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The Netherlands: Discrimination in the Name of Integration Migrants' Rights under the Integration Abroad Act

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Summary

In the past three years the authorities in the Netherlands have introduced a series of measures with the stated aim of better integrating its migrant population. The two key measures are integration tests—one administered in the Netherlands that most foreign residents must take, and another that must be passed by would-be family migrants from some countries before they can join spouses or family members in the Netherlands.

The policies were adopted during a period of heightened public concern about the impact that migrant communities have on social cohesion, with a particular criticism of the supposed lack of integration among Moroccan and Turkish migrant communities.

It is the second policy—the overseas integration test in force since 2006—that raises the greatest human rights concerns. Unlike the integration test in the Netherlands, introduced in 2007 and which most foreign nationals must pass in order to obtain long-term residence, the overseas integration test applies only to nationals of some countries wishing to join family members or spouses in the Netherlands. (The test also applies to family members of Dutch citizens). Citizens of European Union (EU) and European Economic Area (EEA) states and Switzerland, Australia, Canada, Japan, New Zealand, South Korea, and the United States (US) are not required to take the test.

In practice, the overseas integration test targets would-be family migrants from the countries of origin of two of the three largest migrant communities in the Netherlands—Moroccans and Turks—as government documents published when the draft measure was presented to parliament make clear. (Migrants from the former Dutch colony Suriname, the other large migrant community, are partially exempt from the provisions, if they have completed of primary education in Dutch language, as Dutch is the official language and is the teaching language in schools).

The test is an additional requirement on top of financial restrictions on family formation and reunification introduced in 2004, the latter of which apply also to

Dutch and to some extent EU citizens and residents wishing to bring non-Dutch family members, including spouses, to the Netherlands. In addition to the fees and other costs related to the test and application for family migration, family members in the Netherlands must demonstrate that they earn sufficient income to support themselves and their family member backed by a longer-term employment, (while self-employed persons have to prove sufficient profit for the current and immediately preceding financial years).

The introduction of the overseas integration test led to a significant reduction in the number of applications for family migration in the first year. Applications from Turkey and Morocco in particular have fallen significantly. Current plans by the government to make the overseas integration test harder are likely to delay or discourage applications further, since the cost of the test is €350 (each time the test is taken).

While international human rights law does not prohibit states to differentiate between citizens and non-citizens in immigration policies, states cannot discriminate on the basis of nationality or ethnicity (aside from a narrow exception for EU citizens) even in this sphere.

The overseas integration test is discriminatory because it explicitly applies only to family migrants from certain nationalities, namely predominantly “non-western” countries. The legitimate objective of better integration of all migrants cannot be met by a test that only some family migrants are required to take. The Dutch authorities have not provided the very high level of evidence they would need to justify such clear difference in treatment of different nationalities. No evidence has been given to show that the level of a country’s development is a reliable indicator of the skills, capacity, ability, inclinations, or willingness of a potential individual migrant to integrate, and therefore that migrants from poorer countries need to pass special tests to integrate.

The test, coupled with increased financial requirements for family members or new spouses, also amounts to indirect discrimination against Turkish and Moroccan migrants in the Netherlands, who at present rarely marry outside their community and many of whom bring partners from their country of ethnic origin. These

communities suffer higher rates of unemployment, an over-concentration in low wage employment, and low incomes compared to the national average, making it hard for them to meet the financial requirements.

The test and financial restrictions also infringe the right to family life, affecting foreign national would-be family migrants, and also the rights of Dutch residents wishing to bring family members to live with them. The time required to prepare for and pass the test, coupled with the three to six month application procedure for entry, can lead to significant periods of separation for spouses and family members. Again, Turkish and Moroccan migrants in the Netherlands, the majority of whom are Dutch nationals, are disproportionately affected by these measures. Hence, while applying the overseas integration test to family members of Dutch nationals appears at first glance to be equal treatment, in fact it affects Dutch nationals from the main immigrant groups to a much greater extent than it does Dutch nationals.

The right to family life is a qualified right. The state has a legitimate interest in controlling immigration, and European human rights law provides no absolute right to live as a family in a particular country. But a significant delay in family reunification or formation can violate the right to family life for the family member living in the Netherlands if the strength of ties that person has in the country makes it unreasonable to give up that life and move elsewhere to be together with his and her family member, especially if the person was born in the Netherlands and/or has lived there for a significant portion of his or her life.

By preventing spouses from being able to live together for an extended period of time, the test and financial measures are arguably also a breach of the Netherlands' positive obligation to give effect to the right to marry and found a family.

The Dutch government also has a legitimate interest in the integration of its migrant population, which can bring benefits in terms of social cohesion and to migrants themselves. But the overseas integration test does not contribute to integration. By delaying entry into the Netherlands, it actually delays the process of integration of the family members of existing migrants. It also runs the risk of alienating migrant

communities in the Netherlands because it creates an impression that their family members (and hence they) are not welcome in the country.

As the Dutch government has pointed out elsewhere, family life can contribute to socio-cultural stability and, consequently, the integration of migrants into Dutch society. Developing an effective approach to integration, that does not discriminate on the basis of nationality, and is fully consistent with international human rights law, would also serve as a positive example for other European states.

Key Recommendations

Human Rights Watch urges the Dutch government to take the following key steps (fuller recommendations follow at the end of this briefing paper):

- Abolish the civic integration examination abroad.
- In the interim, until such time as that examination is scrapped:
 - Introduce a flat fee for the integration exam abroad by requiring persons to pay only once for taking the test rather than for each attempt.
- Lower the income requirements for applications for family reunification and formation, and introduce flexibility for self-employed and newly-employed sponsors to allow for demonstration of income instead of the current stringent sustainability requirement of longer-term profits and contracts.

In addition, Human Rights Watch further encourages the Dutch government to adhere and implement in a timely manner the recommendations flowing from the United Nations Universal Periodic Review in April 2008 and the third report on the Netherlands of the Council of Europe's European Commission against Racism and Intolerance, published in February 2008, both of which identified specific concerns and resulted in specific recommendations for steps to address the protection of fundamental rights as well as discriminatory policies and practices against migrants, including in the context of integration measures.

Background

Almost 20 percent of the 16.4 million inhabitants of the Netherlands are persons with a foreign background (i.e. they have at least one parent born outside the country).¹ Migrants who originate from Turkey, Africa, Latin America, and Asia (with the exception of Indonesia—the former Dutch East Indies—South Korea, and Japan) are considered to be “non-western” by official statistics. People with at least one “non-western” parent comprise almost 11 percent of the Dutch population.² The three largest “non-western” migrant communities (each with more than 300,000 members) originate from Turkey, Morocco, and the former Dutch colony of Suriname.³

In the background of a public climate involving heated criticisms of the previous Dutch model of integration and of levels of immigration, measures have been introduced in the past three years, supposedly in the name of promoting “integration,” which have had the effect of deterring certain persons from entering the Netherlands to join their families, or to marry. In 2006 the government introduced an integration test for predominantly “non-western” migrants that have to be passed before the migrant is allowed to enter the Netherlands (under the Integration Abroad Act, *Wet inburgering in het buitenland*, 2005). This was followed in 2007 by the introduction of an integration exam for most migrants resident in the Netherlands (under the Integration Act, *Wet inburgering*, 2006).

Under the 2007 law, all foreign nationals⁴, with the exception of EU/EEA citizens⁵ resident in the Netherlands, must pass the integration exam in the Netherlands

¹ Statistics Netherlands (Centraal Bureau voor de Statistiek, CBS), key figures, population by origin and generation, January 1, 2008, Voorburg/Heerlen March 4, 2008, available at <http://www.cbs.nl> (accessed March 4, 2008).

² Statistical Yearbook of the Netherlands, 2007, Population, Voorburg/Heerlen, July 2007, pp. 157-175, <http://www.cbs.nl> (accessed March 4, 2008).

³ There were 368,600 persons of Turkish origin, 329,500 persons of Moroccan origin and 333,500 persons of Surinamese origin in the Netherlands on January 1, 2007. See Integration Report 2007, Jaco Dagevos and Mérove Gijsberts, November 16, 2007, pp. 29-30, http://www.scp.nl/publicaties/boeken/9789037703306/Jaarrapport_Integratie_2007.pdf (accessed March 4, 2008). Provisional data for 2008 by the Statistics Netherlands (Centraal Bureau voor de Statistiek, CBS), key figures, population by origin and generation, January 1, 2008, Voorburg/Heerlen March 4, 2008, <http://www.cbs.nl> (accessed March 27, 2008) gives as more recent figures: 372,852 persons of Turkish origin and 335,208 persons of Moroccan origin.

⁴ Between the age of 16 to 65 years.

within five years of the law coming into force.⁶ A number of exceptions have, however, been introduced in the Civic Integration Act for foreign residents holding certain diplomas and certificates⁷ or who have medical problems.⁸ The test also applies to foreign nationals resident in the Netherlands prior to the introduction of the law.⁹ Those who do not pass the exam are subject to a fine of up to €1,000¹⁰ and are ineligible for a permanent residence permit.

By contrast, and as discussed in detail below, the overseas integration test¹¹ does not apply to all foreign nationals wishing to migrate to the Netherlands for family reasons. Foreign nationals from “western” countries are exempted.

On the face of it the overseas integration test is discriminatory because it explicitly applies only to family migrants from certain nationalities, namely predominantly “non-western” countries. To evaluate its impact, Human Rights Watch has looked at the purported aim of the legislation, assessed where it goes any way towards meeting this aim, and whether the clear difference in treatment between different nationalities can be justified.

⁵ EU/EEA and Swiss nationals (as well as family members of such nationals who are entitled to enter and reside in the Netherlands under their right to free movement) are not considered “integration subjects” and do not have to participate in the integration procedure (Section 5 (2) of the Integration Act).

⁶ Three-and-a-half years if the person concerned has already passed the basic exam abroad, five years in other cases. A recent government bill foresees a uniform time limit for all persons concerned to pass the integration examination in the Netherlands within three-and-a-half years.

⁷ According to a letter to Human Rights Watch by the Minister for Housing, Communities and Integration, by logical consequence, foreign residents that are exempted from taking the integration examination in the Netherlands because of holding certain diplomas and certificates are also exempt from the overseas integration test.

⁸ See Section 5 and 6 of the Integration Act. In principle those who have demonstrated that they possess adequate verbal and written skills in the Dutch language and demonstrable knowledge of Dutch society are not considered “integration subjects.”

⁹ Exceptions apply to those who have more than 8 years of education in the Dutch language and those who can prove that they have an appropriate knowledge of the Dutch language and the Netherlands, see Minister of Housing, Communities and Integration, <http://www2.vrom.nl/pagina.html?id=10696> (accessed February 4, 2008).

¹⁰ See Minister of Housing, Communities and Integration, <http://www2.vrom.nl/pagina.html?id=10696> (accessed February 4, 2008). The rules on administrative penalty in chapter 6 enforcement of the Integration Act specify in sections 29-46, administrative penalties can range from €250 to €1,000 for various infringements. The municipal council will fix the amount of the administrative penalty that may be imposed for the various infringements, by means of a local ordinance. Alternatively measures, penalties or reduction as regards welfare benefits may be imposed.

¹¹ Unofficial translation for *Inburgeringsexamen Buitenland* (hereinafter overseas integration exam)—the Dutch government generally uses the phrase “integration exam abroad” in official documents in English.

