

OSCE/ODIHR Submission of Information about an OSCE Participating State or Partner for Co-operation under Consideration in the Universal Periodic Review Process

Participating State: Netherlands

UPR Working Group Session and Date of Review: 41st Session, 7-18 November 2022

Background

1. The Netherlands has been a participating State in the Organization for Security and Co-operation in Europe (OSCE) since 1973 and has thus undertaken and recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE Documents.¹
2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including the Netherlands, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.
3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in the Netherlands and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in the Netherlands.

Election-related activities

4. ODIHR deployed an Election Assessment Mission (EAM) to the 15 March 2017 parliamentary elections and an Election Expert Team (EET) to the 17 March 2021 parliamentary elections in the Netherlands. Having received an invitation to observe the municipal elections to be held on 16 March 2022, ODIHR deployed a Needs Assessment Mission in February 2022. The NAM made the recommendation not to deploy an election observation activity for the municipal elections while encouraging the authorities to consider and address previous ODIHR electoral recommendations.

Parliamentary Elections 15 March 2017

5. ODIHR deployed an EAM composed of five experts who assessed the parliamentary elections for compliance with OSCE commitments, other international obligations and standards for democratic elections, and with national legislation.
6. The final report of the EAM to the 15 March 2017 parliamentary elections concluded that “The elections were competitive and pluralistic, providing voters with a wide range

¹ OSCE Office for Democratic Institutions and Human Rights, *Compendium of OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, <http://www.osce.org/odihr/elections/76894> and *Compendium of OSCE Human Dimension Commitments: Volume 2, Chronological Compilation (third edition)*, 2011, <http://www.osce.org/odihr/76895>; OSCE Summit Meeting, Astana 2010, *Astana Commemorative Declaration: Toward a Security Community*, 3 December 2010, <http://www.osce.org/cio/74985?download=true>

of choice. The campaign was conducted with respect of fundamental freedoms and the media provided fair access to all contestants. While certain aspects of legislation could be refined, the elections were conducted in a professional manner and were characterised by a high level of public confidence in the election administration and active voter participation”.²

7. The final report of the EAM made 17 recommendations of which the following six were considered a priority:³
 - Existing regulations could be codified into electoral legislation so as to ensure legal certainty and coherence. Legal reform should be undertaken well in advance of the next elections and involve open consultation with all relevant stakeholders.
 - The practice of proxy voting could be reviewed with a view to ensuring the secrecy and equality of the vote. Alternatives to proxy voting should be explored for prisoners, including establishing polling stations in prisons or providing mobile ballot boxes.
 - The election legislation should be harmonized with the objectives of the Convention on the Rights of Persons with Disabilities (CRPD), to ensure the full voting rights of persons with various types of mental disabilities, including the right to request assistance to vote from a person of their choice.
 - Adequate time limits for deciding on election-related complaints at all levels should be provided by the legislation to ensure the implementation of the right to an effective and timely remedy.
 - Consideration should be given to explicitly provide the legal right to appeal election results to a competent court as the final authority.
 - Consideration should be given to setting up an independent political finance oversight body.

Parliamentary Elections, 17 March 2021

8. ODIHR deployed an Election Expert Team (EET) to the 17 March 2021 Parliamentary Elections in the Netherlands. The team, which was composed of three international experts, focused on the legal framework and the implementation of alternative voting methods, including for persons with disabilities, as well as campaign finance rules and the complaints and appeals processes.
9. The final report of the EET concluded, “The legal framework for parliamentary elections is comprehensive and adequately structured to provide for the conduct of democratic elections. Legislative changes since the last parliamentary elections include the establishment of a permanent register of voters abroad, the obligation to publish voting results by polling station and new requirements for the accessibility of polling stations to voters with disabilities. The Elections Act was amended ahead of these elections by a temporary law to facilitate the conduct of elections during the COVID-19 pandemic. The temporary law meets the criteria for legislation in emergency situations, including the necessity and proportionality of the measures introduced”.⁴
10. The final report of the EET made 10 recommendations including the five priority recommendations listed below:

² [The full report of the EAM to the 15 March parliamentary elections in The Netherlands](#)

³ In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. See also the [ODIHR Electoral Recommendations Database](#).

⁴ [The full final report of the EET to the 17 March 2021 parliamentary elections in The Netherlands](#)

- Alternative voting methods which uphold OSCE commitments and other international standards could be considered;
- The introduction on additional voting methods for voters in places of detention was repeated from the previous report;
- All campaign contributions should be registered, including donations in-kind. Donations from foreign donors could be regulated and reasonable limits on donations introduced; and
- An independent political finance oversight body should be established.
- Consideration should be given to providing for an appeal to court against election results as the final authority.

Tolerance and non-discrimination issues

11. OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime. ODIHR supports states in their implementation of those commitments. In this context, ODIHR produces an annual report on hate crime⁵ to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. ODIHR also helps participating States design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.
12. In respect of its 2020 Hate Crime Report⁶ ODIHR recognized the Netherlands' research efforts in addressing the needs of hate crime victims. However, based on available information, it also observed that the Netherlands' hate crime recording and statistics do not sufficiently distinguish hate crimes from other crimes. In addition, ODIHR observed that the Netherlands would benefit from reviewing the existing legal framework in order to ensure that bias motivation can be effectively acknowledged and appropriate penalties imposed on the perpetrators.

⁵ <http://hatecrime.osce.org>.

⁶ [2020 Hate Crime Report- the Netherlands](#), 16 November 2021. Only the 2020 report is referenced for this reporting period as the range of reported issues has been expanded and previous reports are not directly comparable. The full list of Main and Complementary key recommendations (KO) is available [here](#). Pre 2020 KOs on hate crime data are available [here](#).