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Human rights policy versus practice

An evaluation of the implementation of
the human rights policy of the Netherlands
in its relations with China, Indonesia,
Iran, Mexico and Rwanda in the period
1999 - 2004

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Hilde Hey
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**Buitenlandse
Zaken**

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PREFACE

Human rights are considered as a cornerstone of Dutch foreign policy. Despite the importance of the policy area, only a few limited evaluations of human rights programs have been carried out during the past decade. The policy and operations evaluation department (IOB) therefore included this policy area in its evaluation programme and carried out a policy analysis and five sub-studies.

‘Human rights policy versus practice’ presents the results of one of these sub-studies. Between November 2004 and April 2005 Dutch political efforts in the field of human rights in Indonesia, China, Iran, Rwanda and Mexico were assessed. The aim of the sub-study was to describe the implementation of Dutch human rights policy and, for a selected number of case studies, to gauge its effectiveness. To this end, an evaluation framework was designed, documents were reviewed and a large number of key actors were interviewed. The results presented in this report reflect the main issues arising from the analysis of the data collection from all sources.

IOB evaluator Marijke Stegeman is responsible for the overall evaluation of human rights policy. The sub-study presented here was carried out by Marcel Zwamborn, Hilde Hey and Mirjam van Reisen. Research assistant Inge Sturkenboom participated in preparing the documentation for the evaluation. The responsibility for the contents of the report remains, however, with the authors. This report is one in an IOB series of ‘working documents’ that consists of studies which may be of interest to a broader audience.

Henri Jorritsma
Acting Director Policy and Operations Evaluation Department (IOB)

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ABBREVIATIONS

AI	Amnesty International
ASEM	Asia Europe Meeting
AU	African Union
CAR	Custody and repatriation
CASS	Chinese Academy of Social Sciences
CAT	United Nations Convention Against Torture
CCP	Chinese Communist Party
CCPR	International Covenant on Civil and Political Rights
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination against Women
CERD	United Nations Convention on the Elimination of All Forms of Racial Discrimination
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CFSP	European Union Common Foreign and Security Policy
CNDH	Comisión Nacional de los Derechos Humanos (National Human Rights Commission)
CRC	Convention on the Rights of the Child
CSP	Country Strategy Paper
DIHR	Danish Institute for Human Rights
DRC	Democratic Republic of Congo
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
EU	European Union
EZLN	Ejercito Zapatista de Liberacion Nacional (Zapatista National Liberation Army)
FIDH	Fédération Internationale des Droits de l'Homme (International Federation for Human Rights)
GAERC	European Union General Affairs and External Relations Council
HoM	Head of Mission
HRA	Human rights ambassador
ICC	International Criminal Court
ICJ	International Court of Justice
ILO	International Labour Organization
IMF	International Monetary Fund
IOB	Policy and Operations Evaluation Department of the Netherlands Ministry of Foreign Affairs
MDR	Rwandan Democratic Movement
MoU	Memorandum of Understanding
NGO	Non-governmental organisation
OAS	Organization of American States
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OHCHR	United Nations Office of the High Commissioner for Human Rights
PAN	Partido de Acción Nacional (National Action Party)
PGR	Partnership for Governance Reform
PL	Liberal Party
PRI	Partido Revolucionario Institucional (International Revolutionary Party) (in section on Mexico)
PRI	Penal Reform International (in section on Rwanda)

PSD	Social Democratic Party
RPF	Rwandan Patriotic Front
RTL	Re-education through labour
SIM	Studie- en Informatiecentrum Mensenrechten (Netherlands Institute of Human Rights)
SPC	Supreme People's Court
TK	Tweede Kamer (Second Chamber of the Dutch Parliament)
TNI	Tentara Nasional Indonesia – armed forces of Indonesia
UN	United Nations
UNAMET	United Nations Mission in East Timor
UN GA	United Nations General Assembly
UNCHR	United National Commission on Human Rights
UNDP	United Nations Development Programme
UN SC	United Nations Security Council
UN SG	United Nations Secretary General
UNTAET	United Nations Transitional Administration in East Timor

1 MAIN FINDINGS

1.1 Research questions

Contributing to the observance of international human rights standards by reacting to situations in which human rights are violated is an important element in the foreign policy of the Netherlands. This study evaluates the policy, strategy and use of instruments by the Netherlands to contribute to the observance of human rights standards in China, Indonesia, Iran, Mexico and Rwanda. It also includes a review of bilateral relations, as well as work within the framework of the European Union (EU) and action taken in the relevant human rights fora of the United Nations (UN).

The main questions for the study were:

- Has the human rights situation in the countries¹ been analysed and have concerns been acknowledged by the Netherlands?
- Have policy objectives been formulated and strategies developed to achieve the objectives?
- How has the policy been implemented?
- Have concerns been addressed in other fields of foreign policy, such as development co-operation and economic relations?
- Has the Netherlands been effective in a few selected situations per country?

1.2 Main findings and conclusions

Analysis of the human rights situation

Gathering and analysing information regarding the (development of) the human rights situation is the basis for policy and strategy development.

It was found that the Netherlands systematically gathered information and analysed the human rights situation in the five countries. The analyses were by and large consistent with analyses found in reports by international human rights organisations and UN human rights bodies.

The transparency of the analyses for the Dutch Parliament, human rights organisations, the media and the public at large differs for the various countries. Documents submitted by the Government to the Parliament, the main source of public information, were found to be more frequent, elaborate and detailed with regard to Indonesia and Iran than with regard to the other three countries.

Especially with regard to China there is a gap in the level of information in internal and public documents during the last years of the evaluation period. Notwithstanding the interest of Parliament and society at large in human rights issues in China, public documents provide little detail, focus on long-term trends and provide little information on the policy of the Netherlands.

¹ For the purpose of this study a criterion by which countries were selected was the term “serious and / or massive violations of human rights”, which relates to violations of civil and political rights (see paragraph 2.2 in the main report). “Analysis of human rights situation” therefore refers to analyses of the situation of civil and political rights, not social economic and cultural rights.

Considerable effort has been put into gathering information, sharing this information with EU partners and contributing to reporting within the EU framework. However, the gathering of information and reporting and their importance is not very well recognised and acknowledged in internal plans and reports. The results of this activity are publicly visible in the EU Annual Reports on human rights, but not always in Dutch public reporting.

Policy objectives and strategy

There is a distinct weakness in the formulation of human rights policy objectives in terms of outcomes and strategies to achieve these objectives. Furthermore, it was found that the Netherlands did not set benchmarks to measure achievement of objectives. This applies both to promotion of human rights through political efforts and through Official Development Assistance (ODA).

The consequence of the lack of specific objectives and the lack of benchmarks is that there is little transparency regarding what can be expected of the Netherlands, whether options for the use of different instrument have been considered, the arguments for using certain instruments, whether and how policy and strategy are evaluated and what conclusions are drawn, and with what expected outcome the Netherlands enters the debate with EU partners on policy objectives and strategy.

The Netherlands has had an active role in the development of the EU approach towards China and Iran, including the development of the benchmarks used in the dialogues. No explanation has been found as to why the Netherlands did not apply the same approach to its bilateral relations.

Policy implementation bilaterally and through the framework of the EU

Most of the instruments that were available with regard to the countries included in the evaluation were actively applied to address human rights concerns. The exception was Mexico, where instruments were found to be applied less frequently than in the other countries.

Instruments such as support of/through NGO channels (although NGO circumstances differ greatly in the five countries), assistance through ODA and military relations were used when the opportunity was available. Economic relations were not used, although in some cases ministers responsible for these relations were reported to have raised human rights issues.

In all countries a tendency and preference was found for action within the framework of the EU Common Foreign and Security Policy (CFSP). In addition bilateral channels were used to raise concerns and to implement a development co-operation programme.

The tendency to address human rights within the framework of the EU seems strongest with regard to China and Iran. Gathering information and reporting are strongly geared towards the framework provided by the dialogue processes. These dialogues were also found to constitute a framework for interventions.

With regard to Indonesia the situation is different. There is no formal human rights dialogue and only a limited number of EU Member States are seen to have an interest in Indonesia. Political intervention on human rights issues by the EU regarding Indonesia requires strong encouragement from the Netherlands, and this does indeed happen. As a result the Netherlands has also intervened on important human rights

issues bilaterally, even if there is a preference to use the political instruments within the framework of the EU.

With regard to Rwanda there is also a strong preference for undertaking action within the framework of the EU. Action outside the EU framework is undertaken in cases where EU agreement on an intervention is not easily reached and/or is time-consuming.

As for Mexico, the EU-Mexico Global Agreement provides for the opportunity to raise human rights concerns, which rarely happens. The Netherlands has tried several times to change this situation, in one case successfully.

The Netherlands was usually found to be among the EU Member States favouring strong statements and/or EU initiatives in relation to countries such as China, Indonesia and Iran in multilateral fora. There have been the occasional successes, but during the evaluation period the Netherlands did not succeed in convincing its EU partners to (co-)sponsor resolutions on China and Iran at the United Nations Commission on Human Rights (UNCHR) or the Third Committee of the United National General Assembly (UN GA).

During the EU presidency in the second half of 2004 the Netherlands was very active in the field of gathering information and co-ordinating reporting with regard to the five countries. It also initiated interventions with regard to these countries, some of them more successful than others.

Conformity of efforts and plans

More efforts have been undertaken than were planned for the five countries, although one has to bear in mind that for most countries policy objectives were defined at a very abstract level and that no plans for the use of instruments were developed. Activities undertaken were generally based on considerations of necessity and effectiveness, but the work is hardly made visible and, with the exception of the EU human rights dialogues, rarely evaluated.² Conclusions with regard to effects and efficiency are therefore seldom drawn, which hampers the inclusion of lessons learned in future plans.

The evaluation shows that the policy of contributing to a strong and co-ordinated EU approach on human rights through the EU CFSP is indeed followed and is, in the view of the evaluators, a rational choice. Contributing to the efforts of the EU is likely to be more effective than operating in isolation and provides for protection against repercussions from strong international players, like China. The drawback is that it also requires accepting compromises when there are diverging views between the EU partners. An example relating to China is that the Netherlands favoured the option of the EU co-sponsoring a resolution on China at the 58th UNCHR session (something which would normally be introduced by the US) but the EU did not decide to go ahead with this sponsorship. Other examples relate to Mexico and Iran.

Raising concerns in various fields of foreign policy

The main other area of foreign policy that was found to be used for the promotion and protection of human rights was the field of development co-operation through ODA, with the exception of Mexico and Iran of course since there is no ODA relationship.

² Both dialogues were evaluated in 2004 during the Dutch Presidency. The EU-China dialogue showed limited results and the EU-Iran dialogue hardly any results.

The relationship in the field of ODA is not so much used to raise concerns and to put pressure on the government of the recipient country, but rather to contribute to the infrastructure relevant to human rights protection, such as improvement of the judicial sector, development of the civil society sector or building the capacities of independent media. The exception to this is Rwanda, where the political dialogue and ODA are integrated. The Memorandum of Understanding (MoU) between the two governments includes both human rights issues and development co-operation.

With regard to raising human rights concerns in other fields of foreign policy the evaluators found inclusion of human rights concerns in the military co-operation with Indonesia and inclusion of concerns about labour rights in economic relations with Mexico by encouraging Dutch companies operating in Mexico to abide by the Organisation for Economic Co-operation and Development (OECD) guidelines on corporate social responsibility. Furthermore, regarding China there is a standard guideline to raise human rights issues during visits by ministers from other departments and generally this guideline is observed.

Effectiveness of political efforts, based on case studies

The assessment of the effectiveness in a number of case studies has produced varying results.

Interventions on behalf of individuals (China and Iran) or situations of NGOs (Rwanda) have contributed to positive short-term effects for some individuals and for the NGOs concerned. Due to the fact that various actors have made interventions regarding the same individuals or situations, the positive effects cannot be attributed to a specific intervention or actor, in this case the Netherlands.

The Netherlands has frequently raised concerns on freedom of religion in China. There are no positive results to show for this.

Regarding the *ad hoc* East Timor tribunal (Indonesia) it can be concluded that the outcome of the extensive efforts by the Netherlands may not overall be positive (sub-standard procedures, minimal sanctions that were overturned mostly on appeal). Nevertheless, the efforts contributed to processes that ensured part-successes.

The evaluation of the various case studies illustrates that as a small country the Netherlands needs to secure the support of the EU or other partners to achieve its (human rights) policy objectives. In general the conclusion is that the Netherlands has been active and sometimes successful in securing such support in relation to various situations in the countries included in this evaluation.

2. COUNTRY SELECTION, MAIN RESEARCH QUESTIONS, METHODOLOGY AND SCOPE

2.1 The study as part of the overall evaluation of the human rights policy of the Netherlands

The evaluation of the political efforts in bilateral relations in the field of human rights is part of the evaluation of the policy of the Netherlands in the field of human rights in relation to foreign policy undertaken by the Policy and Operations Evaluation Department (IOB) of the Netherlands Ministry of Foreign Affairs. The IOB commissioned this study. The findings of the evaluation of the political efforts in bilateral relations are building blocks in the overall evaluation undertaken by the IOB.

The focus of this study is the evaluation of the extent to which the Netherlands has used the instruments at its disposal in bilateral relations to promote and protect human rights

Such instruments include a political or specific human rights dialogue with the government of the country concerned, public statements, “quiet diplomacy”, *démarches*, restriction of diplomatic relations and sanctions. With the exception of restriction of diplomatic relations and sanctions all of these instruments can be and are increasingly used. This is not the case only in bilateral relations, but also increasingly through the framework of the EU Common Foreign and Security Policy (CFSP). Furthermore, an important strategy to promote and protect human rights is to integrate human rights as an issue into other areas of foreign policy, such as development co-operation, mainly by means of financial support as Official Development Aid (ODA), or in economic or military co-operation.

The evaluation is conducted by reviewing the political efforts in the relations of the Netherlands with five countries: China, Indonesia, Iran, Mexico and Rwanda. By comparing the findings and conclusions of these five case studies a synthesis is made from an overall policy perspective.

For each country the evaluation reviewed:

- the policy objectives of the Netherlands in relation to the main human rights concerns in the country.
- the extent to which policy has been implemented and by which means.
- for a limited number of cases an assessment of the extent to which the efforts of the Netherlands have been effective in addressing human rights concerns, taking into account the circumstances of the situation; however, no case studies were included for Mexico.

Before turning to the research questions and the methodology of the evaluation, a summary overview will be given of the overall human rights policy of the Netherlands and a brief explanation provided of the background to the selection of the five countries included in the study.

2.2 Policy and instruments

In 1979 the Minister of Foreign Affairs and Development Co-operation presented the Memorandum on Human Rights and Foreign Policy to the Parliament.³ The Government issued three follow-up memoranda: in 1987, 1991 and 1997.⁴

The 1979 Memorandum still forms the basis of Dutch human rights foreign policy, but changing political relationships globally (the end of the Cold War and hence changed circumstances in North-South relations) necessitated a review of threats and challenges, but also represented new opportunities for the promotion and protection of human rights in international relations, as stated in the 2001 Memorandum on Human Rights Policy 2001.⁵

The overall objectives of human rights policy in the foreign policy of the Netherlands as outlined in the 1979 Memorandum aim to contribute to (1) the development of international human rights standards and (2) the actual observation of these standards.⁶

The 2001 Memorandum reconfirmed the overall goals of 1979. At the same time it was stressed that the conclusion of the 1979 Memorandum stating that the framework of international standards had more or less been completed was even more true of the situation in 2001. As a result an even greater emphasis in the policy would be placed on the observance and implementation of the international standards.

The range of options identified in the human rights policy of the Netherlands covers among others the promotion of information and education, raising awareness, promoting the establishment of (international) implementation procedures and reacting to specific situations in which human rights are abused and taking action to prevent human rights abuses from occurring or from continuing, the actual topic of this study.

For reacting to specific situations there is a whole spectrum of instruments. Using the various memoranda as a source, one can give an overview of activities/instruments⁷ as outlined in Figure 1.

³ Tweede Kamer, 1978-1979, 15 571, no. 1 – 2, De rechten van de mens in het buitenlands beleid, May 1979; English translation *Human rights and foreign policy*, December 1979.

⁴ First follow-up memorandum (1e voortgangsnotitie over de rechten van de mens in het buitenlands beleid), 25 June 1987; 2nd follow-up memorandum, Tweede Kamer, 1990-1991, 21 800 V, no. 91; 3rd follow-up memorandum, Tweede Kamer, 1996-1997, 25 300, no. 1.

⁵ *2001 Memorandum on human rights and foreign policy*, Tweede Kamer, 2000-2001, 27 742, no. 2, at 2.

⁶ *Human rights and foreign policy*, 1979 at 131 (3).

⁷ For an overview of foreign policy instruments in relation to human rights see also Peter R. Baehr and Monique Castermans-Holleman, *The role of human rights in foreign policy*, third edition (2004), chapter 4.

Figure 1

Activity	Instruments
Analysis of the human rights situation	<ol style="list-style-type: none"> 1. Gathering information on the human rights situation Sources of information: <ol style="list-style-type: none"> a. Fact-finding: contact with victims/relatives/legal counsellors; field visits b. Local sources: local NGOs, media, human rights commissions; other diplomats; local representations of international agencies; etc. c. International sources: research of international agencies, NGOs. 2. Analysis of the information, assessment of options/strategies for contributing to improvement, selection of priority issues for intervention, setting of benchmarks (with indicators) for improvement
Intervention options	<ol style="list-style-type: none"> I. Action in and through international fora: <ul style="list-style-type: none"> • Support to fact finding (missions) • Raise an issue before an international forum • Stimulate the use of monitoring and review mechanisms provided for under international procedures (Special Procedure or Treaty-based Procedure) • File a state complaint as provided for in, for example, Article 41 of the International Covenant on Civil and Political Rights (CCPR) or Article 24 of the European Convention on Human Rights (ECHR). • In conflict situations: early warning and early action, support to humanitarian intervention and support to victims II. Bilateral action <ol style="list-style-type: none"> 1. Political relations, bilaterally and within the framework of the EU: <ul style="list-style-type: none"> • a dialogue with the government concerned • quiet diplomacy • confidential reports • public statements • <i>démarches</i> • visits by ministers or other high-ranking officials • restraining, reducing or cancelling diplomatic contacts • integration of human rights issues into various bilateral contacts. 2. Support of/through NGO channels: <ul style="list-style-type: none"> • support to research, fact-finding and documenting • direct assistance to victims. 3. Development co-operation: <ol style="list-style-type: none"> a. support to programmes that aim to establish the rule of law and improve the administration of justice b. integration of human rights into contacts and activities in the field of development co-operation c. reduce, suspend or cancel development co-operation relations due to violations of human rights. 4. Economic relations: <ol style="list-style-type: none"> a. integration of human rights into economic relations b. reduce, suspend or cancel economic relations due to violations of human rights. 5. Military means: <ol style="list-style-type: none"> a. use of military contacts/relations to raise human rights concerns b. military co-operation to enhance awareness and observance of human rights standards. <p>N.B. Military humanitarian intervention is an option for the Netherlands as action within an international framework; I.5 above</p>

A key issue is of course whether the memoranda provide guidance in answering the question of in which situations and how the Netherlands will react to violations of human rights. The various memoranda provide such guidance only in very general terms.

The 1979 Memorandum states that reacting to specific situations in which human rights are abused involves acting to produce improvements in such situations and refraining from actions which in fact might support such abuses. As a general rule the Netherlands wishes wherever possible to help counter specific human rights abuses, particularly in cases of gross and persistent violations of human rights.⁸ The policy should be impartial and non-selective in that it must not concentrate on countries of one particular political colour and should also not be counter-productive by (unintentionally) harming those whom it seeks to help. Last but not least, the Memorandum states that consideration also needs to be given to whether action by the Netherlands is likely to have any effect at all on the situation concerned.⁹

So, briefly summing up, the criteria for reacting to specific situations in the 1979 Memorandum are:

- priority for situations of gross and persistent human rights violations
- impartial and non-selective as to the choice of situations/countries
- action should not be counter-productive and should be effective concerning the situation at hand.

These criteria were not further elaborated upon, extended or specified in the follow-up memoranda of 1987, 1991 and 1997. The 2001 Memorandum reiterates the first criterion, although in somewhat different wording: the human rights policy of the Netherlands should focus on¹⁰:

- countries in which there are serious and / or massive violations
- countries that wish to accede to the EU or the Council of Europe
- countries with which the Netherlands has special relations for historical or other reasons.

As explained in the next section, the criteria of the 2001 Memorandum have guided the selection of countries for this study, but are not reviewed as such.

However, the more content-oriented first criterion of gross and persistent human rights violations, later termed as serious and/or massive violations, does merit attention, since it may be found to have guided the choice of situations to which the Netherlands has reacted in the countries that are the subject of this study.

The terminology in the first criterion relates to the 1503 procedure, named after the Economic and Social Council (ECOSOC) resolution by which the UN Commission on Human Rights is mandated to examine communications (complaints) received from individuals and groups alleging human rights violations and any government responses.¹¹ The term “gross” in particular merits some further attention. Apart from

⁸ In Dutch the wording gross and persistent violations is “grove en voortdurende schendingen”, Tweede Kamer 1978-1979, 15 571, no. 1 -2, at 102, conclusion 14.

⁹ Human rights and foreign policy (1979), policy conclusions 13, 14 and 15, at 133 and 134.

¹⁰ Tweede Kamer, 2000-2001, no 27 742, no. 2, at 11

¹¹ Resolution 1503(XLVIII) of the Economic and Social Council, revised in ECOSOC resolution 2000/3.

indicating the serious character of the violations, it also relates to the type of violations. Violations considered under this procedure initially included genocide, apartheid, racial or ethnic discrimination, torture, forced mass migrations and mass imprisonment without trial. Gradually the term was considered also to include summary and arbitrary executions, enforced disappearances and systematic discrimination, in particular based on race and gender.¹² In more recent years the term gross is seen as not sufficiently precise for applying international human rights standards.¹³ It is less and less used to identify situations in which a reaction or intervention is called for. Although still referred to as a criterion in the 2001 Memorandum, it is not clear from the Memorandum to what extent the criterion can still guide the choice of situations to which the Netherlands will react. In the final concluding chapter of this report the question will be addressed as to whether this study can shed light on this question (section 8.1.2).

2.3 The selection of countries for the study

The countries selected for the evaluation had to fall into at least one of two of the above mentioned categories of the 2001 Memorandum: serious and/or large scale violations of human rights or countries with special relations for historical or other reasons.

The 2001 Memorandum describes economic relations and development co-operation as areas of foreign policy that have a close link with the promotion and protection of human rights.¹⁴ Therefore the countries selected had substantial potential and/or existing economic relations and/or substantial relations in the sphere of development co-operation.

Last but not least an important reason for selection was the Dutch national political interest in relations with the countries concerned, as expressed for example in the Dutch Parliament.

The countries selected for this evaluation each fall into a cross-section of several of these categories. In all countries there are serious and/or large-scale violations of human rights. With one of the countries, Indonesia, there are special relations for historical reasons. With Indonesia and Rwanda there are substantial relations in the field of development co-operation, China and Mexico are important partners for

¹² Theo van Boven et al (eds), *SIM special no. 12*, Seminar on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Maastricht 11-15 March 1992, SIM 1992, conclusion 10, at 17, online at <http://www.uu.nl/uupublish/homerechtsgeleer/onderzoek/onderzoekscholen/sim/english/publications/simspecials/no/23068main.html>; also, Theo van Boven, Special Rapporteur, *Final report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, E/CN.4/Sub.2/1993/8, para 117 (1), at 56.

¹³ M. Cherif Bassiouni, Special Rapporteur, Final report, *The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, E/CN.4/2000/62, para 8, at 3; also Theo van Boven in *Report of the consultative meeting on the draft Basic principles and guidelines on the right to remedy and reparation for victims of violations of international human rights and humanitarian law*, E/CN.4/2003/63, para 21, at 19.

¹⁴ Notitie Mensenrechtenbeleid 2001, Tweede Kamer, 2000-2001, 27242, no. 2, at a.o. 11, 13, 14.

economic relations and Iran has substantial potential in the field of economic co-operation. Furthermore, the countries represent a geographical spread.

As a final cross-check the selection of the countries was based on the consideration that the selection would also have to include at least one country where promotion and protection of human rights, on the basis of a preliminary desk study, is not an important element in bilateral relations. This was Mexico.

2.4 Main research questions and methods; structure of the report.

Main research questions

The main research questions that were included in the Terms of Reference (annex I) for the study of political efforts in bilateral relations are the following.

- a. *Policy objectives and strategy*
 - What is the human rights situation in terms of the nature and extent of human rights concerns in the countries and is there an analysis in which the Netherlands recognises and acknowledges these concerns?
 - What policy objectives have been formulated? Has a strategy been developed to realise these objectives?

- b. *Implementation of policy objectives*
 - How has the Netherlands raised concerns in the field of human rights in its bilateral relations with the countries concerned?
 - How has the Netherlands expressed its concerns in the field of human rights within the framework of the EU?
 - Are political efforts undertaken in conformity with planned actions? If not, due to what reasons and circumstances was there a change to planned actions? Was one of the reasons the fact that the Netherlands operates within the framework of the EU? Was one of the reasons that other policy areas clashed with human rights policy?
 - Have policy plans (if they exist) been realised to address human rights concerns in the policy areas of economic relations and development co-operation?
 - How has the Netherlands co-operated with actors other than the government of the countries concerned to implement the policy as planned?

- c. *Effectiveness of political efforts*

The effectiveness of the political efforts will be assessed on the basis of case studies, one or two for each country:

 - To what extent have the bilateral political efforts of the Netherlands contributed to an improvement in the human rights situation in the countries concerned or prevented a deterioration of the situation?
 - To what extent have the political efforts of the EU contributed to an improvement in the human rights situation or prevented a deterioration of the situation?

Research methods

The research is based on a combination of document research and interviews.

A desk study of documents, provided by the IOB from the Ministry of Foreign Affairs

archives, was conducted prior to conducting interviews in the Netherlands, after which specific terms of reference were drawn up.

Subsequently, missions were conducted to each of the countries included in the evaluation to undertake interviews and research of documents in the embassies' archives. Interviews were held with officials at the Dutch Embassy, with representatives of embassies of other EU partners and non-EU partners and with representatives of the EU delegations. Furthermore, interviews were held with representatives of international organisations and, in China, Indonesia, Mexico and Rwanda, with representatives of NGOs.

In Rwanda and Mexico interlocutors for the evaluation included representatives of the Government and government agencies. On the missions to China, Indonesia and Iran contact with interlocutors from the Government and government agencies was limited for a variety of reasons, ranging from political expediency (China and Iran) to practical difficulties in arranging meetings at the appropriate level (Indonesia). The lack of access to the views of the governments concerned on the process and content of bilateral and EU relations with regard to human rights interventions hampered a review of the processes and content from the target countries' perspectives and therefore hindered a more comprehensive and complete evaluation.

After the missions additional desk research was conducted with regard to public documents contained in the databases of the Dutch Parliament to complete the information from the mission, interviews and desk research of documents from the Ministry of Foreign Affairs.¹⁵

The country reports, written as working documents for this synthesis report and therefore not separately published, were submitted for comments to the relevant departments of the Ministry of Foreign Affairs and the Embassies of the Netherlands in the countries visited. The observations and comments have been carefully reviewed and considered for inclusion in the reports.

The country reports each followed a framework of a) describing the political context and human rights situation in the country¹⁶, b) an outline of the overall policy and human rights policy of the Netherlands towards the country, c) a review of the implementation of the strategies and instruments through which the policy was implemented, d) the findings of the case studies and e) the conclusions regarding the research questions.

This report is based first and foremost on the country reports. In summarising the country reports for inclusion in the synthesis report emphasis has been placed mainly on the parts of the country reports that describe overall and human rights policy, findings regarding implementation and conclusions on the main research questions. The description of the political context and human rights situation were mainly included for reference purposes for the evaluation missions and to assess the extent to which the analysis of the human rights situation by the Netherlands recognises and acknowledges the situation. The description of the political and human rights situation from the country reports is therefore included in a much reduced format.

¹⁵ <http://parlando.sdu.nl/cgi/login/anonymous>

¹⁶ Since a criterion for selection of the countries is serious and/ or large-scale violations and this term relates to violations of civil and political rights, the focus is on reviewing the situation with regard to civil and political rights in these countries, not on social, economic and cultural rights.

The assessment of the implementation of the planned political efforts is ex-post. The evaluation period is 1999-2004.

The selection of the case studies in each of the countries (with the exception of Mexico, see 2.2) is based on the following considerations:

- There must be clearly identifiable political efforts with a view to reducing or addressing a situation of human rights violations.
- The case must illustrate successes and failures in the implementation of efforts.
- The various steps in the process of policy implementation must be followed over a certain period of time.

The selection of case studies and the specific questions in relation to the selected case study are described in more detail in the relevant sub-section of the chapter that deals with the findings with regard to each of the countries.

Structure of the report

The structure of the report is the following.

In chapters 3 to 7 the findings and conclusions of the evaluation for each country are given. Each chapter starts with a brief overview of the human rights situation, based on various international sources. Next an overview of the human rights policy objectives is given, followed by a description and assessment of the implementation of the policy, sub-divided into topics relevant to the countries, and by the case studies (with the exception of Mexico). At the end of the each chapter are the conclusions with regard to the findings on the country, structured according to the main research questions.

Chapter 8 contains the comparative analysis of the conclusions of the country chapters and overall conclusions. Chapter 8 is also structured according to the main research questions.

3. CHINA

3.1 Political context and human rights situation¹⁷

China is a state with one political party, the Chinese Communist Party (CCP). In all important government, economic and cultural institutions in China, party committees work to see that party and state policy guidance is followed and that non-party members do not create autonomous organisations that could challenge party rule. Party control is tightest in government offices and in urban economic, industrial and cultural settings; it is considerably looser in rural areas.

China's many abuses of human rights in violation of internationally recognised norms, documented by international organisations such as Amnesty International and Human Rights Watch, stem both from the authorities' intolerance of dissent and the inadequacy of legal safeguards for basic freedoms.

The Chinese Constitution and laws provide for fundamental human rights, including due process, but these are often ignored in practice. China has ratified various UN human rights covenants, amongst others the UN Convention against Torture (CAT), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD). In October 1998 the CCPR was signed, but it has still not been ratified. In February 2001 China ratified the Covenant on Economic, Social and Cultural Rights, but placed a reservation on the right to freely form trade unions.

After years of maintaining that international criticism of the human rights situation in China is a matter of "interfering with internal affairs", the Chinese authorities have proved increasingly prepared to engage in dialogue with international partners and to accept support and co-operation with regard to improving the institutional framework for human rights enforcement.

