

Contribution of the dutch NGO Stichting Meldpunt Misbruik Identificatieplicht to the First Universal Periodic Review of the Netherlands by the UN Human Rights Council

Stichting Meldpunt Misbruik Identificatieplicht
Adres Lauwerecht 55, 3515 GN Utrecht, Netherlands
e-mail: meldpunt@ID-nee.nl
website: www.id-nee.nl
Contact: Johan van Someren

November the 27th 2011

Dear Sir/ Madam,

The NGO Stichting Meldpunt Misbruik Identificatieplicht welcomes the opportunity provided by the Office of the High Commissioner on Human Rights to submit a report as input for the First Universal Periodic Review (UPR) of the Netherlands. It is the first time that our organisation is participating in this review.

Meldpunt Misbruik Identificatieplicht is founded in 2004. Its purpose is the remaining of the right on personal freedom and integrity and to oppose the infringement and violating of civil rights and the tendency that technical developments will determine the law in and the behave of human beings.

We are aware of the fact that the Dutch section of the International Commission of Jurists (NJCM) submitted a report in cooperation with several Dutch NGOs including the Platform Bescherming Burgerrechten. Being a member of this organisation, we can in general agree with the tendency and conclusions of this report. However we feel the need to focus the attention of the Office of the High Commissioner on Human Rights on developments regarding the special interests of our NGO, such as the the dutch law on compulsory identification and its consequences in judicial and technical way. The main reason for our contribution is that we are deeply concerned about the use of identification documents and biometric technologies for verification, identification and criminal investment purposes.

Privacy and identification requirements

After the events of 9/11, the Netherlands has adopted numerous laws and policies which either infringe or violate the right to privacy as protected in several international treaties, signed also by the Netherlands. We mention in this context the introduction of the law on compulsory identification of 2005 and biometric passports and ID cards. The law on compulsory identification gives a wide range of government and law enforcement officials the power to demand identification in the course of their duties. Refusal is regarded as a criminal offense and will be fined. Legally a fine for not complying identification requirements is only valid in combination with another penalty. Nevertheless, since the introduction of the compulsory identification scheme, more than 100 000 citizens are fined without fulfilling this legal condition.

Biometrics, fingerprints and facial scans

In August 2006 biometric passports and ID cards were introduced containing a chip with personnel data including a facial scan of the holder. In September 2009 fingerprints were added as a result of the European guideline for travel documents. The European guideline lays down that a digital facial image and fingerprints should be stored on a microchip but the Netherlands are going much further. The changed passport law accepted by the parliament and the upper house in June 2009 regulates the storage of biometric data of all passports and ID cards in a central database to be accessible

24/7. The database is planned not only for verification of travel documents but also for identification of suspects in the context of criminal investigation and counter terrorism. The central database was strongly criticized by the Dutch Data Protection Authority, but its power is limited.

In May this year it came out that fingerprints of passport applicants stored in local databases are of very poor quality. The false acceptance rate lies between 20% and 25%. The responsible Minister of Home Affairs assured the parliament that the fingerprints in the system will be deleted, but until now this deleting has not taken place. The minister did not rule out the central database and its possible use for fingerprint registration in the future if this technology could be improved.

In 2010 the '*Wet identiteitsvaststelling verdachten, veroordeelden en getuigen*' literally the 'Law on identification of suspects, condemned man / women and witnesses' was introduced. It gives the police and other officials the possibility to take facial scans and fingerprints of suspects for storage in a special database linked with a judicial number for prosecution and criminal investigation purposes.

Wireless mobile fingerprint scanners

This year the Ministry of Justice and Security announced the introduction of wireless mobile fingerprint scanners. A pilot project to test these fingerprint scanners is being conducted between November 2011 and early 2012 by four regional police forces and the Royal Netherlands Marechaussee, (the military police responsible for passport and border control). The primary objective of this project is to detect illegal immigrants by digitally verifying the fingerprints of individuals against those in the national database for asylum seekers. It is the intention of the Ministry to extend the use of mobile fingerprint scanners if the pilot turns out to be successful, it was announced that these mobile fingerprint scanners could be used to check if somebody has to pay a fine.

Unfortunately judicial review of formal legislation is prohibited by the Dutch constitution. Judicial review of government policies and the possibilities for citizens to go in court for infringement of their privacy are limited.

Conclusions

We believe that the law on compulsory identification, the changed passport law of 2009, the law on identification of suspects fail fundamental tests of necessity and proportionality. In combination with biometric technologies, they create a serious infringement of the right on privacy and breach key elements of fundamental law.

We believe that a central database with facial scans and fingerprints of all dutch citizens violates in the strongest possible way the fundamental rights on privacy and personal freedom as laid down in international treaties which also the Netherlands have signed.

We also believe that the use of mobile fingerprint scanners is a serious threat to the right of privacy of all citizens and violates the legal conditions for registering and comparing the fingerprints of asylum seekers.

Recommendations

We recommend the Human Rights Council to urge the Netherlands to change the passport law and to withdraw the intention for a central database with facial scans and fingerprints of all dutch passport and ID card holders and even the storage of fingerprints of passport and ID card holders in local databases.

We recommend the Human Rights Council to urge the Netherlands to systematically assess the impact of its policies and legislation and to recognise human rights including the right of privacy of its citizens as laid down in international treaties and to make such assessment apparent in relevant documentation.

This contribution is written on behalf of Stichting Meldpunt Misbruik Identificatieplicht,

Johan van Someren