

UNCHECKED POWER

ID CHECKS AND COLLECTION OF DATA FROM PEACEFUL PROTESTERS IN THE NETHERLANDS



**PROTECT
THE PROTEST**

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EXECUTIVE SUMMARY

“At one point, seven or nine police officers were surrounding us, while there were only four of us. We were told we were doing something that was not allowed, so they wanted to see our ID. (...) And they frisked the people who did not want to show their ID. That was really uncomfortable. I continued to feel helpless about that for days. When it was over, the police officer said that we did in fact have the right to demonstrate. But by then it had already happened, with so many people surrounding you. They invoke their position of power. I very quickly gave my ID because I was afraid of being searched. (...) I feel like they are attempting to make me refrain from demonstrating.”

- Robert, protester at an anti-racism demonstration in November 2020

Throughout history, protests have been a vehicle for advancing human rights. Protests are a peaceful and dynamic way for people to exercise their human rights to freedom of expression and freedom of assembly. These rights enable people to express their opinions and ideas, expose injustice and abuse, and demand accountability of those in power. States have a duty to respect, protect, and facilitate all demonstrations. Yet states often view protests not as a human right, but as a threat to public order.

Over the past years, Amnesty International has found that states are increasingly imposing obstacles to the right to protest, including by surveillance of protesters. In the Netherlands, authorities are turning to surveillance tools to gather information about protests and protesters. This shows that the authorities view protests first and foremost as a risk, instead of the exercise of a human right that they are under a duty to facilitate. The police collect data from social media, deploy camera surveillance during protests, and knock on activists' doors to ask questions about their participation in protests. Other surveillance technologies, such as drones, are being rolled out by the police as experiments.

This report zooms in on the use of ID checks by the police as a surveillance tool. During demonstrations, the police regularly check organisers and participants to gather information about protests and protesters. The police have established a practice of checks and data processing that targets peaceful protesters. This practice violates the right to privacy and has a chilling effect on the right to peaceful assembly. It is important to note that surveillance of protest may have a discriminatory effect. Testimonies from protesters demonstrate that, in actual practice, the harms to protest rights are borne disproportionately by anti-racism protesters, transgender or gender non-conforming people, and people without residence status or awaiting approval of their residence application.

ID CHECKS AND AUTOMATED DATA PROCESSING IN POLICE DATABANKS

During a check, the police officer scans the ID to obtain personal data from the protester. By scanning the ID, the police officer retrieves the person's name, data, place of birth and residence, and police data from 14 different databanks. ID checks are also automatically registered in the databanks, and the police officer who carried out the check may add any information they consider relevant. The police databases are opaque and can lead to unknown and unknowable consequences for the people listed in them. One protester, Sander, reported that the police came to his house after an ID check to ask further questions:

“In January 2022, I and about 10 others organised a protest at the photo op of the newly formed Cabinet. The police checked our IDs. Now, fast forward to March 2022: two police officers showed up at my door four times in one week. It was a local police officer plus someone who did not introduce himself. I was not at home, because I travel a lot for my job. But I made reports of everything, based on what my roommate told me about those visits.

Weeks later, I called the local police officer because I still wanted to know their reason for these visits. He told me some vague story about wanting to ‘get acquainted’ because of my ID check in January.”

The data processing usually takes place without the knowledge or consent of the person being checked. Amnesty International staff assisted 20 protesters in requesting their personal data from the police to gain insight. Marisella, an anti-racism activist, was taken aback by the manner in which the police referred to her in their entries:

“I started a procedure to access my data, because there is a part that I had not been allowed to see yet. What struck me most in what I did see of the records was the tone in which I was referred to. Commenting on our protest, an officer was quoted as saying, among other things: ‘they discriminate against us white people too’.”

UNCONTROLLED DISCRETIONARY POWER OF THE DUTCH POLICE

Under Dutch law, police officers have broad discretion to demand ID. Every person of 14 years or older has the duty to show ID to a law enforcement officer upon the first demand, as far as “reasonably necessary for the performance of the police task”. For the data processing that occurs during and after a check, the police refer to Article 3 of the *Dutch Police Act* as the legal basis. This provision does not provide a specific legal basis, but merely refers to the police’s general tasks of “ensuring effective law enforcement and rendering assistance to those who need it”. Article 3 of the *Dutch Police Act* can therefore not be considered a legitimate legal basis for the processing of personal data after ID checks. Such broad discretion creates a risk of arbitrariness and discriminatory use of powers and is unlawful. The lack of oversight of ID checks also means that there are insufficient safeguards to protect against the discriminatory effects mentioned above.