In 1998 the room to openly promote political and economic reform seemed to be slowly increasing, but in the autumn of the same year it abruptly came to a halt. Not only were political dissidents again severely persecuted, ideological, social and religious groups and spiritual movements that were perceived as threatening to government authority or national stability also suffered. The Chinese authorities place restrictions on the media and the use of the internet. Publications and comments by academics are also monitored and targeted.

Manifestations of civil unrest, such as protests by labourers and farmers against poor social circumstances, have repeatedly provoked excessive use of force by police and led to imprisonment of protesters. In general, the freedom of assembly and association is severely restricted and individuals' rights to privacy are infringed.

¹⁷ Paragraph 3.1 is mainly based on Amnesty International Reports 1999-2004, Human Rights Watch Reports 1999-2004 and United States Department of State reports 1999-2004, unless other references are given.

The reaction against persons who are suspected of nationalist activities or sympathies in the autonomous regions of Tibet and Xinjiang and Inner Mongolia has been and remains harsh.

China's record on respect for religious freedom is notoriously poor. Religious worship in officially registered churches, temples and mosques occurs without interference, but unregistered churches are mostly persecuted, resulting in the disruption of religious services and harassment, physical assault and persecution of church leaders and followers.

A crack-down on criminal activity since 2001 has resulted in due process violations such as illegal detentions, hasty trials, severe sentences and a meaningless appeal process. It has also led to a rapid rise in the number of death sentences and executions and increased use of torture and ill-treatment, even though this is forbidden by law, to extract confessions, as well as curtailed trial procedures and harsh prison sentences.

Trials in China usually do not comply with international standards for fair judicial process. Suspects are detained for long periods of time and have limited access to lawyers. Trials take place behind closed doors, the judiciary is not independent, the lack of due process remains a serious problem and there is a large deficit of legal security due to the various possible forms of administrative detention not subject to judicial review. Government pressure continues to make it difficult for lawyers to represent criminal defendants.

Two systems of administrative detention have been used extensively in recent years: re-education through labour (RTL) and custody and repatriation (CAR).

The lack of due process is particularly egregious in death penalty cases and the accused is often denied a meaningful appeal. Executions often take place on the day of conviction or the day an appeal is refused. A judicial reform is planned, but has not yet been implemented: the legislative plan for the 10th National People's Congress (continued until March 2008) includes the restoration of the responsibility of the Supreme People's Court for the approval of all death sentences that are passed.

China finds itself in the transitional stage from a planned economy to a market economy. Overall the standard of living has risen, but a large portion of the population has no assurance of work and thus income and no access to social services at a basic level. Despite improvements in the standard of living in general, serious concerns remain in the area of protection of economic, social and cultural rights, as noted recently by the Committee on Economic, Social and Cultural Rights (CESCR) in its concluding observations on the report submitted by China on its implementation of the Covenant on Economic, Social and Cultural Rights.¹⁸ One of the consequences is that many civilians migrate within China, voluntarily leaving rural areas to search for better jobs and living conditions in cities.¹⁹

¹⁸ E/C.12/1/Add.107, 13 May 2005.

¹⁹ The situation in the field of economic, social and cultural rights is not the subject of this study. The economic situation is mentioned here as background to the right to freedom of movement. For reference to the situation in the field of economic, social and cultural rights, see the recent concluding observations of CESCR on China's report on the implementation of the Covenant.

On the basis of information from many reputed sources it can be concluded that the situation regarding civil and political rights in China is unfavourable in many ways and there is hardly any indication of concrete improvement. There are large numbers of imprisoned political dissidents, there is repression of religious and spiritual movements, there continue to be large numbers of death penalties and executions, torture is widespread, there are serious limitations on the freedom of information and there is limited improvement in the freedom of residence.

At the same time there are improvements in the institutional and legal framework, such as changes in the Constitution, in legislation and improved legal education, training of judges and creation of institutional services facilities through international technical assistance. The changes in the attitude of the Chinese authorities towards promoting and protecting human rights are limited. There are tentative openings to receiving criticism, but it seems that criticism may not be too severe and must not be uttered in front of the international forum of the UN.

3.2 Overall and human rights policy objectives of the Netherlands

In May 1998 the Government of the Netherlands submitted a country policy document (“landenbeleidsdocument”) to Parliament. The document included a comprehensive assessment of the political, economic and social situation in China, China’s role in world politics and in the region and the objectives of the Netherlands for various fields of foreign policy, including human rights.²⁰

The overall aim of the Netherlands was to contribute, bilaterally, within the framework of the EU and through multilateral channels, to:

- the integration of China into the international community
- stimulating reforms in China
- strengthening economic ties.

The overarching objective of the 1998 Memorandum was to intensify the political dialogue with China on all aspects of relations with the country. As was made clear in the memorandum, and in other public documents that followed, the Netherlands attaches great importance to good relations with China. This is for reasons of economic self-interest, but also for reasons of development and protection of the international (legal) order in which China is becoming an increasingly important player. The Netherlands invested heavily in good relations with China during the evaluation period, which is illustrated among other things by the number of visits from and to China at ministerial level during the evaluation period.²¹

In the outline of its policy in the 1998 China policy document, and also in the explanatory memoranda to the annual budget, the Dutch Government emphasised that one of the important policy objectives for the Netherlands continued to be to contribute to democratisation and to induce the Chinese Government to take effective steps to end violations of fundamental rights, such as freedom of expression and freedom of religion, and to put a stop to arbitrary detention and establish the proper administration of justice. The policy was to be pursued bilaterally as well as multilaterally.

²⁰ Annex to Tweede Kamer, 1997-1998, 25 535, no. 4.

²¹ For an overview, see the Ministry of Foreign Affairs website: http://www.minbuza.nl/default.asp?CMS_ITEM=40069C50A7B242BFA8A34CACDA8D1192X3X38372X99#TOC_21

In 2001 a policy framework for good governance, human rights and peace was approved as an internal Ministry of Foreign Affairs policy document, which provided for a framework to conduct activities aimed at contributing to the respect and implementation of civil and political rights by focusing on contributing to the establishment of the rule of law.

In brief, the policy on human rights outlined in the 1998 China memorandum was as follows:

- the promotion and protection of international human rights standards continue to be an important and integrated part of Dutch policy toward China
- instruments to achieve the policy objectives are bilateral political dialogue, the EU-China human rights dialogue and the multilateral channel and an EU-China programme of co-operation in the field of the rule of law²²
- important guidance in the bilateral dialogue is drawn from the course of the EU-China dialogue and the development of the programme of co-operation.

The policy objectives remained largely the same, but became more specific in the course of implementation.

3.3 Implementation of human rights policy: strategies and instruments

3.3.1 Bilateral political relations

The 1998 China policy memorandum mentioned the EU-China human rights dialogue as one of the main strategic strands in the implementation of the policy. Nevertheless, the Dutch Government continued to use the instruments at its disposal within the framework of the bilateral relations.

Ministerial visits and meetings were an important instrument in the bilateral exchange of views on human rights. During the State visit of the Queen in 1999, the Minister of Development Co-operation Herfkens (and acting Minister of Foreign Affairs) raised the concerns of the Dutch Government with the Chinese Minister of Foreign Affairs about the large-scale violations of civil and political rights, but she also acknowledged positive steps. On a positive note the Dutch Minister concluded that the time when the Chinese authorities regarded a discussion on human rights as “interference in internal affairs” was a thing of the past.²³

Less positive were the experiences of the Minister of Foreign Affairs Van Aartsen in 2001. He was scheduled for a visit to Hong Kong and Beijing. Parallel to the Minister’s programme in Hong Kong, meetings were planned between the Dutch Human Rights Ambassador (HRA) and several NGOs, including Falun Dafa, the chapter of Falun Gong which is legally registered in Hong Kong. The Chinese authorities communicated officially that such a meeting would have serious consequences for bilateral relations. Minister Van Aartsen did not want to jeopardise relations with China, but equally did not want to cancel the scheduled meeting, which could be seen as taking sides in favour of the Chinese authorities’ interpretation of the issue of the limits of freedom of association and expression in Hong Kong.

²² Contributing to the rule of law by means of bilateral ODA was not mentioned as an instrument to improve human rights through bilateral relations.

²³ Tweede Kamer, 1998-1999, 26200 V, no. 62, at 2.

Therefore the Minister postponed the visit and planned to discuss the issue with his Chinese colleague when meeting him at the May 2001 Asia Europe Meeting (ASEM) Ministerial Conference.²⁴

At the end of 2001 the Dutch Minister of Economic Affairs Jorritsma raised the issue of human rights with her Chinese counterpart when she headed a large business delegation.²⁵

In 2003 the first visit of a Dutch Minister of Foreign Affairs since 1994 took place. Minister De Hoop Scheffer stressed the issue of human rights in general. An important topic was freedom of religion and belief.²⁶

In April 2004 the Dutch Prime Minister Balkenende and Minister of Foreign Affairs Bot visited China in preparation for the Dutch EU Presidency. Issues of human rights were raised at all meetings. Positive developments were acknowledged, but concerns were also expressed with regard to the death penalty, the CCPR ratification process, administrative detention in the form of re-education through labour, the human rights situation in Tibet and freedom of religion and belief. A list of individual cases was submitted, as happened during the other ministerial visits as well. The Chinese Prime Minister Wen responded to the concerns raised by stating that the situation was far from perfect, but that the Chinese Government is committed to improve this. From the Dutch side it was pointed out that the assistance through the good governance and human rights programme was an active contribution to the process of improving the human rights situation.²⁷

Apart from the ministerial level, the involvement of the Dutch HRA, ambassador at large, provided for a much more in-depth and comprehensive discussion of human rights issues. The HRA visited China in 2001, 2003 and twice in 2004 (in February and September, the latter visit to co-chair the EU-China human rights dialogue on the occasion of the Dutch EU Presidency). During the HRA's visits lists of individual cases were submitted. The names on these lists largely also featured on the lists submitted on the occasion of ministerial visits and on the lists submitted on behalf of the EU.

Whereas the 2001 visit still had a certain exploratory character, the 2003 visit was more geared at getting concrete answers on various topics. The assessment of this bilateral exchange of views was that there had been a real exchange of views with concrete responses (positive and negative) and not a mere going through the motions.

After the February 2004 exchange of views the conclusion was that, with regard to some international human rights standards, China is making an attempt to move towards compliance and that concerns raised with the interlocutor in the human rights exchanges, the Chinese Ministry of Foreign Affairs, filter through to the (more powerful) Ministries of Justice and Public Security. This may enhance the possibilities for changes in Chinese legislation and practices to bring these in line with international human rights standards.

²⁴ Tweede Kamer, 2000-2001, 27 400 V, no. 51.

²⁵ Tweede Kamer, 2001-2002, 28000 XIII, no. 37, at 4.

²⁶ Tweede Kamer, 2003-2004, 29200 V, no. 5, at 2.

²⁷ Tweede Kamer, 2003-2004, 29200 V, no. 78, at 2, 3.

Summarising briefly the political dialogue as an instrument the conclusions are:

- more emphasis was put on bilateral political dialogue on human rights as an instrument than the 1998 China policy memorandum implied
- an instrument of foreign policy was added to the existing ones (the HRA), which intensified the exchange of views on human rights between China and the Netherlands
- the issues on the agenda largely remained the same throughout the evaluation period
- individual cases were consistently raised, as was freedom of religion
- the changes recorded during the evaluation period pertain to the opening up of the Chinese authorities to an exchange of (critical) views on human rights issues, which may help to establish a more positive attitude among the authorities regarding making real efforts towards improving the situation of human rights on the ground.

3.3.2 The EU-China human rights dialogue

The Netherlands is an active contributor to the EU-China human rights dialogue, a government-to-government dialogue initiated by China in 1995. The dialogue was interrupted after two meetings by China after Denmark (plus nine other EU Member States) tabled a critical resolution at the 1997 UN Commission on Human Rights session.²⁸ Later in 1997, China decided to resume the dialogue.²⁹

In March 2000 the EU General Affairs and External Relations Council (GAERC) reviewed the EU policy on human rights in China. The Council noted that China had shown willingness to discuss sensitive issues at the international level, but that there had been no tangible progress in the domestic human rights situation. The Council decided to review the dialogue regularly, with a view to a more focused and result-oriented approach. It was also concluded that, notwithstanding the existence of the dialogue, *“The EU will continue to express publicly its concerns about human rights in China and to raise them in meetings with China at all levels”*.³⁰

An assessment was made a year later and the GAERC decided that, in order for the dialogue to become more focused and easier to evaluate, it had to define and make public the areas in which the European Union would be seeking progress. These became the dialogue “benchmarks”.³¹

Regular assessments were made by the Council and the European Commission. The EU saw some signs of progress in the commitment of the Chinese Government towards developing institutional measures for the promotion and protection of human rights, but the actual domestic human rights situation remained poor.³²

²⁸ For an extensive description of how the resolution failed (and the Dutch Presidency frustrations) not only because of Chinese diplomatic action, but also internal EU differences, see Peter Baehr and others, at 156 ff.

²⁹ http://europa.eu.int/comm/external_relations/china/intro/index.htm

³⁰ 2249th Council meeting - GENERAL AFFAIRS - Brussels, 20 March 2000; http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/gena/ACFC793.html#_Toc478353437

³¹ 2327th Council meeting - GENERAL AFFAIRS - Brussels, 22-23 January 2001; http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/gena/5279.en1.html; see annex for the benchmarks.

³² For an overview of GAERC conclusions on human rights, see http://europa.eu.int/comm/external_relations/human_rights/gac.htm#hr110302c

An elaborate assessment of the benchmarks and evaluation of the dialogue took place in 2004 during the Dutch EU Presidency. The Council concluded that four out of the eight benchmarks showed a mixed picture of progress and stagnation:

- (1) ratification of the UN Covenants;
- (2) co-operation with human rights mechanisms;
- (3) compliance with ECOSOC guarantees/restriction of the death penalty; and
- (4) judicial reforms.

Progress regarding three benchmarks was labelled as limited:

- (5) respect for rights of prisoners/response to individual cases/imprisonment on dubious grounds;
- (6) freedom of religion and belief; and
- (7) respect for the right to organise.

With regard to:

- (8) cultural rights and religious freedoms in Tibet and Xinjiang
- the EU concluded that there was no progress.

In addition to the EU-China human rights dialogue, there are human rights dialogues with, among others, the Australians, the Canadians, the Norwegians and the Swiss. EU partners Germany and the UK have, in addition to the EU-China dialogue, an institutionalised bilateral dialogue. Although there are specific differences between the various dialogues, the formats do resemble a) a “window” political dialogue coupled with b) “window” expert inputs/seminars.

Representatives of all embassies except the Swiss were interviewed on their assessment of the dialogues. According to the evaluators, their interlocutors largely arrived at the same conclusions:

- human rights improvements in China are an internal process, developing mainly along the lines of internal political dynamics, that is, there is no will to change in areas that could affect the predominant position of the CCP
- outside influence can generate pressure which can be used by the interlocutors on the Chinese side to put pressure on other parts of government, provided there is political will to use that pressure
- the Chinese side can be forthcoming with little “rewards” during times of friendly relations, such as promising information on individual cases, promise of revision of legislation or practices (such as RTL), but there is usually a failure to deliver; the “willingness to engage” on the Chinese side is assessed in different shades of grey
- due to the fact that human rights improvements in China are an internal process with internal dynamics, countries and international agencies seeking improvement of the human rights situation, should operate on a long-term rather than a short-term agenda, but with concrete intermediate benchmarks for achievement.

The assessment by the interlocutors of the usefulness of the expert inputs and seminars was more positive in those cases where there was a more direct link between the political and expert “windows” in terms of: a) time between the event of the dialogue and the seminar, b) a clear link between participants in the political dialogue and those in the seminars, and c) approach on the topics.

In the case of the dialogues of the non-EU countries the synergy between the political dialogue and the seminars was seen as positive. In the case of the EU such synergy was deemed to be mostly absent due to the factors of distance, although most interlocutors underlined that in the case of the EU-China dialogue the political stakes

were higher and therefore achieving synergy between the political and expert “window” of the EU-China dialogue might be more difficult.

Most of the interlocutors of the evaluation team had a clear and substantiated view on the role of the Netherlands in the dialogue both “on- and off-line” during the EU Presidency. That role was perceived as active, professional and well informed with regard to developments of human rights in the Chinese political context. Due to this, the influence of the Netherlands on the overall EU strategy on the dialogue was deemed to be strong.

The role and attitude of the Dutch Embassy in particular were highly valued. This was especially emphasised with regard to the organisation and co-ordination of the work that needed to be done in preparation for the dialogue, but also in relation to the reports, such as the Heads of Mission report on the human rights situation, and initiating, preparing and executing the *démarches*, be it on the agenda for the dialogue or on individual cases.

Summarising briefly the conclusions on the EU-China human rights dialogue:

- the results of the dialogue in terms of influence on the commitment of the Chinese authorities to initiate institutional changes or to actively protect the human rights situation on the ground is limited
- the EU needs to operate with a long-term agenda, but with concrete benchmarks for intermediate achievements
- the investment of the Netherlands in the strategy and content of the dialogue is high and reflects the importance attached to human rights in the context of relations with China.

3.3.3 Multilateral fora

In speeches by the Dutch Minister of Foreign Affairs during the 57th (2001) and 58th (2002) UNCHR sessions, the serious concerns of the Netherlands were raised on issues such as freedom of expression and opinion (57th), the numerous executions, freedom of religion and the situation in Tibet and Xinjiang (58th).³³ During the 59th (2003) and 60th (2004) sessions no country situations were specifically raised in the ministerial statements and therefore concerns on China were not raised either.

Apart from its own contributions to the UNCHR sessions, the Netherlands contributed to the formulation of a clear position of the EU during the UNCHR on China. In view of the Dutch Government’s opinion that pressure on the Chinese Government should be as strong as possible, the Dutch Government favoured expression of serious concerns in the EU interventions on country situations, which materialised for example during the 58th UNCHR session and also during the 59th session. Before the 59th (2003) session of the UNCHR it was decided by the GAERC that, “... the EU general statement on agenda item 9 and other relevant Presidency statements should include strong language on China”.³⁴

Furthermore, the Dutch Government favoured EU co-sponsorship of a resolution on China in the event that such a resolution would be tabled by another country, something

³³ See E/CN.4/2001/SR.40, para 20 (57th session) and E/CN.4/2002/SR.18, para 13 (58th session)

³⁴ GAERC 18 March 2003, par. 12 online at http://europa.eu.int/comm/external_relations/human_rights/gac.htm#hr110302c

which would normally be done by the US. With regard to the 58th UNCHR session, the Netherlands prevented the EU from deciding not to co-sponsor, but neither did the EU decide to sponsor.³⁵

The Netherlands had active input into the EU position with regard to the 59th and 60th UNCHR sessions, where the GAERC stressed the importance of the dialogue with China (and Iran), but where it was also concluded (and publicly stated) that such dialogues do not preclude appropriate consideration by the UNCHR of the human rights situation in those countries, a position which is the basis for the principle stance against “no action motions”.³⁶ In line with this position, the EU partners voted against such a motion tabled by China at the 59th and 60th sessions.³⁷

With regard to the 59th and 60th UNCHR sessions, the Netherlands was less strongly in favour of an EU initiative or support for a resolution on China. With regard to the 60th UNCHR session it was even stated that, if the evaluation of the EU-China human rights dialogue were to show positive changes, a resolution at the UNCHR might be counter-productive, since it might cause the Chinese authorities to close the door to further improvements in the field of human rights.³⁸

Another option for action through the multilateral channel was supporting, by means of ODA, the technical assistance programme of the United Nations Office of the High Commissioner for Human Rights (OHCHR) with regard to China. An agreement in principle on this was reached with both China and the OHCHR, but there has been a consistent lack of progress in the implementation of the technical assistance programme.

Summarising the conclusions with regard to the multilateral channel:

- strong statements on the human rights situation in China were given in contributions by the Netherlands and the EU before and during the 57th and 58th UNCHR sessions
- the Netherlands was in favour of EU support for political pressure by way of a resolution at the UNCHR until the 59th UNCHR session, when the Netherlands became less outspoken in its support for a resolution on China
- technical assistance through the OHCHR was an option, but did not materialise effectively.

3.3.4 Co-operation in the field of human rights and good governance through ODA

From the interviews for the evaluation it became clear that the provision of support in the field of human rights is followed with close attention by the Chinese authorities. There is a fine line between what is deemed to be in conformity with the policy of liberalisation and rationalisation of the economy (e.g. training judges in international commercial law) and what could be seen as undue influence on the views of judges on human rights. Donors therefore constantly have to strike a balance between their aims, in terms of promoting an overall rule of law, and the selective approach of the Chinese authorities, who welcome only the support that fits in with their purposes, leaving out the parts that might reinforce an independent judiciary critical of human rights issues.

³⁵ Tweede Kamer 2001 – 2002, 28 000 V, no. 57, at 13.

³⁶ GAERC, 22 March 2004, par. 5, online at http://europa.eu.int/comm/external_relations/human_rights/gac.htm#hr110302c

³⁷ Tweede Kamer 2003-2004, 29 200, no. 81, at 3.

³⁸ Tweede Kamer 2003-2004, 29 200 V, no 69, at 9.

For the Netherlands the focal area is the establishment of the rule of law in the context of legal reform. A contribution to the establishment of the rule of law and to training the judiciary towards greater professionalism, independence, non-corruption and expertise is expected to have beneficial effects at the level of protection of civil and political rights. Programmes are implemented with, among others, the National Judges College of the Supreme People's Court (SPC) and the Chinese Academy of Social Sciences (CASS). Support through and/or to NGOs in the field of human rights is extremely difficult, since there are no really independent NGOs. Some support is channelled through NGOs which have been set up under the legal format of companies.

One of the strategies, providing aid through the United Nations Development Programme (UNDP) as the implementing agency for the OHCHR, has been put on hold, since the technical co-operation programme agreed between the Chinese authorities and the OHCHR is progressing very slowly.

The evaluation of the effectiveness, efficiency and impact of co-operation in the field of good governance and human rights supported through ODA is not the subject of this evaluation. A recent (non-public) evaluation concluded that the relevance and efficiency of the activities should be seen as positive, but also observed that the activities have not yet been conducted for long enough to draw any conclusions on their impact.³⁹

Various other donors, including the European Commission, are active in the field of establishing the rule of law and the reform of the judiciary. An issue that came up during interviews in Beijing was the need for better co-ordination among donors (also one of the important conclusions of the evaluation of the 2004 EU-China dialogue), with a view to achieving the maximum strategic effect of the interventions.

Summarising briefly the conclusions on the use of ODA:

- the Chinese agreement to ODA in the field of judicial reform, which relates to human rights, opens a window of opportunity for contributing to positive change in the long run
- ODA can in theory be complementary to political dialogue and therefore reinforce this instrument
- ODA was given, but assessment of positive and negative effects are not the subject of this evaluation
- donors have to steer a passage between what they deem to be important rule of law issues and what the Chinese authorities accept as assistance
- the strategy of using the UNDP/OHCHR seems valid, but implementation has been put on hold
- better co-ordination between donors, including the Netherlands, could improve the strategic use and focus of bilateral interventions.

3.4 Effectiveness of policy: individual cases and freedom of religion

The case studies that were selected included a) interventions on behalf of individuals and b) interventions in the field of the freedom of religion. Individual cases are regularly the subject of interventions through both bilateral and EU relations (also the dialogue) and freedom of religion is an issue to which the Netherlands attaches great importance. Moreover, it is one of the EU-China dialogue benchmarks.

³⁹ Briefing and review of evaluation report at the Netherlands Embassy in Beijing.

Individual cases

The long-term purpose of raising these cases is that the Chinese authorities become increasingly aware of the need to change their practice of structurally violating rights. In this sense, the individual case raised with the Chinese counterparts stands for a group of people sharing the same fate.

Nevertheless, the direct purpose is of course to seek improvement in the fate of the particular individual whose case is raised (improvement in prison conditions; early release or reduction of the sentence; stay of execution in cases where the death penalty is imposed; and any positive effects for the group the case symbolises).

The interlocutors interviewed by the evaluators were largely in agreement on the following observations:

- showing concern for the individual demonstrates the principle involved in the protection of human rights: respect for the individual
- generating pressure for positive effects requires consistency and good co-ordination with regard to raising cases
- raising “famous” cases has a danger of “hostage politics”; a *quid* (the release) *pro quo* (leniency e.g. on public criticism)⁴⁰
- seeking the improvement in the fate of one individual has an element of naïve blindness in a country where the authorities have no intention of changing their policies with regard to the whole issue (e.g. freedom of religion or belief; democracy movement activists).

A sample overview made by the evaluators of cases raised in 2004 led to the conclusion that serious efforts have been made to raise cases at a high level and that cases were seriously followed up by *démarches*⁴¹; that only in a few cases in the period reviewed is there new information on a person’s fate; and that of all the cases submitted (more than eighty) there was one positive development – the release of the person involved. It was observed that the Chinese Ministry of Foreign Affairs hardly responds between the various occasions on which cases were raised.

Freedom of religion and belief

The lack of freedom of religion has been raised during all ministerial and HRA visits referred to earlier in this chapter and is an important issue in the EU-China dialogue.

The Netherlands has been actively advocating the inclusion of the issue in the EU human rights approach to China, and therefore also in the EU-China human rights dialogue, and has not been the only EU partner to do so. The clear consensus among the EU partners on the issue is demonstrated by the fact that it is a separate benchmark (6), which then comes back in EU actions and statements, such as in the Council Conclusions on Human Rights in China.⁴²

The effects of the interventions seem extremely limited. The Chinese authorities are afraid of everything that constitutes a movement of any kind, due to feared effects on the predominant position of the Communist Party (and ultimately their own position).

⁴⁰ Amnesty International, ASA 17/010/2005 of 17 March 2005.

⁴¹ From the interviews and documentation reviewed it is clear that new information on the development of the (medical or other) situation of a person was one of the reasons for a *démarche*.

⁴² E.g. conclusion 7 in GAERC Conclusions of 11 March 2002.

With regard to freedom of religion and belief the evaluators conclude:

- political dialogue has been actively and consistently used as a means of raising concerns on the freedom of religion
- the bilateral and EU channels are used complementarily rather than that there is an effect of replacing bilateral action through EU action
- there are no demonstrable effects on the attitude and practice of the Chinese authorities.

3.5 Conclusions

3.5.1. Policy objectives and strategy

Analysis of the human rights situation

The Netherlands conducts analyses of the human rights situation in China. In public documents, such as parliamentary documents, the analyses of the human rights situation and the role of the Chinese authorities in protecting and violating human rights in China are rather general and brief and focus on long-term trends. The overall analysis in these documents is that there is a slow development in Chinese society towards increased protection of human rights, as long as more human rights guarantees do not affect the position of the CCP. Non-public documents, such as reports from the embassy to the relevant ministerial departments and contributions to the EU reporting procedures, give a more in-depth analysis of the human rights situation and a more specific analysis of the attitude of the Chinese authorities towards discussing human rights in the context of international relations. Such documents include *ad hoc* reports on events and themes, on the situation of persons of special concern to the Netherlands or on regions of special concern, such as Tibet and Xinjiang, as well as contributions for the regular human rights reports of the EU Heads of Mission (HoMs), to which the Netherlands actively provides input.

Throughout the evaluation period the Netherlands has made an analysis of the extent and nature of the human rights situation in China, assessed the scope and seriousness of the violations and assessed the role and capacity of the Chinese Government. It has done so clearly in interaction with the EU partners. The input by the Netherlands is regarded by these partners as “well-informed, professional, committed and active”.

The analyses are in general consistent with other sources, such as United Nations bodies, international NGOs such as Amnesty International and Human Rights Watch and the US Department of State annual reports.

Policy objectives, strategy and translation into plans of action

The main policy objectives and strategy were outlined in the 1998 China memorandum and remained largely the same throughout the evaluation period.

The main strategy formulated in the 1998 memorandum was to provide active input and give priority to the EU framework through the EU-China human rights dialogue. Clear objectives and a strategy for a bilateral exchange on human rights issues were not given. Due to this there is little political transparency regarding:

- what can be expected of the Netherlands in bilateral relations (political as well as other), with the exception of development co-operation
- whether options for the use of different instruments have been considered and what were the reasons to select the instruments that have been applied
- how and on what basis the Netherlands evaluates its policy and strategy
- with what stakes the Netherlands enters the debate with the EU partners on policy and strategy.

In the period under consideration the policy objectives were more clearly formulated within the framework of the EU than for the bilateral political relations. The same applies to the formulation of strategy. The EU strategy was set in a framework of regular, explicit and public assessment, setting benchmarks and re-designs of the strategy based on the evaluation of (non-) achievement of the benchmarks. There was no such framework for the bilateral relations.

3.5.2 Implementation of policy objectives

Raising concerns in bilateral relations

For the bilateral exchange on human rights issues, the instruments applied were ministerial visits, involvement of the HRA and development co-operation. Diplomatic *démarches* in Beijing were mainly carried out within the framework of the EU. The use of the high-level instrument of the ministerial visit (even one prime ministerial visit) is standard policy and in line with the policy principle of human rights as a cornerstone of foreign policy.

The multilateral channel of the UNCHR was used for strong statements on China. Such statements were given by the representatives of the Netherlands, e.g. in ministerial speeches, as well as in the statements on behalf of the EU.

The instrument of development co-operation was used, not so much to express concerns but rather to pursue a long-term policy of contributing to the establishment of the rule of law.

EU framework

The interviews conducted and documents studied in the framework of the evaluation provided sufficient information to conclude that the Netherlands is an active and influential partner in the design (and implementation) of that strategy, including the strategy framework with benchmarks, regular assessment and re-design of the strategy in view of the results of the assessments.

Conformity of efforts and plans

In practice, more emphasis has been given to raising human rights concerns in bilateral relations than the 1998 China policy memorandum implied. The additional expertise and capacity generated by involving the HRAs has given additional impetus to the bilateral exchange of views on human rights.

The higher intensity of the bilateral exchange of views during the evaluation period may also be explained due to an increased willingness on the part of the Chinese authorities to discuss the possibility that certain practices (e.g. RTL, use of torture) are not in conformity with international human rights standards and to listen to external views.

Interlocutors interviewed by the evaluators gave a variety of reasons for the change in attitude of the Chinese authorities, ranging from the wish of the Chinese authorities to be accepted as a respectable partner in international relations to a rather cynical *quid pro quo* attitude: accept criticism with regard to human rights to get some leverage in more important fields of foreign policy, such as economic and other relations. Whatever the explanation, the change in attitude was seen by the Netherlands (and its EU partners) as a window of opportunity to exchange (critical) views on human rights issues and this opportunity was taken.

