



Individual submission to the United Nations Universal Periodic Review

LAWYERS FOR LAWYERS

The Netherlands

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Presented by:

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A. Introduction

1. Lawyers for Lawyers ("L4L") submits this report on the state of human rights in the Netherlands, particularly focusing on the legal profession, with recommendations for the 41st session of the Universal Periodic Review ("UPR") Working Group in the United Nations Human Rights Council ("HRC") in November 2022.
2. L4L is an independent and non-political foundation based in the Netherlands, established in 1986 and predominantly funded by donations from lawyers, law firms and lawyers' organizations. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has special consultative status with ECOSOC since 2013.

B. Executive summary

3. In 2020 the Netherlands ranked nr. 5 on the WJP Rule of Law-index.ⁱ The rule of law in the country, including the independence of the judiciary and lawyers, generally is in good shape. However, in the last couple of years there have been issues and incidents that can form a threat to the independence of lawyers. Lawyers for Lawyers feels it is of the utmost importance to address those issues and incidents in order to prevent wear and tear of the rule of law.
4. This submission highlights Lawyers for Lawyers' key concerns regarding the Netherlands' compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the United Nations Basic Principles on the Role of Lawyersⁱⁱ ("**Basic Principles**") and other international rights instruments,ⁱⁱⁱ focusing on the safety of lawyers and effective guarantees for the functioning of lawyers.

C. Normative and institutional framework

5. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, can carry out their professional duties independently of the government and free from political pressure. This is recognized in, inter alia, the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights ("**ICCPR**").
6. Furthermore, on 22 June 2017 the HRC passed a resolution condemning "*the [worldwide] increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions.*" The HRC expressed its deep concern "*about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession*" and called upon States "*to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable.*"^{iv}

7. In order to fulfil its task of promoting and ensuring the proper role of lawyers, the Netherlands must respect the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to ensure that all persons have effective access to independent legal assistance.^v
8. During the third UPR cycle in 2017, the Netherlands received^{vi} and accepted^{vii} recommendations concerning the administration of justice all through the Kingdom of the Netherlands. Lawyers are essential agents of the administration of justice, and even though lawyers were not specifically addressed in recommendations during the UPR in 2017, for the proper working of the administration of justice, it is of the utmost importance that lawyers can do their work without any fear of reprisals or interference.
9. However, reports gathered by Lawyers for Lawyers – including information from various lawyers and lawyers’ organizations in the Netherlands – indicate that the Netherlands can improve on upholding the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. There are examples of lawyers encountering serious difficulties in carrying out their professional duties independently. This undermines the proper functioning of the judicial system, including the right to a fair trial and effective access to justice.

D. Threats and harassment of lawyers and effective protection against this

10. Lawyers in the Netherlands, especially lawyers working in certain areas of law such as criminal law, family law and insolvency law, have reported that they are increasingly the subject of different forms of harassment in connection with their professional activities. This harassment often comes from third parties and is connected to the nature of the cases or the type of clients the lawyers represent. It comes in the form of threats, intimidation, and in some instances physical attacks.
11. International human rights law, including the European Convention on Human Rights to which the Netherlands is a party, requires that States take steps to protect the life and physical integrity of persons who they know or ought to know are at real risk of violence. According to the Basic Principles, governments must ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference^{viii}. The UN Basic Principles specify that “[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”^{ix}.
12. The Dutch Bar Association, an independent body, represents lawyers in the Netherlands and has raised concerns on numerous occasions about the reports of lawyers who are threatened or harassed. The Bar Association has installed a hotline for lawyers to call when they have concerns about their safety. At the initiative of the Dutch Bar Association, the Government of the Netherlands granted a subsidy for 850 *safety scans* for lawyers and law firms.^x Furthermore, as of 2021, the Dutch Bar Association organises resilience training for lawyers, helping them to deal with aggression and threats.^{xi} At the request of the Dutch Bar Association, the Courts set up ‘contact points’ for incidents in and around court houses.^{xii}

