Inrichtingen, 2008) p 51

EU when they receive a *declaration of undesirability*[141] and on third country nationals when they receive a temporary *ban on re-entry.*[142] The *declaration of undesirability* and the *ban on re-entry* are imposed if the foreign national poses a serious threat to public order and when the person is staying illegally in Netherlands and has committed multiple offenses. Until 2014 there were two prisons that accommodated these so-called VRIS[143]-prisoners. The penitentiary institution Esserheem held prisoners with a sentence length of more than four months and penitentiary institution Alphen aan de Rijn held pre-trial prisoners and prisoners with a sentence length shorter than four months. Since 2014 the penitentiary institution Ter Apel accommodates the VRIS-population. In this institution there is a special regime that is requested to provide activities to facilitate repatriation by teaching prisoners skills that may be of use in the country of destination.[144] Whether this is indeed the case has not been monitored yet by the Inspectorate of Security and Justice and the annual report of 2014 by the visiting board has not yet been published.

It is important to remark that the Dutch Custodial Institutions Agency does not consider foreign nationality a valid reason for differential treatment.[145] Differentiation of treatment of prisoners is only justified when it is necessary on the basis of specific needs with regards to the physical and/or mental state of the prisoner.[146] A prisoners' survey in which 38% of the prisoners participated, revealed that prisoners experience discrimination in inter-prisoner relations and in interactions with prison staff. The percentage of those who feel personally discriminated against is however much lower compared to Dutch nationals in foreign detention. One quarter of the prisoners feel discriminated against in Dutch prisons against around half of those detained outside the Netherlands. The main reason for discrimination is, according to those in Dutch , the *cultural background* (44%).[147] This is rather in line with *nationality*, which is the most frequently mentioned reason by Dutch nationals detained abroad (see section 7.2.3). Other reasons that were mentioned by prisoners in Dutch prisons are *type of offence* (20%), *religion* (16%), *sexual preference* (5%) and *gender* (2%).
There are specific provisions within the Dutch Penitentiary Principles Act which address the situation of foreign nationals. Article 56 of this Act states that the prison director is responsible for making sure that upon arrival prisoners are 'informed on paper and as far as possible in a language the prisoner can understand about the prisoners' rules and

141 Artikel 67 Vreemdelingenwet 2000 (Aliens Act)
142 Article 66a lid 7 Vreemdelingenwet 2000 (Aliens Act)
143 VRIS stands for 'Vreemdeling in de strafrechtketen' (Aliens in criminal law)
144 Article 20 b Regeling selectie, plaatsing en overplaatsing van gedetineerden (Selection, Placement, and Transfer of Prisoners Regulations)
145 F. Hofstee- van der Meulen, 'Gedetineerde buitenlanders in Europees perspectief' in: E.R. Muller, P.C. Vegter, *Detentie – Gevangen in Nederland* (Kluwer, Alphen aan de Rijn 2009) p 630
146 The Custodial Institutions Agency uses *Activities of Daily Living* (ADL) as reference; these are the routine activities that people tend do every day without needing assistance.
147 I. Henneken-Hordijk, A. A. van Gemmert, *Gedetineerd in Nederland 2011* (Dienst Justitiële Inrichtingen, 2014) p 101

obligations'. Although the prison rules are indeed translated by the prison authorities into several different languages they are often not made available to FNPs.[148] According to the Act, prison authorities are further obliged to inform a foreign national about his/her right to make contact with the diplomatic mission.[149] This consular right is however not correctly articulated in the Model Prison Rules because it states that prisoners have the *right to receive consular assistance*.[150] As mentioned in section 11.2.3.3 it is up to the discretion of a State whether it provides consular assistance or not.
Another provision in the Penitentiary Principles Act gives FNPs the entitlement to be heard in a language that the prisoner, as much as possible, understands before a decision is taken by the prison director about placing the prisoner, for example in a segregation or observation cell, or when imposing on him/her a sanction. Whether this is always adhered to in practice is not researched. There are however some complaints made by FNPs that they had not been informed properly.[151] Prison authorities are also obliged to seek, if necessary, interpreters' assistance. This has been tackled in practice by using an interpretation telephone line.[152] This hotline is also used when the prison director hands out a decision to a prisoner who does not have sufficient command of the Dutch language. FNPs are allowed to file a complaint in another language than Dutch to the Complaints Committee.[153] The prison governor is requested to ensure that sufficient spiritual care, as far as possible in accordance with the prisoner's religion or ideology, is available in the institution.[154] In order to comply with this rule there is a pool of representatives of various different religions that provide, often in cooperation with volunteers, pastoral care in prisons.

In order to address the needs of FNPs the prison authorities have implemented several measures. Prisoners can rent, for example, a television that has different foreign channels.[155] In the library there are books and magazines in foreign languages and several religious holidays are celebrated on a small scale. Upon admission prisoners are asked about their religious and dietary requirements and whether they prefer rice or potatoes. Prisoners are however in general not satisfied with the quality and quantity of the food.[156] The dietary requirements for Muslim prisoners during Ramadan are taken into consideration. Contact with relatives at home is hampered due to the distance from families and inflexible visiting times. Making international phone calls are expensive and alternatives such as Skype are

148 Inspectie Sanctietoepassing, *Doorlichting P.I. Utrecht locatie Wolvenplein* (ISt, 2012) p 25
149 Article 56.3 Penitentiary Principles Act
150 Inspectie Sanctietoepassing, *Themaonderzoek Slechts op bezoek* (ISt, 2013) p 24
151 Raad voor de Strafrechtstoepassing en Jeugdbescherming (RSJ) 08/0658/GA, 18 July 2008
152 Article 57.2 Dutch Penitentiary Principles Act
153 Article 61.4 Dutch Penitentiary Principles Act
154 Article 41.2 Dutch Penitentiary Principles Act
155 F. Hofstee- van der Meulen, 'Gedetineerde buitenlanders in Europees perspectief' in: E.R. Muller, P.C. Vegter, *Detentie – Gevangen in Nederland* (Kluwer, Alphen aan de Rijn 2009) p 632
156 Inspectie Sanctietoepassing, *Voeding ingeslotenen* (ISt, 2011) p 11

not applied frequently.[157] Provisions for work and training are of rather limited availability in prison and the attendance depends also on the status of the prisoner. Prison leave is in principle not allowed to foreigners due to lack of an acceptable address.[158] It is interesting to note that although a home address that is located outside the Netherlands is not mentioned in the instructions on prison leave it is considered as a contra-indication for granting it.[159] The fact that the FNP is not able to show that he/she is capable of successfully going on leave has two direct consequences. The first is that the prisoner is not able to arrange practicalities for resettlement. Secondly, a successful prison leave is often a condition before a prisoner is allowed to be transferred to a more open setting.

Although prison authorities are requested to include FNPs in resettlement activities, this is often not the case.[160] For that reason the Complaints Committee of the penitentiary institution Ter Apel warned the Secretary of State about the negative consequences of the 'sober' regime. The lack of activities would intensify the already often desperate situation of FNPs.[161]

This leads to the conclusion that despite the provisions in the Dutch Penitentiary Principles Act and efforts by the Dutch prison authorities to address certain needs of FNPs, this particular group generally does not receive equal opportunities to exercise their rights in the Netherlands. This situation is often connected to unintended consequences of prison regulations, lack of resources, lack of knowledge, misunderstanding, miscommunication and practical impossibilities.[162] The lack of interest in the situation of FNPs in Dutch prisons can also be explained by public opinion, according to which the conditions and treatment in Dutch prisons are more than sufficient and perhaps, according to some, not harsh and restrictive enough. Another reason might be that inspection bodies have never monitored the situation of FNPs closely. Furthermore, the treatment of FNPs in Dutch prisons has hardly been debated in the Dutch Parliament. In order to address the situation of FNPs it is, however, necessary that the Custodial Institutions Agency becomes more aware of the difficulties which FNPs face, that it develops a special FNP policy in order to address their basic human rights and that specific training is provided to prison staff to create awareness about FNPs and their particular issues, needs and rights.

157 RSJ 12/1902/GA, 12 November 2012 / RSJ 12/127/GA, 3 July 2012 / Inspectie Sanctietoepassing, *Doorlichting P.I. Veenhuizen locatie Esserheem* (ISt, 2010) p 28

158 Article 4 j Regeling tijdelijk verlaten van de inrichting

159 RSJ 13/0643/GB 6 May 2013

160 Hoge Raad, decision NJ 1987 405 16 January 1987

161 Commissie van Toezicht PI Ter Apel, *Jaarverslag 2013* (DJI, 2014) p 16

162 M. Post, *Detentie en culturele diversiteit: De effectuering van de rechtspositie door etnische minderheden in detentie* (Boom Juridische Uitgevers, Den Haag 2005) p 76

11.4 Dutch FNPs and human rights

This section explores to what extent the basic human rights of Dutch nationals who are detained abroad are protected via consular assistance. It starts by providing insight into how attention to human rights has been reflected in the development of assistance and int the aims, activities and impact of the involved actors: the Ministry of Foreign Affairs, the International Office of the Dutch Probation Service and the religious foundation Epafras. Finally it comments on the proposed new policy for assistance which was made public in October 2014.

11.4.1 Attention to the human rights of FNPs

In marked contrast with foreign nationals in Dutch prisons, the situation of Dutch nationals in foreign detention has received considerable attention in Parliament and the media over the last four decades (see section 5.2.2). The difference in attention paid to the two groups can be explained first of all by the assumption in public opinion in the Netherlands that Dutch detention conditions are 'humane' and abroad they are 'inhuman' or at least less 'humane'. Also the treatment of prisoners is considered to be sufficient and according to the rules. The conclusions in section 11.3 and reports by inspection bodies in the Netherlands show however that there is often room for improvement.[163] However, besides the attention paid to irregular migrants in detention, there is in general little interest in FNPs in Dutch prisons. Another explanation is that Dutch society regards those in foreign detention, even if they have committed a serious crime, as still 'one of us' and therefore they should receive protection and assistance. These caring feelings for nationals detained abroad can be illustrated by the attention paid to a Dutch member of the terrorist group *Rote Armee Fraktion* who was detained in Germany in 1974.[164] Several parliamentarians posed questions to the Minister of Foreign Affairs Van Der Stoel about his treatment while he was on hunger strike. This Dutch prisoner was also visited by the Dutch Committee-Rüter, which noted during a press conference that the security restrictions under which he was being held were too tight.

Over the years the protection of the human rights of Dutch nationals in foreign detention has been more or less a central item in consular assistance. In 1989 the Minister of Foreign Affairs Van Den Broek announced, upon request from the Foreign Affairs committee, the criteria for consular assistance: 'to protect the rights of prisoners and to alleviate the conditions

163 See for example reports by the Inspectorate of Security and Justice at www.ivenj.nl; Commissie van Toezicht www.dji.nl; Raad voor de Strafrechtstoepassing en Jeugdbescherming www.rsj.nl; Inspectorate of Healthcare www.igz.nl.

164 The Rote Armee Fraktion (Red Army Faction) existed from 1970 to 1998, committing numerous operations, especially in the autumn of 1977, which led to a national crisis that became known as *German Autumn*.

under which prisoners are held'.[165] In 1998 the protection and assistance to Dutch FNPs received quite suddenly a lot of attention from the media and the general public. The trigger was, as mentioned in section 5.2.2, the Zembla documentary on 'forgotten prisoners' that was broadcast on national television. As a result, measures were taken by the Ministry to intensify the assistance and to ground it on two basic principles (see section 5.2.3). The Ministry committed itself via these basic principles to monitor the humane treatment of Dutch FNPs and to draw the attention of the local authorities to the observation of human rights treaties in case they are not adhered to.

However, it quickly came to light in a critical report by the Dutch Court of Audit that the announced intensification of assistance was not applied in daily practice and the basic principles were not adhered too.[166] According to the Court of Audit the instructions appeared to be too optional and concrete goals and outcomes were missing. The Court of Audit therefore advised the Ministry on two things: first of all to formulate a standard of assistance and secondly to take its monitoring role seriously by directing the attention of foreign prison authorities towards internationally agreed human rights treaties and standards.[167] It is striking to see that in the announcement of the new policy for consular assistance the Ministry only elaborated on the practical, financial, organisational and social aspects of assistance.[168] The commitment and request from the Court of Audit to address concerns with prison authorities was not mentioned. This omission explains why unfortunately the Court of Audit focused in its follow-up only on the organisational aspects of the assistance. There is only one short remark that the 'criteria to evaluate and compare prison conditions were unclear to consular staff'.[169] The Court of Audit advised the Ministry in the follow-up report to introduce a standard visiting norm to avoid vagueness about the frequency of visits to prisoners. In a response to the report the visiting norm became two visits per year.[170] Additional visits were allowed when the detention conditions were for example below standard; there was no fair trial; and/or the individual prisoner was vulnerable.[171] It is interesting to see that even in the communication with Parliament the Ministry is very careful not to offend other countries about their shortcomings with regard to detention. Instead of writing that the criteria are based on whether a country is able to adhere to basic human rights such as *fair trial* and *human prison conditions*. It states very diplomatically that additional visits can be carried out to countries where the legal system/conditions *differ greatly* from the legal system/conditions in the Netherlands.

165 Tweede Kamer, 1988-1989, 20800 Hoofdstuk V Ministry of Foreign Affairs, Budget for the year 1989 nr 16 p 1

166 Rapport Algemene Rekenkamer 27 430 *Gedetineerdenzorg buitenland* (2000) p 5

167 Rapport Algemene Rekenkamer (2000) p 10

168 Tweede Kamer, 2001-2002 25203 nr. 15 p 4-5

169 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2004-2005, 30010 nr. 1-2) p 21

170 Tweede Kamer, 2005-2006 nr. 5 p 2

171 Tweede Kamer, *Gedetineerdenbegeleiding buitenland (*2007-2008, 30010 nr. 6) p 6

The consequence of this careful approach is that consular staff are not triggered to look at infringements of basic human rights.

This thesis demonstrates that the protection of the human rights of FNPs, as enshrined in the basic principles of consular assistance, has not been a focus of the Ministry (see 8.4.2). Consular assistance to Dutch FNPs is just one of the activities of the Ministry and due to the standardisation of assistance and the relatively high number of Dutch FNPs it has become a rather mechanical exercise. As long as the visits are carried out and the financial allowance is provided to those outside the EU, the task is considered to be accomplished. Monitoring whether certain basic rights of prisoners are violated is not a common theme for discussion and reflection within the Ministry and diplomatic missions. There are several explanations for this, and firstly that the Ministry and the diplomatic missions have other activities and concerns of a higher priority. Unless there are particularly vulnerable cases with attention from the media, the plight of FNPs remains secondary. Furthermore, the range of different types of assistance to Dutch FNPs lays a heavy burden on consular staff and there is little room for manoeuvre. Another reason is that the Ministry of Foreign Affairs is not being reminded regularly about its adherence to the basic principles. As long as the Minister can demonstrate that sufficient attention is paid and assistance is provided, for example in the case of a death penalty imposed on a Dutch national, parliamentarians and the general public are satisfied. It is interesting to note occasions when the Minister is unable to prove that sufficient assistance has been provided, for example with the hanging of the Dutch-Iranian Mrs Bahrami, there was a debate in Parliament.[172] The Minister was reminded of his responsibility and the need to adhere to the basic principles and to address concerns with foreign (prison) authorities. The reply that silent diplomacy had been used is not considered by the Parliament as adequate.[173]

11.4.2 Ministry of Foreign Affairs

The Ministry's primary objective of providing consular assistance to Dutch FNPs has never been defined. The formulation of the basic principles demonstrates however a clear human rights focus in the provision of consular assistance. As mentioned earlier, consular staff should, according to these principles, monitor the detention situation and treatment of prisoners and address concerns with the prison authorities when they are not treated in conformity with the rules. This means that the Ministry is expected to keep a close eye on whether their nationals in foreign detention can exercise basic human rights. However, this thesis clearly shows that the Ministry is primarily focussed on the well-being of prisoners and hardly on whether their basic human rights are addressed properly by the country of detention. This is demonstrated for example by the fact that although 94% of the Dutch FNPs receive a type of assistance from the Netherlands only 20% of them experienced

172 Tweede Kamer, 2010-2011, Executie Nederlandse vrouw in Iran, 3 February 2011 p 48-53-61
173 'Partijen fileren optreden Rosenthal in Bahrami-debat', *NRC.nl* (Amsterdam, 3 February 2011)

attention on how they were treated in prison and only 7% had the impression that consular staff monitored their legal case (see section 8.4.2). This situation cannot be explained by the fact that most prisons in the world operate above the minimum human rights standards. Chapter 7 proves very clearly that the physical conditions in prison are often below standard and many Dutch FNPs receive discriminatory treatment as a result of their foreign status and poor command of the language. As mentioned at the beginning of this chapter, at least nine basic human rights of Dutch FNPs are violated.

What can explain the fact that the Ministry does not adhere to its basic principles by protecting the basic rights of Dutch FNPs? Is it possible that consular staff at the Ministry and at diplomatic missions consider the prison conditions and treatment as a fact which they cannot change? Could they feel insufficiently empowered to address the situation, or is it because of reluctance or unawareness? Are there also political, social and economic reasons that explain the non-interference approach by consular authorities? Broadly speaking, it is a combination of factors and these are the six main ones. It starts with the *formal position* of the Ministry that it *cannot act in the internal affairs and judicial process* of another country. This position, which is contradictory to its commitment to address concerns about human rights infringements with foreign authorities, is a paralysing factor. The second reason is that consular staff consider the detention conditions and treatment of prisoners in general as a *fait accompli* and that no concrete improvements can be achieved. This notion is especially rife in countries where the general standard of living is low. Another reason is that there is *no clear objective* of what needs to be achieved with consular assistance and how the basic principles can be translated into *concrete activities* during detention but also after release. This explains for example why the resettlement of those who will return to the Dutch society is not or at least not sufficiently taken into consideration. Furthermore consular staff are in general not *sufficiently trained* and experienced *to assess the detention conditions and treatment* of prisoners and to verify whether they comply with national and international legally and morally binding human rights standards. And finally the Ministry does *not use its discretionary power* to file inter-state complaints with international human rights bodies and/or to exercise diplomatic protection. Nor has it supported Dutch FNPs in exhausting local remedies before filing an official complaint with the Human Rights Committee or the CAT (see 11.2.3.2 and 11.2.3.3).

The lack of adherence to the basic principles does not mean however that the Ministry does not acknowledge that Dutch FNPs face difficulties in exercising their basic rights, or that it does not address their needs, as seen in chapter 8. Several types of assistance have a direct or indirect link with these rights.
The best example of a type of assistance that addresses a particular right, the *right to be informed,* is the booklet with information about legal procedures and prisoners' rights in the Dutch language that is sent or handed to the prisoner directly after his/her arrest. The

booklet has the highest impact on a special need of FNPs (see 9.3.2), to be *aware of legal procedures and rights*. It is therefore not surprising that the guide has been identified by the British House of Commons as a 'good practice' that should be followed by British Foreign Office.[174] The fact that this booklet is only received by 42% of the prisoners is something the Ministry could work on in the future. During the first conversation with Dutch FNPs consular staff ask them whether they would like to appoint a contact person in the Netherlands with whom consular staff can make contact in case of emergencies. This kind of service contributes indirectly to the basic human *right to maintain in contact with family*. Both prisoners and their relatives appreciate this kind of assistance but families are sometimes disappointed about the lack of new information that is provided by consular staff at the Ministry and the lack of adherence to the basic principles. The Ministry provides information and assistance with regards to transfer procedures. This has a direct link with their *right to be informed about transfer procedures*.

There is one particular need of FNPs that is enshrined in human rights instruments but which is hardly addressed by the Ministry and that is the *right to resettlement*. A large majority (86%) of Dutch FNPs expect to return to Dutch society. Taking into consideration the total number of Dutch FNPs, on average nearly two FNPs will return to the Netherlands each day. One would therefore assume that the Ministry addresses this topic in cooperation with the Ministry of Security and Justice, municipalities, the Probation Service and aftercare organisations. The municipality which the prisoner originates from is responsible for aftercare and should therefore be made aware of the return of an ex-prisoner and seek support from other organisations like the Probation Service. A pro-active approach is necessary, especially when taking into consideration the difficulties which FNPs face upon release (see chapter 6 and 10). The current lack of attention to resettlement, the lack of transmission of information and the lack of support for this group upon return to the Netherlands is incongruous in relation to the general commitment of the Dutch government to tackle recidivism. The fact that Dutch FNPs are not prepared for their resettlement and that they cannot adequately arrange practicalities at home to prepare for their release is not only an infringement of their basic right but is also a potential waste of the time, energy and financial resources that are provided by the Netherlands to the prisoner during the detention abroad.

All in all, this thesis and in particular this chapter show that the Ministry does not turn a blind eye to the protection of the basic human rights of Dutch FNPs during detention. There is however a significant room for improvement. The Ministry should consider providing assistance in a more targeted and pro-active manner. Instead of providing all prisoners with a standard type of assistance it should provide tailor-made assistance when it is necessary because of the individual situation of the prisoner and/or the conditions and treatment in prison. Instead of monitoring the correct application of the *national* rules of the country of detention, as stipulated in the basic principles, the Ministry should focus

174 House of Commons (2014) p 52

on the *internationally agreed basic human rights* of prisoners and in particular to the provisions for FNPs. The Ministry should also invest in *prevention* and *pro-activity* instead of reactivity. This could be done by ensuring that the prison authorities are reminded about their international commitment to adhere to the provisions of international human rights instruments and become aware of the special provisions of FNPs and the difficulties which this particular group face. The Ministry should further *inform* national monitoring bodies about the bottlenecks which FNPs encounter; discuss the situation of FNPs with other consular authorities; and address concerns in a *joint effort*. Lastly the Ministry should invest in *training* of consular staff because this new approach requires a certain level of knowledge and expertise about how to assess prison conditions and treatment of (foreign national) prisoners.

11.4.3 Probation Service

Over the last four decades a large group of Dutch FNPs received assistance from volunteers and staff from the International Office of the Dutch Probation Service and from chaplains and staff of the religious foundation Epafras. The fact that consular assistance can be provided by these non-governmental organisations shows, as mentioned earlier, that prison authorities grant access to non-consular staff and thus allow a broad interpretation of Article 36 of the VCCR. This is a remarkable finding and it also creates opportunities for other countries to explore innovative ways of providing assistance to their nationals in foreign detention.

The main aim of the International Office is, as mentioned in section 5.3.2, to prepare prisoners for their return to Dutch society. Unfortunately this aim, which is directly linked to the basic human *right to prepare for resettlement*, is not sufficiently addressed in practice (section 8.2.8). In the first period of detention the International Office tries in cooperation with the volunteer to assess issues which the individual prisoner needs to tackle to avoid even bigger problems after release. These issues are for example informing the landlord, employer, creditors and insurance company about the detention abroad. The fact that only 17% of the prisoners receive this kind of assistance is a missed opportunity because it can prevent prisoners from facing additional problems after release. These regional coordinators are trained and specialised in tackling bureaucracy and they can also provide support in countries where no volunteers are active. This is very important because, as described in section 7.4, prisoners have no or only limited opportunities to make contact with the outside world. Accessing the internet or writing e-mails are in general not possible and making a telephone call is often difficult and expensive. Although there is, in the last six months before release, attention paid to resettlement, only 12% of the prisoners receive this kind of assistance. This low percentage can be partly explained by the fact that many prisoners were not in the last phase of their detention. Another weak point is the fact that the volunteers of the International Office are often not well acquainted with the ins and outs of the resettlement process in the Netherlands. This outcome is disappointing and

worrying. First of all because prisoners are in general not able to go on prison leave or to participate in resettlement activities (see section 7.6). Secondly because they have a large number of needs that they have to address upon release (see section 10.2.2). It is therefore not surprising that a large majority of the prisoners do not feel prepared to return to society. The practice of the International Office of the Dutch Probation Service of providing assistance to Dutch ex-FNPs in the first period after return to Dutch society was abandoned when the Dutch municipalities became responsible for providing aftercare (see section 6.4) in 2004. This makes their resettlement even more challenging. Although the International Office can be requested by municipalities to provide assistance to this particular group, this does not occur. The fact that this provision was formulated in a footnote of a covenant on resettlement of ex-prisoners is indicative of the limited awareness of and perhaps lack of interest in this particular group of ex-prisoners.

Although attention for resettlement of Dutch FNPs is little evident during detention and nearly non-existent after release, the International Office is able to have a positive impact on their general well-being. Prisoners who receive visits from volunteers feel emotionally supported and less lonely and they experience their detention as less difficult compared to those who do not receive visits. The personal attention they receive from the volunteer is therefore directly linked to the basic human *right to be treated humanely and respectfully*. The volunteers of the International Office contribute furthermore with their knowledge, foreign language skills and experience of the daily prison routine to the *right to information* of Dutch FNPs.

11.4.4 Epafras

The main aim of the religious foundation Epafras is to provide religious assistance to Dutch FNPs. Over the last three decades chaplains from Epafras have carried out visits to Dutch FNPs to assist them to practice their religion and to have meaningful conversations. This kind of service is directly linked to the *right to freedom of religion and to worship*. Although prisoners generally receive opportunities in prison to practice their religion, a personal visit by a chaplain with whom prisoners can speak in Dutch is very much appreciated. The fact that only one quarter of the prisoners receives in practice a personal visit from a chaplain from Epafras is however disappointing. The reason for this low percentage is the policy of visiting prisoners only once or twice per year. Another way in which Epafras addresses the human needs of Dutch FNPs is by producing and sending out the magazine *Gezant*. Unfortunately only one third of FNPs receive this magazine (see 8.2.3). This is particularly unsatisfactory because it is very much appreciated and it decreases their feeling of social isolation. In that sense it contributes to their *right to be treated humanely*. The *right to resettlement* is not included in the aims of Epafras but it could fit perfectly well with the religious belief that offenders continue to be human beings and should receive a fair chance to become rehabilitated. The fact that some churches and religious organisations are

involved in providing aftercare and shelter to ex-prisoners could be an incentive for Epafras to include this type of assistance.

11.4.5 Impact of the person who provides assistance

This thesis clearly proves that personal attention paid to a Dutch FNP during a visit by consular staff, a volunteer and a chaplain contributes to their general well-being and to their *right to be treated humanely*. The fact that they are being seen by someone who is not part of the prison authority is very much appreciated by prisoners. It is further interesting to see that the person who carries out the visit is of influence. Consular staff, volunteers and chaplains have their own distinctive roles. A visit by consular staff is for example more official and formal than a visit by a volunteer and or chaplain. The visits are very much appreciated because it gives prisoners a certain standing and it gives a 'signal' to the prison authorities that they are not forgotten. During interviews it was discovered that most prisoners were not aware that volunteers and chaplains carried out the visits on a voluntary basis. It is possible that in the case of volunteers they were misled by the term 'Probation Service'. In any case prisoners were surprised and sometimes moved when they heard that people visited them on a voluntary basis. The fact that there is someone whom they did not know beforehand who makes the effort to visit them without being paid for doing so is powerful. The personal attention makes them feel good and it gives them the feeling that they are worthwhile and that there are people who believe in them. Very often prisoners feel that they have become a number in prison instead of a human being. The positive feeling which they receive as a result of the personal attention can be considered as the *Belief-effect* (9.4.1.1), the effect that a person who does not know them beforehand believes in their power to change things for the better.

11.5 New policy on consular assistance

In October 2014 the Minister of Foreign Affairs announced a new policy of consular assistance to Dutch FNPs.[175] The new policy replaces the standardised form of assistance with a more tailor-made type of assistance. The reason for this change is that 'those who are really in need of assistance should receive assistance'.[176] Unfortunately the aim and what should be achieved with this new policy is not clarified in the letter. It is however clear that the new policy is not a cost-cutting operation and that the Ministry will continue to invest annually around €7.5 million in assistance to Dutch FNPs. The proposal of the Ministry is that prisoners in countries where the prison conditions are 'according to international standards and rules' receive a *basic package* of assistance. This *basic package* consists of written information about the consular assistance and the involved organisations, one personal visit by consular staff, the periodical magazine *Gezant* and 'where relevant' judicial

175 Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2014-2015, 3001021 nr. 21)
176 Ibidem p 1

advice and assistance with their resettlement in the Netherlands. Those who are detained in countries that do not operate according to the international rules receive a *basic package+*. The extra support contains of additional visits by consular staff, up to a maximum of four visits per year, a monthly financial allowance of €30 and medicines if necessary.

The Ministry announced that it decides on the basis of objective information in which countries the prison conditions and treatment of prisoners are considered to be humane. For 2015 the list of countries, which will be evaluated each year, consist of 40.[177] It is interesting to see that according to the Ministry the detention conditions in these 40 countries do not have to be 'equivalent' to the prison conditions in the Netherlands, as long as they meet certain 'minimum criteria'. This suggests that the situation in Dutch prisons is above standard. This is, however, not always the case, as described in section 11.3. Also in other EU countries the situation is also not always sufficient, as confirmed by the CPT and in findings in chapter 7. Furthermore this approach by the Ministry does not take into consideration that there can be considerable differences between prisons in one country. It is also a pity that the Ministry does not elaborate on the 'minimum criteria' that should be met. It is likely that the Ministry refers to its own basic principles of assistance and therefore to international human rights instruments. It would be useful if these minimum criteria contained, besides the basic human rights of FNPs, other basics needs. For example the need to have a place to sleep; to have sufficient cell space; to be detained under decent hygienic conditions; to have access to drinking water, nutritious food and suitable clothing; and to receive toiletries. Prisoners should further be entitled to have access to a medical doctor and to receive appropriate medical and dental care and if necessary specialised treatment. Prisoners should feel safe and to this end the authorities shall maintain discipline and order, use no force unless strictly necessary and employ punishment only in accordance with the law.

The announcement by the Ministry that it would provide tailor-made assistance in combination with the commitment to monitor whether the countries of detention adhere to the international human rights standards and to address concerns with prison authorities is very much welcomed. The Ministry should acknowledge however that this new policy requires that at least three conditions are met.
The first is that consular staff should be trained and facilitated in their new role. Consular staff will be required to monitor the situation of Dutch FNPs; to analyse whether the basic human rights of Dutch FNPs are respected; to address concerns with prison authorities and to provide tailor-made assistance. This demands of the Ministry that it guide staff in this new role and provide insight into the different human rights instruments and special FNP provisions. In order to create uniformity, each diplomatic mission should use a standard list of

177 28 EU Member States + Andorra, Australia, Canada, Iceland, Japan, Liechtenstein, Monaco, New Zealand, Norway, San Marino, Vatican city and Switzerland.

monitoring topics. Consular staff should collect information concerning the different topics via visits (observations), interviews with prisoners and others, and by consulting written information (studies, media, monitoring reports). For each country where Dutch FNPs are detained a fiche should be drafted which should be updated on an annual basis. The country fiche should provide information as to whether the country is adhering to international human rights instruments; whether concerns should be addressed; and whether assistance from the diplomatic mission is necessary. The diplomatic mission should further develop a fiche for each prisoner to monitor the situation of individual prisoners and to verify whether he or she needs special attention or support. Information for the prisoner's fiche could be obtained during personal conversations with the prisoners but also via his/her family and Dutch authorities. The different topics in the prisoner's fiche could serve as a source of information for the different topics in the country fiche.

The second condition is that the personal visits by consular staff continue to remain an important tool in gathering information about the individual prisoner and the general situation in prison. Collecting information first-hand is indispensable when trying to provide tailor-made assistance, as well as to comply with the commitment to monitor compliance with the rules and to obtain input for the country and prisoners' fiche. The announcement that prisoners will receive only one visit by consular staff in countries which operate according to international standards is therefore not sufficient. As seen in this thesis a personal visit is the most appreciated type of assistance prisoners can receive. Visits have a powerful effect. They make the detention experience less difficult and allow several FNP needs to be addressed. It is further a strong signal to the authorities that the prisoner should be treated correctly. A personal visit is also for consular staff the most direct and personal way to receive information about how the prisoner is doing. Alternative ways to receive information such as via family, letters and telephone are less direct. The Ministry is therefore strongly advised to continue visiting all prisoners at least once per year. Dutch FNPs who are in need of attention and support and who are detained in countries that meet the 'minimum criteria' should continue to receive additional visits too. It is furthermore necessary that the visits are announced beforehand to prisoners so they can prepare themselves properly.

The third condition is connected to the need to continue carrying out visits to prisoners. Fortunately the Ministry announced that it would continue to work together and to provide funding to external organisations with regard to the *trial procedure*, for *additional care during detention* and with regard to *resettlement in the Netherlands* after detention abroad. This decision is of vital importance because the dedication and expertise of the network of volunteers and staff of the International Office of the Dutch Probation Service, chaplains and staff of Epafras, and staff from PrisonLaw are a very strong asset in consular assistance. This thesis revealed the powerful impact of the involvement of volunteers and the fact that their

involvement can help to ease the workload, especially when diplomatic missions are being closed down while the number of countries where Dutch FNPs are detained is increasing.

11.6 Codification of the right to consular assistance

The Ministry's commitment to provide consular assistance and to protect the human rights of Dutch FNPs, as enshrined in the basic principles and mentioned in the new policy, gives rise to the discussion of whether consular assistance should be more than customary law and should become a legal right that is codified in a Consular Act. This section explores the pros and cons from various perspectives. It starts with the practical considerations.

The total number of Dutch nationals detained abroad is high, especially in comparison with other countries that are of a similar size as the Netherlands. In the last five years the total number stabilised to around 2,300 Dutch FNPs detained in nearly 100 countries. Until now the Ministry has, in cooperation with the International Office of the Dutch Probation Service and Epafras, been able to reach out to most Dutch FNPs. But providing assistance to all of them lays a considerable burden on the Ministry and the diplomatic missions. The codification of consular assistance might require that the Ministry continues to reach out to all prisoners and this may become a challenge due to the closing down of diplomatic missions. The current discretionary power of the Ministry to decide on a case-by-case basis whether assistance should or could be provided gives the Ministry flexibility, which it might lose with the codification. Another argument that the Ministry might consider putting forward is that when consular assistance becomes a legal right, the expectations of prisoners and their relatives about assistance are likely to be higher and this can lead to disappointments and negative reports in the media. This situation can however be avoided when the Ministry is transparent about what is being done for nationals in foreign detention and when Parliament is informed on a regular basis about the activities performed. Codification may even have a negative outcome for prisoners if it leads to a devaluation of the quality of the assistance. There is a risk that the lowest minimum norm becomes the standard of assistance, and this should be prevented.

There are however also advantages to codification of the right to consular assistance. First of all it will give Dutch nationals who encounter problems abroad the necessary safeguard that the Netherlands is monitoring their human rights situation and that, if necessary, assistance is provided to ensure at they are enabled to exercise their rights. The establishment of a Consular Act is also in line with the central aim of the Dutch foreign affairs policy to protect

and enhance human rights worldwide.[178] This thesis proves that providing consular assistance is a powerful and important instrument to make the situation of FNPs visible and to address their needs and basic rights. It can contribute to humanity in prisons. Codification is furthermore important to ensure that the quality of the assistance is stable and does not depend on factors such as available time and expertise of consular staff, financial resources and the opinion of the head of the diplomatic mission. With the large network and expertise of volunteers and staff of the involved organisations the Ministry does not have to be afraid of being able to reach out to Dutch FNPs. Prisoners can be reached in different ways and assistance can take various forms. The codification of consular assistance will be also an incentive for consular staff to become more aware of the human rights of prisoners and to start evaluating the situation, and to provide tailor-made assistance. It can also help the Ministry to address concerns about human rights infringements with foreign authorities and to monitor that the concerns are being addressed. Establishing a professional relationship with prison and judicial authorities can be beneficial and can help the Ministry to work in a more preventive and pro-active way rather than remaining re-active. Prison and judicial authorities are often not aware of the specific human rights and distinctive needs of FNPs and of the difficulties they encounter during detention and with regard to their trial. The visits by consular staff ensure that progress being made by the authorities is being monitored and that feedback is provided. Codification might also be an incentive for acknowledging that Dutch ex-FNPs return to Dutch society and should therefore be included in existing resettlement procedures.

The codification of the right to consular assistance is not rare. There are several European countries such as Bulgaria, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Poland, Portugal, Romania and Sweden that have a constitutional provision which provides for a fundamental right to consular assistance.[179] These Acts stipulate that in case of emergency, citizens, including those in prison, are entitled to aid and assistance from consular staff.[180] Also Denmark, Finland, Greece, Slovakia and Slovenia have legislation that can be interpreted as establishing a right to consular protection.[181] The fact that other countries have codified their commitment to protect their nationals abroad, including those in prison, means that

178 Text on website of the Ministry of Foreign Affairs at www.rijksoverheid.nl (*'Nederland probeert mensenrechten over de hele wereld te beschermen en te bevorderen. Nederland zet zich in om de ernstigste schendingen tegen te gaan. BZ werkt hiertoe samen met andere landen en organisaties. Nederland vindt het belangrijk om via de Europese Unie, de Verenigde Naties en de Raad van Europa schendingen van mensenrechten aan te kaarten.)*

179 Redress, *Submission of the Redress Trust for the Foreign Affairs Committee: Inquiry into FCO consular Services* (Redress, 24 January 2014) p 6

180 Frieder Dünkel, Andrea Gensing and Christine Morgenstern, 'Germany' in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007) p 388

181 CARE Project, *Consular and Diplomatic Protection Legal framework in the EU Member States* (University of Vienna, December 2010) p 608

the Netherlands can easily enter into dialogue with and seek support from other countries when addressing concerns with the prison authorities. The topic FNPs can become a standard item at the periodicl consular meetings which are held for example by EU countries.

In short, there are several pros and cons for making consular assistance a legal right, but the pluses outweigh the minuses. To ensure that the Dutch Ministry of Foreign Affairs remains committed to providing consular assistance to Dutch FNPs who are unable to exercise their basic human rights it is necessary that consular assistance be codified in a Consular Act. When taking into account the different considerations, the following general text is proposed for the codification of consular assistance to Dutch FNPs:

Consular authorities should monitor that their nationals in foreign detention are treated humanely, are held under decent prison conditions, receive a fair trial and can resettle successfully in the society of origin after release. In case these conditions are not met, consular authorities should notify the (prison/judicial) authorities and provide the assistance necessary to address their needs.

Codification of consular assistance to foreign national prisoners

States are responsible for protecting the human rights of those who are present on their territories, including prisoners of foreign origin. The situation of Dutch FNPs demonstrates that several basic human rights are infringed. Also the situation of FNPs in Dutch prisons, which are often regarded as 'human rights-proof', show that these prisoners are unable to exercise their rights equally. The failure of States in not addressing the basic human rights of FNPs means that they can be held accountable in their own country, by other countries, by human rights committees, courts and even individual prisoners. In practice this hardly occurs. In order to exercise their rights FNPs are therefore dependent on their consular authorities. This thesis demonstrates that consular assistance, as received by Dutch FNPs, protects certain rights in a reactive way. However, the Dutch consular authorities do not address concerns about human rights infringements with the responsible prison authorities. This practice violates the basic principle of consular assistance that was promised in Parliament. To ensure that Dutch FNPs have the necessary safeguard of the Netherlands monitoring their human rights situation, and that, if necessary, assistance is provided and concerns are addressed with prison authorities, it is necessary that consular assistance be codified in a Consular Act.

The next chapter elaborates on the central research question, comments on key issues of this thesis and concludes with recommendations on how to proceed in the future.

CHAPTER 12

CONCLUSIONS AND RECOMMENDATIONS

12.1 Introduction

This final chapter begins with conclusions on the three hypotheses in order to provide an answer to the central research question that was posed in chapter 1. It further comments on the general key issues of consular assistance to nationals detained abroad. These comments are based on the outcomes of this thesis and reflect on how to proceed in the future. For that reason each key issue is followed by a recommendation. Due to the more general approach of this chapter, the recommendations are addressed to prison/judicial and consular authorities in general.

12.2 Hypotheses

12.2.1 Hypothesis 1: Consular assistance improves the detention experience

This thesis demonstrates that Dutch FNPs experience considerable difficulties during their detention abroad as suggested in the research literature and reports by monitoring bodies. Many difficulties are linked to their foreign status, lack of language skills and distance from their families. Since prison authorities are not sufficiently aware of these difficulties and because they are not addressed properly, Dutch FNPs are placed in a vulnerable position.

The consular assistance which Dutch FNPs receive from the Netherlands has however a positive effect. Those who receive assistance are less negative about their detention experience and this positive impact is visible in practically all aspects that were measured. Those who receive assistance feel for example less unsafe, more informed about the prison rules and procedures and less disconnected from the outside world. They also have better interactions with prisoners and prison staff and live with higher expectations for the future. This outcome demonstrates that foreign authorities and organisations can make a difference in the detention experience of their nationals who are detained abroad.

12.2.2 Hypothesis 2: Consular assistance addresses the special needs of FNPs

On the basis of the literature and reports on FNPs it is possible to identify a number of needs that can be characterised as typical of FNPs. These needs arise due to the difficulties FNPs face as a result of their foreign status, lack of language skills and distance from home. The first need is to feel safe, to be treated humanely and not to suffer discrimination (*well-being and treatment*). The second need is to be made aware of legal procedures and rights (*awareness of legal procedures and rights*). The third one is about the ability to maintain contact with the outside world and family (*contact with outside world*) and the fourth about not being excluded from activities and the society of others within prison (*social inclusion within the prison*). The last need, which is not mentioned in the literature, is the need to prepare for release and to resettle in the society of origin (*preparation for release and resettlement*).

Consular assistance, as received by Dutch nationals in foreign detention, was found to address, to a certain extent, the above mentioned needs. The activities with the highest impact (but not always provided most frequently) are: information on legal procedures and rights from the Ministry that helps with awareness of legal procedures and rights; providing the magazine *Gezant* by Epafras that allows for contact with the outside world; and personal visits by the three organisations to monitor well-being and treatment. The frequency of assistance with regard to preparation for release and resettlement is rather low. This is noteworthy because of the involvement of the International Office of the Dutch Probation Service, which aims to achieve successful resettlement of ex-prisoners.[1]
Personal visits are the most commonly received kind of assistance and also the most appreciated.[2] In 2013 Dutch FNPs received on average nearly five visits each year. A personal visit has a very positive impact on the prisoner's well being.

This outcome underlines that the three organisations focus mainly on the well being of prisoners. There is, however, less interest in the second part of this identified need: treatment of prisoners and whether their basic human rights are being respected. Poor prison conditions, inhumane treatment and lack of a fair trial are considered by the Ministry as 'internal affairs' of the country of detention and therefore out of bounds.

So, although consular assistance does address the special needs of FNPs, it does not have a particular focus on human rights infringements. Hence there is room for improvement.

12.2.3 Hypothesis 3: Consular assistance contributes to effective resettlement after release

There is insufficient evidence to uphold the last hypothesis. The main reason is that the re-offending rates of those who return from detention abroad have not yet been measured. Therefore it is not possible to prove that consular assistance contributes to their successful resettlement after release. It is however clear that the attention paid to preparation for release during detention is limited. Furthermore, none of the organisations that provide assistance during the detention period ensure smooth resettlement of ex-prisoners into Dutch society. This situation is concerning given the high number of resettlement related needs ex-prisoners expect to have after release and the bureaucratic problems which ex-prisoners face upon return.[3]

The fact that Dutch nationals who return from detention abroad are overlooked by the Dutch authorities is not in line with the government-wide approach to stimulate the resettlement

1 See the commentary on the third hypothesis in the next section (12.2.3).
2 See section 12.3.7 for a commentary on the planned reduction of visits by consular staff.
3 A large number of the needs overlap with the factors that were identified by a British and Dutch study as having a high correlation with re-offending (see section 10.2.2).

of ex-prisoners. Annually, around 650 ex-prisoners return to the Netherlands from foreign detention abroad.

On a positive note, some elements of consular assistance received by Dutch FNPs might be linked to elements that are regarded in evidence-based studies as effective in assisting the successful resettlement of ex-prisoners. Furthermore, prisoners who receive assistance are more positive about their chances to live a law-abiding life after release. Consular assistance therefore has the potential to be beneficial for the resettlement of prisoners when it becomes an integral part of assistance during detention and in the first period after release.

12.3 Key issues

As mentioned in the introduction, this thesis raises a number of fundamental issues about consular assistance to FNPs. This section provides insight into these issues on the basis of the results of the thesis. In this commentary the strengths and weaknesses of consular assistance as received by Dutch FNPs are taken into consideration. The key issues are:

1. Vulnerability of foreign national prisoners
2. Infringements of basic human rights of Dutch FNPs
3. Need to provide assistance to FNPs
4. Organisations that should or could provide assistance
5. Aims of assistance to FNPs
6. Important elements of consular assistance
7. Coordination and cooperation between consular authorities
8. The strengths and weaknesses of consular assistance to Dutch FNPs
9. Need to develop a special human rights instrument for FNPs
10. Right to receive consular assistance

12.3.1 Vulnerability of foreign national prisoners

The fact that FNPs face particular difficulties is described in various studies and reports published by independent monitoring bodies. As mentioned in 12.2.1 these difficulties mainly relate to their foreign status, lack of communication skills and distance from their families. This has direct consequences for their well-being, their ability to exercise their rights, their interaction with others and their ability to prepare for resettlement.
Prison authorities are responsible for ensuring that prisoners can exercise their rights and that no particular group of prisoners is disadvantaged. In order to achieve equality it is necessary that authorities treat FNPs as a special group of prisoners, like women and juveniles. This is necessary because foreigners have, like women and juveniles, clear common distinctive needs and rights. Although FNPs are not a homogenous group in terms of physical

appearance, language and cultural and religious backgrounds, they have many concerns in common. It is therefore necessary that prison authorities take into consideration their particular needs and address them adequately. Special policies and support for FNPs are however in practice often lacking. This is often due to a lack of awareness and understanding of the difficulties that they face. FNPs are therefore considered in research literature as a vulnerable group of prisoners.

The situation of Dutch nationals in foreign detention confirms the vulnerability of this group of prisoners. Their vulnerability is apparent in different aspects of their detention. More than half of them feel discriminated against and two-thirds relate this to their foreign nationality. Prisoners are in general poorly informed or not informed at all about the prison rules and of the procedures relating to their legal cases. The support that prisoners receive from lawyers and interpreters tends to be inadequate. Dutch prisoners often feel unsafe and socially excluded due to poor interaction with prison staff. The fact that they are not always able to participate in activities is mainly the result of a general lack of activities in prison. Additionally, prisoners do not feel prepared to return to society after release.

Recommendation

1. Prison, judicial and consular authorities should acknowledge that FNPs experience particular difficulties during detention with regard to both criminal proceedings and resettlement into society after release. FNPs should therefore be regarded as a vulnerable group with distinctive needs, in the same way as women and juveniles;

12.3.2 Infringements of basic human rights of Dutch FNPs

The situation of Dutch FNPs shows that they are not only placed in a vulnerable position, as mentioned in the research literature and reports by monitoring bodies (see chapter 3) but several of their basic human rights are also infringed (see section 11.2.2.10). The research carried out within the remit of the present thesis demonstrates that predominantly there are nine basic human rights which are most commonly infringed upon. Infringements occur despite the fact that prison authorities have the positive obligation to ensure that these rights are respected.

- The first one is the right to receive information about prison rules and their rights.[4] The present research clearly demonstrates that most Dutch FNPs do not receive

4 Rule 35.1 SMR, 4th hyphen UN Recommendations on the Treatment of Foreign Prisoners (UN Rec(1985)), Rule 30.1 EPR, Rule 15.1 CoE Rec(2012)12

sufficient information regarding the prison rules and their rights in a language they can understand. Being unaware of the rules and rights places them in a vulnerable position. It makes them feel insecure and unprotected.