The strategic choice of contributing to a strong and co-ordinated EU approach on human rights *vis á vis* a strong and important player like China is a rational one for a small country such as the Netherlands. Contributing to the efforts of the EU is likely to be more effective than operating in isolation. At the same time it provides for protection against repercussions from the Chinese side.

The active use of bilateral political dialogue provided an additional element, enabling the Netherlands to pursue its own human rights policy objectives, but at the same time interacting with the EU dialogue.

The Netherlands was able to play on two chessboards. The experience gained in the bilateral exchange on human rights, among other things by involving the HRA, paid off during the Dutch EU Presidency. The Netherlands used the opportunity for interaction between the EU and the bilateral channel.

Raising concerns in various fields of foreign policy

It is standing policy of the Netherlands that ministers visiting China raise human rights issues related to their area of work. This policy has been implemented in most visits about which the evaluators obtained information.

The evaluators did not obtain any information on the extent to which human rights issues/concerns were included in the field of economic co-operation (other than ODA, which on the Chinese side is seen as part of economic co-operation) or any other field of co-operation with China.

Human rights concerns and issues have been taken into account and included predominantly in development co-operation through ODA. Activities have been planned and implemented. The small scale of the action, however, does not give rise to strong expectations with regard to the effect. The programme is relatively new, which makes it difficult to assess the positive and negative effects at this point.

There is a seeming lack of co-ordination between donors, including the Netherlands, to maximise the strategic effects of bilateral interventions, even though some attempts to co-ordinate are made. The intention to contribute to a larger, multilateral UNDP/OHCHR programme has been put on hold.

Co-operation with actors other than the Chinese Government

A range of contacts is maintained with international (UN) organisations to exchange views and experiences, with other governments (the Bern process) and international NGOs, such as for example Amnesty International.

The scope for co-operation with actors in China other than the authorities is extremely limited, but it does take place.

3.5.3 Effectiveness of political efforts, based on case studies

Raising individual cases may have contributed to generating some positive short-term effects for the individuals concerned. Another added value of the interventions may also be raising awareness among Chinese counterparts of the principle value of protecting the rights of individuals.

The same holds true for raising individual cases in the course of EU dialogues, in which the Netherlands has had an active input. Whereas many EU and non-EU actors raise the same cases, the successes are rather the result of joint efforts than of one actor's intervention.

With regard to freedom of religion and belief, it can be concluded that the bilateral and EU dialogue have been (inter-)actively used to raise concerns on the freedom of religion, but with limited chance of success in view of the Chinese authorities' suspicion of movements that might endanger the predominant position and influence of the Communist Party. In relation to the freedom of religion and belief hardly any positive effect can be demonstrated.

4. INDONESIA

4.1 Political context and human rights situation⁴³

1998 marked a turning point in the recent political history of Indonesia. Increasing resistance against the Suharto presidency forced him to step down.

Since the resignation of President Suharto there have been gradual positive developments in the overall political climate which also had a positive influence on the human rights climate, especially on political rights and freedoms.

To date, Indonesia has ratified various important international human rights instruments, but not yet the UN Covenants on Civil and Political and Economic, Social and Cultural Rights (CCPR and CESCR).⁴⁴ Furthermore, the Government signed a memorandum of understanding with the UN High Commissioner for Human Rights on technical assistance, which aims, among other things, to strengthen national human rights institutions.

Also, in 1999 a special law on human rights (law no. 39/1999) allowed the establishment of human rights tribunals.⁴⁵ It also enforced the role of the National Commission on Human Rights (Komnas Ham), a body independent of the government, vested with investigative but no judicial powers.⁴⁶ Over the years, it has conducted authoritative investigations into situations of gross and systematic violations of human rights in East Timor, Aceh and Papua. However, its findings and evidence, published in reports, have not always been used by the Attorney General to initiate prosecutions.

The government adopted a National Action Plan 1998-2003, followed in 2004 by another five-year plan, which includes the planned ratification of the CCPR and CESCR. Both ratifications were planned for 2004, but the state of preparation is such that ratification before the end of the five-year plan is very unlikely.

Since 1999 the Parliament has adopted various laws that were an improvement from the perspective of protecting freedom of expression and the establishment of the rule of law. A new press law was adopted and the Parliament passed a law in 2000 enabling prosecution of crimes against humanity, such as the human rights violations in East Timor.⁴⁷

⁴³ Paragraph 4.1 is mainly based on AI Reports 1999-2004, Human Rights Watch Reports 1999-2004 and United States Department of State reports 1999-2004, unless other references are given.

⁴⁴ The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the UN Convention against Torture, the UN Convention on the Elimination of All Forms of Racial Discrimination and several International Labour Organization (ILO) core conventions, among them ILO Convention 87 on the freedom of association and the right to organise.

⁴⁵ The limitations of this law will be discussed in relation to the issue of impunity, paragraph 5.5.

⁴⁶ KomnasHam, established under the Suharto regime, was given statutory authority in 1999 (Law 39/1999). Under the law its 35 members serve five-year terms, nominated by KomnasHam itself, confirmed by Parliament and approved by the President. The law gives KomnasHam subpoena powers and provides that disputes settled by written agreement through the Commission's mediation are enforceable in court.

⁴⁷ Notwithstanding various deficiencies the law was seen as a step forward; see Indonesia: Comments on the law on Human Rights Courts (Law No. 26/2000) (AI Index: ASA 21/005/2001)

Economic problems, endemic corruption and struggle linked to the establishment of the supremacy of the civilian authorities over the TNI (Tentara Nasional Indonesia – armed forces of Indonesia), as well as concerns on the part of both the civilian and military authorities on the territorial integrity of Indonesia, have contributed to ongoing instability and thereby to an environment in which violations of human rights persisted.

In particular, the regional conflicts related to struggles for independence in East Timor, Aceh and Papua and the ethno-religious conflict in the Moluccas have resulted in scores of reports on gross human rights violations, such as arbitrary detentions, torture, disappearances and extra-judicial executions. These conflicts and ensuing human rights violations have for decades been cause for expressions of serious concern *vis à vis* the Indonesian government. Neither the Suharto regime nor the various consecutive governments since the fall of President Suharto have been effective in preventing these conflicts from continuing and sometimes intensifying.

The issue of the status of East Timor was resolved in 1999 with the popular consultation resulting in East Timor gaining independence from Indonesia on 20 May 2002. The conflicts in Aceh and Papua are still ongoing. Human rights violations with involvement by the security forces have been reported throughout the years since 1999.

Many cases of torture, ill-treatment, arbitrary killings and disappearance are reported in the context of the run-up to and aftermath of the 1999 East Timor referendum on independence and the military operations in Aceh, to a lesser extent in the context of the conflict in Papua. Several instances of reported extra-judicial killings took place in the context of the 1998 riots in Jakarta.

Most frequently mentioned as perpetrators of these type of human rights violations are the mobile police units (Brimob) and the army (TNI), but also militias operating in association with security forces, as well as the insurgency movement GAM in Aceh. Prosecution for these kinds of violations of human rights continued to be the exception rather than the rule. Therefore the climate of *de facto* impunity for violations of human rights which existed under the Suharto regime has remained to a large extent in the post-Suharto regime era (see further section 4.5).

Freedom of speech, expression, the press and association undoubtedly increased in the years immediately after the change of the Suharto regime. Many political prisoners were released or saw the charges against them dropped.

Although in general one can still claim that press freedom is one of the achievements of the post-Suharto era, it has been under pressure since 2003. In stead of allowing disputes on media reporting to be settled under civil law, the government has resorted increasingly to the defamation articles under criminal law for prosecuting journalists.

With regard to the death penalty (still imposed for various crimes) Indonesia observed a *de facto moratorium* that was broken in August 2004.

Although Indonesia has ratified the CEDAW, equality between men and women is not reflected in all legislation. Unequal treatment of men and women prevails in labour relations. Domestic violence and sexual abuse against women are widespread. Women are especially vulnerable in the conflict areas. There are numerous reports of sexual intimidation and rape of women by security forces in the conflict regions,

as well as reports of sexual abuse of women as punishment for alleged involvement of relatives in separatist activities.⁴⁸

4.2 Overall policy and human rights objectives of the Netherlands

The overall policy objectives with regard to Indonesia, in which the human rights objectives are embedded, were different for the period of the Habibie presidency (1998-1999) and the Wahid presidency (1999-2001), followed by the Megawati presidency (2001-2004).

The Habibie presidency was seen as a transition period from the Suharto regime to a new era. The overall short-term policy priority of the Netherlands in that period was to contribute through bilateral as well as multilateral channels to the process of political reform started by President Habibie.⁴⁹

The political situation in Indonesia remained rather uncertain throughout the years 1998-1999 and was aggravated by the outburst of violence in East Timor, Aceh and the Moluccas. The Dutch Government kept “intentionally a certain distance” during the Habibie period⁵⁰ and intended to further strengthen the relations with Indonesia once the 1999 parliamentary and presidential elections had been held.⁵¹

Comprehensive, overall human rights policy objectives and strategies were not formulated by the Government of the Netherlands for the Habibie period. The focus was on concrete issues: the parliamentary elections of mid-1999, the situation in the Moluccas, because of the special relationship with the region and the large Moluccan community in the Netherlands, and the situation in East Timor. The latter is, among other things, due to the representation by the Netherlands of Portugal’s interests in Indonesia. Furthermore, the Netherlands was elected a member of the UN Security Council (SC) in October 1998, being chair in September 1999 during the East Timor referendum aftermath in which the UN was one of the major actors.⁵²

The period of the Wahid presidency was expected inside and outside Indonesia to mark the beginning of a more democratically governed Indonesia and the Dutch Government expressed support for the new president and his policy priorities. Indonesia and the Netherlands agreed to develop an agenda for, among other things, intensified economic, socio-cultural, development and military co-operation. Points of departure were the priorities formulated by the Indonesian Government. A critical dialogue on internal political issues, regional issues and human rights was to be part of regular political consultations.⁵³

⁴⁸ For example, AI ASA 21/047/2004. The issue of equality between men and women is not the subject of this study and is mentioned here as background.

⁴⁹ TK 1998-1999, 26 0 49, no. 5, at 3.

⁵⁰ TK 1999-2000, 26 049, no. 28, at 3.

⁵¹ TK 1998-1999, 26 049, no. 6, at 6.

⁵² TK, 1998-1999, 26 301, no. 1, at 1. The Netherlands was elected on 8 October 1998 for the period 1999-2001.

⁵³ TK 1999-2000, 26 049, no 21, at 5.

The Memorandum of Understanding (MoU) containing the *Agenda for renewed and intensified bilateral co-operation* of 3 February 2000 outlined a range of long-term policy objectives and areas of co-operation:⁵⁴

- open political dialogue at ministerial (at least once a year) and civil service level on bilateral, regional and international issues
- development co-operation for an initial period of five years on any issue financed through ODA with co-ordinating roles for the Indonesian Minister for Economy, Finance and Industry and the Dutch Minister for Development Co-operation
- economic co-operation (finance, trade and investment and agriculture)
- Cultural and social co-operation, as well as co-operation in the field of education and science
- military, legal (including protection of human rights), police and public governance co-operation
- a stimulator and brokering role for the Netherlands, aimed at an integrated approach towards Indonesia, covering all relevant fields of co-operation (political, economic and development assistance), within the framework of the EU.

When President Wahid failed to rally various political and other important actors such as the TNI behind his government, he was impeached in July 2001 and succeeded by Vice President Megawati Sukarnoputri.

During the Megawati presidency the overall policy objectives of the Government of the Netherlands officially remained the same. There was, however, a clear and growing concern about the lack of progress regarding the continuing violence and even escalation of the situation in Aceh and Papua, and the lack of progress regarding more autonomy for these two provinces. Furthermore there was concern about the continued failure to bring the armed forces under civilian control and the lack of delivery on promises to bring perpetrators of past human rights violations to justice. This failure was deemed to perpetuate the climate of impunity. The conclusion of the Government of the Netherlands in 2004 was that under President Megawati Sukarnoputri issues such as political reform, autonomy for Aceh and Papua and political control over and reforms within the TNI no longer had the same high priority as immediately after the fall of the Suharto regime.⁵⁵ The inauguration of the new legislature and new president Yudhoyono in October 2004 did not prompt new policy objectives.

More active involvement of the EU in Indonesia, and continued involvement of the UN regarding human rights issues, were important policy objectives for the Netherlands throughout the years covered by the evaluation.⁵⁶

In brief, the findings on the policy on human rights of the Netherlands regarding Indonesia are:

- comprehensive, overall human rights policy objectives were not formulated for the Habibie period; the focus was on concrete issues such as the mid-1999 parliamentary elections, the Moluccas and East Timor
- comprehensive policy objectives were formulated for the Wahid presidency, which were maintained during the Megawati presidency, despite growing concern about the lack of progress towards achievement of these objectives

⁵⁴ TK 1999-2000, 26 049, no 28, at 14.

⁵⁵ TK 2003-2004, 26 049, no 42, at 9.

⁵⁶ Tweede Kamer, 1999–2000, 26 049, nr. 28, at 14.

- specific objectives during the Wahid/Megawati presidency included: bringing the armed forces under civilian control, thereby reducing human rights violations by the armed forces and reducing the climate of impunity for past violations; contributing to the establishment of the rule of law
- active involvement in human rights issues by the EU and continued involvement by the UN were objectives of Dutch policy on human rights regarding Indonesia.

4.3 Implementation of human rights policy: strategies and instruments during the Habibie presidency

During the Habibie presidency developments in the field of human rights were closely monitored and, notwithstanding the policy of keeping a distance (see above, 4.2), concrete concerns about violations of human rights were raised in bilateral contacts.

The preparations for the June 1999 parliamentary elections, the first free elections in Indonesia, was an important preoccupation in the first half of 1999, since this would set the scene as well as conditions for political transformation and have an impact on human rights affairs in general as well as on the peaceful solution of the conflicts in the regions.

The Dutch Minister of Foreign Affairs stressed the importance of democratic elections in various encounters with the Indonesian authorities.⁵⁷ Also, action by and providing financial support through the EU was stimulated. The initiatives resulted in political conclusions at the level of the GAERC and EU financial support and, at the multilateral level, financial support through the UNDP.⁵⁸

Contributing to reducing ethnic and religious violence in the Moluccas was also pursued through a combined strategy of using bilateral contacts to explain the Dutch concerns and at the same time aiming for stronger EU involvement. After Dutch pressure within the EU, various EU *démarches* were undertaken to impress upon the Indonesian authorities their responsibility to restore peace and security in the Moluccas. Another EU step was an intervention at the 55th session of the UN Commission on Human Rights. In addition, humanitarian aid was provided by the Netherlands through an international organisation specialising in humanitarian aid.⁵⁹

From 1999 the situation in East Timor gradually started to dominate the Dutch agenda of human rights concerns in Indonesia. The fact that the Dutch Financial Times journalist, Sander Thoenes, was killed in the violent aftermath of the referendum on independence in Dili on 21 September by assailants who were believed to belong to the armed forces, Military Battalion 745, increased political attention in the Netherlands on prosecuting the violations in East Timor in the period around the referendum. The Netherlands' main strategy in that period was to aim for diplomatic action within the framework of the EU and through the United Nations to continue to put pressure on the Indonesian authorities to deliver on its commitments to the UN to maintain peace and security.⁶⁰

⁵⁷ TK, 1998-1999, 26 049, no. 9, at 2-3.

⁵⁸ TK, 1998-1999, 26 049, no 7, at 1.

⁵⁹ TK, 1998-1999, 26 049, no. 8 at 2, no. 10 at 2.

⁶⁰ TK, 1998-1999, 26 049, no. 15, at 3.

As President of the UN SC, the Netherlands initiated an SC mission, which was immediately deployed, as well as an open SC session on 11 September. Both initiatives were, according to the Dutch Government, “crucial” in making the Indonesian authorities realise that international military assistance could not be held off any longer.⁶¹ A multilateral peacekeeping force was deployed in October, almost immediately after the SC mission.

Within the framework of the EU, the Netherlands actively stimulated and supported the EU position to continuously draw the attention of the Indonesian authorities to the fact that ensuring peace and security was their responsibility.⁶² With regard to an intended decision on 13 September 1999 of the GAERC to establish an arms embargo for a non-determined period, the Netherlands held the position that, in view of acceptance by the Indonesian Government of a multilateral peacekeeping force, an embargo for a determined period would be more effective. Should the Indonesians renege on their acceptance of the peacekeeping force, an arms embargo for a non-determined period could then be the next step. The GAERC decided on a four-month embargo.⁶³ Involvement of the EU in human rights issues was part of the efforts of the Netherlands aimed at getting the EU involved in a comprehensive relationship with Indonesia, covering political relations and dialogue, development co-operation and trade. In the view of the Netherlands, the political dialogue and development co-operation would have to cover issues of human rights.

With the ratification by the newly elected Indonesian Parliament on 19 October of the outcome of the East Timor referendum and the transfer of the authority for East Timor to the UN Transitional Administration in East Timor (UNTAET), the issue of East Timor’s status was finally settled. What remained were the scores of human rights violations perpetrated in the process of the popular consultation. The Netherlands conveyed at the first opportunity (a visit to Indonesia after the inauguration of the Wahid government) its position that the perpetrators of the violations in East Timor needed to be brought to justice. As the prosecution of the violations in East Timor are subject of the case study, the issue will be dealt with further in section 4.5.

In brief, the findings for implementation of human rights policy during the Wahid presidency are:

- the human rights situation was closely monitored
- in accordance with the policy formulated, the focus was on the mid-1999 elections, on the situation in the Moluccas and on East Timor
- both the EU and the UN were actively used as channels to address the concerns and seek improvements according to the policy that was developed.

⁶¹ TK 1998-1999, 26 049, no 16, at 1 and no. 18 at 5-6.

⁶² TK 1998-1999, 21 501-02, no. 305, at 5 and no. 307 at 2.

⁶³ TK 1998-1999, 21 502, no. 310, at 5.

4.4 Implementation of human rights policy: strategies and instruments during the Wahid presidency and onwards

4.4.1 Political dialogue: re-establishment of the rule of law and the conflicts in the regions

A framework of policy priorities of the Netherlands for the Wahid presidency and beyond was outlined in the Indonesia memorandum of July 2000 (see section 4.2). The overall goal was to contribute to a successful process of political transition. Such a transition would create the basic conditions for firmly establishing democratic principles and the respect for human rights and the rule of law by developing the necessary democratic institutions and legislation and involving civil society organisations. This in turn would help to secure support in society at large as a pre-condition for change.⁶⁴ From the February 2000 MoU between the governments of Indonesia and the Netherlands it became clear that the Netherlands' strategies and instruments in the field of human rights were:

- political dialogue on human rights as part of the overall political dialogue
- co-operation in the field of human rights and good governance through ODA
- military co-operation with a view to the professionalisation of the armed forces under civil, democratic control.

The strategies included enhanced involvement of the EU and continued involvement of the UN.

In bilateral relations, the human-rights-related topics and priorities were recurring issues on the agenda for encounters between the Indonesian and Dutch authorities at ministerial and diplomatic level. The Dutch authorities applied a strategy of regularly and continuously ("*frapper toujours*") raising the issues as this was deemed to be the most effective approach. Issues included the re-establishment of the rule of law and the related theme of prosecuting past violations. Later the gradual re-emergence of restrictions on the press under the Megawati presidency were added to the agenda, as was the use of the death penalty when the *de facto moratorium* on executions was broken in August 2004.

Other topics in the political dialogue were the conflict situations and the related human rights violations in the regions: the Moluccas, Aceh and Irian Jaya. There are many examples of diplomatic interventions, including at ministerial level. The Government of the Netherlands, while acknowledging the need to preserve the territorial integrity of Indonesia and showing understanding for the reluctance of Indonesia to give room to international interference in what it regarded as an internal affair, kept exerting pressure on the Indonesian authorities to take more effective action to curb violence and secure respect for human rights.⁶⁵ Initiatives of the Netherlands in the EU resulted among other things in EU missions to the Moluccas in October 2000 and February 2001 and a declaration on the situation in the Moluccas in November 2000.

The Moluccas disappeared from the limelight of Dutch political debate for some time after the state of emergency was lifted in September 2003, but the situation continued to be monitored, since sporadic violent eruptions still occurred.⁶⁶

⁶⁴ Tweede Kamer, 1998-1999, 26 049, no 28, at 12-13.

⁶⁵ TK 2000-2001, 26 049, no. 36, at 6.

⁶⁶ Letter of 24 November 2003 to the "Tweede Kamer" (Second Chamber) from the Minister of Foreign Affairs (DAO/711/03).

Support for reconstruction in the Moluccas through ODA remained. The attention to the conflict situation and related human rights violations in Aceh and Papua also remained and continued to be raised in bilateral contacts and through the EU.⁶⁷

In late 2003 and early 2004 the Government of the Netherlands concluded that little progress had been made under the Megawati government with the agenda of reform. One of the areas that lacked progress was the promotion and protection of human rights, illustrated by the continuing conflicts in Aceh and Papua, which had not come any closer to a solution, with, as a result, continued violations of human rights.⁶⁸ A critical analysis of the “testimonial policy” and strategy of *frapper toujours* with regard to human rights issues led to the conclusion that this approach might not be the most effective. It was decided to move away from the “testimonial policy” and put more emphasis on facilitation of Indonesian stakeholders and actors, among other things by supporting civil society organisations and the media through ODA (see below).

The bilateral strategy of the Netherlands was complemented by an active strategy within the framework of the EU and the UN.

As referred to earlier (section 4.2), the Netherlands aimed to raise human rights concerns in an intensified Indonesia-EU political dialogue and inclusion of human rights issues in EU-Indonesia development co-operation. The results of the efforts to involve the EU in Indonesia are apparent in the policy documents of the EU. This includes the conclusions of consecutive GAERC meetings, but also in the Commission’s 2002-2006 Country Strategy Paper (CSP) on Indonesia, approved by the Council of Ministers, a 2003 internal EU policy paper, as well as the EU-Indonesia National Indicative Programme 2005-2006.⁶⁹ However, EU interventions on human rights concerns are issue-based, focusing for example on the issue of impunity (see section 4.5). The EU has not reached the stage where it can be considered that there is a common EU agenda and approach to human rights issues with regard to Indonesia, as was confirmed in interviews with representatives of EU Member State embassies in Jakarta.

Since the UN played an important role in the political developments in Indonesia, as for example the UN Security Council did in the case of East Timor, the strategy included aiming at the continued involvement of the UN. The efforts within the framework of the UN are described in more detail in the case study on impunity (section 4.5).

Summarising briefly the use of the political dialogue as an instrument during the Wahid period and onwards, the conclusions are:

- the instrument of political dialogue was applied during the Wahid presidency according to plan
- the strategy changed during the years of the Megawati presidency when the conclusion was drawn that the strategy of “testimonial policy” and *frapper toujours* became less effective. More emphasis was put on facilitation of Indonesian actors and stakeholders (civil society and the media) to strengthen the democratic environment

⁶⁷ E.g. letter of 2 August 2003 to the Second Chamber [see above] from the Minister of Development Co-operation (DAO/477/037), reporting on her visit to Jakarta, 23-25 July 2003.

⁶⁸ Letter of 24 November 2003 (DAO/711/03) and TK 2003-2004, 26 049 and 22 054, no. 42, at 9.

⁶⁹ COM (2000) 50 final of 2.2.2000; Indonesia Country Strategy Paper 2002-2006 and National Indicative Programme 2005-2006 http://europa.eu.int/comm/external_relations/indonesia/intro/index.htm; on the Policy Paper, TK 2003-2004, 29 540, no. 10, at 111.

- progress was made in involving the EU in a broader, integrated agenda of issues *vis à vis* Indonesia, which included addressing human rights within the framework of the political dialogue and development co-operation relationship between the EU and Indonesia. EU interventions were issue-based rather than part of an integrated EU human rights policy
- despite the efforts little progress has been made on the Indonesian reform agenda and in the field of the promotion and protection of human rights.

4.4.2 Co-operation in the field of human rights and good governance through ODA

Contributing to the promotion of good governance and human rights through ODA focused on good governance and reform in the justice sector (mainly the judiciary, but also the police and the public prosecutor's office) and reinforcement of the civil society sector active in the field of human rights through direct support of civil society projects, including the media sector. It should be noted, however, that the evaluation has only addressed the question of whether the instrument has been used, not to what extent the instrument has been effective.

The justice sector reform was expected to have a long-term beneficial effect on impunity. A more independent, non-corrupt and knowledgeable judicial sector would be in a better position to prosecute and try members of the armed forces for human rights violations. The link between police training and human rights is even more direct, since most of the activities funded within the police programme were human rights training activities. The enforcement of democratic institutions in the framework of good governance programmes, is expected to contribute to bringing the TNI and the police under democratic political control, one of the pre-conditions for the effective and long-term guaranteeing of respect for human rights and the rule of law in Indonesia.

In order to make better use of existing experience and expertise, but also for reasons of capacity constraints in managing the funds, the main *modus operandi* was to provide funding through multilateral agencies by contributing to their programmes. The Netherlands chose to support the multilateral Partnership for Governance Reform (PGR) programme, a combined activity of the UNDP (lead agency), the World Bank, the Asian Development Bank and the Indonesian authorities and various bilateral donors.

The ODA support focusing on capacity building for human rights NGOs and civil society in general large aimed at contributing to a more effective and stronger advocacy and awareness-raising role for civil society. Started during the Wahid presidency, it received even more emphasis during the years of the Megawati presidency when government-to-government dialogue on human rights turned out to be a less effective channel. The media were included as a target sector for support when the freedom of the press came increasingly under pressure during the Megawati presidency and the reform agenda of the Indonesian government came to a halt.

An issue that recurred during the interviews in Jakarta was that there is little co-ordination among donors active in the field of human rights. Although some attempts are made to produce at least overviews of projects supported by EU Member States, all interlocutors interviewed by the evaluation mission concluded that there is a lack of co-ordination with regard to achieving the maximum strategic effect of the interventions. Attempts by the Netherlands Embassy and the EC Delegation to start a process of donor co-ordination remained fruitless.

Due to a troubled relationship between the Indonesian Government and the OHCHR, supporting an OHCHR programme was not an option. Alternatives were sought but not found.

Summarising briefly the use of ODA means as an instrument during the Wahid period and onwards, the conclusions are:

- the instrument of providing support through ODA was applied according to plan during the Wahid presidency
- the strategy of providing support for good governance through multilateral channels continued during the years of the Wahid and Megawati presidencies
- the good governance programme was complemented with an element of strategic support to the civil society sector and the media and received more emphasis during the Megawati presidency to support Indonesian stakeholders more directly
- the ODA support was not directly aimed at enhancement of the expertise and capacity of the *ad hoc* and human rights tribunals, among other things due to the fact that the initial strategy to contribute through the technical assistance programme of the OHCHR could not be implemented and no alternatives were found
- there is a lack of effective co-ordination between donors, including the Netherlands, to maximise the strategic effects of bilateral interventions, even though attempts to co-ordinate have been and are made.

4.4.3 Military co-operation

Assisting the Indonesian government to bring the armed forces under democratic, civilian control has been a consistent policy objective throughout the whole period after the fall of the Suharto regime. The issue was part of the political dialogue, but also the subject of concrete co-operation and support.

The issue of co-operation aimed at the professionalisation and democratic, civilian control of the armed forces was regularly linked to and complicated by the issue of the arms trade and arms embargo. In the early days of the Wahid presidency the Government of the Netherlands followed a restraint policy with regard to supplying military equipment to Indonesia, coupled with an active policy of contributing to bringing the armed forces under the democratic control of the civilian government. This policy was to be constantly assessed against the actual progress of establishing democratic control over the armed forces.⁷⁰ A similar strategy was followed among others by the World Bank, the IMF and the US Government.

Under the Megawati presidency the process of increasingly establishing democratic, civilian control over the armed forces seemed to grind to a halt.⁷¹ The political circumstances were not very conducive to active military co-operation, even with the aim of contributing to establishing democratic control over the armed forces. The so-called Clingendael trainings on transparency in the armed forces and cautious personal contacts with TNI superiors seemed the maximum possible options.

⁷⁰ TK 1999-2000, 26 049, no.21, at 4.

⁷¹ TK 2003-2004, 26 049 and 22 054, no 42, at 9.

Summarising briefly the use of the instrument of military co-operation, the conclusions are:

- that the process of contributing to enhancing the professionalisation of the armed forces under democratic control started
- that the process came to a halt under the Megawati government, which made little effort to continue the reform agenda with regard to the armed forces.

4.5 Effectiveness of policy: impunity and the ad hoc Tribunal on East Timor

4.5.1 The case

The Indonesian authorities had promised the UN to maintain peace and security in the whole process leading to the 30 August 1999 referendum on independence in East Timor and the period afterwards. This responsibility, as accepted by Indonesia, was acknowledged by the Security Council in a series of resolutions.⁷² Despite the Indonesian promise, serious rights abuses took place. Extra-judicial killings, arbitrary detention, torture and ill-treatment, intimidation and destruction of properties were committed, mainly by retreating members of the Indonesian armed forces and militia and were condoned by armed forces senior officers or taking place with their consent.

The responsibility accepted by the Indonesian Government included prosecuting human rights violations as recognised and confirmed by the Wahid government in a letter to the UN Secretary General (SG).⁷³ The Netherlands attached great importance to the prosecution of human rights violations by the Indonesia authorities themselves as a sign of the commitment of the Indonesian Government to re-establishing the rule of law. Since the alleged perpetrators of these violations were mostly members of the armed forces, the ability to effectively prosecute these violations could also be seen as a benchmark in the process of making the armed forces accountable to and bringing them under the democratic control of the civilian government. Thus the Government of Indonesia and the Government of the Netherlands had the same point of departure: the prosecution of the violations in East Timor committed before and after the referendum was the responsibility of the Indonesian Government.

The efforts of the Netherlands to contribute to an improvement reduction in the climate of impunity by stimulating the prosecution of past violations in East Timor were first and foremost aimed at the establishment and proper functioning of the ad hoc Tribunal on East Timor.

In order to assess the effectiveness of the efforts the following questions are reviewed:

- the means and instruments and the effects of political efforts
- interaction between the political efforts and instruments and ODA and the effects on reducing impunity
- the efforts of the Netherlands to activate the EU (partners) and the effects of the use of the EU channel.

⁷² S/RES/1262 of 27/8/99, extending the mandate of UNAMET (United Nations Mission in East Timor), S/RES/1264 of 15/9/99, authorising a multinational force to maintain peace and security, S/RES/1272 of 25/10/99, establishing United Nations Transitional Administration in East Timor (UNTAET).