13. Despite these actions of the Dutch Bar Association, lawyers remain concerned about the security situation of lawyers working in specific fields of law.
14. Lawyers representing clients who are suspected of a criminal offence have indicated that they receive threats regularly in connection to their work. A high-profile criminal case, the so-called Marengo-trial, against persons suspected of being members of a criminal organization and accused of several murders and attempted murders in relation to hard drugs in the last couple of years has led to a number of incidents involving lawyers. In this criminal case, the witness statement of Nabil B., allegedly a former member of this criminal organisation, is a key factor. No less than three persons close to Nabil B. were liquidated: his brother, his lawyer and an employee of the law firm representing Nabil B.
15. Mr. Derk Wiersum, a well-respected lawyer and deputy judge, was shot in broad daylight right outside his house in Amsterdam in the early morning of 18 September 2019. The Dutch authorities have promptly and publicly condemned this crime and have taken immediate measures to initiate an investigation, which should lead to the identification and prosecution of the perpetrators. In 2021, two suspects were sentenced to 30 years imprisonment.
16. The lawyers who represented Nabil B. subsequently retained the well-known journalist and crime reporter Peter R. de Vries as ‘confidence person’ to Nabil B. De Vries was part of the law firm representing this witness, and the attorney-client privilege applied to him.^{xiii} Peter R. de Vries was liquidated on 15 July 2021. Two suspects were arrested shortly after the liquidation.
17. The killings are believed to be carried out on orders of the criminal organisation. The killings raise serious questions regarding the protection of lawyers and employees of law firms. The family of Peter R. de Vries has criticised the role of the Dutch Government in protecting De Vries. In August 2021, the Dutch Safety Board (an independent administrative body) started an investigation into the safety measures taken by the Dutch Government relating to all involved in this matter, including lawyer Derk Wiersum and ‘confidence person’ Peter R. de Vries. L4L will monitor this investigation and the outcome thereof.
18. Lawyers representing a suspect in these ‘Marengo-proceedings’ were secretly followed to Dubai by the Dutch Public Prosecutor, in an attempt to arrest a member of the aforementioned criminal organization. This is threatening to the lawyers, first of all because they could have been in the line of fire should any arrest have been made, and secondly because their clients could be led to believe that these lawyers worked together with the Dutch Public Prosecutor.^{xiv} The Attorney-General of the Supreme Court denied a request to independently investigate this matter.^{xv}
19. The safety of lawyers is also a matter of concern for lawyers who represent victims of crimes committed against them. It has been reported that by now, it is almost impossible for victims or their next of kin - especially in cases connected to organized crime - to provide themselves with legal assistance, because of their own safety and the safety of their lawyers. Threats against themselves and/or their lawyers are getting more and more serious.

20. Lawyers who act as trustees in bankruptcy have also reported that they are the subject of threats and physical attacks. Trustees in bankruptcy are paid from the insolvency estate, but fulfill a social role, as they have been given an increasingly larger (public) role over the years, namely combating fraud after a company goes bankrupt and subsequently reporting it.^{xvi} However, the support of the police after a trustee files a report with the police is lacking. Currently, there is a lack of transparency around trustees and the rights and obligations of the government after trustees file a report with the police. There is an increase in crime intertwined with bankruptcy proceedings.
21. Principle 17 of the Basic Principles stipulates that, where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities. However, L4L was informed that despite the steps that have been taken to increase security measures for lawyers at risk, the protection of these lawyers by the government is often inadequate and selective, in contrast to the protection given to judges and prosecutors and lawyers of the defendants receive. This may create a climate in which lawyers may eventually refuse to represent clients connected to politically sensitive or controversial issues out of fear of becoming the target of acts of harassment. This severely compromises the universal right to effective legal representation as well as the proper functioning of the rule of law and the protection of human rights and fundamental freedoms.

E. Public rhetoric against lawyers

22. Endangering lawyers by discrediting them occurs, first of all, in criminal cases. Public Prosecutors have made statements at public hearings, in the presence of the press, stating that criminal organizations have a legal department and that lawyers are part of this, in which they do not represent the interests of the suspects but only those of the accused^{xvii}. Furthermore, the Chief of Police of the National Police suggested in an interview with a major national newspaper^{xviii} that lawyers are trapped in criminal organizations and that consideration should be given to lifting the legal privilege of lawyers. This further reinforces the earlier suggestion by the Public Prosecution Service that lawyers are indeed part of those criminal organizations.
23. Lawyers working on asylum cases have been faced with public rhetoric of politicians, discrediting their professional activities. Especially since the asylum crisis of 2015 the right to asylum has become a highly politicized subject. Right-wing politicians have started coining the phrase “asylum industry” with which they are targeting, discrediting and demonizing lawyers who are assisting asylum seekers in the Netherlands.
24. In this rhetoric, the discourse entails that the costs of the asylum policy are astronomical and that lawyers, who work on a legal aid basis, supposedly initiate and stack procedures to extend the stay of asylum seekers. In this regard, it is argued that the asylum industry should be dismantled and legal aid for asylum lawyers should be ended.^{xix}
25. The phrase “asylum industry” has been copied in media and on right-wing blogs. Whereas there have, as yet, not been incidents of violence against immigration lawyers, such language is

inflammatory and causes a normalization of demonizing lawyers. Comparable language was used by politicians in the UK, after which immigration firms have been forced to introduce protective measures and an immigration solicitor was the victim of an armed attack. This goes to show how important it is to protect lawyers from being demonized and that this should be actively pursued by the Dutch government.