- The second most common violation is with regard to the right of foreign nationals to make contact with the consular authorities.[5] This research indicates that only a very small group of Dutch FNPs had been informed by the prison authorities about their consular entitlement. The consequence is that they can miss out on assistance from their consular authorities.
- Thirdly, the right to receive equal treatment before the court and to be informed promptly and in detail in a language they can understand about the charges. This has been reported as another commonly violated right of the Dutch FNPs.[6] The consequence is that they are not or are insufficiently aware about the details of the charges and this can have a direct negative impact on their legal case.
- Fourthly, the present research established that the right to free assistance by an interpreter is another basic right commonly disregarded. It is however vital for those who cannot understand and/or speak the language used by the courts.[7] Assistance by an interpreter during the court proceedings is not always available free of charge and/or possible to be delivered in the native language of the prisoner. This leads to an unfortunate situation in practice whereby the Dutch FNPs stand criminal trials without any proper understanding of what is going on in the court.
- Fifthly, although legal assistance is a basic right and prescribed by international human instruments[8], the practice does not adhere to this prescription. Many Dutch FNPs reported difficulties in making contact with a lawyer and receiving proper legal support. Deficient awareness of legal procedures in the country of detention, lack of contact details for lawyers, communication impaired due to language difficulties and insufficient financial means are only some of the problems Dutch FNPs experience. The consequence is that they encounter difficulties in defending their case. This can result in receiving longer sentences.
- Sixthly, poor interaction with prison staff, feeling unsafe and being treated as a *number* rather than a *human being*, and lack of attention from and understanding by the prison authorities for the special needs of FNPs are important reasons why Dutch FNPs do not feel treated humanely, as demanded by international legally binding instruments.[9]

---

5 Articles 36.1 b and 36.1 c VCCR, Rule 38.1 SMR, Principle 16.2 UN Body of Principles, (e) UN Resolution 1998/22, Rule 37.1 EPR, Rule 24 CoE Rec(2012)12

6 Articles 14.1, 14.3 a and 14.3 c ICCPR, Principle 10 UN Body of Principles, Article 6 EU Directive 2012/13 on the right to information in criminal proceedings

7 Article 14.3 f ICCPR, Principle 14 UN Body of Principles, (c) UN Resolution 1998/22

8 Article 14.3 d ICCPR, Rule 93 SMR, Principles 17 and 18 UN Body of Principles, Rule 23 EPR, Rule 21 CoE Rec(2012)12, Rule 57 CoE Rec(2001)10

9 Article 10.1 ICCPR, Article 5 UDHR, Principle 1 UN Body of Principles, Principle 1 UN Basic Principles for the Treatment of Prisoners, Article 3 ECHR, Rule 1 SMR, Rule 1 EPR, Rule 3 CoE Rec(2012)12

- Seventhly, the right not to be discriminated against and to receive effective protection against discrimination are also basic human rights that are not adhered to in practice.[10] The main reason for this failure is the lack of full appreciation on behalf of the prison authorities of the negative consequences for Dutch FNPs as prisoners of foreign origin, that they lack local language skills and that they are far apart from the support mechanism offered by families and relatives.
- Eighthly, the difficulties which Dutch FNPs face in maintaining contact with their families combined with certain particular requirements. In some prisons Dutch FNPs have to communicate with their relatives in the language of the country of detention. This is a clear violation of the right to have no unlawful interference with their privacy, contact with family and correspondence.[11]
- Finally the last basic right that this research has found to be routinely infringed is that the treatment should be aimed at reformation and social rehabilitation.[12] In practice the large majority of Dutch FNPs do not receive opportunities to prepare during detention for their resettlement. In combination with the fact that most of them are not allowed to go on prison leave leads to the situation that they are practically unable to organise themselves and to inform official authorities in the Netherlands about their return. The consequence is that their resettlement in society is severely hampered. Consequently, as the above listing demonstrates, the outcomes of the present research allows one to conclude that the basic human rights of Dutch FNPs are routinely disregarded. This is particularly true for those who are detained outside the European Union.

Recommendation

2. Prison, judicial and consular authorities should raise their awareness of the basic human rights of FNPs and analyse whether these rights are sufficiently protected in practice;

12.3.3 Need to provide assistance to FNPs

While the present research focused on Dutch FNPs, it is more than likely that their situation is indicative of that of other FNPs. Therefore from a legal and humanitarian point of view it is necessary for prison and judicial authorities to take action. Prison and judicial authorities should provide adequate support to ensure that the needs of FNPs are addressed and their rights respected. Not providing assistance is not an option, as foreign nationals are

10 Article 26 ICCPR, Article 7 UDHR, Rule 6.1 SMR, Principle 5 UN Body of Principles, Principle 2 UN Basic Principles, Rule 13 EPR, Rule 7 CoE Rec(2012)12

11 Article 17 ICCPR, Article 12 UDHR, Rule 37 SMR, Principle 19 UN Body of Principles, 5th hyphen UN Rec(1985), Rule 24 EPR, Rule 22 CoE Rec(2012)12

12 Article 10.3 ICCPR, Rules 58 SMR, Rules 6 and 107 EPR, Rules 9, 29.2 and 35 CoE Rec(2012)12

detained practically everywhere in the world. Secondly because States are obliged to adhere to internationally binding human rights norms and requested to treat prisoners humanely, including those of foreign origin. This is a matter of international human rights obligations that States have undertaken and must therefore comply with. Lastly, it must be remembered that all FNPs will be released one day and return to society. Not only they themselves but also their families and society in general will benefit if they have been treated humanely and supported to lead a law-abiding and self-supporting life upon release.

In order to establish what assistance is required, it is important to acknowledge the situation and the particular difficulties FNPs face. The present research reveals that many concerns of FNPs have arisen as a direct consequence of the failure of the prison authorities to take action. Interestingly, this failure to act rather often results from ignorance and unawareness of the particular situation of FNPs. Moreover, the present research clearly demonstrates that both the prison and judicial authorities lack awareness. They are completely or insufficiently aware that their actions or failure to act may and in fact often do lead to infringements of both national and international human rights norms. In order to reduce this lack of awareness about the particular situation of FNPs, their needs and special rights, the prison and judicial authorities should develop FNP policies that address the specific needs of FNPs. Consular authorities should do the same for their nationals in foreign detention. Such policies should not focus purely on the treatment of FNPs and their trial but also include their needs with regard to their resettlement. Moreover, it is paramount that any such policies should be effectively carried out in practice. Both prison/judicial authorities and consular authorities should therefore ensure that attention to FNPs / nationals in foreign detention becomes part of training material and that staff are properly trained on a continuous basis. For that reason financial resources should be made available.

Recommendation

3. Prison, judicial and consular authorities should assess the situation of FNPs and develop policies that address their vulnerabilities. These policies must form part of a concrete action plan so that adequate and appropriate assistance can be provided;

12.3.4 Organisations that should and/or could provide assistance

Primary responsibility for taking care of prisoners on national territory lies with the national prison authorities. This means, as mentioned earlier, that prison authorities have to take action. They are required to actively shape preconditions under which prisoners can effectively enjoy their basic human rights and receive humane treatment. With regard to

legal proceedings, the judicial authorities are responsible and required to shape conditions so that FNPs can receive a fair trial.

According to the Vienna Convention on Consular relations FNPs are entitled to receive consular assistance from their national authorities. Although prison authorities often omit to inform FNPs about this entitlement they do allow them to receive consular assistance. This thesis shows that prison authorities are lenient in granting access also to non-consular staff. This is remarkable and shows that although the Vienna Convention on Consular Relations does not prescribe what specific assistance can be given, the prison authorities in practice accept a rather broad interpretation of the convention. Clearly, neither the International Office nor Epafras have received this entitlement overnight or without support from the Dutch Ministry of Foreign Affairs. Access to prison for representatives of these organisations is generally arranged by the Dutch diplomatic mission in the country of detention. The two organisations have furthermore been working with Dutch FNPs for decades. Together with the Dutch consular authorities they have invested in building relationships with the prison authorities. The end result, as established by the present thesis is such that Dutch FNPs can receive a wide-range of different types of assistance from various sources which is only commendable.

Although this was not the focus of the present research, it must be noted that clergymen and representatives and/or volunteers from national and international non-governmental organisations can also provide vital support to FNPs during detention and after release.[13] FNPs can also receive indirect support from national and international monitoring bodies that describe their particular situation in visiting reports. These can address the specific needs of FNPs through recommendations and ensure that these recommendations are implemented by the relevant authorities on the ground.

Recommendation

4. Prison, judicial and consular authorities should provide assistance to FNPs to ensure they can exercise their basic rights and the authorities are advised to seek support from national and international governmental and non-governmental organisations.

13 A list of non-governmental organisations concerned with FNPs can be found at: www.cep-probation.org/page/120/members-special-interest-group

12.3.5 Aims of assistance to FNPs

This thesis shows the necessity of both prison/judicial and consular authorities paying attention to (Dutch) FNPs and providing adequate assistance. It is important that the authorities define a clear objective of what they would like to achieve. Prison authorities are advised to start by analysing the situation of FNPs in their prison population. They should verify whether their needs are addressed and whether they are able to exercise their basic human rights. With regard to trial procedures the same applies for judicial authorities. For that reason, the authorities should study the specific FNP entitlements and verify the direct and indirect impact of their foreign origin, language difficulties and distance from relatives. Prison and judicial authorities should use this information to develop a specific FNP policy that includes clear aims. The aim could be for example that the authorities ensure that FNPs are able to exercise their basic human rights by tackling their specific vulnerabilities.

As previously mentioned the Vienna Convention on Consular Relations does not prescribe the kind of consular assistance to be provided nor does it describe the aim. This means that consular authorities are relatively free to develop their own aims and to give substance to their support.[14] Consular authorities are however advised to aim for assistance to contribute to the ability of nationals in foreign detention to be treated humanely and to be able to exercise their basic rights. The aim should further be that awareness is created among prison authorities about the particular situation of FNPs and possible infringements of their basic human rights. This preventive and pro-active approach is necessary to enable the prison authorities to address the situation before violations occur. A preventive approach is also necessary from a human rights perspective and because it can ultimately reduce the necessity of consular authorities' assistance altogether. Another important aim of consular assistance should be that it includes the resettlement of FNPs in their country of origin. This means that consular authorities should inform their own domestic authorities about the needs of this particular group of ex-prisoners and request their active involvement and support for those who return from detention abroad. The general aim of consular assistance should further leave sufficient room for consular authorities to provide tailored assistance per country and per individual prisoner as necessary.

This thesis demonstrates that the Dutch Ministry of Foreign Affairs, the International Office of the Dutch Probation Service and the religious foundation Epafras have their own separate aims for providing assistance. The aim of the Dutch Ministry of Foreign Affairs is to ensure that Dutch FNPs are treated humanely and according to the national law in the country of detention. In practice however the Ministry is primarily focussed upon the well-being of prisoners and not on respect of their basic human rights. The fact that prisoners face

14 See section 12.3.6 for important elements of consular assistance.

difficulties in exercising their basic rights and that prison conditions are often inhumane and degrading is not or is hardly addressed.

The general aim of the International Office of the Dutch Probation Service is to provide prisoners with information and advice and to prepare them for resettlement in order to avoid recidivism post-release. This aim is not adhered to in practice because only a small group of prisoners receives support with resettlement. Moreover assistance stops immediately once the prisoner is released. This situation is difficult to understand for a number of reasons: First of all because it is not in line with the aim of the organisation. Secondly the high number of needs that Dutch FNPs expect to have after release are similar in nature to the needs regarded in literature as having a negative impact on recidivism when not addressed. The final reason is that the International Office is part of the Dutch Probation Service, which can be requested to provide aftercare to ex-prisoners in the Netherlands who have not been detained abroad.

The aim of Epafras is that Dutch nationals detained abroad receive spiritual and religious support. Although this aim is achieved in practice, the assistance from Epafras does reach all Dutch FNPs. The fact that only one third of them benefit from the magazine *Gezant* is disappointing because it is supposed to reach each and every FNP.

Although the three organisations developed their aims independently and incrementally, the different aims fit together rather well and they are sufficiently comprehensive in theory. However, in practice the assistance is mainly focused on the well-being of the prisoner. Infringements of human rights with regards to the conditions of detention, treatment and trial are hardly taken into consideration nor is resettlement. So, despite the fact that an astonishing 93% of prisoners who participated in this study receive some kind of assistance, there is a gap between the aims and what is achieved in practice. This situation has led, and will continue to lead, to disappointments among prisoners, relatives of prisoners and those who provide assistance. Furthermore, it undermines the good work that is being done by the three organisations. It can have a negative impact on the energy and motivation of those who provide consular assistance on a voluntary basis. It is furthermore a missed opportunity to improve the actual situation of (Dutch) FNPs.

Recommendation

5. Consular authorities should monitor whether their nationals detained abroad are treated humanely and can exercise their rights. The consular authority should notify the prison/judicial authorities of any concerns;

12.3.6 Important elements of consular assistance

This thesis provides insight into elements of consular assistance that are considered to be important. They are considered so because they are highly appreciated by prisoners and their relatives, they have a positive impact on the detention experience and/or the special needs of FNPs, and they can address several of their basic human rights. Although the focus of this thesis is on assistance by consular authorities, it does not mean that the mentioned elements of assistance could or should not be applied to prison and judicial authorities as well in addressing the needs of FNPs.

Assessment

In order to provide proper assistance it is necessary, as described in the section above, for consular authorities to obtain per country a comprehensive picture about the general situation of FNPs. It should include information about the legal system in the country of detention, trial procedures and resettlement in the country of origin. It is further important to assess the situation of the individual prisoner. The assessment can be conducted via a specialised tool that is used by criminal justice practitioners to identify the risks, needs and responsivity of prisoners (see section 6.4.1 and 6.4.2). Information for this assessment should be based on a personal conversation with the prisoner and on insight that is obtained via other sources such as the form that prisoners fill in and a conversation with relatives. The results should be crosschecked with information that is available from other sources, for example the central (municipality) administration register in the country of origin.[15] For privacy reasons it is however necessary to obtain the consent of the prisoner to look into his or her personal files. Permission to consult this information might become a precondition for assistance.

Monitoring prisoners' situation through personal visits

An essential feature of assistance is, as demonstrated in this thesis, a personal visit to prisoners. The visits give those who provide assistance the opportunity to gain a better understanding of the individual situation of the prisoner and the general prison conditions. It furthermore helps to give prisoners tailor-made assistance and to keep relatives informed if necessary. Dutch FNPs very much appreciate it that the first visits takes place as soon as possible after the arrest. It gives prisoners the feeling that they are noticed and not left on their own by their country of origin. The visit by the consular authorities is also a *signal* to the prison authorities that they are checking that their national is being treated correctly and that his/her basic rights are not being violated.

15 The central administration register is likely to contain information about a prisoner including the financial (rent, debts, social benefits), social (married, children), criminal (earlier convictions, outstanding sentences, fines) status of the person.

Providing information

Due to the language obstacle, FNPs are often not aware about legal procedures, prison rules and their rights in the country of detention. Dutch FNPs highly appreciate receiving this kind of information orally and/or via booklets from the Dutch Ministry of Foreign Affairs. This type of assistance addresses their particular need and basic right to receive information in a language they can understand very well. Prisoners are further in need of a list of trustworthy lawyers and would like to be informed about prison transfer procedures and resettlement in their country of origin.

Contact with relatives of prisoner

Detention is a life-event, not only for the prisoners themselves, but also for relatives. Families are in general very concerned, feel powerless and sometimes run into trouble due to lack of income and the need to provide care for dependant children. Families are often even more concerned when the detention is abroad and they feel dependent on others such as the Ministry of Foreign Affairs and foreign prison authorities. Informing families about the well being of the prisoner and about what can be expected from consular assistance is regarded as very helpful. General information can be placed on a website.

Bringing medicines, magazines and books, dictionaries and other practical items

Having access to prisoners gives visitors the opportunity to bring, in consultation with prison authorities, items such as newspapers, magazines and books in the language of the country of origin. Dictionaries are also regarded as beneficial because they can help prisoners to learn the language of the country of detention. Dutch prisoners also appreciate personal hygiene items and medicines from home which are not otherwise available to them in prison.

Resettlement

Preparing to return to society and resettlement is a basic human right which in the research literature is not identified as one of the main needs of FNPs. Due to unawareness of prison authorities about resettlement procedures in the country of origin it is necessary for the consular authorities to provide support in stimulating the resettlement of FNPs. The assessment of the FNP at the beginning of detention should be a point of reference for identifying issues which need to be taken care of immediately (care for dependant children, for example) or as soon as possible (freezing debts, stopping rent payments, etc.) in order to avoid even bigger problems after release. The authorities which provide assistance should take into consideration aspects of interventions which are considered effective in evidence based studies like for example *What works*, *How does it work* and *Who works* (see section 6.4). During detention, activities can be offered to prisoners to help with their resettlement, such as following a course or learning a language. After detention, it is beneficial that

consular authorities ensure the smooth transition of the ex-prisoner to the country of origin by involving aftercare organisations and making sure that the person has somewhere to turn for advice and support.

Involvement of qualified and motivated persons who provide assistance

People who normally do not work in prisons provide consular assistance to Dutch FNPs. It is therefore important that the consular authorities ensure that they have good social skills; receive training in safety procedures; have a clear understanding of what they can and cannot or should not do; and know what the rights of FNPs are. Receiving feedback about their work is a way to improve its quality. One of the unexpected outcomes of this thesis is the powerful impact of volunteers. Dutch FNPs were positively surprised and sometimes moved when they heard that the personal visits from the International Office of the Dutch Probation Service and from Epafras were carried out by volunteers. This notion gave a boost to their self-esteem and made them feel good. In literature this is described as the *Belief-effect*.

Addressing concerns with authorities

When FNPs are held in poor prison conditions and/or are treated inhumanely and/or do not receive a fair trial, both monitoring bodies and consular authorities should address their concerns to the prison authorities in order to change this situation (see also section 12.3.7). With regard to resettlement, consular authorities should ensure that municipalities and aftercare organisations are informed and able to provide support once the ex-prisoner returns to the country of origin, in order to ensure a smooth transition.

Recommendation

6. Consular authorities should provide tailored assistance to their nationals with regard to their treatment, trial and resettlement;

12.3.7 Cooperation of consular authorities to address human rights violations

Consular authorities and organisations that provide consular and other assistance to FNPs have, through their entitlement to make contact and to visit nationals in foreign detention, a good understanding of the detention situation, of how FNPs are being treated and whether they can exercise their rights. Their knowledge can be further enriched by attending trials; following the news; reading publications from national and international monitoring bodies, non-governmental organisations and universities; and speaking to representatives of these organisations and others who provide assistance to foreign national and other prisoners.

This inside knowledge places consular authorities in an excellent position to draw the attention of prison authorities to their duty to ensure that FNPs can exercise their basic human rights. Consular authorities can do this independently but it is advisable and more effective when cooperation is sought from other countries that deal with the same concerns. In other words: attention for FNPs can be better achieved through a collective voice of a number of consular representations of different countries. For that reason it is advisable that the topic of the treatment of FNPs becomes a standard topic on the agenda of bilateral and multilateral meetings between diplomatic missions in the country of detention. In case of infringements of human rights these countries could team up in order to add weight to their concern and to avoid one individual country being blamed politically and economically. Addressing the topic of FNPs with different countries can also lead to an increase in knowledge, facilitate the work by exchanging good practices and professionalise the working relationship with the prison authorities. Ultimately this can lead to improvements in the detention conditions and treatment of FNPs and prisoners in general. Enhancement of human rights standards throughout the world will lead to trust among States that the rights of all people are protected.

Recommendation

7. Consular authorities should discuss the situation of their nationals in foreign detention with other consulates. If it is found that the detention conditions, treatment, judicial process and resettlement of FNPs are violating national or international rules and standards, the consular authorities should raise this with the authorities of the country of detention;

12.3.8 The strengths and weaknesses of consular assistance to Dutch FNPs

Studies regard consular assistance as provided by the Netherlands to Dutch FNPs as a *good practice*.[17] Since the assistance received by Dutch FNPs is evaluated and studied closely in this thesis it is possible to verify whether this is actually true. This section analyses therefore

16 The first basic principle concerns the monitoring of the correct application of the rules by the country of detention and making sure that Dutch prisoners receive all opportunities as provided for by national law. The second basic principle relates to monitoring whether Dutch nationals are held under humane prison conditions. In case the conditions are not humane and according to international standards the Ministry can bring this to the attention of (local) authorities. Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 1989* (1988-1989, 20800 V nr. 156) p 1-2

17 Kalmthout, van A.M., F. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisons*, (2007) p 75, p 87 (recommendation 69), Hans van Kooten, *Eyes and Ears - Liaison Office for Dutch Prisoners Abroad and International contacts (*Reclassering Nederland, Utrecht 2005) p 9, Outcome European Conference on Foreign National Prisoners, Nieuwersluis 16-17 October 2008, Epafras, *Nieuwsbrief* (Epafras, July 2013) p 1

the strong, not so strong elements and weak elements of consular assistance that they receive from the Ministry of Foreign Affairs, the International Office of the Dutch Probation Service and the religious foundation Epafras.

The strong elements of consular assistance by the Netherlands are first of all the *preventive measures* that are taken by the Ministry to prevent nationals from committing drug crimes abroad. The Ministry warns potential offenders via its website about the consequences of smuggling drugs and in the past it financed a documentary on the situation of Dutch nationals detained abroad that was broadcast on television. Another strong point is the *outreach* to nearly all Dutch FNPs. It is a remarkable achievement, especially when taking into consideration that around 2,300 Dutch nationals are detained in nearly 100 countries. The strong outreach can be explained by the presence of many Dutch diplomatic missions and consulates around the world and the large network of volunteers and staff of the International Office of the Dutch Probation Service and the religious foundation Epafras.[18]

The *frequent personal visits* to prisoners by consular staff; volunteers and chaplains are the most powerful feature of consular assistance by the Netherlands. These visits are the backbone of consular assistance and have a very positive impact on Dutch FNPs. The fact that a quarter of Dutch FNPs are visited within one week and more than half within one month is another important achievement. It is interesting to see that those detained outside the EU receive their first visits significantly more quickly compared to those detained in the EU. Overall, the Ministry succeeds in its policy of visiting prisoners twice per year. Due to the visits by volunteers and chaplains, Dutch prisoners received (as mentioned before) on average nearly five visits each in 2013. Relatives of prisoners particularly appreciate the fact that the health situation of prisoners is monitored and when necessary special medicines are provided to prisoners. It should be mentioned, however, that the Netherlands is currently closing down diplomatic missions due to financial constraints. Even more unwelcome is the Ministry announcement that prisoners will receive only one visit if they are detained in a country where the conditions are considered to be adequate. This development will lead to a reduction in the positive effects of consular assistance. The Ministry should acknowledge that by carrying out fewer visits, consular staff will be less able: to monitor the individual situation of prisoners; to receive current information about their legal procedures; to inform the prisoners' families of any updates; and to give a signal to the authorities when the detention conditions and treatment are not in line with international human rights standards. Above all, without the personal contact which can only be obtained during a visit, the Ministry is unable to provide tailor-made assistance. A reduction in the number of visits will also have consequences for the proper resettlement of ex-prisoners because

18 The International Office has around 15 staff members and 300 volunteers who are active in over 50 countries. Epafras has 4 staff members and around 45 chaplains who are active in 70 countries.

the authorities will be less able to inform aftercare organisations and municipalities about details of the specific situation and needs of ex-prisoners. The Ministry is therefore urgently requested to reconsider the proposed policy and to continue carrying out visits at least once per year to all prisoners. The Ministry should further continue to financially and practically support the regular visits that are carried out by volunteers and chaplains.

The expertise of the different organisations that provide assistance is an important reason why consular assistance is appreciated so much and seen as beneficial. It is interesting to see that the person who carries out the visit has a distinctive role. Dutch FNPs appreciate the involvement of consular staff because their official role gives a signal to authorities that their country shows an interest in their well being and that they are not left on their own. The regular visits by volunteers give the FNPs a feeling of visibility and that someone believes in them. The visits by chaplains of Epafras are very much appreciated because of the meaningful conversations conducted with these professionals. Prisoners are surprised and emotionally touched when they hear that the individuals who visit them on behalf of the Probation Service and Epafras provide this assistance on a voluntary basis. The positive influence of these visits is confirmed in literature and is considered as effective for the resettlement of prisoners. The fact that staff, volunteers and chaplains are trained on a regular basis, stay in contact with each other and receive feedback is considered in evidence based studies as beneficial for the quality of their work.

Another strong element of consular assistance is the fact that the Ministry has developed booklets with *information about detention abroad*. This type of assistance, which is very much appreciated by prisoners, has the biggest impact on a need (*awareness of legal procedures*) and it also addresses the FNPs basic right to be informed in a language they can understand. The Ministry could, however, go one step further by translating the standard prison rules and the penitentiary act of the country of detention in countries where there are several Dutch FNPs. As it is difficult for prisoners to find a decent lawyer, it is recommended that consular authorities also provide a list of names and contact details of local lawyers. In the past the Ministry was reluctant to hand out such a list because it was afraid that prisoners would hold the Ministry responsible for the quality of the lawyers' work. The magazine *Gezant* is very much appreciated. A shortcoming is that, as mentioned before, it is sent to all prisoners but only received by one third of them. It is not known whether prison authorities do not accept the magazine and/or it is sent to the wrong prison because the prisoner has been transferred or released.

The Dutch Ministry of Foreign Affairs, and to a certain extent also the International Office and Epafras, make *contact with the families of Dutch FNPs*. This kind of assistance is very much appreciated by both relatives and prisoners. The detention of a relative abroad is often regarded as a life event and families are, especially directly after the arrest, desperate and

ignorant about what to do. Although families appreciate their relative receiving assistance they are often disappointed by what the Ministry does in practice and about the interaction with consular staff at the Ministry. Families would like to be kept informed about the latest news on a more frequent basis. By showing more empathy and patience with families the relationship with the Ministry can be improved. Misunderstandings and disappointments can be further avoided by explaining on paper more clearly the roles and activities of the different organisations which provide consular assistance. The practice that Dutch FNPs detained outside the EU, except for a few countries[19], receive a monthly *financial allowance* from the Ministry of €30 is very much appreciated by them. It helps them to buy basic necessities which are not provided free of charge by the prison authorities like clean water, dietary supplements, toiletries etc. However, it is sometimes used to buy safety and can be a reason why prisoners are threatened and bullied by other prisoners.

A rather weak element of consular assistance is the *assessment* of individual Dutch FNPs. In order to provide adequate assistance it is important to assess what is actually needed. The Ministry provides, however, a standard form of consular assistance to Dutch citizens who wish to receive it. Only three basic assessments are carried out by the Ministry. The first is whether the prisoner is eligible to receive assistance. The second is whether a prisoner is very young or ill, as he or she can in this case receive additional support. The last pertains to the country of detention in order to verify whether the prisoner can receive a monthly financial allowance. The Probation Service analyses the situation of those who would like to receive assistance based on the registration form and on the conversation during the first visit. Based on this information, the needs (not the risks) of prisoners are identified and tackled in the first period of the detention. There is no assessment of needs and risks when preparing for release. Those in pre-trial detention are visited more frequently by volunteers than sentenced prisoners. It is advisable that those preparing for resettlement are visited as frequently. The assessment of prisoners could further be improved by integrating the knowledge and expertise of probation workers in the Netherlands; by using a similar assessment tool; and by targeting also the risks for re-offending. Epafras does not assess prisoners. Those who would like to receive spiritual support can receive it.

An essential element of consular assistance that needs to be improved is that the Ministry should become focussed on whether Dutch FNPs are enabled to exercise their basic human rights. Human rights infringements, which often occur, are hardly addressed by the Ministry and official diplomatic démarches are rare. This shortcoming proves that the Ministry does not adhere to its basic principles for assistance: to monitor the correct application of the rules[20] by the country of detention and to make sure that Dutch prisoners receive all

19 Since 2015 are not included anymore Australia, Canada, Iceland, Japan, Liechtenstein, Monaco, New Zealand, Norway, San Marino, Singapore, Switzerland and Vatican city.

20 This includes universally accepted internationally binding rules on a fair trial, and rules and standards on prison conditions and treatment.

opportunities provided for in national law. The Ministry has however made a commitment to adhere to these principles in Parliament and is also expected to intervene based on rulings by The Hague court and the National Ombudsman (see section 5.2.5.1). The fact that the new policy of the Ministry contains a strong focus on verifying whether countries adhere to the basic human rights of Dutch FNPs is promising. It is expected that the general assumption that no interference is necessary as long as a lawyer is assigned and that the judicial process is strictly an 'internal affair' are history.

There is also a strong need for improvement with regard to the resettlement of Dutch FNPs. The Netherlands does not focus sufficiently on preparing them for release and the assistance abruptly ends once the Dutch prisoner is released. Upon release several bureaucratic and other obstacles are encountered which hamper the resettlement of this group. Not only is the current situation not in line with evidence-based studies[21] and the government strategy to reduce recidivism[22] but it potentially counteracts consular assistance. Without proper resettlement, ex-prisoners can end up in a foreign or other prison again. To remedy this situation the Ministry should ensure that the International Office of the Dutch Probation Service provides tangible support during detention, that municipalities are informed in a timely manner of the arrival of ex-prisoners and that adequate support is provided.

Furthermore the Ministry should develop a clear objective or mission about what it would like to achieve by providing consular assistance to Dutch FNPs. The assistance should continue to be based on the basic principles, but instead of focussing on the national rules in the country of detention it should focus on the basic human rights of FNPs which are enshrined in universally accepted human rights instruments. The Ministry should ensure that if prisoners are unable to exercise their rights, the prison authorities are notified and tailored consular assistance is provided until the prisoners can exercise their rights. This means that the standardised and reactive form of assistance should be replaced by tailor-made assistance and a preventive and pro-active approach by the Ministry. The assistance should, further, not abruptly stop once the prisoner is released but the person should be monitored during the first period after return to the Dutch society. The Ministry should, in cooperation with the Association of Netherlands Municipalities, the International Office of the Probation Service and aftercare organisations, analyse the resettlement of Dutch ex-FNPs and ensure that the responsible organisations address the bureaucratic difficulties which Dutch FNPs encounter to guarantee that they will not be overlooked anymore and receive a fair chance to resettle successfully in the Netherlands.

21 G. Harper, C. Chitty, *The impact of correction on re-offending: a review of What Works* (Home Office Research and Statistics Directorate, Research Study 291, 3rd edition February 2005) p 16

22 Tweede Kamer, Brief aangepast Masterplan DJI 2013-2018 (2012-2013 24587 nr. 435 19 June 2013) p 3

Recommendation

8. The Dutch Ministry of Foreign Affairs should fully adhere to its two basic principles of consular assistance; improve their assistance to FNPs in cooperation with the actors involved, in particular the International Office of the Dutch Probation Service and Epafras; and monitor whether Dutch ex-FNPs are supported in resettling into the Dutch society;

12.3.9 Need to develop a special human rights instrument for FNPs

The attention paid to the unique situation, specific needs and basic human rights of FNPs by prison authorities is currently low. Attention for nationals who are detained abroad by consular authorities in general is equally low. Moreover, despite the high number of FNPs worldwide the UN has not paid appropriate attention to this particular group of prisoners. The one-page UN Model Agreement on the Transfer of Foreign Prisoners (1985) includes the Recommendations on the Treatment of Foreign Prisoners. These recommendations consist of only five brief points for attention, which are not even numbered.[23] In order to do justice to nearly half a million FNPs worldwide and to draw attention to the difficulties they face during detention and after release the UN is strongly advised to draft and adopt a specific human rights instrument for FNPs. To this end, the Council of Europe Recommendation (2012)/12 concerning foreign prisoners can serve as a model.

It is however important that the status of this FNP human rights instrument becomes more than a mere recommendation. There are several legally binding rights which are directly applicable to the specific situation of FNPs but which have not been listed together or identified as FNP rights.[24] The fact that FNPs are placed in a vulnerable position is equally a valid reason to draft special rules for this particular group since there are specific sets of rules addressing the needs of other vulnerable groups like the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the UN Rules for the Treatment of Women Prisoners (Bangkok Rules). For a number of reasons the Netherlands is well placed to initiate this drafting process. First of all the Dutch Ministry of Foreign Affairs does not neglect this particular group of prisoners in its current work, which means that considerable understanding and know-how has been acquired. Secondly the Dutch Ministry is aware of the specific needs of FNPs and thirdly the Ministry might in future benefit as the prison authorities around the world become better aware of the rights of the FNPs, thus reducing the workload of consular authorities and the Dutch Ministry. Finally the symbolic nature that such Dutch leadership would carry must be noted. Currently a section of the Scheveningen prison in the outskirts of The Hague is 'home' to a number of foreign prisoners

23 See the text of the UN Recommendations on the Treatment of Foreign Prisoners in Annex 11.
24 Section 11.2.4 contains a list of several basic human rights of FNPs.

who have been convicted or are undergoing a trial by the International Criminal Court.[25] It would be rather appropriate and symbolic that The Hague would therefore become the 'home' city of the UN rules addressing the rights of FNPs. The Hague Rules on FNPs would thus stand alongside such instruments as the Bangkok rules addressing the rights of women in detention and Beijing Rules on juvenile justice.

Recommendation

9. States should draft, under auspices of the UN, special rules covering the treatment of FNPs, and gain support from States for their adoption and implementation;

12.3.10 The right to receive consular assistance

According to the Vienna Convention on Consular Relations, FNPs have the right to receive consular assistance. Whether they receive assistance is however at the discretion of the consular authorities of their country. In practice, not many FNPs receive consular assistance. This thesis demonstrates that consular assistance is beneficial and positive for FNPs, for their relatives, for prison authorities and ultimately for the country of return in general. For that reason the previous chapter explored whether it would be useful if consular assistance were codified in the Netherlands in a Consular Act. There are benefits as well as potential negative consequences but the conclusion is that the pluses outweigh the minuses.
Taking into consideration the vulnerable position of FNPs; their need for assistance; the necessity of reminding prison and judicial authorities about their responsibility to address the basic human rights of FNPs and their need to resettle successfully after release, it is clear that FNPs should not be overlooked and deprived of assistance. The codification of consular assistance is an important tool to make the situation of FNPs visible; to stimulate that they are enabled to exercise their basic human rights; and for providing assistance if necessary. It ensures that their situation is being monitored and that they have a fair chance of resettling successfully in society after release. The fact that a country is concerned about its citizens who are detained abroad is a signal to prison authorities to show compliance with international standards and commitment to the humane treatment of FNPs. The codification of consular assistance is therefore indispensable.

25 The UN ICC Registrar has overall responsibility for the ICC Detention Centre as stipulated in Regulation 90 of the Regulations of the International Criminal Court. The International Committee of the Red Cross (ICRC) is the inspecting authority and has unrestricted access to the Detention Centre.

Recommendation

10. States should codify the right of FNPs to receive consular assistance.

12.4 Final remarks

This thesis demonstrates that the Netherlands does not forget its nationals who are detained abroad and that most of them receive consular assistance. Prisoners appreciate this assistance; it has a positive impact on their detention experience and it addresses several typical needs of FNPs. From this perspective one could conclude that consular assistance by the Netherlands can be regarded as a *good practice*. There are however also shortcomings and therefore it is not (yet) a *best practice*. It has however the potential to be transformed into a *best practice*. This can only be achieved when the Dutch Ministry of Foreign Affairs starts adhering to its basic principles. Consular staff should monitor the detention situation in each country and how nationals are being treated to ensure that they receive all provisions as provided by (inter)national law. The Ministry should not be reluctant to discuss concerns about infringements of human rights with the prison/judicial authorities, for example when Dutch nationals do not receive humane treatment and/or a fair trial. Furthermore, the Ministry should ensure that those who return from detention abroad are included in national resettlement policies. It is important that municipalities be informed about the return of Dutch ex-FNPs and that they ensure that this group is not excluded. To stimulate successful reintegration into society it is necessary that FNPs receive in the first period after release support from the (International Office of the) Probation Service and/or other aftercare organisation(s).

Furthermore, the right to consular assistance should be codified in a Consular Act. Codification will accelerate the implementation of necessary improvements. It will also serve as a protective measure: first of all to ensure that all nationals in foreign detention who are in need of assistance will (continue to) receive assistance. Secondly it can serve to hold the Ministry to account when it does not adhere to its commitment to monitor whether nationals in foreign detention can exercise their basic human rights. The codification will require the Ministry to start working in a pro-active way to prevent Dutch FNPs from being placed in a vulnerable position. In order to obtain first-hand information it is indispensable that consular staff visit individual prisoners at least once per year and more frequently when necessary. The Ministry also needs to cooperate with other countries and to seek support from organisations with particular expertise. The involvement of volunteers is possible and can have a powerful impact.

This thesis proves that FNPs are in desperate need of the lifeline which consular assistance represents. Hopefully this lifeline will no longer be necessary in the future when the

involved authorities are sufficiently concerned with this particular group of (ex-)prisoners. The proposed UN Foreign National Prisoners Rules could contribute to this process.

This thesis will conclude with a quotation from Nelson Mandela: 'A nation should not be judged by how it treats its highest citizens, but its lowest ones…' FNPs can be considered as 'its lowest ones', and the way they are treated and to what extent their rights are adhered to in practice can be considered as the ultimate test of the respect for humanity and civilisation in a society.

Bibliography

Conferences

Council of Europe, 17th Conference of Directors of Prison Administrations, Rome 21 November 2012
Council of Europe, 14th Conference of Directors of Prison Administrations (CDAP), Vienna 19-21 November 2007
European Conference on Foreign National Prisoners, Nieuwersluis 16-17 October 2008

Court cases

UN

Human Rights Committee, USA-Turkmenistan Komarovski (CCPR/C/93/D/1450/2006) 5 August 2008
International Court of Justice, Avena case (Mexico v. USA) 31 March 2004
International Court of Justice, LaGrandcase (Germany v. USA) 27 June 2001

European Court of Human Rights (ECtHR)

Vasilescu v. Belgium (Application no. 64682/12) 25 November 2014
Lyapin v. Russia (Application no. 46956/09) 24 October 2014
Baytar v. Turkey (Application no. 45440/04) 14 October 2014
Nusret Kaya and Others v. Turkey (Applications no 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08) 8 September 2014
Ananyev and Others v. Russia (Application no. 42525/07; 60800/08) 10 April 2012
Rangelov v. Germany (Application no. 5123/07) 22 March 2012
Korobov v. Ukraine (Application no. 39598/03) 21 October 2011
Shishkin v. Russia (Application no. 18280/04) 7 October 2011
S.D. v. Greece (Application no. 53541/07) 11 June 2009
Ladent v. Poland (Application no. 11036/03) 18 March 2008
Modârcâ v. Moldova (Application no. 14437/05) 10 May 2007
Kalashnikov v. Russia (Application no. 47095/99) 15 June 2002
Dougoz v. Greece (Application no. 40907/98) 6 March 2001

Netherlands

RSJ 13/0643/GB, 6 May 2013
RSJ 12/1902/GA, 12 November 2012
RSJ 12/127/GA, 3 July 2012
RSJ 08/0658/GA, 18 July 2008
Hoge Raad NJ 1987 405, 16 January 1987
Gerechtshof 's Gravenhage GHSGR:2004:AR748, 02/43, 25 November 2006

Legislation

United Nations

Basic Principles for the Treatment of Prisoners
Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
Charter of the United Nations
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
International Covenant on Civil and Political Rights (ICCPR)
Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Recommendations on the Treatment of Foreign Prisoners (1985) (UN Rec(1985))
Resolution 1984/47 Procedures for the effective implementation of the SMR
Resolution 59 (I) Calling of an International Conference on Freedom of Information (1946)
Resolution 60/251UN by the General Assembly on 15 March 2006
Resolution 1998/22 Status of foreign citizens in criminal proceedings (UN Resolution 1998/22)
Standard Minimum Rules for the Treatment of Prisoners (SMR)
Standard Minimum Rules for the Treatment of Prisoners (draft resolution Mandela Rules 21 May 2015)
Vienna Convention on Consular Relations (VCCR)

Regional
African Charter on Human and Peoples' Rights (Banjul Charter)
American Convention on Human Rights (ACHR)
Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights

Council of Europe
Commentary to Recommendation CM/Rec(2012)12 concerning foreign prisoners (CM(2012)108 add)
Commentary to Recommendation concerning foreign prisoners (CoE PC-CP(2011)
Commentary to Recommendation Rec(2006)2 on the European Prison Rules (CoE Publishing, Strasbourg 2006)
Convention on the Transfer of Sentenced Persons
European Convention of Human Rights (ECHR)
European Prison Rules (EPR)
Recommendation CM/Rec (2012)12 concerning foreign prisoners
Recommendation No. R(87)71 concerning the ethical and organisational aspects of health care in prison
Recommendation Rec(2001)10 on the European Code of Police Ethics
European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (1964, CETS 051)

European Union
Directive 2012/13/EU on the right of information in criminal proceedings OJ L142
Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings OJ L280
Council Framework Decision 2009/829/JHA
Council Framework Decision 2008/909/JHA
Council Framework Decision 2008/947/JHA

Netherlands
Penitentiary Principles Act
Regeling selectie, plaatsing en overplaatsing van gedetineerden (Selection, Placement, and Transfer of Prisoners Regulations)
Vreemdelingenwet 2000 (Aliens Act)
Wetboek van Strafvordering
Wet Werk en Bijstand (Work and Social Assistance Act) (WWB)

Literature

Aarten P, T van der Heijden and P van der Laan, *Accreditation of offender programmes – An Overview of accreditation panels and procedures in various countries, Offending behaviour Programmes Accreditation Panel* (Netherlands Institute for the Study of Crime and Law Enforcement, Amsterdam/The Hauge 2011)

Andrews D A, J Bonta and others, 'Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis' (August 1990) Criminology Volume 28, Issue 3

Andrews D and J Bonta, *The pschygology of criminal conduct* (Anderson Publishing Co, Cincinnati 1998)

Annison J, T Eadie and C Knight, 'People first: Probation officer perspectives on probation work' (2008) Probation Journal 55(3)

Algemene Rekenkamer, *Gedetineerdenzorg buitenland* (2000-2001 27430 nr. 1-2)

Algemene Rekenkamer, *Gedetineerdenbegeleiding Buitenland* (2004-2005 30010 nr. 1)

APCCA, *Conference notes of the 21st Asian and Pacific Conference of Correctional Administrators* (APCCA Chiang Mai 2001)

Australian Government Department of Foreign Affairs and Trade, *Arrested or jailed overseas* (DFAT, Barnton 2014)

Balbo P, 'Italy' in A M van Kalmthout, F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Banks J, 'Foreign National Prisoners in the UK: Explanations and Implications' (2011) The Howard Journal of Criminal Justice

Bell B, F Fasani and S Machin, *Crime and Immigration: Evidence from Large Immigrant Waves* (Institute for the Study of Labor (IZA) Discussion paper no. 4996, London 2010)

Bestuursakkoord Rijk en gemeenten 'Samen aan de slag' (VNG 4 June 2007)

Blokker N M and N J Schrijver, *Netherlands Yearbook of International Law* (T M C Asser Institute, Den Haag 2005)

Boetticher A and J Feest, 'German Criminal and Prison' in International Penal and Penitentiary Foundation, *Prison policy and prisoners' rights, Proceedings of the Colloquium of the IPPF (IPPF, Wolf Legal Publishers, Nijmegen 2008)*

Bonta J and D A Andrews, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation 2007-06* (Public Safety Canada, 2007)

Boone M, 'Ten geleide – Nazorg en maatschappelijke opvang'(2005) Proces 2005/6

Bureau Buitenland, *Bureau Buitenland - Reclassering houdt niet op bij de grens* (Bureau Buitenland, Utrecht) <www.reclassering.nl/buitenland/bureau-buitenland> last accessed October 2015

Bureau Buitenland, *Straks terug naar Nederland? Regel het nu!* (Bureau Buitenland, Utrecht March 2013)

Bureau Buitenland, *Gezocht: vrijwilligers – Reclasseringsvrijwilligers maken zich sterk voor Nederlanders in buitenlandse detentie* (Bureau Buitenland, Utrecht March 2013)

Bureau Buitenland & Buitenlandse Betrekkingen, *Vrijwilliger voor de Nederlandse Reclassering* (Bureau Buitenland, January 2006)

Bureau Buitenland, 'Start Bureau Buitenland' *Vereniging van reclasseringsinstellingen* (Utrecht 4 June 1975)

Cachia T and M F Montebello 'Malta' in A M van Kalmthout, F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

CARE Project, *Consular and Diplomatic Protection Legal framework in the EU Member States* (University of Vienna, December 2010)

CCPR, *Concluding observations on the initial report of Haiti* (CCPR, 21 November 2014)

CCPR, *Concluding observations on the second periodic report of Burundi* (CCPR, 21 November 2014)

CCPR, *Concluding observations on the second periodic report of Malta* (CCPR, 21 November 2014)

CCPR, *Concluding observations on the initial report of Montenegro* (CCPR, 21 November 2014)

CCPR, *Concluding observations on the fourth periodic report of Georgia* (CCPR, 19 August 2014)

CCPR, *Concluding observations on the sixth periodic report of Japan* (CCPR, 19 August 2014)

CCPR, *Concluding observations on the fourth periodic report of the USA* (CCPR, 22 April 2014)

CEP, Special Interest Group on Foreign Nationals, 'Legal issues' (2014)

Commissie van Toezicht PI Ter Apel, *Jaarverslag 2013* (DJI, 2014)

Coalition agreement, Bruggen slaan - Regeerakkoord VVD – PvdA, 29 October 2012

Conseil National des Droits de L'Homme, *Prison Crisis: a shared responsibility – 100 recommendations for the protection of prisoners' rights* (CNDH, Rabat 2012)

Consulate General People's Republic of China Vancouver, *Guide to China's Consular Protection and Services Overseas* (2003)

Contrôleur Général des Lieux de Privation de Liberté, *Annual report 2013 (*CGLPL, France 2014*)*

Contrôleur Général des Lieux de Privation de Liberté, *Activity Report 2012* (CGLPL, Paris 2013)

Cooney F, 'Double Punishment: the treatment of foreign national prisoners' (January 2013) Prison Service Journal (issue 205)

Council of Europe, *CPT Standards* (CPT/Inf/E (2002) 1-Rev. 2013)

Council of Europe, *CPT Standards* (CPT/Inf/E (2002) 1-Rev. 2013)

Council of the European Union, *Implementation of the Council Framework 2008/909/JHA* (6345/3/12 Rev 3 2012)

Coyle A, *A Human Rights Approach to Prison Management - Handbook for prison staff* (International Centre for Prison Studies, London 2002)

CPT, 2nd General Report CPT (Council of Europe, Strasbourg 1992)

CPT report visit Spain (2012)

CPT Report visit The Netherlands (2011)

CPT Report visit Albania (2010)

CPT Report visit Armenia (2010)

CPT Report visit Bulgaria (2010)

CPT Report visit Georgia (2010)

CPT Report visit Ireland (2010)

CPT Report visit Austria (2009)

CPT Report visit Greece (2009)

CPT Report visit Poland (2009)

CPT Report visit Serbia (2009)

CPT Report visit Ukraine (2009)

CPT Report visit Bulgaria (2008)

CPT Report visit Denmark (2008)

CPT Report visit United Kingdom (2008)

CPT Report visit Georgia (2007)

CPT Report visit Latvia (2007)

CPT Report visit Norway (2007)

CPT Report visit Ukraine (2005)

CPT Report visit Serbia & Montenegro (2004)

CPT Report visit Austria (2004)

CPT Report visit Sweden (2003)

CPT Report visit Czech Republic (2002)

CPT Report visit Malta (2001)

CPT Report visit Greece (1997)

CPT Report visit Spain (1991)

Craig L A, T A Gannon and L Dixon, *What Works in Offender Rehabilitation: An Evidence-Based Approach to Assessment and Treatment* (Wiley-Blackwell, 2013)

Décarpes P, 'France' in in A M van Kalmthout, F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Dienst Justitiële Inrichtingen, *Gevangeniswezen in getal 2008-2012* (DJI, Den Haag 2013)

Dienst Justitiële Inrichtingen, *Procedure WOTS en WETS* (DJI, February 2012)

Dienst Justitiële Inrichtingen, *Gevangeniswezen in getal 2006-2010*, (DJI, Den Haag 2011)

Dünkel F, A Gensing and C Morgenstern, 'Germany' in A M van Kalmthout and F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

EMCDDA, *Country overview the Netherlands* <www.emcdda.europa.eu/publications/country-overviews/nl>

Epafras, *Nieuwsbrief* (Epafras, July 2013) <www.epafras.nl/16-nieuwsbrief.html> last accessed October 2015

Epafras, 'Bureau Buitenland – Alarmcentrale voor gedetineerden' (2010) Gezant uit Nederland (number 3, Utrecht 2010)

Epafras, *Algemeen beleidsplan van stichting Epafras 2008-2012: 'Verba volant, scripta manent'* (Epafras, Utrecht October 2008)

Epafras, *Pastoraal beleidsplan: Ver-reikend Omzien Naar Elkaar* (Epafras, Utrecht 2008)

Epfaras, *Gevangen in het Buitenland? Dan ben je ver van huis!* (Epafras, Utrecht) <www.epafras.nl> last accessed October 2015

European Commission, Meeting with EU Member States' experts on the implementation of the Framework Decisions 909/947/829, Brussels 13 November 2013

European Commission - MEMO/07/551 (2007) EU Initiative to strengthen consular protection for citizens outside the European Union

European Union Agency for Fundamental Rights (FRA), *Police Stops and Minorities* (EU-MIDIS Data in Focus Report nr. 04, 2010)

EuroPris, *State of Play: EU Framework Decisions 909/947 <www.europris.org/state-of-play-eu-framework-decisions-909-947-829/> last accessed October 2015*