⁷³ Letter from the Minister of Foreign Affairs of Indonesia to the UN SG, forwarded by the UN SG to the President of the General Assembly and the President of the Security Council; A/54/727, S/2000/65 of 31 January 2000.

A distinction is made between the preparatory period in the establishment of the *ad hoc* Tribunal and the period of the actual Tribunal itself.

4.5.2 The implementation of the strategy

During the period of establishment of the Tribunal

After contacts throughout 2000 with various government ministers and Indonesian judicial authorities, the Government of the Netherlands expressed cautious confidence in the actions of the Indonesian authorities to deliver on their commitments to prosecute the violations in East Timor.⁷⁴ However, in October 2000 the Dutch Government reported to the Dutch Parliament that a provision in the revised Constitution may endanger the retroactive punishment of human rights violations such as in East Timor based on Law 26/2000. Upon intervention, the Indonesian authorities assured the Netherlands that the 1999 East Timor violators would be prosecuted. Law 26/2000 was passed.⁷⁵ When in August 2001 the Presidential Decree on the *ad hoc* Human Rights Court on East Timor based on law 2000/26 was issued, important cases of violations were excluded due to the geographical and temporal limitations on jurisdiction.⁷⁶ Nationally and internationally, this move was strongly criticised. The Government of the Netherlands intervened at regular intervals, seeking assurance that the Tribunal would start soon and with a maximum mandate.⁷⁷

In order to contribute to the effectiveness of the Tribunal, the Netherlands offered financial support to a project for technical assistance run by the OHCHR. This was meant, among other things, to train prosecutors, judges and defence counsellors of the *ad hoc* and regular human rights courts. However, the project was suspended in January 2002, with no prospect of re-starting, due to differences between the Indonesian Government and the OHCHR over adjustments in the geographical and temporal jurisdiction of the *ad hoc* Tribunal-to-be.⁷⁸ Although agreeing with the High Commissioner's principled stand on the jurisdiction extension, the Netherlands sought to save the project, but to no avail.

Mostly initiated by Portugal and the Netherlands, on various occasions EU partners publicly displayed increasing concern about the issue of the limited geographical and temporal jurisdiction of the *ad hoc* Tribunal, including at the November 2001 Governmental Group on Indonesia meeting. This pressure is likely to have contributed to the (limited) expansion of the mandate of the *ad hoc* Tribunal.

⁷⁴ TK 1999-2000, 26 049, no. 28, at 8; report of the International Commission, A/54/660 of 10 December 1999.

⁷⁵ TK 2000-2001, 26 049, no. 33, at 2.

⁷⁶ Decree 96/2001 of President Megawati, amending decree 53 on the establishment of an *ad hoc* human rights court at the central Jakarta district court: the *ad hoc* court has the authority to hear and rule on cases of gross violations of human rights occurring in jurisdictions Liquia, Dilli and Soae in East Timor in the months of April 1999 and September 1999; and those in Tanjung Priok in the month of September 1984.

⁷⁷ E.g. TK 2000-2001, 26 049, no 36 at 6.

⁷⁸ High Commissioner Mary Robinson referred during an intervention at the 58th session of the UN Commission for Human Rights to the suspension of the project due to the limited jurisdiction, much to the disappointment of the Indonesian Permanent Representative in Geneva.

In addition, at the end of 2001 and the beginning of 2002, the Netherlands took initiatives for messages to be conveyed by the EU bilaterally, at the 58th session of the UN Commission on Human Rights and in other UN fora, resulting in an UNCHR presidency statement.⁷⁹

The actual trials and follow-up

In March 2002 the *ad hoc* human rights tribunal on East Timor was finally convened to consider cases of crimes against humanity committed around the August 1999 referendum. The Netherlands Embassy became one of the initiators and driving forces behind the organisation of regular attendance of the sessions of the Tribunal by staff from the embassies of EU Member States and non-EU countries such as Canada and New Zealand and ensuring the presence of Heads of Mission on several important occasions. This occurred during sessions such as when a verdict was expected, with the (sometimes) successful attempt to attract media attention.⁸⁰ The rather labour-intensive monitoring of the trials continued throughout the trial period.

When the first verdicts of the tribunal were handed down in mid-August 2002, the Netherlands was one of the Member States which initiated the EU Presidency issuing a statement. The statement noted the flaws in the process and stated that these would jeopardise the tribunal's credibility and urged the Indonesian Government to ensure that proceedings conformed with the rule of law and international standards. Another statement was issued by the EU on 6 August 2003 after the final verdicts, noting among other things that the *ad hoc* Tribunal had failed to deliver justice and did not result in a substantial account of the violence, that the prosecution did not submit all the evidence provided by the UN, the special investigation committee of Komnas-Ham and others and emphasising again that the deficiencies in the trial jeopardised the credibility of the tribunal.

In addition to the bilateral and EU level, action continued within the UN as well. For both the 59th (2003) and the 60th (2004) sessions of the UN Commission on Human Rights the Netherlands took action to ensure strong references to the *ad hoc* Tribunal in the Chairperson's statement on the human rights situation in East Timor. This resulted in a strong statement at the 59th session and a Chairperson's statement at the 60th UNCHR session on Timor-Leste, but with no further references to Indonesia.⁸¹

Another strand in the strategy was to try and put the issue back on the agenda of the UN Security Council. Reminding the SG's staff of Indonesia's responsibility before the UN, the suggestion was given to prepare a report to the Security Council with proposals for follow up action. Based on this report, in January 2004 the Security Council core group on East Timor accepted limited terms of reference for a committee of experts, which included review of the Dili (Serious Crimes Process) and Jakarta trials (*ad hoc* Tribunal).⁸² In July 2004 the decision on setting up the committee of experts was postponed at the request of the Government of East Timor after substantial pressure from the Indonesia Government.

⁷⁹ Commission on Human Rights, Report on the 58th session, E/CN.4/2002/200, at 462

⁸⁰ 14/6/2002 the Jakarta Post reports on the ambassadors of the Netherlands, Canada, New Zealand, Portugal attending a session of the tribunal.

⁸¹ Commission on Human Rights, Report on the 59th session, E/CN.4/2003/135, at 385 and <http://www2.unog.ch/unchr/60/humright.exe?language=en>

⁸² The Terms of reference include no mandate recommend a follow up tribunal. Both the UK and the US fear a new international tribunal with all financial, institutional and political consequences

However, after the 25 August session of the Security Council in which various countries expressed strong criticism on the conduct of affairs around the *ad hoc* Tribunal, the UN Secretariat was able to count on support for follow-up activities, such as a committee of experts.

4.5.3 Assessment

The Government of Indonesia has been quite reluctant to deliver on its commitment to the UN to prosecute and try the violations committed in East Timor around the referendum. The agenda of the Megawati presidency was more influenced by internal political factors, such as not alienating the TNI by prosecuting members of the armed forces for human rights violations. There was a clear lack of political will on the part of the Indonesian Government to prosecute members of the TNI for human rights violations in the past.

Various actors have tried to pressure the Indonesian Government to be more expeditious in the establishment of the *ad hoc* Tribunal, to expand the originally limited geographical and temporal mandate and to ensure that the trials would be held according to international standards. These actors included EU and non-EU governments, using their bilateral contacts, the EU through its Common Foreign and Security Policy and various UN bodies and high officials (UN SC, UNCHR, SG and OHCHR). The pressure of these actors resulted in concessions by the Indonesian Government, but every step in the process, from the establishment of the Tribunal to the final appeal on the verdicts, meant a fight with the UN and countries advocating a stronger mandate of the Tribunal.

Obviously the concessions made by the Indonesian Government cannot be contributed to the actions of the Netherlands alone. Nevertheless, it is clear that the Netherlands was quite active (bilaterally, through the EU and through the UN) in pursuing the objective to make the Indonesian Government deliver on its promise to prosecute the East Timor violations and thereby contributed to the results.

The use of bilateral political relations was actively used, but with limited effect due to the changing political climate. That changing climate also prevented the intended technical assistance to enhance the capacity and expertise of judges and prosecutors in the *ad hoc* Tribunal by means of an OHCHR technical assistance programme.

The efforts of the Netherlands to get the EU more involved generated concrete results, as is demonstrated in the declarations at the level of the GAERC in which the EU expressed concern about issues that were a priority to the Netherlands.⁸³ It is also seen in concrete EU actions at the UNCHR and statements in other UN fora, such as the UN SC.

Last but not least, the Netherlands was quite instrumental in keeping the issue of past human rights violations on the UN agenda, which resulted in the committee of experts.

⁸³ See for example Council conclusions 14 April 2003, http://europa.eu.int/comm/external_relations/indonesia/intro/gac.htm and Council conclusions 11 October 2004, http://europa.eu.int/comm/external_relations/indonesia/intro/gac.htm

4.6 Conclusions

4.6.1 Policy objectives and strategy

Analyses of the human rights situation

Throughout the evaluation period, the Netherlands made an analysis of the extent and nature of the human rights situation in Indonesia, assessed the scope and seriousness of the violations, and assessed the role and capacity of the Indonesian Government and other stakeholders, such as the armed forces and civil society.

The analyses in (public) documents specifically intended to inform the Dutch Parliament of the situation in Indonesia contain an in-depth analysis of the human rights situation in the country as a whole, but also in specific regions such as Aceh, Papua, the Moluccas, East Timor/Timor Leste. These documents also give an analysis of the political will and ability of the government to promote and protect human rights, the position and role of important actors in the field of the promotion and protection of human rights, such as the armed forces (TNI), the judiciary and organisations that aim to promote and protect human rights.

The Netherlands is an active player in conducting research and providing input for the (annual) EU Heads of Mission reports on human rights, the more recent human rights fact sheets and the *ad hoc* reports, such as the report on torture in Indonesia. These documents are not public. The Dutch inputs are seen by representatives of EU and other embassies as “well-informed, professional, committed and active”.

Analyses of the human rights situation in Indonesia made by the Netherlands are in general consistent with the analysis found in reports by various United Nations human rights bodies and mechanisms, international human rights organisations such as Amnesty International and Human Rights Watch and the US Department of State annual reports.

Policy objectives, strategy and translation into plans of action

Policy objectives were formulated both for the transitional period of the Habibie presidency and for the period of the Wahid presidency and onwards.

Comprehensive, overall human rights policy objectives and strategies were not formulated by the government of the Netherlands for the Habibie period. The focus was on specific situations according to urgency: the 1999 parliamentary elections and the conflict situations and related human rights violations in the Moluccas, East Timor, Aceh and Irian Jaya.

For the period of the Wahid presidency there was a comprehensive policy framework with strategies and matching instruments. A specific issue within contributing to establishing the rule of law was the prosecution of human rights violations, as a litmus test for the progress of the process.

The strategies for the Wahid presidency and onward included:

- a political dialogue on human rights as part of the overall political dialogue at the bilateral level, within the framework of the EU and the appropriate fora of the UN
- co-operation in the field of human rights and good governance through ODA, with an important focus (in relation to human rights) on the judicial sector and the police, through multilateral channels
- military co-operation with a view to the professionalisation of the armed forces under civil, democratic control.

4.6.2 Implementation of policy objectives

Raising concerns in bilateral relations

There is ample evidence from the documentation and interviews at the Ministry of Foreign Affairs and held in Jakarta that human rights concerns have been raised through bilateral contacts, the structured political dialogue and in informal meetings. This was done at the level of ministers, at the level of diplomatic contacts and at the level of officials of the Ministries of Foreign Affairs.

The bilateral political dialogue turned out not to be a very effective instrument when the Megawati government did not want to pursue the reform agenda. More emphasis was subsequently given to the use of the EU channel and multilateral channels (Governmental Committee on Indonesia and UN) in addition to the bilateral channel.

The EU framework

The Netherlands' efforts to stimulate the EU into an integrated and strong policy towards Indonesia did reap results, as is shown in important EU policy documents describing EU relations with Indonesia. At the same time, it needs to be underlined that an active EU policy toward Indonesia was dependent on inputs from mainly three EU Member States: Portugal, the United Kingdom and the Netherlands.

The initiatives of the these three EU partners secured a generally firm position from the EU in its bilateral relations with Indonesia and within various UN fora such as the UNCHR and UN SC on important human rights issues, like the violations in relation to the regional conflicts and the issue of combating impunity. The EU involvement added considerable weight to the political efforts of the Netherlands, ensuring pressure when it was needed on the Megawati government.

Conformity of efforts and plans

The policy plans with regard to political efforts have been realised, but adjustments were made because of the changing political climate under the Megawati presidency. One of those adjustments was less *frapper toujours* and more investment in a broad political dialogue, conducted at a higher level.

Co-operation within the framework of the EU has not resulted in a change of plans or lesser efforts than planned. Rather there has been positive and complementary interaction between the bilateral efforts and the EU channel.

Raising concerns in various fields of foreign policy

Human rights concerns and issues have been taken into account and integrated into other policy areas in relations with Indonesia, predominantly in development co-operation through ODA and military co-operation. Activities have been planned and implemented.

The larger, multilateral good governance programmes financed through ODA are meant to have a positive impact on judicial reform, which may in turn have a positive effect on the climate of impunity and redressing other human rights violations. However, the topics included in the judicial reform do not focus directly on issues related to violations of human rights. It should be noted that the evaluation has not reviewed any potential effects of the judicial reform programme in relation to human rights.

The evaluation has also not reviewed the effects of the strategic support of the civil society sector and the media, which is geared to supporting national institutional

capacity building and enhancement of expertise, as well as effective advocacy and awareness-raising in the field of human rights.

Military co-operation was engaged in with a view to the professionalisation of the armed forces and bringing these under democratic control, but with little or no demonstrable effects with regard to achievement of the planned objective.

There is no information on integration of human rights in other policy areas, such as economic relations.

Co-operation with actors other than the Indonesian Government

The Netherlands has co-operated with the EU partners and UN agencies in the implementation of political efforts.

The Netherlands has also co-operated with multilateral agencies in the implementation of good governance, including judicial reform and police reform. Co-operation with other donors on strategic support to the civil society and media sectors was lacking, but co-operation with international and national civil society organisations with a view to providing that support is taking place.

4.6.3 Effectiveness of political efforts, based on the case study

The *ad hoc* East Timor Tribunal did start in 2002 after strong international pressure. The trials, closely monitored by representatives of the diplomatic community in Jakarta, with active involvement and impetus from the Netherlands, resulted in a limited number of convictions that were lenient in view of the crimes committed. Most of these convictions were overturned on appeal.

Bilateral political efforts by the Netherlands and contribution to action within the framework of the EU and the UN were not the sole factor in this (limited) progress in the prosecution of past human rights violations, but certainly contributed to the following processes and effects thereof:

- the establishment and operation of the *ad hoc* Tribunal on East Timor and the (limited) adjustment of the geographic and temporal jurisdiction
- concrete actions by the EU: various EU declarations, conclusions in statements of the EU GAERC and actions by the EU influencing the chairperson's statements at consecutive sessions of the UNCHR, monitoring of the *ad hoc* Tribunal sessions
- the prosecution of some of the alleged violators, resulting in convictions that were however overturned upon appeal
- renewed UN SG involvement, resulting in the establishment of the commission of experts.

Despite the fact that the convictions were few, the actions of the Netherlands did contribute to raising awareness among the authorities, civil society and the media of the international concern on the climate of impunity and thereby rendered support to and stood by those Indonesian actors who are seriously committed to redressing this situation.

Political efforts by the EU and the UN have carried to a large extent the policy objectives of the Netherlands, giving additional impetus to tackling the issue of impunity. The Netherlands stretched its goodwill with the EU partners to the limit to address the issue of impunity and the prosecution of the murder of the Dutch journalist, but did not go beyond that limit.

5. IRAN

5.1 Political context and human rights situation⁸⁴

Iran is a theocratic republic with a constitutional division of powers between legislature, executive and judiciary (*trias politica*). The constitutionally enshrined position of the (non-elected) Religious Leader, since 1989 Sayyed Ali Khamenei, who is at the same time head of state, gives him considerable control over matters within the mandate of the institutions of the *trias*, including the legislature.⁸⁵ The influence of the religious leadership as a whole on the affairs of key political institutions is illustrated by the role and position of the twelve-member, non-elected Council of Guardians.⁸⁶ The Council must approve the legislation passed by Parliament in view of constitutional principles, thereby including Islamic principles.

The Council is generally seen as a very conservative body. It has in recent years rejected parliamentary bills in areas such as women's rights, family law, preventing and combating torture and electoral reform. In particular, the Council has vetoed bills assenting to the ratification of international human rights treaties such as CEDAW and CAT.

The Iranian judicial system is one that has been designed to conform, where possible, to an Islamic canon based on the Qu'ran, Sunna and other Islamic sources.⁸⁷ Many of the serious violations of human rights in Iran are rooted in the set-up and functioning of the judicial system. Although Article 156 of the Constitution guarantees the independence of the judiciary, the sweeping judicial and administrative powers of the head of the judiciary and the fact that he must be a cleric and is chosen and accountable to the Supreme Leader jeopardises the principle of an independent judiciary. The system and actual administration of justice are not in conformity with international standards. The UN Working Group on Arbitrary Detention made a range of recommendations to improve the judicial system after a visit to Iran in 2003, which included transfer of authority from the revolutionary tribunals and clerical courts to the ordinary courts, review of the practice of solitary confinement, the progressive freeing of prisoners of conscience, guarantees of due process and reform of imprisonment for debt.⁸⁸

⁸⁴ Paragraph 6.1 is mainly based on AI Reports 1999-2004, Human Rights Watch Reports 1999-2004 and United States Department of State reports 1999-2004, unless other references are given.

⁸⁵ Article 57 of the Constitution of Iran.

⁸⁶ Six of the members of the Council are appointed by the Religious Leader, the other six by the head of the judiciary, after parliamentary approval.

⁸⁷ Amnesty International: "Islamic law, commonly known as the Shari'a, is based on the Qur'an, which Muslims believe to be the literal and final word of God, and on Sunna, or traditions of the Prophet Muhammad. Using these sources, as well as pre-Islamic customary practices of the Middle East which were not explicitly repudiated by the Qur'an and Sunna, Muslim jurists developed Shari'a as a comprehensive legal system..." Shari'a law is composed of the Sunna and the Qur'an, both for Sunni and Shia Islam. An-Na'im, A., *Human rights in cross-cultural perspective*, Philadelphia: University of Pennsylvania Press.

⁸⁸ E/CN.4/2004/3/Add.2, 27/06/03.Report of the UN Working Group on Arbitrary Detention, para 65, at 19-20.

Freedom of expression and of opinion are not enshrined in the Iranian Constitution. Freedom of the press is guaranteed, except when publishing ideas which are “*contrary to Islamic principles, or detrimental to public rights*”. Numerous reports state that the Iranian government severely restricts freedom of expression and opinion and that the situation has been further deteriorating in recent years. After a protracted campaign to silence critics that started in 2000, which included the closing down of newspapers and the imprisonment of journalists and editors, the Iranian judiciary has shut down at least 100 publications and in July 2004 two additional moderate newspapers closed following action by the hard-line judiciary.⁸⁹ Today, very few independent daily newspapers remain. The suppression of freedom of expression and opinion also extends to human rights defenders.

The Iranian Constitution prohibits arbitrary arrest and detention as well as solitary confinement. Despite this, these practices remain common, as is clear from the report by the UN Working Group on Arbitrary Detention, referred to above, and reports by Human Rights Watch and Amnesty International. Torture is prohibited in the Constitution and in the May 2004 law on “Respect of lawful liberties and protection of citizenship rights”. Despite this there are still numerous credible reports that security forces and prison personnel continued to torture detainees and prisoners, clearly indicating that the law is not adequately enforced.

The death penalty is still widely applied, although decreasingly to minors as there has been a *de facto moratorium* for minors (see below, section 5.4). Executions frequently take place in public. The death penalty is also applied in cases involving girls related to offences such as “illegal sex”, often in contexts which suggest that the girls have actually been victims of rape.⁹⁰

The legal system in Iran is not in compliance with international standards with regard to non-discrimination of women. Numerous provisions in the Islamic Civil and Penal Codes, in particular those sections dealing with family, inheritance and equality before the law, discriminate against women.

Freedom of religion is a principle recognised in the Iranian Constitution which states that, “*the official religion of Iran is Islam and the doctrine followed is that of Ja’fari (Twelver) Shi’ism*”, and that “*other Islamic denomination are to be accorded full respect*”. Furthermore, the Constitution recognises Zoroastrians, Christians and Jews as protected religious minorities. However, religious minorities not explicitly mentioned in the Constitution do not enjoy freedom of religion. A case in point is the Baha’i minority, which continues to suffer repression by conservative elements of the judiciary and the security establishment.

⁸⁹ International Federation for Human rights, Appraisal of the EU-Iran Human Rights Dialogue: Assessment of the Human Rights Situation in Iran, July 2004, at 6.

⁹⁰ Women’s Forum Against Fundamentalism in Iran, “Urgent appeal to save a 13-year-old girl from stoning in Iran”, 14 October 2005. Available at: <http://www.wfafi.org/wfafistatement9.htm>.

5.2 Overall and human rights policy objectives of the Netherlands

Since the late 1990s, the policy objectives of the Netherlands towards Iran have been strongly linked to the policy objectives set within the framework of the EU Common Foreign and Security Policy. In 1998, the EU opted for a “comprehensive dialogue” with Iran, ending a period of few contacts and critical dialogue. The agenda of the EU dialogue included all the topics that were included in bilateral contacts between Iran and the Netherlands: human rights, defence policy, weapons of mass destruction, the Middle East peace process and fighting terrorism.⁹¹

The overall policy of the Netherlands in the period 1999-2001 aimed at an increase in the intensity of bilateral relations between the Netherlands and Iran. This was not only with a view to furthering the topics that were the focus for the EU-Iran comprehensive dialogue, but also with the aim of enhancing economic co-operation, as the Dutch Government saw new potential emerging for the Dutch private sector. Nevertheless, during various debates in the Dutch Parliament on the relationship between the Netherlands and Iran, the Minister of Foreign Affairs emphasised that the bilateral discussions were focused on human rights, whereas some of the EU partners seemed to let their economic interests prevail.⁹²

The strategy of the Government of the Netherlands was to monitor closely the developments on all topics with a view to contributing in the most effective manner to improvements in those areas where Iranian domestic and foreign policy would continue to give rise to concern.⁹³

The election of a more progressive parliament in 2000 and the re-election of the reformist President Khatami in 2001 initially gave rise to hope by the Government of the Netherlands that there were opportunities for substantial reform in Iran to which the EU-Iran dialogue and bilateral contacts could contribute. Soon, however, the Dutch Government concluded that the reform process was not living up to the original expectations.

With regard to human rights, the Netherlands deemed that the EU and bilateral dialogue would be the appropriate means to continue to urge the Iranian authorities to conform with international norms and standards. Exerting pressure through the UN human rights fora (UNCHR and UN GA Third Committee) was deemed to be an appropriate and effective means to exert pressure on the Iranian Government, next to bilateral and EU initiatives. The position of the Netherlands regarding the use of human rights instruments in UN fora was that such use should not be made dependent upon whether progress was made in other policy areas, such as the nuclear issue.

In addition, contacts in the social and private sector through, for example, exchanges between social organisations, an investment protection agreement, extension of cultural, scientific and parliamentary contacts, would serve as support for the reformist powers in Iran.⁹⁴

⁹¹ Tweede Kamer 1999-2000, 23 432, no 28, at 9.

⁹² Tweede Kamer, 1999-2000, 26 800 V no 108, at 1; Tweede Kamer 2001-2002, 28 000 V, no 57 at 6 – 7.

⁹³ Tweede Kamer 1999-2000, 23 432, no 25, at 4.

⁹⁴ Tweede Kamer, 2000-2001, no 23 432, no 35, at 5 – 6.

In relation to bilateral relations, no specific objectives and benchmarks for achievement were set in the field of human rights. In line with the overall strategy of monitoring developments and contributing to those areas where Iranian domestic policy gave rise to concern, issues for intervention were decided upon, leaving the impression of a rather *ad hoc* intervention strategy. As can be concluded from the documentation that was reviewed and the interviews conducted, the main focal areas of Dutch human rights policy during the evaluation period included strengthening civil society, issues of democracy, the promotion of freedom of expression and freedom of religion, the death penalty, the need for ratification of international human rights instruments, notably CEDAW and CAT, and the improvement of the position of women.⁹⁵

In brief, the policy was to:

- achieve improvements in the field of human rights, using the bilateral channel and the EU framework through the EU-Iran dialogue
- address concerns related to democratisation, freedom of expression, freedom of religion, the death penalty, ratification of international human rights instruments and the improvement of the position of women; the improvements aimed for were not specified
- enhance the support to resolutions regarding human rights in Iran in the context of the UN human rights fora.

5.3 Implementation of human rights policy: strategies and instruments

5.3.1 Bilateral relations

The instruments on which the Netherlands focused in its bilateral relations with Iran included ministerial visits to the country, documentation of violations and sharing the information, *démarches* and (financial) support for civil society organisations. However, while there is a reasonable logic to the choice of these instruments in view of the context and possibilities for promoting human rights in Iran, an overall strategy as a framework to apply those instruments was lacking, as was recognised and acknowledged internally in 2003.⁹⁶

Prior to 2000, relations between Iran and the Netherlands were very limited. Only after the election of a more progressive Iranian Parliament in 2000 did the Dutch Minister of Foreign Affairs, van Aartsen, pay a visit to Iran – the first visit of a Dutch government official since the revolution, in which the HRA also participated.⁹⁷ The visit was in line with the general Dutch policy that “*visits by members of the cabinet to ‘difficult’ countries (..) and where no intensive dialogue is held with that country, such as is the case with Iran, it is reasonable that visits by other ministers are preceded by a visit or dialogue with that country by the Minister of Foreign Affairs*”.⁹⁸ After the visit of the Minister of Foreign Affairs and the election of the 6th Majlis, more ministerial visits were made to Iran until the end of 2001.⁹⁹

⁹⁵ Among others, Tweede Kamer, vergaderjaar 2001-2002, 23 432, no 35, at 5.

⁹⁶ Annual report, HM Embassy, Teheran.

⁹⁷ Tweede Kamer, 1999-2000, 26 800 V, no. 108, at 1.

⁹⁸ Tweede Kamer, 1998-1999, 26 600, no 57, at 8-9.

⁹⁹ For an overview of the visits see the website of the Ministry of Foreign Affairs, facts and figures, Iran, 4.2, online at http://www.minbuza.nl/default.asp?CMS_ITEM=C478D0DC182143DE9A9A5EF681B9FC93X3X42942X38#TOC_22.

Although the visits took place within the more general framework of increased co-operation between the two countries, these also provided the context for the promotion of human rights in Iran.¹⁰⁰

An important strand in the activities in view of the promotion and protection of human rights in Iran has been documenting violations of human rights. As a result there is a very well-documented resource base of human rights violations based on a network of contacts, which contains reliable and verified information on human rights abuses. The information is regarded as essential to keep human rights on the agenda, both with the Government of Iran as well as within the EU. For example, various people interviewed by the evaluators expressed the view that the accurate information on human rights violations provided by the Netherlands has helped to keep human rights firmly on the political agenda, against the tendency to diminish attention in view of the priority attached to the nuclear issue by the three largest EU countries.

The information gathered was effectively shared with and appreciated by representatives of other embassies and international agencies as can be concluded from the interviews with various interlocutors. The capacity to collect information has been one of the single greatest assets of the Netherlands in terms of supporting an effective human rights policy in Iran. In particular, its wide network has helped to ensure information gathering that has verification potential. However, the capacity to collect information has in recent times diminished and finding solutions to deal with this seem to have failed. Particularly, an attempt to share the burden with EU partners aroused little interest in participation.

The Netherlands has been very active in Iran in initiating EU *démarches* of various kinds with regard to human rights concerns. Most of these *démarches* relate to the violation of rights of individuals, especially (but not exclusively) related to juvenile offenders who have received the death penalty, taking up close to twenty cases. Much prominence was given to juvenile offenders, all male, sentenced to death following fights and killings.

There is no strict dividing line between Dutch bilateral actions and its actions within the EU framework. The EU provided a framework for the use of various instruments as will also be shown in the next section on the EU-Iran human rights dialogue. Examples of initiatives that were undertaken when holding the presidency of the EU in the period 2004-2005 included cases of clamp-downs on bloggers (freedom of expression), death penalty for children (as a violation of the Convention on the Rights of the Child) and repression of Baha'i (freedom of religion). The activities undertaken include contacting the authorities, visiting officials, attending court cases and sending letters – the latter always in the context of the EU. Generally, these efforts are not made public, although in some circumstances it is decided that publicity helps the *démarche*.

The overall perception is that the Iranian Government was sensitive to these initiatives on human rights. Often simply sharing information sets processes in motion, as the Iranian authorities are not always aware of the cases themselves or the problems related to them.

¹⁰⁰ Tweede Kamer 2000-2001, 23 432, no. 35, at 5.

The actions undertaken as part of supporting individual cases are cross-cutting with other instruments described above, as well as with the EU-Iran human rights dialogue. In a way the support to individual cases can be seen as a microcosm of the application of most other instruments mentioned in this chapter. Following individual cases is definitely a very important instrument of the Netherlands human rights policy in Iran, given that structural discussions on improving human rights have been experienced as very difficult (see below).

A selection of specific case studies on support for individual cases is presented in section 5.4.

Apart from the specific human-rights-oriented instruments, economic relations and development co-operation also played a role in the promotion and protection of human rights.

The Netherlands did not shy away from using the potential leverage of the possible EU trade and co-operation agreement with Iran on the human rights situation. Then Minister of Foreign Affairs De Hoop-Scheffer stated that Iran was not a country for "business as usual", linking human rights to the question as to whether EU negotiations with Iran on the agreement should begin.¹⁰¹ This particular situation demonstrated a more general feature of the Dutch policy towards Iran which, in terms of a "carrot-and-stick" policy, tended to put more emphasis on the "sticks" than on the "carrots".

Funding for human rights initiatives was also applied as an instrument to promote human rights in Iran. However, it has proved to be very difficult. NGOs that are truly independent from the government exist, but believe they can only survive by not accepting money from foreign governments. Therefore the Netherlands has given substantial support to the UNDP programme in Iran.

In 2004 the concern in the Dutch Parliament over the human rights situation in Iran resulted in a programme for human rights of 705,000 euro per year for activities as part of a strategic facility for human rights in countries for which there is no official ODA programme.¹⁰² The objective of the programme was, and is, to support projects through local NGOs and international organisations to strengthen civil society and thereby improve the human rights situation. In 2004, a year in which the increasing repression was a constraining factor to directly channelling funds to NGOs, the facility contributed to substantial support for the UNDP democracy and governance programme in Iran.