We have not been able to find sufficient justification for such clear discriminatory treatment. Apart from the clear, direct discrimination by nationality, the test, coupled with financial requirements for family members and new spouses to enter the Netherlands, also amounts to indirect discrimination targeting Turkish and Moroccan migrants in the Netherlands, who rarely marry outside their community and many of whom bring partners from their country of ethnic origin. These communities are generally in a more difficult position on the labor market compared to the national average, making it hard for them to meet the financial requirements. The test and financial restrictions can lead to significant periods of delay in, or even the abandonment of, family reunification or formation. This infringes the right to family life, affecting the would-be family migrants and the family members living in the Netherlands.

Reasons for the Change

Previous Dutch policies towards its immigrant communities had aimed at the full and equal participation of specific groups in society, allowing space for cultural expression and development facilitated by the government. Recent policies had focused on the responsibilities of individual members of society. Civic integration courses as an introduction to Dutch society were required for certain categories of newcomers.¹² These courses under the previous integration policy included Dutch language training, teaching about Dutch society, including its important institutions, as well as, to some extent, its labor market, and led to the development of an extensive infrastructure of course providers.¹³

The current minister for housing, communities and integration has explained integration as having occurred when "someone who has come to the Netherlands speaks Dutch and is familiar with the culture and the values and norms. People must be able to understand, comprehend and tolerate each other. ... Integration is a

¹² See for instance M. Bruquetas-Callejo, B. Garcés-Masareñas, R. Penninx and P. Scholten, "Policy making related to immigration and integration. The Dutch case: a policy analysis," IMISCOE-Working Paper nr 15, www.imiscoe.org, and Saskia Bonjour, "Who's in and who's out? The postwar politics and policies of family migration in the Netherlands," Paper prepared for the ESSHC Conference, Amsterdam, March 22-25, 2006.

¹³ This civic integration system was developed and made mandatory on the basis of the Newcomers Integration Act (*Wet inburgering nieuwkomers*, WIN). Courses were voluntary for established immigrants, so-called "oldcomers."

common term for the coalescence of social groups in society. Integration policy is oriented towards the advancement of the integration of immigrants and ethnic minorities. The goal of the integration policy is a society in which everyone can fully and actively participate."¹⁴

However the last decade has seen public criticism of immigration, and of some migrant communities, with allegations that certain groups do not “integrate.” Allegations of segregation, a high level of school drop-out, and of unemployment among some ethnic minority communities, and the alleged failure of immigrants to learn Dutch, have been used as reasons to declare the failure of multiculturalism and previous integration policies. The most prominent criticism was by the sociologist and publicist Paul Scheffer in his essay entitled “the multicultural disaster” in 2000.¹⁵ His critical essay on this dissatisfaction and alleged neglect of negative aspects of multiculturalism also had a great impact on the emerging national integration debate on immigration, Muslim migrant communities, and Dutch national identity and values.

The main targets for these attacks have been Muslim communities, especially Turks and Moroccans. An issue often highlighted as a threat was the common practice among Turkish and Moroccan migrants of arranged marriages and so-called “imported brides.” This was then linked to fears about forced marriage, the perceived low status of women in some cultures and their educational and economic disadvantages.

In fact, in 2004 a Parliamentary Research Committee on the Integration Policy (Blok Commission)¹⁶ concluded amongst other things that integration had actually been

¹⁴ See website of the Minister for Housing, Communities and Integration at <http://international.vrom.nl/pagina.html?id=10696> (accessed March 27, 2008).

¹⁵ Paul Scheffer, “Het multiculturele drama” (the multicultural disaster/tragedy), NRC Handelsblad on January 29, 2000.

¹⁶ A Parliamentary Research Commission on the Integration Policy appointed by the lower house of parliament headed by Stef Blok from the Conservative Liberal party (VVD), to study and review the Netherlands’ integration policy, which published a final report: “Bruggen Bouwen” (Building Bridges), Parliamentary Papers Lower House 2003-2004, 28 689, Nos. 8-9, and English Summary, Chapter 10 Summary, Conclusions and Recommendations, http://www.kiemnet.nl/dossiers/Integratie/Integratiealgemeen/4094_1040.html (accessed March 4, 2008). The committee applied the following definition of integration. “A person or group is considered integrated in society if their legal position is equal to that of native Dutch people, if they participate on equal terms in the socioeconomic field, if they have command of the Dutch language and if they respect the prevailing standards, values and customs. Integration is a two-

relatively successful and that progress had been achieved in the various fields of housing, employment, and education. But these findings of the commission at that time were largely ignored in a climate of public attacks on immigration, migrant communities, and Dutch integration policies.

In this climate, some politicians, such as the late Pim Fortuyn, espoused platforms that promoted a reduction in immigration (in Fortuyn's case, combined with anti-Muslim rhetoric), and saw an increase in their support among the "native" Dutch population (those with both parents having been born in the Netherlands). Critics such as Fortuyn, and Rita Verdonk (who served recently as Minister for Aliens' Affairs and Integration), other politicians in major political parties, and to some extent even the Blok Commission argued that the state should pursue a much more "active" integration policy that placed more demands on the immigrant population and emphasized the importance of essential Dutch values and standards. The integration courses for migrants were attacked as well for failing to achieve their objectives, although others said problems with the courses were inevitable given that they were new.¹⁷

These attacks produced a government response. In 2002 a government memorandum argued that: "Immigrants are offered enough possibilities to use their rights and to fulfill their social obligations, but they have to prove themselves."¹⁸ The 2002¹⁹ and 2003-6²⁰ coalition governments under Prime Minister Jan Peter Balkenende transformed the policy framework, combining mandatory integration requirements with the stated aim of enhancing social cohesion with new restrictions on immigration, especially for those seeking to bring non-Dutch family members to

sided process: newcomers are expected to be prepared to integrate, while the Dutch society has to make integration possible."

¹⁷ Some pointed to deficiencies and insufficient results of the integration courses, such as the relative ease by which newcomers could evade their obligations; the high drop-out rates, and the fact that only a limited number of newcomers reach the point deemed necessary for autonomous functioning and active participation in Dutch society. These results were seen by some as teething troubles typical of the initial stages of such new programs. Others claimed that the entire idea of integration courses was ill-conceived.

¹⁸ Government Memorandum "Integratie in de Context van Immigratie" (Integration in the Perspective of Immigration), Kamerstukken II, 2001-2002, 28 198, no. 2, pp. 49, 54.

¹⁹ A short lived coalition of the Christian Democratic Appeal CDA party, the Liberal party VVD, and the Pim Fortuyn LPF party.

²⁰ In the second coalition, the LPF party was not part of the government anymore. A new coalition government was formed by the CDA, VVD, and the progressive liberal party Democrats 66 (D66).

the Netherlands. In major shift “newcomers” coming to the Netherlands for marriage or to join family members already living in Netherlands are now expected to begin the process of integration while still in their country of origin.²¹

The Dutch government introduced under this “Integration Policy New Style” a series of explicit policies purportedly aimed at the integration of migrant communities. The overall objective of these measures was set out in the coalition agreement presented by the second Balkenende government to the parliament in May 2003:

Anyone who wishes to settle permanently in our country must participate actively in society and master the Dutch language, become aware of Dutch values and observe the standards. Each newcomer who comes to our country voluntarily ... must first learn basic Dutch in the home country as a condition for admission. Once arrived in the Netherlands, the newcomer must also deepen his or her knowledge of Dutch society.²²

Following the 2006 election of a new government in the Netherlands, which came into office in February 2007, there has been a shift in the discourse and approach to integration policy and social issues, with greater emphasis given to the amelioration of poverty and alienation within society as a means of addressing lack of integration. In November 2007 the government issued an Integration Memorandum (*Integratienota*) presenting a 56-point plan on integration for 2007-2011, placing more emphasis on action to combat racism, discrimination, polarization, and radicalism.²³

During her presentation of the memorandum, the current Minister of Housing, Communities and Integration, Ella Vogelaar, expressed concerns about the widening gap between native Dutch people and migrants. But she also signaled the government’s intention to pursue different policies than those of her predecessor,

²¹ Motion by Sterk et al. (CDA) approved on December 17, 2002, Parliamentary Papers Lower House 2002/03, 27 083, No. 25.

²² Parliamentary Papers Lower House, 2002/03, 28 637, No. 19, p. 14.

²³ See Ministry of Housing, Communities and Integration, “2007—2011 Integration Memorandum: Make sure you fit in!” press release, November 1, 2007, <http://international.vrom.nl/pagina.html?id=11094> (accessed February 4, 2008).

Rita Verdonk, and her refusal to join the contest among anti-immigration politicians to see who could have the strictest policy.²⁴ She pointed out that integration also requires an effort on the part of the native Dutch population.

However, despite this change in rhetoric, the tests introduced by the previous government, and particularly the overseas integration test, remain in force, with the discriminatory outcome that is set out below.

The Netherlands as a European Model

This overseas test is new not only in the Netherlands but in the rest of the EU.²⁵ The Netherlands' recent approach to integration policy, especially that of requiring language and other tests before family reunification, has served as a model for other EU member states, including Germany, Denmark, France, and the UK. Inspired by the Dutch model of integration in the country of origin, Germany introduced a new language requirement in August 2007 for foreign spouses wishing to move to Germany.²⁶ They must provide evidence of a basic command of German before entering Germany when they apply for their visa at the German embassy or consulate.²⁷

²⁴ See Ministry of Housing, Communities and Integration, "2007–2011 Integration Memorandum: Make sure you fit in!" press release, November 1, 2007, <http://international.vrom.nl/pagina.html?id=11094> (accessed February 4, 2008); "Vogelaar breekt met aanpak van Verdonk", "Ook de autochtoon moet zijn best doen," NRC Handelsblad, November 13 and 14, 2007 and "Minister attacks anti-immigration MPs," DutchNews.nl, November, 14 2007, http://www.dutchnews.nl/news/archives/2007/11/minister_attacks_antiimmigrati.php (accessed March 4, 2008).

²⁵ With the very limited exception of Germany, which has had oral German (dialect) tests since 1996, which could not be retaken, for the special group of Spätaussiedler (ethnic Germans from the former Soviet Union) to prove their "Germanness." The function of these tests was different and had no aim of integration: by passing the test, the person was recognized as ethnic German, could enter Germany and would relatively quickly receive citizenship. In addition, for instance the GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit) would also organize language courses in those concentrated areas where ethnic Germans lived. Moreover, in 2005 Germany required tests also for family members of ethnic Germans, which to a certain extent had an integration aim. If they would pass they could enter Germany at the same time as the ethnic German primary migrant. If not, the ethnic German would travel first to Germany and then apply for family reunification. Family members would then fall under the normal provisions of the Aliens Law.

²⁶ § 28 (1) sentence 5 and § 30 (1) sentence 1 no. 2 and the exceptions in § 30 (1) sentence 2 and 3 of the German Residence Act and § 41 of the Residence Ordinance. Citizens of Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand, and the United States of America are exempted.

²⁷ Applicants for family reunification must demonstrate basic knowledge of the German language and are asked to submit a German language proficiency certificate in general from the Goethe Institute of the level A1 of the Common European Framework of Reference for Languages when applying for an immigration visa to Germany. Costs are to be financed by the migrant. See Federal Office for Migration and Refugees, leaflet "Evidence of basic knowledge of German in the case of subsequent immigration by spouses from abroad," available at <http://www.integration-in-deutschland.de> (accessed March 4, 2008).

The government in the UK has indicated it is considering similar plans to the Dutch policies that would require non-EU citizens wishing to enter as spouses to pass a language test in the country of origin before they are granted an entry visa.²⁸ Denmark has already adopted a bill on requiring foreign nationals applying for family migration to first pass a test on Danish language and society before they can immigrate.²⁹ The law has yet to be implemented. A new (still to be implemented) French government law on integration of family migrants foresees courses in the immigrants' countries of origin.³⁰

The Operation of the Integration Abroad Act

The Integration Abroad Act requires some foreign nationals³¹ wishing to migrate to the Netherlands for marriage (family formation) or to join family members living in the Netherlands (family reunification) to pass an integration test before entering the country. The test is in addition to the integration exam that most non-EU/EEA nationals seeking long-term residence in the Netherlands are required to take.