Both the ID checks and the subsequent processing of protesters’ personal data in police databanks are in violation of the right to privacy. ID checks in the context of demonstrations may only be considered necessary when there is a reasonable suspicion of a sufficiently serious criminal offence based on individualised and objectively verifiable indicators. There may be instances where the processing of personal data is necessary for the investigation of a crime, but an assessment needs to be carried out on a case-by-case basis, adhering to the human rights requirements of legality, necessity and proportionality.

CHILLING EFFECT ON THE RIGHT TO ASSEMBLY

In addition to the violations of privacy, ID checks also have an impact on the right to assembly. While most people will cooperate with an unlawful check, those who refuse can be arrested. Refusal to cooperate with an unlawful ID check thus ends their exercise of the right to assembly.

“When I arrived for the assembly, the police asked for my ID. I refused because they did not give me a reason. According to the lawyer I consulted, I did not have to show my ID. Nevertheless, I was arrested and taken away in handcuffs. The police officers did not explain to me why I needed to show identification. I feel like this has taken away my right to demonstrate.”

- Birgit, climate activist

These arrests are disproportionate and in violation of the right to assembly as they criminalise protesters. Even the threat of arrest or surveillance may cause a *chilling effect* on the right to freedom of peaceful assembly, as it can pre-emptively dissuade people from exercising their right to assembly.

The police practices documented in this report directly contravenes what the legislative drafting history of the *Compulsory Identification Act* suggests is desirable or permissible. When the *Compulsory Identification Act* was originally proposed, the Dutch government assured critics that a chilling effect would be prevented, as ID checks would be allowed only “to the extent reasonably necessary for the performance of the police task”. According to the government, this would “make clear that obstructing participation in regular societal activities cannot be part of this”. Apart from situations where someone is a suspect, they held that it would be “hard to imagine” what purpose would be served by recording personal data for the purpose of carrying out other police duties. The government stated that its commitment to not register ID checks would be a safeguard against the possibility of a chilling effect.

This report shows that these commitments by law-makers are being flouted by the police in practice. For years, the police have been misusing their discretionary power to conduct ID checks for the purpose of identifying protesters and processing their personal data. Under threat of arrest, the police have effectively created a privacy tax on the right to protest, as a result of which people in the Netherlands are forced to have

their – potentially sensitive – personal data mined by authorities, and accessed at will by thousands of police, for uses that are untransparent to protesters.

OBSTACLES TO REMEDIES AND REDRESS

Effective remedies after an unlawful ID check are scarce and often hampered by numerous obstacles. Most protesters cooperate with unlawful checks so that they can continue their participation in an assembly. A protester who refuses to cooperate is usually arrested and removed from the location, but released after a few hours without prosecution. Challenging the unlawful check in a civil case requires a lengthy and costly legal process, and not many people have the time and resources (financial and otherwise) to do so.

Protesters can file a complaint with the police, but the complaints procedure has serious shortcomings. The assessment of the case involves an internal procedure, carried out by the police themselves. Only a small number is reviewed by a complaints committee, which then issues an advice. A complainant may then appeal to the National Ombudsman, which decisions are non-binding and advisory. No public data is made available on complaints or their outcomes. The only formal decision following a complaint about an unlawful ID check that Amnesty International is aware of is one that involves an Amnesty International staff member. In May 2021, 2.5 years after filing the complaint, this person received a decision that affirmed that the police's check of his ID during a peaceful protest had been unlawful. Nevertheless, this practice continues throughout the Netherlands.

RECOMMENDATIONS

To the Dutch legislator:

1. Amend the legislation and accompanying instructions for ID checks to clarify that such checks may not be carried out during peaceful assemblies, unless there is a reasonable suspicion of a sufficiently serious criminal offence based on individualised and objectively verifiable indicators. Make it clear and unambiguous that the police may not 'ask' for ID if they have no legal authority to demand it.
2. Require police to systematically record ID checks and monitor practices for public accountability. The registrations should describe, among other things, the circumstances and reasonable suspicion, and should be appropriate for examination of possible discriminatory effects.
3. Strengthen data protection rights in the planned amendment of the Dutch Police Data Act (*Wet politiegegevens*).
4. Introduce effective remedies for unlawful ID checks and related unlawful arrest and detention, including immigration detention.