Summarising briefly the use of the bilateral relations and instruments the conclusions are:

- the Netherlands has been pro-active in the use of the bilateral relations and instruments
- ministerial visits took place until the end of 2002 and were used to raise human rights concerns
- gathering documentation and sharing of information underpinned Dutch initiatives and contributed to an active role of the EU partners
- *démarches* included interventions in individual cases and are deemed to have at least sensitised the Iranian authorities

¹⁰¹ Tweede Kamer, 2003-2004, 29 216, nr. 4, at. 7.

¹⁰² The so-called "strategische mensenrechtenfaciliteit", Minister of Foreign Affairs Bot, in *Handelingen Tweede Kamer 2003-2004*, 2725, at 38.

- Dutch agreement with the conclusions of an EU trade and co-operation agreement with Iran was linked to the issue of improved commitment by the Iranian authorities to improving human rights
- development co-operation was made to play a role in supporting civil society organisations
- the evaluators found no formulation of an overall strategy guiding the selection of instruments in relation to interventions on human rights concerns in Iran.

5.3.2 EU-Iran human rights dialogue

In 1997 the EU proposed to Iran to start a “comprehensive dialogue” for which the following four priority areas were identified in 1998:

- (1) proliferation;
- (2) terrorism;
- (3) human rights; and
- (4) the Middle East.¹⁰³

In 1999 the Netherlands launched the idea of organising a number of seminars with Iran on the rule of law in the context of the dialogue, which was positively received. The idea was modelled on the EU-China human rights dialogue.¹⁰⁴ The dialogue started with a first session in December 2002, followed by three more: two in Brussels (March and October 2003) and one in June 2004 in Tehran. The Netherlands actively participated in the preparations for the first and following sessions.

The human rights dialogue came under pressure in 2003 with the refusal of Iran to allow participation of Amnesty International and Human Rights Watch in the third dialogue session. The human rights dialogue itself was only suspended for a short period. Meanwhile human rights remained part of the overall comprehensive dialogue and *ad hoc* EU *démarches* on human rights continued to be undertaken.¹⁰⁵

After resumption, the main original facilitators of the dialogue, the Danish Institute for Human Rights (DIHR) and the Iranian Human Rights Committee, were replaced by the British Institute for International and Comparative Law and an Iranian organisation which is seen as being closely linked to the Ministry of Intelligence and therefore not independent and impartial. Many donors channel their assistance through this organisation, as it is the biggest and most well-developed organisation for human rights in Iran and their support may impact on the policy and effectiveness of the organisation. The Netherlands explicitly refuses to do so.

The Netherlands has systematically expressed concern about the lack of progress and the conduct of the dialogue. Moreover, the Netherlands was concerned that the dialogue would provide an excuse to reduce efforts to condemn human rights violations within the framework of the UN and repeatedly and clearly expressed the wish for these issues to be de-coupled.¹⁰⁶

¹⁰³ Tweede Kamer 2001-2002, 28 000 V, no 52, at 2.

¹⁰⁴ Tweede Kamer, 1999-2000, 26 800 V, no. 83.

¹⁰⁵ Tweede Kamer 2003-2004, annex to proceedings, questions from members Ormel and Wilders/answers from the Government, no 141.

¹⁰⁶ Tweede Kamer, 2002-2003, 21 501-02, no. 450, at 1.

The concerns of the Netherlands gradually seemed to permeate the EU partners' position on the attitude of the Iranian authorities and their way of conducting the dialogue. In conclusions of October 2003 and October 2004 the GAERC publicly expressed deep concern about the human rights situation in Iran, the progress of the dialogue and the impact of the dialogue on the situation on the ground.¹⁰⁷ The fact that these messages are given in public documents clearly marks the increasingly critical position of the EU on the commitment of the Iranian authorities to promote and protect human rights.

In its October 2004 conclusions the GAERC also made public the results of the evaluation of the EU-Iran human rights dialogue. The evaluation was initiated in June 2004 and finalised during the Dutch Presidency:

"The evaluation clearly establishes that with regard to the issues that this Council has designated as its priorities, although there seemed to be hopeful signs at some point, little overall progress has been achieved since the start of the dialogue in December 2002. These key areas of concern, which have been used as benchmarks to appraise the human rights situation in Iran and to measure the results of the dialogue, relate to Iran's co-operation with human rights mechanisms and implementation of their recommendations, ratification and implementation of key conventions; unhindered access for international observers and international NGOs; civil rights and political freedoms; reform of the judicial system; prevention and eradication of torture; criminal punishment; discrimination and the prison system ...and came to the conclusion that since the introduction of the Dialogue only very little progress had been made".¹⁰⁸

The conclusions subsequently spell out the shortcomings in relation to each benchmark.¹⁰⁹ The GAERC reaffirms the EU commitment to the dialogue, but also reiterates that it will be an effective instrument only if there are clear improvements in the situation on the ground and expresses the wish to discuss practical improvements to enhance the effectiveness of the dialogue with the Iranian side.¹¹⁰ The Netherlands was sceptical regarding the possibilities of making the dialogue more effective by strengthening and reorganising it, but supported the EU consensus in this conclusion. An assessment by outsiders of the impact of the dialogue does not give a very positive picture either, as is illustrated by a report from the International Federation of Human Rights (FIDH).¹¹¹

Overall, the most prominent outcome of the EU-Iran human rights dialogue so far has been the fact that a moratorium on the punishment of stoning has been introduced. However, reports have suggested that amputation sentences continue to be implemented, sometimes even in public.

¹⁰⁷ GAERC, 13 October 2003, online at http://europa.eu.int/comm/external_relations/human_rights/gac.htm#hr131003b and GAERC 11 October 2004, online at http://europa.eu.int/comm/external_relations/iran/intro/gac.htm#iran111004

¹⁰⁸ GAERC, 11 October 2004, para 4.

¹⁰⁹ GAERC, 11 October 2004, para. 5-6.

¹¹⁰ GAERC, 11 October 2004, para. 8-9.

¹¹¹ Notably the International Federation for Human Rights expressed frustration due to the very slow pace of progress. In relation to the request for information on individual cases, the organisation points out that, "In light of the number of prisoners of opinion still in jail, this is in no way sufficient to be considered as progress". More generally, FIDH states that, "The EU Human Rights Dialogue with Iran has had at best some cosmetic effects, while real improvement on the ground has yet to happen." International Federation for Human Rights, Assessment of the EU-Iran Human Rights Dialogue, November 2003.

The critical analysis of the EU-Iran human rights dialogue corroborated the Dutch position that the dialogue is not, in and of itself, an effective means to improve the human rights situation in Iran. The principled position of the Netherlands seems to have contributed to a critical reflection on how the dialogue can be meaningfully used to improve human rights in Iran, and Dutch contributions in terms of information have helped to achieve this in more concrete ways. Within the scope of what can be expected as a contribution from just one Member State among 25, this seems to have been a reasonably positive contribution to ensure that the promotion of human rights remains the key focus of the dialogue, and to ensure also that other instruments were not downgraded as part of the process.

Summarising briefly the conclusions on the EU-Iran human rights dialogue:

- the Netherlands has been one of the initiators of the human rights dialogue format
- at the same time, the Netherlands has maintained a critical position within the EU with regard to the progress and outcome of the dialogue
- the Netherlands opposed linking the dialogue and concessions on actions in UN human rights fora
- the evaluation of the outcome of the EU-Iran dialogue corroborates the critical Dutch view.

5.3.3 Multilateral fora

The Netherlands has consistently held the position that the existence of the dialogue does not preclude the introduction of resolutions on the situation in Iran in relevant UN fora such as the Commission on Human Rights and the UN GA Third Committee.

In 2002 the Dutch Minister of Foreign Affairs had to report to the Parliament that, although the human rights situation in Iran gave every reason to introduce a resolution in the 57th UN GA (Third Committee), a majority of EU partners held the position that having a dialogue and at the same time introducing a resolution would send the wrong signal to Iran. The Netherlands expressed its disappointment and reserved the right to introduce its own resolution or to support a third party. However, chances of a successful stand-alone action by the Netherlands were slim and no other third party seemed interested. Since failure would be worse than no initiative, the Government decided to refrain from introducing a resolution.¹¹²

The Netherlands continued to push for a resolution at the 59th UNCHR session, but to no avail.¹¹³ The GAERC even publicly announced that it would refrain from tabling a resolution.¹¹⁴ The Netherlands also strongly advocated within the EU to table a resolution at the 60th UNCHR session which would denounce the human rights situation, again to no avail. After consultation with the EU partners by the presidency, it was concluded that there was no consensus.¹¹⁵

¹¹² Tweede Kamer, 2002-2003, 21 501-02, no. 450, at 2 and 460 at 7.

¹¹³ Tweede Kamer, 2002-2003, 21 501-02, no. 468, at 4.

¹¹⁴ GAERC, 18 March 2003, para 8, online at http://europa.eu.int/comm/external_relations/iran/intro/gac.htm#iran111004.

¹¹⁵ Tweede Kamer, 2003-2004, 21 501-02, 21 502-20, no 533, at 4 and Tweede Kamer 2003-2004, 29 200 V, no. 81, at 2.

However, in 2003, in the absence of a unified EU position, the Netherlands strongly supported the Canadian proposal for a resolution on Iran at the UN GA. Similarly, in 2004, the Netherlands, making the most of its leeway as holder of the Presidency of the EU, presented a proposal for a resolution at the Third Committee of the General Assembly on behalf of the EU. The resolution was eventually adopted by the plenary session which is regarded as a great success.¹¹⁶

Summarising the conclusions with regard to the multilateral channel:

- the Netherlands has made serious efforts to convince the EU partners to support action at the UN GA (Third Commission) and UNCHR
- the Netherlands even reserved the right to a stand-alone initiative at the 57th UN GA session, breaking the CFSP consensus,
- the Netherlands eventually succeeded in the 59th UN GA.

5.4 Effectiveness of policy: intervening on behalf of individual cases

For the purpose of this evaluation, several cases were reviewed. One case is of a journalist who was arrested for weblogging, was denied defence council by a hardline court and faced the death penalty. Another case reviewed was of a juvenile, also facing the death penalty. Finally, some other cases relate to humanitarian support provided to victims of human rights violations.¹¹⁷

In the case of the journalist the aim was mainly to provide support in view of difficult circumstances, which eventually succeeded. With regard to the case of the juvenile much effort was undertaken to ensure that the death penalty was not implemented as the accused was a minor. This was achieved. A strong point in this case was that it related well to the Convention of the Rights of the Child which Iran has ratified.¹¹⁸ The case of the juvenile fitted well with EU Guidelines on the Death Penalty.¹¹⁹ The Guidelines were given great prominence during the Dutch Presidency and helped to define frameworks for common action. In Iran this appeared to be an effective strategy to get common EU consensus on the issue of capital punishment for juveniles.

Furthermore, the case has helped to give focus to the issue of capital punishment for juvenile offenders and has helped to move the position of the Iranian judiciary in this regard. The involvement of many other actors (Amnesty International and UNICEF) who campaigned for the abolition of the death penalty for children were of crucial importance and contributed to the success of the case. Bringing the case into a joint EU policy on this issue has also helped to obtain and maintain a consensus in this area of EU policy *vis-à-vis* Iran.

The individual cases are important in and of themselves, but also help to illustrate and raise the issue of a particular human rights problem. The result so far seems to be that the 7th Majlis is considering a law to abolish the death penalty for minors – although no official date has been set for the introduction of such proposal into Parliamentary proceedings.

¹¹⁶ Tweede Kamer, 2004-2005, 26 150, no 18, at 4.

¹¹⁷ Names are not given, since too specific information may jeopardise those concerned.

¹¹⁸ Iran has made reservations to the CRC, these are not recognised by the Netherlands.

¹¹⁹ EU guidelines on Human Rights, published by the Human Rights Department, Ministry of Foreign Affairs, the Netherlands.

A moratorium on the death penalty for minors was temporarily observed which is generally seen as the result of campaigns on this issue. However, it is not clear whether this will lead to a change in the law. Regarding freedom of expression and weblogging, there has not, as yet, been a policy change by the Iranian authorities.

It is clear that the support of foreign countries in the cases reviewed has helped those directly involved. However, there is also concern that there is a pattern of revenge taken on family members who have remained behind in Iran.

On the other hand, support for individual cases has been effective through some positive impact on more general policies, such as the death penalty for juveniles. The assessment has also shown that the success of individual cases increases in areas where Iran has ratified international conventions. Therefore, the ratification of international conventions is an important element in a progressive strategy to improve human rights in Iran. A comprehensive strategy towards the ratification of CEDAW and CAT should, therefore, complement a strategy based on individual cases.

An issue which remains is how the broad framework of the EU Guidelines on the Death Penalty is made to work in individual cases. The criteria for the selection of individuals from the large pool of cases that could be selected according to the general guidelines are not identified. There seems to be a need for a stronger framework that helps define criteria for action in relation to victims of human rights violations.

5.5 Conclusions

5.5.1 Policy objectives and strategy

The assessment of the situation of human rights in Iran by the Netherlands in the period under investigation is generally consistent with assessments made by various UN human rights bodies and international human rights organisations such as Amnesty International, Human Rights Watch and the US Department of State annual reports. Internationally broad consensus exists on the nature and extent of the human rights violations in Iran.

Over the period researched policy objectives in relation to Iran were described in general terms. The active approach of the Netherlands is expressed in numerous communications to Parliament on the subject, reflecting the actions undertaken by the government to address the human rights situation in Iran.

The policy of the Netherlands for the promotion of human rights in Iran is clearly set within the EU context, with the EU-Iran human rights dialogue as a spear-heading activity, next to promoting human rights in bilateral relations and through the relevant UN fora.

The main areas of focus of Dutch human rights policy were the strengthening of civil society, support for democratisation, the promotion of freedom of expression, the promotion of freedom of religion, the abolition of the death penalty – especially for minors, and the improvement of the position of women.

Throughout the period of evaluation, the Netherlands has included the promotion of human rights as an important objective in its bilateral relations with Iran, within the framework of the EU and the UN.

However, it should be noted that, while there seems to be a reasonable logic to the main areas of focus and the instruments that are identified by the Netherlands in order to promote human rights in Iran, a formulation of benchmarks for bilateral relations with a strategic rationalisation for their identification and prioritisation was not found by the evaluators. The absence of an explicit strategy with benchmarks for the promotion of human rights in bilateral relations and the absence of benchmarks for the efforts of the Netherlands regarding the EU-Iran human rights dialogue leaves the Dutch policy without concrete targets against which to measure the effectiveness of its interventions.

Comparison with the EU dialogue brings the point home. The EU dialogue has benchmarks which enable the Council to give a (critical) assessment of the lack of progress in particular areas of human rights. Hence the EU has concrete targets against which to measure the effectiveness of its intervention. Moreover, making this assessment public, as the Council has done, provides an opportunity to send a clear message to the Iranian authorities and other Iranian stakeholders, such as civil society organisations.

5.5.2 Implementation of policy objectives

Raising concerns in bilateral relations

The Netherlands has been proactive in the use of instruments identified to promote and protect human rights in its bilateral relations. The Netherlands is an active player in conducting research. Its system of documenting human rights abuses is well-developed and plays an important role in the provision of information. This counts even more since Iran is not easily accessible for UN human rights representatives or international human rights organisations such as Amnesty International and Human Rights Watch. The commitment and effectiveness of the Netherlands in this area of work is highly regarded. Throughout the whole evaluation period information on human rights was gathered and shared with like-minded partners, forming a basis for further initiatives. However, capacity for this task seems to be diminishing and could not be complemented by inputs from other like-minded partners.

Until the end of 2002, ministerial visits were used to raise human rights concerns, the HRA visited Iran as part of the delegation of the Minister of Foreign Affairs, *démarches* were undertaken in which cases of victims of human rights violations were raised and victims of violations were supported.

Towards the end of 2002 bilateral relations became less intensive and relations with Iran developed more within the framework of the “comprehensive dialogue” between the EU and Iran, which included an institutionalised human rights dialogue. The use of bilateral instruments (visits, *démarches*) decreased, attention for and support of individual cases remained.

The Netherlands actively pursued action within the framework of the UNCHR and UN GA (Third Committee), trying (until 2004 unsuccessfully) to convince EU partners to take action. In 2003 a Canadian resolution tabled at the UN GA Third Committee was supported and in 2004 a resolution proposed by the Netherlands on behalf of the EU was adopted by the plenary.

EU framework

The rationale for the EU-Iran human rights dialogue is the belief in inclusion and co-operation rather than isolation as well as dialogue rather than coercive measures.

The Netherlands is not very comfortable with this approach and has made this clear in various ways. Notwithstanding this, the Netherlands clearly works within an EU framework, recognising that a collective EU position will bring more to bear, and has been prepared to make compromises for this purpose.

The Netherlands has acted consistently with this approach and this has led to some successes, particularly in relation to gaining support for UN resolutions condemning Iran's human rights violations. The Netherlands has also amplified the effectiveness of its instruments (documentation, individual cases and *démarches*) by sharing information and building coalitions in the EU and other like-minded frameworks.

Furthermore, the EU-Iran human rights dialogue has been important, as it puts issues of human rights on the agenda for discussion. It has led to the GAERC expressing clear concern and asking the Iranian Government for a number of specific actions. This is likely to have added to the international pressure on Iran.

Conformity of efforts and plans

Bilateral relations, the EU framework and the UN fora were used in line with the stated priority of human rights for relations with Iran.

Although there is no written strategy for the use of instruments, in their field work the evaluators found that in general the procedure for the selection of instruments is based on considerations of necessity and effectiveness. Documentation of human rights abuses is considered to be fundamentally important and necessary, particularly due to the lack of human rights organisations in Iran. The choice of the support given to individual cases is less self-evident – and motivated by a broad variety of justifications relating to the choice of the main focal areas (i.e. death penalty for minors) and a clear humanitarian need. The latter seemed to prompt action in most cases. Where the clear humanitarian need does provide a legitimate reason for intervention, the evaluators conclude at the same time that in some of the policy areas, notably cases of women who were prosecuted for offences such as “illegal sex” (while actually being rape victims), no individual cases were selected for intervention. This makes it difficult to draw conclusions as to how the support for an individual is a consequence of pursuing the Dutch objectives on human rights in Iran.

Raising concerns in various fields of foreign policy

Human rights concerns were tied to other fields of foreign policy in bilateral relations with Iran. Visits by all ministers, irrespective of their mandate, were used to raise human rights issues alongside other topics. Furthermore, it was planned to give support through ODA to human rights organisations, but human rights NGOs do not accept support from embassies out of fear of repercussions. UNDP programmes that support smaller NGOs are funded. This study has not aimed to measure effectiveness of this support. However, it may be noted that providing such support meets with very difficult circumstances and that there are no easy solutions.

The Netherlands considers the promotion of human rights in Iran as an issue separate from trade. Nevertheless, within the framework of the EU, the position of the Netherlands on negotiations on an EU-Iran trade and co-operation agreement is that conclusion of such an agreement would not be appropriate given the human rights situation in the country.

The effects of the Dutch position on the trade and co-operation agreement are difficult to measure. Following negotiations between the three largest EU Member States and Iran it was decided that these negotiations would begin. The Netherlands had little influence on this decision, despite holding the Presidency of the EU.

Co-operation with actors other than the Government of Iran

The main partners for co-operation were the EU partners, but also governments of like-minded countries, especially within the framework of the UN. Partners also included international NGOs and independent Iranian organisations and individuals, the latter constrained by the danger posed for the organisations and persons involved.

5.5.3 Effectiveness of political efforts, based on case studies

The support to individual cases was effective in relation to the individuals who were supported. Evidence suggests that generally the Iranian Government has become sensitive to *démarches* and that these *démarches* do lead at times to responses by the Iranian Government. For this reason the documentation and information collection and source-verification is an important instrument in raising emerging human rights problems with the authorities.

At a more structural level it has been difficult to find progress in terms of policy, but the Dutch approach has not been to focus strongly on such changes and has been led by a pessimistic view of the potential for structural change.

Concerning the EU-Iran human rights dialogue, frustration has been expressed over the lack of results. However, the concerns raised by the GAERC about Iranian human rights problems as a result of the dialogue have clearly added to international pressure.

The instruments employed by the Netherlands have provided added value in relation to what other actors are doing to support human rights in Iran.

As a final conclusion, the evaluation has demonstrated considerable effort and commitment by the Dutch Government to engage in actions to help improve the human rights situation in Iran. The choice of instruments appeared to be based on necessity and they do have added value. The Netherlands has used the EU framework effectively to amplify its actions and create greater international pressure for improving human rights in Iran. The effectiveness could be enhanced if a more explicit strategy was designed to direct the actions of the Netherlands in Iran with regard to human rights.

6. MEXICO

6.1 Political context and human rights situation¹²⁰

After seventy years of continuous rule by the Institutional Revolutionary Party (Partido Revolucionario Institucional – PRI), the candidate of another party, the National Action Party (Partido de Acción Nacional – PAN), Vicente Fox, won the 2000 Mexican presidential election. Although the PRI lost the presidency, it maintained its majority in the chamber of deputies.¹²¹

After President Fox took office in 2000 he immediately took various steps with a view to improving the human rights situation. He agreed on a technical co-operation programme with the OHCHR and accepted the visits of various international human rights monitoring missions which previous Mexican governments had held at bay. Furthermore, Mexico acceded to the first Optional Protocol to CCPR, recognising the competence of the Human Rights Committee to receive complaints from individuals.¹²²

Despite these steps, many of the human rights problems that existed before December 2000 continue to exist today. Major concerns about human rights that need to be addressed are how to deal with past human rights violations, especially those that took place during Mexico's "dirty war" (1960s and 1970s), and how to enhance legal and political reform to inhibit future human rights violations.

In order to help to deal with investigation of violations from the past, the Government of Mexico introduced legislation that forbids the government to withhold information on human rights violations from the past. This enabled the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos – CNDH*),¹²³ to produce a well-evidenced report in November 2001 on disappearances, torture and arbitrary arrests during the 1960s and 1970s.¹²⁴ However, by late 2004 the special prosecutor's office, established by the President to follow up on the CNDH report, had not made progress regarding the investigation or the prosecution of those responsible.

¹²⁰ Paragraph 7.1 is mainly based on AI Reports 1999-2004, Human Rights Watch Reports 1999-2004 and United States Department of State reports 1999-2004, unless other references are given.

¹²¹ See source www.ife.org.mx, 14 March 2005.

¹²² Mexico is among others party to CCPR (1981), the CCPR 1st Optional Protocol (2002), CESC, 1981, CERD, (1975), CEDAW (1981) and the Optional Protocol (2002), CAT (1987) and the Optional Protocol to CAT (signed 2003), CRC (1990) and the Optional Protocols to the CRC, the international Convention of the Rights of All Migrant Workers and members of their Families (2003), the 1951 Convention on the Status of Refugees (2000) and the 1967 Protocol related to the status of refugees (2000), the Rome Statute of the ICJ (signed 2000) and a whole series of relevant conventions opened for ratification within the framework of the Organization of American States.

¹²³ There is an Ombudsman system in Mexico, which addresses the non-legal elements of human rights defence. Each state has its own ombudsman (32), plus the national CNDH. The CNDH receives complaints from individuals or groups, investigates and may engage in reconciliation or make recommendations.

¹²⁴ Comisión Nacional de los Derechos Humanos, Recomendación 26/2001, México, D.F., 27 de noviembre de 2001.

Inhibiting present-day human rights abuses requires reform of the judicial system, since many of the current human rights problems are rooted in a judicial system that falls short of protecting human rights and holding perpetrators accountable, as concluded in an OHCHR report (see below). The OHCHR conclusions were acknowledged in a government plan that was written subsequently to tackle the structural human rights problems found by the OHCHR.¹²⁵

The poor functioning of the judicial system is aggravated by the fact that the Mexican Constitution does not recognise international law or international human rights treaties ratified by Mexico as supreme law, above federal or local law. For international human rights law to be implemented it must be incorporated into state law or included in the federal constitution as supreme law. This requires fundamental federal constitutional changes and approval by all states. Also, due to the federal system of Mexico, police authorities at various levels (federal, state, district and municipal) are involved in investigating cases of violations of human rights. This complicates judicial processes and adds to their ineffectiveness.

An illustration of the shortcomings of the system is the fact that judges in general accept statements obtained under torture by the police, while lawyers representing defendants fail to protest. Torture practices by the police are widespread, as noted by the UN Committee against Torture.¹²⁶ The inadequate functioning of the judicial system is also evident in the internationally well-known case of the more than 300 women and girls murdered since 1993 in Ciudad Juárez and in the improper criminal investigation into the death of human rights activist Digna Ochoa.¹²⁷

The Mexican Constitution provides for equality between men and women.¹²⁸ However, in practice women suffer extensive discrimination in employment. Furthermore, sexual harassment is a major problem. To illustrate this, reference can be made to the human rights commission of Mexico City that reported that in 2001 some eighty percent of all women working in Mexico City had experienced sexual harassment at work.¹²⁹ Boys and girls are the subject of sexual exploitation. The trafficking of children from the poor south to the north is thought to be widespread.¹³⁰

Indigenous people are subject to discrimination and marginalisation. Especially in the states of Chiapas, Oaxaca and Guerrero, the indigenous population often does not participate in decision-making processes or is excluded from decision-making processes which affect their use of land, cultural traditions and the distribution of resources. This situation gives rise to disputes over these issues.¹³¹

¹²⁵ OHCHR Mexico, *Diagnóstico Sobre la Situación de los Derechos Humanos en México*, [Diagnostic on the human rights situation in Mexico], Mexico 2003, p. 69. Secretaría de Gobernación, Programa Nacional de Derechos Humanos, [National Human Rights Program], Mexico, diciembre 2004.

¹²⁶ Quoted in: Amnesty International, *Amnesty International Report 2004*, Mexico, 20 December 2004.

¹²⁷ In June 2003 the Inter American Commission of Human Rights informed the Mexican Government of the inconsistencies of the investigation held with regard to her death. The case remains closed.

¹²⁸ Equality between men and women is not the subject of this study but is included as relevant background to the Ciudad Juárez case, as also transpires from the IACHR rapporteur on the rights of women.

¹²⁹ As mentioned in: US Department of State, *Country reports on human rights practices 2003*, 25 February 2004, p.18, www.state.gov/g/drl/rls/hrrpt/2003/27905.htm.

¹³⁰ US Department of State, *Country reports on human rights practices 2003*, 25 February 2004, p. 19, www.state.gov/g/drl/rls/hrrpt/2003/27905.htm.

¹³¹ US Department of State, *Country reports on human rights practices 2003*, 25 February 2004, p. 20, www.state.gov/g/drl/rls/hrrpt/2003/27905.htm.

In the aftermath of the 1994 uprising by the Zapatista National Liberation Army (Ejercito Zapatista de Liberacion Nacional – EZLN) (;) paramilitary and military activity continues, as well as ensuing human rights abuses. It is estimated that some 12,000 people are internally displaced because of the EZLN uprising and the failure of the peace agreement between the Zapatistas and the Government. Congress did not pass legislation regarding the recognition of the rights and cultures of indigenous people introduced by President Fox, which might have alleviated the tension in the areas with large indigenous populations.

Economic growth and changes in the Mexican economy have not alleviated poverty, but have contributed to widening the inequality gap and exacerbated social exclusion for a wide range of groups.¹³²

Mexico has become a transit country for many Central American illegal immigrants hoping to make it to the US with the prospect of a better life there. Many Mexicans themselves cross the border and work illegally in the US. At the same time, many people attempting to cross the border to the US become victims of abuse.

6.2 Overall and human rights policy objectives of the Netherlands

Mexico, as one of the bigger economies in the world, is an important economic partner for the Netherlands. The economic ties between Mexico and the Netherlands are strong, which is illustrated by the fact that the Netherlands is the second biggest investor in Mexico after the US.¹³³ In view of the rapid increase in investment in Mexico important objectives of the Netherlands with regard to Mexico are, as stated in the Explanatory Memorandum to the 2001-2002 Foreign Affairs budget, the continuation and where possible improvement of the trade and investment relationship.¹³⁴ According to the government of the Netherlands the relationship with Mexico should, however, be broadened where possible.¹³⁵

There are no public or internal Ministry of Foreign Affairs documents in which an outline is given specifically of the policy objectives with regard to Mexico in relation to human rights. The only (implicit) reference can be found in a recent policy paper from the Ministry of Foreign Affairs, *Distant neighbors, good friends*, of May 2004. The memorandum elaborates Dutch foreign policy towards Latin America and the Caribbean.¹³⁶ In the memorandum, it is stated that human rights issues are taken up with all countries of the Latin American region.

¹³² OHCHR Mexico, *Diagnóstico Sobre la Situación de los Derechos Humanos en Mexico*, [Diagnostic on the human rights situation in Mexico], Mexico 2003, see chapter 4. The situation in the field of economic, social and cultural rights is not the subject of this study, but is mentioned as background to other human rights problems.

¹³³ Website BuZa, *feiten en cijfers Mexico*, online at http://www.minbuza.nl/default.asp?CMS_ITEM=3734CC7AF7BC4139894DCD45A37F7FCEX3X57656X05#TOC_20.

¹³⁴ Tweede Kamer, 2001-2002, 28 000 V, at 128; Tweede Kamer 2002-2003, 28 600 V, no. 2, at 152; Tweede Kamer 2003-2004, 29 653, no. 1, at 28.

¹³⁵ Tweede Kamer, 2001-2002, 28 326, no. 1 (Latijns Amerika notitie), at 17.

¹³⁶ Tweede Kamer, *Verre Buren, Goede Vrienden / Het Nederlandse buitenlandse beleid ten aanzien van Latijns-Amerika en de Cariben*, vergaderjaar 2003-2004, 29 653, no. 1.

The memorandum mentions that human rights issues to be raised with the countries of Latin America and the Caribbean are not only violations in these countries themselves, but that these countries are also important coalition partners with regard to strengthening the international legal order in the field of human rights. Therefore one of the policy objectives with regard to Latin America generally and Mexico specifically is to seek co-operation on strengthening the international human rights protection system within the framework of international organisations such as the UN and the Organization of American States (OAS).¹³⁷ Particular issues of interest include the reform of the UNCHR and the ratification of the Statute of Rome (International Criminal Court – ICC).