Fair Trials International, *Fair Trials International and JUSTICE Response to the Balance of Competences Review on police and criminal justice* (FTI, London 2014)

Finney Hairston C, *'Prisoners and their families'* in Jeremy Travis and Michelle Waul, *Prisoners once removed. The impact of incarceration on re-entry of Children Families and Communities* (The Urban Institute Press, 2003)

Flood C, *Report on Irish Prisoners Abroad* (Irish Prisoners Abroad, 2007)

Foreign Affairs Committee*, Support for British nationals abroad: The Consular Service* (House of Commons, Fifth Report of Session 2014-15)

Geenen M J, 'Niet te strikt volgens de regels. Informele professional kan criminele jongere helpen stoppen' (June 2010) Tijdschrift voor sociale vraagstukken no. 6

Geenen M J, *Stoppen is afzien. Welke betekenis geven jongeren aan professionals in het proces van stoppen met criminaliteit?* (Avans Hogeschool, January 2010)

Greek Ombudsman, *Letter to prisoner by Andreas Takis, deputy Greek Ombudsman* (Greek Ombudsman, 206970722 2 April 2008)

Hagens M, *Toezicht op menswaardige behandeling van gedetineerden in Europa – Een onderzoek naar de verhouding tussen het EHRM en het CPT bij de effectuering van het folterverbod* (Wolf Legal Publishers, 2011)

Harper G and C Chitty, *The impact of correction on re-offending: a review of 'What Works'* (Home Office Research and Statistics Directorate, 3rd edition February 2005) Research Study 291

Henneken-Hordijk I, A A van Gemmert, *Gedetineerd in Nederland 2011* (Dienst Justitiële Inrichtingen, 2014)

Hermanns J, 'Nieuwe wegen in het terugdringen van recidive?' (2009) Proces (88) 3

Hill G, *The treatment of foreign prisoners* (International Scientific and Professional Advisory Council of the UN Crime Prevention and Criminal Justice Programme (ISPAC), January 2004)

HM Inspectorate of Prisons, *Foreign National Prisoners: A Follow Up report* (HMIP*,* London 2007)

HM Inspectorate of Prisons, *Foreign National Prisoners: A thematic review* (HMIP, London 2006)

Hofstee-van der Meulen F, 'Gedetineerde buitenlanders in Europees perspectief' in: 'E R Muller, P C Vegter, *Detentie – Gevangen in Nederland* (Kluwer, Alphen aan de Rijn 2009)

Home Office, *World Prison Population List* (Home Office Findings, 4th edition 2003)

Home Office, *The Impact of Stops and Searches on Crime and the Community* (Police Research Series Paper 127, London 2000)

House of Commons, *Prisoners: Foreign Nationals* (Column 643 W, 3 July 2013)

Human Rights Watch Lebanon, Lebanon: Free Foreign Prisoners When Sentences End (2010)

International Office, *Probation doesn't stop at the border – About the work of the International Office, brochure by the Dutch Probation Service* (Reclassering Nederland, Utrecht 2013)

Inspectie Ontwikkelingssamenwerking en Beleidsevaluatie (IOB), *Evaluatie Consulaire dienstverlening doorgelicht 2007-2010* (Ministerie van Buitenlandse Zaken, Den Haag 2010 nr. 338)

Inspectie Sanctietoepassing (ISt), *Themaonderzoek Slechts op bezoek* (ISt, 2013)

Inspectie Sanctietoepassing, *Doorlichting P.I. Utrecht locatie Wolvenplein* (ISt, 2012)

Inspectie Sanctietoepassing, *Voeding ingeslotenen* (ISt, 2011)

Inspectie Sociale Zaken en Werkgelegenheid (SZW), *Informatie-uitwisseling rondom ex-gedetineerden met multiproblematiek – nota van bevindingen* (ISZW, June 2012)

Inspectie Sanctietoepassing, *Doorlichting PI. Veenhuizen locatie Esserheem* (ISt, 2010)

Johnson A, 'Sweden' in A M van Kalmthout, F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Kalmthout, A M van, M M Knapen and C Morgenstern, *Pre-trial detention in the European Union* (Wolf Legal Publishers, Nijmegen (2009)

Kalmthout A M van, and L Tigges, 'The Netherlands' in A M van Kalmthout, I Durnescu (Eds), *Probation in Europe* (CEP, Wolf Legal Publishers Nijmegen 2008)

Kalmthout A M van, F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Kempen P H, 'Positive obligations to ensure the human rights or prisoners` in P J P Tak and M Jendly (eds) *Prison policy and prisoners' rights. The protection of prisoners' fundamental rights in international and domestic law* (Wolf Legal Publishers, Nijmegen 2008)

Kensey A and P Tournier, *Arithmétique de l'exécution des peines, Travaux & documents* (Ministère de la Justice, Paris 2002)

Kirgis F L, *World Court Rules Against the United States in LaGrand Case Arising from a Violation of the Vienna Convention on Consular Relations* (The American Society of Civil Law, July 2001)

Knaap L M van der, and D L Alberda, *De predictieve validiteit van de recidive inschattingsschalen (RISc)* (WODC Cahier 2009-12, Den Haag 2009)

Knaap L van der, L Leenarts and L Nijssen, *Psychometrische kwaliteiten van de Recidive Inschattingsschalen (RISc). Interbeoordelaarsbetrouwbaarheid, interne consistentie en congruente validiteit* (WODC, Den Haag 2007)

Kooijmans P H, *Internationaal publiekrecht in vogelvlucht* (Wolters-Noordhoff Groningen, 1994)

Kooten H van, *Eyes and Ears - Liaison Office for Dutch Prisoners Abroad and International contacts* (Reclassering Nederland, Utrecht 2005)

Kuijer M, *Training manual on international human rights standards in the field of prevention of torture* (CNDH, April 2013)

Lambert M J, C Harmon and others, 'Providing feedback to psychotherapists on their patients' progress: Clinical results and practice suggestions' (2005) *Journal of Clinical Psychology, vol 61 issue 2*

Lappi-Seppälä T, 'Finland' in A M van Kalmthout, F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Liba P, 'Estonia' in A M van Kalmthout and F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Lipsey M W, 'The Primary Factors that Characterize Effective Interventions With Juvenile Offenders: A meta-analytic Overview' (2009) Victims & Offenders nr. 4

Lipsey M W and F T Cullen, 'The effectiveness of correctional rehabilitation: A review of systematic reviews' (2007) The Annual Review of Law and Social Science vol 3

Malisauskaite-Simanaitiene S, 'Lithuania' in A M van Kalmthout, F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Mantouvalou K, *Consular Assistance and Trial Attendance: A Comparative Examination of the American, Australian, British, Dutch and German Ministries of Foreign Affairs* (Fair Trials International, London 2009)

Martinson R, 'What works? Questions and answers about prison reform' (1974) National Affairs, issue 35

Maruna S, *Making Good: How ex-convicts reform and rebuild their lives* (Apa books, Washington DC 2001)

Menger A, 'Wat werkt en wie werkt? Over effectiviteit en professionaliteit in het reclasseringwerk' (April 2010) Maatwerk Vakblad voor maatschappelijk werk nr. 2

Menger A, 'Wie werkt? Over het vakmanschap van de reclasseringswerkerker' (2009) Proces (88) nr. 3

Mens en Samenleving, 'RISc (Recidive Inschattings Schalen): kans op delictgedrag? (2013) <http://mens-en-samenleving.infonu.nl/diversen/41119-risc-recidive-inschattings-schalen-kans-op-delictgedrag.html> last accessed October 2015

Miedema F, S Stoltz, *Vast(gelopen) in den vreemde. Een onderzoek naar het hoge aantal Nederlanders in buitenlandse detentie* (WODC, Den Haag 2008)

Miller S, M Hubble and B Duncan, 'Supershrinks, what's the secret of their success?' (August 2008) Psychotherapy in Australia vol 14 nr. 4

Ministerie van Buitenlandse Zaken, *Jaarlijkse rapportage over Nederlandse gedetineerden in het buitenland* (DCV/CA-494/2015, Den Haag 8 June 2015)

Ministerie van Buitenlandse Zaken, *Gearresteerd in het buitenland* (Ministerie van Buitenlandse Zaken, Den Haag July 2014)

Ministerie van Buitenlandse Zaken, Gedetineerdenbeleid in buitenlands perspectief. Inventarisatie uitgevoerd in het kader van de Ronde Tafel Conferentie Gedetineerdenbegeleiding (Den Haag October 2001)

Ministerie van Justitie, *Werken aan recidive reductie* (Ministerie van Justitie, December 2010 Jaargang 2) nr. 8

Ministerie van Justitie, *Afstemming van gedragsinterventies voor jeugdige delinquenten* (Ministerie van Justitie, Den Haag 2008)

Mol G D, I Henneken-Hordijk, *Gedetineerd in Nederland 2007* (DJI, Den Haag 2008)

Murdoch J, The treatment of prisoners – European standards (Council of Europe publishing, Strasbourg 2006)

National Research Council, *Parole, Desistance from Crime, and Community Integration* (National Research Council, 2007)

Nationale Ombudsman, Letter to Minister of Security and Justice (2013.09734.001) 5 November 2013

Nationale Ombudsman, Letter to Minister of Security and Justice (2013.09734) 13 March 2014

Nationale Ombudsman, *Rapportnummer: 2006/0098* (Den Haag, 20 March 2006)

Nikolas K, 'Greek prisons running out of food' *Digital Journal* (May 30, 2012)

Noordhuizen S and G Weijters, *Derde meting van de monitor nazorg ex-gedetineerden* (WODC Cahier, Den Haag 2013)

NPM Albania, *Annual report 2013* (Republic of Albania People's advocate, Tirana)

NPM Albania, *Activity of the People's Advocate on the role of the National Mechanism on Prevention of Torture 2008-2010* (Albanian Rehabilitation Centre for Trauma and torture, Tirana 2011)

NPM Armenia, *NPM report* (Human Rights Defender, Yerevan 2009)

NPM Azerbaijan, *Report on the activity of the National Preventive Mechanism Against Torture 2009-2010* (Commissioner for human rights (Ombudsman), Baku 2011)

NPM Bulgaria, *Annual Report of the Ombudsman of the Republic of Bulgaria in the Capacity of National Preventive Mechanism* (Ombudsman of the Republic Bulgaria, 2013)

NPM Czech Republic, *Systematic visits to facilities where persons restricted in their freedom are confined* (Public Defender of Rights, 2006)

NPM Denmark, *Annual report 2013* (Danish Parliamentary Ombudsman, Copenhagen 2014)

NPM Estonia, Overview of the Chancellor of Justice Activities for the Prevention of Ill-treatment (Chancellor of Justice, 2010)

NPM Georgia, *Human Rights in Closed Institutions Report of National Preventive Mechanism of Georgia* (Public Defender (Ombudsman) of Georgia, 2013)

NPM Georgia, *Human Rights in Closed Institutions Report of National Preventive Mechanism of Georgia* (Public Defender (Ombudsman) of Georgia, 2010)

NPM Macedonia, *Annual report 2012* (Ombudsman National Preventive Mechanism, May 2013)

NPM Norway, *SOM The Parliamentary Ombudsman's National Preventive Mechanism Doc 4.1 (2014-2015)* (Parliamentary Ombudsman for Public Administration Norway, 2015)

NPM Slovenia, *Implementation of the duties and powers of the NPM in 2013* (Human Rights Ombudsman of the Republic of Slovenia, June 2014)

NPM Ukraine, *Monitoring of custodial settings in Ukraine: Status of implementation of the national preventive mechanism Report for 2013* (Parliament Commissioner for Human Rights, Kyiv 2014)

NPM United Kingdom, Monitoring places of detention *Fourth Annual Report 2012-12* (NPM, March 2014)

NRC, 'Partijen fileren optreden Rosenthal in Bahrami-debat', *NRC.nl* (Amsterdam, 3 February 2011)

Open Society Justice Initiative, *A Study of stop-and-search practices in Paris* (Open Society Institute, New York 2009)

Pilgram A and V Hofinger, 'Austria' in A M van Kalmthout and F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Plaisier J and S Pennekamp, *Planevaluatie Reclasserings Toezicht* (WODC, September 2009)

Ploeg G,`The Netherlands' in: A M van Kalmthout, J T M Derks, *Probation and Probation Services, A European Perspective* (Wolf Legal Publishers, Nijmegen 2000)

Poort R, *Fundamenten voor toezicht. Over de grondslagen voor de ontwikkeling van reclasseringstoezicht* (Reclassering Nederland, Utrecht 2009)

Post M, *Detentie en culturele diversiteit* (Pompe Reeks, Boom Juridische Uitgevers 2005)

Prison Reform Trust, *Forgotten Prisoners – The Plight of Foreign National Prisoners in England and Wales* (PRT Briefing, London May 2004)

Prisoners Abroad, 'Creativity behind bars: reducing isolation' (23 May 2014)

Punter L, 'Foreign Nationals Survey' (unpublished) in Prison Reform Trust: *Forgotten Prisoners – The Plight of Foreign National Prisoners in England and Wales* (PRT Briefing, London May 2004)

Quigley J, William J Aceves and S Adele Shank, *The Law of Consular Access – a documentary guide* (Routlegde Research, 2010)

Radio Nederland Wereldomroep, 'Ambassade Dublin zoekt vrijwilligers voor cel-bezoek' (19 Agust 2009)

Reclassering Nederland, *RISc – informatie voor opdrachtgevers van de reclassering* (Reclassering Nederland, Utrecht 2009)

Reclassering Nederland, *Factsheet Quickscan voor opdrachtgevers van de reclassering* (Reclassering Nederland, Utrecht 2009)

Redress, *Submission of the Redress Trust for the Foreign Affairs Committee: Inquiry into FCO consular Services* (Redress, 24 January 2014)

Rekenkamer Amsterdam, *Onderzoeksrapport Nazorg aan gedetineerden een ongemakkelijke keten*, (Rekenkamer Amsterdam, May 2013)

Reilly M, *Standards for the Inspection of Prisons in Ireland* (Inspectorate of Prisons, Ireland 2009)

Reiman J, *And the Poor Get Prison: Economic Bias* (American Criminal Justice, Boston 1996)

Richards M, et al, 'Foreign Nationals in English Prisons: II. Some Policy Issues' (August 1995) The Howard Journal, Vol 34, No. 3

Rosenfeld R, J Petersilia and C Visher, 'The First Days After Release can Make a Difference' (June 2008) Corrections Today

Rovers B, *Ze deugen nergens voor: Het Belief effect in justitiële jeugdinterventies* (Inauguration lecture 9 November 2007)

Ruthven D and E Seward, R*estricted Access: Legal Information for Remand Prisoners* (Prison Reform Trust, London 2002)

Schie C van, *Nazorg ex-gedetineerden – Enquête bij PI's en gemeenten* (Centrum Criminaliteitspreventie Veiligheid, December 2012)

Singer J K, D K Das and E M Ahlin, *Trends in Corrections Interviews with Corrections Leaders Around the World,* (CRC Press, Boca Raton 2013) p xxix-xxxi

Singh Bhui H, *Race & Criminal Justice* (SAGE Publications Ltd, 2009)

Singh Bhui H, *Going the Distance: Developing Effective Policy and Practice with Foreign National Prisoners* (Prison Reform Trust, London 2004)

Skeem J and S Manchak, 'Back to the future: From Klockar's model of effective supervision to evidence based practice in probation' (2008) Journal of Offender Rehabilitation 47(3)

Škvain P, 'Czech Republic' in A M van Kalmthout, F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Snacken S, 'Belgium' in A M van Kalmthout and F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Snacken S, *Buitenlanders in de Belgische gevangenissen: knelpunten en mogelijke oplossingen* (Koning Boudewijnstichting, Brussel 2004)

Sonnenschein A, *Trendwatch - Introductie en eerste resultaten van een instrument ter verbetering van justitiële capaciteitsramingen* (WODC Cahier 2011-4, Den Haag 2011)

South African Department on International Relations & Cooperation, *Advice to South African Citizens in the Event a South African is Arrested or Jailed Abroad* (International relations & Cooperation)

Spronken T, *EU–Wide Letter of Rights in Criminal Proceedings: Towards Best Practice* (University Maastricht and Bundesministerium der Justiz, July 2010)

SPT 5th Annual Report of the SPT (2011)

SPT, 4th Annual Report of the SPT (UN, CAT/C/46/2, 2011)

SPT Report visit Paraguay (2010)

SPT Report visit Maldives (2009)

SPT Report visit Paraguay (2009)

SPT Report visit Sweden (2009)

SPT Report visit Sweden (2008)

SPT Report visit Benin (2008)

Stando-Kawecka B, 'Poland', Tímea Szabó and others, 'Hungary' in A M van Kalmthout, F Hofstee-van der Meulen and F Dünkel, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

Steffensmeier D and S Demuth, 'Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?' (2000) American Sociological Review Vol. 65 No. 5

Tactus, *Clientinformatie Reclasseringstoezicht* (Tactus, April 2010)

Tak P, M Jendly (eds) *Prison policy and prisoner's rights* (Wolf Legal Publishers Nijmegen, 2008)

Telegraaf, 'Diplomaten gaan gedetineerden minder bezoeken' *De Telegraaf* (Amsterdam, 1 October 2013)

Tomašeski T, *Foreigners in prison* (European Institute for Crime Prevention and Control, Publication Series No. 24, 1994)

Townsend M, 'Stop and search 'racial profiling' by police on the increase, claims study', *The Observer* (London 14 January 2012)

Tuynman M, M Planije, *Monitor Plan van Aanpak Maatschappelijke Opvang* – rapportage 2011 (Trimbos Instituut, Utrecht 2013)

Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2014-2015, 3001021 nr. 21)

Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 2014* (2013-2014, 33750 V nr. 10)

Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 2014* (2013-2014, 33750 V nr. 1)

Tweede Kamer, *Modernisering Nederlandse diplomatie* vergaderjaar (2013-2014 32734 Nr. 16)

Tweede Kamer, Brief aangepast Masterplan DJI 2013-2018 (2012-2013 24587 nr. 435 19 June 2013)

Tweede Kamer, *Gedetineerdenbegeleiding Buitenland* (2011-2012, 30010 nr. 18)

Tweede Kamer, *Executie Nederlandse vrouw in Iran* (2010-2011, 3 February 2011)

Tweede Kamer, *Rechtsbijstand* (2009-2010, 31753 nr. 16)

Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2008-2009, 30010 nr. 15)

Tweede Kamer, Gedetineerdenbegeleiding buitenland (2008-2009, 30010 nr. 11)

Tweede Kamer, *Vaststelling van de begroting van de uitgaven en de ontvangsten van het Ministerie van Buitenlandse zaken (V) voor het jaar 2008* (2007-2008, 31 200 V nr. 10)

Tweede Kamer, Gedetineerdenbegeleiding buitenland (2007-2008, 30010 nr. 6)

Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2005-2006, 30010 nr. 5)

Tweede Kamer, *Gedetineerdenbegeleiding buitenland* (2004-2005, 30010 nr. 1-2)

Tweede Kamer, *Reclasseringsbeleid* (2003-2004, 29270 nr. 1)

Tweede Kamer, *Maatschappelijke opvang* (2003-2004 27834 nr. 34 26 May 2004)

Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 16)

Tweede Kamer, *Nederlanders in buitenlandse gevangenissen en buitenlanders in Nederlandse gevangenissen* (2001-2002, 25203 nr. 15)

Tweede Kamer, *Vaststelling van de begroting van de uitgaven en de ontvangsten van het Ministerie van Buitenlandse zaken (V) voor het jaar 2001* (2000-2001, 27400 V nr.2)

Tweede Kamer, *Vaststelling van de begroting van de uitgaven en de ontvangsten van het Ministerie van Buitenlandse zaken (V) voor het jaar 2000* (1999-2000, 26800 V nr. 32)

Tweede Kamer, 1988-1989, 20800 Hoofdstuk V Ministry of Foreign Affairs, Budget for the year 1989 nr. 16

Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 1989* (1988-1989, 20800 V nr. 156)

Tweede Kamer, *Brief minister van Buitenlandse Zaken aan Tweede Kamer* (1997-1998, 25203 nr. 5)

Tweede Kamer, *De Nederlandse vertegenwoordigingen in het buitenland* (1992-1993, 23238 nr. 1)

Tweede Kamer, *Vaststelling van de begrotingsstaten van het Ministerie van Buitenlandse Zaken (V) voor het jaar 1989* (1988-1989, 20800 V nr. 156)

Tzschaschel N, *Ausländische Gefangene im Strafvollzug* (Centaurus, 2002)

UK Foreign & Commonwealth Office, *In prison abroad* (Consular Directorate, London 2012)

UK, 1st Annual report UK National Preventive Mechanism (London, 2011)

UN Committee Against Torture, *Annual CAT report 2010-2011* (UN A/66/44)

UN Committee Against Torture, Concluding observations on the fifth period report of Estonia (CAT/C/EST/CO/5 2013)

UN Office on Drugs and Crime, *World Drug Report 2011* (United Nations, New York 2011)

UNODC, *Handbook on Prisoners with special needs* (UN Publications, New York 2009)

UNODC, *Custodial and non-custodial measures. Detention Prior to Adjudication. Criminal justice assessment toolkit* (UNODC New York 2006)

UNODC, *Custodial and non-custodial sentences - Alternatives to imprisonment (*New York 2006)

UN Working Group on Arbitrary Detention, Report of mission to Germany (2011) A/HRC/19/57/Add.3

UN Working Group on Arbitrary Detention, Report of mission to Malta (2009) A/HRC/13/30/Add.2

UN Working Group on Arbitrary Detention, Report of mission to Senegal (2009) A/HRC/13/30/Add.3

UN Working Group on Arbitrary Detention, Report of mission to Turkey (2006) A/HRC/4/40/Add.5

UN Working Group on Arbitrary Detention, Report of mission to Bahrain (2001) E/CN.4/2002/77/Add.2

US Department of State, *Human Rights Reports 2013* (2014) <www.state.gov/j/drl/rls/hrrpt/>

US Department of State, *Assistance to U.S. Citizens Arrested Abroad* (Travel State Government) http://travel.state.gov/content/studentsabroad/en/emergencies/assistance-to-us-citizens-arrested-abroad.html

Vera Institute of Justice, *The first month out: post-incarceration experiences in New York City* (Vera Institute of Justice, New York 1999)

Vermeer-Künzli A M H, The Protection of Individuals by means of Diplomatic Protection – Diplomatic Protection as a Human Rights Instrument (E M Meijers Instituut, 2007)

VNG, Ministerie van Veiligheid en Justitie, *'Richting aan Re-integratie - Convenant Re-integratie van (ex-)* gedetineerden' (VNG, 10 December 2014)

VNG-Ministerie van Justitie, *Samenwerkingsmodel Nazorg volwassen (ex-)gedetineerde burgers, actualisatie* (VNG-Ministerie van Justitie, Den Haag 2011)

VNG, *Nazorg ex-gedetineerden* (BAOZW/U200902781, 21 January 2010)

VNG, Ministerie van Justitie, *Samenwerkingsmodel Nazorg volwassen (ex-)gedetineerde burgers, gemeenten – justitie* (VNG-Ministerie van Justitie, Den Haag 2009)

Volkskrant, 'Buitenlandse Zaken moet meer zorg besteden aan gevangenen' *De Volkskrant* (Amsterdam, 20 March 1998)

Wacquant L, ''Suitable enemies' Foreigners and Immigrants in the prisons of Europe' (1999) Punishment and Society Vol 1(2)

Walmsley R, 'Prison health care and the extent of prison overcrowding' (2005) International Journal of Prisoner Health, Vol. 1 Iss: 1

Wampold B E, 'Three ways to improve our effectiveness' (American Psychological Association, 2006)

Ward T and C A Fortune, 'The Good Lives Model: Aligning risk reduction with promoting offenders personal goals' (2013) European Journal of Probation Vol 5 (2)

Wermink H, J de Keijser and P Schuyt, 'Verschillen in straftoemeting in soortgelijke zaken. Een kwantitatief onderzoek naar de rol van specifieke kenmerken van de dader' (2012) Nederlands Juristenblad edition 11

WODC, *De Monitor Nazorg Ex-gedetineerden* (Cahier 2010-4, Den Haag 2010)

WODC, *Ethnic Diversification and Crime* (European Journal on Criminal Policy and Research 2001/01)

Wormith J S and others, 'The rehabilitation and reintegration of offenders: The current landscape and some future directions for correctional psychology' (May 2007) Criminal Justice and Behavior vol 34 no. 7

Zwemmer J, J Jager and J A van Vliet, 'Nazorg in ontwikkeling: werk in uitvoering!' (2007) Proces 2007/3

Zyl Smit D van, S Snacken*, Principles of European Prison Law and Policy – Penology and Human Rights* (Oxford University Press, Oxford 2009)

Websites[1]

Commissie van Toezicht Justitiele Inrichtingen www.commissievantoezicht.nl / www.dji.nl

Council of Europe www.coe.int

Council of Europe SPACE Statistics http://wp.unil.ch/space

Council of Europe Treaty Office http://conventions.coe.int

Epafras www.epafras.nl

Eur-Lex http://eur-lex.europa.eu/homepage.html?locale=en

European Union www.europa.eu

Europris www.europris.org

Exodus www.exodus.nl

Dienst Justitiele Inrichtingen (DJI) www.dji.nl

Gevangenenzorg Nederland www.gevangenenzorg.nl

International Centre for Prison Studies www.prisonstudies.org

Inspectorate of Security and Justice at www.ivenj.nl

Inspectorate of Healthcare www.igz.nl

Health In Prisons Programme (HIPP) of the UN World Health Organisation (WHO) www.euro.who.int

Leger des Heils www.legerdesheils.nl/nieuwe-start-na-gevangenisstraf

NationMaster Prisoners statistics www.nationmaster.com/country-info/stats/Crime/Prisoners/Foreign-prisoners

NOMS www.justice.gov.uk/about/noms

Prisoners Abroad www.prisonersabroad.org.uk

Prison Law www.prisonlaw.nl

Prison Watch www.prisonwatch.org

Raad voor de Strafrechtstoepassing en Jeugdbescherming www.rsj.nl

Reclassering www.reclassering.nl

Rijksoverheid www.rijksoverheid.nl

Salvation Army www.legerdesheils.nl

Special Interest Group foreign national prisoners www.cepprobation.org/page/79/foreign-national-prisoners

US Department of State, *Human Rights Reports* www.state.gov/j/drl/rls/hrrpt

1 The websites links have been last accessed in October 2015.

Abbreviations

ACHR	American Convention on Human Rights
ADL	Activities of Daily Living
AIRS	Internationale Rechtshulp in Strafzaken
ANOVA	Analysis of Variance
APCCA	Asian and Pacific Conference of Correctional Administrators
CAT	UN Committee Against Torture
CCPR	UN Human Rights Committee
CDAP	Conference of Directors of Prison Administrations
CEP	Confideration of European Probation
CGLPL	Contrôleur Général des Lieux de Privation de Liberté
CM	Council of Europe Committee of Ministers
CNDH	Conseil National des Droits de L'Homme Morocco
CoE	Council of Europe
CPT	Committee for the Prevention of Torture and Inhuman or
DCM	Consular Affairs and Migration Policy Department, Dutch Ministry of Foreign Affairs
DJI	Dutch Custodial Institutions Agency
DPAN	Registration system of prisoners
EABT	Education Behind Foreign Bars
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EPR	European Prison Rules
EU	European Union
FNO	Foreign national officer
FNP	Foreign national prisoner
FTI	Fair Trials International
HIPP	Health in Prison Project WHO
HMIP	Her Majesty's Inspectorate of Prisons
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICCPR	International Convenant on Civil and Political Rights
ICPS	International Centre for Prison Studies
ICRC	International Committee of the Red Cross
IOB	Policy and Operations Evaluation Department, Dutch Ministry of Foreign Affairs
IPCA	International Prison Chaplain Association
ISt	Inspectie Sanctietoepassing
IV&J	Inspectie Veiligheid en Justitie (Inspectorate of Security and Justice)
JHA	EU Justice and Home Affairs Council
JRS	Jesuit Refugee Service Europe
MMD	Social Services Employee
NOMS	National Offender Management Service, British Ministry of Justice
NPM	National Preventive Mechanism
OBJD	Onderzoeks- en Beleidsdatabase Justitiële Documentatie
Oj	EU Official Journal
OPCAT	UN Optional Protocol to the Convention Against Torture
PC-CP	CoE Council for Penological Co-operation
PFI	Prison Fellowship International

Rec	Recommendation
RIC	Re-integration Centre
RISc	Recidivism Assessment Scales
RNR-model	Diagnostic and risk assessment tool
RSJ	Raad voor de Strafrechtstoepassing en Jeugdbescherming
SMR	UN Standard Minimum Rules for the Treatment of Prisoners
SPACE	Statistiques Pénales Annuelles du Conseil de l'Europe (Annual Penal Statistics)
SPSS	Statistical Package for the Social Sciences
SPT	Subcommittee on Prevention of Torture
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UPR	Universal Periodic Review
VCCR	Vienna Convention on Consular Relations
VNG	Association of Netherlands Municipalities
WODC	Research and Documentation Centre, Dutch Ministry of Security and Justice
WHO	UN World Health Organisation
WWB	Wet Werk en Bijstand (Work and Social Assistance Act)

Summary

Summary Detained abroad – Assisting Dutch nationals in foreign detention

'For those arrested outside their own country, detained hundreds of miles from home, unable to speak the local language, ignorant of the local legal system and with no idea of who to turn to for help, consular assistance provides a lifeline. It is, however, a public service which has been subject to almost no detailed examination whether by academic institutions, bodies like Fair Trails International or even Ministries of Foreign Affairs themselves.'

Fair Trials International, November 2009

In recent decades prison populations have become less homogeneous. In prisons all around the world a huge range of nationalities and languages can be found alongside cultural and religious diversity. Foreign national prisoners (FNPs) are detained in relatively large numbers. This is particularly true for countries in the European Union (EU), where on average nearly one in every five prisoners is a foreigner. FNPs are persons who are detained in relation to a criminal offence in a country of which they are neither a national nor a resident and to whom another country is entitled to provide consular assistance.

The book *Foreigners in European Prisons*[1] revealed that in the European Union FNPs encounter many difficulties in daily prison life as a result of their foreign status, language difficulties and distance from their families. In practice, prison authorities are often not fully aware of the problems FNPs face and they do not address their special needs. As a result FNPs often feel socially excluded and are unable to exercise their rights. One of their rights is to receive consular assistance from consular staff from their country of origin. In practice only a few countries provide consular assistance to their nationals in foreign detention. One of these countries is the Netherlands.

Consular authorities are, based on article 36.1 (c) of the universally accepted Vienna Convention on Consular Relations, entitled to visit their nationals in foreign detention and to give them assistance. Dutch nationals also receive, besides consular assistance from diplomatic staff, support from the International Office of the Dutch Probation Service and from the religious organisation Epafras. These two organisations, which are based in the Netherlands, have a strong network of volunteers who visit Dutch FNPs on a regular basis. Both the International Office and Epafras have been providing such assistance for over three decades. In the study *Foreigners in European Prisons* this practice was identified as a good practice. However, whether the consular assistance received by Dutch FNPs is indeed a good

1 A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, Foreigners in European Prisons (Wolf Legal Publishers, Nijmegen 2007)

practice has never been evaluated. This, in combination with the high number of FNPs and the fact that both prison and consular authorities are often not aware of the difficulties which they encounter, was the incentive to start this thesis. The aim of this research is to contribute to existing literature on FNPs. The goal is that the outcome of this thesis will inspire and stimulate prison and judicial authorities, diplomatic missions and civil society organisations to address FNPs' distinctive rights and needs adequately. It would be beneficial when FNPs will be treated, as are females and juveniles, as a special group of prisoners.

The central research question of this thesis is *does consular assistance, as received by Dutch FNPs, contribute to their detention experience, special needs and resettlement?* This research question is studied by combining a literature study with receiving input from questionnaires addressed to Dutch FNPs and relevant others.2 Based on the main research question nine research questions have been formulated. The first four questions are based on desk research and the five others on field research. Since each research question is tackled in a separate chapter this summary will provide insight per chapter/research question.

1. What is the situation of FNPs worldwide; do they have any distinctive rights and needs? *(Chapter 3)*

Worldwide the prison population consists of over 10 million prisoners. Although it is important to exercise caution when using figures for FNPs as, for example, countries do not always use the same definition for FNPs, it is possible to confirm there are nearly half a million FNPs detained abroad. This is on average 5% of the total prison population. The highest percentage of FNPs can be found in the Middle East, where more than one in three prisoners is a foreigner. There are various explanations for the relatively high number of FNPs. Globalisation has contributed to increased mobility. Despite the fact that there is little evidence that foreign nationals commit more serious crimes than nationals, they have more chance of being arrested and of receiving a prison sentence. This is due to their foreign appearance, the fact that they do not speak the national language, their limited awareness of their legal rights, reduced access to legal support, and because FNPs are generally excluded from non-custodial sentences and measures. Their over-representation during pre-trial detention is demonstrated in figures provided by the Council of Europe.

International legally binding human rights instruments are, with the exception of the right to have access to an interpreter, relatively silent on issues faced by FNPs. There is, for example,

2 Quantitative data have been collected by sending out questionnaires to all (2,606) Dutch FNPs (22% response rate from 54 countries), 1,250 relatives of prisoners (22% response rate) and 137 diplomatic missions (69% response rate). Qualitative data have been collected by conducting interviews with prisoners (48) in nine countries, consular staff (27), volunteers and staff of the International Office (23), chaplains and staff of Epafras (8), relatives of prisoners (15), ex-prisoners (11), others (11) and letters from prisoners (46).

no obligation for countries to provide information about rules and rights in a language the prisoner can understand. However recently, within the EU, minimum standards have been set for defence rights. EU nationals who are suspected or accused of a criminal offence in an EU country where they do not speak or understand the language are supposed to receive, without delay, interpretation during criminal proceedings, including police questioning and court hearings. EU Member States are furthermore requested to provide such detainees with a written translation of all essential documents, including the decision to deprive them of their liberty, the charges and the judgement. Furthermore, EU nationals are entitled to be informed in a language they can understand about their rights (*Letter of Rights*) in prisons in the EU. Despite the fact that these EU directives are supposed to be implemented in national law and in practice, this is not yet the case.
There is one specific FNP right which is not legally binding but which is universally accepted by prison authorities. This is the right of FNPs to make, with their permission, contact with the diplomatic mission and to receive consular assistance. According to Article 36.1 b) of the Vienna Convention on Consular Relations the authorities have a duty to inform FNPs about their right to make contact with the diplomatic mission and they should, upon request by the FNP, notify the latter of the detention. The fact that receiving consular assistance is not a legally protected right makes its provision a matter for government policy. In practice not many FNPs receive consular assistance from their diplomatic mission. It seems that States are hardly aware when their nationals are detained abroad.

Literature and reports by independent monitoring bodies show that FNPs face particular difficulties due to their foreign status, the fact that they do not speak the language, their distance from their families and to a lesser extent cultural and religious differences. Prison authorities fail in their duty to protect FNPs adequately and to address their needs, and FNPs can therefore be considered a vulnerable group of prisoners. The FNP needs concern their *well-being and treatment*; their *awareness of legal procedures and rights*; *contact with the outside world;* and their *social inclusion within prison*. One need that is hardly mentioned in the research literature and which is added in this thesis is their need to *prepare for release and to receive aftercare*.

2. What is the background and location of Dutch nationals in foreign detention? *(Chapter 4)*

Over the last 25 years the number of Dutch FNPs has quadrupled, from 579 in 1988 to 2,262 in 2015, making the Netherlands a leader in comparison with other neighbouring countries. There are several explanations for the fact that the Dutch FNP population is so considerable. Firstly, it is the tolerant Dutch approach towards drugs for personal use and the fact that the Netherlands is both a transit and distribution country for drugs and a manufacturer of synthetic drugs. Most countries have a punitive and harsh approach towards drug crimes and

therefore judges order long sentences. The fact that the percentage of Dutch FNPs detained for drug offences has dropped in recent years might explain why the total number of Dutch FNPs has started to decrease after a long period of growth. Secondly, the Netherlands have a rather broad concept of who constitutes a Dutch citizen. Dutch citizenship is determined by birth to at least one Dutch parent irrespective of the place of birth. The Kingdom of the Netherlands consists also of overseas countries and municipalities. It is therefore not surprising that more than half of the Dutch FNPs were born outside the Netherlands and sometimes do not speak Dutch. Thirdly, the fact that Dutch FNPs receive consular assistance is an incentive for Dutch FNPs and/or their families to notify the Dutch diplomatic mission about their detention abroad. This can be illustrated by the considerable growth in numbers when the Ministry announced that Dutch FNPs detained outside the EU would receive a monthly financial allowance. In 2015 Dutch FNPs were detained in 102 different countries. Popular countries are 'neighbouring' countries such as Germany, Spain, France, United Kingdom and Belgium, but also the Dominican Republic, Peru and the USA. A study revealed that two thirds of the Dutch FNPs had financial problems before they were arrested. Compared to prisoners in Dutch prisons, Dutch FNPs are significantly older. The percentage of female FNPs is double that size compared to the situation in Dutch prisons.

3. How is consular assistance to Dutch FNPs organised in the Netherlands, and what do the different organisations involved aim to achieve? *(Chapter 5)*

Although Dutch FNPs have no right to claim consular assistance from the Dutch authorities, they can receive it in practice. The Ministry of Foreign Affairs has committed itself in Parliament to providing assistance to Dutch FNPs and to founding its assistance on two basic principles. The first is to monitor the correct application of the rules by the country of detention and the second to monitor whether Dutch FNPs are held in humane prison conditions. If Dutch FNPs do not receive all the opportunities provided for in national law and/or the conditions and treatment are not humane according to international standards, the Ministry can bring this to the attention of the local authorities. Although these two basic principles are significant and meaningful, they stand in conflict with the principle of the Ministry not to interfere in 'internal affairs' of foreign countries. The Dutch Court of Audit stated that the Ministry lacked adherence to the two basic principles.

The Ministry of Foreign Affairs finances both the International Office and Epafras in providing consular assistance to Dutch FNPs. The International Office has a network of around 300 Dutch volunteers who live in 50 countries. They visit on average every two months Dutch FNPs in their region. Epafras has a network of 45 chaplains (priests, pastors, imams) who carry out visits from the Netherlands to Dutch FNPs in around 70 countries. These visits take place once or twice per year.

The central aim of the International Office is to reduce harm during detention and prevent re-offending. The main aim of Epafras is to provide Dutch FNPs with spiritual and diaconal

support. The fact that Dutch FNPs can generally receive visits from volunteers and staff from non-governmental organisations as well as visits from consular staff demonstrates that most prison authorities are prepared to interpret the Vienna Convention on Consular Relations broadly.

4. How is the resettlement of ex-prisoners arranged in the Netherlands and what are the factors that are considered to be effective in stimulating their resettlement? *(Chapter 6)*

The aim of preparing prisoners as much as possible for reintegration into society is firmly anchored in the Dutch Penitentiary Act. The focus on resettlement, reframed in the aim to reduce recidivism, is also laid down in the coalition agreement of the Dutch government and in the agreement between the Ministry of Security and Justice and the Association of Netherlands Municipalities. Detention is not seen as an isolated period and aftercare is tied up with and builds on processes that have already started during detention. To increase a smooth transition into society new prisoners are screened on five *basic necessities for return to society*.3 Municipalities, which are responsible for aftercare, are informed about the specific needs of their inhabitants in prison. The Probation Service can be commissioned to assess the risks, needs and responsivity of the individual offender on the basis of a diagnostic tool. This tool is based on the so-called *What Works* principles that are in the Anglo-Saxon world generally acknowledged to reduce reoffending. The adage is that the bigger the risks and needs of the offender, the more intensive the intervention should be. According to representatives of the *What Works* school it is important to look at the setting (*How does it work?)* and the person who provides the intervention (*Who works?)* as well. Interventions should therefore not be analysed in isolation but should be considered in context. Tailor-made assistance and a positive working relationship between the prisoner and the person who delivers the intervention are considered to contribute to its effectiveness.

5. How do Dutch FNPs experience their detention abroad, and are the findings in line with what has been published in the literature? *(Chapter 7)*

This study reveals that Dutch FNPs are held abroad under the same prison conditions as national prisoners. This means that the majority share a cell and there are prisoners who live in cramped conditions. In general Dutch FNPs do not feel safe, especially when they are detained outside the EU. Discrimination is seen as part of prison life and many of them experience it themselves. Dutch FNPs regard discrimination as being a direct consequence of their foreign nationality. Despite international regulations, prisoners are not properly made aware by the prison authorities of the rules, rights and procedures in prison. This omission puts foreigners in a disadvantaged position, especially when taking into consideration that

3 These basic necessities are: work/income, accommodation, valid proof of identity, debt rescheduling plan, and suitable addiction or psychiatric care.

many prisoners do not receive proper legal support or the services of an interpreter. Most Dutch FNPs are capable of establishing contact with their families despite the physical distance. They are however not satisfied with the opportunities for communication. Postal services are often unreliable, because of censorship prison staff sometimes read letters, and making a phone call is expensive. In some countries telephone numbers need to be verified and approved by the prison authorities. Only one third of the prisoners receive visitors.
Dutch FNPs are negative about the lack of activities in prison. The fact that around half of them can work shows, however, that they are not excluded from activities as is sometimes mentioned in the research literature. Access to religious care is sufficiently catered for. Dutch FNPs are critical about the quality of healthcare in prison, especially those detained outside the EU. They are further negative about their interaction with prison staff. Linguistic barriers are seen as one of the reasons but also the fact that they are treated as a 'number' rather than a human being. Even though prisoners generally get along well with other prisoners, violence and ill-treatment do occur. There is a lack of opportunities to prepare for reintegration after release. Nearly three quarters of the prisoners have no opportunity to prepare for resettlement and it is therefore not surprising that an even larger group feels incapable of and ill-prepared for returning to society.

6. What kind of consular assistance do Dutch FNPs receive in practice and which types of assistance do they regard as the most important? *(Chapter 8)*

A staggering 94% of Dutch FNPs who participated in the questionnaire received support from the Netherlands. In total 88% received assistance from the Ministry; 52% from the Probation Service and 40% from Epafras. This achievement is admirable and it demonstrates that the Netherlands is not only willing but also capable of reaching out to Dutch FNPs. It is further remarkable that nearly a quarter of them are visited within one week of their arrest and more than half within one month. Those detained outside the EU are even visited significantly faster than those in the EU.
This study shows that Dutch FNPs are very positive about the support they receive and they regard many different types of assistance as very important. A personal visit by consular staff is seen by them as the most important type of assistance they can receive from the Netherlands. Consular staff also regard a personal visit as a good way to monitor the prisoners' well-being, health, detention situation and the progress of their legal case. More than two thirds of the prisoners, however, do not have the impression that the Ministry is monitoring either their treatment or their legal case. This is probably a direct consequence of the formal approach of the Ministry to not interfere in the *internal affairs* of another country. As long as Dutch FNPs are not treated worse than other prisoners the Ministry avoids taking action, even if the prison conditions and treatment are below international standards. Taking into consideration the often severe detention conditions under which Dutch FNPs are detained,

it is peculiar that the Ministry seldom appeals to foreign authorities when international human rights law is breached.
The Probation Service is, thanks to its large network of volunteers, able to reach out to more than half of the Dutch FNPs who participated in this study. Around one third of them received a visit by a volunteer. It is remarkable that the assistance Dutch FNPs receive from the Probation Service is focussed on the detention period and hardly at all on preparing them for release, although this latter is the main aim of the Probation Service. Only 11% of the prisoners receive this kind of support. The chaplains of Epafras are able to reach out to less than half of the Dutch FNPs who were questioned. Epafras is well known by prisoners for its magazine *Gezant*. Despite the fact that the magazine is distributed to all prisoners, in practice only one third of them receive it. This is regrettable also because the magazine is very popular.

7. What is the impact of consular assistance on the detention experience and the special needs of Dutch FNPs? *(Chapter 9)*

Dutch FNPs who receive consular assistance experience their detention as less negative than those who do not receive assistance. Although the control group is rather small, it is possible to see the impact of consular assistance on various aspects of the detention experience. Those who receive assistance feel for example less unsafe, more informed about the prison rules and procedures and less disconnected from the outside world. They also have better interactions with prison staff and live with higher expectations for the future. The most positive impact measured relates to improved interaction with fellow prisoners. Explanations for this given in interviews were that the interest of official bodies from outside the prison helps them to be treated better by other prisoners. Dutch FNPs are also positive about the impact of consular assistance on the needs that are identified in research literature as typical of FNPs.
The types of assistance with the highest impact are: information on legal procedures and prisoners' rights provided by the Ministry *(awareness of legal procedures and rights*); the magazine *Gezant* provided by Epafras (*contact with outside world*); and personal visits from the three organisations (*well-being and treatment*).

As mentioned earlier Dutch FNPs qualify a personal visit as the most important type of consular assistance they can receive. Prisoners clarified that they expect from consular staff that they keep a certain level of distance during the visit. Their visits give prisoners a certain standing and feeling of protection. Prisoners highly appreciate the personal attention they receive from volunteers of the Probation Service. The visits by chaplains of Epafras are also highly appreciated. The conversations with them reflect on life rather than on religion. One of the findings in this research is the powerful impact of volunteers. Once prisoners understand that it is a voluntary service, they place the assistance in a different perspective.

This kindness was truly appreciated and some of them were emotionally touched by this. Thanks to the personal attention they feel that there are people who 'believe' in them.

While reflecting on consular assistance that is provided by the Netherlands, it is important to note that it is focussed on the well-being of the prisoner. It does not, however, address the root causes of the difficulties that Dutch FNPs face. The fact that prisoners are detained in degrading conditions, are treated inhumanely and do not receive a fair trial is not addressed, even if the difficulties are directly connected to prison and/or judicial authorities not adhering to international, legally binding rules. This means that there is no preventive element in the assistance and that the Ministry does not adhere to its two basic principles. A firmer position by the Ministry on behalf of Dutch FNPs is recommended.

8. What are the expectations, needs and experiences of Dutch FNPs in relation to their resettlement in the Netherlands? *(Chapter 10)*

Nearly nine out of ten Dutch FNPs expect to return to the Netherlands upon release from detention abroad. Annually, around 650 prisoners return to the Netherlands. Nearly half of them plan to go to Amsterdam or Rotterdam. Upon return they expect to need to address several needs. The four most frequently mentioned are: finding a home, finding work, applying for social benefits and arranging official documents. One in three prisoners need to find shelter directly after release. Most prisoners expect support after release from family and friends but also from Dutch authorities such as the Probation Service, municipalities and other authorities. Despite the long list of needs and the fact that in practice no organisations provide aftercare, Dutch FNPs do not expect to re-offend after release. Dutch FNPs are also very clear about the factors that would prevent them from re-offending. The most important factor is having a regular income, a house and support from others. It is interesting to see that a majority of prisoners regard their detention experience abroad as the most important reason for refraining from re-offending. Interviews with ex-prisoners revealed that it is however very difficult to resettle in Dutch society after detention abroad. The two main reasons are the bureaucratic obstacles which they have to overcome, combined with a complete lack of attention and support from the local authorities. Municipalities are responsible for providing aftercare to ex-prisoners but often they are not aware of their citizens in foreign detention. When a citizen is abroad for longer than eight months the municipality automatically deregisters him or her. Without registration it is not possible to apply for social benefits or to obtain, for example, a personal public service number. This number is required to be permitted to work, open a bank account, to make use of healthcare and to obtain an identity card. If ex-prisoners manage to apply for social benefits they have to wait at least 56 days before the first payment is disbursed.

Studies show that the likelihood that an ex-prisoner will commit a new crime is highest in the first months after release. Studies show furthermore that providing supervision and assistance in the period immediately following release is the best way to avoid recidivism. Taking into consideration the main aim of the Probation Service, and the time and money that are invested in Dutch FNPs during detention, it is incomprehensible that Dutch nationals who return from detention abroad are left on their own and are overlooked by the Dutch authorities. This omission is even more striking when one sees that the aim of reducing recidivism is also laid down in the coalition agreement of the Dutch government. Whether Dutch FNPs do reoffend after release from detention abroad has never been measured. Further research is therefore desirable.
Those who were transferred to a Dutch prison to serve the remaining part of their sentence were less negative about their resettlement, because their needs were analysed upon arrival in the Dutch prison and municipalities were informed about issues that needed to be addressed after release.