F. Lack of lawyer-client confidentiality

26. The Basic Principles provide that communication between lawyers and their clients must take place “in full confidentiality” and that “governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”^{xx} Furthermore, the United Nations Human Rights Committee stated in its General Comment No.32 on Article 14 ICCPR that “the right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.”^{xxi}
27. There have been numerous incidents where the client-attorney privilege was breached by the Dutch Public Prosecutor or other government bodies. For instance, in a high profile case, early 2022 a court found that the tax authorities of the Dutch Government had breached the client-attorney privilege on a large scale.^{xxii} The Dutch Bar Association raised concerns about the manual used by the Dutch Public Prosecutor regarding the attorney-client privilege.^{xxiii}

G. Recommendations to the Government of the Netherlands

- **Safeguard and guarantee a full and effective independence of lawyers, by ensuring that they can perform their professional duties without any fear of reprisals, intimidations, or threats.**
- **When the security of lawyers is threatened, take immediate measures to ensure that the security of lawyers and all employees of law firms is guaranteed, effectively support the initiatives proposed by the Dutch Bar Association, and ensure that all incidents are properly investigated.**
- **Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers**
- **Preserve the right to people to access justice, and then preserve lawyers’ mission to guarantee that.**
- **Actively address and refute false rhetoric that demonizes lawyers and can lead to harassment and incitement of violence.**
- **Fully comply with and create awareness about the core values underlying the legal profession, including the attorney-client privilege, amongst others by bringing the UN Basic Principles on the Role of Lawyers to the attention of relevant stakeholders, especially members of the executive, the public prosecutor’s office, the police and the public.**

ⁱ <https://worldjusticeproject.org/rule-of-law-index/country/2020/Netherlands/>

ⁱⁱ The UN Basic Principles provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on September 7, 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on December 18, 1990 in both the session of the Third Committee and the plenary session of the General Assembly. Source: <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

ⁱⁱⁱ Examples include Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Principle 3 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

^{iv} UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20

^v During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11.

^{vi} Report of the Working Group on the Universal Periodic Review of the Netherlands, A/HRC/36/15, 18 July 2017.

^{vii} Report of the Working Group on the Universal Periodic Review of the Netherlands, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replied presented by the State under review, A/HRC/36/15/Add.1, 14 September 2017.

Recommendation 131.200 (Kenya): Continue to protect and promote human rights in the Caribbean Netherlands by reducing poverty, providing a minimum of social security and establishing legal offices to provide legal advice and referrals to increase access to justice and recommendation 131.115 (Bolivarian Republic of Venezuela): Adopt measures to eliminate domestic violence, rape and sexual harassment, ensuring the safety of victims and the timely response to complaints, as well as access to free legal assistance.

^{viii} Principle 16

^{ix} Principle 17

^x <https://www.advocatenorde.nl/veiligheidsscan>

^{xi} <https://www.advocatenorde.nl/standpunten/weerbaarheid/weerbaarheidstraining>

^{xii} <https://www.advocatenorde.nl/nieuws/meldpunt-dreiging-advocaten-bij-gerechten>

^{xiii} Gerechtshof Den Haag, 25 mei 2021 (*De Staat/Peter R. de Vries*),

<https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2021:897>

^{xiv} The Dutch Association of Criminal Lawyers raised this issue with the Dutch Public Prosecutor:

<https://www.nvsa.nl/wp-content/uploads/2020/08/200826-brief-NVSA-aan-College-PG.pdf> The Dutch Public Prosecutor is of the opinion that there was a valid reason to secretly follow the lawyers, given the specific circumstances of the case: <https://www.om.nl/actueel/nieuws/2020/08/21/reactie-college-van-procureurs-generaal-over-observeren-advocaten-in-zoektocht-naar-ridouan-t>

^{xv} <https://www.vcas.nl/index.php/dossier-observatie/>

^{xvi} Artikel 68 lid 2 Faillissementswet.

^{xvii} Paul Vugts. (11 August 2021 Wednesday). OM: ‘Advocaten dienen soms meer belang bende dan belang verdachte’. Het Parool.nl. <https://www.parool.nl/amsterdam/om-advocaten-dienen-soms-meer-belang-bende-dan-belang-verdachte~bbfddf9c/#:~:text=Net%20zoals%20legale%20organisaties%20hebben,ze%20in%20een%20strafzaak%20bijstaan.>

^{xviii} John van den Heuvel. (11 September 2021, Saturday). ‘Hoe humaan moet het zijn?’; Politiechef is vrijheden voor zware criminelen in de gevangenis beu. De Telegraaf.

<https://www.telegraaf.nl/nieuws/2077263744/politiechef-is-vrijheden-zware-criminelen-in-gevangenis-beu-hoe-humaan-moet-het-zijn.>

^{xix} See for example the election program 2021 of Forum voor Democratie, page 21,
<https://www.fvd.nl/aanpakken-immigratie>.

^{xx} UN Basic Principles, Principle 8 and Principle 22.

^{xxi} CCPR/C/CG/32. UN Human Rights Committee, 23 August 2007.

^{xxii} Court of Oost-Brabant, 22 March 2022,

<https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBOBR:2022:1035>

^{xxiii} <https://www.advocatenorde.nl/nieuws/om-handleiding-verwerking-geheimhouderinformatie-miskent-verschoningsrecht>