In Mexico the Netherlands has no development co-operation programme. Mexico is a member of the OECD and as such is not considered to be a country which needs ODA. In line with the overall human rights policy, Dutch companies which operate abroad are encouraged to accept the OECD corporate social responsibility guidelines.¹³⁸ Furthermore, if companies obtain subsidies from the Dutch Government, these companies are evaluated with regard to the observance of labour rights (as well as environmental issues) and must formally state that they will not resort to corruption practices and will abide by the OECD norms of corporate social responsibility.¹³⁹

The Netherlands has not formulated policy objectives on the promotion and protection of human rights in Mexico through the EU (although it does happen, see below) and the multilateral fora of the UN, other than referred to above.

In brief:

- the overall Dutch policy objectives have been mainly specified in terms of promoting trade and investment relations
- the overall policy objectives include the promotion and protection of human rights, but human rights objectives are not specified, with the exception of labour rights which are subject to the promotion of corporate social responsibility
- no objectives have been formulated to promote human rights through the EU and the UN multilateral fora, other than seeking Mexico's co-operation on promotion of the international legal order in relation to human rights.

6.3 Implementation of human rights policy: strategies and instruments

6.3.1 Bilateral relations

The Dutch Embassy collects information on the situation of human rights and relevant developments. Since October 2003, the Dutch Embassy includes information on the human rights situation in monthly reporting.¹⁴⁰ Within the context of the EU the information is used to contribute to the EU human rights fact sheet and the reports of the HoM. The Dutch Embassy is seen as well-informed on the human rights situation in the country as a whole.

¹³⁷ Tweede Kamer, Verre Buren, Goede Vrienden / Het Nederlandse buitenlandse beleid ten aanzien van Latijns-America en de Carïben, 2003-2004, 29 653, nr. 1, 4 juni 2004.

¹³⁸ Tweede Kamer, Notitie Mensenrechtenbeleid 2001, 2000-2001, 27 742, no. 2, 14 mei 2001.

¹³⁹ Tweede Kamer, Verre Buren, Goede Vrienden / Het Nederlandse buitenlandse beleid ten aanzien van Latijns-America en de Carïben, 2003-2004, 29 653, nr. 1, 4 juni 2004; Interviews at the Dutch Embassy in Mexico, February 2005.

¹⁴⁰ Interviews at the Dutch Embassy in Mexico, February 2005.

The analysis of the human rights situation by the Netherlands does not differ significantly from the information provided by UN rapporteurs or the information put forward by international human rights NGOs.

Ministerial visits between Mexico and the Netherlands do not provide a very good opportunity to raise human rights issues, since such visits are not very frequent. There has been no official state visit by the Netherlands to Mexico since 1964. Furthermore, contacts, which have taken place at the level of ministers between the two countries have mainly taken place on the margins of international meetings. A trade mission by the Dutch Minister of Economic Affairs Jorritsma did take place in 2003. Human rights issues were not addressed during this bilateral visit.

Political relations between the Netherlands and Mexico were strengthened through a visit of President Fox in January 2003 to the Netherlands. On the occasion of this visit, a Memorandum of Understanding (MoU) between Mexico and the Netherlands was signed which aims to enhance the political dialogue between Mexico and the Netherlands. The MoU makes no specific reference to human rights. The political dialogue between the Netherlands and Mexico on the basis of the MoU had not yet materialised by the end of 2004.

As stated earlier, the Netherlands and Mexico have no development co-operation programme and the Netherlands therefore does not support human rights work through ODA. Other EU Member States do have development co-operation programmes with Mexico in the area of human rights. The UK has a programme in the area of judicial reform in Mexico. This includes training of judges and lawyers and the training of police forces in the field of criminal investigation. The fact that the UK has a development co-operation programme in this area also enables it to address problems regarding judicial reform with the authorities more easily.¹⁴¹ In addition, France engages in the training of judges, although this is on a rather *ad hoc* basis.¹⁴²

Due to the fact that the Netherlands has no development co-operation programme and the embassy has no financial means to support projects, the Netherlands has no funding for human rights work by NGOs in Mexico. The consequence has been that the embassy has lost contact with human rights NGOs and is only informed in very general terms about their work.

The Netherlands, besides encouraging Dutch companies to accept their corporate social responsibility, also stimulates the work undertaken by a Mexican NGO, which lobbies for corporate social responsibility in Mexico and encourages Mexican companies to abide by the OECD guidelines regarding labour and environmental issues. By means of these activities, human rights issues have entered the main policy objective of fostering economic relations in Mexico.

Summarising briefly the conclusions on the bilateral relations:

- information was actively gathered and shared with EU partners
- human rights issues were not raised during (infrequent) ministerial visits
- promotion and protection of labour rights have been integrated into fostering economic relations.

¹⁴¹ Interview at UK Embassy in Mexico, February 2005.

¹⁴² Interview at French Embassy in Mexico, February 2005.

6.3.2 Dutch contribution within the framework of the EU

EU-Mexican relations are governed by the Economic Partnership, Political Co-operation and Co-operation Agreement (the Global Agreement) between the EU and Mexico. The Global Agreement, signed on 8 December 1997 and entering into force on 1 October 2000, has as its objective to liberalise trade and promote free trade in goods and services between Mexico and EU Member States. The EU is Mexico's main trading partner after the US.

The agreement refers to democratic principles and respect for human rights as the basis for co-operation.¹⁴³ It establishes an institutionalised framework for political dialogue in which human rights issues can be discussed and that takes place at various levels: summit meetings at presidential level, Joint Council meetings at ministerial level and Joint Committee meetings at the level of senior civil servants. Furthermore, it provides for support of human rights activities through ODA.¹⁴⁴

Human rights issues have indeed been a topic during the various meetings at various levels in the framework of the institutionalised framework for political dialogue under the agreement.¹⁴⁵ However, from the information obtained, the evaluators conclude that the political dialogue with regard to human rights mainly functions as a means to reaffirm human rights commitments and to sustain the political engagement of Mexico with regard to human rights rather than having a discussion on solutions for concrete human rights concerns.

The EU CFSP and the fact that human rights issues were part of the political dialogue with Mexico, required consultation and co-ordination between the EU partners. After a period during which internal EU co-ordination on human rights issues was not very prominent, such co-ordination improved when human rights were put on the agenda of the EU Member States political officers' meeting by the Italian EU Presidency (July-December 2003). Human rights has remained an item on the agenda since then.

For the Dutch EU presidency various goals were set in the field of human rights, such as paying special attention to Mexico's implementation of the recommendations made by UN rapporteurs and the advance made in the investigations of the women murdered in Ciudad Juárez.

An example of a case in which a Dutch EU Presidency initiative was not followed through was a situation in which information was received from Amnesty International about the illegal arrest of two indigenous people in the State of Chihuahua. The arguments of the EU partners were that the cases could only be brought forward if they were very well documented and this should be done on a bilateral level, but not for example at an EU-Mexico Summit meeting.¹⁴⁶ The Netherlands did not further pursue the issue.

¹⁴³ References to human rights are included in the preamble and Article 1; Article 39 contains a provision on co-operation in the field of human rights and democracy; text of the agreement online at http://europa.eu.int/comm/external_relations/mexico/intro/index.htm

¹⁴⁴ See http://europa.eu.int/comm/external_relations/mexico/intro/index.htm

¹⁴⁵ See http://europa.eu.int/comm/external_relations/mexico/intro/index.htm

¹⁴⁶ Interviews at Dutch Embassy in Mexico, 7-11 February 2005.

Another example of a Dutch initiative during the Dutch EU Presidency was the treatment of protesters by the police in May 2004 during the EU-Latin America Committee summit in Guadalajara, which was taken up with the Mexican Government. The CNDH claimed that the police had detained and mistreated 118 demonstrators illegally and had tortured 19 detained protesters. The CNDH recommended that the Governor of Jalisco investigate the matter and that those responsible be brought to justice. The Governor of Jalisco claimed he would not follow the recommendation of the CNDH because the CNDH had not taken into account the behaviour of the demonstrators. During bilateral talks with the Mexican Government, the situation of Guadalajara was brought up by the Dutch Presidency. Apparently, the Mexican Government was not pleased that this was brought up, since it claimed that the protesters had acted very aggressively.¹⁴⁷

Yet another example of a Dutch contribution within the EU framework is the application of the death penalty. Since the EU has a policy which aims for the complete abolition of the death penalty, the EU and its Member States have supported Mexico to address the issue of Mexicans on death row in the US with the US Government. With regard to the death penalty the Netherlands has also been active in supporting Mexico with regard to the initiatives it has taken to complain to the US Government regarding Mexican nationals who are on death row in the US. The point of the EU is to work towards the abolition of the death penalty and specific attention is given to foreigners if consular access is denied. The above has been the case for some Mexican nationals in the US.

Generally, the contributions of the Netherlands with regard to human rights were valued and appreciated by the representatives of the EU embassies in Mexico. The role and activities of the Dutch EU Presidency were also seen as positive, both with regard to gathering and sharing of information and the preparation of potential initiatives in the field of human rights.

Summarising briefly the conclusions on the Dutch contribution within the framework of the EU:

- the Netherlands is an active participant in the structures in which the EU co-ordinates its human rights initiatives
- the Netherlands is an active participant in the institutionalised structure for political dialogue in which human rights concerns are raised by the EU with Mexican counterparts
- the Netherlands has taken initiatives for EU interventions during its presidency of the EU, some of which were carried through, some not.

6.3.3 Multi-lateral fora¹⁴⁸

Council of Europe

A Mexican request to obtain observer status at the Council of Europe in December 1998 sparked off a discussion, initiated by the Netherlands, on the (human rights) conditions under which a state could be granted observer status at the Council of Europe.¹⁴⁹

¹⁴⁷ Interview at DWH, Dutch Ministry of Foreign Affairs in The Hague, January 2005.

¹⁴⁸ The information for this section is based on non-public material from the Dutch Ministry of Foreign Affairs made available to the evaluators.

¹⁴⁹ Council of Europe, Relations between the Council of Europe and Mexico, Strasbourg, 15 March 1999.

The Dutch position was, after some internal discussion, that to obtain observer status at the Council of Europe, the Council of Europe would need to review:

- the extent to which the state enhances the implementation of human rights and democracy
- whether a state is considered to have a poor human rights record according to a UN forum.

The last consideration, in particular, was important for the Netherlands, since the human rights situation in Mexico at the time gave rise to serious concerns according to the UN human rights sub-commission resolution of 1998. As a result, the Netherlands proposed that a quick decision should not be made regarding the observer status of Mexico at the Council of Europe and that the outcome of the possible discussions on Mexico at the 1999 UNCHR should be awaited. Notwithstanding the Dutch hesitance to accept the observer status of Mexico at the Council of Europe, the Committee of Ministers asked the Parliamentary Assembly on 7 April 1999 for a recommendation on the issue. In November 1999, the Parliamentary Assembly unanimously recommended granting Mexico permanent observer status at the Council of Europe, which it received on 1 December 1999.

United Nations

In 1999 the Netherlands called for strong wording to be included in the EU statement on country situations at the 55th session of the UNCHR regarding the human rights situation in Mexico. However, ever since Mexico became more open to accepting human rights monitoring initiatives and becoming a participatory actor within international human rights forums, the Netherlands has voiced less criticism of the Mexican human rights situation. This is evident from non-public material made available to the evaluators and substantiated by interviews at the Dutch Ministry of Foreign Affairs and the Dutch Embassy in Mexico.

The Netherlands has agreed to participate in the Group of Friends, which Mexico established for the United Nations Reform, and has also agreed and is presently working together with Mexico on a reform of the UNCHR.¹⁵⁰ The Netherlands holds the view that now Mexico is a party to all the important UN human rights treaties and has become a proponent of improving international protection of human rights through UN reform and regional co-ordination on human rights in Latin America, human rights concerns in Mexico itself are better dealt with by means of co-operation rather than public resolutions.

Summarising briefly the conclusions with regard to multilateral fora:

- at times when the human rights situation in Mexico gave rise to serious concerns and the attitude of the Mexican Government was not forthcoming, the Netherlands openly voiced its critique on the human rights situation in international fora
- once the Mexican Government started receiving international monitoring mechanisms and became an active proponent of improving the international system for the protection of human rights, the Netherlands policy was more geared to seeking improvement through co-operation than voicing criticism in multilateral fora.

¹⁵⁰ Interview, Dutch Embassy in Mexico, February 2005.

6.4 Conclusions

6.4.1 Policy objectives and strategy

Analysis of the human rights situation

The human rights situation in Mexico still raises concerns, especially with regard to the functioning of the judicial system and human rights problems that result from the failures of the systems, such as the frequent use of torture practices by the police and the acceptance of statements made due to torture by the judiciary. Another area of serious concern is the marginalised position of the indigenous population.

The Netherlands collects information on the situation of human rights and relevant developments. The analysis of the human rights situation does not differ significantly from the information provided by UN rapporteurs or the information put forward by international human rights NGOs.

The Dutch Embassy is seen as well-informed about the human rights situation in the country as a whole. Since October 2003 an assessment of the human rights situation is explicitly included in the monthly reporting mechanism. Within the context of the EU the information is used to contribute to the EU human rights fact sheet and the reports of the HoM.

The fact that the Mexican Government has committed itself internationally on numerous occasions to promoting human rights, by commencing to address human rights problems and accepting human rights monitoring, is an indication for the Netherlands and the EU that Mexico is committed to changing its human rights situation.

Policy objectives, strategy and translation into plans of action

There are no public or internal Ministry of Foreign Affairs documents in which an outline is given specifically of the policy objectives with regard to Mexico and human rights. The only (implicit) reference can be found in a recent policy paper from the Ministry of Foreign Affairs, *Distant neighbors, good friends*, of May 2004, which elaborates Dutch foreign policy towards Latin America and the Caribbean. In the memorandum it is stated that human rights issues are taken up with all countries of the Latin American region. Neither public policy papers nor the internal documents give an explicit strategy, including tools, which are to be used for the promotion and protection of human rights in Mexico.

The Netherlands has not formulated policy objectives to contribute to the promotion and protection of human rights in Mexico through the EU (although it does happen, see below) and the multilateral fora of the UN. Objectives were formulated for specific issues during the EU Presidency of the Netherlands.

In Mexico the Netherlands has no development co-operation programme. Hence, there are no objectives formulated as to how the instrument of ODA can be used to promote and protect human rights.

Making businesses aware of corporate social responsibility is an explicit policy objective.

6.4.2 Implementation of policy objectives

Raising concerns in bilateral relations

The Netherlands has rarely voiced criticism about the human rights situation with the Mexican central government at the bilateral level. Occasionally human rights issues were raised at a decentralised level. For example, the state of affairs with regard to the investigation of the murders of the women and girls in Ciudad Juárez was not taken up with the Mexican federal government, but was taken up with the governor of the state during a visit to the region of Chihuahua in support of Dutch companies.¹⁵¹

Bilateral (ministerial) visits on the part of the Netherlands have not been frequent and were not used to raise human rights issues. President Fox visited the Netherlands in 2003 to sign the MoU. Human rights issues were not raised.

The Netherlands has no development co-operation with Mexico. Other EU partners have funding available, which enables these partners to raise human rights concerns more specifically. The fact that the Netherlands has no funding available is preventing it from supporting human rights initiatives and as a result the Embassy has lost contact with human rights NGOs and has little information about these NGOs' activities.

The Netherlands encourages Dutch companies to take on corporate social responsibility. If companies obtain subsidies from the Dutch Government, they are evaluated with regard to observance of labour rights and environmental issues. The Netherlands stimulates the work undertaken by VAMOS, which encourages Mexican companies to work according to the OECD guidelines for corporate social responsibility.

Since the Fox government came to power and due to the fact that the Mexican Government has been forthcoming internationally on human rights issues, the Netherlands has implemented a strategy of co-operation rather than voicing open criticism on human rights issues in Mexico. Since President Fox came to power the Netherlands has not openly voiced criticism in multilateral fora.

EU framework

The Netherlands shares human rights information with its EU partners and is an active participant in the various mechanisms established for political dialogue within the framework of the EU-Mexico Global Agreement, which governs the economic relations between Mexico and the EU and encourages political dialogue.

The dialogue is rarely used to address human rights concerns, but rather to reaffirm Mexico's commitment to human rights. It is not clear whether the Netherlands attempts to stimulate the use of the mechanisms of the dialogue to discuss specific situations of human rights concern.

The Netherlands aimed to pay special attention to Mexico's implementation of the recommendations made by UN rapporteurs and the advances made in the investigations of the women murdered in Ciudad Juárez during its EU Presidency. In the end, these issues were not the subject of a EU initiative. Initiatives were taken on *ad hoc* issues.

¹⁵¹ Interview at Dutch Embassy, 7-11 February 2005.

Conformity of efforts and plans

In practice more was done in the field of promotion and protection of human rights than was planned, bearing in mind that there was no plan specifying objectives and strategies.

Raising concerns in various fields of foreign policy

Concerns about labour rights were included in the field of economic relations by encouraging Dutch companies operating in Mexico to abide by the norms set by the OECD concerning corporate social responsibility, by making such abidance a requirement for companies receiving subsidies from the Dutch Government and by supporting a Mexican NGO to encourage Mexican companies to abide by the OECD rules.

Co-operation with actors other than the Mexican Government

Due to the fact that the Netherlands has no funding for NGO activities in Mexico, there is extremely limited contact and therefore no co-operation with civil society.

The Netherlands does co-operate with the business community on the issue of promotion of abidance by the OECD rules.

6.4.3 Effectiveness of political efforts

The effectiveness of political efforts with regard to the human rights situation in Mexico has not been the subject of case studies.

In view of the fact that there is no overall policy and strategy, and information on concrete Dutch initiatives and follow-up to these in the field of human rights is limited, the issue of effectiveness cannot be addressed properly.

One final observation related to the issue is the following.

The approach of the Netherlands to contributing to the improvement of the human rights situation in Mexico is to stimulate Mexico's engagement by supporting its initiatives in the international realm and seldom to raise human rights violations directly with the Mexican central government. Within the framework of the EU there is the same approach of not raising human rights violations directly with the government. As a result, initiatives for interventions on behalf of the EU are rarely agreed upon and human rights interventions on concrete violations, either bilaterally or through the EU, are extremely limited in number.

Whereas this approach can certainly be considered to be effective in fostering the central government's continued commitment to protecting human rights and may thereby contribute to improved human rights protection in the long run, it is not geared to make a direct contribution to the situation of actual human rights violations on the ground. Contributing to ending the concerns on these concrete issues, such as the continued use of torture by the police, the failures of the judicial system and the failure of the Government to ensure the effective participation in society of marginalised groups such as the indigenous population, would necessitate an expansion of the policy, including more involvement at the decentralised level by the Dutch Government.

7. RWANDA

7.1 Political context and human rights situation¹⁵²

After the 1994 genocide a transitional government was formed and power was initially shared amongst the leading political parties: the Rwandan Patriotic Front (RPF), the Rwandan Democratic Movement (MDR), the Social Democratic Party (PSD) and the Liberal Party (PL). However, since the formation of that transitional government the RPF and its political leader, Paul Kagame, gradually increased political influence. In the 2003 presidential and parliamentary elections, the first since the genocide, the RPF consolidated and increased its political power even more. International election observers were very critical of the elections, which had been marked by lack of transparency, intimidation and fraud.¹⁵³

Human rights issues in Rwanda continue to be determined by the legacy of the 1994 genocide. Issues include concerns such as the restrictions on political freedoms, the slow fostering of civil society, the situation of women and children, concerns regarding poverty and the continued insecurity in the Great Lakes Region.

Rwanda is a party to most international and regional human rights instruments.¹⁵⁴ Although the Rwandan Government has taken major steps in addressing human rights concerns during the period under review (1999-2004), adherence to international human rights norms has been a problem especially in the area of political rights.

Even though the Rwandan Constitution guarantees civil and political rights, the freedom of association, assembly, opinion and freedom of the press, these freedoms may be limited by means of ordinary legislation because the Constitution prohibits “divisionism” and an “ideology of genocide” in its Article 33. The unclear definition of these terms allows the Government to limit political freedoms with reference to Article 33. This provision has been used by the RPF-dominated Parliament to eliminate the political opposition, in particular the MDR.

For example, in late 2002 a parliamentary commission started an investigation into the MDR and the role the party played in the past regarding divisions which characterised Rwandan society. The (transitional) National Assembly recommended the dissolution of the MDR. The Government publicly endorsed the Assembly’s report and approved the dissolution of the MDR. Various people named in the report were arrested without charge, some fled the country and some disappeared. Although the Government has brought out two reports regarding the disappearances, according to donors the explanations provided are not satisfactory and thus they consider the matter unresolved.¹⁵⁵

¹⁵² Paragraph 8.1 is mainly based on AI Reports 1999-2004, Human Rights Watch Reports 1999-2004 and United States Department of State reports 1999-2004, unless other references are given.

¹⁵³ EU, Rwanda Election Presidentielle 25 aout 2003, Elections Legislatives 29 et 30 septembre, 2 octobre 2003 Mission 'Observation Electorale de l'Union Européenne Rapport Final.

¹⁵⁴ Rwanda is party to major international human rights treaties, among others the CCPR, CESC, CERD, CEDAW, CRC and the African Charter, but not CAT.

¹⁵⁵ Interviews by the authors with donors in Kigali, 15-25 November 2004.

The law prohibits torture and other cruel, inhuman or degrading treatment or punishment. In practice torture occurs. So does arbitrary detention, including in the run-up to the 2003 elections among supporters of opposition parties.

With regard to the right to fair trial in Rwanda there are two main issues at stake. First, judges and lawyers are not free from corruption and the legal system has few resources. Secondly, the legal system needs to deal with the legacy of the genocide and bring to trial those accused of having committed genocide or accused of being accomplices to the genocide. By late 2004 the prison population was estimated at around 80,000.

In relation to the first issue, it should be noted that over the past two and half years the Rwandan Law Reform Commission has drafted reform proposals for the justice system in order to improve the competence, impartiality and independence of those working in the legal system. The proposals resulted in adoption of new laws, new structures of institutions and firing and new recruitment of staff, which is to be seen as a positive development. However, the functioning of the system as such still needs to improve vastly.

In order to address the second issue of dealing with the legacy of the genocide, a law was issued in 1996 that provides that different categories of suspects of the genocide can be tried differently. The instigators and organisers of genocide, people in authority, notorious murderers and rapists are brought to trial before a conventional Rwandan court. Other suspects are to be tried under the gacaca system. This system, which started country-wide in 2005 after pilots in the previous years, is based on a traditional, community-based form of restorative and retributive justice. There are no defence lawyers involved and judges are selected from the community. The intent of the gacaca system is to stimulate a process of community truth-telling, facilitating reconciliation, but is also very pragmatically geared to speed up bringing the accused to trial and reducing the number of inmates in the prison system.

As stated earlier, the Constitution guarantees freedom of expression. However, under the 2002 press law a national press council, operating under the authority of the president, has the power to accredit or ban publications or close radio or TV stations. Journalists in general engage in self-censorship in fear of government reprisals and there have been cases of harassment of journalists. Furthermore, national human rights organisations, which have been critical of the Government's human rights policies, have also come under pressure to engage in self-censorship. With reference to the possibility that genocide may occur again, measures are taken which prevent the development of an independent civil society that can counter-balance the Government. The control over NGOs and the restrictive political climate is hampering the development of professionally and independently operating NGOs.

Rwanda has taken legislative measures to improve the position of women, but with little effect as yet on discrimination against women.¹⁵⁶ During the genocide many women became the victims of rape.¹⁵⁷

¹⁵⁶ The situation of women, the situation in the field of economic, social and cultural rights and the conflict situation as such are not the subject of this study in relation to political efforts by the Netherlands. These issues are mentioned here to complete the overall picture of and background to the human rights situation.

¹⁵⁷ The UN Special Rapporteur on Rwanda estimated in 1996 that some 250,000 women were raped during the genocide. UN Doc. Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségni, Special rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994, E/CN.4/1996/68, 29 January 1996.

Rape committed during the genocide is considered as one of the most severe crimes, but the legal system provides little redress and testifying in court as a rape victim might also have the consequences of being ostracised from the community or family due to the stigmatising nature of the crime. The genocide has further affected women in the sense that many are now heads of their families because their husbands were either killed in the genocide or were imprisoned accused of genocide.

Rwanda has improved its Human Development Index ranking in recent years, as has its neighbour Uganda. All other neighbouring countries have deteriorated. Nevertheless, life expectancy remains low.¹⁵⁸

7.2 Overall and human rights policy objectives of the Netherlands

The overall Dutch policy objective at the regional level is to obtain stability in the Great Lakes Region. Without peace in the region, human rights continue not to be well protected in all countries of the Great Lakes Region, including Rwanda. The majority of the conflicts in the Great Lakes Region are conflicts of a transnational nature. According to the Dutch Government, the majority of the states in the region lack functioning state structures and governance falls short of democratic principles. The Dutch Government sees these two components as the main cause for conflict in the region.¹⁵⁹

The ongoing conflicts in the Great Lakes Region greatly influence the development perspective and the human rights situation in the countries of the region. At the same time, the lack of protection of the rule of law and human rights is to the detriment of peace and stability in the countries of the region. Against this background a distinction can be made between regional and bilateral components of Dutch foreign policy objectives, relevant in relation to Rwanda.

At the regional level, Dutch policy aims to facilitate international initiatives which contribute to regional conflict resolution and facilitate peace and stability. The African Union (AU) is seen as a vital organisation, which needs to be strengthened to enhance local ownership of the regional peace initiatives. At the regional level the Netherlands also stimulates co-operation amongst countries of the Great Lakes Region. At the multilateral level Dutch policy also aims to encourage multilateral agencies to take on an active role in their dialogues with governments of the Great Lake Region.¹⁶⁰

Rwanda is considered to be one of the most stable countries in the Great Lakes Region with functioning state institutions providing stability. Fostering Rwandan institutions is therefore considered to contribute both to regional conflict resolution and to improvements in peace and stability, as well as democratisation and respect for human rights in Rwanda itself.

In 2001, the policy objectives in the field of human rights were defined in terms of conducting a critical dialogue on human rights with the Rwandan Government both bilaterally and within the EU framework, reconstruction activities in the area of justice and human rights and decentralisation and local governance.

¹⁵⁸ UNDP, *Human development report 2004*, New York, 2004, p. 163.

¹⁵⁹ Afrika Beleid, *crisisituatie Grote Meren Gebied (Africa Policy, crisis situation Great Lakes region)*, Tweede Kamer, 2003-2004, 29 237 and 25 098, no. 5, at 8.

¹⁶⁰ Crisis situation Great Lakes Region, Tweede Kamer, 2003-2004, 29 237 en 25 098, no. 5, at 17.

No specific achievements regarding improvement were mentioned in relation to these concerns.¹⁶¹ The 2001 policy objectives were confirmed in the 2004 policy memorandum for the Great Lakes Region. At the same time it became clear that the policy in recent years had aimed not only to achieve long-term structural improvements, such as the 2001 policy objectives, but also to solve concrete human rights violations, such as for example disappearances of political opponents of the Government.¹⁶²

Rwanda receives 16 million euro a year in ODA from the Netherlands.¹⁶³ In 2004, the Dutch Parliament did not consider it appropriate to increase the development co-operation budget for Rwanda. During the parliamentary debate on the foreign affairs budget, an amendment was passed requesting the withholding of an increase in the budget for Rwanda. The argument used was the very poor situation with regard to good governance and the human rights situation in 2003 and 2004.¹⁶⁴ The Dutch Parliament and Dutch development NGOs were and still are very critical of the human rights situation in Rwanda and would like to see more public criticism in this regard from the Ministry of Foreign Affairs.

Summarising briefly the policy objectives:

- the Netherlands aims to contribute to stability and conflict resolution in the Great Lakes Region in general and in Rwanda in particular
- in the period under review the policy objectives have not significantly changed, but became more clearly defined
- the policy objectives included conducting a critical dialogue on human rights both bilaterally and within the framework of the EU and contributing to reform in the justice sector and the protection of human rights.

7.3 Implementation of human rights policy: strategies and instruments

7.3.1 Strategy: integration of development co-operation and political dialogue

The general expectation in 2000 was that the Dutch Government would add Rwanda to the list of developing countries eligible for structural development aid (ODA) from the Netherlands. However, due to concerns about Rwanda's involvement in the Democratic Republic of Congo (DRC) conflict, the delays in the area of democratisation and reform of the justice system, as well as the unclear situation with regard to developments in the area of macro-economics and doubts about Rwanda's ability to engage in a structural relationship, Rwanda was placed on the good governance, human rights and peace-building list. Initiatives in the area of decentralisation, justice, and human rights were developed.

2001 marked the beginning of a new approach in the bilateral relations with Rwanda with a view to contributing to conflict prevention and the promotion of human rights. The various initiatives in the area of good governance, human rights and peace building were seen as lacking substance and as being insufficiently integrated to make

¹⁶¹ Crisissituatie Grote Meren Gebied, Tweede Kamer, 2000-2001, 25 098, no. 17, at 14.

¹⁶² Afrika Beleid, crisissituatie Grote Meren Gebied, Tweede Kamer, vergaderjaar 2003-2004, 29 237 en 25 098, no. 5, at 25.

¹⁶³ Afrika Beleid, Crisissituatie Grote Meren Gebied, Tweede kamer, vergaderjaar 2003-2004, 29 237 en 25 098, nr. 5, p. 24.

¹⁶⁴ Vaststelling van de begrotingsstaten van het ministerie van Buitenlandse Zaken (V) voor het jaar 2005, Tweede Kamer, vergaderjaar 2004-2005, 29 800 V, Nr. 15.

a viable contribution to improvements in the field of peace-building, good governance and human rights. To allow for a more integrated and strategic approach a Memorandum of Understanding (MoU) was signed between the Government of the Netherlands and the Government of Rwanda on 14 February 2002.¹⁶⁵

The MoU provided for an overall framework for bilateral relations between the two countries, covering both the broader political as well as the development co-operation relationship. The existence of a relationship in the area of development co-operation, in particular, was seen as “a channel to discuss problems in the field of human rights and to explore possibilities for improvement” by the Government of the Netherlands. In addition it was planned to use ODA for initiatives to improve the human rights situation. Furthermore, the MoU included improvement in the human rights situation and progress in democratisation as conditions for continued development support.¹⁶⁶

For the Netherlands the MoU meant a long-term commitment in the field of political engagement and providing ODA. Rwanda committed itself to take steps in the areas of national reconciliation and unity, conflict resolution, good governance, poverty reduction, sustainable macro-economic stability and human resource development. The commitments of the Rwandan Government in these fields of the MoU are the benchmarks against which the improvements in these various fields are assessed.¹⁶⁷ The MoU did not contain specific commitments on improvement regarding the human rights situation. The MoU ended in 2004. On 11 March 2005 a new MoU was signed which includes commitments on the part of the Rwandan Government with regard to good governance, the establishment of an open, inclusive society and respect for human rights. With regard to human rights, it is specifically stated that the Rwandan Government will continue to investigate all reports of human rights abuses, including disappearances.¹⁶⁸

In 2002 the Netherlands, Sweden and the UK commissioned a joint evaluation of the MoUs which they concluded with Rwanda. The overall outcome of the evaluation with regard to the added value of the MoU as a strategic approach was positive. At the same time the evaluation had to conclude that there is a tension between the issue of principle and the issue of practice when it comes to the commitments undertaken by the Rwandan Government. “On the one hand, the Government’s adherence to the ideals of participation, democracy, and human rights in principle appears strong. On the other hand, there is an anxiety that in practice giving too much freedom to the media, NGOs and opposition parties may lead to a return to ethnic politics and the preconditions for another genocide”. The evaluation recommended developing clearly defined indicators to allow for better monitoring of progress in the fields of reconciliation, good governance and conflict resolution.¹⁶⁹

¹⁶⁵ Other governments which have signed an MoU with the government of Rwanda are the UK (1999), Sweden (2002) and Switzerland (2002).