9. What does the situation of Dutch FNPs say about the protection of their human rights? *(Chapter 11)*

This research shows that Dutch FNPs face disadvantages on multiple levels, not only during detention but afterwards. States are responsible for protecting the human rights of those who are present on their territories, including prisoners of foreign origin. The situation of Dutch FNPs demonstrates that several basic human rights are infringed. The situation of FNPs in Dutch prisons, which are often regarded as 'human rights-proof', shows that these FNPs too are unable to exercise their rights equally. The failure of States to address the basic human rights of FNPs means that they can be held accountable in their own country, by monitoring bodies, by other countries, by human rights committees, courts and even by individuals. However in practice this hardly ever occurs. In order to exercise their rights FNPs are therefore dependent on their consular authorities. Receiving consular assistance is for Dutch FNPs, as mentioned earlier, not a legally protected right but a government policy. In order to protect the rights of Dutch FNPs it is therefore important that consular assistance will become codified in a Consular Act.

10. Conclusions and recommendations (Chapter 12)

This research demonstrates that Dutch FNPs experience considerable difficulties during their detention abroad as suggested in the research literature and reports by monitoring bodies. Since prison authorities are not sufficiently aware of these difficulties and because they are not addressed properly, Dutch FNPs are placed in a vulnerable position. The consular assistance which Dutch FNPs receive from the Netherlands has however a positive effect. Those who receive assistance are less negative about their detention experience and this positive

impact is visible in practically all aspects that were measured. This outcome demonstrates that foreign authorities and organisations can make a difference in the detention experience of their nationals who are detained abroad. Consular assistance, as received by Dutch FNPs, addresses to a certain extent their special needs. Personal visits are the most commonly received kind of assistance, the most appreciated and it also has a very positive impact on the prisoner's well being. The involvement of volunteers is very worthwhile. In conclusion, this study demonstrates that the Dutch model of consular assistance is a 'good practice'. It can become a 'best practice' when the Netherlands addresses concerns with the foreign authorities when the basic rights of Dutch FNPs are not respected. It is further necessary that adequate assistance will be provided to those who will resettle into the Dutch society after detention abroad.

Based on the results of this thesis the following recommendations have been formulated:

Prison, judicial and consular authorities should:

1. acknowledge that FNPs experience particular difficulties during detention with regard to both criminal proceedings and resettlement into society after release. FNPs should therefore be regarded as a vulnerable group with distinctive needs, in the same way as women and juveniles;
2. raise their awareness of the basic human rights of FNPs and analyse whether these rights are sufficiently protected in practice;
3. assess the situation of FNPs and develop policies that address their vulnerabilities. These policies must form part of a concrete action plan so that adequate and appropriate assistance can be provided;
4. provide assistance to FNPs to ensure they can exercise their basic rights and the authorities are advised to seek support from national and international governmental and non-governmental organisations;

Consular authorities should:

5. monitor whether their nationals detained abroad are treated humanely and can exercise their rights. The consular authority should notify the prison/judicial authorities of any concerns;
6. provide tailored assistance to their nationals with regard to their treatment, trial and resettlement;
7. discuss the situation of their nationals in foreign detention with other consulates. If it is found that the detention conditions, treatment, judicial process and resettlement of FNPs are violating national or international rules and standards, the consular authorities should raise this with the authorities of the country of detention;

The Dutch Ministry of Foreign Affairs should:

8. fully adhere to its two basic principles of consular assistance; improve their assistance to FNPs in cooperation with the actors involved, in particular the International Office of the Dutch Probation Service and Epafras; and monitor whether Dutch ex-FNPs are supported in resettling into the Dutch society;

States should:

9. draft, under auspices of the UN, special rules covering the treatment of FNPs, and gain support from States for their adoption and implementation;
10. codify the right of FNPs to receive consular assistance.

Summary in Dutch

Samenvatting Geboeid in het buitenland – Ondersteuning aan Nederlanders in buitenlandse detentie

'Voor diegenen die gearresteerd zijn in het buitenland, ver van huis, niet in staat om de taal te spreken, onbekend zijn met het juridische system en geen idee hebben bij wie ze zich kunnen melden voor hulp, is consulaire begeleiding een 'life-line'. Het is echter een publieke dienst die nauwelijks is onderzocht door academische instellingen, organisaties zoals Fair Trials International of Ministeries van Buitenlandse Zaken zelf.'

Fair Trials International, november 2009

In de afgelopen decennia zijn gevangenispopulaties steeds heterogener geworden. Wereldwijd kom je een grote diversiteit aan verschillende nationaliteiten, talen, culturen en religies tegen in gevangenissen. Het aantal buitenlandse gedetineerden (FNPs)[1] is groot. Dit geldt met name voor landen in de Europese Unie (EU) waar gemiddeld bijna een op de vijf gedetineerden een buitenlander is. FNPs zijn personen die vanwege een strafbaar feit gedetineerd zijn in een land waarvan ze niet de nationaliteit bezitten of ingezetene van zijn en aan wie een ander land het recht heeft om consulaire bijstand te verlenen.

Uit de publicatie *Foreigners in European Prisons*[2] blijkt dat FNPs in de EU dagelijks te maken hebben met problemen als gevolg van hun buitenlandse status, de taalbarrière en de afstand tot hun familie. De gevangenisautoriteiten zijn doorgaans niet of onvoldoende bekend met de moeilijkheden die FNPs ervaren en bieden geen gepaste zorg. Het gevolg hiervan is dat FNPs zich vaak sociaal buitengesloten voelen en geen gebruik kunnen maken van hun rechten. Een van hun rechten is de mogelijkheid om consulaire bijstand van de diplomatieke vertegenwoordiging van hun land van herkomst te ontvangen. In de praktijk zijn er slechts weinig landen die consulaire bijstand verlenen aan hun landgenoten in buitenlandse detentie. Nederland is daarop een uitzondering.

Consulaire autoriteiten hebben, op basis van artikel 36.1 (c) van het universeel geaccepteerde Verdrag van Wenen inzake Consulaire Betrekkingen, het recht om landgenoten in buitenlandse detentie te bezoeken en bijstand te verlenen. Nederlandse FNPs kunnen, naast deze bijstand van consulaire medewerkers van de diplomatieke post, ook ondersteuning ontvangen van Bureau Buitenland van Reclassering Nederland en van de religieuze organisatie Epafras. Deze twee organisaties, beide gevestigd in Nederland, werken met een groot netwerk van vrijwilligers die regelmatig Nederlandse FNPs bezoeken.

---

1 Foreign national prisoners (FNP) betekent buitenlandse gedetineerden.

2 A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel, Foreigners in European Prisons (Wolf Legal Publishers, Nijmegen 2007)

Zowel Bureau Buitenland als Epafras bieden deze hulp al ruim drie decennia. Deze werkwijze is in de publicatie *Foreigners in European Prisons* geïdentificeerd als een 'good practice'. Of deze steun uit Nederland inderdaad een 'good practice' is, is nooit onderzocht. Dit, in combinatie met het grote aantal FNPs en het feit dat zowel gevangenissen als consulaire autoriteiten zich vaak niet bewust zijn van de moeilijkheden die FNPs ondervinden, was de aanleiding geweest om aan dit proefschrift te beginnen. Het doel van dit onderzoek is om een bijdrage te leveren aan bestaande literatuur over FNPs. De uitkomst van deze studie is bedoeld om de gevangenis- en rechterlijke autoriteiten, de diplomatieke missies en ook maatschappelijke organisaties te inspireren en te stimuleren om FNPs te benaderen vanuit hun onderscheidende rechten en noden. Het is zinvol om FNPs te zien als een speciale groep, net als vrouwelijke en jeugdige gedetineerden.

De centrale onderzoeksvraag van dit onderzoek luidt: *draagt consulaire bijstand, zoals ontvangen door Nederlandse FNPs, bij aan hun detentie ervaring, hun speciale noden en aan hun terugkeer in de samenleving?* De onderzoeksvraag is bestudeerd aan de hand van de relevante literatuur en door Nederlandse FNPs en overige betrokkenen te bevragen.[3] Op basis van de centrale onderzoeksvraag zijn negen afzonderlijke onderzoeksvragen geformuleerd. De eerste vier vragen zijn beantwoord aan de hand van literatuuronderzoek en de laatste vijf aan de hand van veldonderzoek. Iedere onderzoeksvraag is in een afzonderlijk hoofdstuk behandeld.

1. Wat is de situatie van FNPs wereldwijd; hebben ze onderscheidende rechten en noden? *(Hoofdstuk 3)*

Wereldwijd zijn er ruim 10 miljoen gedetineerden. Hoewel voorzichtigheid is geboden bij het gebruik van cijfers voor FNPs, onder andere omdat niet alle landen dezelfde definitie hanteren, zijn er volgens berekeningen wereldwijd bijna een half miljoen FNPs. Dit is gemiddeld 5% van de totale gevangenisbevolking. Het hoogste percentage FNPs bevindt zich in het Midden-Oosten, waar meer dan een op de drie gedetineerden een buitenlander is. Er zijn verschillende redenen die het relatief hoge aantal FNPs wereldwijd verklaren. Zo draagt globalisering bij aan de toegenomen mobiliteit van personen. Ook al is er geen bewijs dat buitenlanders ernstigere misdaden begaan dan de lokale bevolking hebben ze meer kans om aangehouden en vastgezet te worden. Dit komt door hun buitenlandse verschijning, het feit dat zij de nationale taal niet spreken, beperkt op de hoogte zijn van de lokale regels

3 Kwantitatieve informatie is verzameld via vragenlijsten die zijn verstuurd naar alle (2.608) Nederlandse FNPs (22% response uit 54 landen), alle 1.250 geregistreerde contactpersonen van gedetineerden (22% respons) en 137 diplomatieke posten (69% response). Kwalitatieve informatie is verzameld via interviews met gedetineerden (48), consulaire medewerkers (27), vrijwilligers en personeel van Bureau Buitenland (23), gezanten en personeel van Epafras (8), familieleden van gedetineerden (15), ex-gedetineerden (11), anderen (11) en brieven van gedetineerden (46).

en minder toegang hebben tot juridische bijstand. Daarnaast krijgen buitenlanders vaak geen alternatieve straf. De oververtegenwoordiging van buitenlanders tijdens voorlopige hechtenis is aangetoond in cijfers van de Raad van Europa.

Bij internationale mensenrechten verdragen zijn er geen verplichtende bepalingen die de specifieke noden van buitenlandse gedetineerden beschermen. De uitzondering hierop is het recht om hulp te ontvangen van een vertaler indien de gedetineerde niet bekend is met de taal die in de rechtszaal wordt gebruikt. Zo is er bijvoorbeeld geen verplichting voor gevangenisautoriteiten om de gevangenisregels te vertalen in gangbare buitenlandse talen. Ter bevordering van de gelijke rechten van EU-onderdanen in strafprocedures heeft de EU recentelijk richtlijnen ingevoerd. EU-onderdanen die verdacht of beschuldigd worden van een strafbaar feit in een EU-land waarvan zij de taal niet spreken of begrijpen, dienen hulp te krijgen van een tolk tijdens de strafrechtelijke procedure (zoals het politie verhoor en bij de rechtbank). EU-lidstaten moeten hen daarnaast zo spoedig mogelijk voorzien van een schriftelijke vertaling van alle essentiële documenten zoals het vonnis en de zogenoemde 'Letter of Rights' (document met informatie over hun rechten). De EU-lidstaten hebben deze richtlijnen nog onvoldoende in nationale wetgeving geïmplementeerd en ook in de praktijk wordt het vaak nog niet toegepast.

Er is één specifiek FNP recht dat juridisch niet bindend is maar wel universeel wordt geaccepteerd door de gevangenisautoriteiten en dat is het recht van FNPs om contact met de diplomatieke post van hun land van herkomst te maken en om hulp te ontvangen. Volgens artikel 36.1 b) van het Verdrag van Wenen inzake Consulaire Betrekkingen hebben (gevangenis-) autoriteiten de plicht om FNPs te informeren over hun recht om, indien de FNP dat wil, contact te leggen met hun diplomatieke missie. Het feit dat landen niet verplicht zijn om consulaire bijstand aan hun landgenoten in buitenlandse detentie te verlenen maakt het tot een beleidsmaatregel van de overheid. In de praktijk ontvangen niet veel FNPs consulaire bijstand en het lijkt erop dat landen zich vaak niet bewust zijn van hun landgenoten in buitenlandse detentie.

Onderzoeksliteratuur en rapporten van onafhankelijke toezichthouders tonen aan dat FNPs bijzondere moeilijkheden ondervinden tijdens hun detentie. Omdat gevangenisautoriteiten falen in hun taak om FNPs op adequate wijze te beschermen en om in hun noden te voorzien, kunnen FNPs beschouwd worden als een kwetsbare groep gedetineerden. Deze speciale FNPs noden hebben betrekking op hun welzijn en behandeling; hun kennis van juridische procedures en rechten; contact met de buitenwereld en hun sociale integratie in de gevangenis. Een nood die in de onderzoeksliteratuur niet wordt genoemd maar die in dit onderzoek is toegevoegd, is de behoefte aan voorbereiding voor terugkeer in de maatschappij en nazorg.

2. Wat is de achtergrond en de locatie van Nederlanders in buitenlandse detentie? ***(Hoofdstuk 4)***

In de afgelopen 25 jaar is het aantal Nederlandse FNPs verviervoudigd, van 579 in 1988 naar 2.262 in 2015. Hoewel er de laatste jaren een lichte daling is, is Nederland in vergelijking tot andere landen 'koploper'. Er zijn verschillende verklaringen voor het feit dat er zo veel Nederlandse FNPs in het buitenland zijn. Allereerst de tolerante Nederlandse houding ten opzichte van het gebruik van drugs voor persoonlijk gebruik, het feit dat Nederland een transportland is van drugs en dat het producent is van synthetische drugs. De meeste landen hebben een repressieve aanpak van drugshandel waarop ook lange straffen staan. Het feit dat het percentage Nederlandse FNPs die vastzitten voor drugs-gerelateerde misdaden is gedaald in de afgelopen jaren, kan een verklaring zijn waarom het totale aantal Nederlandse FNPs licht is gedaald na een lange periode van groei. Ten tweede hanteert Nederland een ruime definitie van het burgerschap. Zo wordt de Nederlandse nationaliteit bepaald door geboorte bij ten minste één Nederlandse ouder ongeacht de plaats van geboorte. Daarnaast bestaat het Koninkrijk der Nederlanden ook uit overzeese landen en gemeenten. Dit verklaart waarom meer dan de helft van de Nederlandse FNPs buiten Nederland is geboren en soms geen Nederlands spreekt. Ten derde is het feit dat Nederland daadwerkelijk hulp biedt een stimulans voor Nederlandse FNPs en/of hun families om de Nederlandse diplomatieke post in kennis te stellen van hun detentie. Dit kan geïllustreerd worden door de sterke groei van het aantal Nederlandse FNPs toen het Ministerie van Buitenlandse Zaken begon met het geven van een maandelijkse financiële ondersteuning aan FNPs buiten Europa. In 2015 waren Nederlandse FNPs gedetineerd in 102 verschillende landen. 'Populaire' detentie landen zijn nabij gelegen landen zoals Duitsland, Spanje, Frankrijk, het Verenigd Koninkrijk en België, maar ook de Dominicaanse Republiek, Peru en de VS. Uit een studie blijkt dat twee derde van de Nederlandse FNPs financiële problemen had voorafgaand aan de detentie. In vergelijking met gedetineerden in Nederlandse gevangenissen, zijn Nederlandse FNPs aanzienlijk ouder. Het percentage vrouwelijke FNPs is tweemaal zo groot in vergelijking met de vrouwelijke populatie in Nederlandse gevangenissen.

3. Hoe is consulaire bijstand aan Nederlandse FNPs georganiseerd en wat proberen de verschillende betrokken organisaties te bereiken? *(Hoofdstuk 5)*

Hoewel Nederlanders geen recht hebben op consulaire bijstand kunnen ze in de praktijk bijstand ontvangen tijdens detentie in het buitenland. Het Ministerie van Buitenlandse Zaken heeft zich in de Tweede Kamer gecommitteerd om bijstand te verlenen en om deze te baseren op twee basisprincipes. Het eerste principe is dat het Ministerie controleert of Nederlanders in buitenlandse detentie gebruik kunnen maken van dezelfde rechten als andere gedetineerden. Het tweede principe is dat het Ministerie kijkt of Nederlandse FNPs onder humane omstandigheden worden gedetineerd. In het geval dat Nederlandse

FNPs niet alle mogelijkheden krijgen zoals voorzien in de nationale wetgeving en/of de detentie omstandigheden en behandeling niet humaan zijn, dient het Ministerie dit onder de aandacht van de (lokale) autoriteiten te brengen. Deze twee basisprincipes zijn belangrijk en zinvol, maar ze conflicteren met het beginsel van het Ministerie om zich niet te mengen in 'interne aangelegenheden' van andere landen. In een evaluatie door de Nederlandse Rekenkamer blijkt dat het Ministerie haar basisprincipes onvoldoende naleeft in de praktijk.

Het Ministerie van Buitenlandse Zaken financiert Bureau Buitenland en Epafras om consulaire bijstand aan Nederlandse FNPs te geven. Bureau Buitenland heeft een netwerk van ongeveer 300 Nederlanders die woonachtig zijn in 50 landen en die op vrijwillige basis gemiddeld om de maand Nederlandse FNPs bezoeken in hun regio. Bij Epafras werken 45 gezanten (dominees/priesters/imams) die een of tweemaal per jaar vanuit Nederland gedetineerden bezoeken in ongeveer 70 landen. Het hoofddoel van Bureau Buitenland is om detentieschade te beperken en om recidive tegen te gaan. De doelstelling van Epafras is om geestelijke ondersteuning te verlenen.

Het feit dat Nederlandse FNPs over het algemeen ook bezoek en bijstand kunnen ontvangen van vrijwilligers en personeel van niet-consulaire organisaties (zoals Bureau Buitenland en Epafras) toont aan dat de meeste (gevangenis) autoriteiten het Verdrag van Wenen inzake Consulaire Betrekkingen ruim interpreteren.

4. Hoe is de re-integratie van ex-gedetineerden in Nederland georganiseerd en wat zijn de factoren die als 'doeltreffend' worden beschouwd om recidive tegen te gaan? *(Hoofdstuk 6)*

Het doel om gedetineerden zo goed mogelijk voor te bereiden op terugkeer in de maatschappij is stevig verankerd in de Nederlandse Penitentiaire Beginselenwet. De focus op een succesvolle resocialisatie, weliswaar geformuleerd als doel om recidive te beperken, is ook vastgelegd in het regeerakkoord van de Nederlandse regering en in de overeenkomst tussen het Ministerie van Veiligheid en Justitie en de Vereniging van Nederlandse gemeenten. Detentie wordt in Nederland niet gezien als een geïsoleerde periode. Nazorg bouwt namelijk voort op processen die al tijdens detentie zijn gestart. Om de overgang van detentie naar de maatschappij te bevorderen, worden gedetineerden bij binnenkomst in de gevangenis al gescreend op *vijf basisvoorwaarden voor terugkeer*.4 De gemeenten, die verantwoordelijk zijn voor de nazorg, worden geïnformeerd over de specifieke behoeften van hun ingezetenen die in de gevangenis verblijven. Reclassering Nederland kan gevraagd worden om de risico's, noden en ontvankelijkheid van de individuele gedetineerde te meten aan de hand van een diagnostische methode. Deze zogenaamde `What works' methode

4 Deze basisbehoeften zijn: werk/inkomen, onderdak, geldig legitimatiebewijs, schuldsanering en geschikte zorg (verslaving/psychisch).

wordt in de Angelsaksische wereld veelvuldig ingezet om recidive te verminderen. De stelregel is, hoe groter de risico's voor terugval in crimineel gedrag en hoe hoger de noden, hoe intensiever de interventie. Volgens vertegenwoordigers van de `What Works' school is het belangrijk om ook te kijken naar de setting (`How does it work?`) en naar de persoon die de interventie geeft (`Who Works'). Interventies moeten daarom in een context worden geplaatst. Op maat gesneden bijstand en een positieve werkrelatie tussen de persoon die de interventie geeft en de ontvanger dragen bij aan de doeltreffendheid van de interventie.

5. Hoe ervaren Nederlandse FNPs hun detentie in het buitenland en zijn hun bevindingen in overeenstemming met wat bekend is in de onderzoeksliteratuur? *(Hoofdstuk 7)*

Nederlandse FNPs zijn in het buitenland gedetineerd onder dezelfde omstandigheden als nationale gedetineerden. Dit betekent dat de meerderheid een cel deelt met andere gedetineerden en dat de cellen veelal overbevolkt zijn. De meeste Nederlandse FNPs voelen zich onveilig, vooral diegenen die buiten de EU zijn gedetineerd. Zij zien discriminatie als een veelvoorkomend verschijnsel en hebben het soms zelf meegemaakt. Waar discriminatie voorkomt zien zij een directe link met hun buitenlandse nationaliteit.
Internationale regels schrijven voor dat gedetineerden moeten worden geïnformeerd over de regels, rechten en procedures die in de gevangenis gelden, maar in de praktijk gebeurt dat meestal niet. Ook ontbreekt vaak een tolk of goede juridische bijstand. Dit plaatst buitenlandse gedetineerden in een achtergestelde positie. De meeste Nederlandse FNPs kunnen contact maken met hun familie ondanks de fysieke afstand. Ze zijn echter niet tevreden over de mogelijkheden om dit contact te onderhouden. Het postverkeer is vaak onbetrouwbaar, de brieven worden soms gelezen door het gevangenispersoneel en telefoneren is duur. In sommige landen controleren de autoriteiten eerst de telefoonnummers voordat FNPs naar het buitenland mogen bellen. Een op de drie heeft bezoek gekregen van thuis.
Nederlandse FNPs zijn negatief over het aanbod aan activiteiten in de gevangenis. Het feit dat ongeveer de helft van hen kan werken, laat zien dat zij niet worden uitgesloten van activiteiten, zoals soms wordt genoemd in onderzoeksliteratuur. Ook kunnen ze hun religie belijden. Over de kwaliteit van de gezondheidszorg zijn de Nederlandse gedetineerden zeer kritisch, vooral als zij buiten de EU zijn gedetineerd. Ze zijn verder negatief over hun interactie met het gevangenispersoneel. De taalbarrière is de belangrijkste oorzaak hiervan maar ook dat gedetineerden als 'nummer' worden behandeld in plaats van als mens. Alhoewel Nederlandse FNPs over het algemeen redelijk met medegedetineerden kunnen opschieten, komen geweld en mishandeling voor. Bijna driekwart van hen kan zich niet voorbereiden op terugkeer naar de samenleving. Het is daarom niet verwonderlijk dat zij zich niet in staat voelen om op een goede manier terug te keren naar de samenleving.

6. Welke consulaire bijstand ontvangen Nederlandse FNPs in de praktijk en welke vormen van begeleiding ervaren zij als het belangrijkst? *(Hoofdstuk 8)*

Maar liefst 94% van de Nederlandse FNPs die hebben deelgenomen aan het onderzoek ontvingen bijstand vanuit Nederland. In totaal 88% ontving steun van het Ministerie van Buitenlandse Zaken; 52% van Bureau Buitenland en 40% van Epafras. Het feit dat zo veel Nederlandse FNPs bijstand ontvingen is een bewonderingswaardige prestatie. Het toont aan dat Nederland niet alleen bereid is tot het geven van bijstand, maar dat ook een zeer grote groep wordt bereikt. Verder is het indrukwekkend dat bijna een kwart van de Nederlandse FNPs binnen een week na hun arrestatie is bezocht en meer dan de helft binnen een maand. Nederlanders gedetineerd buiten de EU worden aanzienlijk sneller bezocht dan diegenen die in de EU zijn gedetineerd.
Dit onderzoek laat zien dat de Nederlandse FNPs zeer positief zijn over de steun die zij ontvangen vanuit Nederland. Zij ervaren de verschillende vormen van hulp als belangrijk. Een persoonlijk bezoek door een consulaire medewerker zien gedetineerden als de belangrijkste vorm van bijstand die ze kunnen ontvangen. Consulaire medewerkers beschouwen deze bezoeken als een goede manier om zich te informeren over het welzijn van de gedetineerde, zijn/haar gezondheid, de detentie situatie en de voortgang van de rechtszaak. Meer dan twee derde van de gedetineerden heeft echter niet de indruk dat het Ministerie toezicht houdt op de behandeling in de gevangenis en hun rechtszaak. Dit is waarschijnlijk een rechtstreeks gevolg van de formele benadering van het Ministerie om zich niet te mengen in de interne aangelegenheden van een land. Zolang de Nederlandse FNPs niet slechter worden behandeld dan andere gedetineerden, maakt het Ministerie misstanden in het algemeen niet aanhangig bij de autoriteiten, zelfs niet wanneer de omstandigheden in gevangenissen en de behandeling in strijd zijn met de internationale rechten van de mens.
Bureau Buitenland bereikt, dankzij het grote netwerk aan vrijwilligers, meer dan de helft van de Nederlandse FNPs die hebben deelgenomen aan deze studie. Ongeveer een derde van hen ontvangt persoonlijk bezoek van een vrijwilliger. Het is opmerkelijk dat de begeleiding van Bureau Buitenland zich voornamelijk richt op de detentie periode en nauwelijks op de voorbereiding op terugkeer. Terwijl dit het belangrijkste doel is van Bureau Buitenland. Slechts 11% van de gedetineerden ontvangt steun van Bureau Buitenland op dit terrein. De gezanten van Epafras bezoeken iets minder dan de helft van de Nederlandse FNPs. Epafras is ook bekend door het tijdschrift *Gezant*. Ondanks dat Epafras dit tijdschrift verspreidt onder alle Nederlandse FNPs ontvangt slechts een op de drie dit blad. Dit is spijtig omdat de *Gezant* zeer populair is.

7. Wat is het effect van consulaire bijstand op de detentie-ervaring en de speciale noden van Nederlandse FNPs? *(Hoofdstuk 9)*

Nederlandse FNPs die consulaire bijstand ontvangen ervaren hun detentie als minder negatief dan de gedetineerden die geen begeleiding vanuit Nederland ontvangen. Alhoewel de controlegroep vrij klein is, kan geconcludeerd worden dat het positieve effect van consulaire bijstand zichtbaar is bij verschillende aspecten van de detentie-ervaring. Zo voelen zij zich bijvoorbeeld minder onveilig, meer bekend met de regels en procedures in de gevangenis en minder sociaal buitengesloten.
Ook hebben ze beter contact met de bewaarders en zijn ze positiever over hun toekomst. Het meest positieve effect heeft betrekking op de interactie met medegedetineerden. Als verklaring hiervoor gaven gedetineerden aan dat de aandacht van officiële instanties van buiten de gevangenis maakt dat ze beter worden behandeld. Het effect van consulaire bijstand is ook positief op hun specifieke behoeften. Het meest effectief zijn de brochure van het Ministerie over de regels, rechten en gerechtelijke procedures in het land van detentie (*behoefte aan kennis van juridische procedures en rechten*); het tijdschrift *Gezant* van Epafras (*behoefte aan contact met de buitenwereld*); en de persoonlijke bezoeken van de drie organisaties (*behoefte aan welzijn en een goede behandeling*).

Zoals eerder opgemerkt vinden Nederlandse FNPs een persoonlijk bezoek de belangrijkste vorm van bijstand. Uit interviews met hen blijkt dat zij van consulaire medewerkers verwachten dat ze een zekere mate van afstand houden tijdens het bezoek. Deze bezoeken geven hen zowel 'aanzien' als bescherming. Gedetineerden waarderen daarnaast zeer de persoonlijke aandacht die zij van de vrijwilligers van Bureau Buitenland ontvangen. Ook het bezoek van de gezant stellen zij zeer op prijs. Deze gesprekken zijn van levensbeschouwelijke en niet zozeer van religieuze aard. Eén van de bevindingen in dit onderzoek is de grote kracht die uitgaat van vrijwilligers. Wanneer gedetineerden horen dat de bezoeken van Bureau Buitenland en Epafras worden afgelegd door vrijwilligers, plaatsen zij deze bezoeken in een ander daglicht. Deze vrijwillige inzet wordt zeer gewaardeerd en het raakt ze soms ook emotioneel. De persoonlijke aandacht geeft ze het gevoel dat er mensen zijn die in hen geloven.

Reflecterend op consulaire bijstand die Nederland geeft is het duidelijk dat de hulp is gericht op het welzijn van de gedetineerde. Het richt zich niet op de oorzaken van de moeilijkheden die Nederlandse FNPs ervaren. Het feit dat ze vaak onder vernederende omstandigheden worden vastgehouden, onmenselijk worden behandeld en geen eerlijk proces krijgen, wordt in het algemeen niet aan de kaak gesteld. Zelfs niet als deze moeilijkheden rechtstreeks te maken hebben met het niet naleven van internationale juridisch bindende regels door de gevangenis en/of gerechtelijke autoriteiten. Hieruit blijkt dat consulaire bijstand geen preventief element bevat en dat het Ministerie niet voldoet aan haar twee basisprincipes.

Een meer krachtigere positie van het Ministerie ten guste van Nederlanders in buitenlandse detentie is daarom wenselijk.

8. Wat zijn de verwachtingen, de noden en de ervaringen van Nederlandse FNPs met betrekking tot hun re-integratie in Nederland na hun vrijlating? *(Hoofdstuk 10)*

Bijna negen van de tien Nederlandse FNPs verwachten na afloop van hun buitenlandse detentie terug te keren naar Nederland. Jaarlijks komen zo'n 650 gedetineerden terug. Ongeveer de helft van hen is van plan om zich te vestigen in Amsterdam of Rotterdam. Nederlandse FNPs gaan er van uit dat zij bij terugkeer behoeften hebben. De vier meest frequent genoemde zijn: het vinden van een huis en werk, het aanvragen van een uitkering en het organiseren van officiële papieren. Een op de drie heeft behoefte aan een slaapplaats direct na terugkeer in Nederland. De meesten verwachten bij terugkeer in Nederland steun van familie en vrienden en ook van officiële instanties zoals Reclassering Nederland en de gemeente. Ondanks de lange lijst van behoeften verwachten Nederlandse FNPs dat ze niet opnieuw met justitie in aanraking komen na vrijlating. Zij weten ook zeer goed hoe ze recidive kunnen voorkomen, namelijk door het hebben van een regelmatig inkomen, een onderkomen en steun van anderen. Het is interessant om te zien dat de meerderheid van de gedetineerden hun detentie ervaring in het buitenland ziet als de belangrijkste reden om niet weer de fout in te gaan.

Interviews met ex-gedetineerden laten zien dat het zeer moeilijk is om weer deel uit te gaan maken van de Nederlandse samenleving na een buitenlandse detentie. De twee belangrijkste redenen zijn de bureaucratische hindernissen die ze moeten overwinnen in combinatie met een compleet gebrek aan aandacht en steun van de (lokale) autoriteiten. Gemeenten zijn verantwoordelijk voor het verlenen van nazorg aan ex-gedetineerden. Vaak zijn gemeenten zich er echter niet bewust van dat ze ingezetenen hebben die in het buitenland vastzitten. Daarnaast worden ingezetenen die langer dan acht maanden buiten de gemeente verblijven automatisch uit de gemeentelijke basisadministratie geschreven. Zonder een registratie is het niet mogelijk om een uitkering of een burgerservicenummer aan te vragen. Dit burgerservicenummer is nodig om te kunnen werken, om een bankrekening te openen, om gebruik te maken van de gezondheidszorg of om een identiteitskaart aan te vragen. Wanneer ex-gedetineerden een uitkering willen aanvragen moeten zij ten minste 56 dagen wachten voordat zij een eerste betaling ontvangen.

Uit onderzoeksliteratuur blijkt dat de waarschijnlijkheid dat een ex-gedetineerde een nieuwe misdaad pleegt het hoogst is in de eerste maanden na vrijlating. Ook blijkt dat toezicht en begeleiding in de eerste periode na vrijlating de beste manieren zijn om recidive te voorkomen. Rekening houdend met het hoofddoel van Bureau Buitenland en de tijd en middelen die zijn geinvesteerd in Nederlandse FNPs tijden hun detentie, is het onbegrijpelijk dat zij over het hoofd worden gezien als zij uit het buitenland terugkeren. Deze omissie is zelfs nog opmerkelijker wanneer men beseft dat het doel om recidive te verminderen

ook in het regeerakkoord van de Nederlandse regering is vastgelegd. Of Nederlandse FNPs recidiveren na vrijlating uit de gevangenis in het buitenland is nog nooit onderzocht. Verder onderzoek is daarom wenselijk.
Nederlandse FNPs die naar Nederland worden overgeplaatst om hun straf in Nederland uit te zitten, zijn minder negatief over hun re-integratie in Nederland. De reden is dat tijdens hun detentie in Nederland hun noden zijn geanalyseerd en dat de gemeente naar waar zij terugkeren hiervan op de hoogte is gebracht.

9. Wat zegt de situatie van Nederlandse FNPs over de bescherming van hun rechten? *(Hoofdstuk 11)*

Dit onderzoek toont aan dat Nederlandse FNPs op meerdere niveaus moeilijkheden ervaren tijdens hun detentie en ook daarna. Landen zijn verantwoordelijk voor de bescherming van de rechten van de mens van de personen die aanwezig zijn op hun grondgebied, met inbegrip van gedetineerden van buitenlandse afkomst. De situatie van Nederlandse FNPs toont aan dat verschillende fundamentele mensenrechten worden geschonden. Ook uit de situatie van buitenlanders in Nederlandse gevangenissen, die vaak als 'mensenrechten-proof' worden beschouwd, blijkt dat FNPs onvoldoende in staat zijn om aanspraak te maken op hun rechten. Het feit dat landen niet in staat zijn om een goede uitvoering te geven aan de fundamentele mensenrechten van FNPs, betekent dat zij verantwoordelijk kunnen worden gehouden in hun eigen land, door toezichthouders, door andere landen, door mensenrechten commissies, door rechtbanken en zelfs door individuen. In de praktijk gebeurt dit nauwelijks. Dit betekent dat FNPs afhankelijk zijn van de steun van hun consulaire autoriteiten. Het ontvangen van consulaire bijstand is voor Nederlandse gedetineerden, zoals al eerder vermeld, geen recht maar beleid van de overheid. Om de rechten van Nederlandse FNPs te beschermen, is het daarom nodig dat Nederland consulaire bijstand codificeert in een Consulaire Akte.

10. Conclusies en aanbevelingen *(Hoofdstuk 12)*

Dit onderzoek laat zien dat Nederlandse FNPs verschillende moeilijkheden ervaren tijdens hun detentie in het buitenland. Dit beeld bevestigt hetgeen hierover in de onderzoeksliteratuur bekend is. Omdat de gevangenisautoriteiten onvoldoende op de hoogte zijn van deze moeilijkheden en ook niet de juiste zorg bieden zitten FNPs in een kwetsbare positie. Dit onderzoek toont aan dat consulaire bijstand vanuit Nederland helpt. Zo ervaren diegenen die bijstand ontvangen hun detentie als minder negatief. Het positieve effect is meetbaar op de meeste aspecten van hun detentie en op een aantal van hun speciale behoeften. Dit bewijst dat consulaire bijstand verschil kan maken. Een persoonlijk bezoek is de meest ontvangen en ook de meest gewaardeerde vorm van bijstand. Het heeft een zeer positief

effect op het welzijn van de gedetineerde. De inzet van vrijwilligers is hierbij van grote waarde.
Kortom, dit onderzoek toont aan dat het Nederlandse model van consulaire bijstand een 'good practice' is. Het kan een 'best practice' worden indien Nederland de buitenlandse autoriteiten aanspreekt wanneer de basisrechten van Nederlandse FNPs niet worden gerespecteerd. Daarnaast dient er een adequate ondersteuning te komen voor hen die na detentie in het buitenland re-integreren in de Nederlandse maatschappij.

Op basis van de resultaten van dit onderzoek zijn de volgende aanbevelingen geformuleerd:

Justitiële, rechterlijke en consulaire autoriteiten dienen:

1. te erkennen dat FNPs bijzondere moeilijkheden ervaren tijdens detentie, met betrekking tot hun rechtszaak en terugkeer in de maatschappij. FNPs moeten daarom worden beschouwd als een kwetsbare groep met specifieke noden, net zoals vrouwelijke en jeugdige gedetineerden;
2. bekend te zijn met de fundamentele mensenrechten van FNPs en te analyseren of hun rechten in de praktijk voldoende zijn beschermd;
3. de situatie van FNPs te analyseren en een beleid te ontwikkelen dat zich richt op hun kwestbaarheden. Dit beleid moet deel uitmaken van een concreet actieplan zodat adequate en passende hulp kan worden geboden;
4. bijstand te verlenen aan FNPs om ervoor te zorgen dat zij op humane wijze worden behandeld en dat ze hun fundamentele rechten kunnen uitoefenen. De autoriteiten worden geadviseerd om, bij het geven van bijstand, ondersteuning te zoeken bij nationale, internationale gouvernementele en niet gouvernementele organisaties;

Consulaire autoriteiten dienen:

5. toe te zien of hun landgenoten in buitenlandse detentie op humane wijze worden behandeld en hun rechten kunnen uitoefenen. Wanneer er zorgen zijn, melden zij dit bij de gevangenis/rechtelijke autoriteiten;
6. op maat gesneden bijstand te verlenen aan FNPs om tegemoet te komen aan hun noden tijdens detentie, met betrekking tot hun rechtszaak en hun re-integratie in de samenleving;
7. de situatie van hun landgenoten in buitenlandse detentie met andere consulaten te bespreken. Als geconstateerd wordt dat de detentieomstandigheden, de behandeling, de rechtsgang en de re-integratie in de maatschappij van FNPs in strijd zijn met de (inter) nationale regels en normen, dan moeten zij dit aanhangig maken bij de autoriteiten van het land van detentie;

Het Nederlandse Ministerie van Buitenlandse Zaken dient:

8. de twee basisprincipes van consulaire bijstand volledig na te leven; de bijstand aan FNPs te verbeteren in samenwerking met de betrokken organisaties zoals Bureau Buitenland van Reclassering Nederland en Epafras; en erop toe te zien dat Nederlanders die terugkeren uit buitenlandse detentie worden ondersteund bij hun re-integratie in de Nederlandse maatschappij;

Staten dienen:

9. onder auspiciën van de Verenigde Naties speciale regels voor FNPs op te stellen en steun bij staten te zoeken voor de ratificatie en implementatie ervan;
10. consulaire bijstand tot een wettelijk recht voor FNPs te maken.

Annexes

Annex 1.1 Letter to prisoners about questionnaire

Tilburg, 23 April 2008

Dear compatriot,

This is a letter from Femke Hofstee-van der Meulen from Tilburg University in The Netherlands. I am working on a research into 'Dutch Nationals Detained Abroad'.

Around the world there are many people detained in countries from which they do not come originally. A recent study[1] identified that the group of 'foreign' prisoners in European countries consists of over 110,000 persons. On average this is more than 20% of the total prison population in Europe.
In general prison authorities do not take into account the special needs of foreign prisoners and also embassies can/will not provide care. This means that foreign prisoners often have to depend on their own. An exemption to this general situation seems to be the Netherlands where besides consular assistance sometimes care is being provided by the Dutch Probation Service and by a religious organisation called 'Epafras'.

The aim of this research is to analyse care that is being provided by The Netherlands to Dutch nationals in foreign detention, to evaluate this care and to find out how foreign detention is being experienced. Central questions are: how are you? What kind of difficulties do you experience? What kind of assistance do you receive from The Netherlands? What is your opinion about this assistance? And does this assistance fit with your needs to prepare for a return to society?

Filling in this survey is ANONYMOUS and the data will be treated confidentially. It takes around 45 minutes to fill in the survey. The results of the research will be published in 'Gezant uit Nederland' and on www.foreignersinprison.eu. Please put the completed survey in the return envelope and send it to Tilburg University. The address is on the envelope and a stamp is not necessary.

I would like to thank you very much for your co-operation and participation in this research. It would be wonderful that with your help and experience care for Dutch Nationals Detained Abroad can be improved.

Kind regards,

Femke Hofstee-van der Meulen
F.B.A.M.Hofstee@uvt.nl

PS: In case prison staff will have questions about this survey please find on this website special information for staff in various languages (Dutch, French, German, Spanish, Portuguese and Russian).

---

1 'Foreigners in European Prisons' published by professor A.M. van Kalmthout, drs. F.B.A.M. Hofstee-van der Meulen and professor F. Dünkel (Nijmegen, Wolf Legal Publishers, 2007).

Annex 1.2 Letter to prison staff about questionnaire

Information for prison staff about survey from Tilburg University
This survey is developed by Tilburg University in The Netherlands. The survey is part of a research into 'Dutch nationals detained abroad'. Some Dutch nationals detained abroad receive besides consular assistance, care from the Dutch Probation Service and spiritual support from the religious organisation 'Epafras'.The aim of the survey is to get an idea what kind of care Dutch nationals receive from The Netherlands, how they experience it, and if it is suitable to their needs in order to make a successful return to society after release. Their participation in this survey is therefore very much appreciated and we would like to thank you for your support. In case you like to see the English translation of the survey, please visit the website: www.foreignersinprison.eu or contact Drs. Femke Hofstee-van der Meulen from Tilburg University at: F.B.A.M.Hofstee@uvt.nl.

Hintergrundinformationen für Gefängnisautoritäten über einen Fragbogen der Universität Tilburg
Der Fragenbogen ist entwickelt durch die Universität Tilburg in den Niederlanden und Teil eines Forschungsprojektes über niederländische Inhaftierte im Ausland. Inhaftierte niederländische Staatsbürger im Ausland erhalten neben der Unterstützung durch Botschaft und/oder Konsulat, Begleitung durch die niederländische Bewährungshilfe sowie geistliche Unterstützung durch die kirchliche Stiftung Epafras.
Ziel dieser Erhebung ist es, Einsicht zu bekommen, welche Art der Hilfe niederländische Staatsbürger durch die Niederlande erhalten, wie sie diese erfahren und ob diese nützlich für eine erfolgreiche Rückkehr in die Gesellschaft nach der Entlassung ist. Eine Teilnahme an diesem Fragebogen wird deshalb sehr begrüßt und wir möchten Ihnen für ihre Unterstützung danken. Falls Sie Interesse an der englischen Übersetzung des Fragebogens haben, so finden Sie diese auf unserer Website: www.foreignersinprison.eu oder nehmen Sie Kontakt auf mit Frau Drs. Femke Hofstee-van der Meulen von der Universität Tilburg: F.B.A.M.Hofstee@uvt.nl.

Información para Funcionarios de Prisiones acerca de Estudio de la Universidad de Tilburg
Este estudio es desarrollado por la Universidad de Tilburg en Holanda. Es parte de una investigación sobre «Holandeses Detenidos en el Extranjero». Algunos de ellos reciben, además de la asistencia consular, apoyo del Servicio Holandés de Probation y ayuda espiritual de la organización religiosa «Epafras».El objetivo del estudio es conocer qué tipo de apoyo reciben los holandeses de su gobierno, cómo lo reciben, y si satisface sus necesidades respecto de un retorno exitoso a la sociedad una vez liberados. Su participación en este estudio, por lo tanto, es altamente apreciada y queremos agradecerle su apoyo. En caso que quiera ver la versión en inglés del estudio, le rogamos visitar el website www.foreignersinprison.eu o contactar a la Dra. Femke Hofstee-van-der-Meulen de la Universidad de Tilburg en F.B.A.M.Hofstee@uvt.nl.

Informação para a equipe da prisão sobre a pesquisa da universidade de Tilburg
Essa pesquisa está sendo desenvolvida pela Universidade de Tilburg da Holanda. Esse questionário faz parte da pesquisa 'Holandeses Detidos no Exterior'. Alguns presos holandeses no exterior recebem assistência consular, atenção do serviço de liberdade condicional holandês e apoio espiritual da organização religiosa 'Epafras'. O objetivo da pesquisa é estimar os tipos de assistência que os holandeses recebem da Holanda no exterior, como eles percebem isso, e se essa assistência é suficiente para ajudá-los a regressar com sucesso para a vida em sociedade. Portanto, a participação deles nessa pesquisa é muito importante e gostaríamos de agradecer previamente sua colaboração. Se tiver o interesse em ler a versão em inglês do questionário, por favor, visite o website www.foreignersinprison.eu ou entre em contato com a Dra. Femke Hofstee-van der Meulen da Universidade de Tilburg por meio do seguinte endereço: F.B.A.M.Hofstee@uvt.nl.

Information destinée au personnel pénitentiaire concernant l'enquête réalisée par l'Université de Tilburg (Cette enquête a été conçue par l'université de Tilburg aux Pays-Bas. Elle fait partie d'un projet de recherche sur les citoyens néerlandais détenus à l'étranger. Certains citoyens néerlandais détenus à l'étranger reçoivent, en complément de l'assistance consulaire, une aide du service néerlandais de libération conditionnelle et un soutien spirituel de l'organisation confessionnelle « Epafras ». Le but de cette enquête est de mettre en évidence quelle assistance les citoyens néerlandais reçoivent de leur pays d'origine, comment ils la perçoivent, et si elle répond à leurs besoins afin de les préparer à un retour réussi dans la société après leur libération. Leur participation à cette enquête est donc très appréciée et nous voudrions vous remercier pour votre soutien. Si vous souhaitez une traduction en anglais de l'enquête, vous pourrez l'obtenir sur le site www.foreignersinprison.eu ou en contactant Madame Femke Hofstee-van der Meulen à l'université de Tilburg à l'adresse suivante: F.B.A.M.Hofstee@uvt.nl.

Информация для персонала тюрем о проведении опроса Тилбургским университетом
Данный опрос проводится Тилбургским университетом Соединенного королевства Ниделандов. Данный опрос является частью исследования «Граждане Голландии, находящиеся в тюремном заключении за рубежом». Некоторые граждане Голландии, отбывающие срок заключения за рубежом, помимо дипломатической поддержки находятся также под опекой Голландской службы пробации, а также пользуются духовной поддержкой религиозной организации «Эпафраз»(Epafras). Цель данного опроса - выявить насколько полно граждане Голландии пользуются государственной поддержкой Соединенного королевства Нидерландов, ощущают ли они ее присутствие, отвечает ли она их потребностям настолько, чтобы способствовать успешной интеграции в жизнь общества после освобождения. Мы очень благодарны за предоставленную возможность провести данных опрос и поддержку. С английской версией опроса можно ознакомиться на сайте www.foreignersinprison.eu или связаться с г-жой Фемке Нофсти-ван дер Мюлен по адресу F.B.A.M.Hofstee@uvt.nl.

TILBURG UNIVERSITY

DUTCH NATIONALS DETAINED ABROAD

Research into Dutch care and detention experience

This survey is part of a research by Tilburg University into Dutch nationals detained abroad. The survey consists of two parts. The first part is about care you might receive from The Netherlands by the Dutch embassy, 'International office' of the Dutch Probation Service and/or 'Epafras'. In the second part you will be asked how you experience detention abroad.

Filling in this survey is ABSOLUTELY ANONYMOUS and the data will be treated confidentially. It takes around 45 minutes to fill in the survey. Please read the questions carefully and tick the box (☐) next to the answer that comes closest to your opinion. The results of this survey will be published in 'Gezant uit Nederland'. The original text of this survey is in Dutch and can be found at: www.foreignersinprison.eu.

Thank you in advance for your cooperation!

There are three agencies in The Netherlands that can provide care to compatriots in foreign detention. These are the Ministry of Foreign Affairs, the 'International office' of the Dutch Probation Service and Epafras.

The Ministry of Foreign Affairs protects the interests of Dutch nationals abroad. Dutch nationals do not have the right of consular care but very often the Dutch embassy provides care. The 'International office' of the Dutch Probation Service supports the interests of compatriots that are in foreign detention. The 'International office' co-ordinates a network of volunteers that regularly visit Dutch nationals in foreign detention. These visits are mend to give support during detention and to prepare for resettlement in The Netherlands. The religious organisation Epafras provides spiritual support to Dutch nationals detained abroad.

Every Dutch citizen that is arrested and/or detained abroad has the right to contact the Dutch representation (embassy and/or consulat). This right is laid down in article 36.1 of the UN Vienna Convention for Consular Relations. The Dutch embassy has the right to visit each Dutch national that has been arrested or detained in case he/she gives permission for this. During this visit the Dutch detainee will receive information about the work of volunteers of the Dutch Probation Service and of Epafras. The detainee can, via filling out a form, indicate to make use of these services.