The Integration Abroad Act (*Wet inburgering in het buitenland*, Wib), was passed on December 22, 2005 and entered into force on March 15, 2006.³² According to the

²⁸ Patrick Wintour, "Smith seeks to restore trust in immigration system," *The Guardian*, December 6, 2007, <http://www.guardian.co.uk/politics/2007/dec/06/immigration.immigrationpolicy> (accessed March 4, 2008).

²⁹ The bill was adopted by the Danish Parliament in April 2007. It also applies to religious preachers. EU/EEA nationals are exempt. See also "Comparative study on the implementation of the Family Reunification Directive," Centre for Migration Law, Radboud University Nijmegen, Questionnaire data of Denmark, section B.20, May 2007, <http://cmr.jur.ru.nl/CMR/Qs/family/denmark/> (accessed March 4, 2008).

³⁰ Amendments of the French Immigration Act (Projet de loi relative à la maîtrise de l'immigration, à l'intégration et à l'asile), adopted by the Sénat and the Assemblée Nationale on October 23 2007, http://ameli.senat.fr/publication_pl/2007-2008/30.html (accessed March 6, 2008), and approved by the Conseil Constitutionnel in November 2007. See for the law *Loi relative à la maîtrise de l'immigration, à l'intégration et à l'asile* (n° 2007-1631 of 20 November 2007), published in JO n° 270 of 21 November 2007, <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000524004> (accessed March 27, 2008): In the new articles L 411-8 and L 211-2-1, French consular officers may prescribe a language and integration course of up to two months when a would-be family migrant lacks French language knowledge; the applicant will get the visa only if he or she has seriously participated in the course and after the applicant's language skills are reevaluated.

³¹ Aged between 16 to 65 years.

³² The Integration Abroad Act (*Wet inburgering in het buitenland*, Wib) of December 22, 2005, amending Article 16 of the Law on Aliens. Official Gazette *Staatsblad* 2006, no. 28, Kamerstuk 29 700, January 31, 2006, STB9475, ISSN 0920 – 2064, <http://www.eerstekamer.nl/9324000/1/j9vvgh5ihkk7kof/vh7rf1gymzy5/f=y.pdf> (accessed March 4, 2008).

act's preparatory documents, its declared objective is to stimulate the integration of migrant communities.³³

Some foreign nationals who wish to enter the Netherlands for a prolonged purpose must first obtain an authorization for temporary residence (known as “MVV,” *Machtiging tot voorlopig verblijf*).

The act introduced a new requirement to obtain an MVV, in that the applicant must pass an exam. This requirement applies in practice to three categories of person: 1) foreign nationals who wish to form a family (e.g. marry) with someone in the Netherlands; 2) foreign nationals seeking to be reunited with family members already living in the Netherlands, and 3) religious leaders coming to the Netherlands for employment, such as imams or preachers.

Those who require an MVV to enter the Netherlands for other employment purposes do not need to take the exam.³⁴ Surinamese nationals who have completed at least primary education in the Dutch language in Suriname or the Netherlands are also exempt, even if they are seeking to enter for a family purpose.³⁵

Citizens of EU/EEA states, as well as Australia, Canada, Japan, New Zealand, South Korea, Switzerland, and the US do not require an MVV to enter the Netherlands, and do not need to take the overseas integration test. EU/EEA nationals are exempted because under EU law the Netherlands cannot impose such restrictions.³⁶ The test also applies to family members of Dutch citizens.

³³ “Integration Abroad Act” (29.700), website Upper House, <http://www.eerstekamer.nl/9324000/1f/j9vvgh5ihkk7kof/vgxun7oy4d51> (accessed March 4, 2008), and Parliamentary Document, Second Chamber, Wet inburgering in het buitenland, KST 2003-2004, 29700, no. 3, (memorie van toelichting), http://www.justitie.nl/images/VvW%20Wet%20inburgering%20in%20het%20buitenland_2312_tcm34-73905.pdf?cp=34&cs=580 (accessed March 4, 2008).

³⁴ Those exempt include: persons coming to the Netherlands with a work permit and their family members, the self-employed, and “knowledge” migrants (highly skilled workers), as well as family members of a person in possession of an asylum-seeker’s residence permit and persons coming to the Netherlands for a temporary reason, such as study, au pair work, or medical treatment.

³⁵ In Suriname, Dutch is the official language and the teaching language in schools.

³⁶ European Community law (in particular Regulation No. 1612/68 and the relevant directives concerning the right of freedom of movement within the Community) does not allow the application of this integration requirement for EU citizens in other EU states.

Under the new requirement applicants must demonstrate basic knowledge of the Dutch language and basic concepts of Dutch society before they enter the Netherlands. This knowledge is tested by a “compulsory basic civic integration exam” administered in Dutch, at a Dutch embassy or consulate general in the applicant’s country of residence. It is the responsibility of the applicant to prepare him/herself for the examination.

The person taking the exam talks by telephone to a computer. The score is calculated automatically by the computer. Prior to November 2007, the score was double-checked by human examiners. If the examination is passed, the migrant can apply for an MVV.³⁷ If the candidate fails the test, the Dutch authorities will not consider an application for an MVV and the person will have to take the exam again.

The Minister for Housing, Communities and Integration confirmed in a letter to Human Rights Watch that there is no legal remedy against an assessment of having failed the test³⁸ but that the candidate would be free to take the test again if they paid the fee again.³⁹ Applicants can appeal, however, against a refusal of their application for an MVV.⁴⁰

High costs related to the exam include the examination fee of €350 (each time the test is taken), the costs for preparing independently for the test (for example, an optional examination package, including a video/DVD available in six and 14 languages respectively, which can be purchased for about €64, or the costs of telephoning the Netherlands for Dutch language practice),⁴¹ and transportation costs

³⁷ The application will then be tested against the normal requirements of the Aliens Act.

³⁸ Article 8:4 of the General Administrative Law Act.

³⁹ According to article 9:1 of the General Administrative Law Act, an applicant can however complain against the circumstances under which the overseas integration test has taken place or against behavior by the public authority or public officer in service of that authority during the examination. Furthermore, in some cases where the computerized system is unable to generate a score for examination due to technical issues, these exams are assessed a second time by human examiners.

⁴⁰ Letter from minister for housing, communities and integration, March 19, 2008, also on behalf of the minister of foreign affairs and the state secretary of justice, responding to Human Rights Watch letter, January 23, 2008.

⁴¹ Private tuition and Dutch language practice by telephone with a family member in the Netherlands or someone else who speaks Dutch are among the other proposed ways of preparing for the test. The other preparation materials of the package are in Dutch. A leaflet explaining the components of the examination package, possible practice for the examination, and the examination itself are available in 12 languages. In addition, the Immigration and Naturalization Service (IND) website

to the Dutch embassy (in some cases located in a neighboring country). As result it can in fact be a considerable challenge for some applicants to take the exam.

The Dutch government is planning to review the Integration Abroad Act, starting in April 2008 with results expected by spring 2009.⁴²

Nationals of “Western” Countries Exempt from Test

Potential family migrants from “western” countries do not have to take the overseas integration test under Dutch law.⁴³ These countries are: EU and EEA states, as well as Australia, Canada, Japan, Monaco, New Zealand, South Korea, Switzerland, the Vatican, and the US.

At the time of the act’s introduction, the then-minister for immigration and integration argued that the exemption made sense because the countries in question are “similar” to the Netherlands in socio-economic and political development. The government argued that exempting nationals of these countries from the requirement of an MVV and therefore the test would not therefore lead to “unwanted and unbridled immigration and essential problems with integration in Dutch society.”⁴⁴ This suggested that reducing immigration, and not just achieving integration, was actually a main reason for the legislation.

When Human Rights Watch asked the current government to comment on the rationale for exempting some non-EU/EEA nationals from taking the overseas integration test, the minister for housing, communities and integration referred first to pragmatic reasons for linking this integration requirement of the Integration Abroad Act with the requirement of an MVV. This allows the government to determine whether the new requirement has been met before the foreign national arrives in the

(www.ind.nl) suggests that the family member living in the Netherlands could purchase commercially available teaching materials in the Netherlands, some of which can be used for self-study, and can send it to family members abroad.

⁴² Letter from minister for housing, communities and integration, March 19, 2008, also on behalf of the minister of foreign affairs and the state secretary of justice, responding to Human Rights Watch letter, January 23, 2008.

⁴³ It should be noted that nationals of some European states outside the European Union, such as e.g. from Russia, Ukraine, and countries of ex-Yugoslavia also have to take the test.

⁴⁴ Parliamentary Document, Second Chamber, Wet inburgering in het buitenland, KST 2003-2004, 29700, no. 3, (memorie van toelichting), p. 19.

Netherlands. These specific non-EU/EEA nationals, however, are specifically exempted from the MVV requirement.⁴⁵ Grounds given for the exemption of these countries from the MVV requirement are factors such as Dutch economic interests, foreign relations, national security, and public order. The minister also referred to other reasons for the exemption such as similarity in socio-economic background and political terms, as well as the exemption not leading to unwanted immigration and problems with integration, which the previous government had identified as a factor in its explanatory memorandum to the bill.⁴⁶

At no time though, has either the previous or the current government provided evidence on how the level of a country's development affects the ability, inclinations, or willingness of a potential individual migrant to integrate in the Netherlands.⁴⁷

Targets of Overseas Integration Test

Although the integration test abroad applies to any would-be family migrant from predominantly “non-Western” countries (with the partial exemption of Suriname), in practice the test primarily targets nationals from Morocco and Turkey. Again, Turkish and Moroccan migrants in the Netherlands, the majority of whom are Dutch nationals, are disproportionately affected by these measures. Hence, while applying the test abroad also to family members of Dutch nationals at first glance appears to be equal treatment, in fact it affects Dutch nationals from the main immigrant groups to a far greater extent than it does Dutch nationals in general.

The three main non-western migrant communities in the Netherlands originate from Morocco, Turkey, and Suriname. Surinamese migrants are exempt from the test if they have a certain amount of Dutch education. In practice, therefore, the test primarily affects Turks and Moroccans seeking to migrate to the Netherlands for family reasons.

⁴⁵ Letter from minister for housing, communities and integration, March 19, 2008, responding to Human Rights Watch letter, January 23, 2008.

⁴⁶ Ibid.

⁴⁷ See also Art. 1, the national association against discrimination, in its position paper submitted to ECRI, an agency of the Council of Europe, in January 2007 for the report on the Netherlands, <http://www.art1.nl/scripts/download.php?document=345> (accessed February 14, 2008).