¹⁶⁶ Tweede Kamer, 2001-2002, no. 724 (response to questions from MPs), 4 March 2002. Author’s translation.

¹⁶⁷ These are the benchmarks adopted parallel to the MoU between the UK and Rwanda, which was signed in March 1999 and included in the 2002 MoU signed between the governments of the Netherlands and Rwanda.

¹⁶⁸ Crisissituatie Grote Meren Gebied, Tweede Kamer, 2004-2005, 25 098, nr. 28, Key indicators, Memorandum of Understanding.

¹⁶⁹ David Steedman and Mads Andenas, “Report of the independent monitors on the memoranda of understanding between governments of Rwanda – the Netherlands, governments of Rwanda – Sweden, and Governments of Rwanda – United kingdom” (1 October – 30 November 2002).

The different states that concluded a MoU with Rwanda aim to have the same commitments and benchmarks. When the evaluators visited Rwanda in November 2004 their interlocutors expressed their view that a joint MoU might eventually be accomplished, as a means to achieve further collaboration between like-minded donors.¹⁷⁰

Summarising briefly the strategy of integrating development co-operation and political dialogue:

- since 2001 the bilateral relations of the Dutch Government with Rwanda have become more intense, which was reflected in the conclusion of the MoU
- the MoU marks the beginning of a strategy in which promotion and protection of human rights is approached from the perspective of political dialogue as well as development co-operation, which facilitates an integrated strategic planning of interventions and instruments for the promotion of human rights.

7.3.2 Political dialogue and interventions

The Netherlands monitors the human rights situation in Rwanda. Main concerns are the lack of space for political parties, freedom of expression especially with regard to the press and the intimidation and/or accusation of individuals and organisations of divisionism and ideology of genocide.¹⁷¹ Under the Dutch EU Presidency an EU human rights fact sheet was prepared in November 2004, which gives an analysis of the main human rights problems in Rwanda that does not vary significantly from the human rights problems identified by international human rights NGOs. The staff involved in monitoring human rights is professional and well-informed.

Although the MoU provides for an overall policy framework in terms of mutual commitments, it does not provide for any specific means as to how and when issues in the field of human rights are to be raised. Depending on the issue and the circumstances, human rights issues can be and were raised during visits by ministers or high-level officials from the Ministry of Foreign Affairs. In addition, an important role is played by the Dutch Embassy in Kigali through talks with various Rwandan ministries, *démarches* and public statements. At present, initiatives for interventions and the choice of the tools used are left to the discretion of the Embassy itself. From interviews held with interlocutors it is clear that the partnership relationship does not hinder the Dutch Embassy from bringing forward delicate human rights issues with the Rwandan Government, but rather provides the Embassy with legitimacy.

Bilateral visits to Rwanda by Dutch ministers and high-level civil servants did take place, but may not always have been used to the full extent. For example in May 2002 the Dutch HRA visited Rwanda. There is no report of this visit and no indication as to how the HRA brought human rights concerns forward with the Government of Rwanda. Information obtained during the mission made it clear that the HRA did not meet with government officials, which might have been useful in view of explaining the various concerns of the Dutch Government regarding the human rights situation.¹⁷²

¹⁷⁰ See also: Crisissituatie Grote Meren Gebied, Tweede Kamer, 2004-2005, 25 098, no. 28, 11 april 2005.

¹⁷¹ Interviews during the evaluation mission.

¹⁷² Interview at Dutch Embassy Kigali, 16 November 2004.

The HRA did make a visit to the newspaper, *Umuseso*, which at the time was under pressure. An interview scheduled with the editor in chief of the *Rwandan Herald* did not take place. On the day of the planned interview he was arrested and deported to Uganda on the charge that he did not have a visa.

The Dutch Embassy in Kigali is one of the most significant actors in intervening on human rights issues, both bilaterally and within the framework of the EU. This becomes apparent from interviews held with various sources.

A particular issue of attention for the Netherlands is the right to fair trial. On the one hand the Netherlands is one of the main donors who provide assistance to the justice sector. It includes support to international NGOs working in the justice system i.e. Penal Reform International (PRI), building of a prison, financial support for the running of the gacaca system, support for the Law Reform Commission and support for the Supreme Court.

On the other hand, the Netherlands has monitored closely the functioning of the judicial system, in particular by following the trial of former President Bizimungu (1994-2000). Bizimungu was arrested in April 2002, apparently on the grounds that he conducted opposition referring to ethnicity.¹⁷³ Various EU *démarches* were conducted until Bizimungu's case was put to trial in mid 2004. The EU embassies in Kigali in turn raised the case to make it clear that all EU Member State embassies considered this case as ranking high on the human rights agenda and would question the Government with regard to the issue of fair trial. The Bizimungu trial took a very long time to commence, but once initiated it was quickly over with a conviction in June 2004.

The Bizimungu trial illustrates that *démarches* are mainly undertaken within an EU framework and, if possible, other donor partners will be requested to join if a common point of view can be obtained. The obvious argument is that the more donors with a common view point the stronger the weight of the *démarche*— rather than all the states engaging in a *démarche* single-handedly. In the case where the Netherlands held the EU Presidency, between July and December 2004, or represented the Presidency, the Dutch greatly determined the content of the *démarche*.¹⁷⁴ The *démarches* in the Bizimungu trial functioned as a critical dialogue. That is, keeping the political diplomatic space open, including human rights, during which both sides express their concerns.

Another issue followed closely by the Netherlands is the limitation of the freedom of expression, both imposed and self-imposed.¹⁷⁵ The same applies as with the right to fair trial. On the one hand the Netherlands supports the freedom of the press by means of capacity building and the professionalisation of the press.¹⁷⁶ On the other hand, the Netherlands intervenes in cases where the freedom of expression is in danger of being violated. In 2001, two journalists of the newspaper *Newsline* (supported with Dutch funding), John Mugabi and Shyaka Kanuma, were called to the office of the Chief of Staff of the Rwandan army and accused of damaging the image of the army.

¹⁷³ Tweede Kamer, 2001-2002, 1364, response to question MP of 2 July 2002.

¹⁷⁴ Interview Dutch Embassy Kigali, 15 November 2004.

¹⁷⁵ Tweede Kamer, 2001-2002, 1364, response to MP question of 2 July 2002; Tweede Kamer, 2003-2004, 557, response to MP question of 23 December 2003.

¹⁷⁶ Tweede Kamer, 2003-2004, 557, response MP question of 23 December 2003.

After the incident the two journalists received anonymous threats, advertisers withdrew and they feared for their safety. Representatives of the Dutch Embassy visited *Newsline's* office to show moral support. This was to no avail, for a month the paper did not publish and in the end returned as a non-critical newspaper.

Another case involved Ismail Mbonigaba, editor of the Rwandan newspaper *Umuseso* who was charged in 2003 with "divisionism" for publishing a political cartoon. The Netherlands proposed an EU *démarche*, which took time to be decided upon due to differences between EU partners as to the content. In the meantime the Dutch Minister for Development Co-operation raised the case when the Foreign Minister of Rwanda visited the Netherlands in February 2003. Shortly after the visit Mbonigaba was released on grounds of procedural error. An EU intervention was therefore no longer necessary.

In brief, the conclusions regarding political dialogue and interventions are:

- the Netherlands monitors developments in the human rights situation in Rwanda; the embassy reports on an *ad hoc* basis
- the MoU provides for an overall policy framework in terms of mutual commitments, but does not provide for any specific means to raise human rights issues
- the partnership relationship embedded in the MoU does not hinder raising delicate human rights issues with the Rwandan Government, but rather provides the Embassy with legitimacy to do so
- concerns are raised during visits by ministers or high-level officials from the Ministry of Foreign Affairs
- more important are contacts by the Dutch embassy with various Rwandan ministries, (EU) *démarches* and public statements; the focus is on the right to fair trial and freedom of expression
- the interventions and the choice of the tools used are left very much to the discretion of the Embassy itself.

7.3.3 Development co-operation

As already referred to in the previous sections, a main area of support within the context of development co-operation is the justice sector. For example, the Netherlands has supported the Law Reform Commission, the *gacaca* legal system and the building of a prison. These projects have the potential to contribute to the respect for human rights. However, it is beyond the scope of this evaluation to assess the extent to which these interventions effectively contributed to the promotion and protection of human rights.

Other areas are freedom of expression (already mentioned above) and support to local human rights NGOs. Several NGOs which monitor human rights and undertake human rights education have been supported over the years. The background to this is that when Rwanda was placed in 2000 on the good governance, human rights and peace building list, much of the funding at the time went to initiatives or activities proposed by Rwandan human rights NGOs, which were considered to be independent. Those that approached their work professionally could obtain funding. The fact that only some NGOs received funding and others did not has become a reason for concern, since this is seen by the Government and other NGOs as preferential treatment.¹⁷⁷ As mentioned earlier, the MoU defines the commitments on the side of the Rwandan Government.

¹⁷⁷ Interviews during evaluation mission.

The MoU contains an evaluation mechanism, but no specific indicators to assess achievements were defined. According to the evaluation of the 2002 MoU, this may result in different interpretations, as will be illustrated by the following case. One of the commitments relates to the setting up of a National Human Rights Commission. There were differences of opinion between Rwanda and the Netherlands on whether or not the National Human Rights Commission should be eligible for funding through ODA. According to the Netherlands, the Commission did not merit any funding because it was slow in becoming operational and did not conduct itself independently from the Government. The Rwandan side argues differently. A lesson learned could be to agree beforehand on indicators of achievement, rather than argue differently afterwards due to the lack of agreed indicators of achievement or progress.

In brief, the conclusions on development co-operation are:

- development as a tool to promote and protect human rights forms an integral part of the strategic planning of the Dutch Government's relations with Rwanda.
- development co-operation and political interventions are complementary means to promote and protect human rights and to address the areas of concern
- the focal areas are support for human rights NGOs, reform of the justice sector and freedom of expression
- the lack of selection criteria and indicators of achievement does sometimes give rise to differences between Rwanda and the Netherlands on which initiatives can (continue to) receive funding
- assessment of the effectiveness of the support through ODA is not part of this evaluation; hence, no conclusion can be drawn on this.

7.3.4 Acting through multilateral channels¹⁷⁸

The Netherlands supports activities at the multilateral level which address conflict resolution in the Great Lakes Region. During its membership of the UN Security Council in 1999 and 2000 the Netherlands was active in placing the situation of the Great Lakes Region on the agenda of the Security Council. Furthermore, the Netherlands supported initiatives undertaken by the UN Security Council to implement the 1999 Lusaka agreement.

Looking more in particular at the promotion and protection of human rights in Rwanda, it must be noted that the Netherlands has been active within the UNCHR to keep Rwanda on the agenda. In 2001, a year after the mandate of the Special Representative of the Commission had ended, the Netherlands was active, in co-operation with the EU partners, in generating attention for Rwanda concerning the restrictions to the freedom of expression, the situation of people in prison and the need for co-operation with the OHCHR.

In brief, the conclusions on acting through multilateral channels are:

- a major issue at the multilateral level is conflict resolution in the Great Lakes Region, since peace and stability are considered to make a major contribution to the protection of human rights; initiatives were taken at the level of the UN Security Council
- promotion and protection of human rights in Rwanda has been the subject of initiatives taken by the Netherlands at the UNCHR; EU partners were involved; the concerns focused on were in line with the overall human rights concerns (freedom of expression, situation in prisons).

¹⁷⁸ For this section, non-public information from the Dutch Ministry of Foreign Affairs made available to the author was used.

7.4. Effectiveness of policy: the case studies on disappearances and support to NGOs¹⁷⁹

Disappearances in the run-up to the 2003 presidential elections

In May 2003 the Government of the Netherlands tied the provision of 250,000 euro in election support to the condition that the Government of Rwanda came up with a report giving clarification on the disappearance in April of political opponents of the Government in the run-up to the elections.¹⁸⁰

When, by the end of June, there was still no information, the Netherlands proposed an EU intervention. A letter was written on behalf of the EU to request rapid clarification. In early August, during a visit of the Netherlands Ministers of Foreign Affairs and Development Co-operation, the Rwandan Government published its first report on the disappearances. Before leaving the country, the Dutch Minister for Development Co-operation stated at a press conference that the Netherlands would withhold financial support for the presidential elections if no satisfactory report was published on the investigation of the disappearances. This position was not discussed with the Rwandan governmental counterparts. Since the report of the Rwandan government turned out to be deemed unsatisfactory by the Dutch Government, as it did not clarify what happened to the disappeared, the Netherlands decided to withhold its financial support for the elections.

The action taken by the Netherlands was a very far-reaching step. The Netherlands was the only donor in Rwanda to do this. The position of the Netherlands was:¹⁸¹

- the Netherlands does not want to be associated with elections in which people seem to have disappeared because of their political activities during the run-up to those elections
- the Netherlands saw it as the obligation of the Rwandan state to investigate these disappearances.

Obviously the Netherlands succeeded in not being associated with the elections during which disappearances took place. The objective of using the withdrawal of funds to generate pressure to receive information did not succeed. A second interim report was made public by the Rwandan Government in June 2004. However, it did not provide satisfactory information either.¹⁸²

The evaluation team has interviewed various interlocutors on their perception of the Dutch action. On the side of the Rwandan Government, the position was that the Government of the Netherlands had the right to withhold the funding, but that in the case of the disappearances the Dutch should accept the information that was given. At some point no further information can be provided. In general, the role of the Netherlands as a critical partner is appreciated by the representatives of the Rwandan Government met by the evaluation team.

¹⁷⁹ For this section, non-public information from the Dutch Ministry of Foreign Affairs made available to the author was used.

¹⁸⁰ Interviews at the Dutch Embassy in Kigali, 15-25 November 2004.

¹⁸¹ Interview at the Dutch Embassy in Kigali, 15 November 2004.

¹⁸² Interview at the Dutch Embassy in Kigali, 15 November 2004.

The human rights NGOs, both national and international, have been very appreciative of the work undertaken by the Dutch and their critical approach to human rights is greatly valued. Withholding the financial support for the elections was seen as someone finally responding and taking an initiative.

The fact that the activities undertaken became publicly known was seen as providing moral support for those active in the human rights field and it became clear that the activities of the Rwandan Government were not blindly being accepted.

Diverse reactions were obtained from other embassies, ranging from positive to negative. These reactions are the result of the different policies of different donor countries with regard to Rwanda and the extent to which they are willing and politically committed to address human rights.

In brief, the conclusions with regard to the effects of the actions in this case are:

- the Netherlands could indeed not be associated with the elections that took place in a context of a serious violation of human rights (disappearances)
- the message was given to and received clearly by the Rwandan Government; this had no repercussions for the relationship between the two countries
- the human rights NGO community in Rwanda welcomed the action and perceived it as moral support
- reactions within the diplomatic community ranged from positive to negative and should be understood against the background of their own policies
- currently there is no satisfactory information from the Rwandan Government as to what happened to those who disappeared.

Support to human rights organisations

Activities with regard to human rights organisations have two elements. On the one hand, it fosters human rights work by providing financial means aimed at enhancing technical capabilities as well as capacity in terms of human and financial resources. On the other hand, activities are geared to providing protection for the organisations and individuals working in the field of human rights. This case focuses on the second element and not on the issue of enhancing the capacity of organisations through financial support.

In order to contribute to a safe working environment for human rights work, the Embassy of the Netherlands intervened in various situations in which the work of NGOs was threatened. Two cases of intervention are given below.

In May 2003 two NGOs, Liprodhor and PRI, were forbidden to monitor the gacaca trials. The Dutch Embassy intervened on behalf of the two NGOs, pointing out that to restrict independent NGOs from monitoring the gacaca system was a restrictive way of interpreting the gacaca proceedings. Because of the intervention, the problem was solved rapidly and the NGOs were no longer hindered from undertaking their work. As a result, the Rwandan Government recognises the role that NGOs have in monitoring the gacaca system. This type of intervention is a vital contribution in the work towards the prevention of human rights violations in the future.

A much more difficult case was the parliamentary report and the allegations in it of divisionism and adherence to the ideology of genocide addressed at two organisations, Liprodhor and the Fédération des Organisations Rurales (Federation of Rural Organisations). The organisations received support from the Netherlands.

The Embassy intervened with the Rwandan Government before the Government officially reacted to the parliamentary report. The Embassy considered the report to be intimidating to members of civil society. The accusations were weak and the report provided no information on the content of the accusations. A special consideration for intervention on the part of the Dutch was that two of its partner organisations were accused but no information was provided about the grounds of the accusation. The aim of the interventions was to make the Government aware that a rapid reply was needed to diminish the intimidating effect of the report, but also that no action would be taken against the organisations before a full judicial enquiry was held into the allegations.

Pending a Rwandan Government reaction to the report, Liprodhor's bank account was frozen. An intervention by the EU Head of Delegation and the Dutch Embassy resulted in the bank account being unfrozen.

On 18 September 2004, the Government gave its official reply to the report and called on the judiciary to hold an investigation into all those mentioned in the report. Shortly after this, the EU issued a declaration on the statement of the Rwandan Government, welcoming it but regretting that "those mentioned in the report are not presumed innocent until the contrary is proven".¹⁸³ The Rwandan Minister of Foreign Affairs and Co-operation responded in turn that the Rwandan Constitution and all laws of the country guarantee the principle that "one is presumed innocent until proven guilty". A small step forward was achieved: the Rwandan Government confirmed the presumption of innocence. At the time of writing, the case has not yet been concluded, so it is not clear to what extent the Government will abide by its commitment.

Reviewing the case, one can note the following.

The purposes of the intervention in response to the parliamentary report were to:

- diminish the intimidating working of the report
- make the government aware of the weakness of the accusations
- obtain a dialogue on the meaning of "an ideology of genocide".

The overall purpose was to diminish the chance of violations taking place in the future.

By the end of 2004, Liprodhor had not been dissolved, as called for by the parliamentary report. However, interlocutors interviewed by the evaluation team concluded that because of the accusation the organisation lost credibility and legitimacy, especially in the countryside. As a result, Liprodhor has cancelled many of its activities.¹⁸⁴ Other NGOs mentioned that they felt threatened because they fear that they may be accused of divisionism or of adhering to the ideology of genocide just for being together with other colleagues in a public space.¹⁸⁵ The parliamentary report did its intimidating work, despite interventions by representatives of the various countries, including the Netherlands.

With regard to the second aim, raising awareness as to the weakness of the accusations, it can be noted that the Government requested the judiciary to look into the allegations and to further investigate the findings of the parliamentary report.

¹⁸³ EU, Declaration on the statement of the Rwandan Government on the parliamentary report on Genocidal Ideology, 22 September 2004.

¹⁸⁴ Interview with Liprodhor, Kigali, 17 November 2004.

¹⁸⁵ Interview with Human Rights Watch, Kigali, 19 November 2004.

Also, the reply from the Government that everyone is considered innocent until proven guilty is a positive result. None of those accused have been detained, although some have left the country for fear of reprisals. In this sense the interventions have been effective.

As to the issue of a dialogue on the ideology of genocide, the Rwandan Government has stated in response to the EU declaration referred to above, that the Rwandan people are clear about the meaning and the content of these terms and that there is no intention to define these terms. The engagement of the Government in a dialogue seems to have failed. On the other hand, the intervention by the Dutch Embassy and representatives of other countries has had the side effect that everyone is talking about the consequences of the parliamentary report. In the end this may result in a public debate on “an ideology of genocide”, which would be a positive outcome.

From the reactions of their government interlocutor, the evaluators conclude that the Government would not have reacted as quickly as was done in the case of the frozen bank account if not alerted by the Dutch Embassy.

NGOs mentioned that it was very important that a donor took up these issues with the Government (no other donor did so). There was some difference of opinion between NGOs and the Embassy on the extent to which they were informed of initiatives taken by the Netherlands. The response of representatives of other embassies varied from “has it achieved anything?” to “very good that they are taking up these issues”.

In brief, the conclusions with regard to the effects of the actions in this case are:

- the human rights organisation was not immediately dissolved, however it did lose credibility and human rights workers did flee the country
- following the intervention by the Netherlands, the Rwandan Government gave urgency to the issue of the frozen bank account and referred the matter for investigation by the courts
- the human rights NGO community in Rwanda welcomed the activities undertaken by the Dutch Government
- the reactions of various embassies as to the positive effects were mixed.

7.5 Conclusions

7.5.1 Policy objectives and strategy

Analysis of the human rights situation

The Netherlands monitors the human rights situation in Rwanda, reporting is *ad hoc* rather than on a regular basis. Main concerns are the lack of space for political parties, the freedom of expression especially with regard to the press and the intimidation and/or accusation of individuals and organisations of the not very specific term divisionism and ideology of genocide. Under the Dutch EU Presidency an EU human rights fact sheet was prepared. The analysis of the main human rights problems in the fact sheet does not vary significantly from the human rights problems identified by international human rights NGOs.

The staff involved in human rights issues at the Dutch Embassy is professional and well informed.

Policy objectives, strategy and translation into plans of action

A distinction can be made between the regional and bilateral components of Dutch foreign policy objectives in relation to Rwanda. At the regional level Dutch policy aims to facilitate international initiatives that contribute to regional conflict resolution and facilitate peace and stability.

Rwanda is considered to be one of the most stable countries in the Great Lakes Region with functioning state institutions providing stability. Fostering Rwandan institutions is therefore considered to contribute both to regional conflict resolution and to improvements in peace and stability, as well as to democratisation and enhanced respect for human rights in Rwanda itself. The bilateral policy is not only aimed at achieving long-term structural improvements in the field of good governance and human rights, such as reform of the justice sector and creating a democratic environment, but is also aimed at addressing concrete human rights violations.

The main intervention strategy used by the Netherlands in aiming for long-term structural improvements and addressing human rights violations in Rwanda is through a critical dialogue in interaction with development co-operation. The 2002 MoU marked this new strategic approach. The MoU provides for an overall framework for bilateral relations between the two countries, covering both the broader political as well as the development co-operation relationship.

For the Netherlands, the MoU meant a long-term commitment in the field of political engagement and providing ODA. For Rwanda, the MoU determined the commitments in the areas of national reconciliation and unity, conflict resolution, good governance, poverty reduction, sustainable macro-economic stability and human resource development. These commitments were at the same time the benchmarks against which the improvements in these various fields are assessed.

In a new 2005 MoU the commitments, and therefore benchmarks, in the field of human rights are more specific than in the 2002 MoU and include the establishment of an open, inclusive society and respect for human rights. In relation to human rights, it is specifically stated that the Rwandan Government will continue to investigate all reports of human rights abuses, including disappearances.

The states (Netherlands, Sweden and the UK) that concluded a MoU with Rwanda aim to have the same commitments and benchmarks. A joint MoU might eventually be accomplished.

7.5.2 Implementation of policy

Raising concerns in bilateral relations

The means used vary from quiet diplomacy and *démarches*, to public statements either alone or within the framework of the EU or together with other diplomatic partners, to raising human rights issues on the occasion of official visits, although not on a frequent basis.

Diplomatic activities are undertaken bilaterally, together with other states and within the context of the EU. In raising human rights issues with the Government of Rwanda, preference is given to joint donor action. The Dutch Embassy in Kigali is one of the most significant actors on human rights issues.

The integrated approach of critical political dialogue and development co-operation becomes apparent in particular with regard to the issues of the right to fair trial and freedom of expression. With regard to both issues there are interventions regarding violations and at the same time financial support is given through ODA to achieve improvements that will help to prevent future violations. Interventions in both the area of fair trial and in the area of freedom of expression generated some positive results for those who were victims of these violations.

The combination of being an important donor, having a serious commitment in the field of human rights which is acknowledged by the Rwandan counterparts and engaging regularly and strongly on human rights issues, seems to give the Netherlands a strong leverage in human rights issues.

EU framework

At the political level activities are undertaken, preferably within the context of the EU. Bilateral action is also taken frequently, specifically in those cases where agreement on an intervention is not easily reached and/or is time consuming, as in the Bizimungu case, where an EU intervention was eventually agreed and undertaken, and in the Mbonigaba case.

During the Dutch EU Presidency, the Netherlands also played a significant role in addressing human rights issues with the Rwandan Government.

Conformity of efforts and plans

The implementation of instruments is in conformity with the policy and strategies as formulated in the different policy papers and plans.

Raising concerns in various fields of foreign policy

In Rwanda there is a notable interplay between the means used within the framework of a political dialogue and development co-operation initiatives on the part of the Netherlands.

Dutch development co-operation with regard to human rights focuses on the improvement of the justice sector, the gacaca trial system and the building of a prison. In addition, NGOs are supported in the area of human rights monitoring and human rights education.

Within the realm of Dutch development co-operation with Rwandan, the MoU is a central tool, since it includes human rights commitments to be achieved by the Rwandan Government. Hence, in Rwanda there is synchronisation and interlinking between diplomatic initiatives and development co-operation.

The critical dialogue which the Embassy has with the Rwandan Government regarding human rights issues is not hindering the partnership at the level of development co-operation. Rather, the two seem to reinforce one another.

Co-operation with actors other than the government

At the international and regional level, the Netherlands supports both political mechanisms and conflict resolution initiatives as a means to give adherence to its strategy to seek stability in the Great Lakes Region. The Netherlands undertakes these activities at the international and regional level as a means of combining forces

The Netherlands co-operates in Rwanda with actors other than the government, such as representatives of other embassies and international agencies, as well as international and national NGOs.

7.5.3 Effectiveness of political efforts, based on case studies

The two case studies show that the Dutch Government has expressed itself as being very critical of measures taken by the Rwandan Government concerning human rights issues. The interventions have not caused the Rwanda Government to shy away from the criticism voiced by the Netherlands, but rather to react and express its commitment to seek improvement.

For the NGOs the critical human rights voice of the Netherlands has meant that they have obtained moral support. Although the conclusion cannot be drawn that the efforts of the Netherlands have a direct effect on changes to the human rights situation, it can be stated that the activities undertaken have contributed towards making human rights issues open for discussion. In the end this might facilitate a change in attitude by the Rwandan Government in terms of human rights issues.

8. CONCLUSIONS

8.1 Policy objectives and strategy

8.1.1 Information on and analysis of the human rights situation

Analyses of the human rights situation are made by the Netherlands with regard to each of the countries under review. The analyses are made in terms of the nature and seriousness of the violations, as well as the role, capacity and commitment of the government concerned to counter these violations. These analyses do not differ much from the analyses found in reports by international human rights organisations such as Amnesty International, Human Rights Watch and various UN human rights bodies.

The staff involved in gathering the information at the embassies is in general described as well-informed, professional, committed and active by their counterparts in other embassies. The inputs of the Netherlands into the regular human rights reports by the EU HoMs and the fact sheets are seen as reliable, timely and to the point.

The extensiveness and level of detail of reporting on the human rights situation in public documents submitted by the Government of the Netherlands to the Dutch Parliament differs between the various countries. With regard to Indonesia and Iran the frequency and the level of reporting on the actual situation and analyses of the situation has been more detailed than with regard to the other three countries, where reporting in public documents remains at a rather general level.

Reporting in more detail on Indonesia reflects the importance that the Government of the Netherlands and Dutch society at large attach to relations with the country. Reporting in more detail on Iran by the Government of the Netherlands is a reflection of the seriousness of concerns on violations in this country and the lack of progress in improvements in the situation. The more detailed reporting on these two countries seems to be at least partly a result of a proactive attitude of the Parliament in asking for information from the Dutch Government regarding its assessment of the situation and how it intends to contribute to improvements in the situation.

With regard to China there is a gap towards the end of the evaluation period in the level of detail in the description of the human rights situation between internal documents and public documents. Notwithstanding the interest of Parliament and society at large in human rights issues in China, public documents describe the human rights situation and the role of the Chinese authorities in protecting and violating human rights rather briefly and in general terms, focusing on long-term trends and providing little information on the policy of the Netherlands.

8.1.2 Policy objectives, strategy and translation into plans of action

The evaluation of the policy with regard to the five countries has shown a distinct weakness in the formulation of human rights policy objectives and strategies to achieve these objectives. The exceptions are Indonesia for the Wahid period and Rwanda as of the preparation and conclusion of the first MoU in 2002.

The policy objectives were found to be formulated either in very general terms or in terms of *ad hoc* issues. No benchmarks were set to measure achievement of the objectives or successful completion of a phase in the strategy. The exception is Rwanda, but that relates to the period beyond the evaluation period. The new 2005 MoU does contain benchmarks. However, the MoU has not been reviewed in detail.

Policy frameworks were developed for promotion of human rights through ODA for China, Indonesia and Rwanda, but the objectives formulated were still at a rather abstract and general level. No benchmarks were included to assess achievements.

The criterion of gross and persistent human rights violations (1979 Memorandum on Human Rights and Foreign Policy), later termed as serious and/or massive violations (2001 Memorandum), was not found in the evaluation as a criterion to identify situations in which a reaction or intervention is called for. The criterion was therefore not found to guide in practice the choice of situations to which the Netherlands will react.

The evaluators did not find clear objectives or guidelines for the input of the Netherlands into the preparation and implementation of EU policy, not with regard to the EU-China and EU-Iran human rights dialogues, nor with regard to the other three countries.

Due to the lack of specific objectives and the lack of benchmarks there was little transparency regarding:

- what can be expected of the Netherlands in bilateral relations (political as well as other) or through multilateral fora; an exception to this are to a certain extent the activities identified with the framework of development co-operation
- whether options for the use of different instrument have been considered and what arguments were used to select the instruments that have been applied
- how and on what basis the Netherlands evaluates its policy and strategy
- with which stakes the Netherlands enters the debate with EU partners on policy objectives and strategy.