DUTCH CARE

CONSULAR CARE BY THE ROYAL NETHERLANDS EMBASSY (DUTCH EMBASSY)

1. **Every Dutch citizen that is arrested and/or detained abroad has the right to contact the Dutch representation (embassy and/or consulat). Did you know this?**
   - ☐ Yes
   - ☐ No ..... ➞ Move to **question 4**

2. **If so, who told you so?**
   - ☐ Prison personnel
   - ☐ Fellow-prisoner(s)
   - ☐ Probation volunteer of 'Bureau Buitenland'(International office) of the Dutch Probation Service
   - ☐ Spiritual counsellor of the religious organisation 'Epafras'
   - ☐ Employee of the Dutch embassy
   - ☐ Lawyer
   - ☐ Family / friends
   - ☐ Was aware of it myself
   - ☐ Other, namely .....

3. **Have you made contact with the Dutch embassy?**
   - ☐ Yes
   - ☐ No

4. **Have you received consular care from the Dutch embassy?**
   - ☐ Yes
   - ☐ No ..... ➞ Move to **question 20**

5. **If so, whereof did this care from the Dutch embassy consist of?** (You can tick more than one box)
   - ☐ A personal visit straight after your arrest / detention
   - ☐ Providing information about the judicial process in the country of detention
   - ☐ Attending my session at the court
   - ☐ To oversee that the right judicial proceedings are being followed in my case
   - ☐ To oversee that I am not being treated less favourable than other detainees
   - ☐ Attention for my medical health condition
   - ☐ To remain in contact with my contact-person at home
   - ☐ To advise you on transferring money
   - ☐ Providing a monthly allowance (outside Europe)
   - ☐ Taking along practicalities
   - ☐ Providing guidance and support during transfer procedures (e.g. WOTS)
   - ☐ Providing financial loans in case of emergency
   - ☐ Other, namely .....

6. **Can you indicate which kinds of care you value the most?**
   - ☐ A personal visit straight after your arrest / detention
   - ☐ Providing information about the judicial process in the country of detention
   - ☐ Attending my session at the court
   - ☐ To oversee that the right judicial proceedings are being followed in my case
   - ☐ To oversee that I am not being treated less favourable than other detainees
   - ☐ Attention for my medical health condition
   - ☐ To remain in contact with my contact-person at home
   - ☐ To advise you on transferring money
   - ☐ Providing a monthly allowance (outside Europe)
   - ☐ Taking along practicalities
   - ☐ Providing guidance and support during transfer procedures (e.g. WOTS)
   - ☐ Providing financial loans in case of emergency
   - ☐ Other, namely .....

7. Can you indicate which kinds of care you value the <u>least</u>?
- ☐ A personal visit straight after your arrest / detention
- ☐ Providing information about the judicial process in the country of detention
- ☐ Attending my session at the court
- ☐ To oversee that the right judicial proceedings are being followed in my case
- ☐ To oversee that I am not being treated less favourable than other detainees
- ☐ Attention for my medical health condition
- ☐ To remain in contact with my contact-person at home
- ☐ To advise you on transferring money
- ☐ Providing a monthly allowance (outside Europe)
- ☐ Taking along practicalities
- ☐ Providing guidance and support during transfer procedures (e.g. WOTS)
- ☐ Providing financial loans in case of emergency
- ☐ Other, namely ……..……..……..……..

8. When were you visited by the Dutch embassy for the first time after your arrest?
- ☐ within 24 hours
- ☐ within 2 days
- ☐ within 1 week
- ☐ within 2 weeks
- ☐ within 1 month
- ☐ within 2 months
- ☐ within 6 months
- ☐ within 1 year

9. What do you think about the rapidity of which you were visited by the Dutch embassy for the first time after your arrest?
- ☐ bad
- ☐ below average
- ☐ sufficient
- ☐ good
- ☐ excellent

10. How often are you being visited by the Dutch embassy?
- ☐ 1 time per month
- ☐ 1 time per 3 months
- ☐ 1 time per 6 months
- ☐ 1 time per year
- ☐ 1 time per 2 years
- ☐ Other

11. What do you think about the frequency of the visits by the Dutch embassy?
- ☐ bad
- ☐ below average
- ☐ sufficient
- ☐ good
- ☐ excellent

YOUR OPINION ABOUT SOME BRIEF STATEMENTS ABOUT CONSULAR CARE

You will find below a list of statements about consular care. You may tick one box for each statement. You can fill in 'not applicable' in case the statement does <u>not</u> apply to you personally.

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
12. The visit of the embassy staff directly after my arrest / detention gave me the impression that I was not alone.	☐	☐	☐	☐	☐	☐
13. Information of the Dutch embassy about the judicial process of the country in which I am detained is of great value.	☐	☐	☐	☐	☐	☐
14. Attention of the Dutch embassy for my health helps.	☐	☐	☐	☐	☐	☐
15. I can use the monthly financial allowance of the Dutch embassy very well.	☐	☐	☐	☐	☐	☐
16. Contact between the Dutch embassy and my contact-person in The Netherlands makes me more calm.	☐	☐	☐	☐	☐	☐
17. Thanks to the attention of the Dutch embassy I maintain a connection with The Netherlands.	☐	☐	☐	☐	☐	☐
18. The Dutch embassy does what it promises.	☐	☐	☐	☐	☐	☐
19. I am satisfied about what the Dutch embassy, within its limitations, does for me.	☐	☐	☐	☐	☐	☐

➡ Move to **<u>question 24</u>**

20. In case you have not received consular care from the Dutch embassy, why is that?
(Please answer question 20-23 only when your answer to question 4 was 'no'. You may tick more than one box)
- ☐ I did not know that I could contact the Dutch embassy to inform them about my arrest/detention
- ☐ I was not able to contact the Dutch embassy
- ☐ I did not want to contact the Dutch embassy
- ☐ I have not yet been visited by someone from the Dutch embassy
- ☐ Other, namely ……..……..……..……..

21. In case you could not make contact with the Dutch embassy, why was that? (You may tick more than one box)
- ☐ I do not have the contact details of the Dutch embassy
- ☐ I do not have money to call or write the Dutch embassy
- ☐ I did not recieve permission of prison personell to make contact
- ☐ Other

22. In case you do not want consular care, why is that? (You may tick more than one box)
- ☐ I do not feel like a Dutch citizen
- ☐ I do not return to the Netherlands after my release from prison
- ☐ I do not speak Dutch
- ☐ I do not want that 'The Netherlands' is aware about my detention
- ☐ Consular care is of no value for me personally
- ☐ Consular care makes my situation in this institution worse
- ☐ Other, namely ……..……..……..……..

23. Wich kind of consular care would you think is important? (You may tick more than one box)
- ☐ A personal visit straight after your arrest / detention
- ☐ Providing information about the judicial process in the country of detention
- ☐ Attending my session at the court
- ☐ To oversee that the right judicial proceedings are being followed in my case
- ☐ To oversee that I am not being treated less favourable than other detainees
- ☐ Attention for my medical health condition
- ☐ To remain in contact with my contact-person at home
- ☐ To advise you on transferring money
- ☐ Providing a monthly allowance (outside Europe)
- ☐ Taking along practicalities
- ☐ Providing guidance and support during transfer procedures (e.g. WOTS)
- ☐ Providing financial loans in case of emergency
- ☐ Other, namely ……..……..……..……..

SPIRITUAL CARE BY THE RELIGIOUS ORGANISATION EPAFRAS

24. Did you know that the religious organisation Epafras gives spiritual care to Dutch nationals detained abroad?
- ☐ Yes
- ☐ No ……..…… ➡ Move to **<u>question 26</u>**

25. If so, who told you so?
- ☐ Employee of the Dutch embassy

☐ Probation volunteer of ´Bureau Buitenland´(International office) of the Dutch Probation Service
☐ Spiritual counsellor of the religious organisation 'Epafras'
☐ Prison personnel
☐ Fellow-prisoner(s)
☐ Family / friends
☐ Lawyer
☐ Was aware of it myself
☐ Other, namely ……

26. Do you receive spiritual care from Epafras?
☐ Yes
☐ No ..... ➡ Move to **question 38**

27. If so, whereof does the spiritual care from Epafras consists of? (You may tick more than one box)
☐ A personal conversation during a visit by a spiritual counsellor of Epafras
☐ Receiving religious literature (Bible, books, magazines)
☐ Maintaining contact with relatives in The Netherlands by Epafras
☐ Receiving material support (practicalities)
☐ Receiving the magazine 'Gezant uit Nederland'
☐ Correspondence with a correspondence volunteer at Epafras
☐ Other, namely ……..

28. Can you indicate which kinds of care you value the most?
☐ A personal conversation during a visit by a spiritual counsellor of Epafras
☐ Receiving religious literature (Bible, books, magazines)
☐ Maintaining contact with relatives in The Netherlands by Epafras
☐ Receiving material support (practicalities)
☐ Receiving the magazine 'Gezant uit Nederland'
☐ Correspondence with a correspondence volunteer at Epafras
☐ Other, namely ……..

29. Can you indicate which kinds of care you value the least?
☐ A personal conversation during a visit by a spiritual counsellor of Epafras
☐ Receiving religious literature (Bible, books, magazines)
☐ Maintaining contact with relatives in The Netherlands by Epafras
☐ Receiving material support (practicalities)
☐ Receiving the magazine 'Gezant uit Nederland'
☐ Correspondence with a correspondence volunteer at Epafras
☐ Other, namely ……..

30. How often are you being visited by a spiritual counsellor of Epafras?
☐ 1 time per 3 months ☐ 1 time per year
☐ 1 time per 6 months ☐ 1 time per 2 years

31. What do you think about the frequency of the visits by a spiritual counsellor of Epafras?
☐ bad ☐ good
☐ below average ☐ excellent
☐ sufficient

YOUR OPINION ABOUT SOME BRIEF STATEMENTS ABOUT SPIRITUAL CARE FROM EPAFRAS

You will find below a list of statements about consular care. Yoy may tick one box for each statement. You can fill in 'not applicable' in case the statement does not apply to you personally.

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
32. A personal conversation with a spiritual counsellor of Epafras helps me to cope better with my situation.	☐	☐	☐	☐	☐	☐
33. Thanks to the spiritual care of Epafras do learn more about myself and what I want in life.	☐	☐	☐	☐	☐	☐
34. Thanks to the personal attention of the spiritual counsellor I feel mentally supported.	☐	☐	☐	☐	☐	☐
35. Thanks to the magazine 'Gezant uit Nederland' I do not feel alone.	☐	☐	☐	☐	☐	☐
36. Epafras does what it promises.	☐	☐	☐	☐	☐	☐
37. I am satisfied about what Epafras, within its limitations, does for me.	☐	☐	☐	☐	☐	☐

➡ Move to **question 40**

38. In case you do not receive spiritual care from Epafras, why is that?
(Please answer question 38-39 only when your answer to question 26 was 'no'. You may tick more than one box)
☐ I did not know that I could receive a visit by a spiritual counsellor of Epafras
☐ Until now no spiritual counsellor has visited my region
☐ I do not need spiritual care
☐ I am not religious
☐ I receive spiritual care via a religious counsellor in this institution
☐ Spiritual care is bad for my situation in this institution
☐ Other, namely ……..

39. Can you indicate which kinds of care you would think are important?
☐ A personal conversation during a visit by a spiritual counsellor of Epafras
☐ Receiving religious literature (Bible, books, magazines)
☐ Maintaining contact with relatives in The Netherlands by Epafras
☐ Receiving material support (practicalities)
☐ Receiving the magazine 'Gezant uit Nederland'
☐ Correspondence with a correspondence volunteer at Epafras
☐ Other, namely ……..

CARE BY 'BUREAU BUITENLAND' OF THE DUTCH PROBATION SERVICE

40. Did you know that the 'Bureau Buitenland' (International office) of the Dutch Probation Service provides care to Dutch Nationals detained abroad?
☐ Yes
☐ No..... ➡ Move to **question 42**

41. If so, who told you so?
☐ Employee of the Dutch embassy
☐ Probation volunteer of ´Bureau Buitenland´(International office) of the Dutch Probation Service
☐ Spiritual counsellor of the religious organisation 'Epafras'
☐ Prison personnel
☐ Fellow-prisoner(s)
☐ Lawyer
☐ Family / friends
☐ Was aware of it myself
☐ Other, namely ……..

42. Do you receive care from the Dutch Probation Service?
☐ Yes
☐ No ..... ➡ Move to **question 63**

43. If so, whereof does care of the Dutch Probation Service consist of? (You may tick more than one box)

☐ Social visit by a Probation volunteer of 'Bureau Buitenland'
☐ Attention for my personal situation and development
☐ Receiving information material ('Detained in …')
☐ Attending my session at the court
☐ Taking along practicalities like soap, toilet-paper, magazines, medicines etc.
☐ Taking along the monthly allowance of the Dutch embassy (outside Europe)
☐ Providing help in organising things at home (informing debtors and landlords etc)
☐ Organising a social enquiry report by the Dutch Probation Service
☐ Contact with family at home
☐ Providing access to a training course by 'Stichting Educatie Achter Buitenlandse Tralies'
☐ Correspondence with correspondence volunteer
☐ Preparations for return in society
☐ Support during transfer procedures (like WOTS)
☐ Other, namely ……

44. Can you indicate which kinds of care you value the most?
☐ Social visit by a Probation volunteer of 'Bureau Buitenland'
☐ Attention for my personal situation and development
☐ Receiving information material ('Detained in …')
☐ Attending my session at the court
☐ Taking along practicalities like soap, toilet-paper, magazines, medicines etc.
☐ Taking along the monthly allowance of the Dutch embassy (outside Europe)
☐ Providing help in organising things at home (informing debtors and landlords etc)
☐ Organising a social enquiry report by the Dutch Probation Service
☐ Contact with family at home
☐ Providing access to a training course by 'Stichting Educatie Achter Buitenlandse Tralies'
☐ Correspondence with correspondence volunteer
☐ Preparations for return in society
☐ Support during transfer procedures (like WOTS)
☐ Other, namely ……

45. Can you indicate which kinds of care do you value the <u>least</u>?
☐ Social visit by a Probation volunteer of 'Bureau Buitenland'
☐ Attention for my personal situation and development
☐ Receiving information material ('Detained in …')
☐ Attending my session at the court
☐ Taking along practicalities like soap, toilet-paper, magazines, medicines etc.
☐ Taking along the monthly allowance of the Dutch embassy (outside Europe)
☐ Providing help in organising things at home (informing debtors and landlords etc)
☐ Organising a social enquiry report by the Dutch Probation Service
☐ Contact with family at home
☐ Providing access to a training course by 'Stichting Educatie Achter Buitenlandse Tralies'
☐ Correspondence with correspondence volunteer
☐ Preparations for return in society
☐ Support during transfer procedures (like WOTS)
☐ Other, namely ……

46. Do you receive visit from a Probation volunteer?
☐ Yes
☐ No..... ➞ Move to **<u>question 49</u>**

47. How often do you receive visits from a Probation volunteer?
☐ 1 time per month ☐ 1 time per 3 months
☐ 1 time per 6 weeks ☐ 1 time per 4 months
☐ 1 time per 2 months ☐ 1 time per 6 months

48. What do you think about the frequency of the visits of the Probation volunteer?
☐ bad ☐ good
☐ below average ☐ excellent
☐ sufficient

YOUR OPINION ABOUT SOME BRIEF STATEMENTS ABOUT CARE FROM THE DUTCH PROBATION SERVICE

You will find below a list of statements about care from the Dutch Probation Service. You may tick one box for each statement. You can fill in 'not applicable' in case the statement does <u>not</u> apply to you personally.

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
49. Thanks to the visit of the Probation volunteer, detention in this institution feels less difficult.	☐	☐	☐	☐	☐	☐
50. Thanks to the contact with the Probation volunteer, I feel less lonely.	☐	☐	☐	☐	☐	☐
51. Thanks to the personal attention of the Probation volunteer, I feel emotionally supported.	☐	☐	☐	☐	☐	☐
52. My detention situation has been improved thanks to information & advice of the Probation volunteer.	☐	☐	☐	☐	☐	☐
53. My contact with prison personnel has improved via help of the Probation volunteer.	☐	☐	☐	☐	☐	☐
54. My contact with fellow-prisoners has improved via help of the Probation volunteer.	☐	☐	☐	☐	☐	☐
55. My contact with family at home has positively been influenced by the Probation volunteer.	☐	☐	☐	☐	☐	☐
56. My contact with family at home has positively been influenced by the Dutch Probation Service.	☐	☐	☐	☐	☐	☐
57. My detention situation has been improved thanks to care of the Dutch Probation Service.	☐	☐	☐	☐	☐	☐
58. I am able to arrange practicalities at home better via care of the Dutch Probation Service.	☐	☐	☐	☐	☐	☐
59. I can prepare myself better for return to society thanks to care of the Dutch Probation Service.	☐	☐	☐	☐	☐	☐
60. Thanks to care from the Probation Service I am less likely to end up in prison again after my return to The Netherlands.	☐	☐	☐	☐	☐	☐
61. The Probation Service does what it promises.	☐	☐	☐	☐	☐	☐
62. I am satisfied about what the Dutch Probation Service, within its limitations, does for me.	☐	☐	☐	☐	☐	☐

➞ Move to **<u>question 66</u>**

63. In case you have not received care from the Dutch Probation Service, why is that?
(Please answer question 63-65 only when your answer to question 42 was 'no'. You may tick more than one box)
☐ I did not know that I could receive care from the Dutch Probation Service
☐ I receive probation and resettlement care from this institution
☐ I do not want care from the Dutch Probation Service because I do not feel like a Dutch citizen
☐ I do not want care from the Dutch Probation Service because I will not return to The Netherlands
☐ I do not want care from the Dutch Probation Service because I speak no/limited Dutch
☐ I do not want that 'The Netherlands' are aware of my arrest/detention

☐ I do not need care from the Dutch Probation Service
☐ I have no trust in care from the Dutch Probation Service
☐ Care from the Dutch Probation Service is bad for my situation in this institution
☐ Other, namely ……..

64. In case you do not receive a vist from a Probation volunteer. Why is that? (You may tick more than one box)
☐ There is no Probation volunteer in my area
☐ I do not want a visit from a Probation volunteer
☐ The Probation volunteer does not want to visit me
☐ I do not speak (enough) Dutch so I can not communicate with the Probation volunteer
☐ I already receive visits from the national Probation Service of the country in which I am detained
☐ Other, namely ……

65. Which kinds of care from the Dutch Probation Service would you think are important?
☐ Social visit by a Probation volunteer
☐ Attention for my personal situation and development
☐ Receiving information material ('Detained in …')
☐ Attending my session at the court
☐ Taking along practicalities like soap, toilet-paper, magazines, medicines etc.
☐ Taking along the monthly allowance of the Dutch embassy (outside Europe)
☐ Providing help in organising things at home (informing debtors and landlords etc)
☐ Organising an social enquiry report by the Dutch Probation Service
☐ Contact with family at home
☐ Providing access to a training course by 'Stichting Educatie Achter Buitenlandse Tralies'
☐ Correspondence with correspondence volunteer
☐ Preparations for return in society
☐ Support during transfer procedures (like WOTS)
☐ Other, namely ……..

PREPARING FOR RETURN TO SOCIETY

66. Do you prepare yourself to return to society?
☐ Yes
☐ No

67. Do you receive support from the Probation volunteer in your preparations for return to society?
☐ Yes
☐ No ..... ➡ Move to **question 71**

68. Can you indicate what kind of support you receive? (You may tick more than one box)
☐ Conversations about my future
☐ Attention for practicalities which I have to organise at home
☐ Advice on administrative procedures in The Netherlands (request for special documents etc)
☐ Referral to agencies in The Netherlands
☐ Participation in course by 'Stichting Educatie Achter Buitenlandse Tralies'
☐ Contact with contact-person at home
☐ Support with transfer procedures (e.g. WOTS)
☐ Information and advice on after-care services upon return in The Netherlands
☐ Other, namely ……..

69. Can you indicate which kind of care would be most useful for you?
☐ Conversations about my future
☐ Attention for practicalities which I have to organise at home
☐ Advice on administrative procedures in The Netherlands (request for special documents etc)
☐ Referral to agencies in The Netherlands
☐ Participation in course by 'Stichting Educatie Achter Buitenlandse Tralies'
☐ Contact with contact-person at home
☐ Support with transfer procedures (e.g. WOTS)
☐ Information and advice on after-care services upon return in The Netherlands
☐ Other, namely ……..

70. How does after-care by the Dutch Probation Service fit in with your needs to prepare for return?
☐ bad ☐ good
☐ below average ☐ excellent
☐ sufficient

71. Do you receive support from other organisations?
☐ Yes
☐ No ..... ➡ Move to **question 73**

72. If so, by whom is this support being provided?
☐ Penitentiary institution
☐ Dutch embassy
☐ Epafras
☐ Organisation from outside this penitentiary institution
☐ Other, namely ……..

73. Do you have the feeling that you, as soon as you are released, are well prepared for return to society?
☐ Yes
☐ Do not know
☐ No

74. When you will be released, where are you planning to go to?
☐ Back to The Netherlands
☐ I will stay in the country of detention ..... ➡ Move to **question 79**
☐ I will go to another country ..... ➡ Move to **question 79**
☐ I am not sure yet ..... ➡ Move to **question 79**

75. In case you return to The Netherlands, where are you planning to go to?
☐ Amsterdam
☐ Rotterdam
☐ Den Haag
☐ Utrecht
☐ Other, namely ……..

76. In case you return to The Netherlands, what kind of support do you think you will need?
(You may tick more than one box)
☐ Shelter accommodation upon return
☐ House
☐ Arrangeing official papers
☐ Work
☐ Education
☐ Medical care
☐ Psychiatric care
☐ Claim welfare benefits
☐ Contact with family

77. Do you expect support once you are back in The Netherlands?
☐ Yes
☐ No ..... ➡ Move to **question 79**

78. If so, from whom do you expect support in The Netherlands? (You may tick more than one box)
☐ Parents/partner/children
☐ Family and friends
☐ Municipality
☐ Dutch Probation Service
☐ Salvation Army
☐ GGZ Nederland (association of mental health and addiction organisations)
☐ Epafras

☐ Dutch Prison Service
☐ Other, namely ……..……..……..……..

79. Do you expect to commit more offences after release?
☐ Yes
☐ No ……. ➡ Move to **question 82**

80. If so, why do you think you will commit more offences? (You may tick more than one box)
☐ Shortage of money
☐ No official papers (identity card, registration with municipality)
☐ No accommodation
☐ No contact with parents/partner/children
☐ No counselling / guidance
☐ Shortage of social contacts
☐ Shortage of education
☐ Poor medical health care
☐ Poor psychiatric health care
☐ Addiction
☐ No alternative
☐ Other, namely ……..……..……..……..

81. How could you prevent yourself for being involved in crimes again? (You may tick more than one box)
☐ Regular income (job, allowance)
☐ Official papers (identity card)
☐ Accommodation
☐ Contact with parents/partner/children
☐ Counselling / guidance
☐ Social contacts
☐ Education
☐ Good medical health care
☐ Good psychiatric health care
☐ Treatment of addiction
☐ Other, namely ……..……..……..……..

82. Why do you think you will not commit any further crimes?
(Please answer this question only when your answer to question 79 was 'no'. You may tick more than one box)
☐ Detention experience abroad
☐ I can return to my partners/partner/children
☐ I can return to my own house
☐ I can stay with friends
☐ I can return to my former job
☐ I have enough income
☐ I learned a profession in which it is easy to find a job
☐ I am fysically in a good shape
☐ I am mentaly in a good shape
☐ I am not (anymore) addicted
☐ Other, namely ……..……..……..……..

PERSONAL DETAILS

The next questions give insight into the different characteristics of Dutch nationals in foreign detention. This is important for processing the results of this survey. The data is completely anonymous and will be treated confidentially.

83. I am a:
☐ Man
☐ Woman

84. My age is in the following category:
☐ 19 years or younger
☐ 20-24 years
☐ 25-29 years
☐ 30-34 years
☐ 35-39 years
☐ 40-44 years
☐ 45-49 years
☐ 50-59 years
☐ 60 years and older

85. I am born in:
☐ The Netherlands
☐ Turkey
☐ Morocco
☐ Surinam
☐ The Dutch Antilles
☐ Another European country besided The Netherlands
☐ Another non-European country
☐ Unknown

86. My cultural background is:
☐ Dutch
☐ Turkish
☐ Moroccan
☐ Surinamese
☐ Dutch Antillean
☐ Other, namelijk ……..……..……..……..

87. The highest educational programme that I have completed is:
☐ I did not complete any educational programmes
☐ Primary education (also special needs)
☐ Special needs secondary education
☐ Vocational education (i.e. school that prepares you for a specific job)
☐ Mainstream secondary education (with certificates e.g. GCSEs, A levels)
☐ Technical secondary education
☐ Further education (polytechnic, training college, etc.)
☐ University

THE INSTITUTION AND THE TIME YOU HAVE SPENT IN DETENTION

88. I am detained in: (Please fill in country of detention)

……..……..……

89. I have been detained in this country for:
☐ Less than 1 month
☐ 1 to 3 months
☐ 3 to 6 months
☐ 6 months to 1 year
☐ 1 to 3 years
☐ 3 to 5 years
☐ 5 years or more

90. I am in remand (pre-trial detention):
☐ Yes
☐ No

91. I expect to be in detention for:
☐ Less than 1 month
☐ 1 to 3 months
☐ 3 to 6 months
☐ 6 months to 1 year
☐ 1 to 3 years
☐ 3 to 5 years
☐ 5 years or more

92. This is my first time in detention in a foreign country:
☐ Yes
☐ No

93. I have been detained previously in The Netherlands:
- ☐ Yes
- ☐ No

94. I share a cell with:
- ☐ Nobody
- ☐ 1 person
- ☐ 2-5 persons
- ☐ 6-10 persons
- ☐ 10 to 20 persons
- ☐ more than 20 persons

95. I have at least 4 square metres for my personal use:
- ☐ Yes
- ☐ No

96. I am daily out of my cell:
- ☐ never
- ☐ 1 hour
- ☐ 2 to 3 hours
- ☐ 3 to 6 hours
- ☐ 6 to 12 hours
- ☐ more than 12 hours

DETENTION EXPERIENCE

This survey is based on a questionnaire that is being presented bi-annualy to detainees in Dutch penitentiary institutions. The questionnaire is developed by the Dutch National Agency for Correctional Institutions in order to measure the detention experience.

THE FOOD IN THIS INSTITUTION

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
1. I am satisfied with the times of the meals.	☐	☐	☐	☐	☐	☐
2. I get enough to eat.	☐	☐	☐	☐	☐	☐
3. The hot meals are often the same,	☐	☐	☐	☐	☐	☐
4. I like the hot meals.	☐	☐	☐	☐	☐	☐
5. The hot meals are the right temperature.	☐	☐	☐	☐	☐	☐
6. The meals also cater for diets.	☐	☐	☐	☐	☐	☐
7. The meals also cater for religious beliefs.	☐	☐	☐	☐	☐	☐

THE SHOP IN THIS INSTITUTION

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
8. I can buy what I need at the shop.	☐	☐	☐	☐	☐	☐
9. The products in the shop are expensive.	☐	☐	☐	☐	☐	☐
10. I am satisfied with the quality of the products in the shop.	☐	☐	☐	☐	☐	☐
11. I think it's useful to hand in complaints at the shop.	☐	☐	☐	☐	☐	☐

THE WORK IN THIS INSTITUTION

12. I work:
- ☐ Yes
- ☐ No ..... ➡ Move on to **question 14**

13. I work because: (You may tick more than one box)
- ☐ I have to
- ☐ to earn money
- ☐ to mix with other prisoners
- ☐ to mix with the personnel
- ☐ to have something to do
- ☐ to learn things
- ☐ to be out of my cell
- ☐ another reason

THE PUNISHMENTS IN THIS INSTITUTION

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
14. The punishments are too harsh.	☐	☐	☐	☐	☐	☐
15. The punishments take account of personal circumstances.	☐	☐	☐	☐	☐	☐
16. The punishments are carried out according to the rules.	☐	☐	☐	☐	☐	☐

DRUG USE IN THIS INSTITUTION

17. Drugs are being used in this section:
- ☐ Often
- ☐ Sometimes
- ☐ Never ..... ➡ Move on to **question 23**

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
18. The drug use by other prisonesr bothers me.	☐	☐	☐	☐	☐	☐
19. There are too many check for *possesion* of drugs.	☐	☐	☐	☐	☐	☐
20. There are too many checks for drug *use*.	☐	☐	☐	☐	☐	☐

THE HYGIËNE IN THIS INSTITUTION

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
21. It is clean:						
- in my own section	☐	☐	☐	☐	☐	☐
- in the shower(s)	☐	☐	☐	☐	☐	☐
- in the recreation space	☐	☐	☐	☐	☐	☐
- in the workplace	☐	☐	☐	☐	☐	☐
- in the exercise yard	☐	☐	☐	☐	☐	☐
- in the visitor's space	☐	☐	☐	☐	☐	☐
- in the kitchen in my own section	☐	☐	☐	☐	☐	☐

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
22. I can wash my clothes/have my clothes washed often enough in this prison.	☐	☐	☐	☐	☐	☐
23. I can shower often enough.	☐	☐	☐	☐	☐	☐

24. Do you have your own shower in your cell?
- ☐ Yes
- ☐ No

THE ACTIVITIES IN THIS INSTITUTION

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
25. I am satisfied with the following activities/facilities:						
- recreation	☐	☐	☐	☐	☐	☐
- sport	☐	☐	☐	☐	☐	☐
- library	☐	☐	☐	☐	☐	☐
- work	☐	☐	☐	☐	☐	☐
- crafts	☐	☐	☐	☐	☐	☐

26. How often do you use the following facilities?

	Never	Once a week	More than once a week	Daily	Not applicable
- sport	☐	☐	☐	☐	☐
- library	☐	☐	☐	☐	☐
- education	☐	☐	☐	☐	☐
- exercise yard	☐	☐	☐	☐	☐
- crafts	☐	☐	☐	☐	☐

THE SPIRITUAL CARE IN THIS INSTITUTION

27. In this institution I have had contact with: (You may tick more than one box)

- ☐ the priest
- ☐ the pandit
- ☐ the chaplain
- ☐ the imam
- ☐ the rabbi
- ☐ the humanist counsellor
- ☐ the spiritual counsellor of Epafras from The Netherlands
- ☐ no spiritual counsellor at all ..... ➡ Move to **question 29**

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
28. I am in general satisfied with the work of the spiritual counsellor.	☐	☐	☐	☐	☐	☐

THE HEALTHCARE IN THIS INSTITUTION

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
29. My health has deteriorated during this period of detention.	☐	☐	☐	☐	☐	☐
30. I have been well informed about contagious diseases (e.g. sexually transmissible diseases/ aids / hepatitis) during this period of detention.	☐	☐	☐	☐	☐	☐
31. I can easily have a test if I want (for example for aids / hepatitis).	☐	☐	☐	☐	☐	☐

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	No experience
32. I can go to the GP if I want in this institution.	☐	☐	☐	☐	☐	☐

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	No experience
33. I am satisfied with the work of:						
- the nurse	☐	☐	☐	☐	☐	☐
- the GP	☐	☐	☐	☐	☐	☐
- the dentist	☐	☐	☐	☐	☐	☐
- the psychologist	☐	☐	☐	☐	☐	☐

OTHER PEOPLE WHO WORK IN THIS INSTITUTION

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	No experience
34. I am satisfied with the work of:						
- the social worker	☐	☐	☐	☐	☐	☐
- the head of the section	☐	☐	☐	☐	☐	☐
- the teacher	☐	☐	☐	☐	☐	☐
- the prison guards	☐	☐	☐	☐	☐	☐
- the prison registration office	☐	☐	☐	☐	☐	☐

HOW COMPLAINTS ARE DEALT WITH IN THIS INSTITUTION

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	No experience
35. I know where to hand in a complaint if i have any.	☐	☐	☐	☐	☐	☐

36. It is possible to hand in a complaint with: (You may tick more than one box)

- ☐ Independent complaint commission
- ☐ Public prosecutor
- ☐ Judge
- ☐ Prison director
- ☐ Ombudsman
- ☐ Other, namely ……
- ☐ There is no possibility to hand in a complaint

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	No experience
37. The person / agency responsible for handling complaints is easy to contact.	☐	☐	☐	☐	☐	☐
38. I think it is useful to lodge complaints.	☐	☐	☐	☐	☐	☐

39. I have lodged a complaint in the past:

- ☐ Yes
- ☐ No ..... ➡ Move to **question 42**

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	No experience
40. It took too long to deal with my complaint(s).	☐	☐	☐	☐	☐	☐
41. My complaint was taken seriously.	☐	☐	☐	☐	☐	☐

THE SAFETY IN THIS INSTITUTION

42. I have felt unsafe:

- ☐ Often
- ☐ Sometimes
- ☐ Never ..... ➡ Move on to **question 45**

43. The following person(s) make(s) / made me feel unsafe: (You may tick more than one box)

- ☐ a prison guard
- ☐ various guards
- ☐ my cell mate
- ☐ another detainee
- ☐ various detainees
- ☐ another staff member who is not a guard
- ☐ a visitor

44. I feel / felt unsafe in the following places: (You may tick more than one box)

- ☐ my own cell
- ☐ the workplace
- ☐ my own section
- ☐ the visitor's space
- ☐ the isolation cells
- ☐ the recreation space
- ☐ the showers
- ☐ the sports hall
- ☐ the toilets
- ☐ the crafts space
- ☐ the corridors/stairs
- ☐ the library
- ☐ the exercise yard
- ☐ the classroom

DISCRIMINATION IN THIS INSTITUTION

The following questions are about discrimination in this institution. Being meant by discrimination is that someone

is treated differently because of their nationality, skin colour, religion, gender, sexuality, type of offence, etc.

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
45. Guards discriminate against detainees.	☐	☐	☐	☐	☐	☐
46. Detainees discriminate against other detainees.	☐	☐	☐	☐	☐	☐

47. I have been discriminated against in this institution:
☐ Yes
☐ No ..... ➡ Move to **question 50**

48. I have been discriminated because my: (You may tick more than one box)
☐ Nationality ☐ Sexuality
☐ Skin colour ☐ Type of offence
☐ Religion ☐ Other, namely ……
☐ Gender

49. I have been discriminated against in this prison by:
☐ a prisoner
☐ a prison officer
☐ a member of staff other than a prison officer

CONTACTS WITH THE OUTSIDE WORLD IN THIS INSTITUTION

50. Do you have contact with your family / friends in The Netherlands?
☐ Yes
☐ No ..... ➡ Move to **question 52**

51. How do you remain into contact? (You may tick more than one box)
☐ via telephone
☐ via mail
☐ via visits
☐ via E-mail

➡ Move to **question 53**

52. If no, why do you have no contact with your family / friends in The Netherlands?
☐ it is not allowed by this institution
☐ it is too expensive
☐ I do not have family / friends
☐ I do not want any contact

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
53. I have enough opportunities for keeping in touch with family and friends.	☐	☐	☐	☐	☐	☐
54. There are enough possibilities to remain in contact with the Dutch embassy.	☐	☐	☐	☐	☐	☐
55. There are enough possibilities to remain in contact with the Dutch Probation Service.	☐	☐	☐	☐	☐	☐
56. There are enough possibilities to remain in contact with the Probation volunteer.	☐	☐	☐	☐	☐	☐
57. There are enough possibilities to remain in contact with the Epafras volunteer.	☐	☐	☐	☐	☐	☐
58. I am brought to my visitors on time.	☐	☐	☐	☐	☐	☐
59. I have enough opportunities for keeping in touch with my lawyer.	☐	☐	☐	☐	☐	☐
60. I am brought to the bus on time when I am due in court.	☐	☐	☐	☐	☐	☐
61. I have enough privacy during phone calls.	☐	☐	☐	☐	☐	☐
62. I have enough privacy during visiting hours.	☐	☐	☐	☐	☐	☐
63. The visiting times make it difficult for me to see my family / friends / children.	☐	☐	☐	☐	☐	☐
64. I can easily bring things in from outside (e.g. radio, TV or clothes).	☐	☐	☐	☐	☐	☐

65. Have you been on leave?
☐ Yes
☐ No ..... ➡ Move to **question 68**

66. I heard I was getting leave too late in advance.
☐ Yes
☐ No

67. I knew my rights and obligations when I went on leave.
☐ Yes
☐ No

YOUR OPINION ABOUT SOME BRIEF STATEMENTS

You will find below a list of statements about life in this institution. You may tick one box for each statement.

	Entirely disagree	Disagree	Neither agree nor disagree	Agree	Entirely agree	Not applicable
68. I feel safe in this institution.	☐	☐	☐	☐	☐	☐
69. I can keep myself occupied in my cell.	☐	☐	☐	☐	☐	☐
70. I have no input in anything here.	☐	☐	☐	☐	☐	☐
71. The staff are willing to listen to my point of view.	☐	☐	☐	☐	☐	☐
72. I get on well with most of the detainees.	☐	☐	☐	☐	☐	☐
73. The guards are not really interested in how I am doing.	☐	☐	☐	☐	☐	☐
74. I am supported in resettling into society.	☐	☐	☐	☐	☐	☐
75. I do not mind sharing a cell with one person.	☐	☐	☐	☐	☐	☐
76. I do not think I will commit any more crimes after release.	☐	☐	☐	☐	☐	☐
77. I can spend my spare time on things that I enjoy.	☐	☐	☐	☐	☐	☐
78. Some detainees are exploited by other detainees.	☐	☐	☐	☐	☐	☐
79. The rules in this institution are unclear.	☐	☐	☐	☐	☐	☐
80. The guards never ask me how I am doing.	☐	☐	☐	☐	☐	☐
81. My communication with personnel is fine despite the language differences.	☐	☐	☐	☐	☐	☐
82. My communication with other detainees is fine despite the language differences.	☐	☐	☐	☐	☐	☐
83. You have to watch out for certain fellow-prisoners.	☐	☐	☐	☐	☐	☐
84. Contact with fellow-prisoners is very important for me.	☐	☐	☐	☐	☐	☐
85. I am encouraged to organise things for myself here.	☐	☐	☐	☐	☐	☐
86. Everything is decided for me here.	☐	☐	☐	☐	☐	☐
87. The guards help me if I have problems.	☐	☐	☐	☐	☐	☐
88. The detention is also useful to me.	☐	☐	☐	☐	☐	☐
89. I do not expect to find a job after my detention.	☐	☐	☐	☐	☐	☐
90. My life here is monotonous.	☐	☐	☐	☐	☐	☐
91. The prisoners here treat each other with respect.	☐	☐	☐	☐	☐	☐
92. I am not treated as an adult here.	☐	☐	☐	☐	☐	☐
93. The guards are nice to me.	☐	☐	☐	☐	☐	☐
94. The institution is doing nothing about my	☐	☐	☐	☐	☐	☐

reintegration in society.						
95. I know what happens if I break the rules.	☐	☐	☐	☐	☐	☐
96. My cell is too cold.	☐	☐	☐	☐	☐	☐
97. My cell is too hot.	☐	☐	☐	☐	☐	☐
98. My cell is too humid.	☐	☐	☐	☐	☐	☐
99. I can talk with the guards when I am feeling low.	☐	☐	☐	☐	☐	☐
100. I have enough to do in the evenings.	☐	☐	☐	☐	☐	☐
101. New detainees are soon accepted in the group.	☐	☐	☐	☐	☐	☐
102. I expect society to give me a fair chance after my detention.	☐	☐	☐	☐	☐	☐
103. The guards do not chat with me.	☐	☐	☐	☐	☐	☐
104. Working in this institution is preparing me for life after detention.	☐	☐	☐	☐	☐	☐
105. I am bored in weekends.	☐	☐	☐	☐	☐	☐
106. The institution informs me about rules.	☐	☐	☐	☐	☐	☐
107. You have to watch out for certain guards here.	☐	☐	☐	☐	☐	☐
108. My life here is entirely determined by other people.	☐	☐	☐	☐	☐	☐
109. I am pessimistic about the future after my detention.	☐	☐	☐	☐	☐	☐
110. I am well prepared for my return to society.	☐	☐	☐	☐	☐	☐
111. Prison staff are helping me with my reintegration in society.	☐	☐	☐	☐	☐	☐
112. The guards treat me normally.	☐	☐	☐	☐	☐	☐
113. I regularly feel threatened by other detainees.	☐	☐	☐	☐	☐	☐
114. I spend too long in my cell.	☐	☐	☐	☐	☐	☐
115. There are enough fellow-detainees with whom I can communicate in my own language.	☐	☐	☐	☐	☐	☐
116. The institution informs me of my rights.	☐	☐	☐	☐	☐	☐
117. If I want, I can take courses that will be useful to me after my detention.	☐	☐	☐	☐	☐	☐
118. I do not discuss my feelings with other detainees.	☐	☐	☐	☐	☐	☐
119. The guards protect me from aggressive fellow-detainees.	☐	☐	☐	☐	☐	☐
120. I think I can make a fresh start after my detention.	☐	☐	☐	☐	☐	☐
121. If I start something new here (e.g. a course), I get encouragement from the guards.	☐	☐	☐	☐	☐	☐
122. The prisoners here make allowances for each other.	☐	☐	☐	☐	☐	☐
123. I can decide for myself about the things I find important.	☐	☐	☐	☐	☐	☐
124. The rights of the detainees are clear.	☐	☐	☐	☐	☐	☐
125. I do not think to end up in prison again.	☐	☐	☐	☐	☐	☐
126. The guards join in with e.g. cards, billiards, table-tennis, etc.	☐	☐	☐	☐	☐	☐
127. There are detainees who listen to me when I have problems.	☐	☐	☐	☐	☐	☐
128. I do not mind sharing a cell with more detainees.	☐	☐	☐	☐	☐	☐
129. You are regularly threatened by guards here.	☐	☐	☐	☐	☐	☐
130. In general I am satisfied about this institution.	☐	☐	☐	☐	☐	☐
131. I would prefer to be detained in The Netherlands.	☐	☐	☐	☐	☐	☐

FOLLOW UP

Interview on location

Besides this survey, in-depth interviews will be held with Dutch nationals during detention. The interviews are planned in 2008 and 2009 and will probably be held in the Dominican Republic, Germany, Japan, Morocco, Surinam, United Kingdom and the United States of America. In case you are detained in one of these countries and like to continue your participation in this research you can apply here. Because of the large number of Dutch nationals detained in these countries it is not possible to invite everyone for an interview

☐ I am detained in one of the countries mentioned above and I like to be invited for an interview.

Name penitentiary institution: Address:
Country: Prison number:
Expected date of release:

Interview with contact-person(s)

This research will take into consideration the experience and opinon of family / contact-person(s) of Dutch nationals detained abroad. In case your family and/or contact-person(s) like to participate in this research you can apply below.

☐ I agree that contact will be made with my family / contact-person(s)

Name contact-person(s): Relation (partner/parent):
Address contact-person(s): E-mail contact-person:
Tel number contact-person: Language:

Interview after release of foreign detention

In case you might return to The Netherlands in 2008 or 2009 and like to share your experience and opinion about your detention abroad you can apply for an interview by telephone/mail or in person. If so, please contact info@foreignersinprison.eu as soon as you have arrived in The Netherlands.

☐ I am interested to take part in an interview after release

Address: E-mail:
Date of expected arrival in The Netherlands: Telephone number:

Please put the survey in the envelop as soon as you are ready (stamps are not needed) and send it to:

Tilburg University
Faculty of Law
Section Deprivation of Freedom
Room M 823
Antwoordnummer 60561 (FREEPOST)
5000 VB Tilburg
The Netherlands

Many thanks for your kind cooperation!

The results of the research will be published in ´Gezant uit Nederland' and on www.foreignersinprison.eu

Vragenlijst contactpersonen gedetineerden

In het kader van de beleidsdoorlichting heeft IOB in april 2010 alle 1.250 contactpersonen van Nederlandse gedetineerden in het buitenland aangeschreven.[257] Van 278 personen is een ingevulde vragenlijst ontvangen. Dit is een respons van 22%. Aangezien een deel van de contactpersonen in het buitenland woonachtig is en een, deels overlappend, deel de Nederlandse taal minder goed beheerst is er sprake van een redelijk goede respons.

<Onderzoeksnummer >

Deze enquête is van de directie Inspectie Ontwikkelingssamenwerking en Beleidsevaluatie (IOB). IOB is een onafhankelijke inspectie- en evaluatiedienst van het ministerie van Buitenlandse Zaken. IOB doet op dit moment onderzoek naar de consulaire dienstverlening door het ministerie van Buitenlandse Zaken in Den Haag en ambassades en consulaten in de wereld. Begeleiding aan gedetineerden in het buitenland is een van de taken van het ministerie van Buitenlandse Zaken op consulair gebied. U bent voor het ministerie van Buitenlandse Zaken contactpersoon van een Nederlandse gedetineerde in het buitenland. Graag horen wij uw persoonlijke mening over gedetineerdenbegeleiding en de communicatie met het ministerie.

Het invullen van de vragenlijst is VOLLEDIG ANONIEM en uw gegevens worden vertrouwelijk behandeld. Het invullen van de vragenlijst duurt ongeveer 15 minuten. Leest u de vragen goed door. Aangezien het niet bekend is of de Nederlandse gedetineerde uw partner / kind / familielid / vriend is wordt de verzamelterm 'relatie' gebruikt.

Aanwijzingen

*Deze vragenlijst wordt geautomatiseerd verwerkt. Daarom is het belangrijk dat u de vragenlijst niet kreukt en dat u de vragenlijst invult met een zwarte of blauwe pen (geen rode pen of viltstift). Zet een duidelijk kruisje (**X**) in het hokje (☐) dat het best past bij uw mening. Als u per ongeluk het verkeerde vakje heeft aangekruist, moet u het goede vakje helemaal inkleuren (■).Open vragen dient u binnen het daarvoor bestemde kader in te vullen, dus graag niet buiten de lijntjes!*

Alvast hartelijk dank voor uw medewerking!

[257] Niet alle gedetineerden wijzen een contactpersoon aan.

Contact

1. Mijn relatie (partner/kind/familielid/vriend) is gearresteerd / gedetineerd in:

(Graag land invullen)

2. Mijn relatie is gearresteerd / gedetineerd sinds:

(Graag datum invullen, bijvoorbeeld mei 2008)

3. Heeft uw relatie contact opgenomen met de Nederlandse ambassade / consulaat toen hij/zij werd gearresteerd/gedetineerd in het buitenland?

- ☐ Ja
- ☐ Nee
- ☐ Weet ik niet

4. Door wie bent u op de hoogte gebracht van de arrestatie/detentie van uw relatie in het buitenland?

- ☐ Door een medewerker van het ministerie van Buitenlandse Zaken in Den Haag
- ☐ Door een medewerker van de ambassade / consulaat in het land van arrestatie / detentie
- ☐ Door mijn relatie zelf — GA NAAR VRAAG 7
- ☐ Door een medewerker van de gevangenis / politie — GA NAAR VRAAG 7
- ☐ Door iemand anders — GA NAAR VRAAG 7

5. Bent u tevreden over de manier waarop u door een medewerker van het ministerie van Buitenlandse Zaken of de ambassade / consulaat op de hoogte bent gebracht van de arrestatie/detentie van uw relatie?