An explanatory memorandum that accompanied the integration abroad bill when it was introduced in parliament (as well as government documents on various proposed integration measures), suggest that the measure was aimed mainly at Turkish and Moroccan brides “imported” by second-generation Dutch residents of Turkish and Moroccan origin. The government indicated that the bill was also aimed at addressing the problem of culturally and socially isolated Turkish and Moroccan women with children and those migrants who have difficulty accessing the labor market.⁴⁸

Indeed, when the bill was introduced in 2004, the Dutch government assessed that almost half of all immigrants in the past years consisted of people joining family members in the Netherlands, including through marriage (so-called “subsequent migrants”).⁴⁹ In the explanatory memorandum of the bill, the Dutch government states that:

...a significant portion of this group of migrants has characteristics that are unfavorable for adequate integration in Dutch society. The most prominent of these—also in size—is the group of family formers from Turkey and Morocco...Almost half of the family migrants come from Morocco and Turkey. These migrants have a poor starting position in Dutch society.⁵⁰

The memorandum for the bill alleges further that these migrant groups “have little contact with Dutch people, identify mainly with their own group, and orient themselves mainly to their own language and culture.” Data is cited in the memo from the Social and Cultural Planning Office in support of the view that women from these groups are a burden on society:

⁴⁸ Leonard F.M. Besselink, “Unequal Citizenship: Integration measures and Equality,” Centre for Migration Law (Radboud University of Nijmegen), Sergio Carrera (ed.), Centre for European Policy Studies (CEPS), *The Nexus between Immigration, Integration and Citizenship in the EU*, Collective Conference Volume, Challenge Papers (the Changing Landscape of European Liberty and Security), April 2006, p. 18. See also Parliamentary Document, Second Chamber, *Wet inburgering in het buitenland*, KST 2003-2004, 29700, no. 3, (memorie van toelichting).

⁴⁹ Parliamentary Document, Second Chamber, *Wet inburgering in het buitenland*, KST 2003-2004, 29700, no. 3, (memorie van toelichting), p. 4.

⁵⁰ Ibid.

Women from ethnic minority groups have a considerably lower level of education than native Dutch women. Of the Turkish women between 40 and 65 years of age, a maximum of 80 percent have had basic education, whereas this is true for not less than 90 percent of the older Moroccan women. They have a very low rate of participation in the labor market. ... A quarter of them have jobs, and about 15 percent of the women on average are jobless as against 4 percent of the native Dutch women.⁵¹

The overseas integration test also affects the family members of some refugees and others in need of international protection. While family members of persons who have been recognized in the Netherlands as refugees are exempt from the test, many asylum applicants obtain forms of status other than as refugees, including regular residence permits. As the Dutch Council for Refugees has noted, those people who do not benefit from family reunification for refugees, and their family members, must meet the regular conditions for entry, including bypassing the overseas integration exam.⁵²

Falling Application Rates after the Test was introduced

The introduction of the overseas integration test has resulted in a significant reduction in the number of applicants for MVVs for the purposes of family formation and reunification. This effect was anticipated by the government. In its explanatory documentation when the Integration Abroad Act (then a bill) was being debated in parliament, the government indicated the introduction of the legislation would result in some family migrants delaying or even canceling their intended settlement in the Netherlands.⁵³

According to the Dutch Immigration and Naturalization Service (IND), the introduction of the overseas integration test in March 2006 is the main cause of the

⁵¹ Ibid., p. 5.

⁵² VluchtelingenWerk Nederland, “(Geen)eebied voor gezinsleven”, November 2006.

⁵³ Parliamentary Document, Second Chamber, Wet inburgering in het buitenland, KST 2003-2004, 29700, no. 3, (memorie van toelichting), p. 14.

20 percent reduction in the number of MVV applications for family reunification and family formation in 2006, compared to the previous year.⁵⁴

There were only 14,500 MVV applications plus requests for advice on MVV applications from the “target group” (an overlapping but slightly larger category than those required to take the overseas integration test)⁵⁵ in 2006 compared to almost 22,000 in 2005.⁵⁶ There were 9,000 applications or requests for advice from the target group in the first 9 months of 2007.⁵⁷

This effect is confirmed by the 2007 Integration Report by the Social and Cultural Planning Office in the Netherlands. It concludes that the Integration Abroad Act has had a restrictive effect on immigration for family formation and family reunification.⁵⁸

The introduction of the overseas integration test appears to have had a particularly notable effect on applications from Moroccan and Turkish spouses and family members wishing to migrate to the Netherlands. Although direct correlations cannot be proven, the numbers are still striking.⁵⁹

⁵⁴ IND report, annual results 2006, The Hague, March 2007, p. 3, http://www.ind.nl/en/Images/def_ENG_jaaroverz_o6_tcm6-146619.pdf (accessed February 5, 2008).

⁵⁵ The “target group” is defined in the IND monitor report as persons between 16 and 65 seeking to enter the Netherlands for “a non-temporary stay” and who require an MVV. It includes some MVV applicants who are exempt from the overseas integration test, such as family members of refugees. Surinamese migrants are excluded. Thus, figures do not reflect the actual number of persons who have to take the integration test abroad as the definition of the target group that is used by the IND does not include the whole target group. According to the INDIAC (IND Informatie- en Analysecentrum, Information and Analysis centre), it is not possible to get a better picture of the target group than that presented in the monitor report.

⁵⁶ IND, Monitor Inburgeringsexamen Buitenland, November 2007, pp. 4, 27-28, <http://www.vrom.nl/get.asp?file=docs/kamerstukken/Mon26Nov20071528430100/BWWI2007116985MonitorWib-Nov2007.pdf> (accessed March 5, 2008).

⁵⁷ IND, Monitor Inburgeringsexamen Buitenland, November 2007, pp. 4, 27-28, <http://www.vrom.nl/get.asp?file=docs/kamerstukken/Mon26Nov20071528430100/BWWI2007116985MonitorWib-Nov2007.pdf> (accessed March 5, 2008).

⁵⁸ Integration Report 2007, Jaco Dagevos and Mérove Gijsberts, April 16, 2007, p. 57, http://www.scp.nl/publicaties/boeken/9789037703306/Jaarrapport_Integratie_2007.pdf.

⁵⁹ It should be noted that in its 2007 judgment, *D.H. and others v. Czech Republic*, the European Court of Human Rights held that statistics are relevant to assessing the impact of a measure or practice on an individual or group, and that reliable and significant statistics may be sufficient to constitute prima facie evidence of indirect discrimination.

The top countries of origin for MVV applications/requests from the target group in 2005 were Turkey (3,948), Morocco (3,527), Ghana (1,371), and China (1,013).⁶⁰ Considering the figures provided for the target group, in 2006, the year of the introduction of the overseas integration test, procedures from Turkey fell by 39 percent and those from Morocco fell more than 44 percent. The top countries of origin in 2006 of MVV applications from the target group were Turkey (2,404), Morocco (1,964), and China (844).⁶¹ The numbers of applications remained low in the first nine months of 2007, with 1,329 applications from Turkey and 1,164 from Morocco.⁶²

Tougher Test Planned

According to the Dutch government, in the first year around 90 percent of applicants successfully passed the integration examination abroad. In its budget estimate for 2006, the government anticipated that about 13,000 people would take the exam abroad each year.⁶³ In fact, fewer than 5,000 applicants took the test in the first year.⁶⁴ The fall in the number of applicants suggests that the high success rate may reflect self-selection on the part of those having to take the test.

Nonetheless, in June 2007, the Dutch government announced it was considering introducing a higher minimum passing score for the “Spoken Dutch” element of the

⁶⁰ IND, Monitor Inburgeringsexamen Buitenland, November 2007, p. 30, <http://www.vrom.nl/get.asp?file=docs/kamerstukken/Mon26Nov20071528430100/BWWI2007116985MonitorWib-Nov2007.pdf> (accessed March 5, 2008).

⁶¹ Ibid.

⁶² Ibid: figures up to September 2007. The top countries of origin of all MVV applications in 2007 were China (4,506), India (3,756), Turkey (3,738), Suriname (2,341), and Morocco (2,244). Source: in English for the first 9 months IND, 2007 figures for provisional residence permits (MVV), http://www.ind.nl/en/Images/MVV%20200709%20EN_tcm6-144650.pdf (accessed March 5, 2008); in Dutch for the year 2007, http://www.ind.nl/nl/Images/MVV%20december%202007_tcm5-144650.pdf (accessed March 5, 2008).

⁶³ Second Chamber, committee year 2005-2006: “Determining the budget of the Ministry of Justice for the year 2006” (Vaststelling van de begrotingsstaten van het Ministerie van Justitie (VI) voor het jaar 2006), 30 300 hoofdstuk VI, nr. 2, KST 88429-2, p. 117.

⁶⁴ Between March 15, 2006 and March 15, 2007, 4,684 exams were completed by 4,434 candidates. See Letter of the present minister of housing, communities and integration of May 29, 2007 to the Second Chamber (TK 29700, no. 40), p. 2 and Integration Report 2007, Jaco Dagevos and Mérove Gijsberts, November 16, 2007, p. 57, http://www.scp.nl/publicaties/boeken/9789037703306/Jaarrapport_Integratie_2007.pdf (accessed March 4, 2008). For latest figures see IND, “Monitor Inburgeringsexamen Buitenland,” November 2007, p. 3, <http://www.vrom.nl/get.asp?file=docs/kamerstukken/Mon26Nov20071528430100/BWWI2007116985MonitorWib-Nov2007.pdf> (accessed February 8, 2007).

overseas integration test.⁶⁵ The higher pass mark was originally intended to come into effect on December 1, 2007, but its introduction was postponed, pending the results of a study requested by the lower house of the Dutch Parliament. The study, carried out by the Research Centre for Examination and Certification (RCEC), stated that the current minimum passing score is too low to determine whether the candidate has actually achieved the required language level. The RCEC recommended an interim increase in the passing score and further study to determine an appropriate permanent increase.⁶⁶ These recommendations have been adopted by the government, and an interim increase to the minimum passing score in the verbal proficiency section of the overseas integration test has been implemented since March 15, 2008.⁶⁷

In a letter to Human Rights Watch,⁶⁸ the minister indicated that that she expects the failure rate to be 14 percent (compared to the 6 percent hitherto) under the newly raised pass mark.⁶⁹

Financial Constraints

The overseas integration test should also be seen in the context of financial restrictions on family formation and reunification.

⁶⁵ See Letter of the present minister of housing, communities and integration of May 29, 2007 to the Second Chamber (TK 29700, no. 40), where it was still foreseen that 25 percent would fail the test under a new passing score, and another letter of February 5, 2008 on the introduction of the more difficult integration test abroad on March 15, 2008. The February 2008 letter states that the formal language level required will not change, but in fact the test becomes more difficult, i.e. more correct answers are needed to pass, and hence it would be unfair to introduce the new stricter test before the announced date, although all the required changes for administering the new test are in place. See also Letter of the minister of November 28, 2007 to the Second Chamber (TK 29700, no. 49).

⁶⁶ In a Letter from the minister for housing, communities and integration, March 19, 2008, also on behalf of the minister of foreign affairs and the state secretary of justice, responding to Human Rights Watch letter, January 23, 2008, the minister further outlined that further research will be conducted on a definitive pass mark for the spoken Dutch part of the overseas integration test. Research will include a meticulous examination with regard to the conditions in which the examination is taken and the possibilities for preparation that have to be offered by the Dutch government.

⁶⁷ See website of the IND, http://www.ind.nl/en/inbedrijf/actueel/Aanpassing_slaaggrens_Toets_Gesproken_Nederlands_uitgesteld.asp, and http://www.ind.nl/en/inbedrijf/actueel/Slaaggrens_Toets_Gesproken_Nederlands_per_15_maart_2008_aangepast.asp, as well as website of the Ministry of Housing, Spatial Planning and the Environment: <http://international.vrom.nl/pagina.html?id=11136> (accessed February 18, 2008).

⁶⁸ Letter from minister for housing, communities and integration, March 19, 2008, also on behalf of the minister of foreign affairs and the state secretary of justice, responding to Human Rights Watch letter, January 23, 2008.

⁶⁹ This percentage is based on the examination results for the last 1.5 years. What the exact failure rate will be under the new pass mark is still uncertain, as the minister notes.