In comparison, the EU strategy with regard to two of the countries under review (China and Iran) was set within a framework of regular, explicit assessment with benchmarks of achievement and procedures for re-design of the strategy based on the evaluation of (non-) achievement of the benchmarks, which allows for evaluation of policy (objectives), strategy and achievements. The evaluators did not find a comparable framework for the bilateral relations with the countries included in the evaluation.

It should be noted that the Netherlands has had an active role in the development of the EU framework for the approach towards China and Iran, including the development of the benchmarks. No explanation has been found as to why the Netherlands, as a strong proponent of the EU approach with regard to China and Iran, does not apply the same approach with regard to its bilateral relations.

The extent to which Dutch human rights policy with regard to the five countries included in the evaluation has been integrated into EU policy is different for each country. The integration is strongest with regard to China and Iran and is close to being subsumed completely into the EU policy. Setting clear policy objectives, designing a clear strategy and setting benchmarks of achievement for the bilateral relations would also clarify the objectives for the Dutch input into EU policy and also allow for transparency and accountability in this respect.

8.2 Implementation of policy

8.2.1 Raising concerns bilaterally

There is a tendency with regard to the five countries reviewed increasingly to use the EU CFSP as a framework to intervene on human rights issues and use political instruments such as institutionalised political dialogues, *démarches*, public statements and raising issues before international fora. As stated above, and as will be elaborated later (8.2.2), the tendency has resulted in different stages of integration with regard to the five countries under review.

With regard to all the countries reviewed, the evaluators conclude that the instruments of foreign policy that were available, varying from quiet diplomacy and *démarches*, to raising human rights issues on the occasion of official visits and public statements, have been used. However, public statements have not been issued in connection with Mexico since the Fox presidency came to power in 2000. The instruments were applied bilaterally, but also and increasingly within the framework of the EU (see further below, 8.2.2)

Overall, the evaluators found evidence of active use of the available instruments by Dutch officials, whether it concerned ministers, the HRA, Foreign Ministry officials or the embassies. An exception to this seem to be visits by ministers other than the Ministers of Foreign Affairs and Development Co-operation. It is standard procedure that Dutch ministers are briefed on the human rights situation in the country they are visiting and use that information in meetings with their counterparts. Some evidence was found by the evaluators with regard to China and Iran that these ministers, and in the case of China the Prime Minister, raised human rights concerns during their visits to one of the five countries or when receiving a colleague from one of these countries.

Review of the use of instruments other than political instruments (such as support of/through NGO channels, assistance through ODA and use of economic and/or military relations for those countries where these relations exist) shows that these instruments were mostly used when the opportunity was available, with the exception of economic relations other than ODA. The exception are Iran and Mexico, since there is no ODA relationship with these countries.

Looking at the use of multilateral fora, the conclusion is that the Netherlands has actively sought to raise concerns in the UNCHR and the Third Committee of the UN GA for four out of the five countries under review. No initiatives were taken with regard to Mexico after the election of president Fox in 2000.

The UNCHR was used for strong statements on China, Indonesia and Iran. Such statements were given by the representatives of the Netherlands, e.g. in ministerial speeches, as well as in the statements on behalf of the EU. However, the latter usually required much internal EU consultation and negotiation.

Reviewing the implementation of policy from an overall perspective, the conclusion is that the Netherlands has been an active and professionally competent player with regard to raising human rights issues in relation to each of the five countries, bilaterally, within the framework of the EU and by using the possibilities offered by international fora.

However, the lack of specific policy objectives, the lack of clearly formulated strategies and the lack of benchmarks make it difficult to compare intervention strategies and compare the use of the various instruments for the improvement of the human rights situation in the five countries. It is therefore also difficult to draw conclusions on whether there would have been different options for strategies and for the use of different instruments. Furthermore, it is also difficult to draw conclusions regarding the appropriateness with regard to the frequency and intensity with which the instruments were applied.

8.2.2 EU framework

The tendency to address human rights within the framework of the EU seems strongest with regard to China and Iran.

The EU human rights dialogues with these two countries provide for an overall framework which guides and directs not only the exchange with the Chinese and Iranian counterparts, but also the internal EU consultation and co-ordination of the selection of priority issues, the benchmarks to assess achievements, the choice of instruments, the intensity and frequency of interventions and the evaluation of the whole process. Even gathering information and reporting were strongly geared towards the framework provided by the dialogue process, as is illustrated by the efforts of the Netherlands in contributing to the regular HoMs reports and human rights fact sheets. The existence of the dialogues is a strong factor in guiding the EU Member States towards adopting a unified position in multilateral fora such as the UNCHR.

The exceptions to this overall conclusion are to a certain extent ministerial visits and visits by the HRA which are by their very nature bilateral instruments. In the selection of issues and cases to be raised on these occasions the Netherlands gives its own emphasis, selecting its own priorities. However, the individual cases and issues also feature on the EU agenda and reactions to the interventions on these occasions are co-ordinated with the EU partners.

In brief, overall the conclusion is that with regard to China and Iran there is a strong convergence of policy, strategies and use of instruments within the framework of the EU. The fact that two EU partners, Germany and the United Kingdom, have their own human rights dialogue with China alongside the EU dialogue does not change that conclusion.

With regard to Indonesia the situation is different. There is no such framework as a formal human rights dialogue and the EU as such is said to have a limited interest in Indonesia, even though the Netherlands and the United Kingdom put a lot of effort in trying to enhance this interest. Political intervention on human rights issues by the EU regarding Indonesia therefore has to be strongly stimulated by the Netherlands and Portugal (although a less influential player), which indeed happens as is illustrated by the efforts around the issue of impunity.

This situation and the special relationship between Indonesia and the Netherlands has resulted in the Netherlands intervening on important human rights issues bilaterally, even though there is a preference for using the political instruments within the framework of the EU.

With regard to Rwanda there is also a strong preference for undertaking action within the framework of the EU and there are examples where initiatives have resulted in EU interventions. However, bilateral action outside the EU framework is also undertaken frequently, especially in cases where EU agreement on an intervention is not easily reached and/or is time consuming.

Rwanda furthermore poses a different situation from the other countries, due to the overall importance of the development co-operation relationship with that country. The lack of a specific EU Rwanda policy and the fact that only a few EU Member States (Sweden, the United Kingdom and the Netherlands) have a strong (ODA) presence in the country, results in a situation where these countries can follow more or less their own policy. They do try to co-ordinate as much as possible.

The situation with regard to Mexico is again somewhat different. Human rights issues can be raised through the various mechanisms established for political dialogue within the framework of the EU-Mexico Global Agreement. However, the dialogue tends to be used to reaffirm Mexico's commitment to human rights rather than to raise concerns. Occasionally the Netherlands has attempted to change this situation and on one occasion this resulted in an EU statement.

With regard to the EU position in multilateral fora, it can be concluded that the Netherlands was usually to be found among the EU Member States favouring strong statements and/or EU initiatives on countries such as China, Indonesia and Iran. There have been the occasional successes, for example, influencing the EU position as stated in various GAERC conclusions that the EU-China and EU-Iran dialogues do not preclude favouring consideration by the UNCHR of the human right situation in such countries. At the same time it should be noted that during the evaluation period the Netherlands did not succeed in convincing its EU partners to (co-)sponsor resolutions on these two countries at the UNCHR or the Third Committee of the UN GA.

The Netherlands held the EU Presidency during the second half of 2004. It took its responsibility seriously in the field of gathering information and co-ordinating reporting with regard to the five countries. It also initiated interventions with regard to those countries, sometimes more successfully than others, as shown in the previous chapters. The one remark that could be made, but which is not merely a matter of Dutch policy, but just as much of EU policy, is the lack of transparency and therefore accountability on initiatives taken and results achieved.

8.2.3 Conformity of efforts and plans

In practice more emphasis has been given to raising human rights concerns in bilateral relations than the policies and strategies outlined for the five countries. However, one has to bear in mind the earlier conclusion that policy and strategy for the five countries were formulated at a rather general and abstract level, with no specific objectives, benchmarks and identification of instruments. Hence, the evaluators found an important discrepancy between the plans and the actual practice: more has been done than the plans outlined.

For example, considerable effort has been put into gathering information, sharing this information with EU partners and contributing to reporting within the EU framework.

This aspect of the work is hardly acknowledged and recognised in internal plans and reports. The results can be seen in the EU Annual Reports on human rights, but not always in regular separate Dutch reporting.

Reviewing the activities undertaken with regard to the five countries the evaluators found in general that (initiatives for) interventions were based on considerations of necessity and effectiveness in the concrete circumstances related to the case or issue at hand, but with a lack of long-term perspective. The implementation met with respect from the colleagues at various embassies for the professional competence with which it was done. Again, the work is hardly made visible and rarely evaluated and conclusions with regard to effects and efficiency are therefore seldom drawn. This does not contribute to including the actual experience in future plans.

At least one (overall) plan is confirmed by the findings of this evaluation. That is the choice to work on human rights issues increasingly within the framework of the EU CFSP. This is clearly demonstrated by the findings on China and Iran, but also on Indonesia and Mexico, and to a lesser extent by the findings on Rwanda

The strategic choice of contributing to a strong and co-ordinated EU approach on human rights through the EU CFSP is, in the view of the evaluators, a rational one for a small country such as the Netherlands. Contributing to the efforts of the EU is likely to be more effective than operating in isolation. At the same time it provides for protection against repercussions from the strong international players like China and relatively important regional players like Indonesia and Iran.

The drawback is that it also means compromises must be accepted when there are diverging views between the EU partners. In view of this, more translation of lessons learned into new plans are important to keep a clear view on the priorities, objectives and plans with which the Netherlands enters the EU debate.

8.2.4 Raising concerns in various fields of foreign policy

The other main area of foreign policy that was found to be used for the promotion and protection of human rights was the field of development co-operation through ODA.

With China and Iran this is done through a special human rights facility included in the development co-operation budget of the Netherlands. With Indonesia and Rwanda there are structural development co-operation relationships in which the promotion and protection of human rights are integrated in the development co-operation relationship. With Mexico there is no development relationship.

The relationship in the field of ODA is not so much used to raise concerns and to put pressure on the government of the recipient country to improve specific human rights issues or situations, but rather to contribute to the improvement of the infrastructure relevant to human rights protection, such as for example the judicial sector, development of the civil society sector or building the capacities of independent media.

The exception to this is Rwanda, where the political dialogue and ODA are integrated in the MoU. The combination of being an important donor and engaging regularly and clearly on human rights issues in the political dialogue seems to give the Netherlands a strong leverage in human rights issues.

With regard to support through ODA in the field of human rights, interlocutors interviewed by the evaluators frequently expressed concern about the lack of co-ordination between donors, to the detriment of maximising the strategic effects of donor support. In each of the countries visited attempts were undertaken to improve the situation.

With regard to raising human rights concerns in other fields of foreign policy, the evaluators found inclusion of human rights concerns in the military co-operation with Indonesia and inclusion of concerns on labour rights in economic relations with Mexico by encouraging Dutch companies operating in Mexico to abide by the OECD guidelines on corporate social responsibility.

8.2.5 Co-operation with actors other than the government

With regard to each of the countries it was found that a range of contacts is maintained with international (UN) organisations to exchange views and experiences, with other governments within the framework of the EU, but also outside the EU, and with international NGOs, such as Amnesty International, Human Rights Watch and the Fédération Internationale des Droits de l'Homme.

Whenever necessary *ad hoc* coalitions are formed, such as in the case of Indonesia and the issue of impunity, where there was strong co-operation with various non-EU embassies.

In China and Iran the scope for co-operation with civil society actors is extremely limited, but does take place. Due to the fact that the Netherlands has no funding for NGO activities in Mexico there is extremely limited contact and no co-operation with the civil society sector.

8.3 Effectiveness of political efforts, based on case studies

The assessment of the effectiveness in various case studies has shown the following results.

With regard to China, Iran and Rwanda, interventions on behalf of individuals (China and Iran) and NGOs (Rwanda) were reviewed. The conclusion is that raising individual cases or situations of NGOs with the authorities is likely to have contributed to positive short-term effects for the individuals/NGOs concerned. Apart from that, the interventions may have added to the awareness of the authorities of the principle value of protecting the rights of individuals and the rights of civil society. Since the same cases were raised by many different actors in different settings, it is difficult to attribute (small) successes to a particular actor or particular intervention strategy. The lesson learned is rather that continuous, consistent and concerted efforts bear fruit.

With regard to Indonesia, where the establishment of and trials before the *ad hoc* East Timor Tribunal were reviewed, it was concluded that the Netherlands has put a lot of effort into this issue. Even though the outcome was not positive overall (sub-standard procedures, minimal sanctions that were overturned mostly on appeal) and even though the efforts of the Netherlands were not the only factor, the following processes were supported bilaterally and by working through the EU and the UN:

- establishment of the tribunal and widening (although to a limited extent) the scope of jurisdiction
- concrete EU and UN actions, enhancing the pressure on the Indonesian authorities
- prosecution and conviction of some alleged violators

- renewed involvement of the UN at Secretary General level
- lending support to Indonesian actors who were committed to redressing the situation of impunity.

The Netherlands is a small country. Hence it needs in many cases to secure the support of the EU partners to carry more weight in striving to achieve its (human rights) policy objectives. It also needs to secure support in international fora, such as the UNCHR and the UN GA Third Committee. In general the conclusion is that the Netherlands has been successful in securing such support in relation to various situations in the countries included in this evaluation.

Overall conclusions regarding the effects of the interventions on issues of long-term, structural concerns are difficult to draw. The evaluation has been able to assess few if any positive results regarding the issues of freedom of religion in China, impunity in Indonesia, the executions and torture in Iran, torture in Mexico and freedom of expression in Rwanda. Whereas it is clear that such serious concerns cannot be solved in a relatively short period of several years, it is thus all the more important to define specific steps in a longer term policy and strategy for such a period, in order to monitor and evaluate results and to draw conclusions from the lessons learned.

ANNEX 1 TERMS OF REFERENCE (IN DUTCH)

Evaluatie mensenrechtenbeleid; Concept terms of reference deelstudie politieke inzet in bilaterale betrekkingen; Vastgesteld 12 augustus 2004

1 Aanleiding

Een FEZ/IOB inventarisatie van evaluaties heeft het beleidsterrein goed bestuur, mensenrechten en vredesopbouw als witte vlek geïdentificeerd. Een terreinverkenning op het gebied van goed bestuur en mensenrechten heeft dit bevestigd. Dit vormde de aanleiding om een evaluatie te entameren op het gebied van de mensenrechten, waarbij wordt nagegaan in welke mate de beleidsuitvoering overeenkomt met de voornemens; en in welke mate de uitvoering van het beleid via verschillende instrumenten efficiënt en effectief is geweest. Omdat het een complex beleidsterrein betreft is het besluit genomen de evaluatie op te splitsen in een aantal deelstudies.¹⁸⁶ Twee deelstudies hebben betrekking op uitgaven in het kader van OS: de deelstudie NGO's en de deelstudie programma's en projecten. In de deelstudie Nederlandse inzet in de VN Commissie voor de Rechten van de Mens en in de voorliggende deelstudie staan de politieke inspanningen centraal. In de landenstudie Guatemala zijn zowel de politieke inzet als de uitgaven in OS kader onderwerp van evaluatie. De voorliggende studie wordt beperkt tot vijf landen: Indonesië, China, Iran, Rwanda en Mexico.¹⁸⁷ Via de selectie van landen binnen de deelstudies wordt een relatie tussen de verschillende deelstudies gelegd. Deze relatie komt in het syntheserapport aan de orde.

2 Nederlands beleid

In 1979 werd er een belangrijke nota uitgebracht: 'De rechten van de mens in het Buitenlands Beleid'.¹⁸⁸ De nota stelt dat op democratische landen de verantwoordelijkheid rust zich in te zetten voor de opbouw van een internationale rechtsorde waarin de vrije geestelijke en maatschappelijke ontplooiing van alle mensen met kracht wordt bevorderd. De twee globale doelstellingen zijn het totstandkomen van internationale normen en de feitelijke naleving van die normen. De naleving wordt beoogd via: het bevorderen van voorlichting; het bevorderen van het tot stand komen en functioneren van internationale procedures voor toezicht op de naleving van de aanvaarde normen; en het reageren op specifieke situaties waar inbreuk op mensenrechten plaatsvindt, met inbegrip van het voorkomen van schendingen.

Er zijn drie voortgangsnotities verschenen (1987, 1991, 1997)¹⁸⁹ en in 2001 verscheen er een nieuwe notitie: Mensenrechtenbeleid.¹⁹⁰ Deze notitie stelt dat het beleid nog steeds is gefundeerd op de nota uit 1979.

¹⁸⁶ Voor meer informatie over deze deelstudies wordt verwezen naar de startnotitie.

¹⁸⁷ Het selectieproces is beschreven in de paragraaf over reikwijdte en representativiteit.

¹⁸⁸ Tweede Kamer, zitting 1978-1979, 15.571, nrs.1-2.

¹⁸⁹ Tweede Kamer, vergaderjaar 1986-1987, 19.700; Tweede Kamer, vergaderjaar 1990-1991, 21.800; Tweede Kamer vergaderjaar 1996-1997, 25.300

¹⁹⁰ Tweede Kamer, vergaderjaar 2000-2001, 27.742

De context is sinds 1979 evenwel sterk veranderd. Omdat het instrumentarium zowel op het gebied van de burger- en politieke rechten als op dat van de economische, sociale en culturele rechten als vrijwel voltooid wordt beschouwd, verschuift het accent van de totstandkoming van normen naar de naleving van die normen.

In iedere memorie van toelichting sinds 1990 komt het beleidsveld mensenrechten aan de orde, zowel in nationaal als in internationaal verband. In algemene zin wordt het beleid in de jaren '90 niet gewijzigd, maar er zijn wel accentverschuivingen. In de eerste plaats komt de nadruk meer op toezichtmechanismen en op naleving van normen, en minder op normstelling, te liggen. In de tweede plaats wordt samenwerking in EU kader steeds belangrijker bij de totstandkoming en implementatie van het beleid en in de derde plaats krijgt de samenhang tussen ontwikkelingssamenwerking en het buitenlands beleid, met inbegrip van het mensenrechtenbeleid, meer aandacht.

Voor reacties op en het voorkomen van schendingen van mensenrechten in bilaterale contacten staat een scala van politieke instrumenten ter beschikking, waaronder het aangaan van een dialoog met de overheid; stille diplomatie; publieke uitingen; *démarches*; beperking van de diplomatieke contacten en sancties, dit alles al dan niet in EU-kader. Voorts wordt gestreefd naar integratie van mensenrechten in andersoortige bilaterale contacten en kan financiële steun worden gegeven aan activiteiten ter bevordering van mensenrechten. De toepassing van instrumenten is maatwerk, waarbij beperking van diplomatieke contacten en sancties als ultieme maatregelen worden beschouwd.

De nota van 1979 stelt dat er bij de bevordering van de naleving van mensenrechten landenkeuzes dienen te worden gemaakt. Criteria zijn de ernst en massaliteit van schendingen en de mate waarin verwacht mag worden dat een reactie effect teweeg brengt. De mensenrechtennotitie 2001 onderscheidt drie type landen die prioriteit krijgen:

landen waar sprake is van ernstige en/of massale schendingen; landen die willen toetreden tot de EU dan wel tot de Raad van Europa; en landen waarmee Nederland historische of om andere redenen bijzondere betrekkingen onderhoudt.

Bevordering van de mensenrechten kan op gespannen voet staan met andere beleidsdoelen, bijvoorbeeld economische samenwerking. In dit geval is bevordering van de mensenrechten wel belangrijk, maar niet per definitie prioritair. De bevordering van mensenrechten kan ook onderdeel vormen van andere beleidsvelden, zoals economische samenwerking en ontwikkelingssamenwerking. In de notitie 2001 staat het voornemen om tot een nog bredere integratie van het mensenrechtenbeleid in het buitenlandse- en ontwikkelingsbeleid te komen.

3 Doel van de evaluatie en onderzoeksvragen

Het doel van de evaluatie is inzicht te verwerven in de aard van de politieke inspanningen die Nederland in bilateraal verband doet ter bevordering van de mensenrechten; en voor een beperkt aantal gevallen te beoordelen in hoeverre de inzet van hierbij toegepaste instrumenten tot het beoogde effect heeft geleid.

Dit houdt in:

- 1 Inventarisatie van voornemens tot politieke inzet van Nederland in een geselecteerde groep landen waar sprake is van grove mensenrechtenschendingen;
- 2 Oordeel over de mate waarin de voornemens tot politieke inzet zijn gerealiseerd;
- 3 Voor een beperkt aantal casussen: oordeel over de mate waarin en de omstandigheden waaronder de politieke inzet effectief is geweest.

1 Voornemens tot politieke inzet

- Wat is de omvang van de problematiek in termen van aard, ernst en massaliteit van schendingen?
- Bestaat er een analyse van de situatie waarin Nederland deze problematiek onderkent?
- Op welke wijze wordt deze problematiek geadresseerd in beleidsplannen?
 - Bestaat er een strategie om schendingen van mensenrechten tegen te gaan en om structurele bescherming van de rechten van de mens te bevorderen? Zo ja, is deze strategie vertaald in een actieplan?
 - Is er sprake van politieke inzet en welke instrumenten zullen daarbij worden gehanteerd?
 - Op grond van welke motieven is de keuze voor het al dan niet inzetten van instrumenten tot stand gekomen?
 - Op welke manier worden mensenrechten geadresseerd binnen andere beleidsterreinen die een invloed kunnen hebben op de mensenrechtensituatie, zoals economische samenwerking of ontwikkelingssamenwerking?

2 Realisatie van voornemens tot politieke inzet

- Op welke wijze heeft Nederland in haar bilaterale contacten met de regering uitdrukking gegeven aan zorgen over de mensenrechtensituatie? Hoe heeft de besluitvorming terzake gestalte gekregen?
- Op welke wijze heeft Nederland in EU verband uitdrukking gegeven aan zorgen over de mensenrechtensituatie? Hoe heeft de besluitvorming terzake gestalte gekregen?
- Komt de politieke inzet, i.e. de toepassing van de verschillende instrumenten, overeen met de voornemens? Zo nee, welke factoren hebben ertoe geleid dat er van de oorspronkelijke plannen is afgeweken? Is het feit dat Nederland in EU kader opereert hierop van invloed geweest? Is het feit dat andere doelen van het buitenlands beleid conflicteerden met het mensenrechtenbeleid hierop van invloed geweest?
- Werden er instrumenten ingezet die additioneel waren aan de voornemens? Zo ja, welke en op basis van welke gebeurtenissen?
- Zijn voornemens om mensenrechten binnen economische samenwerking en ontwikkelingsamenwerking te adresseren gerealiseerd?
- Op welke wijze heeft Nederland samengewerkt met andere actoren dan de regering teneinde de beleidsvoornemens te realiseren?

3 Effectiviteit van de politieke inzet

De effectiviteit van de politieke inzet zal worden beoordeeld aan de hand van een aantal cases, minimaal twee in elk land.

- In welke mate heeft de NL politieke inzet in bilateraal verband een bijdrage geleverd aan verbetering in de mensenrechtensituatie cq aan het voorkomen van de verslechtering hiervan?
- In welke mate heeft de politieke inzet van de EU een bijdrage geleverd aan verbetering in de mensenrechtensituatie cq aan het voorkomen van de verslechtering hiervan?

4 Reikwijdte en representativiteit

De deelstudie illustreert aan de hand van vijf landen hoe binnen het Nederlandse mensenrechtenbeleid de toepassing van verschillende instrumenten die zijn samen te vatten onder de noemer 'politieke inzet' gestalte krijgt. Voor een beperkt aantal casussen binnen deze landen wordt beoordeeld in hoeverre deze inzet effectief is geweest. Er is geen sprake van representativiteit.

De evaluatieperiode loopt van 1999 tot en met 2003.

In de vijf geselecteerde landen is sprake van ernstige en/of massale mensenrechtenschendingen. Er is gekozen om vier landen in de studie op te nemen waar bevordering van de mensenrechten een belangrijk onderdeel vormt van de bilaterale betrekkingen en een land waar dit slechts in beperkte mate het geval is.

De selectie van landen is op basis van een beredeneerde keuze tot stand gekomen. Daarbij vormde ernst en massaliteit van schendingen een belangrijk criterium. Voorts vormde aandacht voor de mensenrechtensituatie in de Tweede Kamer een belangrijk criterium. Hieronder staan de geselecteerde landen, voorzien van beknopte informatie over economische samenwerking en ontwikkelingssamenwerking. Deze worden in de notitie van 2001 nauw met het mensenrechtenbeleid verweven beleidsvelden genoemd.

- 1 Indonesië is geselecteerd als land waarmee op historische gronden bijzondere betrekkingen bestaan. Amnesty International rapportage meldt ernstige en massale mensenrechtenschendingen. Economische samenwerking vormt een belangrijk bestanddeel van de buitenlandse betrekkingen met Indonesië. Het land is een partnerland. Indonesië is een van de landen waar de IOB/UNDP evaluatie van het goed bestuurprogramma van UNDP wordt uitgevoerd.
- 2 Mexico is geselecteerd als een van de landen waar ernstige schendingen plaatsvinden (Amnesty International rapportage). Het land heeft een EU associatie akkoord. Economische samenwerking vormt een belangrijk bestanddeel van de buitenlandse betrekkingen met Mexico. In het jaarplan 2003 worden de mensenrechten slechts in beperkte mate geadresseerd.
- 3 China is geselecteerd als een van de landen waar ernstige en massale schendingen plaatsvinden (Amnesty International rapportage). De mensenrechtensituatie is regelmatig aan de orde gesteld in de Tweede Kamer. Er is een EU mensenrechtendialog. Economische samenwerking vormt een belangrijk bestanddeel van de buitenlandse betrekkingen met China.

China was een GMV land, waar een bescheiden programma ter verbetering van de rechtsstaat in uitvoering is. Momenteel is het een 'mensenrechten-modaliteit' land.

- 4 Iran is geselecteerd als een van de landen waar ernstige en massale schendingen plaatsvinden (Amnesty International rapportage). De mensenrechtensituatie is regelmatig aan de orde gesteld in de Tweede Kamer. Er is een EU mensenrechtendialoog. De economische samenwerking is beperkt van omvang.
- 5 Rwanda is geselecteerd als een van de landen waar ernstige en massale schendingen plaatsvinden (Amnesty International rapportage). Het land is regelmatig aan de orde gekomen in de Tweede Kamer. Er is vrijwel geen economische samenwerking. Rwanda is een partnerland met een programma ter bevordering van de rechtsstaat.

5 Onderzoekopzet en methode van gegevensverzameling

Voor de inventarisatie zal aan de hand van jaarverslagen van internationale NGO's als Human Rights Watch, Amnesty International en VN rapportages de problematiek in kaart worden gebracht. Voorts zal worden nagegaan welke voornemens tot politieke inzet er bestonden bij de Nederlandse regering om schendingen van mensenrechten tegen te gaan. Deze inventarisatie van de beleidsvoornemens is ex-post en beschrijvend. Jaarplannen en -verslagen, politieke rapportage en ambtsberichten vormen hiervoor de bronnen.

De beoordeling van de realisering van de voornemens tot politieke inzet is ex-post en heeft een toetsend karakter. De realisering van de inzet van instrumenten die worden aangemerkt als 'politieke inzet' wordt vergeleken met de voornemens tot inzet van deze instrumenten. Jaarplannen en -verslagen, politieke rapportage, ambtsberichten, informanten op ambassades en regiodirecties en onafhankelijke informanten vormen de bronnen.

De beoordeling van de effectiviteit van de politieke inzet is eveneens ex-post en heeft een toetsend karakter. Er wordt hierbij een benadering gevolgd, waarbij het oordeel is gebaseerd op de visie en beoordeling van verschillende partijen. In ieder land worden enkele casussen gekozen. Per casus wordt beoordeeld in hoeverre, en onder welke omstandigheden, de inzet van een instrument of een combinatie van instrumenten tot het beoogde effect heeft geleid. Het oordeel komt tot stand op basis van archiefonderzoek en interviews. Informanten op Nederlandse ambassades en regiodirecties, informanten werkzaam op Nederlandse vakministeries, informanten op enkele andere ambassades, vertegenwoordigers van mensenrechtenorganisaties en onafhankelijke informanten vormen de bronnen.

De evaluatiematrix is beperkt tot voornemens tot politieke inzet en de realisering daarvan. Bij de indicatoren wordt een (niet limitatief) aantal instrumenten genoemd. Na archiefonderzoek in de geselecteerde landen, wordt de externe deskundige verzocht voor de casussen inzake de effectiviteit van de politieke inzet, een voorstel voor de toe te passen methodologie ter goedkeuring voor te leggen aan IOB.

Figuur 6 Evaluatiematrix

	INDICATOREN	BRONNEN	METHODEN	EVALUATIE
Voorname tot politieke inzet	Beoogde (EU) dialoog met regering Voorname tot rapportage Voorname tot bijwonen processen Voorname tot contacten met mensenrechtenorganisaties	Jaarplannen Politieke rapportage Ambtsberichten Informanten op ambassade en regiodirectie	Archiefonderzoek Interviews	
Mate waarin beleidsvoorname zijn gerealiseerd				
Politieke inzet	(EU) dialoog Démarches Publieke uitingen, bv rapportage Bijgewoende processen Contacten met mensenrechtenorganisaties	Jaarverslagen Politieke rapportage Ambtsberichten Informanten op ambassade en regiodirectie Informanten op ambassade en regiodirectie Overige documenten, zoals literatuur en kranten	Archiefonderzoek Interviews	

6 Organisatie

Inspecteur Marijke Stegeman is verantwoordelijk voor de opzet en begeleiding van het deelonderzoek. Dit houdt in het informeren van betrokken partijen en het organiseren van archiefonderzoek, deelname aan en begeleiden van de uitvoering. Onderzoeksmedewerker Inge Sturkenboom doet dossierstudie ter voorbereiding van het onderzoek.

Externe deskundigen worden aangetrokken voor het analyseren van de dossiers, voor het houden van interviews in de betrokken landen en voor de verwerking van de gegevens en de analyse van de resultaten.

Een referentiegroep bestaande uit drie externe en drie interne deskundigen begeleidt de evaluatie.

7 Product

Het onderzoek resulteert in een werkdocument. Besluitvorming over de wijze van publicatie vindt plaats na afronding van het onderzoek.

8 Tijdschema

De totale tijdsduur is geraamd op zes tot acht maanden.

- | | |
|--|-------------------------------|
| • Vooronderzoek | juli-september 2004 |
| • Analyse dossiers en interviews | september 2004 - januari 2005 |
| • Analyse gegevens en opstelling rapport | februari - maart 2005 |

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