- ☐ Tevreden
- ☐ Neutraal
- ☐ Niet tevreden
- ☐ Geen mening

6. Kunt u aangeven WAAROM u tevreden / neutraal / niet tevreden bent of geen mening heeft?

Behoefte aan informatie bij arrestatie/detentie

7. Toen u wist dat uw relatie in het buitenland was gearresteerd / gedetineerd had u behoefte aan informatie?
- ☐ Ja
- ☐ Nee ..... GA NAAR VRAAG 9

8. Aan welke informatie had u op dat moment behoefte?
(meerdere antwoorden zijn mogelijk)
- ☐ Informatie over de persoonlijke situatie van mijn relatie
- ☐ Contactgegevens van plaats van arrestatie / detentie van uw relatie
- ☐ De reden voor de arrestatie / detentie
- ☐ Informatie over wat het ministerie en de ambassade / consulaat wel en niet kan doen
- ☐ Informatie over rechtsgang in land van detentie
- ☐ Contactgegevens van advocaten in land van detentie
- ☐ Contactgegevens van de Nederlandse ambassade / consulaat in land van detentie
- ☐ Informatie over praktische zaken (bevriezen schulden, opzeggen huur etc)
- ☐ Informatie over organisaties die hulp kunnen bieden
- ☐ Anders

9. Heeft u informatie gekregen van het ministerie van Buitenlandse Zaken en/of de ambassade / consulaat?
- ☐ Ja
- ☐ Nee..... GA NAAR VRAAG 14

10. Zo ja, welke informatie heeft u gekregen van het ministerie van Buitenlandse Zaken en /of de ambassade / consulaat? (meerdere antwoorden zijn mogelijk)
- ☐ Informatie over de persoonlijke situatie van mijn relatie
- ☐ Contactgegevens van plaats van arrestatie / detentie van uw relatie
- ☐ De reden voor de arrestatie / detentie
- ☐ Informatie over wat het ministerie van Buitenlandse Zaken en de ambassade / consulaat wel en niet kan doen
- ☐ Contactgegevens van advocaten in land van detentie
- ☐ Contactgegevens van de Nederlandse ambassade / consulaat in land van detentie
- ☐ Informatie over praktische zaken (bevriezen schulden, opzeggen huur etc)
- ☐ De reden voor de arrestatie / detentie
- ☐ Informatie over organisaties die hulp kunnen bieden
- ☐ Anders

11. Via wie / hoe heeft u deze informatie gekregen? (meerdere antwoorden zijn mogelijk)
- ☐ Van een medewerker van het ministerie van Buitenlandse Zaken in Den Haag
- ☐ Van een medewerker van de Nederlandse ambassade / consulaat in het land van detentie
- ☐ Via de website van het ministerie van Buitenlandse Zaken
- ☐ Via de website van de Nederlandse ambassade / consulaat
- ☐ Van het boekje 'Gearresteerd in ....(land van detentie).....'
- ☐ Ander voorlichtingsmateriaal

12. Bent u tevreden over de informatie die u van het ministerie van Buitenlandse Zaken en/of de ambassade / consulaat heeft gekregen?
- ☐ Tevreden
- ☐ Neutraal
- ☐ Niet tevreden
- ☐ Geen mening

13. Kunt u aangeven WAAROM u tevreden / neutraal / niet tevreden bent of geen mening heeft?

14. Heeft u (ook) op een andere manier informatie gekregen?
- ☐ Ja
- ☐ Nee .....GA NAAR VRAAG 17

15. Zo ja, op welke manier?
- ☐ Via mijn relatie
- ☐ Van andere organisaties, namelijk: .....
- ☐ Via website(s) .....
- ☐ Anders
- ☐ Ik heb geen andere informatie gekregen

16. Indien u geen informatie heeft gekregen van het ministerie van Buitenlandse Zaken en/of de ambassade / consulaat, waarom is dat? (Deze vraag alléén beantwoorden als u op vraag 9 'Nee' heeft geantwoord)
- ☐ Ik wist niet dat ik informatie kon krijgen van het ministerie van Buitenlandse Zaken en/of de ambassade / consulaat
- ☐ Ik heb geen behoefte aan informatie van het ministerie van Buitenlandse Zaken en/of de ambassade / consulaat
- ☐ Ik heb geen behoefte aan informatie
- ☐ Anders

Informatie tijdens detentie

17. Wordt u regelmatig op de hoogte gehouden over de persoonlijke situatie van uw relatie tijdens de detentie in het buitenland?

☐ Ja
☐ Nee..... GA NAAR VRAAG 20

18. Zo ja, van wie krijgt u informatie over de persoonlijke situatie van uw relatie en hoe tevreden bent u hierover?

	Tevreden	Neutraal	Niet tevreden	Geen mening
☐ Van mijn relatie zelf	☐	☐	☐	☐
☐ Van het Ministerie van Buitenlandse Zaken	☐	☐	☐	☐
☐ Van de Nederlandse ambassade / consulaat	☐	☐	☐	☐
☐ Van een bezoekvrijwilliger van Reclassering Nederland	☐	☐	☐	☐
☐ Van Bureau Buitenland van Reclassering Nederland, Utrecht	☐	☐	☐	☐
☐ Van een pastorale gezant van stichting Epafras	☐	☐	☐	☐
☐ Van iemand anders	☐	☐	☐	☐

19. Kunt u aangeven WAAROM u tevreden / neutraal / niet tevreden bent of geen mening heeft?

20. Indien u géén informatie krijgt over de persoonlijke situatie van uw relatie? Waarom is dat?

(Deze vraag alléén beantwoorden als u op vraag 17 'Nee' heeft geantwoord) (Meerdere antwoorden zijn mogelijk)

☐ Ik wist niet dat ik informatie kon krijgen
☐ Ik heb geen behoefte aan informatie
☐ Anders

Nederlandse gedetineerdenbegeleiding

Nederlanders in buitenlandse detentie hebben geen recht op consulaire bijstand maar vaak wordt door de Nederlandse ambassade / consulaat begeleiding verleend. 'Bureau Buitenland' van Reclassering Nederland en Stichting Epafras ondersteunen het ministerie van Buitenlandse Zaken hierbij. 'Bureau Buitenland' coördineert een netwerk van vrijwilligers die regelmatig bezoeken afleggen aan Nederlanders in buitenlandse detentie. Stichting Epafras biedt geestelijke zorg via haar pastorale gezanten die jaarlijks Nederlanders in buitenlandse detentie bezoeken.

De begeleiding van de Nederlandse ambassade / consulaat en/of van bezoekvrijwilligers van Reclassering Nederland en gezanten van Epafras wordt in onderstaande vragen genoemd 'begeleiding vanuit Nederland'.

21. Krijgt uw relatie begeleiding vanuit Nederland?

☐ Ja
☐ Nee..... GA NAAR VRAAG 27
☐ Weet ik niet ..... GA NAAR VRAAG 27

22. Waaruit bestaat de begeleiding die uw relatie vanuit Nederland krijgt?

(meerdere antwoorden zijn mogelijk)

☐ Een persoonlijk bezoek van de ambassade / consulaat direct na arrestatie / detentie
☐ Het geven van informatie over rechtsgang in het land van detentie
☐ Het bijwonen van de rechtszitting
☐ Het toezien op de juiste rechtsgang
☐ Het ontvangen van een lijst met contactgegevens van advocaten
☐ Erop toezien dat hij/zij niet slechter word behandeld dan andere gedetineerden
☐ Aandacht voor de medische gezondheid
☐ Het onderhouden van contact met de contactpersoon thuis
☐ Het geven van bemiddeling bij het overmaken van geld
☐ Het verstrekken van een maandelijks geldbedrag (buiten Europa)
☐ Het meenemen van praktische zaken
☐ Het geven van begeleiding bij de terugkeer procedure (bijvoorbeeld WOTS)
☐ Het verstrekken van een financiële lening bij noodgevallen
☐ Bezoek van een bezoekvrijwilliger van Reclassering Nederland
☐ Regelen van praktische zaken door Bureau Buitenland van Reclassering Nederland
☐ Volgen van een studie van 'Educatie Achter Buitenlandse Tralies'
☐ Voorbereiding terugkeer in de maatschappij
☐ Bezoek van een dominee/priester/imam van stichting Epafras
☐ Ontvangen van tijdschrift 'Gezant uit Nederland' van stichting Epafras
☐ Correspondentie
☐ Anders

23. Welke vormen van begeleiding stelt uw relatie het meest op prijs?

(meerdere antwoorden zijn mogelijk)

☐ Een persoonlijk bezoek van de ambassade / consulaat direct na arrestatie / detentie
☐ Het geven van informatie over rechtsgang in het land van detentie

- ☐ Het bijwonen van de rechtszitting
- ☐ Het toezien op de juiste rechtsgang
- ☐ Het ontvangen van een lijst met contactgegevens van advocaten
- ☐ Erop toezien dat hij/zij niet slechter word behandeld dan andere gedetineerden
- ☐ Aandacht voor de medische gezondheid
- ☐ Het onderhouden van contact met de contactpersoon thuis
- ☐ Het geven van bemiddeling bij het overmaken van geld
- ☐ Het verstrekken van een maandelijks geldbedrag (buiten Europa)
- ☐ Het meenemen van praktische zaken
- ☐ Het geven van begeleiding bij de terugkeer procedure (bijvoorbeeld WOTS)
- ☐ Het verstrekken van een financiële lening bij noodgevallen
- ☐ Bezoek van een bezoekvrijwilliger van Reclassering Nederland
- ☐ Regelen van praktische zaken door Bureau Buitenland van Reclassering Nederland
- ☐ Volgen van een studie van 'Educatie Achter Buitenlandse Tralies'
- ☐ Voorbereiding terugkeer in de maatschappij
- ☐ Bezoek van een dominee/priester/imam van stichting Epafras
- ☐ Ontvangen van tijdschrift 'Gezant uit Nederland' van stichting Epafras
- ☐ Correspondentie
- ☐ Weet ik niet
- ☐ Anders

24. Welke vormen van begeleiding aan uw relatie stelt u zelf het meest op prijs?

(meerdere antwoorden zijn mogelijk)

- ☐ Een persoonlijk bezoek van de ambassade / consulaat direct na arrestatie / detentie
- ☐ Het geven van informatie over rechtsgang in het land van detentie
- ☐ Het bijwonen van de rechtszitting
- ☐ Het toezien op de juiste rechtsgang
- ☐ Het ontvangen van een lijst met contactgegevens van advocaten
- ☐ Erop toezien dat hij/zij niet slechter word behandeld dan andere gedetineerden
- ☐ Aandacht voor de medische gezondheid
- ☐ Het onderhouden van contact met de contactpersoon thuis
- ☐ Het geven van bemiddeling bij het overmaken van geld
- ☐ Het verstrekken van een maandelijks geldbedrag (buiten Europa)
- ☐ Het meenemen van praktische zaken
- ☐ Het geven van begeleiding bij de terugkeer procedure (bijvoorbeeld WOTS)
- ☐ Het verstrekken van een financiële lening bij noodgevallen
- ☐ Bezoek van een bezoekvrijwilliger van Reclassering Nederland
- ☐ Regelen van praktische zaken door Bureau Buitenland van Reclassering Nederland
- ☐ Volgen van een studie van 'Educatie Achter Buitenlandse Tralies'
- ☐ Voorbereiding terugkeer in de maatschappij
- ☐ Bezoek van een dominee/priester/imam van stichting Epafras
- ☐ Ontvangen van tijdschrift 'Gezant uit Nederland' van stichting Epafras
- ☐ Correspondentie
- ☐ Weet ik niet
- ☐ Anders

25. Bent u over het algemeen tevreden over de begeleiding die uw relatie ontvangt?

- ☐ Tevreden
- ☐ Neutraal
- ☐ Niet tevreden
- ☐ Geen mening

26. Kunt u aangeven WAAROM u tevreden / neutraal / niet tevreden bent of geen mening heeft?

GA NAAR VRAAG 30

27. Indien uw relatie géén begeleiding ontvangt, waarom is dat?

(Deze vraag alléén beantwoorden als u op vraag 21 'Nee' heeft geantwoord) (Meerdere antwoorden zijn mogelijk)

- ☐ Mijn relatie wist niet dat hij/zij contact kon opnemen met de ambassade / consulaat
- ☐ Mijn relatie mocht geen contact opnemen met de ambassade / consulaat
- ☐ Mijn relatie wilde geen contact opnemen met de ambassade / consulaat
- ☐ Er is nog niemand van de ambassade / consulaat bij mijn relatie langs geweest
- ☐ Mijn relatie heeft geen behoefte aan begeleiding
- ☐ Weet ik niet
- ☐ Anders

28. Welke vormen van begeleiding zou uw relatie het meest op prijs stellen?

(meerdere antwoorden zijn mogelijk)

- ☐ Een persoonlijk bezoek van de ambassade / consulaat direct na arrestatie / detentie
- ☐ Het geven van informatie over rechtsgang in het land van detentie
- ☐ Het bijwonen van de rechtszitting
- ☐ Het toezien op de juiste rechtsgang
- ☐ Het ontvangen van een lijst met contactgegevens van advocaten
- ☐ Erop toezien dat hij/zij niet slechter word behandeld dan andere gedetineerden
- ☐ Aandacht voor de medische gezondheid
- ☐ Het onderhouden van contact met de contactpersoon thuis
- ☐ Het geven van bemiddeling bij het overmaken van geld
- ☐ Het verstrekken van een maandelijks geldbedrag (buiten Europa)
- ☐ Het meenemen van praktische zaken
- ☐ Het geven van begeleiding bij de terugkeer procedure (bijvoorbeeld WOTS)
- ☐ Het verstrekken van een financiële lening bij noodgevallen
- ☐ Bezoek van een bezoekvrijwilliger van Reclassering Nederland
- ☐ Regelen van praktische zaken door Bureau Buitenland van Reclassering Nederland
- ☐ Volgen van een studie van 'Educatie Achter Buitenlandse Tralies'
- ☐ Voorbereiding terugkeer in de maatschappij
- ☐ Bezoek van een dominee/priester/imam van stichting Epafras
- ☐ Ontvangen van tijdschrift 'Gezant uit Nederland'
- ☐ Correspondentie

☐ Weet ik niet
☐ Mijn relatie heeft geen behoefte aan begeleiding
☐ Anders

29. Welke vormen van begeleiding aan uw relatie zou u zelf het meest op prijs stellen?
(meerdere antwoorden zijn mogelijk)
☐ Een persoonlijk bezoek van de ambassade / consulaat direct na arrestatie / detentie
☐ Het geven van informatie over rechtsgang in het land van detentie
☐ Het bijwonen van de rechtszitting
☐ Het toezien op de juiste rechtsgang
☐ Het ontvangen van een lijst met contactgegevens van advocaten
☐ Erop toezien dat hij/zij niet slechter word behandeld dan andere gedetineerden
☐ Aandacht voor de medische gezondheid
☐ Het onderhouden van contact met de contactpersoon thuis
☐ Het geven van bemiddeling bij het overmaken van geld
☐ Het verstrekken van een maandelijks geldbedrag (buiten Europa)
☐ Het meenemen van praktische zaken
☐ Het geven van begeleiding bij de terugkeer procedure (bijvoorbeeld WOTS)
☐ Het verstrekken van een financiële lening bij noodgevallen
☐ Bezoek van een bezoekvrijwilliger van Reclassering Nederland
☐ Regelen van praktische zaken door Bureau Buitenland van Reclassering Nederland
☐ Volgen van een studie van 'Educatie Achter Buitenlandse Tralies'
☐ Voorbereiding terugkeer in de maatschappij
☐ Bezoek van een dominee/priester/imam van stichting Epafras
☐ Ontvangen van tijdschrift 'Gezant uit Nederland'
☐ Correspondentie
☐ Weet ik niet
☐ Anders

Verwachtingen

30. Had u verwacht begeleiding van het ministerie van Buitenlandse Zaken te ontvangen toen uw relatie werd gearresteerd / gedetineerd?
☐ Ja
☐ Nee
☐ Weet ik niet

31. Zijn uw verwachtingen uitgekomen?
☐ Ja…… GA NAAR VRAAG 33
☐ Nee
☐ Weet ik niet

32. Zo nee, welke verwachtingen zijn niet uitgekomen?

33. Had uw relatie verwacht begeleiding te ontvangen (van de Nederlandse ambassade / consulaat en / of van bezoekvrijwilligers van Reclassering Nederland en gezanten van Epafras) toen hij/zij werd gearresteerd / gedetineerd?
☐ Ja
☐ Nee
☐ Weet ik niet

34. Zijn de verwachtingen van uw relatie uitgekomen?
☐ Ja…… GA NAAR VRAAG 36
☐ Nee
☐ Weet ik niet

35. Zo nee, welke verwachtingen zijn niet uitgekomen?

Klachten

36. Als u een klacht hebt over de begeleiding die u wel/niet uit Nederland heeft gekregen, weet u waar u die moet indienen?
☐ Ja
☐ Nee
☐ Weet ik niet

37. Als uw relatie een klacht heeft over de begeleiding die wel/niet uit Nederland is ontvangen, weet u waar hij/zij die moet indienen?
☐ Ja
☐ Nee
☐ Weet ik niet

38. Heeft u weleens een klacht ingediend bij het ministerie van Buitenlandse Zaken?
☐ Ja
☐ Nee

39. Heeft uw relatie weleens een klacht ingediend bij het ministerie van Buitenlandse Zaken?

- ☐ Ja
- ☐ Nee..... GA NAAR VRAAG 44
- ☐ Weet ik niet

40. Zo ja, binnen hoeveel tijd is de klacht afgehandeld?

- ☐ Binnen 4 weken
- ☐ Binnen 6 weken
- ☐ Binnen 10 weken
- ☐ Langer dan 10 weken
- ☐ Weet ik niet

41. Is de klacht gegrond verklaard?

- ☐ Ja
- ☐ Nee
- ☐ Weet ik (nog) niet

42. Bent u tevreden over de manier waarop uw klacht in behandeling is genomen?

- ☐ Tevreden
- ☐ Neutraal
- ☐ Niet tevreden
- ☐ Weet ik (nog) niet
- ☐ Geen mening

43. Wat was de reden van de klacht?

Persoonskenmerken contactpersoon

44. Ik ben een:

- ☐ Man
- ☐ Vrouw

45. Mijn leeftijd is:

(Leeftijd invullen, bijvoorbeeld 33 jaar)

46. Ik ben geboren in:

- ☐ Nederland
- ☐ Turkije
- ☐ Marokko
- ☐ Suriname
- ☐ De Nederlandse Antillen en Aruba
- ☐ Een ander Europees land dan Nederland
- ☐ Een ander niet-Europees land
- ☐ Onbekend

47. Mijn relatie in buitenlandse detentie is mijn:

- ☐ Partner
- ☐ Ouder
- ☐ Kind
- ☐ Broer/zus
- ☐ Ander familielid
- ☐ Ex-partner
- ☐ Vriend / kennis
- ☐ Buurman/buurvrouw
- ☐ Anders

48. De periode dat mijn relatie gedetineerd is:

- ☐ Minder dan 1 maand
- ☐ 1 tot 3 maanden
- ☐ 3 tot 6 maanden
- ☐ 6 maanden tot 1 jaar
- ☐ 1 tot 3 jaar
- ☐ 3 tot 5 jaar
- ☐ 5 jaar of langer
- ☐ Weet ik niet

49. Zit uw relatie in voorarrest?

- ☐ Ja
- ☐ Nee
- ☐ Weet ik niet

50. De periode dat mijn relatie (naar verwachting) nog in detentie moet zitten is:

- ☐ Minder dan 1 maand
- ☐ 1 tot 3 maanden
- ☐ 3 tot 6 maanden
- ☐ 6 maanden tot 1 jaar
- ☐ 1 tot 3 jaar
- ☐ 3 tot 5 jaar
- ☐ 5 jaar of langer
- ☐ Weet ik niet

Uw mening over een aantal korte uitspraken over consulaire begeleiding

Nu volgt er een aantal stellingen over consulaire begeleiding. U mag per uitspraak één hokje aankruisen dat het best past bij uw mening. 'Niet van toepassing' invullen als de vraag niet geldt.

	helemaal oneens	Oneens	Neutraal	Eens	Helemaal eens	Niet van toepassing
51. Ik word goed geïnformeerd door het ministerie van Buitenlandse Zaken over mijn relatie in buitenlandse detentie.	☐	☐	☐	☐	☐	☐
52. Contact met het ministerie van Buitenlandse Zaken over mijn relatie in buitenlandse detentie geeft mij het gevoel dat ik er niet alleen voor sta.	☐	☐	☐	☐	☐	☐
53. Mijn relatie heeft ondersteuning nodig	☐	☐	☐	☐	☐	☐
54. Begeleiding aan mijn relatie vanuit Nederland is van groot belang voor mijn relatie	☐	☐	☐	☐	☐	☐
55. Ik ben tevreden over wat het ministerie van Buitenlandse Zaken in Den Haag, binnen zijn mogelijkheden, voor mij doet.	☐	☐	☐	☐	☐	☐
56. Ik ben tevreden over wat de Nederlandse ambassade / consulaat, binnen zijn mogelijkheden, voor mijn relatie in buitenlandse detentie doet.	☐	☐	☐	☐	☐	☐

57. Mocht u nog opmerkingen hebben dan kunt u deze in onderstaand kader noteren:

Toelichting

Mocht u interesse hebben om deze vragenlijst telefonisch toe te lichten dan kunt u dat hier aangeven:

Voornaam:

Achternaam:

Telefoonnummer(s):

Tijdstip waarop u het beste bent te bereiken:

Graag de ingevulde vragenlijst in de envelop stoppen (postzegel is niet nodig) en sturen naar:

Directie Inspectie Ontwikkelingssamenwerking en Beleidsevaluatie (IOB)
Antwoordnummer 10794
2501 WB Den Haag

Hartelijk dank voor uw tijd en medewerking!

Vragenlijst posten

Enquête consulaire dienstverlening
Hoofd consulaire zaken

Waarom deze vragenlijst?
In opdracht van S en DGRC voert IOB een beleidsdoorlichting uit met betrekking tot de consulaire dienstverlening van Nederland. Meer in het bijzonder richt deze doorlichting zich op artikel 7.1 (professionele consulaire dienstverlening) en artikel 7.2 (BZ als ketenpartner in het vreemdelingenbeleid). Deze twee artikelen, ook wel operationele doelstellingen genaamd, hebben betrekking op een breed scala aan onderwerpen die met elkaar gemeen hebben dat het dienstverlening betreft aan de burger.
Ten behoeve van deze beleidsdoorlichting worden alle hoofden van consulaire afdelingen gevraagd een enquête in te vullen. De uitkomst van deze enquête zal als input dienen voor de rapportage.

Hoe werkt het?
De vragenlijst bestaat uit 23 vragen. U kunt de vragenlijst digitaal invullen.

Terugsturen
Wij verzoeken u de ingevulde vragenlijst uiterlijk 23 april terug te sturen via BZ berichtenverkeer naar email IOB@minbuza.nl

Alvast hartelijk dank voor uw medewerking!

Post:	
Tevens geaccrediteerd in:	
Medeverantwoordelijk voor de volgende EU- en Schengenpartners:	

Vraag 4 Gedetineerden

4		Aantal
a	Nederlandse c.q. Nederlands-Antilliaanse of Arubaanse gedetineerden in het ressort van uw post	
b	Aantal gevangenissen waar de gedetineerden verblijven	
c	Aantal gedetineerden in detentie op meer dan twee uur reisafstand van uw post	
d	Aantal behandelde WOTS of LOTS verzoeken	
e	Aantal bezoekvrijwilligers van Bureau Buitenland (Reclassering Nederland)	

Vraag 14 Gedetineerdenbegeleiding

a. Bestaat er op uw post een beleid(skader) t.b.v. gedetineerdenbegeleiding?
- ☐ Ja
- ☐ Nee

b. Hoe is op uw post de bezoekregeling aan gedetineerden vormgegeven?
- ☐ Elke gedetineerde wordt 2 keer per jaar bezocht
- ☐ De bezoekfrequentie wordt afgestemd op de specifieke situatie van de gedetineerde
- ☐ Anders, namelijk iedere zes weken worden de gedetineerden bezocht

c. Indien aan uw post bezoekvrijwilligers van Bureau Buitenland (Reclassering Nederland) verbonden zijn, wat betekent dat voor uw post? *(meerdere antwoorden mogelijk)*
- ☐ Lastenvermindering voor de post m.b.t. afleggen van bezoeken aan gedetineerden
- ☐ Verbetering van contact met gedetineerden
- ☐ Mogelijkheid om departement beter in te lichten over situatie gedetineerden
- ☐ Verbetering van detentieomstandigheden gedetineerden
- ☐ Verbetering van contact met gevangenis autoriteiten
- ☐ Geen verschil
- ☐ Lastenvermeerdering vanwege coördinatie bezoekvrijwilligers
- ☐ N.v.t. er zijn geen bezoekvrijwilligers verbonden aan mijn post

Annex 2 List of respondents

Country code					
A	Austria	G	Germany	PO	Portugal
B	Belgium	GH	Ghana	SE	Serbia
BR	Brazil	GR	Greece	S	Spain
C	Croatia	I	Indonesia	SW	Sweden
CU	Cuba	IT	Italy	TH	Thailand
CY	Cyprus	L	Luxembourg	T	Turkey
CZ	Czech Republic	MX	Mexico	UK	United Kingdom
D	Dominican Republic	M	Morocco	US	United States of America
F	France	N	Norway	V	Venezuela
GA	Gambia	P	Peru		

Category respondent			
C	Chaplain	O	Others
CS	Consular staff at diplomatic mission	P	Prisoner
CSH	Consular staff at Ministry of Foreign Affairs The Hague	PS	Staff International Office Dutch Probation Service
E	Staff Epafras	R	Relative of prisoner
EXP	Ex-prisoner	S	Prison staff
L	Letter	V	Volunteer of International Office Probation Service

Number respondent			
1	Interview[1] first respondent in country x	3	Interview third respondent etc.
2	Interview second respondent etc.	4	Etc.

Respondents				
Nr.	Personal code[2]	Function	Location	Date
Argentina				
1	AR.L1	Letter prisoner 1	Marcos Paz, Argentina	2008
Austria				
2	A.CS1	Consular staff, embassy	Dutch embassy, Vienna	27-11-2009
3	A.V1	Volunteer Probation Service	Jozefstadt prison, Vienna	27-11-2009
4	A.P1	Prisoner 1	Jozefstadt prison, Vienna	27-11-2009
5	A.P2	Prisoner 2	Jozefstadt prison, Vienna	27-11-2009
6	A.P3	Prisoner 3	Jozefstadt prison, Vienna	27-11-2009
7	A.P4	Prisoner 4	Josefstadt prison, Vienna	27-11-2009
Belgium				
8	B.CS1	Consular staff, embassy	Dutch embassy, Brussels	16-7-2009
9	B.V1	Volunteer Probation Service	Sint Gilles, Brussels	16-7-2009
10	B.P1	Prisoner 1	Sint Gilles, Brussels	15-7-2009
11	B.P2	Prisoner 2	Sint Gilles, Brussels	15-7-2009
12	B.P3	Prisoner 3	Sint Gilles, Brussels	15-7-2009
13	B.P4	Prisoner 4	Sint Gilles, Brussels	15-7-2009
14	B.P5	Prisoner 5	Sint Gilles, Brussels	15-7-2009
15	B.P6	Prisoner 6	Sint Gilles, Brussels	15-7-2009
16	B.P7	Prisoner 7	Sint Gilles, Brussels	15-7-2009
17	B.P8	Prisoner 8	Sint Gilles, Brussels	16-7-2009
18	B.P9	Prisoner 9	Sint Gilles, Brussels	16-7-2009
19	B.P10	Prisoner 10	Sint Gilles, Brussels	16-7-2009
20	B.P11	Prisoner 11	Sint Gilles, Brussels	16-7-2009
21	B.P12	Prisoner 12	Sint Gilles, Brussels	16-7-2009
22	B.P13	Prisoner 13	Sint Gilles, Brussels	16-7-2009
23	B.P14	Prisoner 14	Sint Gilles, Brussels	16-7-2009
24	B.EXP1	Ex-prisoner 1	Telephone	1-8-2011
25	B.L1	Letter prisoner 1	Letter from Leuven	2-3-2009
26	B.L2	Letter prisoner 2	Letter from Leuven	10-12-2008
Brazil				
27	BR.EXP1	Ex-prisoner 1	Telephone	3-8-2011
28	BR.R1	Relative 1	The Hague, The Netherlands	23-6-2009
29	BR.L1	Letter prisoner 1	Letter from Sao Paulo	11-6-2008
Croatia				
30	C.R1	Relative 1	Rotterdam, The Netherlands	27-8-2009
Cuba				
31	CU.L1	Letter prisoner 1	La Londesa	1-11-2008
Cyprus				
32	CY.CS1	Consular staff, embassy	Dutch embassy, Nicosia	28-5-2008
33	CY.P1	Prisoner 1	Nicosia prison, Nicosia	27-5-2008
34	CY.P2	Prisoner 2	Nicosia prison, Nicosia	27-5-2008
35	CY.P3	Prisoner 3	Nicosia prison, Nicosisa	27-5-2008

[1] Or letter.
[2] List of names is for privacy reasons not made public. Tilburg University keeps the names in a confidential storage.

36	CY.P4	Prisoner 4	Nicosia prison, Nicosia	27-5-2008
37	CY.P5	Prisoner 5	Nicosia prison, Nicosia	27-5-2008
		Czech Republic		
38	CZ.L1	Letter prisoner 1	Letter from Prague	2-6-2008
39	CZ.L2	Letter prisoner 2	Letter from Prague	8-6-2008
		Dominican Republic		
40	D.V1	Volunteer Probation Service	Telephone	29-6-2011
41	D.R1	Relative 1	Telephone	6-10-2009
42	D.R2	Relative 2	Rotterdam, The Netherlands	11-8-2009
43	D.R3	Relative 3	The Hague, The Netherlands	27-8-2009
44	D.R4	Relative 4	Amsterdam, The Netherlands	10-8-2009
		France		
45	F.CS1	Consular staff, embassy	Telephone	2-8-2011
46	F.V1	Volunteer Probation Service	Telephone	13-4-2011
47	F.R1	Relative 1	Telephone	12-8-2009
48	F.R2	Relative 2	Veenendaal, The Netherlands	20-8-2009
49	F.R3	Relative 3	Doorwerth, The Netherlands	20-8-2009
50	F.EXP1	Ex-prisoner 1	Telephone	23-6-2011
51	F.L1	Letter prisoner 1	Letter from France	13-6-2008
52	F.L2	Letter prisoner 2	Letter from France	16-6-2008
53	F.L3	Letter prisoner 3	Letter from France	-
54	F.L4	Letter prisoner 4	Letter from Gradignan	26-6-2008
55	F.L5	Letter prisoner 5	Letter from St. Genevieve	-
56	F.L4	Letter prisoner 6	Letter Fleury-Merogis	16-6-2008
		Gambia		
57	GA.L1	Letter prisoner 1	Letter from Gambia	-
		Germany		
58	G.CS1	Consular staff, consulat Düsseldorf	Kleve	18-8-2009
59	G.V1	Volunteer Probation Service	Tiel, The Netherlands	18-8-2009
60	G.P1	Prisoner 1	Kleve	18-8-2009
61	G.P2	Prisoner 2	Kleve	18-8-2009
62	G.P3	Prisoner 3	Kleve	18-8-2009
63	G.P4	Prisoner 4	Kleve	18-8-2009
64	G.P5	Prisoner 5	Kleve	18-8-2009
65	G.P6	Prisoner 6	Kleve	18-8-2009
66	G.P7	Prisoner 7	Kleve	18-8-2009
67	G.P8	Prisoner 8	Kleve	18-8-2009
68	G.P9	Prisoner 9	Kleve	18-8-2009
69	G.R1	Relative 1	Rotterdam, The Netherlands	27-8-2009
70	G.EXP1	Ex-prisoner 1	Telephone	31-10-2009
71	G.EXP2	Ex-prisoner 2	Telephone	20-7-2011
72	G.L1	Letter prisoner 1	Letter from Tonna	27-11-2008
73	G.L2	Letter prisoner 2	Letter from Ludwigsburg	8-7-2008
74	G.L3	Letter prisoner 3	Letter from Ravensburg	3-7-2009
75	G.L4	Letter prisoner 4	Letter from Tonna	26-11-2008
		Ghana		
76	GH.R1	Relative prisoner 1	Amsterdam	17-8-2009
		Greece		
77	GR.P1	Prisoner 1	Korydallos prison Piraeus	13-6-2014
78	GR.L1	Letter prisoner 1	Letter from Crete	12-6-2008
79	GR.L2	Letter prisoner 1	Letter from Chios	13-9-2008
80	GR.L3	Letter prisoner 1 + 5	Letter from Crete	-
81	GR.EXP1	Ex-prisoner 1	Utrecht, The Netherlands	15-9-2014
		Indonesia		
82	I.V1	Volunteer Probation Service	Telephone	4-8-2011
		Italy		
83	IT.L1	Letter prisoner 1	Letter from Arsizio	-
84	IT.L2	Letter prisoner 2	Letter from Italy	-
		Luxemburg		
85	L.L1	Letter prisoner 1	Letter from Sandweiler	-
86	L.L2	Letter prisoner 2	Letter from Sandweiler	20-6-2009
		Mexico		
87	MX.L1	Letter prisoner 1	Letter from Tapachula	15-9-2007
		Morocco		
88	M.CS1*	Ambassador and deputy, embassy	Dutch embassy, Rabat	15-4-2010
89	M.CS2	Head of Consular department, embassy	Dutch embassy, Rabat	15-4-2010
90	M.CS3	Former consular staff	Dutch embassy, Rabat	15-4-2010
91	M.CS4	Consular staff	Dutch embassy, Rabat	16-4-2010
92	M.V1	Volunteer Probation Service	Telephone	17-5-2010
93	M.P1	Prisoner 1	Salé	16-4-2010
94	M.P2	Prisoner 2	Salé	16-4-2010
95	M.R1	Relative 1	Soest, The Netherlands	5-12-2009
96	M.EXP1	Ex-prisoner 1	Soest, The Netherlands	5-12-2009
		Peru		
97	P.CS1	Consular staff, embassy Lima	Telephone	9-8-2011
		Portugal		
98	PO.L1	Letter prisoner 1	Letter from Alcoentre	27-8-2008

99	PO.L2	Letter prisoner 2	Letter from Madrina	29-6-2008
		Serbia		
100	SE.L1	Letter prisoner 1	Letter from Mitrovica	18-8-2008
		Spain		
101	S.CS1*	Ambassador, embassy	Dutch embassy, Madrid	14-4-2010
102	S.CS2	Consul, embassy	Dutch embassy, Madrid	14-4-2010
103	S.CS3	Consular staff, embassy	Dutch embassy, Madrid	12-4-2010
104	S.CS4	Consular staff, embassy	Telephone	June 2011
105	S.CS5*	Honorary Consul	Dutch consulate, La Nucia	12-4-2010
106	S.CS6	Consular staff, consulate Palma de Mallorca	Benidorm	13-4-2010
107	S.CS7	Consular staff, Tenerife	Benidorm	13-4-2010
108	S.V1	Volunteer Probation Service	Benidorm	13-4-2010
109	S.V2	Volunteer Probation Service	Benidorm	13-4-2010
110	S.V3	Volunteer Probation Service	Benidorm	13-4-2010
111	S.V4	Volunteer Probation Service	Benidorm	13-4-2010
112	S.V5	Volunteer Probation Service	Benidorm	13-4-2010
113	S.V6	Volunteer Probation Service	Benidorm	13-4-2010
114	S.V7	Volunteer Probation Service	Benidorm	13-4-2010
115	S.P1	Prisoner 1	Fontcalent	12-4-2010
116	S.P2	Prisoner 2	Fontcalent	12-4-2010
117	S.L1	Letter prisoner 1	Letter from Palencia	24-6-2008
118	S.L2	Letter prisoner 2	Letter from Rioja	1-7-2008
119	S.L3	Letter prisoner 3	Letter from Spain	24-6-2008
120	S.L4	Letter prisoner 4	Letter from Spain	3-7-2008
121	S.L5	Letter prisoner 5	Letter from La Moraleja	23-6-2008
122	S.L6	Letter prisoner 6	Letter from Huelva	9-8-2008
123	S.L7	Letter prisoner 7	Letter from Salamanca	-
124	S.L8	Letter prisoner 8	Letter from Topas	-
125	S.L9	Letter prisoner 9	Letter from Salamanca	-
		Sweden		
126	SW.L1	Letter prisoner 1	Letter from Sala	-
		Thailand		
127	TH.CS1	Consular staff, embassy Bangkok	Telephone	20-7-2011
		Turkey		
128	T.CS1*	Head of Consulate	Dutch consulate, Istanbul	1-6-2010
129	T.CS2	Consular staff, Istanbul	Dutch consulate, Istanbul	1-6-2010
130	T.P1	Prisoner 1	Bakirköy	2-6-2010
131	T.P2	Prisoner 2	Bakirköy	2-6-2010
132	T.P3	Prisoner 3	Bakirköy	2-6-2010
133	T.P4	Prisoner 4	Bakirköy	2-6-2010
134	T.P5	Prisoner 5	Bakirköy	2-6-2010
135	T.L1	Letter prisoner 1	Letter from Istanbul	5-7-2008
		United Kingdom		
136	UK.CS1	Consular staff, embassy	Dutch embassy, London	18-8-2009
137	UK.V1	Volunteer Probation Service	Dutch embassy, London	19-8-2009
138	UK.P1	Prisoner 1	HMP Wandsworth, Wandsworth	19-8-2009
139	UK.P2	Prisoner 2	HMP Wandsworth, Wandsworth	19-8-2009
140	UK.P3	Prisoner 3	HMP Wormwood Scrubs, London	18-8-2009
141	UK.P4	Prisoner 4	HMP Wormwood Scrubs, London	18-8-2009
142	UK.P5	Prisoner 5	HMP Holloway, London	18-8-2009
143	UK.P6	Prisoner 6	HMP Holloway, London	18-8-2009
144	UK.R1	Relative 1	Nijkerk	
145	UK.L1	Letter prisoner 1	Letter from HMP Morton Hall	18-07-2008
146	UK.L2	Letter prisoner 2	Letter from HMP Chelmsford	27-7-2008
		United States of America		
147	US.CS1	Consular staff, consulate	Dutch consulate, New York	22-5-2009
148	US.V1	Volunteer Probation Service	New York	24-5-2009
149	US.V2	Volunteer Probation Service	Cleveland	22-7-2011
150	US.EXP1	Ex-prisoner 1	Assen, The Netherlands	7-8-2009
151	US.EXP2	Ex-prisoner 2	Telephone	1-6-2011
152	US.EXP3	Ex-prisoner 3	Amsterdam	29-5-2014
153	US.R1	Relative 1	Assen, The Netherlands	7-8-2009
154	US.R2	Relative 2	Midlum, The Netherlands	7-8-2009
155	US.L1	Letter prisoner 1	Letter from Saint. Luis Obispo	17-6-2008
156	US.L2	Letter prisoner 2	Letter from Winton	17-6-2008
157	US.L3	Letter prisoner 3	Letter from USA	16-7-2008
158	US.L4	Letter prisoner 4	Letter from Ionia, Michigan	4-5-2009
		Venezuela		
159	V.EXP1	Ex-prisoner 1	The Hague, The Netherlands	23-6-2009
		Ministry of Foreign Affairs		
160	CSH1*	Consular department	The Hague, The Netherlands	8-7-2011
161	CSH2*	Consular department	The Hague, The Netherlands	25-5-2010
162	CSH3	Case manager	The Hague, The Netherlands	6-4-2010 11-5-2010
163	CSH4	Case manager	The Hague, The Netherlands	11-5-2010

164	CSH5	Archivist	The Hague, The Netherlands	7-6-2010
International Office of the Dutch Probation Service				
165	PS1*	Director Bureau Buitenland	Utrecht, The Netherlands	25-2-2010
166	PS2	Regional cordinator	Utrecht, The Netherlands	19-7-2011
167	PS3	Regional cordinator	Utrecht, The Netherlands	19-7-2011
168	PS4	Regional cordinator	Utrecht, The Netherlands	19-7-2011
169	PS5	Regional cordinator	Benidorm, Spain	13-4-2010
170	PS6	Director Bureau Buitenland	Utrecht, The Netherlands	1-8-2011
Epafras				
171	E1*	Director Epafras	Utrecht, The Netherlands	25-2-2010
172	E2	Director Epafras	Utrecht, The Netherlands	2-8-2011
173	C1	Chaplain 1	Utrecht, The Netherlands	1-8-2011
174	C2	Chaplain 2	Utrecht, The Netherlands	19-7-2011
175	C3	Chaplain 3	Utrecht, The Netherlands	19-7-2011
176	C4	Chaplain 4	Utrecht, The Netherlands	19-7-2011
177	C5	Chaplain 5	Utrecht, The Netherlands	19-7-2011
178	C6	Chaplain 6	Benidorm, Spain	13-4-2010
Consultations with others				
179	S.S1	Prison staff	Fontacalent	12-4-2010
180	O.1	Head Internationale Rechtshulp in Strafzaken (AIRS), Ministry of Security and Justice	The Hague, The Netherlands	8-6-2010
181	O.2	Coordinator Aansluitende Nazorg, Minstry of Security and Justice	The Hague, The Netherlands	2010
182	O.3	Director, Prisoners Abroad	London, United Kingdom	2009
183	O.4	Equality & Diversity Officer NOMS Ministry of Justice	London, United Kingdom	2009
184	O.5	Leger des Heils Dienstencentrum Schiphol	Telephone	2012
185	O.6	Gevangenzorg Nederland	Zoetermeer, The Netherlands	2009
186	O.7	Municipality Stichtse Vecht	Telephone	2013
187	O.8	Founder, EABT	Telephone	2013
188	O.9	English teacher female section Nicosia prison	Nicosia prison, Cyprus	27-5-2008
189	O.10	Consul, German embassy	Rabat, Morocco	16-4-2010

*=IOB
- = no date (letters)

Annex 3 Overview total number FNPs 2005-2010-2015

Country	%	Total 2003	FNP 2003	%	Total 2005	FNP 2005	%	Total 2010	FNP 2010	%	Total 2013	FNP 2013	%	Total 2015	FNP 2015
Afghanistan							0,9	12500	113	0,9	24613	222	0,9	28976	261
Albania	0,4	3053	12	0,4	3778	15	0,6	5041	30	1	4779	57	1,5	5589	84
Algeria	1,3	34243	445	1,3	38868	505	1	54000	540	1,7	56000	952	1,7	60000	1020
American Samoa (USA)							66	132	87	66	167	110	66	192	127
Andorra	83,6	48	40	83,6	61	51	81,7	60	49	69,4	42	29	80,6	45	36
Angola											19898	0		21634	0
Anguilla (UK)							7,3	55	4	25	76	19	21,1	57	12
Antigua and Barbuda			0	11,4	184	21	30,6	229	70	30,6	361	110	30,6	361	110
Argentina			0	4,9	56313	2759	7,5	52457	3.934	6	59227	3257	5,8	66484	3856
Armenia	0,1	7428	7	0,1	2866	3	1,8	4850	87	3,5	4812	159	2,6	3923	102
Aruba (Netherlands)			0	48,1	231	111	48,1	277	133	48,1	246	118	48,1	240	115
Australia			0	16,7	24171	4037	19,3	29317	5.658	19,7	29383	5788	19,7	33791	6657
Austria	33	6915	2.282	33	8700	2871	45,8	8671	3.971	46,4	8694	4034	48,6	8384	4075
Azerbaijan	1,4	23504	329	1,8	16345	294	3,4	20986	714	2,5	36891	922	3	19744	592
Bahamas											1300	0		1433	0
Bahrain										30,2	1100	332	30,2	2307	697
Bangladesh							1,1	77000	847	1,1	64255	707	0,1	65662	66
Barbados	14,3	850	122	14,3	997	143	17,2	899	155	17,2	1032	178	17,2	1507	259
Belarus	2,6	56000	1.456	3,4	52500	1785	2,9	36533	1.059	3,1	41525	1287	3,1	31700	983
Belgium	40,9	8764	3.584	40,9	9245	3781	41,1	10501	4.316	44,2	10974	4851	44,2	11769	5202
Belize							9,8	1400	137	8,8	1324	117	11,5	1650	190
Benin											6908	0		7247	0
Bermuda (UK)							11,5	261	30	11,5	271	31	11,5	267	31
Buthan											1001	0		1104	0
Bolivia							6,8	7782	529	6,8	11516	783	5,7	14771	842
Bosnia (Fed)			0	4,9	1509	74	2,2	1750	39	2,6	1819	47	2,6	1883	49
Bosnia (Srpska)			0	5,6	1052	59	3,2	924	30	2,9	1054	31	2,9	1003	29
Botswana	47	6102	2.868	13,4	6105	818	22,6	5216	1.179	22,6	5063	1144	22,6	4124	932
Brazil	0,4	233859	935	0,4	330000	1320	0,7	494237	3.460	0,7	549577	3847	0,6	581507	3489
Brunei			0	35,8	463	166	29,6	423	125	32,3	427	138	29,5	530	156
Bulgaria	2	9283	186	2	11060	221	1,9	9071	172	1,8	10961	197	2	10006	200
Burkina Faso											4837	0	4,1	5976	245
Burundi							0,3	10858	33	0,3	10389	31	1,2	7793	94
Cambodia			0	2,1	6778	142	4,2	13957	586	3,9	15065	588	4,8	15182	729
Cameroon										2,4	23368	561	2,4	25337	608
Canada											38691	0		41049	0
Cape Verde			0	4,5	755	34	4,5	755	34	4,5	1226	55		1434	0
Cayman Islands (UK)			0	24,1	187	45	16	194	31	16	212	34	22,8	190	43
Central African Republic											845	0		845	0
Chad	1	3883	39	1,3	3883	50	1,3	3416	44	1,3	4831	63	1,3	4831	63
Chile	3	31600	948	2,9	38135	1106	3,7	53973	1.997	3,4	48702	1656	3,4	44112	1500
China	0	1428126	0	0,2	1548498	3097	0,2	1620000	3.240	0,3	1640000	4920	0,4	1701344	6805
Colombia	1	57068	571	0,6	68545	411	0,7	81486	570	0,8	114697	918	0,8	115634	925
Comores											130	0	8,7	206	18
Congo											1400	0		1500	0
Cook Islands (New Zealand)										0	25	0	0	25	0
Costa Rica	8,7	5826	507	8,7	7619	663	14,2	10471	1.487	14,2	14963	2125	14,2	17440	2476
Croatia	11,8	2584	305	5,7	3010	172	3,2	4734	151	4,7	5064	289	5,6	3853	216
Cuba											57337	0		57337	0
Curaçao (The Netherlands)											502	0		438	0
Cyprus	42,9	369	158	42,9	355	152	59,6	831	495	58,9	900	530	52,9	930	492
Czech Republic	9,4	19320	1.816	8,6	19133	1645	7,3	22001	1.606	7,5	22992	1724	8,8	18376	1617
Dem. Rep. Congo											22000	0		22000	0
Denmark	16,3	3150	513	15,5	3774	585	21,9	3967	869	28,2	3829	1080	28,2	3774	1064
Djibouti											750	0		550	0
Dominica							0,8	235	2	0,4	242	1	0,4	238	1
Dominican Republic	5,2	15340	798	5,2	13836	719	6,9	21050	1.452	7,4	20969	1552	6,4	26132	1672
Ecuador							7,2	10808	778	7,2	11800	850	8,1	25902	2098
Egypt			0	1	61845	618	1	64378	644	1	66000	660	1	62000	620
El Salvador			0	0,2	12117	24	1,2	22969	276	1,6	26639	426	1,5	28301	425
Equatorial Guinea														1000	0
Estonia	35,8	4723	1.691	35,8	4571	1636	39,4	3436	1.354	40,3	3288	1325	38,1	3065	1168
Ethiopia											112361	0		93044	0
Faeroe Islands (Denmark)											8	0		9	0
Fiji			0	1,2	1186	14	0,4	1150	5	0,5	1537	8	1,1	1520	17
Finland	7,9	3040	240	7,8	3446	269	10,3	3231	333	14,5	3214	466	14,6	3011	440
France	21,4	50714	10.853	21,4	55028	11776	19,2	59655	11.454	17,8	67225	11966	21,7	68295	14820
French Guyana										63	654	412	63	680	428
French Polynesia (France)											426	0		429	0
Gabon											2750	0		3500	0
Gambia	66,7	450	300	66,7	450	300	66,7	450	300	66,7	1000	667	66,7	914	610
Georgia	1,4	7688	108	1,6	8644	138	1,6	23219	372	1,3	21425	279	2,3	10426	240
Germany	29,9	78707	23.533	27,7	79329	21974	26,3	72052	18.950	26,7	65722	17548	27,1	65710	17807
Ghana							4,5	13573	611	4,5	13436	605	4,5	14728	663
Gibraltar (UK)			0	68,4	19	13	29,4	51	15	29,4	70	21	29,4	48	14
Greece	42,4	8343	3.537	41,7	8760	3653	43,9	11547	5.069	57,1	12586	7187	63,2	13147	8309
Greenland (Denmark)											194	0		175	0