Dutch citizens and residents, irrespective of their nationality,⁷⁰ must meet stringent income requirements⁷¹ to show that they can provide financially (“sponsor”) for non-Dutch family members, including spouses they wish to bring to the Netherlands.⁷² These requirements are in addition to the high costs of entry visas and subsequent residence permits.⁷³

In a response to Human Rights Watch, the minister of housing, communities and integration stated that according to the state secretary of justice no changes are foreseen as regards the income requirements for family reunification and formation and the fees for the issuance of MVVs and residence permits.⁷⁴

Sponsors must demonstrate that they can meet the income requirement, backed by an employment contract of at least one year at the time of application (or alternatively an employment record of three years and an employment contract valid at least for the next 6 months).⁷⁵

The income requirement for newly formed families is 120 percent of the legal minimum wage (€1,512.34 as of January 1, 2008), irrespective of the age of the sponsor.⁷⁶ As the statutory minimum wage of 21 year old workers is €856,⁷⁷ a

⁷⁰ Including to some extent EU citizens as well.

⁷¹ In the 1990s Dutch citizens, refugees, and holders of a settlement permit had to earn at least 70 percent of the welfare level to be allowed to bring family members into the country. Persons over 57.5 years old or single parents caring for small children were exempted from the income requirement before 2004.

⁷² Rules existing since the 1990s were further tightened in November 2004, in particular for family formation.

⁷³ The total amount of fees to be paid for a residence permit for family reunification amounts to approximately €1,400. See Comparative study on the implementation of the Family Reunification Directive, Centre for Migration Law, Radboud University Nijmegen, Questionnaire data of the Netherlands, section B.11, May 2007, <http://jurrit.jur.kun.nl/CMR/Qs/family/Netherlands/> (accessed February 4, 2008). See also IND, Residence in the Netherlands, December 2007, p. 15, http://www.ind.nl/en/Images/4012_tcm6-595.pdf and Costs for staying in the Netherlands, http://www.ind.nl/en/Images/Legeso7B_ENG_tcm6-76140.pdf (accessed March 6, 2008). In addition, there are of course still the generally applicable additional costs for legalizing and translating documents, which differ for each country.

⁷⁴ Letter from minister for housing, communities and integration, March 19, 2008, also on behalf of the minister of foreign affairs and the state secretary of justice, to Human Rights Watch letter, January 23, 2008. However, the minister informed Human Rights watch in this letter that the state secretary of justice will evaluate the impact of income and age requirements, amended in 2004, this year.

⁷⁵ Self-employed persons have to provide a declaration of sufficient net income and profit for the current and immediately preceding financial years, certified by a financial administrator.

⁷⁶ Royal Decree of September 29, 2004 (Stb. 2004, 496) amending several provisions of the Dutch Aliens Decree (Vreemdelingenbesluit). For the income requirement, see IND, “New ‘means requirement’ standard amounts introduced with effect from 1 January 2008 by the IND,” December 21,

sponsor aged 21 or 22 must earn a considerably higher percent of the minimum wage for his or her age group in order to meet the requirement.⁷⁸ The income level and the need to show a record of employment make it more difficult for sponsors under 23 to meet the requirements for sponsorship.⁷⁹

The income requirement for family reunification of couples is € 1,260.28 per month as of January 1, 2008.⁸⁰ This is the highest income level required for family reunification in the European Union.⁸¹

Impact on the Rights of Migrants

The overseas integration test is discriminatory. Coupled with the income requirements and cost of applications for family formation and reunification, it infringes the right to family life, affecting the rights of both those seeking to enter the Netherlands as family migrants and Dutch citizens and residents wishing to bring family members to live with them. As noted above, Turkish and Moroccan migrants in the Netherlands are disproportionately affected by these measures.

2007, http://www.ind.nl/en/inbedrijf/actueel/Met_ingang_van_1_januari_2008_nieuwe_normbedragen_middelenvereiste.asp (accessed March 5, 2008).

⁷⁷ Ministry of Social Affairs and Employment, http://internationalezaken.szw.nl/index.cfm?fuseaction=dsp_document&link_id=95108&rubriek_id=13006&lijstm=0,310_6057,334_12070 (accessed February 5, 2008).

⁷⁸ A sponsor aged 21 must therefore earn about 160 percent of the net minimum wage for workers of his or her age.

⁷⁹ The argument that for younger persons this in fact amounts to a higher income requirement than 120 percent was also put forward by the IOT, "The alliance of Turkish immigrants in Holland" (Stichting Inspraakorgaan Turken in Nederland), in a letter to the European Commission, no. 204-03HZ.HS, Utrecht, December 6, 2004. The IOT is the national Turkish consultation body and part of the National Consultation on Minorities in the Netherlands that is established under the Minority Policy Consultation Act.

⁸⁰ See IND, "New 'means requirement' standard amounts introduced with effect from 1 January 2008 by the IND," December 21, 2007, http://www.ind.nl/en/inbedrijf/actueel/Met_ingang_van_1_januari_2008_nieuwe_normbedragen_middelenvereiste.asp (accessed March 5, 2008).

⁸¹ See K. Groenendijk et al, "The Family Reunification Directive in EU Member States," the first year of implementation, Centre for Migration Law (CMR), Nijmegen, 2007, p. 26.

Prohibition of Discrimination

Human Rights Law

Human rights law prohibits discrimination and unjustified unequal treatment. The European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) forbid discrimination on the basis of nationality.⁸² The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) forbids discrimination on the basis of race.⁸³ The Netherlands is a party to each of these treaties.

Governments have the right to control entry to their borders and have a certain margin of appreciation to justify differential treatment compatible with international human rights law. But the measures must pursue a legitimate aim and need to be proportional to the achievement of this aim.⁸⁴

The European Court of Human Rights has accepted as compatible with the European Convention on Human Rights differences in treatment between EU nationals and third country nationals.⁸⁵ But the court has ruled that other differences in treatment solely on the basis of nationality are difficult to justify, requiring “very weighty reasons.”⁸⁶ The jurisprudence of the court leaves little or no room for justification of distinctions on grounds of “race” or “ethnic origin.”

⁸² European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively – ratified by the Netherlands on August 31, 1954.. Protocol No. 12 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S. 177, entered into force April 1, 2005, ratified by the Netherlands on July 28, 2004. See ECHR, article 14 (discrimination) together with article 8 (right to family life), Article 1 of Protocol 12.

International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the Netherlands on December 11, 1978, art. 17, 23, and 26.

⁸³ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by the Netherlands on December 10, 1971, art 1, 5, and 14.

⁸⁴ Indeed, in accordance with the ECHR jurisprudence, a difference in treatment of “persons in otherwise similar situations” does not constitute discrimination contrary to article 14 where it has an objective and reasonable justification; that is, where it can be shown that it pursues a “legitimate aim” or there is a “reasonable relationship of proportionality between the means employed and the aim sought to be realized.” See for example the judgment in the case of Abdulaziz, Cabales and Balkandali v. the United Kingdom (judgment of 28 May 1985, Series A, No. 94, paragraph 72).

⁸⁵ *Moustaquim v. Belgium*, Judgment of 18 February 1991.

⁸⁶ *Gaygusuz v. Austria*, Judgment of 16 September 1996.

In a recent case on Russia, the Court held that:

...no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.⁸⁷

In an important November 2007 judgment on non-discrimination (D.H. and others v. Czech Republic), the court underscored that the European Convention addresses not only specific acts of discrimination, but also systemic practices that deny the enjoyment of rights to racial or ethnic groups. The court re-affirmed that "a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a racial or ethnic group."⁸⁸

Indeed, the court clarified that such a situation may amount to "indirect discrimination," in breach of the convention. A difference in treatment without objective and reasonable justification may violate article 14 even in the absence of discriminatory intent. It is sufficient that the practice or policy resulted in a disproportionate adverse effect on a particular group.

The ICERD does not permit distinctions among non-citizens on racial grounds. The treaty does draw a distinction between citizens and non-citizens (article 1(2)), and permits some exceptions in legal provision relating to nationality, citizenship, or naturalization (article 1(3)).

In its General Recommendation No. 30, the UN Committee on the Elimination of Racial Discrimination (CERD) has stated that states must "ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin."⁸⁹ The General Recommendation also

⁸⁷ European Court of Human Rights, Judgment of December 13, 2005, *Timishev v. Russia* (Appl. Nos. 55762/00 and 55974/00), para. 58.

⁸⁸ *D.H. and others v. Czech Republic*, Judgment of November 13, 2007.

⁸⁹ CERD Committee, General Recommendation No. 30: Discrimination Against Non Citizens, October 1, 2004, II, section 9.

indicates that the compatibility of differential treatment in immigration matters with ICERD will depend on whether the measures pursue a legitimate aim and are proportional to the achievement of this aim.⁹⁰

The CERD Committee has also affirmed the principle of non-discrimination in the specific context of family unification. In March 2007 the CERD Committee observed, in relation to Israeli legislation limiting family reunification in cases of marriage between an Israeli citizen and a person residing in the West Bank or Gaza, that states must “ensure that restrictions on family reunification are strictly necessary and limited in scope, and are not applied on the basis of nationality, residency or membership of a particular community.”⁹¹

Overseas integration test discriminatory

The overseas integration test violates the principle of non-discrimination as enshrined in the European Convention on Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

The exemption granted to persons from “western” countries constitutes discrimination in the sense of Article 14 of the ECHR and under Protocol 12 to the convention.⁹² The act does not meet the requirement for justification set by the European Court of Human Rights. The integration of the immigrants into the Netherlands, including through the acquisition of Dutch language, history, and culture, may be a legitimate aim. But an integration exam that provides a blanket exemption for some nationalities and not others is not proportionate to that aim. A general exemption for persons from a number of countries is also contrary to the alleged aim of the act, namely that all migrants should have a basic level of integration before arrival.⁹³

⁹⁰ CERD Committee, General Recommendation No. 30: Discrimination Against Non Citizens, October 1, 2004, II, section 4.

⁹¹ CERD Committee, Consideration Of Reports Submitted By States Parties Under Article 9 Of The Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Israel, Seventieth session, 19 February–9 March 2007, CERD/C/ISR/CO/13, section 20.

⁹² This is also the view expressed by Art. 1, in its position paper submitted to European Commission against Racism and Intolerance (ECRI), in January 2007 for the report on the Netherlands, <http://www.art1.nl/scripts/download.php?document=345> (accessed February 14, 2008).

⁹³ Ibid.

When Human Rights Watch asked the minister for housing, communities and integration why citizens of some countries are exempted, her response was that to a certain extent those are similar in socio-economic, social, and political background to European countries. The countries do not generate undesired and unbridled migration flows to the Netherlands nor do their citizens experience essential problems in integration into Dutch society. Nationals of these countries, she said, are also exempted from the MVV requirement because of factors such as Dutch economic interests, foreign relations, national security, and public order.⁹⁴

As noted above, the argument that the exempted countries are comparable with the Netherlands in social, economic, and political background has no objective justification. The government has not demonstrated that, for example, Japanese family members who are exempted from the overseas integration test tend to integrate more easily than Turkish family members who are required to take it. There is no evidence that the declared social and economic level of a country is a reliable indicator of the capability, inclination, or willingness of a potential individual migrant to integrate.⁹⁵ The government has not shown, if it believes family members in some countries need to pass this integration test, why others do not.

In assessing the proportionality of the measure, it is important to recall that the government requires most long-term foreign residents (with the exception of EU/EEA citizens) to pass an examination demonstrating greater knowledge of the Dutch language and culture than is assessed by the overseas integration test.⁹⁶ The Dutch government still argues that the overseas integration test facilitates the process of ongoing integration once the person is present in the Netherlands.⁹⁷ Yet it fails to

⁹⁴ Letter from minister for housing, communities and integration, March 19, 2008, also on behalf of the minister of foreign affairs and the state secretary of justice, responding to Human Rights Watch letter, January 23, 2008.

⁹⁵ This is also the view expressed by Art. 1, in its position paper submitted to ECRI, in January 2007 for the report on the Netherlands, <http://www.art1.nl/scripts/download.php?document=345> (accessed February 14, 2008).

⁹⁶ As mentioned before, EU/EEA and Swiss nationals (as well as family members of such nationals who are entitled to enter and reside in the Netherlands under their right to free movement) are not considered “integration subjects” and do not have to participate in the integration procedure (section 5 (2) of the Integration Act).

⁹⁷ See website of the Ministry of Housing, Spatial Planning and the Environment, section on integration, <http://www2.vrom.nl/pagina.html?id=10696> (accessed February 17, 2008), which states that the Integration Abroad Act should ensure that someone coming to the Netherlands on a long-term basis “already knows something about the Netherlands and is somewhat familiar with the language.” Once in the Netherlands, the integration is supposed to continue as regulated by the Integration Act: “He or she learns the language better and learns more about the Netherlands.”

justify why for nationals of some countries, the integration program in the Netherlands is deemed sufficient to facilitate the process of integration, and no overseas test is required.

Since the difference in treatment has no relation to the aim of the measure (better integration in the country of destination), it amounts to discrimination on the basis of ethnic origin and nationality. The sanction for not passing the overseas integration test is the refusal of entry into the Netherlands. A reduction in immigration by non-western family migrants was an expected effect of the legislation by the Dutch government.⁹⁸ The government assumed here that only those who pass the test have satisfactorily manifested their willingness to integrate. But this assessment fails to take sufficiently into account the practical difficulties in preparing and taking the test before entry to the Netherlands. This disproportionate instrument therefore violates the Netherlands' obligations under the ECHR.

Similarly, the country exemptions for the overseas integration test also constitute an unjustified infringement of the principles of non-discrimination in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). As the concept of "race" in Article 1(1) of the convention is to be broadly interpreted, including descent, or national or ethnic origin, the persons affected by the act can be considered to fall under the definition of "race."

The National Bureau against Racial Discrimination, LBR, (now part of "Art. 1," the national association against discrimination) argues that the act constitutes an unjustified infringement on the principles of non-discrimination as enshrined in ICERD.⁹⁹ Its conclusion is based on the exemptions granted to some nationalities and the proportionality of the measure to the aims it seeks to achieve. The organization argues that the comparable socio-economic, social, and political development of a country is an arbitrary justification for the exemption, since it bears

⁹⁸ Parliamentary Document, Second Chamber, *Wet inburgering in het buitenland*, KST 2003-2004, 29700, no. 3, (memorie van toelichting), pp. 5-6.

⁹⁹ Letter of the National Bureau Against Racial Discrimination, LBR, (now Art. 1) to the chair of the CERD Committee, concerning compulsory integration measures, the Netherlands, March 20, <http://www.art1.nl/scripts/download.php?document=270> (accessed March 6, 2008).

no relationship to the capacity or the inclinations of an individual to integrate in the Netherlands or his or her knowledge of the Dutch language.

The exemption for certain nationalities is not covered by the two exceptions in Article 1 of ICERD. The measure is part of the immigration legislation, not of the citizenship legislation. It distinguishes between different groups of non-nationals rather than between nationals and non-nationals. Moreover, the measure in practice directly or indirectly has different effects for migrants related to their ethnic or racial origin.¹⁰⁰ It therefore violates the Netherlands' obligations under the ICERD.

Indirect discrimination: disproportionate impact on certain migrant communities

In addition to the discriminatory impact on foreign national family migrants from non-western countries, the overseas integration test also indirectly discriminates against individual Dutch citizens and residents from non-western migrant communities, particularly those of Turkish and Moroccan origin. As noted above, members of these communities in the Netherlands are also disproportionately impacted by financial requirements for sponsoring family formation and reunification.

At first glance, the legal rules on the integration exam abroad in the Netherlands are formulated in a general and neutral way, affecting all Dutch citizens and residents who wish to bring family members to the Netherlands. However this disguises the fact that this measure disproportionately affects Dutch citizens and residents of “non-western” origin. Members of “non-western” migrant communities are more likely to bring family members from abroad to the Netherlands than “native” Dutch persons, and far more likely to bring family members from “non-western” countries than migrants from “western” countries living in the Netherlands.

The exemption of Surinamese nationals with a certain level of Dutch education, means that in practice it is members of the other two largest migrant communities in the Netherlands—from Turkey and Morocco—who are most affected. Indeed as noted

¹⁰⁰ This is also the view expressed by the National Bureau Against Racial Discrimination, LBR, (now Art. 1), in its letter to the chair of the CERD Committee, concerning compulsory integration measures, the Netherlands, March 20, 2007, <http://www.art1.nl/scripts/download.php?document=270> (accessed March 6, 2008).

above, these two groups were uppermost in the mind of policymakers when the overseas integration test legislation was introduced.

According to figures released by Statistics Netherlands (CBS) in January 2008, a large majority of Turkish men who married in 2006 chose a bride of Turkish origin; in 54 percent of the marriages, the wife had previously lived in the Netherlands while 27 percent lived in Turkey before their marriage, but later moved to the Netherlands.¹⁰¹ Among Moroccan men, 83 percent of those who married in 2006 chose a bride of Moroccan origin—60 percent had Moroccan wives who had previously lived in the Netherlands and 23 percent had wives who migrated from Morocco after marriage.

The high cost of the test and financial requirements also disproportionately affect Turkish and Moroccan migrants in the Netherlands. Turkish and Moroccan migrant communities are generally the most disadvantaged in the Netherlands. They suffer high rates of unemployment,¹⁰² an over concentration in low wage employment, and low incomes compared to the national average.¹⁰³ The sustainability requirement to be demonstrated by longer-term employment contracts or profits represents a

¹⁰¹ See Mila van Huis, "Fewer immigrant brides from Turkey and Morocco," Web magazine, January 8, 2008, <http://www.cbs.nl/en-GB/menu/themas/bevolking/publicaties/artikelen/archief/2008/2008-2350-wm.htm> (accessed March 7, 2008).

¹⁰² In 2006 unemployment rates (in percentages) varied significantly according to Statistics Netherlands: Moroccan 17, Turkish 15 and "native" Dutch 4. It should be noted that more recent data of Statistics Netherlands published in March 2008 outlines that unemployment rates for groups with a non-western foreign background have decreased in the past year. In the fourth quarter of 2007, unemployment among people with a non-western foreign background was 9.1 percent. In the fourth quarter of 2006 it was still as high as 12.4 percent. Unemployment fell among the native Dutch population in the same period. In the fourth quarter of 2007, 3.3 percent of the native Dutch labor force was unemployed, compared with 4.0 percent 12 months previously. In particular for young non-westerners the drop was substantial: The larger fall in unemployment among the non-westerners has diminished the gap substantially in unemployment between them and the native Dutch group. In 2006 youth unemployment was still two-and-a-half times as high among nonwestern groups as among native groups. In 2007 it was just under twice as high. Out of the groups with a non-western foreign background distinguished in the survey, Moroccans traditionally have the highest unemployment rates. In 2001 11 percent of them were unemployed. This is one-and-a-half times as high as unemployment among the Surinamese, the non-western group with the lowest rate of unemployment. The decrease in unemployment was in the same order of magnitude for all the groups distinguished. See <http://www.cbs.nl/en-GB/menu/themas/dossiers/allochtonen/publicaties/artikelen/archief/2008/2008-019-pb.htm> (accessed May 5, 2008).

<http://www.cbs.nl/en-GB/menu/themas/dossiers/allochtonen/publicaties/artikelen/archief/2008/2008-019-pb.htm> (accessed May 5, 2008).

¹⁰³ Around 30 percent of Turkish, Moroccan, Antillean, and other non-Western ethnic minority households live below the poverty line, compared with eight percent of indigenous households. Source: SCP (Social and cultural planning bureau), The Netherlands Web magazine, January 8, 2008, <http://www.cbs.nl/en-GB/menu/themas/bevolking/publicaties/artikelen/archief/2008/2008-2350-wm.htm> (accessed March 7, 2008).

difficult challenge for newly employed, self-employed persons and in general for persons with a more difficult position on the labor market.

The introduction of stricter sponsorship requirements in 2004 has been put forward as a partial explanation for the decline between 2001 and 2006 in the number of Turkish and Moroccan men in the Netherlands marrying brides from abroad. The proportion of Turkish men in the Netherlands marrying a bride coming from Turkey fell during that period from 56 percent to 27 percent, while among Moroccan men the proportion marrying a woman coming from Morocco fell from 57 percent to 23 percent.¹⁰⁴

The financial constraints also affect refugees. Refugees who fail to apply for family reunification within three months of receiving status are subject to the income requirements, as are asylum seekers who receive other forms of status. Access to employment can be difficult for such persons, who have sometimes been absent from the labor market for a long period, making it difficult to comply with the income requirements.

The Right to Family Life

The operation of the overseas integration test has a direct impact on the right to family and private life of migrants resident in the Netherlands and their foreign national family members.

Human Rights Law

The right to family life is protected under international human rights law, including the ECHR and ICCPR.¹⁰⁵ But the right is a qualified one, insofar as interference with its enjoyment is legitimate where necessary to protect a greater public interest. In the context of family unification, the public interest in question is immigration control.

cent of indigenous households. Source: SCP (Social and cultural planning bureau), The Netherlands Web magazine, January 8, 2008, <http://www.cbs.nl/en-GB/menu/themas/bevolking/publicaties/artikelen/archief/2008/2008-2350-wm.htm> (accessed March 7, 2008).

¹⁰⁴ See Mila van Huis, "Fewer immigrant brides from Turkey and Morocco," Statistics Netherlands Web magazine, January 8, 2008, <http://www.cbs.nl/en-GB/menu/themas/bevolking/publicaties/artikelen/archief/2008/2008-2350-wm.htm> (accessed March 7, 2008).

¹⁰⁵ Article 8 of the ECHR and articles 17, 23 of the ICCPR.

Whether the restriction constitutes a violation will depend on a number of factors including the length of stay and ties of the individuals to the country where they live and whether it is possible to enjoy family life in another state.

The European Court on Human Rights acknowledges the state's own interest in controlling immigration and that the ECHR provides no automatic right to family life in a particular country. To assess whether an interference with this right strikes the correct balance between an individual's right to family life and the state's interest in controlling immigration, the court takes into account, among other factors, the individual's ties to the country of residence and the country of nationality, his or her family situation, and the obstacles the individual and his family members would face in the individual's country of nationality.¹⁰⁶

Article 23 of the ICCPR provides that "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State" and therefore guarantees the protection of family life, including the interest in family reunification. The Human Rights Committee, which monitors compliance with the ICCPR, addressed the issue indirectly in its 1986 General Comment 15 on the "Position of Aliens under the Covenant" noting that although in general states have discretion in relation to admitting non-nationals, "in certain circumstances, an alien may enjoy the protection of the Covenant even in relation to entry or residence," for example, when considerations of non-discrimination and respect for family life arise.¹⁰⁷

Interference with the Right to Family Life

Foreign family members must remain outside the Netherlands until they have met the requirements for family migration to the Netherlands, including passing the

¹⁰⁶ Sen. v. the Netherlands judgment—application no. 31465/96, Eur. Ct. H.R. 888 (2001). The admissibility decision was rendered on November 7, 2000 and the judgment given on December 21, 2001. It should be noted that the court acknowledged that family life was dynamic and that the state was obliged to allow for and facilitate the normal development of family ties. In the view of the court, the right to respect for family life applied to all parents and their children in the same way, regardless of nationality. Human rights principles therefore overrule exclusionary effects of restrictive national immigration rules.