Grenada			0	2,1	237	5	3,8	372	14	2,6	419	11	2,6	456	12
Guadeloupe (France)											768	0		846	0
Guam (USA)							1,8	513	9	1,8	585	11	1,8	696	13
Guatemala							3,5	9993	350	3,5	12835	449	3,3	18464	609
Guernsey (UK)			0	3,6	107	4	11,7	77	9	13	114	15	11,5	96	11
Guinea			0	5,5	3070	169	5,5	3070	169	3,5	4000	140	3,5	2600	91
Guinea Bissau											64	0		92	0
Guyana	0,6	1507	9	1,9	1295	25	1,8	1989	36	1,8	1962	35	2,5	2032	51
Haiti											7009	0		10250	0
Honduras							1,2	11348	136	1,2	12336	148	1,2	16331	196
Hong Kong (China)			0	39,2	12266	4808	29,7	10137	3.011	27	9232	2493	26,4	8695	2295
Hungary	4,4	17890	787	4,2	16543	695	3,8	15373	584	3,4	17210	585	3,7	17841	660
Iceland	9,3	110	10	6,1	115	7	17,7	175	31	24,3	152	37	15,8	147	23
India			0	7,5	322357	24177	1,3	376396	4.893	1,5	372296	5584	1,6	411992	6592
Indonesia	0,5	62886	314	0,5	84357	422	0,5	140740	704	0,4	141981	568	0,5	167163	836
Iran											250000	0		217851	0
Iraq											37920	0		45634	0
Ireland			0	9,1	3417	311	10,8	4409	476	13,6	4275	581	13,3	3531	470
Isle of Man (UK)			0	0	62	0	1	97	1	0	105	0	4,9	82	4
Israel	24,9	9421	2.346	5,7	13603	775	6,6	22725	1.500	52	17700	9204	52	18658	9702
Italy	30,1	55136	16.596	31,8	56530	17977	36,2	68121	24.660	36	66529	23817	32,4	54428	17635
Ivory Coast			0	30	10355	3107	30	11143	3.343	30	11143	3343	30	8900	2670
Jamaica	4	4288	172	4	4744	190	2,8	4709	132	2,8	4500	126	1,2	4050	49
Japan	6,5	61242	3.981	7,9	76413	6037	7	78952	5.527	6,5	69876	4542	6	62971	3778
Jersey (UK)			0	17,3	183	32	30,1	176	53	28,6	165	47	24,8	133	33
Jordan	22,1	5448	1.204	9,1	5589	509	9,6	7242	695	14	6066	849	14	6066	849
Kazakhstan			0	3,5	52608	1841	4,1	59141	2.425	4,5	51593	2322	4,4	49821	2192
Kenya							0,7	46662	327	0,7	52000	364	0,7	53163	372
Kiribati			0	0	69	0	0	72	0	0	124	0	0	141	0
Kosovo											1450	0	5,4	1695	92
Kuwait			0	13,5	3700	500	13,5	3500	473	14	4179	564	13,5	2900	392
Kyrgyzstan	1,3	19500	254	1,9	16734	318	1,9	7199	137	4,8	9828	472	4,8	10060	483
Laos											4020	0		4020	0
Latvia	0,6	8486	51	0,8	7796	62	1	7055	71	1,3	6561	85	1,3	5280	69
Lebanon	36,1	8285	2.991	36,1	5375	1940	38	5870	2.231	38	5100	1938	38	5290	2010
Lesotho	6,6	3000	198	6,6	3000	198	1	2701	27	0,9	2243	20	0,9	2401	22
Liberia							2	1600	32	2	1601	32	2	1827	37
Libya	27,2	6750	1.836	35,3	11790	4162	29,1	12905	3.755	26,7	3186	462	12,8	6187	792
Liechtenstein	35,3	24	8	35,3	18	6	0	10	0	71,4	11	8	71,4	7	5
Lithuania	1,6	11216	179	1,6	8063	129	1,2	8655	104	1,3	9920	129	1,6	9261	148
Luxembourg	63,9	357	228	72,9	653	476	69,5	706	491	68,7	660	453	72,2	701	506
Macau (China)			0	5,2	875	46	15,7	930	146	58,5	1040	608	62,5	1200	750
Macedonia			0	5,9	1598	94	3,6	2235	80	2,7	2300	62	2,7	2880	78
Madagascar							0,1	17703	18	0,1	19870	20	0,1	18719	19
Malawi							1	11996	120	1	12033	120	0,2	12156	24
Malaysia	39,6	27299	10.810	39,8	42282	16828	30	36040	10.812	28,3	37157	10515	29,4	39740	11684
Maldives							1,1	1125	12	1,1	1000	11	1,1	1050	12
Mali											5817	0		4963	0
Malta	35	257	90	35	278	97	40,1	583	234	50	580	290	38,4	615	236
Marshall Islands											41	0		36	0
Martinique (France)											954	0		865	0
Mauretania											1695	0		1664	0
Mauritius	3,4	2438	83	3,4	2565	87	4,6	2163	99	5	2354	115	6,4	2233	143
Mayotte (France)											214	0		176	0
Mexico	0,9	154765	1.393	1	201931	2019	0,9	224749	2.023	0,9	239941	2159	0,9	254641	2292
Micronesia											95	0		107	0
Moldova			0	1	10729	107	1,2	6334	76	1,6	6521	104	1,6	7081	113
Monaco							91,2	25	23	91,7	12	11	95,1	23	22
Mongolia			0	0,1	6400	6	0,4	5079	20	0,3	8193	25	0,3	7930	24
Montenegro			0	6,1	734	45	6,1	986	60	3,9	1350	53	11,4	1064	121
Morocco			0	1,2	54200	650	2,2	53580	1.179	1,9	65279	1240	1,8	72816	1311
Mozambique										0,9	16881	152	0,9	15663	141
Myanmar			0	0,5	60000	300	0,8	60053	480	0,8	60053	480	0,8	60000	480
Namibia	5,5	4814	265	5,5	4814	265	5,5	4064	224	5,5	4314	237	5,5	4314	237
Nauru			0	0	3	0	6,7	30	2	7	20	1	6,7	14	1
Nepal			0	9,5	7132	678	9,5	6700	637	6	14000	868	5,5	16813	925
Netherlands	36,4	14968	5.448	33,2	19999	6640	27,7	15604	4.322	24,6	13749	3382	23,2	12638	2932
New Caledonia (France)											423	0		417	0
New Zealand	5,2	5980	311	0,3	6802	20	20	8892	1.778	19,8	8623	1707	3,5	8571	300
Nicaragua			0	2,2	5610	123	2,9	6803	197	2,9	7200	209	2,9	9168	266
Niger											7000	0		7116	0

Nigeria													54156	0	0,3	56785	170	
Northern Mariana Islands (USA)													162	0		168	0	
Norway	15	2666	400	19,2	2975	571	32,6	3446	1.123	32,4	3575	1158	33	3842	1268			
Oman	20,3	2020	410	20,3	2020	410	30,3	1403	425	30,3	1403	425	30,3	1300	394			
Pakistan							1,2	95016	1.140	1,2	77800	934	1,2	74944	899			
Palau			0	6,5	97	6	6,5	97	6	6,5	73	5	6,5	51	3			
Panama	9,1	8290	754	9,1	10630	967	8,6	11661	1.003	9,6	14238	1367	9,9	15208	1506			
Papua New Guinea	0	3296	0	0,15	4056	6	0,4	5288	21	0,4	4134	17	0,4	3863	15			
Paraguay							5,3	6146	326	5,3	6300	334	7,6	10949	832			
Peru			0	2,3	32129	739	2,5	45184	1.130	2,6	59451	1546	2,5	71612	1790			
Phillippines	0,6	70383	422	0,6	67968	408	0,3	102267	307	0,3	104710	314	0,6	110925	666			
Poland	1,5	82173	1.233	1	82262	823	0,7	81009	567	0,7	85419	598	0,7	78094	547			
Portugal	12	13384	1.606	12	13147	1578	20,5	11651	2.388	19,1	13655	2608	17,7	14148	2504			
Puerto Rico											11452	0		12244	0			
Qatar	55,6	570	317	55,6	570	317	59,7	465	278	73,3	1150	843	73,3	1150	843			
Reunion											1127	0		1113	0			
Romania	0,7	51528	361	0,8	38416	307	0,7	28081	197	0,7	31816	223	0,9	30609	275			
Russia	1,7	919330	15.629	1,7	803000	13651	2,8	833600	23.341	4,2	706200	29660	4,2	671700	28211			
Rwanda	0,3	112000	336	0,3	87000	261	0,3	55000	165	0,3	58461	175	0,3	55618	167			
Samoa							0,5	186	1	0,5	427	2	0,5	430	2			
San Marino			0	0	0	0	0	2	0	0	0	0	0	0	0			
Sao Tome and Principe	0,8	130	1	0,8	130	1	0,8	160	1	0,8	185	1	0,8	194	2			
Saudi Arabia	50,9	23720	12.073	46,9	28612	13419	72	44600	32.112	72	49000	35280	72	47000	33840			
Senegal	7,5	5360	402	7,5	5360	402	7,5	6425	482	21,2	7300	1548	10,7	8428	902			
Serbia			0	1,7	7724	131	1,8	10526	189	2,3	11094	255	2,3	10031	231			
Seychelles			0	4,7	149	7	4,1	305	13	19,7	593	117	7,5	786	59			
Sierra Leone							1,7	2328	40	1,7	2537	43	0,7	3792	27			
Singapore	19,9	14704	2.926	17,6	16835	2963	16,3	12944	2.110	13,2	12555	1657	11,3	13095	1480			
Sint Kitts & Nevis										4,1	344	14	2,1	330	7			
Sint Lucia							4,8	581	28	3	554	17	3	587	18			
Sint Maarten										20,2	138	28	20,2	180	36			
Sint Vincent & Grenadines	1,3	302	4	7,3	397	29	7,4	410	30	7,4	424	31	8,3	412	34			
Slovakia	2,3	7509	173	2,3	8891	204	1,8	10044	181	2	11092	222	1,8	10206	184			
Slovenia	15,3	1120	171	11,7	1129	132	10,8	1385	150	11	1412	155	10	1526	153			
Solomon Islands			0	0,7	295	2	0,4	234	1	0	262	1	0	326	0			
Somalia											2900	0		3450	0			
South Africa	2,1	176893	3.715	2,4	186739	4482	5,3	161204	8.544	5,3	156659	8303	5,3	157824	8365			
South Korea			0	1,3	57902	753	3,2	47514	1.520	3	44731	1163	3,3	47969	1583			
South Sudan											8000	0		7500	0			
Spain	25,4	50656	12.867	25,4	61246	15556	35,7	75484	26.948	33,5	68685	23009	30,3	65194	19754			
Sri Lanka			0	0,9	20975	189	0,3	30933	93	0,5	21216	106	1,1	22414	247			
Sudan	0	32000	0	0,8	12000	96	1	19144	191	1	20000	200	1	19101	191			
Suriname	19,3	1933	373	19,3	1933	373	19,3	1600	309	19,3	1010	195	19,3	1050	203			
Swaziland	1,4	3400	48	1,4	3245	45	6	2628	158	6	3764	226	6	3616	217			
Sweden	27,2	6089	1.656	25	7332	1833	28,7	7286	2.091	27,6	6669	1841	31,6	5525	1746			
Switzerland	70,8	4985	3.529	70,5	6021	4245	70,2	6084	4.271	71,4	6065	4330	74,3	7072	5254			
Syria							7,3	10599	774	7,3	10599	774	7,3	10599	774			
Taiwan											65675	0	0,9	64104	577			
Tajikistan							4,9	7350	360	4,9	9317	456	4,9	9317	457			
Tanzania	0,2	44063	88	0,2	43244	86	3,7	40111	1.484	3,7	38568	1427	3,7	35301	1306			
Thailand	2,9	217697	6.313	5,7	168264	9591	4,7	212058	9.967	4	234633	9385	4	325631	13025			
Timor Leste											260	0		429	0			
Togo											3844	0	5,2	4287	223			
Tonga	1,8	113	2	0,8	128	1	0	170	0	0	158	0	0	163	0			
Trinidad & Tobago							2,8	3591	101	7,5	3500	263	3,1	4846	150			
Tunesia											21000	0		25000	0			
Turkey	1,7	61336	1.043	1,7	67772	1152	1,7	121275	2.062	1,8	124677	2244	1,7	156543	2661			
Turkmenistan							0,7	10953	77	0,7	10953	76	0,7	26500	186			
Tuvalu			0	0	7	0	0	3	0	0	12	0	0	8	0			
Uganda	2,9	21900	635	1	26126	261	0,8	29826	239	0,8	34000	272	0,8	41837	335			
United Arab Emirates							92,2	11193	10.320	92,2	11193	10320	92,2	11193	10320			
UK (Eng&Wales)			0	17,3	77025	13325	13,1	85159	11.156	13	83909	10336	13	85406	11103			
UK (Northern Ireland)			0	1,5	1300	20	8	1532	123	6,7	1683	137	7,7	1745	134			
UK (Scotland)			0	1,2	6727	81	3,4	7668	261	3,3	7791	309	3,6	7434	268			
United States of America	0,5	1962220	9.811	6,5	2131180	138527	5,9	2297400	135.547	5,9	2239751	132145	6,8	2228424	151533			
Ukraine	1,6	198885	3.182	1,6	198386	3174	1,6	152169	2.435	1,7	148971	2533	1,7	79750	1356			
Uruguay							2,7	8749	236	2,7	9450	255	2,5	9632	241			
Uzbekistan											42000	0		46200	0			
Vanuatu							0,5	187	1	0,4	191	1	0,4	194	1			
Virgin Islands (UK)										84,8	138	117		119	0			
Virgin Islands (USA)										15,7	587	92	15,7	571	90			
Venezuela			0	7,7	21342	1643	6	32624	1.957	3,7	50000	1850	3,7	52933	1959			
Vietnam							0,3	107668	323	0,3	113018	339	0,3	130180	391			
Yemen										3,5	11313	396	3,2	14000	448			
Zambia							2,1	15544	326	2,1	17000	357	2,1	17038	358			
Zimbabwe	4,8	21000	1.008	4,8	20000	960	0,8	15000	120	0,7	15000	105	2	17484	350			
		6718702	**189.237**		**7994038**	**398889**		**9251676**	**449067**		**10142113**	**462.956**		**10356981**	**485,080**			

Annex 4 Overview number of Dutch nationals in foreign detention (1995-2015)

Name	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Afghanistan										1											
Albania			1	1						1										1	1
Algeria	1	1	1	1	1	1	1	1	1	2	1	1	1	2							
Antigua and Barbuda																				1	1
Argentina	1	1	2	3	5	2	1	1	1	3	6	12	34	44	29	41	37	28	23	17	11
Armenia														1	2	2				1	1
Australia	12	11	15	10	7	10	11	19	19	26	26	32	28	16	10	7	11	9	8	8	9
Austria	8	6	6	9	14	14	16	18	12	22	25	31	15	11	8	13	19	18	15	15	11
Bahama's												1									
Bahrain																				1	
Bangladesh		1					1					1									
Barbados					1	1	1			3	6	8	7	3	1		2	1	1		
Belarus						1	1	1	1	1						1		1	1	2	1
Belgium	52	42	97	99	107	79	136	74	60	68	77	91	90	74	94	81	95	107	126	90	121
Benin							1														
Bermuda		1	1					2	2	2	1					2					
Bolivia	1	1	1	1		1	4					4	4	10	8	16	14	15	12	10	6
Bosnia												2	3	2	2	1	2	4	2		
Brazil	20	25	26	22	21	26	27	26	26	31	56	66	77	77	82	99	86	85	57	50	47
British Virgin Islands											1	1	1					8			
Bulgaria	3	1	2	2	14	6	3	7	7	3	9	9	10	14	18	13	6		13	11	10
Burkina Faso													1	1							
Cambodia											1	1	1	1	1	1	2	1	2	2	2
Canada	3	6	4	5	2	11	6	3	3	2	4	4	4	7	5	5	6	9	7	27	27
Cape Verde											2	8	10	11	8	8	3	8	7	6	5
Cayman Islands												1	1								
Chile	1	1	1	1	2	2	1	1	1	1		1	2	2	2		3	3	1	1	1
China				1	1			5	5	5	8	7	7	6	8	8	12	12	14	12	13
Colombia	2	3	5	7	8	8	8	11	12	16	14	13	12	15	20	25	29	25	25	25	27
Congo															1					1	
Costa Rica		1	3	2	2	1	2	7	8	7	12	9	10	9	6	9	6	4	4	3	2
Croatia	2	1	3	5	7	6	4	1	2	3	3	2	2	4	4	6	6	3	4	2	3
Cuba			2	3	2	3	3	5	5	14	15	16	16	13	12	11	11	8	6	3	
Cyprus		1	1	2	2	2	2	2	2	1	1			3	10	1	2	1		1	1
Czech Republic	9	14	12	6	4	3	7	2	2	2	3	3	5	6	4	3	7	5	9	6	5
Denmark	5	15	11	6	9	5	5	18	18	22	29	13	10	10	10	11	21	25	18	17	19
Dominican Rep.	3	5	5	5	9	15	16	27	27	39	77	108	150	168	174	165	144	125	106	99	77
Ecuador	8	8	8	13	9	11	10	7	8	19	21	38	45	44	24	25	24	24	24	20	22
Egypt		1					1	4	4	4	5	3	2	4	3	3	3	3	2	3	7
Eritrea												1	1	1	1	1					
Estonia																	1	1		1	2
Ethiopia					1												2		2	1	1
Finland	1	1		2	4	2	2	1	1		1	3	5	6	5	6	6	2	5	6	10
France	198	212	222	234	204	177	166	148	151	231	259	228	230	229	191	179	199	166	149	169	203
French Guyana	12	11	13	19	7	10	15	16	15	17	31	27	34	24	15	19	9	17	17	19	18
Gambia						1	1					4	3	3	3	1	7	3	2	3	3
Georgia																	1	2	1	3	1
Germany	230	220	275	271	289	332	358	333	336	362	407	459	444	414	433	436	440	438	436	487	499
Ghana		1	1	1	1	1	1	2	2	2	1	1	7	12	16	14	18	18	15	12	8
Greece	5	5	10	5	2		3	7	7	8	18	15	21	19	25	20	18	15	18	18	15
Grenada	1	1																			
Guadeloupe											4	5	3	3	9	6	11	9	8	7	6
Guinea																					1
Guyana					1			1	1				1	1							
Honduras					1	1	1	1	1	1	1	1	1	1	1		1		1	1	1
Hungary	3	3	8	7	9	8	8	5	5	4	11	11	6	9	17	12	17	8	8	3	4
Hong Kong	1	1	1				1	1	1	1											
Iceland			1	3	1	3	3				2	1	1	1	1	1					
India	4	2	1	3	1			2	2	1	3	2	2	2	3	2	4	5	5	7	8
Indonesia	6	3	11	6	2	2	3	11	12	10	4	11	7	13	13	10	8	7	8	7	10
Iran			1	1	1		1	1	1	2	1	1	2	3	3	4	5	3	3	3	2
Iraq										2		2	1	1	2	4	3	4	2	1	1
Ireland	4	4	3	3	3	2	4	2	4	5	8	13	13	17	20	14	9	5	4	4	6
Israel	1	2	2	1		1		2	2	4		1	1	1				1			1
Italy	16	16	17	21	27	29	25	60	60	82	92	129	69	100	95	108	91	83	61	47	41
Ivory coast			1																		
Jamaica		2	2		5	4	7			7	20	16	7	4		4	11	10	9	7	5
Japan	2	6	7	3	2	6	8	14	14	19	30	41	41	33	21	13	10	8	8	11	8
Jemen							1	1	1	1		2									
Jordan							1			1		1	1								

Kenya			1	1			1	1	1			1	2			2		4	4	5	3
Kosovo																	1	1			
Kuwait								1	1	1										1	
Latvia														1			1	1	2	1	1
Lebanon													1	2	2	2	4	3	3	3	3
Libya															1						
Lithuania							1	1	1		1		1				2	3	3	4	1
Luxembourg	10	5	3	8	2	2	5	2	2	4	8	9	12	17	12	15	14	11	10	9	3
Macedonia											1				1	2	2	3	1	1	3
Malaysia											1	1	2	3	3	1	2	2	1		1
Maldives			2							1	1	1	1	1	1	1	1				
Malta	1				1		3	5	5	5	3	5	3	3	8	11	12	12	9	9	7
Martinique												1	1								
Mauritius								1	1	1	1	2	2	2	2	2	2	1	1	1	1
Mexico	1	1	2	1			5	10	10	10	10	11	13	11	12	10	2	3	2	2	
Moldova																					1
Monaco							1											1	1		
Mongolia													1								
Montenegro																	1	1	1		
Morocco	69	74	84	103	83	70	65	68	74	52	48	26	40	67	88	53	65	68	55	48	50
Myanmar																1	1	1	1		
Namibia																					1
Nepal		2			1	2	2							2	4	1	2	2	2	1	1
New-Zealand					1			2	2	3	4	4	3	4	3	2	7	6	4	4	5
Nicaragua															1		1				
Nigeria			1	1				1	1	1							1			1	
Norway	5	20	32	28	26	18	15	14	14	22	36	36	30	29	36	45	36	36	22	29	29
Oman																1			1		2
Pakistan	1			4	5	7	4	5	4	4	3	3	4	4	5	4	3	3	1		1
Panama	1	4	5	5	5	4	8	5	6	4	7	12	19	19	12	13	13	13	14	14	13
Paraguay			2	3	4	3	3	2	2	1	1					1	1	1	2	2	2
Peru	4	4	4	6	8	19	36	42	42	41	47	54	88	98	110	120	117	94	80	76	71
Philippines	1		1	1	2	2	2	1	1	2	1	2	5	3	4	3	2	1	3	3	4
Poland	8	13	10	7	3	6	9	3	4	5	6	5	4	9	13	17	17	12	16	11	14
Portugal	40	51	56	39	39	24	25	43	41	36	39	71	88	70	37	24	28	39	27	23	23
Qatar	1						1										1			1	2
Reunion														1	1	1					
Romania	3	3	2	7	10	3	1	7	7	8	5	5	4	4	4	5	5	5	6	6	5
Russia		2	5	6	3	2	2	1	1	1	2	1	1	1		2	2	1	2	5	1
Saint Lucia												1					1	2			
Saudi Arabia	1																		1	1	2
Senegal									1				2	2	1	2	1	1	1	2	2
Serbia											4	4	5	5	5	6	12	12	11	6	7
Sierra Leone	1																				
Singapore			1	1	1						1			1			1		1	1	3
Slovakia		1	1	1	2	1		1	1		1	2			1	2		1	2	2	2
Slovenia					1	1	1				1	1	1	2	1			1	1	1	2
Somalia																		1	1	1	
South Africa		1			3	1	1	5	5	4	5	4	5	5	5	4	2	5	4	1	1
South Korea			1	1				1	1				1	1				1			1
South Sudan																				1	
Spain	183	205	203	184	175	118	114	163	162	184	189	215	254	321	349	341	341	302	262	238	229
Sri Lanka										1		1	3	4	2	2	1	2	1	1	1
Sudan																		1	1	2	2
Surinam	38	33	32	45	69	203	302	133	142	169	123	83	38	54	44	29	32	44	46	41	37
Sweden	5	3	17	11	16	26	23	25	28	24	34	41	28	27	25	41	39	36	52	44	41
Switzerland	15	14	13	6	12	13	10	8	8	8	13	15	8	9	18	32	30	31	22	16	15
Syria								1					1	1			3	3	2	2	2
Taiwan					1	1	1			1											
Tanzania												1					1	1		1	
Thailand	8	5	4	8	7	8	10	15	15	15	13	19	16	17	12	9	13	6	11	8	15
Timor-Leste																					1
Togo																		1	1	1	1
Trinidad & Tobago	9	8	7	12	11	12	15	4	5	12	12	18	22	7	2	3	3	3	3	10	10
Tunisia	1	1	2	1	2	3	3	2	2	3	1	3	1	1	2	1			1	1	3
Turkey	4	11	15	15	17	7	13	5	11	27	39	44	31	53	62	66	85	93	105	101	94
Uganda			1															1		1	
Ukraine										2	2	3	2	3	3	4	5	3	1	1	2
United Arab Emirates				1							1			3	3	8	4	6	3	6	4
United Kingdom	130	156	158	200	230	274	245	270	272	264	195	166	160	112	109	118	130	143	146	131	161
United States of Americ	57	49	49	57	74	99	128	226	227	195	154	127	102	85	91	93	82	62	80	87	76
Uruguay			2	2									1	4	3	3	2		2	2	
Venezuela	11	12	12	18	18	14	21	41	42	46	45	68	67	75	50	45	36	31	25	18	18
Vietnam			1	1	2	2	1	1	1	2	2	1				1	1	1	1	1	1
Yugoslavia	1	1	1				6	3	3	2											
Zambia								1	1	1	1	1	1	1	1	1			1	1	1
Zimbawe		1	1	2	1	1															
Number countries	57	63	72	69	71	66	78	78	78	82	81	91	93	93	88	90	96	99	99	104	102

Annex 5 Overview location of Dutch diplomatic missions (2015)

Afghanistan	Hungary	Portugal
Albania	India	Qatar
Algeria	Indonesia	Romania
Angola	Iran	Russia
Argentina	Iraq	Rwanda
Australia	Ireland	Saudi Arabia
Austria	Israel	Senegal
Azerbaijan	Italy	Serbia
Bangladesh	Japan	Singapore
Belgium	Jemen	Slovenia
Benin	Jordan	South Africa
Bosnia	Kazakhstan	South Korea
Brazil	Kenya	South Sudan
Bulgaria	Kosovo	Spain
Burundi	Kuwait	Sri Lanka
Canada	Latvia	Sudan
Chile	Lebanon	Suriname
China	Libya	Sweden
Colombia	Lithuania	Switzerland
Congo	Luxembourg	Tanzania
Costa Rica	Macedonia	Thailand
Croatia	Malaysia	Trinidad & Tobago
Cuba	Mali	Tunisia
Cyprus	Malta	Turkey
Czech Republic	Mexico	Uganda
Denmark	Morocco	Ukraine
Dominican Republic	Mozambique	United Arab Emirates
Egypt	New-Zealand	United Kingdom
Estonia	Nigeria	United States of America
Ethiopia	Norway	Vatican city
Finland	Oman	Venezuela
France	Pakistan	Vietnam
Georgia	Panama	Zambia
Germany	Peru	Zimbawe
Ghana	Philippines	
Greece	Poland	

Annex 6 Overview numbers International Office and Epafras

Overview number volunteers International Office Dutch Probation Service (2015)								
Nr.	**Country**	**V**	**Nr.**	**Country**	**V**	**Nr.**	**Country**	**V**
1	Albania	1	21	Ecuador	4	41	Peru	6
2	Argentina	5	22	Finland	1	42	Poland	2
3	Aruba	1	23	France	25	43	Portugal	10
4	Australia	4	24	Germany	48	44	Romania	3
5	Austria	7	25	Ghana	3	45	Senegal	1
6	Belgium	9	26	Greece	3	46	Serbia	2
7	Bolivia	3	27	Hungary	2	47	Singapore	2
8	Brazil	15	28	Indonesia	2	48	South Africa	2
9	Cambodia	1	29	Ireland	2	49	Spain	30
10	Canada	2	30	Italy	18	50	Suriname	5
11	Cape Verde	1	31	Jamaica	1	51	Sweden	3
12	Chile	1	32	Japan	1	52	Switzerland	7
13	China	1	33	Lebanon	1	53	Thailand	2
14	Colombia	5	34	Lithuania	2	54	Ukraine	1
15	Costa Rica	1	35	Luxembourg	5	55	United Arab Emirates	1
16	Croatia	2	36	Malta	1	56	United Kingdom	10
17	Cyprus	1	37	Morocco	5	57	United States of America	17
18	Czech Republic	7	38	New-Zealand	1	58	Urugay	2
19	Denmark	3	39	Norway	4	59	Venezuela	5
20	Dominican Republic	6	40	Panama	2	60	**Total number**	318

Overview countries visited by chaplains Epafras (2014)					
Nr.	**Country**	**Nr.**	**Country**	**Nr.**	**Country**
1	Austria	22	French Guyana	43	Nepal
2	Argentina	23	Gambia	44	Norway
3	Belgium	24	Germany	45	Panama
4	Bolivia	25	Ghana	46	Paraguay
5	Brazil	26	Greece	47	Peru
6	Bulgaria	27	Guadeloupe	48	Philippines
7	Cambodia	28	Honduras	49	Poland
8	Canada	29	Hungary	50	Portugal
9	Cape Verde	30	Iceland	51	Romania
10	Colombia	31	India	52	Senegal
11	Chili	32	Indonesia	53	Serbia
12	Costa Rica	33	Ireland	54	Spain
13	Croatia	34	Italy	55	Sweden
14	Cuba	35	Jamaica	56	Suriname
15	Cyprus	36	Japan	57	Thailand
16	Czech Republic	37	Lebanon	58	Trinidad & Tobago
17	Denmark	38	Lithuania	59	Ukraine
18	Dominican Republic	39	Luxembourg	60	United Kingdom
19	Ecuador	40	Malta	61	United States of America
20	Finland	41	Mauritius	62	Venezuela
21	France	42	Morocco	63	Zwitserland

Description	Score	Range	Sign
Positive / Entirely agree	5	Score > 3.50	++
Slightly positive / agree	4	Score > 3.25 < 3.50	+
Neutral / neither agree or disagree	3	Score > 2.75 < 3.25	0
Slightly negative / disagree	2	Score > 2.50 < 2.75	-
Negative / Entirely disagree	1	Score < 2.50	--

Well-being and treatment prisoner

Detention conditions	Questions	Overall	EU	Non-EU	Test	Pre-trial	Sentenced	Test
Cell	Single cell occupancy	32%	36%	24%	X^2**(5)=124**	26%	36%	X^2**(5)=14**
	Double cell occupancy	30%	39%	12%	**p<.001**[2]	36%	27%	**p=.017**
	Occupancy 2-5 people	19%	16%	25%		23%	17%	
	Occupancy 6-10 people	10%	7%	15%		10%	10%	
	Occupancy 10-20 people	3%	2%	7%		2%	4%	
	Occupancy >20 people	6%	0%	17%		3%	7%	
	Size cell at least 4m2 p.p.	63%	71%	48%	$X^2(1)$**=26** **p<.001**	69%	60%	$X^2(1)$=4 p=.056
	No time outside cell	5%	5%	5%	X^2**(5)=51**	7%	4%	X^2**(5)=33**
	Daily 1 hours outside cell	15%	19%	9%	**p<.001**	26	10%	**p<.001**
	Daily > 2 hours < 3 hours outside cell	21%	26%	12%		22%	22%	
	Daily > 3 hours < 6 hours outside cell	22%	22%	21%		19%	22%	
	Daily > 6 hours < 12 hours outside cell	28%	24%	36%		21%	31%	
	Daily > 12 hours outside cell	9%	5%	18%		6%	11%	
Hygiene	Overall score[1]	3.2(1.0)	3.4(1.0)	2.8(1.1)	**t(138)=4** **p<0.001**	3.2(1.0)	3.2(1.1)	t(213)=.3 p=.0754
	I can frequently wash my clothes	3.1(1.4)	2.9(1.4)	3.5(1.4)	**t(528)=-4.5** **p<.001**	2.9(1.5)	3.1(1.4)	**t(298)=-1.6** **p=.101**
	I can frequently take a shower	3.6(1.3)	3.5(1.4)	3.7(1.2)75%	**t(410)=-2.3** **p=.022**	3.3(1.4)	3.7(1.3)	**t(321)=-2.9** **p=.005**

[1] The results are based on n=584.
[2] Tests which prove to be significantly different are in bold.
[3] The overall score is based on the ratings of 9 statements. An example statement is: "It is clean in the showers". A 5-point Likert scale ranging from totally disagree (1) to totally agree (5) was used for the ratings.

Food	I like the hot dishes	2.4(1.2)	2.5(1.2)	2.1(1.2)	**t(511)=4 p<.001**	2.4(1.2)	2.3(1.3)	t(485)=.4 p=.629
	I receive sufficient food	2.9(1.3)	3.1(1.3)35%	2.5(1.4)54%	**t(540)=5 p<.001**	3.1(1.3)34%	2.8(1.4)45%	t(366)=2 p=.059
	Religious diets are available	2.9(1.4)	3.3(1.3)	2.1(1.4)25%	**t(477)=10 p<.001**	2.9(1.4)55%	2.8(1.5)57%	t(450)=.5 p=.623
Drugs	Drugs are often used in prison	45%	44%	48%	X^2(2)=2 p=.457	35%	50%	**X^2(2)=12 p=.002**
	Drugs are sometimes used in prison	26%	27%	23%		28%	25%	
	Drugs are never used in prison	29%	29%	29%		37%	26%	
Safety	**Questions**	**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Sentenced**	**Test**
Safety	Overall score[4]	2.6(.7)	2.7(.7)	2.4(.7)	t(386)=4 p<.001	2.7(.7)	2.6(.7)	t(368)=.5 p=.596
	I often feel unsafe	29%	23%	41%	**X^2(2)=24 p<.001**	23%	32%	X^2(2)=5 p=.105
	I sometimes feel unsafe	33%	34%	33%		37%	31%	
	I never feel unsafe	38%	43%	26%		40%	37%	
	Prisoners are exploited by other prisoners	3.9(1.1)	3.8(1.0)	4.0(1.1)	**t(501)=-2 p=.035**	3.7(1.2)	3.9(1.0)	t(257)=-2 p=.129
	Prisoners have to beware of some staff	3.7(1.2)	3.6(1.2)	4.0(1.1)	**t(396)=-3 p=.001**	3.5(1.3)	3.8(1.2)	**t(300)=-2 p=.017**
	Prisoners feel unsafe at their wing	49%	43%	59%	**X^2(1)=9 p=.003**	49%	53%	X^2(1)=.4 P=.519
	Prisoners feel unsafe in their cell	33%	31%	36%	X^2(1)=1 p=.323	38%	33%	X^2(2)=.6 p=.447
Discriminatory treatment	**Questions**	**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Sentenced**	**Test**
Discriminatory treatment	Prison staff discriminates prisoners	3.5(1.3)	3.4(1.3)	3.8(1.2)	**t(375)=-3 p=.004**	3.5(1.3)	3.5(1.3)	t(479)=-1 p=.464
	Prisoners discriminate each other	3.6(1.2)	3.5(1.3)	3.9(1.4)	**t(378)=-3 p=.001**	3.5(1.3)	3.7(1.2)	t(484)=-2 p=.089
	Prisoner is personally discriminated	51%	46%	61%	**X^2(1)=11 p=.001**	48%	51%	X^2(1)=1 p=.435
	Reason for discrimination:							
	Nationality	66%	66%	66%	X^2(1)=.0 p=.896	60%	72%	**X^2(1)=4 p=.042**
	Skin colour	30%	31%	28%	X^2(1)=.3	30%	30%	X^2(1)=0

[4] The overall score is based on the ratings of 7 statements. An example statement is: "Prison staff protects me when other prisoners are violent to me". A 5-point Likert scale ranging from totally disagree (1) to totally agree (5) was used for the ratings.

					p=.562			p=.976
	Religion	17%	23%	8%	X^2**(1)=12 P<.001**	20%	17%	X^2(1)=.3 p=.585
	Type of crime	10%	7%	14%	X^2**(1)=5 p=.028**	14%	9%	X^2(1)=2 p=.212
	Sexual preference	3%	2%	5%	X^2(1)=2 p=.182	2%	3%	X^2(1)=.2 p=.665
	Gender	2%	3%	1%	X^2(1)=2 p=.165	2%	2%	X^2(1)=.1 p=.701
Medical care	**Questions**	**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Sentenced**	**Test**
Medical care	Overall score[5]	2.5(1.0)	2.7(1.0)	2.3(1.0)	**t(276)=4 p<.001**	2.6(.9)	2.5(1.0)	t(263)=.4 p=.704
	Prisoners' health has deteriorated in prison M(SD)	3.7(1.3)	3.6(1.3)	3.8(1.2)	**t(543)=-2 p=.020**	3.7(1.3)	3.7(1.3)	t(510)=.3 p=.743
	Prisoner can visit a doctor when in need of care	3.6(1.2)	3.7(1.1)	3.3(1.3)	**t(319)=4 p<.001**	3.6(1.1)	3.6(1.2)	t(510)=.4 p=.854
	Prisoner is satisfied with nurse	2.8(1.3)	3.0(1.3)	2.4(1.4)	**t(464)=5 p<.001**	2.9(1.3)	2.8(1.4)	t(438)=.3 p=.739
	Prisoner is satisfied with medical doctor	2.7(1.3)	2.9(1.3)	2.3(1.3)	**t(513)=5 P<.001**	2.8(1.3)	2.7(1.3)	t(482)=.5 p=.626

Awareness legal procedures and rights

Clarity about rules and rights	**Questions**	**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Sentenced**	**Test**
Awareness	Overall score[6]	2.7(.9)	2.7(.9)	2.7(.8)	t(360)=1 p=.357	2.5(.8)	2.8(.9)	**t(449)=-3 p=.003**
	Prisoner is not aware of rules	3.7(1.3)	3.6(1.2)	3.7(1.3)	t(534)=-1 p=.363	3.7(1.3)	3.6(1.2)	t(501)=1 p=.836
	Prisoner knows effect of breaking the rules	3.7(1.1)	3.7(1.2)	3.8(1.1)	t(520)=-1 p=.235	3.3(1.2)	3.9(1.1)	**t(277)=-5 p<.001**
	The prison informs me about the prison rules	2.9(1.3)	2.9(1.3)	2.9(1.3)	t(359)=.2 p=.841	2.7(1.3)	3.0(1.3)	**t(494)=-2 p=.028**
	The prison informs me about my rights	2.2(1.2)	2.2(1.2)	2.1(1.3)	t(529)=2	2.1(1.1)	2.2(1.2)	t(369)=-1

[5] The overall score is based on the ratings of 5 statements. An example statement is: "I am satisfied about the work of the dentist". A 5-point Likert scale ranging from totally disagree (1) to totally agree (5) was used for the ratings.

[6] The overall score is based on the ratings of 5 statements. An example statement is: "I am aware of the consequences when breaking prison rules". A 5-point Likert scale ranging from totally disagree (1) to totally agree (5) was used for the ratings.

					p=.092			p=.207
Consular right	Prisoner is aware of right to contact Dutch diplomatic mission	82%	84%	78%	X^2**(1)=4 p=.045**	86%	80%	X^2(1)=3 p=.092
Made aware via	Aware through:							
	Prison staff	11%	13%	6%		14%	9%	
	Other prisoners	14%	14%	13%		14%	14%	
	International Office Probation Service	7%	8%	2%		8%	4%	
	Epafras	1%	1%	0%	X^2**(8)=23 p=.003**	0%	0%	X^2(1)=8 p=.429
	Consular staff	12%	9%	19%		10%	13%	
	Lawyer	8%	9%	6%		7%	8%	
	Family/friends	5%	3%	8%		6%	4%	
	Themselves	36%	34%	39%		34%	38%	
	Other	8%	8%	7%		7%	9%	
Punishments and complaints	**Questions**	**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Sentenced**	**Test**
Punishments	Punishments are too harsh in prison	3.9(1.2)	3.9(1.2)	3.9(1.3)	t(466)=.0 p=.985	3.8(1.2)	4.0(1.2)	t(442)=2 p=.133
	Personal circumstances are taken into consideration when a punishment is imposed	2.2(1.3)	2.3(1.3)	2.1(1.3)	**t(450)=.2 p=.049**	2.2(1.2)	2.2(1.3)	t(428)=2 p=.728
	Punishments are imposed according to the rules)	2.5(1.3)	2.6(1.3)	2.3(1.4)	**t(443)=.2 p=.019**	2.4(1.3)	2.5(1.3)	t(420)=2 p=.709
Complaints	Prisoners know where to file a complaint	3.1(1.3)	3.1(1.3)	3.1(1.4)	t(492)=.2 p=.833	2.9(1.3)	3.3(1.3)	**t(466)=2 p=.007**
	Where to file a complaint:							
	Complaints committee	16%	20%	7%	X^2**(1)=15 P<.001**	12%	18%	X^2(1)=3 p=.072
	Public prosecutor	10%	13%	5%	X^2**(1)=10 p=.001**	10%	11%	X^2(1)=.0 p=.880
	Judge	9%	11%	4%	X^2**(1)=8 p=.005**	6%	11%	X^2(1)=3 p=.082
	Prison director	45%	46%	41%	X^2(1)=2 p=.219	39%	49%	X^2**(1)=5 p=.023**
	Ombudsman	10%	11%	8%	X^2(1)=1 p=.365	8%	11%	X^2(1)=1 p=.241
	Filing a complaint is useful	2.7(1.4)	2.7(1.4)	2.8(1.5)	t(444)=-1 p=.363	2.6(1.4)	2.8(1.5)	t(421)=-1 p=.224
	Prisoner has filed a complaint	45%	43%	49%	X^2(1)=2 p=.221	42%	47%	X^2(1)=-1 p=.261
	Complaint procedures are too slow	4.0(1.2)	4.1(1.1)	3.8(1.3)	**t(141)=2 p=.038**	3.9(1.2)	4.0(1.2)	t(210)=.2 p=.521

	Complaint of prisoner was taken seriously	2.3(1.3)	2.2(1.3)	2.4(1.4)	t(150)=-1 p=.458	2.2(1,2)	2.3(1.4)	t(212)=-1 p=.574

Contact outside world and family

Contact outside world	Questions	Overall	EU	Non-EU	Test	Pre-trial	Sentenced	Test
Contact	Overall score[7]	3.0(.8)8	3.0(.8)	2.9(.8)	t(250)=2 p=.084	2.8(.7)	3.0(.8)	**t(238)=-3 p=.007**
Contact lawyer	Prisoner is able to contact lawyer	3.2(1.2)	3.3(1.2)	3.0(1.3)	**t(482)=3 p=.013**	3.1(1.3)	3.2(1.2)	t(457)=-1 p=.358
Contact family	Prisoner can maintain contact with family	87%	89%	81%	X^2**(1)=7 p=.007**	87%	86%	X^2(1)=0 p=.851
	Sufficient possibilities to contact family	3.0(1.3)	3.1(1.3)	2.9(1.3)	t(531)=1 p=.209	2.7(1.3)	3.2(1.3)	**t(502)=-4 p<.001**
	Prisoner has enough privacy during visits	2.5(1.4)	2.6(1.4)	2.4(1.4)	t(432)=1 p=.183	2.3(1.4)	2.6(1.4)	**t(405)=-2 p=.021**
	Prisoner has enough privacy while on telephone	2.8(1.4)	2.8(1.4)	2.7(1.4)	t(403)=1 p=.320	2.7(1.4)	2.8(1.4)	t(382)=-1 p=.291
No contact	Not allowed by prison authorities	18%	6%	33%	X^2**(1)=12 P<.001**	21%	20%	X^2(1)=0 p=.877
	Too expensive	13%	13%	13%	X^2(1)=0 p=.985	7%	15%	X^2(1)=1 p=.299
	Prisoner has no family or friends	20%	23%	18%	X^2(1)=.4 p=.552	21%	17%	X^2(1)=0 p=.590
	Prisoner does not want to have contact	19%	25%	11%	X^2(1)=3 p=.087	18%	22%	X^2(1)=0 p=.680
Means of contact	Letter	75%	83%	59%	X^2**(1)=33 P<.001**	79%	74%	X^2(1)=1 p=.240
	Telephone	67%	61%	78%	X^2**(1)=14 P<.001**	57%	72%	X^2(1)=1 p=.002
	Visit	31%	35%	24%	X^2**(1)=6 p=.015**	38%	30%	X^2(1)=3 p=.072
	Email	3%	0%	10%	X^2**(1)=30 P<.001**	1%	4%	X^2(1)=3 p=.089

[7] The overall score is based on the ratings of 7 statements. An example statement is: "I can easily get things (for example clothes) from outside prison". A 5-point Likert scale ranging from totally disagree (1) to totally agree (5) was used for the ratings.

Social inclusion within the prison

Activities	Questions	Overall	EU	Non-EU	Test	Pre-trial	Sentenced	Test
Activities	Overall score	2.40	2.48	2.24		2.32	2.46	
Participation	Education	49%	54%	39%	X^2(3)=8 P=.055	45%	51%	X^2(3)=6 p=.119
	Library	59%	62%	53%	**X^2(3)=9 p=.025**	57%	61%	X^2(3)=6 p=.133
	Sports	70%	75%	59%	**X^2(3)=26 p<.001**	69%	71%	X^2(3)=7 p=.074
Work	Prisoner works in prison	50%	49%	50%	X^2(1)=.3 p=.858	34%	58%	**X^2(1)=26 p<.001**
	Prisoner is obliged to work	24%	26%	19%	X^2(1)=2 p=.158	12%	28%	**X^2(3)=7 p=.010**
	Main reason to work is money	58%	68%	39%	**X^2(1)=22 p<.001**	57%	61%	X^2(1)=.4 p=.516
	Prisoner likes to meet other prisoners via work	17%	20%	10%	**X^2(3)=5 p=.025**	17%	17%	X^2(1)=0 p=.967
Religion	Prisoner is satisfied with religious counsellor	3.7(1.1)	3.7(1.2)	3.7(1.1)	t(274)=.2 p=.809	3.6(1.2)	3.7(1.1)	t(263)=-.3 p=.748
Interaction with staff	**Questions**	**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Sentenced**	**Test**
Interaction with staff	Overall score[8]	2.4(.8)	2.5(.8)	2.3(.9)	t(351)=2 p=.103	2.4(.8)	2.4(.8)	t(333)=-.6 p=.557
	Prison staff treats prisoner in a 'normal' way	3.2(1.2)	3.3(1.1)	3.0(1.2)	**t(543)=3 p=.009**	3.1(1.1)	3.2(1.2)	t(513)=-.3 p=.795
	Prison staff is nice and kind to the prisoner	2.9(1.2)	2.9(1.2)	2.7(1.2)	**t(525)=2 p=.041**	2.8(1.1)	2.9(1.2)	t(494)=-1 p=.235
	Prison staff don't chat with prisoner	3.2(1.2)	3.2(1.2)	3.1(1.2)	t(538)=.5 p=.608	3.2(1.2)	3.1(1.2)	t(506)=1 p=.355
Satisfaction	Satisfaction with prison staff[9]	2.5(1.1)	2.7(1.1)	2.1(1.1)	**t(267)=4 p<.001**	2.5(1.0)	2.5(1.3)	t(248)=-.3 p=.346
Interaction with	**Questions**	**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Sentenced**	**Test**

[8] The overall score is based on the ratings of 9 statements. An example statement is: "Prison staff is nice to me". A 5-point Likert scale ranging from totally disagree (1) to totally agree (5) was used for the ratings.

[9] The overall score is based on the ratings of 5 statements. An example statement is: "I am satisfied with the work of the head of the department". A 5-point Likert scale ranging from totally disagree (1) to totally agree (5) was used for the ratings.

prisoners								
Interaction with other prisoners	Overall score[10]	3.0(.7)	3.1(.7)	2.9(.8)	**t(264)=3 p=.013**	3.1(.8)	3.0(.7)	t(231)=.8 p=.406
	I go along with other prisoners	3.6(1.0)	3.7(1.0)	3.4(1.1)	**t(330)=3 p=.005**	3.6(1.0)	3.6(1.0)	t(492)=.0 p=.991
	I can communicate well with fellow prisoners, despite language differences	3.7(1.0)	3.7(1.1)	3.7(1.0)	t(522)=.2 p=.842	3.6(1.0)	3.8(1.0)	t(494)=-1 p=.243
	Prisoners treat each other respectfully	2.7(1.4)	2.8(1.2)	2.4(1.3)	**t(530)=4 p<.001**	2.7(1.3)	2.6(1.2)	t(500)=1 p=.328

Preparations for release and resettlement

Reintegration	Questions	Overall	EU	Non-EU	Test	Pre-trial	Sentenced	Test
Reintegration	Overall score	2.3(0.8)	2.3(0.8)	2.3(0.8)	t(210)=1.6 p=.116	2.3(0.8)	2.3(0.8)	t(128)=.18 p=.857
	Prisoner does not receive support with return to society	4.1(1.2)	4.0(1.3)	4.2(1.1)	**t(360)=-2.1 p=.037**	4.0(1.3)	4.2(1.1)	t(275)=-.46 p=.645
	Prisoner is well prepared by others for return to society	2.3(1.3)	2.3(1.3)	2.3(1.3)	t(319)=-0.6 p=.570	2.3(1.3)	2.2(1.3)	t(315)=.89p=.775
	Prisoner can follow reintegration course	2.7(1.4)	2.8(1.3)	2.5(1.5)	**t(323)=2.4p=.018**	2.6(1.4)	2.7(1.3)	t(312)=-1.3 p=.202
	Prison staff does not help prisoner to reintegrate	1.9(1.0)	1.8(1.0)	1.9(1.1)	t(277)=-2.8 p=.781	1.8(1.0)	1.9(1.1)	t(317)=-.01 p=.995
	Prisoner has been on prison leave	4%	6%	2%	X^2**(1)=4 p=.028**	3%	5%	X^2(1)=1 P=.240
Expectations future	Overall score	3.8(0.7)	3.8(0.7)	3.9(0.8)	T(250)=-1.2 p=.236	3.8(0.8)	3.8(0.8)	T(256)=.009 p=.993
	Prisoner expects recidivism	15%	14%	17%	X^2(1)=.4 p=.509	12%	17%	X^2(1)=2 p=.160

[10] The overall score is based on the ratings of 7 statements. An example statement is: "New prisoners are quickly welcomed in the group". A 5-point Likert scale ranging from totally disagree (1) to totally agree (5) was used for the ratings.