¹⁰⁷ Human Rights Committee, General Comment 15, The Rights of Aliens Under the International Covenant on Civil and Political Rights, HRI/GEN/1/Rev.7, para. 5, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument).

overseas integration test, and their MVV application has been approved. This can lead to significant periods of separation for spouses and family members.

Once all the requirements have been met and the application submitted, the MVV procedure generally takes three to six more months. The requirement that applicants pass the overseas integration test (including the involved preparation time) arguably amounts to an informal waiting period.¹⁰⁸ Even if an applicant passes the test on the first try, and is able to meet other requirements, the accumulation of these conditions can lead to a considerable waiting period.¹⁰⁹

For applicants under the age of 21, the waiting period is even longer. For example, if a 19-year-old Dutch citizen of Turkish or Moroccan origin marries, he or she will have to wait until age 21 before an application for family formation can even be filed. Moreover, the income requirement for family formation is 120 percent of the minimum wage persons aged 23 and up. If the 21 year old earns at or below the average for his age group, he or she may have to wait up to two more years before being able to comply with the income requirement.¹¹⁰

Notwithstanding, the state's own interest in controlling immigration and the fact that the ECHR provides no right to family life in a particular country, a significant delay in family reunification or formation would be an interference in the right to family life for the family member living in the Netherlands. Whether or not it would amount to a violation (that is a disproportionate interference) of the right to family life of the person resident in the Netherlands would depend on the strength of ties that he or she had established in the Netherlands (the presence of family members, employment, etc), and whether or not he or she could reasonably be expected to give up residence in the Netherlands and move to a third country.

¹⁰⁸ See K. Groenendijk et al., "The Family Reunification Directive in EU Member States, the first year of implementation," Centre for Migration Law (CMR), Nijmegen, 2007, pp. 23-24.

¹⁰⁹ Time is an important concept in the right to family life and Article 8 of European Convention on Human Rights (ECHR), and a waiting period is also regulated in the EU Directive 2003/86/EC on the right to family reunification.

¹¹⁰ See also Comparative study on the implementation of the Family Reunification Directive, Centre for Migration Law, Radboud University Nijmegen, Questionnaire data of the Netherlands, Section B.23, Netherlands, <http://jurrit.jur.kun.nl/CMR/Qs/family/Netherlands/>.

When Human Rights Watch asked the minister for housing, communities and integration if the government has assessed the impact of restrictions on family reunification and formation on the right to family life of Turkish and Moroccan migrants living in the Netherlands, the minister responded that the state secretary of justice will evaluate the impact of the income and age requirements this year. The impact of Integration Abroad Act on the influx of family migrants, including Turkish and Moroccan migrants, will be taken into account in the evaluation of this act, also beginning this year. The minister stated that the number of applications for MVVs, including the applications of family migrants has decreased since 2003. She argued that the evaluation will have to demonstrate whether this decrease in applications can be ascribed to the sharpened restrictions on family formation and reunification.¹¹¹

The Right to Marry and Found a Family

Human Rights Law

In addition to its obligation not to discriminate on the basis of nationality or ethnic origin, the Netherlands also has a positive obligation under international human rights law to protect the family, including the establishment of families. The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the ICCPR, the Convention on the rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) all afford special protection to the family as the fundamental unit of society.

Under Article 16 of the Universal Declaration of Human Rights and Article 23 (1) and 26 of the International Covenant on Civil and Political Rights (ICCPR), discriminatory limitations of the human right to marry and found a family are prohibited. The family is defined as the natural and fundamental group unit of society and entitled to protection by society and the State.

¹¹¹ Letter from minister for housing, communities and integration, March 19, 2008, also on behalf of the minister of foreign affairs and the state secretary of justice, to Human Rights Watch letter, January 23, 2008.

General Comment 19, Article 23, paragraph 2, of the ICCPR reaffirms the right of men and women of marriageable age to marry and to found a family. As the Human Rights Committee argues, “the possibility to live together implies the adoption of appropriate measures ... to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.”¹¹² Protection of the family and its members is also guaranteed, directly or indirectly, by other provisions of the covenant. Thus, article 17 establishes a prohibition on arbitrary or unlawful interference with the family.¹¹³

In addition, Article 5 (d) (iv) of the Convention on the Elimination of Racial Discrimination (ICERD) requires states parties to guarantee the right of everyone to equality before the law in the enjoyment of their right to marriage and choice of spouse.

Article 10 of the ICESCR also recognizes that: “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children...”

The committee that assesses state compliance with this covenant (CESCR) has expressed concern about Norway’s imposition of financial requirements on migrants seeking family reunification, concluding that “the subsistence requirement imposes an undue constraint on the ability of some foreigners...to be reunited with their closest family members” and encouraged the state “to consider easing restrictions on family reunification in order to ensure the widest possible protection of, and assistance to, the family.”¹¹⁴

Impact on individuals in the Netherlands and their family members

¹¹² Human Rights Committee, CCPR General Comment No. 19 (1990), Protection of the family, the right to marriage and equality of the spouses (Article 23), paragraph 5, http://www.unhcr.org/refugees/pdf/Gen_Comment23_on19.PDF (accessed March 7, 2007).

¹¹³ Human Rights Committee, CCPR General Comment No. 19 (1990), Protection of the family, the right to marriage and equality of the spouses (Article 23), paragraph 1, http://www.unhcr.org/refugees/pdf/Gen_Comment23_on19.PDF (accessed March 7, 2007).

¹¹⁴ CESCR, fourth periodic report of Norway, E/C.12/1/Add.109, 13 May 2005, § 16 and 35, according to OHCHR migration paper on family reunification, November 2005.

Although the act does not directly forbid a marriage with the spouse of their choice, the overseas integration test, coupled with the financial requirements for family migration to the Netherlands, may make it impossible for a considerable number of spouses to live together for an extended period of time.¹¹⁵ The restrictive conditions required impose constraints that are very difficult for some applicants to fulfill and thereby interfere with the ability of these couples to realize their choice of a spouse. They have a significant impact on marriage migration by poor and less educated women who need more support to integrate into Dutch society.

As FORUM (Institute for Multicultural Development) pointed out in 2003 when overseas integration conditions were first proposed, the lack of facilities to learn the Dutch language in some countries makes it almost impossible for nationals of those countries to join their spouses and family members in the Netherlands. FORUM further challenged why an income requirement of 120 percent was imposed while the legal minimum wage had been based on the fact that a family could support itself on this wage.¹¹⁶

Forced marriage, domestic violence¹¹⁷, and honor-related violence¹¹⁸, issues present in the Dutch public debate on integration policies, are human rights violations and the Dutch authorities have an obligation to take positive effective measures to prevent them. But even if that were the purpose of the law, the introduction of collective blanket restrictions on family formation and reunification for Turkish and Moroccan migrant communities in the Netherlands are not proportionate to that aim.

¹¹⁵ This is also the concern expressed by the National Bureau Against Racial Discrimination, LBR, (now Art. 1), in its letter to the chair of the CERD Committee, concerning compulsory integration measures, the Netherlands, March 20, 2007, <http://www.art1.nl/scripts/download.php?document=270> (accessed March 6, 2008).

¹¹⁶ FORUM (Institute for Multicultural Development, a large non-governmental actor and centre of expertise in the field of integration policy in the Netherlands) had commented at the time of the introductions of these new conditions and had warned of its arbitrary character. See FORUM, "Integration becomes a one-way street in new coalition agreement" (Integratie wordt eenrichtingsverkeer in nieuw regeerakkoord), Reaction of FORUM to coalition agreement, Press release, Utrecht, May 20, 2003, <http://www.forum.nl/pers/index.html> (accessed March 6, 2008).

¹¹⁷ Domestic violence is the most prevalent form of violence against women in the Netherlands according to the Special Rapporteur on violence against women. Migrant women have to face these issues in an overall more vulnerable position due to their specific circumstances. However, it should be noted that the National report of the Netherlands for the Universal Periodic Review of the Human Rights Council, February 2008, states that: "violence in the private domain is the most prevalent form of violence in our society and occurs in all socioeconomic strata and all cultures."

¹¹⁸ The report of the Special Rapporteur on violence against women, its causes and consequences on the mission to the Netherlands, A/HRC/4/34/Add.4, February 7, 2007, points out: "The uncertainties about the overall levels of violence noted, some categories of violence are prevalent in the Netherlands which primarily or exclusively affect women with a foreign background. These acts of violence, ... are referred to as "honour"-related violence (HRV)."

An Ineffective Instrument of Integration

Integration can be a positive objective. Giving newcomers the opportunity to acquire a basic command of the language and some idea of the society they will be joining may be in their interest, as well as that of society. The Dutch government has a legitimate interest in the integration of its migrant population, which can bring benefits in terms of social cohesion. Migrant representatives interviewed by Human Rights Watch generally agreed that migrants should prepare as well as they can for their future country.¹¹⁹

The real question is whether the overseas integration test contributes to the process of integration for family migrants to the Netherlands. As noted above, the government says that such an evaluation of effectiveness has not been conducted yet, but announced that it will be assessed in the forthcoming review of the Integration Abroad Act.¹²⁰ Our research indicates that it does not contribute, and instead may alienate migrant communities in the Netherlands, making integration more difficult, as well as impeding integration in a practical sense.

The operation of the test, coupled with the income requirements, high costs, and long waiting periods, create a strong impression, also expressed by the majority of migrant representatives interviewed by Human Rights Watch, that the measures are not about integration but rather about keeping people out of the Netherlands—in the words of one, “to close the door.”¹²¹ As one integration policy expert put it: the

¹¹⁹ Human Rights Watch interviews in October-November 2007 with several migrant representatives interviewed in the course of the research for this briefing paper.

¹²⁰ Letter from minister for housing, communities and integration, March 19, 2008, responding to Human Rights Watch letter, January 23, 2008. The results are expected around spring 2009 and the evaluation will include an investigation into the effect of the overseas integration test on the integration programme and language level of newcomers. The minister furthermore argues that since the Civic Integration Act was just introduced two years ago, the effectiveness as an instrument of integration and participation can only be determined to a small extent and this evaluation will therefore give a first indication.

¹²¹ Human Rights Watch interview with migrant representative cooperating with Platform Buitenlanders Rijnmond (PBR), an umbrella organization of migrant self-organizations, November 6, 2007. Similar views were expressed during a Human Rights Watch interview with two PBR board members, Rotterdam, November 6, 2007, and a Human Rights Watch interview with Leo Euser, coordinator, and Ahmed Charifi, secretary, from the national Moroccan consultation body, Samenwerkingsverband van Marokkanen in Nederland (SMN), Utrecht, November 8, 2007.

“message [is you are] not welcome.”¹²² This is underscored by the fact that when the Dutch government introduced the bill it explicitly linked integration requirements to immigration, together with the fact that all non-EU/EEA migrants in the Netherlands seeking long-term residence are required to pass an integration test.¹²³ The language used by the government to justify the exemption of certain nationalities considered as western from having to take the overseas integration test suggests that immigration control, to prevent an increase in numbers of certain communities in the Netherlands, is an element of the intent of the legislation.

The introduction of the integration exam requirement in its current form sends negative messages both to immigrants and the majority of the population: “Immigrants do not want to learn the language; we have to force them to do so.”¹²⁴

One representative of a national migrant organization pointed out that “not learning the language, but showing motivation to try to learn the language under hard circumstances [seems to be] the aim.”¹²⁵ The Dutch government argued when introducing the bill that this new integration requirement also would select only those aliens who are sufficiently motivated to integration. They have to demonstrate the willingness and ability to make the necessary efforts. Thus, any “failure to integrate” is blamed on the potential migrants.

The overseas integration test and other entry requirements may also impede integration in a direct sense, by delaying the process of integration. Experts and

¹²² Human Rights Watch email correspondence with Erna Lensink, policy officer on “inburgering” (integration programs and tests), Dutch Council for Refugees (VluchtelingenWerk Nederland), February 5, 2008. This view was echoed during a Human Rights Watch interview with several migrant representatives and members of SPIOR (Stichting Platform Islamitische Organisaties Rijnmond/foundation platform Islamic organizations Rijnmond), umbrella organization for Muslim organizations in and around Rotterdam, November 7, 2007, Rotterdam.

¹²³ Parliamentary Document, Second Chamber, Wet inburgering in het buitenland, KST 2003-2004, 29700, no. 3, (memorie van toelichting).

¹²⁴ See Kees Groenendijk, “Integration Tests Abroad as a Condition for Family Reunification in the EU?” in Immigration Law Practitioners’ Association (ILPA) European Update, June 2007 and Human Rights Watch email correspondence with Kees Groenendijk, professor of sociology of law, Centre for Migration Law, University of Nijmegen, chairman of the Standing Committee of Experts on international immigration, refugee and criminal law (Meijers Committee) in October 2007. A similar view was expressed by Erna Lensink, policy officer on “inburgering” (integration programs and tests) from the Dutch Council for Refugees (VluchtelingenWerk Nederland), in email correspondence with Human Rights Watch on February 5, 2008.

¹²⁵ Human Rights Watch email correspondence with Harm van Zuthen from the IOT, “The alliance of Turkish immigrants in Holland” (Stichting Inspraakorgaan Turken in Nederland), the national Turkish consultation body (part of the National Consultation on Minorities established under the Minority Policy Consultation Act), February 12, 2008 and Human Rights Watch interview in Utrecht, November 8, 2007.

migrant representatives have pointed out to Human Rights Watch that the usual effect of new restrictions is that family members postpone reunification.¹²⁶ Hence, they will arrive in the country and actually start the integration process later and older.¹²⁷ It is unclear how this enhances integration—one integration policy expert even indicated as a result “that it hinders the integration of the partner in the Netherlands.”¹²⁸

An integration, citizenship, and migration expert told Human Rights Watch that the overseas integration test is unlikely to enhance integration for the individual migrant because integration before entry is “difficult and inefficient.” “The input is far bigger than the output. One could better use this input once the migrant arrived in the Netherlands.”¹²⁹ “How can someone integrate if you are not experiencing anything of Dutch society?” as one migrant representative put it.¹³⁰ In the words of another, “integration abroad is useless indeed. ... integration after arrival is much more efficient, [but] the argument was turned around.”¹³¹

In practical terms, it is likely to prove difficult to learn a foreign language “when there is no real possibility to practice the language in daily life” and where there are a

¹²⁶ Kees Groenendijk in the June 2006 issue of the ILPA European Update and Human Rights Watch email correspondence with Kees Groenendijk, Professor of Sociology of Law, Centre for Migration Law, University of Nijmegen, chairman of the Standing Committee of Experts on international immigration, refugee and criminal law (Meijers Committee) in October 2007, confirmed by Human Rights Watch email correspondence on February 5, 2008 with Erna Lensink, policy officer on “inburgering” (integration programs and tests) from the Dutch Council for Refugees (VluchtelingenWerk Nederland), and Human Rights Watch interview with a representative from a national Turkish cooperation organization IOT (Stichting Inspraakorgaan Turken in Nederland), November 8, 2007.

¹²⁷ Kees Groenendijk in the June 2006 issue of the ILPA European Update and also confirmed by Human Rights Watch email correspondence, February 5, 2008, with Erna Lensink, policy officer on “inburgering” (integration programs and tests) from the Dutch Council for Refugees (VluchtelingenWerk Nederland); and Human Rights Watch email correspondence with Harm van Zuthen from the IOT, “The alliance of Turkish immigrants in Holland” (Stichting Inspraakorgaan Turken in Nederland), February 12, 2008.

¹²⁸ Human Rights Watch email correspondence with Erna Lensink, policy officer on “inburgering” (integration programs and tests) from the Dutch Council for Refugees (VluchtelingenWerk Nederland), March 11, 2008.

¹²⁹ Human Rights Watch email correspondence with Joëlle de Poorte, programme manager at FORUM, Institute for Multicultural Development, February 6, 2008.

¹³⁰ One migrant representative during Human Rights Watch interview with several migrant representative and members of SPIOR (Stichting Platform Islamitische Organisaties Rijnmond/foundation platform Islamic organizations Rijnmond), umbrella organization for Muslim organizations in and around Rotterdam, November 7, 2007, Rotterdam.

¹³¹ Human Rights Watch email correspondence with Harm van Zuthen from the IOT, “The alliance of Turkish immigrants in Holland” (Stichting Inspraakorgaan Turken in Nederland), February 12, 2008 and Human Rights Watch interview in Utrecht, November 8, 2007.

limited number of Dutch language courses on offer.¹³² As one migrant representative points out: “Taking the integration exam abroad is not just costly, for many it is impossible as well, because facilities to prepare for this exam are lacking.”¹³³

By contrast, reunification of families would arguably enhance integration. As the Dutch government has pointed out, family life can contribute to the stimulation of socio-cultural stability and, consequently, the integration of migrants into Dutch society. There are, therefore, not only benefits to individual migrants, but also to Dutch society as a whole.¹³⁴

The Council of Europe, which dealt with the issue of family reunification in the Recommendation (2002) 4 of the Committee of Ministers “on the legal status of persons admitted for family reunification” recognized that the residence status and other rights granted to the admitted family members are important elements assisting the integration of new migrants in the host society.¹³⁵

There is similar language in the preamble to the EU family reunification directive:

Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.¹³⁶

¹³² Kees Groenendijk, “Integration Tests Abroad as a Condition for Family Reunification in the EU?” in Immigration Law Practitioners’ Association (ILPA) European Update, June 2007.

¹³³ Human Rights Watch email correspondence with Harm van Zuthen from the IOT, “The alliance of Turkish immigrants in Holland” (Stichting Inspraakorgaan Turken in Nederland), February 12, 2008 and Human Rights Watch interview in Utrecht, November 8, 2007.

¹³⁴ Ministry of Justice, “Towards a modern Migration Policy, Memorandum on the review of the policy on managed migration to the Netherlands,” June 2006, http://english.justitie.nl/images/612778%20Migratie-binnenENG-de_tcm35-76782.pdf.

¹³⁵ Recommendation (2002) 4 of the Committee of Ministers to member states on the legal status of persons admitted for family reunification (Adopted by the Committee of Ministers on 26 March 2002 at the 790th meeting of the Ministers’ Deputies).

¹³⁶ EU Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, October 3, 2003, p.12-18, Preamble no. 4.

Facilitating family reunification could also send a positive message to migrant communities about the Netherlands, and may thereby enhance their integration into society. “A healthy base to start from is necessary ... people are discouraged to bring their foreign partner in ... People have become suspicious of the Dutch government and the new policy ... If we want to encourage a healthy integration then we also have to change the overall (negative) view on the Netherlands.”¹³⁷

Recommendations

To the Government of the Netherlands

- Ensure that all integration and immigration policies comply with the Netherlands’ obligations under international human rights law, including the prohibition of discrimination and the right to family life, as enumerated, among others, in ICERD, ICCPR, and ECHR.
- Abolish the civic integration examination abroad under the Civic Integration Abroad Act.
- In the interim, and until such time as the examination is scrapped:
 - Introduce a flat fee for the integration exam abroad by requiring persons to pay only once for taking the test rather than for each attempt.
 - Allow the test to be taken remotely via phone or regionalize the exam abroad enabling people to take the exam in different regional centers in one country, for the benefit of applicants living far from Dutch consulates, or in countries without Dutch consular representation.
- Lower the income requirements for sponsors for authorization for temporary residence (known as “MVV”) applications for family reunification and formation to 70 percent of the social assistance level (the level for certain categories prior to 2004). Sponsors under 23 years of age should be subject to income requirements reflecting the lower minimum wage for that age group.
- Introduce flexibility in the sustainability requirement for MVV applications for self-employed and newly-employed sponsors to allow them to demonstrate

¹³⁷ One migrant representative during a Human Rights Watch interview with several migrant representatives and members of SPIOR (Stichting Platform Islamitische Organisaties Rijnmond/foundation platform Islamic organizations Rijnmond), umbrella organization for Muslim organizations in and around Rotterdam, November 7, 2007, Rotterdam.

that they have the necessary income, instead of the current stringent sustainability requirement of longer-term profits and contracts.

- Reduce administration and processing fees for applications and the issuance of permits.
- In addition, Human Rights Watch further encourages the Dutch government to adhere and implement in a timely manner the recommendations flowing from the UN Universal Periodic Review in April 2008 and the third report on the Netherlands of the Council of Europe's European Commission against Racism and Intolerance (ECRI), published in February 2008, both of which identified specific concerns and resulted in specific recommendations for steps to address the protection of fundamental rights as well as discriminatory policies and practices against migrants and the integration policy, including in the context of integration measures.

To the European Union

- Member states should not adopt and implement compulsory conditions of integration abroad based on the "Dutch model," which this briefing paper identifies as discriminatory, serving as an instrument of immigration control, and running counter to its stated purpose of efficiently promoting integration.
- Member states should ensure that their integration measures are fully compliant with international human rights law, including the prohibition of discrimination.
- Member states and relevant EU institutions should ensure adequate follow-up and implementation of the recommendations made in the European Parliament, report on strategies and means for the integration of immigrants in the European Union, adopted in May 2006. The Parliament should consider preparing a follow-up report taking stock of action undertaken since the publication of its report. Members of the Parliament should question the commission and council on measures taken to address the recommendations in the report, and on initiatives undertaken overall at the EU level in the area of integration.
- The commission and the council should ensure that initiatives undertaken at the EU-level in the area of integration serve to protect and promote human rights, including the right to non-discrimination and equality.

- The Fundamental Rights Agency should continue to monitor integration measures in EU member states and assess their compliance with the fundamental human rights norms underpinning the Union.

To the Council of Europe

- ECRI should continue to monitor closely integration measures in the Netherlands and follow up with the government to ensure that its policies are consistent with the European Convention on Human Rights and other Council of Europe human rights standards.
- ECRI should consider undertaking targeted work in the area of integration, inter alia by developing a general policy recommendation on key elements of a human rights compliant integration policy, including on best practices in integration policy in accordance with the European Convention on Human Rights and other Council of Europe standards distilled from its monitoring work across the Council of Europe region.
- The Council of Europe commissioner for human rights should use the opportunity of his upcoming visit to the Netherlands to follow up on the concerns raised in this briefing paper and should further question the government of the Netherlands about migrants' rights under the overseas integration test.

To the United Nations

- The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance should consider follow-up action to address the concerns detailed in this briefing paper, including by conducting a country visit to the Netherlands and elaborating recommendations for reforms.
- The Special Rapporteur on the human rights of migrants should follow up on the concerns detailed in this briefing paper and elaborate recommendations in his fields of competence.
- The Human Rights Committee and the Committee on the Elimination of Racial Discrimination should use the opportunity of their upcoming reviews of the Netherlands to scrutinize the government's approach to integration, including the Integration Abroad Act.