Received assistance

Ministry of Foreign Affairs								
Type of assistance	**Overall** (n=584)	**Overall** (n=515)	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**
Personal visit from consular staff	59%	67%	66%	69%	$X^2(1)$=0.3 p=.572	68%	69%	$X^2(1)$=.1 p=.728
Information about legal proceedings	42%	48%	51%	42%	$X^2(1)$=4 p=.059	57%	45%	$X^2(1)$=6 p=.014
Maintaining contact with family at home	33%	38%	34%	46%	**$X^2(1)$=8 p=.006**	43%	35%	$X^2(1)$=3 p=.072
Attention to medical health	25%	28%	26%	32%	$X^2(1)$=2 p=.162	28%	28%	$X^2(1)$=0 p=1.000
Assistance with prison transfers	21%	23%	27%	16%	**$X^2(1)$=8 p=.004**	18%	26%	$X^2(1)$=4 p=.048
Monitoring treatment of prisoner	20%	23%	22%	26%	$X^2(1)$=1 p=.292	21%	26%	$X^2(1)$=1 p=.291
Monthly allowance of €30[1]	20%	23%	3%	61%	**$X^2(1)$=226 p<.001**	16%	27%	**$X^2(1)$=8 p=.006**
Assistance with money transfers	16%	18%	10%	35%	**$X^2(1)$=48 p<.001**	16%	19%	$X^2(1)$=.6 p=.451
Practicalities (soap, books, medicines)	11%	12%	8%	20%	**$X^2(1)$=16 p<.001**	13%	12%	$X^2(1)$=.2 p=.694
Consular staff attends trial	10%	12%	9%	16%	**$X^2(1)$=5 P=.028**	8%	13%	$X^2(1)$=.3 p=.105
Monitoring legal case	7%	8%	7%	10%	$X^2(1)$=1 P=.221	7%	8%	$X^2(1)$=.1 p=.713
Emergency financial loan	2%	2%	2%	3%	$X^2(1)$=.3 p=.604	0%	3%	$X^2(1)$=5 p=.032

[1] Dutch prisoners detained outside Europe are eligible to receive a monthly allowance from the embassy.

Probation Service								
Type of assistance	**Overall** (n=584)	**Overall** (n=331)	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**
Visit from volunteer	33%	58%	59%	57%	$X^2(1)$=.1 p=.784	58%	60%	$X^2(1)$=.3 p=.613
Attention to personal situation	22%	39%	40%	37%	$X^2(1)$=.3 p=.560	39%	39%	$X^2(1)$=0 p=.981
Information material	18%	31%	36%	21%	**$X^2(1)$=9 p=.003**	41%	29%	**$X^2(1)$=5 p=.033**
Assistance organising things at home	17%	30%	34%	23%	$X^2(1)$=4 p=.054	36%	28%	$X^2(1)$=2 P=.138
Contact with family at home	16%	28%	30%	24%	$X^2(1)$=1 p=.238	34%	26%	$X^2(1)$=2 p=.153
Participation in study course by EABT	16%	28%	30%	25%	$X^2(1)$=.8 p=.357	29%	29%	$X^2(1)$=0 p.930
Assistance during transfer procedures	15%	26%	28%	21%	$X^2(1)$=2 p=.141	27%	24%	$X^2(1)$=.3 p=.561
Preparations for return to society	12%	21%	24%	13%	**$X^2(1)$=5 p=.020**	21%	18%	$X^2(1)$=.6 p=.427
Social inquiry report	10%	18%	23%	10%	**$X^2(1)$=8 P=.004**	18%	18%	$X^2(1)$=0 p=854
Being provided with essentials	6%	11%	6%	21%	**$X^2(1)$=19 p<.001**	7%	14%	$X^2(1)$=3 P=.078
Correspondence with volunteer	5%	9%	12%	4%	**$X^2(1)$=6 p=.016**	9%	8%	$X^2(1)$=.1 P=.715
Volunteer attends trial	4%	7%	8%	5%	$X^2(1)$=1 p=.250	9%	5%	$X^2(1)$=2 P=.208
Epafras								
Type of assistance	**Overall** (n=584)	**Overall** (n=255)	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**
Magazine 'Gezant'	34%	79%	75%	84%	$X^2(1)$=3 P=.089	80%	82%	$X^2(1)$=.1 p=.811

Visit from a chaplain	24%	54%	40%	73%	**$X^2(1)$=28 p<.001**	49%	59%	$X^2(1)$=2 p=.161
Religious literature	17%	38%	35%	41%	$X^2(1)$=1 P=.326	38%	40%	$X^2(1)$=.1 p=.740
Correspondence with volunteer	9%	21%	24%	17%	$X^2(1)$=2 P=205	23%	21%	$X^2(1)$=.1 p=.734
Maintaining contact with family at home	7%	15%	13%	18%	$X^2(1)$=1 P=.289	12%	17%	$X^2(1)$=.9 p=.341
Material support	3%	7%	9%	4%	$X^2(1)$=3 P=.085	8%	5%	$X^2(1)$=.7 p=.392

Most appreciated types of assistance

Ministry of Foreign Affairs										
Type of assistance	**Overall** (n=515)	**Assistance** 3x (n=139)	**Visit** (n=46)	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**	**No assistance** (n=87)
Personal visit from consular staff	61%	66%	83%	61 %	62 %	$X^2(1)$=.1 p=.811	64 %	63 %	$X^2(1)$=0 p=.893	31%
Information about legal proceedings	47%	51%	61%	45 %	49 %	$X^2(1)$=.8 p=.364	46 %	48 %	$X^2(1)$=.2 p=.651	36%
Assistance with prison transfers	43%	45%	59%	46 %	37 %	**$X^2(1)$=5 p=.031**	48 %	43 %	$X^2(1)$=1 p=.298	37%
Attention to medical health	41%	42%	61%	36 %	49 %	**$X^2(1)$=9 p=.003**	39 %	42 %	$X^2(1)$=.3 p=.600	33%
Maintaining contact with family at home	35%	35%	35%	35 %	37 %	$X^2(1)$=.2 p=.653	41 %	32 %	**$X^2(1)$=4 p=.050**	24%
Monitoring treatment of prisoner	35%	37%	39%	33 %	39 %	$X^2(1)$=2 p=.155	37 %	35 %	$X^2(1)$=.2 p=.686	31%
Monitoring legal case	33%	37%	44%	30 %	40 %	**$X^2(1)$=6 p=.017**	38 %	31 %	$X^2(1)$=2 p=.133	28%
Consular staff attends trial	24%	25%	33%	22 %	27 %	$X^2(1)$=2 p=.210	23 %	24 %	$X^2(1)$=.1 p=.820	26%

Monthly allowance of €30	20%	23%	37%	8 %	42 %	**$X^2(1)$=81 p<.001**	19 %	20 %	$X^2(1)$=0 p=.935	13%
Emergency financial loan	18%	14%	20%	17 %	19 %	$X^2(1)$=.3 p=.605	17 %	18 %	$X^2(1)$=.2 p=.674	25%
Practicalities (soap, books, medicines)	16%	21%	28%	13 %	22 %	**$X^2(1)$=7 p=.007**	16 %	16 %	$X^2(1)$=0 p=.930	17%
Assistance with money transfers	15%	16%	20%	14 %	19 %	$X^2(1)$=2 p=.147	19 %	13 %	$X^2(1)$=2 p=.127	17%
Probation Service										
Type of assistance	**Overall** (n=331)	**Assistance** 3x (n=139)	**Visit** (n=46)	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**	**No assistance** (n=282)
Visit from volunteer	54%	58%	89%	57%	48%	$X^2(1)$=2 p=.135	56 %	56 %	$X^2(1)$=0 p=.930	40%
Attention to personal situation	47%	50%	65%	48%	44%	$X^2(1)$=.6 p=.447	52 %	44 %	$X^2(1)$=2 p=.150	42%
Assistance during transfer procedures	46%	44%	44%	51%	38%	**$X^2(1)$=5 p=.025**	47 %	48 %	$X^2(1)$=0 p=.851	52%
Assistance organising things at home	38%	43%	44%	40%	33%	$X^2(1)$=2 p=.194	47 %	35 %	$X^2(1)$=4 p=.054	32%
Preparations for return in society	35%	37%	37%	38%	30%	$X^2(1)$=2 p=.121	35 %	35 %	$X^2(1)$=0 p=.969	39%
Contact with family at home	32%	34%	39%	35%	27%	$X^2(1)$=2 p=.117	38 %	31 %	$X^2(1)$=1 p=.241	28%
Participation in study course by EABT	27%	30%	30%	28%	25%	$X^2(1)$=.2 p=.624	32 %	24 %	$X^2(1)$=2 p=.141	25%
Information material	26%	25%	26%	28%	21%	$X^2(1)$=2 p=.141	34 %	23 %	**$X^2(1)$=4 p=.043**	23%
Social inquiry report	18%	20%	24%	21%	13%	$X^2(1)$=3 p=.068	23 %	15 %	$X^2(1)$=3 p=.077	14%
Being provided with essentials	16%	19%	24%	14%	21%	$X^2(1)$=3 p=.075	18 %	15 %	$X^2(1)$=.6 p=.451	21%
Volunteer attends trial	14%	18%	26%	17%	10%	$X^2(1)$=3 p=.100	18 %	12 %	$X^2(1)$=2 p=.197	16%
Correspondence with volunteer	11%	12%	30%	12%	7%	$X^2(1)$=2 p=.143	13 %	9 %	$X^2(1)$=1 p=.261	14%

Epafras										
Type of assistance	**Overall** (n=255)	**Assistance** 3x (n=139)	**Visit** (n=46)	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**	**No assistance** (n=349)
Magazine 'Gezant'	60%	64%	67%	63%	58%	$X^2(1)$=.6 p=.433	58%	64%	$X^2(1)$=.8 p=.369	49%
Visit from a chaplain	53%	56%	78%	44%	65%	**$X^2(1)$=11 p=.001**	44%	59%	**$X^2(1)$=4 p=.035**	34%
Religious literature	30%	37%	39%	30%	30%	$X^2(1)$=0 p=.982	30%	30%	$X^2(1)$=0 p=.914	26%
Maintaining contact with my family at home	27%	30%	28%	30%	23%	$X^2(1)$=1 p=.251	35%	23%	$X^2(1)$=3 p=.066	21%
Material support	17%	19%	20%	18%	15%	$X^2(1)$=.3 p=.562	17%	17%	$X^2(1)$=0 p=.985	23%
Correspondence with chaplain	17%	20%	24%	20%	14%	$X^2(1)$=2 p=.165	23%	15%	$X^2(1)$=2 p=.146	17%

Impact consular assistance on detention experience

Theme	Overall	No assistance	Assistance	Test
Hygiene[1] M(SD) (1=very bad, 5=very good)	3.2(1.0)	3.1(1.2)	3.3(1.0)	t(208)=-.5 p=.636
Safety[2] M(SD) (1=very unsafe, 5= very safe)	2.6(0.7)	2.6(0.7)	2.6(0.8)	t(357)=-.2 p=826
Rules and Rights[3] M(SD) (1=totally disagree, 5=totally agree)	2.7(0.9)	2.6(0.9)	2.7(0.9)	t(441)=-.9 p=.363
Activities M(SD) (1=totally disagree, 5=totally agree)	2.4(0.9)	2.6(0.8)	2.4(0.9)	t(171)=.6 p=.579
Medical care[4] M(SD) (1=very bad, 5=very good)	2.5(1.0)	2.4(1.1)	2.6(1.0)	t(250)=-.7 p=.511
Contact outside world[5] M(SD) (1=very little contact, 5=very much)	3.0(0.8)	2.7(0.8)	3.0(0.8)	t(227)=-1.7 p=.085
Interaction with prison staff[6] M(SD) (1=very unsatisfied, 5=very satisfied)	2.4(0.8)	2.2(0.8)	2.4(0.8)	t(326)=-1.5 p=.141
Interaction with prisoners[7] M(SD) (1=very unsatisfied, 5=very satisfied)	3.0(0.7)	2.7(0.8)	3.1(0.7)	t(384)=-2.2 p=.028
Reintegration activities[8] M(SD) (1=very unsatisfied, 5=very satisfied)	2.3(0.8)	2.3(0.7)	2.3(0.8)	t(283)=-.3 p=.767
Expectations future[9] M(SD) (1=very unsatisfied, 5=very satisfied)	3.8(0.7)	3.6(0.8)	3.8(0.7)	t(379)=-1.5 p=.146

A 5-point Likert scale ranging from totally disagree (1) to totally agree (5) was used for the ratings.

[1] The overall score is based on the ratings of 9 statements. An example statement is: "It is clean in the showers".
[2] The overall score is based on the ratings of 7 statements. An example statement is: "Prison staff protects me when other prisoners are violent to me".
[3] The overall score is based on the ratings of 5 statements. An example statement is: "I am aware of the consequences when breaking prison rules".
[4] The overall score is based on the ratings of 5 statements. An example statement is: "I am satisfied about the work of the dentist".
[5] The overall score is based on the ratings of 7 statements. An example statement is: "I can easily get things (for example clothes) from outside prison".
[6] The overall score is based on the ratings of 9 statements. An example statement is: "Prison staff is nice to me".
[7] The overall score is based on the ratings of 7 statements. An example statement is: "New prisoners are quickly welcomed in the group".
[8] The overall score is based on the ratings of 7 statements. An example statement is: "I can educate myself in things that are useful after my release".
[9] The overall score is based on the ratings of 6 statements. An example statement is: "I think I can make a fresh start after my detention".

Impact consular assistance on special needs

Well-being and treatment prisoner									
Organisation	**Statements**	**Score**	**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**
Epafras	Thanks to Epafras' chaplain I feel spiritually supported	++	3.9(1.0)	3.9(1.1)	3.9(0.9)	t(177)=-0.5 p=.639	3.8(1.1)	3.9(0.9)	t(168)=-0.9 p=.345
Ministry of Foreign Affairs	Visit by consular staff after arrest made me feel that I was not left on my own	++	3.8(1.1)	3.9(1.1)	3.8(1.1)	t(440)=1.0 p=.299	3.8(1.1)	3.8(1.1)	t(413)=0.0 p=.993
Probation Service	Thanks to attention from the volunteer I feel emotionally supported	++	3.7(1.1)	3.7(1.0)	3.6(1.3)	t(119)=0.7 p=.515	3.8(1.1)	3.6(1.1)	t(217)=1.6 p=.111
	Thanks to contact with the volunteer I feel less lonely	++	3.6(1.2)	3.7(1.1)	3.5(1.4)	t(155)=0.9 p=.348	3.6(1.2)	3.6(1.2)	t(215)=-0.1 p=.938
Awareness of legal procedures and rights									
Organisation	**Statements**	**Score**	**Mean**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**
Ministry of Foreign Affairs	Information from Dutch embassy about legal proceedings in country of detention is of great value	++	4.2(1.0)	4.3(0.9)	4.1(1.0)	t(466)=1.7 p=.099	4.3(0.9)	4.2(0.9)	t(441)=1.4 p=.151
Probation Service	My detention situation improved thanks to info and advice from the volunteer	+	3.3(1.3)	3.3(1.2)	3.3(1.4)	t(225)=0.2 p=.841	3.4(1.2)	3.2(1.3)	t(213)=0.6 p=.542
Contact with outside world and family									
Organisation	**Statements**	**Score**	**Mean**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**
Epafras	Thanks to the magazine 'Gezant' I do not feel alone	++	4.1(1.0)	4.2(0.9)	4.1(1.0)	t(221)=0.9 p=.372	3.9(1.2)	4.2(0.9)	**t(209)=-2.3 p=.023**
Ministry of Foreign Affairs	Contact between Dutch diplomatic mission and my contact-person makes me calmer	++	3.8(1.1)	3.9(1.1)	3.7(1.0)	t(380)=1.2 p=.247	4.0(1.0)	3.7(1.1)	**t(376)=2.4 p=.019**
	I am able to arrange practicalities					t(213)=0.9			t(202)=1.0

Probation Service	the Probation Service								
	My contact with family at home has positively been influenced by the Dutch Probation Service	0	2.9(1.3)	3.0(1.2)	2.7(1.3)	t(200)=1.8 p=.078	2.8(1.2)	3.0(1.3)	t(190)=-0.9 p=.352
Social inclusion within the prison									
Organisation	**Statements**	**Score**	**Mean**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**
Ministry of Foreign Affairs	I can use the monthly €30 of the Dutch embassy very well	++	3.9(1.2)	3.5(1.4)	4.3(0.9)	**t(288)=-5.6p=.000**	3.8(1.2)	3.9(1.2)	t(292)=-0.6 p=.538
Epafras	A personal conversation with chaplain of Epafras helps me to cope better with my situation	++	3.8(1.1)	3.8(1.1)	3.8(1.1)	t(181)=0.2 p=.876	3.7(1.0)	3.8(1.1)	t(171)=-0.8 p=.431
Ministry of Foreign Affairs	Attention by Dutch diplomatic mission for my health is beneficial	++	3.7(1.2)	3.8(1.2)	3.7(1.3)	t(410)=0.5 p=.605	3.7(1.3)	3.8(1.2)	t(386)=-0.2 p=.806
Probation Service	Thanks to visits by volunteer my detention feels less difficult.	++	3.6(1.2)	3.5(1.2)	3.6(1.3)	t(232)=-0.2 p=.879	3.4(1.3)	3.5(1.2)	t(214)=-0.5 p=.635
Preparations for release and aftercare									
Organisation	**Statements**	**Score**	**Mean**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Post-trial**	**Test**
Ministry of Foreign Affairs	Thanks to assistance from the diplomatic mission I maintain a connection with the Netherlands	++	3.7(1.2)	3.8(1.2)	3.6(1.3)	**t(284)=2.3 p=.021**	3.9(1.2)	3.7(1.2)	t(417)=1.7 p=.097
Epafras	Thanks to religious assistance from Epafras I learn more about myself and what I want in life	++	3.6(1.1)	3.7(1.1)	3.4(1.1)	t(176)=1.5 p=.148	3.6(1.1)	3.5(1.1)	t(166)=0.2 p=.846
Probation Service	I can prepare my return to society better thanks to assistance from the Dutch Probation Service	+	3.4(1.3)	3.6(1.3)	3.2(1.4)	**t(118)=2.0 p=.049**	3.4(1.3)	3.4(1.3)	t(206)=-0.2 p=.852
	Thanks to assistance from the Dutch Probation Service I am less likely to reoffend after my return to the Netherlands	0	3.2(1.4)	3.3(1.4)	3.0(1.5)	t(210)=1.7 p=.089	3.2(1.5)	3.2(1.4)	t(201)=-0.3 p=.773

Annex chapter 10 Resettlement in the Netherlands

Expectations		Overall	EU	Non-EU	Test	Pre-trial	Sentenced	Test
Expectations about future	Go to the Netherlands after release	86%	89%	80%	X^2**(3)=16 P< .001**	82%	88%	X^2(3)=4 p=.317
	Stay in country of detention after release	3%	3%	4%		3%	3%	
	Go to another country after release	3%	3%	2%		4%	2%	
	Don't know where to go after release	8%	5%	15%		11%	7%	
	Prisoner is going to Amsterdam	23%	21%	27%	X^2**(4)=16 p=.004**	21%	23%	X^2(4)=6 p=.209
	Prisoner is going to Rotterdam	21%	19%	25%		19%	23%	
	Prisoner is going to The Hague	7%	6%	12%		8%	8%	
	Prisoner is going to Utrecht	5%	5%	5%		8%	3%	
	Prisoner is going to somewhere else	44%	50%	32%		45%	43%	
Needs		**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Sentenced**	**Test**
Expected needs upon return to the Netherlands	Housing	56%	57%	54%	X^2(1)=.5 p=.497	51%	59%	X^2(1)=3 p=.096
	Work	56%	55%	58%	X^2(1)=.4 p=.544	57%	58%	X^2(1)=.1 p=.800
	To apply for social benefits	47%	50%	41%	X^2(1)=3 p=.067	46%	48%	X^2(1)=.1 p=.767
	Arranging official papers	46%	46%	46%	X^2(1)=0 p=.941	45%	48%	X^2(1)=.4 p=..533
	Shelter directly after release	33%	33%	33%	X^2(1)=0 p=.888	36%	32%	X^2(1)=.6 p=.426
	Medical care	32%	29%	39%	X^2**(1)=5 p=.021**	31%	33%	X^2(1)=.3 p=.581
	Mental care	27%	29%	22%	X^2(1)=3 p=.111	30%	27%	X^2(1)=.5 p=.486
	Education	24%	24%	26%	X^2(1)=.5 p=.498	26%	24%	X^2(1)=.3 p=.595
	To make contact with relatives	23%	21%	24%	X^2(1)=.5 p=.469	23%	22%	X^2(1)=0 p=.840
Support		**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Sentenced**	**Test**
Expectations	Prisoner expects support after release	77%	75%	83%	X^2**(1)=4 p=.049**	80%	77%	X^2(1)=.5 p=.502
Expected support from	Family / friends	58%	56%	62%	X^2(1)=1 p=.245	60%	58%	X^2(1)=.1 p=.768
	Dutch Probation Service	46%	49%	41%	X^2(1)=2 p=.153	47%	45%	X^2(1)=.1 p=.808
	Municipality	35%	37%	32%	X^2(1)=1	38%	34%	X^2(1)=.5

					p=.360			p=.499
	Religious organisation Epafras	13%	12%	14%	$X^2(1)=.4$ p=.507	12%	13%	$X^2(1)=.2$ p=.629
	Dutch prison service	6%	8%	4%	$X^2(1)=2$ p=.149	3%	8%	$X^2(1)=3$ p=.063
	National mental health care service	6%	7%	5%	$X^2(1)=1$ p=.315	6%	6%	$X^2(1)=.1$ p=.796
	Salvation Army	5%	5%	5%	$X^2(1)=0$ p=.988	6%	4%	$X^2(1)=.6$ p=.456
Recidivism		**Overall**	**EU**	**Non-EU**	**Test**	**Pre-trial**	**Sentenced**	**Test**
Expectations	Prisoner expects to be in contact with justice / re-offend after release	15%	14%	17%	$X^2(1)=.4$ p=.509	12%	17%	$X^2(1)=2$ p=.160
General reasons for recidivism	Lack of money	60%	56%	68%	$X^2(1)=2$ p=.215	52%	67%	$X^2(1)=2$ p=.145
	No housing	55%	50%	63%	$X^2(1)=2$ p=.182	48%	61%	$X^2(1)=1$ p=.257
	No support	35%	27%	50%	X^2**(1)=6 p=.014**	28%	37%	$X^2(1)=1$ p=.372
	Bad mental care	23%	30%	11%	X^2**(1)=5 p=.023**	24%	24%	$X^2(1)=0$ p=.961
	Lack of social contacts	22%	22%	24%	$X^2(1)=.1$ p=.819	28%	20%	$X^2(1)=1$ p=.385
	No papers	21%	18%	29%	$X^2(1)=2$ p=.176	24%	24%	$X^2(1)=0$ p=.961
	Bad medical care	20%	22%	16%	$X^2(1)=.6$ p=.446	17%	20%	$X^2(1)=.1$ p=.771
	No alternative	19%	14%	29%	$X^2(1)=4$ p=.056	24%	17%	$X^2(1)=1$ p=.412
	No contact with family	18%	14%	26%	$X^2(1)=3$ p=.109	14%	18%	$X^2(1)=.3$ p=.574
	Lack of education	16%	13%	21%	$X^2(1)=1$ p=.250	17%	17%	$X^2(1)=0$ p=.987
	Addiction	12%	9%	18%	$X^2(1)=2$ p=.143	7%	13%	$X^2(1)=1$ p=.367
General reasons to avoid recidivism	Regular income	22%	20%	26%	$X^2(1)=3$ p=.097	16%	25%	X^2**(1)=6 p=.016**
	Housing	16%	14%	20%	$X^2(1)=3$ p=.101	10%	19%	X^2**(1)=8 p=.006**
	Support	11%	9%	13%	$X^2(1)=2$ p=.191	8%	12%	$X^2(1)=2$ p=.154
	Contact family	7%	8%	6%	$X^2(1)=.7$	6%	8%	$X^2(1)=1$

					p=.419			p=.386
	Social contacts	7%	7%	7%	$X^2(1)=0$ p=.836	6%	7%	$X^2(1)=.2$ p=.697
	Education	7%	7%	8%	$X^2(1)=.4$ p=.513	4%	9%	$X^2(1)=4$ p=.060
	Good medical care	7%	7%	8%	$X^2(1)=.2$ p=.665	6%	8%	$X^2(1)=1$ p=.386
	Good mental care	7%	8%	5%	$X^2(1)=2$ p=.200	6%	8%	$X^2(1)=1$ p=.386
	Official papers	6%	5%	6%	$X^2(1)=0$ p=.915	6%	6%	$X^2(1)=0$ p=.878
	Treatment of addiction	2%	2%	3%	$X^2(1)=1$ p=.221	1%	3%	X^2 (1)=3 p=.112
Personal reasons to avoid recidivism	Detention experience abroad	54%	55%	52%	$X^2(1)=.4$ p=.539	48%	61%	**$X^2(1)=7$ p=.008**
	Prisoner can go back to own family	37%	37%	39%	$X^2(1)=.3$ p=.600	39%	38%	$X^2(1)=0$ p=.928
	Prisoner is mentally fit	32%	31%	34%	$X^2(1)=.3$ p=.560	35%	31%	$X^2(1)=1$ p=.279
	Prisoner is physically fit	28%	30%	25%	$X^2(1)=1$ p=.297	29%	29%	$X^2(1)=0$ p=.957
	Prisoner can go back to own home	19%	19%	18%	$X^2(1)=.1$ p=.778	21%	18%	$X^2(1)=.5$ p=.493
	Prisoner has a profession and will find a job	19%	18%	21%	$X^2(1)=1$ p=.310	18%	19%	$X^2(1)=.1$ p=.754
	Prisoner is not addicted (anymore)	15%	17%	10%	**$X^2(1)=5$ p=.026**	15%	16%	$X^2(1)=0$ p=.852
	Prisoner can stay with friends	11%	11%	12%	$X^2(1)=.1$ p=.770	11%	11%	$X^2(1)=0$ p=.980
	Prisoner can go back to own job	11%	10%	11%	$X^2(1)=0$ p=.849	11%	11%	$X^2(1)=0$ p=.903
	Prisoner has sufficient income	8%	9%	8%	$X^2(1)=.1$ p=.790	10%	8%	$X^2(1)=1$ p=.468

Annex 11 UN and Council of Europe Recommendation on Foreign national prisoners

UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners

Adopted by the Seventh Crime Congress, Milan, 26 August-6 September 1985, and endorsed by the General Assembly in resolution 40/32

The social resettlement of offenders should be promoted by quickly facilitating the return of persons convicted of crime abroad to their home country to serve their sentence.

Prisoner transfer should take place where the offense in question is punishable by deprivation of liberty in both sending (sentencing) and receiving (administering) countries.

A transfer may be requested by either the sentencing or the administering State. A transfer shall be dependent on the consent of both States and the prisoner as well. The administering State should be given the opportunity to verify the free consent of the prisoner.

At the time of request for a transfer, as a general rule, the prisoner shall have at least six months of the sentence remaining to be served.

The administering State shall either continue enforcement of the sentence or convert the sentence to one prescribed by its law for a corresponding offense.

In the case of continued enforcement, the administering State shall be bound by the sentence determined by the sentencing State. It may, however, adapt the sanction to the punishment prescribed by its own law for the offense, but a sanction involving deprivation of liberty shall not be converted to a pecuniary sanction.

The administering State shall be bound by the findings of the sentencing State, which has the sole competence for review of the sentence.

Costs incurred as a result of a transfer shall be borne by the administering State, unless otherwise decided by both States.

Both the sentencing and administering States shall be competent to grant pardon and amnesty.

RECOMMENDATIONS ON THE TREATMENT OF FOREIGN PRISONERS

Foreign prisoners should have the same access as national prisoners to education, work and vocational training.

Foreign prisoners should be eligible for alternative measures to imprisonment according to the same principles as nationals.

The religious precepts and customs of foreign prisoners should be respected.

Foreign prisoners should be informed, in a language they understand, of the prison regime and regulations as well as their right to request contact with consular authorities. Proper assistance should be given in dealings with medical or programme staff and concerning such matters as complaints, special diets and religious representation and counseling.

Contacts should be facilitated between foreign prisoners and their families and with humanitarian international organizations.

Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners

Adopted by the Committee of Ministers on 10 October 2012 at the 1152nd meeting of the Ministers' Deputies

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, in particular through harmonising laws on matters of common interest;

Considering the large number of foreign prisoners detained in the prisons in its member States;

Recognising the difficulties which these prisoners may face on account of such factors as differences in language, culture, customs and religion, and lack of family ties and contact with the outside world;

Desirous of alleviating any possible isolation of foreign prisoners and of facilitating their treatment with a view to their social reintegration;

Considering that such treatment should take into account the special needs of foreign prisoners, arising from the fact that they are detained in a State of which they are neither a national nor a resident, in order to provide them with opportunities equal to those of other prisoners;

Taking into account:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);

- the Convention on the Transfer of Sentenced Persons (ETS No. 112);

- the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167);

- Recommendation Rec(92)16 on the European rules on community sanctions and measures;

- Recommendation Rec(92)17 concerning consistency in sentencing;

- Recommendation Rec(93)6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison;

- Recommendation Rec(97)12 on staff concerned with the implementation of sanctions and measures;

- Recommendation Rec(98)7 concerning the ethical and organisational aspects of health care in prison;

- Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation;

- Recommendation Rec(2003)22 on conditional release (parole);

- Recommendation Rec(2006)2 on the European Prison Rules;

- Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;

- Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures;

- Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules;

Bearing in mind:

The United Nations Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners (1985);

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Resolution 2010/16);

The European Union Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union;

The European Union Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;

The European Union Council Framework Decision 2009/829/JHA on the application, between member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention;

Considering that Recommendation Rec(84)12 of the Committee of Ministers to member States concerning foreign prisoners needs to be replaced by a new recommendation reflecting the developments since then in penal policy, sentencing practice and the overall management of prisons in Europe;

Taking into account the constitutional principles, legal traditions and the independence of the judiciary in its member States;

Recognising that a range of authorities and agencies deal with foreign persons who are subject to criminal proceedings, sanctions or measures, and that such bodies are in need of a coherent set of guiding principles in line with Council of Europe standards,

Recommends that governments of member States:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation, which replaces Recommendation Rec(84)12 of the Committee of Ministers to member States concerning foreign prisoners;

- ensure that this recommendation and the accompanying commentary to its text are translated and disseminated as widely as possible and more specifically to all relevant authorities, agencies, professionals and associations which deal with foreign prisoners, as well as to the prisoners themselves.

Appendix to Recommendation CM/Rec(2012)12

I. Definitions and scope

Definitions

1. For the purpose of this recommendation:

a. **foreign person** means any person who does not have the nationality of and is not considered to be a resident by the State where he or she is;

b. **foreign suspect** means any foreign person who is alleged to have committed but who has not been convicted of a criminal offence;

c. **foreign offender** means any foreign person who has been convicted of a criminal offence;

d. **prison** means an institution reserved primarily for the detention of suspects or offenders;

e. **foreign prisoner** means any foreign person held in prison and a foreign suspect or a foreign offender detained elsewhere;

f. **judicial authority** means a court, a judge or a prosecutor.

Scope

2. This recommendation applies to foreign prisoners and to other foreign persons who are not in prison but who are subject to criminal proceedings, and criminal sanctions and measures, and who may be or have been deprived of their liberty.

II. Basic principles

3. Foreign prisoners shall be treated with respect for their human rights and with due regard for their particular situation and individual needs.

4. Foreign suspects and offenders shall be entitled to be considered for the same range of non-custodial sanctions and measures as other suspects and offenders; they shall not be excluded from consideration on the grounds of their status.

5. Foreign suspects and offenders shall not be remanded in custody or sentenced to custodial sanctions on the grounds of their status, but, as for other suspects and offenders, only when strictly necessary and as a measure of last resort.

6. Foreign offenders sentenced to imprisonment shall be entitled to full consideration for early release.

7. Positive steps shall be taken to avoid discrimination and to address specific problems that foreign persons may face while subject to community sanctions or measures, in prison, during transfer and after release.

8. Foreign prisoners who so require shall be given appropriate access to interpretation and translation facilities and the possibility to learn a language that will enable them to communicate more effectively.

9. The prison regime shall accommodate the special welfare needs of foreign prisoners and prepare them for release and social reintegration.

10. Decisions to transfer foreign prisoners to a State with which they have links shall be taken with respect for human rights, in the interests of justice and with regard to the need to socially reintegrate such prisoners.

11. Sufficient resources shall be allocated in order to deal effectively with the particular situation and specific needs of foreign prisoners.

12. Appropriate training in dealing with foreign suspects and offenders shall be provided for the relevant authorities, agencies, professionals and associations which have regular contact with such persons.

III. Use of remand in custody

13.1. In order to ensure that remand in custody is used for foreign suspects, as for other suspects, only when strictly necessary and as a measure of last resort, it shall be governed by Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

13.2. In particular:

a. alternatives to remand in custody shall always be considered for a foreign suspect; and

b. the fact that such a suspect is neither a national nor a resident of the State or has no other links with that State shall not, in itself, be sufficient to conclude that there is a risk of flight.

IV. Sentencing

14.1. In order to ensure that custodial sanctions are imposed on foreign offenders, as for other offenders, only when strictly necessary and as a measure of last resort, sentencing shall take into consideration Recommendation Rec(92)17 concerning consistency in sentencing. In particular, foreign offenders shall be considered for the same range of non-custodial sanctions or measures as national offenders.

14.2. The judicial authorities shall be provided, where possible and appropriate, with pre-sentence reports about the personal circumstances of foreign offenders and their families, the likely impact of various sanctions on them and the possibility and desirability of their being transferred after sentencing.

14.3. To avoid disproportionate hardship and obstacles to social reintegration, account shall be taken when considering sentences of the possible impact that such sentences may have on individual offenders and their dependants, without prejudice to the independence of the judiciary.

V. Conditions of imprisonment

Admission

15.1. At admission and during detention, foreign prisoners shall be provided with information, in a language they understand, about:

a. their rights and duties as prisoners including regarding contacts with their consular representatives;

b. the main features of the prison regime and the internal regulations;

c. rules and procedures for making requests and complaints; and

d. their rights to legal advice and assistance.

15.2. Immediately after admission, prison authorities shall assist foreign prisoners, who wish to do so, to inform of their imprisonment their families, legal advisers, consular representatives and other persons or organisations competent to assist them.

15.3. As soon as possible after admission, foreign prisoners shall be provided with information, in a language they understand, orally or in writing, of international transfer possibilities.

Allocation

16.1. Decisions regarding the allocation of foreign prisoners shall take into account the need to alleviate their potential isolation and to facilitate their contact with the outside world.

16.2. Subject to the requirements of safety and security, and the individual needs of foreign prisoners, consideration shall be given to housing foreign prisoners in prisons close to transport facilities that would enable their families to visit them.

16.3. Where appropriate and subject to the requirements of safety and security, foreign prisoners shall be allocated to prisons where there are others of their nationality, culture, religion or who speak their language.

Accommodation

17. Decisions on whether to accommodate foreign prisoners together shall be based primarily on their individual needs and the facilitation of their social reintegration, while ensuring a safe and secure environment for prisoners and staff.

Hygiene

18.1. Facilities for sanitation and hygiene shall, as far as practicable, accommodate the cultural and religious preferences of foreign prisoners, while maintaining appropriate medical standards.

18.2. Rules that require prisoners to keep their appearance clean and tidy shall be interpreted in a manner that respects prisoners' cultural and religious preferences, while maintaining appropriate medical standards.

Clothing

19.1. Clothes provided by prison authorities shall not offend the cultural or religious sensibilities of foreign prisoners.

19.2. Where clothes are not provided by the prison authorities, prisoners shall be allowed, subject to the requirements of safety and security, to wear clothes that reflect their cultural and religious traditions.

Nutrition

20. In addition to providing a nutritious diet that takes account of the cultural and religious requirements of prisoners, prison authorities shall, where possible, provide prisoners with opportunities to purchase and cook food that makes their diet more culturally appropriate and to take their meals at times that meet their religious requirements.

Legal advice and assistance

21.1. Foreign prisoners shall be informed, in a language they understand, about their right to legal advice on matters affecting their detention and status.

21.2. Foreign prisoners shall be informed about possible legal aid and, where necessary, assisted in accessing such legal aid.

21.3. Foreign prisoners who need to communicate with their legal adviser shall be allowed access to interpretation where necessary.

21.4. Prison authorities shall facilitate the provision of administrative and legal assistance to foreign prisoners by approved outside agencies.

21.5. Foreign prisoners who are subject to disciplinary proceedings shall be assisted by an interpreter where necessary.

Contact with the outside world

22.1. To alleviate the potential isolation of foreign prisoners, special attention shall be paid to the maintenance and development of their relationships with the outside world, including contacts with family and friends, consular representatives, probation and community agencies and volunteers.

22.2. Unless there is a specific concern in individual cases related to safety and security, foreign prisoners shall be allowed to use a language of their choice during such contacts.

22.3. Rules for making and receiving telephone calls and other forms of communication shall be applied flexibly to ensure that foreign prisoners who are communicating with persons abroad have equivalent access to such forms of communication as other prisoners.

22.4. Indigent foreign prisoners shall be assisted with the costs of communicating with the outside world.

22.5. In order to optimise contact, visits to foreign prisoners from family members who live abroad shall be arranged in a flexible manner, which may include allowing prisoners to combine their visit entitlements.

22.6. Support and information shall be provided to the extent possible to enable family members who live abroad to visit foreign prisoners.

22.7. Special measures shall be taken to encourage and enable foreign prisoners to maintain regular and meaningful contact with their children.

22.8. Arrangements shall be made to facilitate visits, correspondence and other forms of communication by children with their imprisoned parent, in particular when they live in a different State.

22.9. The authorities shall endeavour to ensure that foreign prisoners are able to inform family members about the prison or other facility in which they are held or to which they have been transferred.

22.10. In cases of emergency and where the foreign prisoner has given prior consent, the prison authorities shall endeavour to inform family members of the death, serious illness or serious injury of such a prisoner.

22.11. The authorities shall endeavour to keep up-to-date contact details of family members of foreign prisoners.

23.1. Foreign prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to newspapers, periodicals or other publications in a language they understand.

23.2. To the extent possible, foreign prisoners shall be given access to radio or television broadcasts or other forms of communication in a language they understand.

23.3. Probation agencies, approved associations and volunteers providing support to foreign prisoners shall be given access to such prisoners who wish to have contact with them.

Contact with consular representatives

24.1. Foreign prisoners have the right to regular contact with their consular representatives.

24.2. Foreign prisoners shall be given reasonable facilities to communicate with their consular representatives.

24.3. Foreign prisoners who are without consular representation in the country in which they are detained have the right to regular contact and to facilities to communicate with representatives of the State which takes charge of their interests.

24.4. Foreign prisoners who are refugees, asylum seekers or stateless have the right to communicate with representatives of the national or international authorities whose task it is to serve the interests of such prisoners.

25.1. Prison authorities shall inform foreign prisoners about their right to request contact with their consular representatives or representatives of national or international authorities whose task it is to serve their interests.

25.2. Prison authorities shall, subject to the prisoner's request, inform consular representatives about their nationals held in prison.

25.3. Prison authorities shall co-operate fully with consular representatives and national or international authorities whose task is to serve the interests of foreign prisoners.

25.4. Prison authorities shall keep a record of instances where foreign prisoners waive their right to contact their consular representatives and of visits by consular representatives to foreign prisoners.

Prison regime

26.1. In order to ensure equal access to a balanced programme of activities, prison authorities shall, where necessary, take specific measures to counter the difficulties foreign prisoners may face.

26.2. Access to activities shall not be restricted because the prisoners concerned may be transferred, extradited or expelled.

Work

27.1. Foreign prisoners shall have access, where appropriate, to suitable work and vocational training, including programmes outside prison.

27.2. Where necessary, specific measures shall be taken to ensure that foreign prisoners have access to income-producing work.

27.3. Foreign prisoners may transfer at least a part of their earnings to family members who are resident abroad.

27.4. Foreign prisoners who work and contribute to the social security system of the State in which they are imprisoned shall be allowed, where possible, to transfer the benefits of such contributions to their State of nationality or another State.

Exercise and recreation

28.1. Exercise and recreational activities shall be arranged flexibly to enable foreign prisoners to participate in a manner that respects their culture.

28.2. Prison authorities shall encourage activities that promote positive relations amongst prisoners from the same culture and between prisoners from different backgrounds.

Education and training

29.1. To enable foreign prisoners to relate effectively to other prisoners and staff, they shall be given the opportunity and be encouraged to learn a language that allows them to communicate, and to study local culture and traditions.

29.2. To ensure that educational and vocational training is as effective as possible for foreign prisoners, prison authorities shall take account of their individual needs and aspirations, which may include working towards qualifications that are recognised and can be continued in the country in which they are likely to reside after release.

29.3. The prison library shall be stocked as far as possible with reading materials and other resources that reflect the linguistic needs and cultural preferences of the foreign prisoners in that prison and are easily accessible.

Freedom of religion or belief

30.1. Prisoners shall have the right to exercise or change their religion or belief and shall be protected from any compulsion in this respect.

30.2. Prison authorities shall, as far as practicable, grant foreign prisoners access to approved representatives of their religion or belief.

Health

31.1. Foreign prisoners shall have access to the same health care and treatment programmes that are available to other prisoners.

31.2. Sufficient resources shall be provided to deal with specific health problems which may be faced by foreign prisoners.

31.3. Medical and health care staff working in prisons shall be enabled to deal with specific problems and diseases which may be encountered by foreign prisoners.

31.4. To facilitate the health care of foreign prisoners, attention shall be paid to all aspects of communication. Such communication may require the use of an interpreter who is acceptable to the prisoner concerned and who shall respect medical confidentiality.

31.5. Health care shall be provided in a way that is not offensive to cultural sensitivities and requests by foreign prisoners to be examined by a medical practitioner of the same gender shall be granted as far as possible.

31.6. Where possible, psychiatric and mental health care shall be provided by specialists who have expertise in dealing with persons from different religious, cultural and linguistic backgrounds.

31.7. Attention shall be paid to preventing self harm and suicide among foreign prisoners.

31.8. Consideration shall be given to the transfer of foreign prisoners, who are diagnosed with terminal illnesses and who wish to be transferred, to a country with which they have close social links.

31.9. Steps shall be taken to facilitate the continuation of medical treatment of foreign prisoners who are to be transferred, extradited or expelled, which may include the provision of medication for use during transportation to that State and, with the prisoners' consent, the transfer of medical records to the medical services of another State.

Good order, safety and security

32.1. Prison staff shall ensure that good order, safety and security are maintained through a process of dynamic security and interaction with foreign prisoners.

32.2. Prison staff shall be alert to potential or actual conflicts between groups within the prison population that may arise due to cultural or religious differences and inter-ethnic tensions.

32.3. To ensure safety in prison, every effort shall be made to enhance mutual respect and tolerance and prevent conflict between prisoners, prison staff or other persons working or visiting the prison, who come from different backgrounds.

32.4. The nationality, culture or religion of a prisoner shall not be the determinative factors in the assessment of the risk to safety and security posed by such prisoner.

Women

33.1. Special measures shall be taken to combat the isolation of foreign women prisoners.

33.2. Attention shall be paid to meeting the psychological and healthcare needs of foreign women prisoners, especially those who have children.

33.3. Arrangements and facilities for pre-natal and post-natal care shall respect cultural and religious diversity.

Infant children

34.1. When deciding whether it would be in the best interests of an infant child of a foreign prisoner to be kept in prison, particular consideration shall be given to:

a. the conditions in which the child would be held in prison;

b. the conditions that would apply if the child is kept outside prison; and

c. the views of the legal guardians of the child.

34.2. Arrangements and facilities for the care of infant children who are in prison with their parent shall respect cultural and religious diversity.

34.3. The legal status of any infant children in prison with their foreign parent shall be determined as early as possible during the sentence of that parent, with special care being taken to resolve cases where children born in prison have a different nationality to that of their parent.

VI. Release

Preparation for release

35.1. Preparation for release of foreign prisoners shall start in good time and in a manner that facilitates their reintegration into society.

35.2. In order to facilitate the reintegration of foreign prisoners into society:

a. their legal status and their situation after release shall be determined as early as possible during their sentence;

b. where appropriate, prison leave and other forms of temporary release shall be granted to them; and

c. they shall be assisted in making or re-establishing contact with family, friends and relevant support agencies.

35.3. Where foreign prisoners are to remain in the State in which they were held after release, they shall be provided with support and care by prison, probation or other agencies which specialise in assisting prisoners.

35.4. Where foreign prisoners are to be expelled from the State in which they are being held, efforts shall be made, if the prisoners consent, to contact the authorities in the State to which they are to be sent with a view to ensuring support both immediately upon their return and to facilitate their reintegration into society.

35.5. In order to facilitate continuity of treatment and care where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the competent authorities shall, if the prisoner consents, provide the following information to the State to which the prisoners shall be sent:

a. the treatment the prisoners have received;

b. the programmes and activities in which they have participated;

c. medical records; and

d. any other information that will facilitate continuity of treatment and care.

35.6. Where foreign prisoners may be transferred to another State, they shall be assisted in seeking independent advice about the consequences of such a transfer.

35.7. Where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the authorities of the receiving State shall provide the prisoners with information on conditions of imprisonment, prison regimes and possibilities for release.

Consideration for early release

36.1. Foreign prisoners, like other prisoners, shall be considered for early release as soon as they are eligible and shall not be discriminated against in this respect.

36.2. In particular, steps shall be taken to ensure that detention is not unduly prolonged by delays relating to the finalisation of the immigration status of the foreign prisoner.

Release from prison

37.1. In order to assist foreign prisoners to return to society after release, practical measures shall be taken to provide appropriate documents and identification papers and assistance with travel.

37.2. Where foreign prisoners will return to a country with which they have links and, if the prisoner consents, the consular representatives shall assist them where possible in this regard.

VII. Persons who work with foreign prisoners

Selection

38. Persons who work with foreign prisoners shall be selected on criteria that include cultural sensitivity, interaction skills and linguistic abilities.

Training

39.1. Staff involved in the admission of foreign prisoners shall be appropriately trained to deal with them.

39.2. Persons who work with foreign prisoners shall be trained to respect cultural diversity and to understand the particular problems faced by such prisoners.

39.3. Such training may include learning languages spoken most often by foreign prisoners.

39.4. Training programmes shall be evaluated and revised regularly to ensure they reflect changing populations and social circumstances.

39.5. Persons who deal with foreign suspects and offenders shall be kept informed of current national law and practices and international and regional human rights law and standards relating to their treatment, including this recommendation.

Specialisation

40. Appropriately trained specialists shall be appointed to engage in work with foreign prisoners and to liaise with the relevant agencies, professionals and associations on matters related to such prisoners.

VIII. Policy evaluation

41. The authorities shall regularly evaluate their policies for dealing with foreign suspects and offenders on the basis of scientifically validated research and revise them where appropriate.

Annex 12 Recommendations thesis

Based on the results of this thesis the following recommendations have been formulated:

Prison, judicial and consular authorities should:

1. acknowledge that FNPs experience particular difficulties during detention with regard to both criminal proceedings and resettlement into society after release. FNPs should therefore be regarded as a vulnerable group with distinctive needs, in the same way as women and juveniles;
2. raise their awareness of the basic human rights of FNPs and analyse whether these rights are sufficiently protected in practice;
3. assess the situation of FNPs and develop policies that address their vulnerabilities. These policies must form part of a concrete action plan so that adequate and appropriate assistance can be provided;
4. provide assistance to FNPs to ensure they can exercise their basic rights and the authorities are advised to seek support from national and international governmental and non-governmental organisations;

Consular authorities should:

5. monitor whether their nationals detained abroad are treated humanely and can exercise their rights. The consular authority should notify the prison/judicial authorities of any concerns;
6. provide tailored assistance to their nationals with regard to their treatment, trial and resettlement;
7. discuss the situation of their nationals in foreign detention with other consulates. If it is found that the detention conditions, treatment, judicial process and resettlement of FNPs are violating national or international rules and standards, the consular authorities should raise this with the authorities of the country of detention;

The Dutch Ministry of Foreign Affairs should:

8. fully adhere to its two basic principles of consular assistance; improve their assistance to FNPs in cooperation with the actors involved, in particular the International Office of the Dutch Probation Service and Epafras; and monitor whether Dutch ex-FNPs are supported in resettling into the Dutch society;

States should:

9. draft, under auspices of the UN, special rules covering the treatment of FNPs, and gain support from States for their adoption and implementation;
10. codify the right of FNPs to receive consular assistance.