To the Ministry of Justice and Security and the Dutch police:

5. Assume that an assembly is peaceful by default, unless there is convincing evidence to the contrary. View peaceful assembly and protesters not as threats that must be monitored or controlled, but as the exercise of a human right that police have a legal obligation and thus duty to facilitate.
6. Stop the misuse of ID checks for the purpose of collecting information about peaceful assemblies or protesters. Organisers and participants should not be subjected to ID checks, unless there is a reasonable suspicion of a sufficiently serious criminal offence based on individualised and objectively verifiable indicators.
7. Systematically record ID checks and monitor practices for public accountability. The registrations should describe, among other things, the circumstances and reasonable suspicion, and should be appropriate for examination of possible discriminatory effects.
8. Commission an independent review of the police systems to identify people who are registered in police systems due to their involvement in peaceful assemblies. Conduct this review in cooperation with the Dutch Data Protection Authority, the National Ombudsman, human rights experts and with the meaningful participation of affected communities and individuals.
9. Inform people who have been registered in police systems due to their organisation of or participation in a peaceful assembly. Take appropriate measures to provide them with an effective remedy, including compensation and the deletion of records related to peaceful protest from the police systems. If personal data was shared with third parties, request deletion from other databanks as well.

METHODOLOGY

This report is part of Amnesty International’s global flagship campaign “Protect the Protest” which will challenge attacks on peaceful protest, act in solidarity with those targeted and support the causes of social movements pushing for human rights change. The experiences of activists were the starting point for this research on unlawful identity card (ID) checks in The Netherlands. Protesters regularly report ID checks by the police to Amnesty International, and staff of the organisation often participate in protests where they experience a check themselves or observe that others are asked for their ID by the police. Amnesty International has been monitoring assemblies in the Netherlands since 2016 and has observed ID checks of peaceful protesters (e.g. at two different protests for climate action in The Hague in May 2020 and March 2021). Amnesty International has been working on protest rights for almost ten years, over the course of which it has had numerous meetings and exchanges on issues related to protest rights with government officials, local authorities, academics and experts. The organisation has built an extensive network of activists from a range of social movements and activist groups, a great number of whom Amnesty International has had contact with on numerous occasions, related to different protests over the years. These networks include activists who protest for climate justice, refugee rights, anti-racism or are pro-Palestine. As part of the preliminary research for this report, Amnesty International also spoke with an activist from a farmers’ group as well as activists protesting against COVID-19 measures. Unfortunately, this has not resulted in further participation in the research. The cases documented in this report all pertain to assemblies that occurred between September 2020 and November 2022 and came to the attention of the organisation through direct observation by our researchers who were monitoring assemblies in the Netherlands and first-hand accounts from activists.

This report focuses on ID checks as one of the ways in which protesters are surveilled. Amnesty International investigated different types of surveillance at protests. As part of this research, the organisation conducted interviews with 50 activists between May 2021 and February 2022, to gain insight into the nature, scale and impact of different methods of surveillance employed by authorities at assemblies. Activists were selected for this research based on the organisation’s existing contacts and networks and referrals by others. The interviews were conducted in Dutch and over the phone. ID checks by the police were the most frequently mentioned form of surveillance. Of the 50 participants, 38 noted that either they or a fellow demonstrator had been asked for ID by the police while participating in peaceful protest. Of the 38 participants, 24 people experienced ID checks themselves during a protest. For this report, those 24 respondents were contacted with follow-up questions. Twenty of them responded and gave consent to have their story included in this report. In addition to the people included in the interviews for the research into surveillance of protest, another six people contacted Amnesty International in 2021– 2022 to report ID checks during demonstrations. In email exchanges, the organisation advised them about their rights and the possibility to submit complaints about unlawful checks to the police. Amnesty International further assisted 20 activists in contacting the police to request information on the processing of their personal data. Experiences by Amnesty International staff whose IDs were checked during protests have also been included in the research.

Most of the respondents are long-time participants in the organisation’s network. The information they shared was corroborated by news coverage and other available sources, such as verified videos or audio shared by activists. In addition to the individual interviews, respondents were invited to meetings in April 2022, September 2022, and January 2023 to discuss violations of protest rights in the Netherlands and the findings of this research.

All interviewees gave informed consent for the inclusion of their case in this report. No incentives were provided by the organisation in exchange for interviews. Some of those interviewed requested anonymity,

while others wished to share their identities publicly. For those who opted for anonymity, pseudonyms have been used and all potentially identifying information has been omitted from this report.

Amnesty International further requested documents about surveillance of protests from municipalities and police in the Netherlands through Freedom of Information (Fol) requests. The organisation interviewed government officials from the Ministry of Justice and Security (on 16 September 2021), officials from the police (on 19 October 2021 and 6 December 2021), and officials from the intelligence unit of the National Police (on 31 January 2022).

Preliminary findings from the research were shared with the Ministry of Justice and Security and the Dutch police on 21 December 2022, and they were given the opportunity to respond and to provide comments and clarifications. The Ministry of Justice and Security and the Dutch police sent joint replies on 19 January 2023 and 1 February 2023. The police offered further clarifications in a phone call on 7 February 2023 and in e-mails on 24 February 2023 and 10 March 2023. These responses have been taken into account in the final text. On 4 May 2023, the executive summary of the findings and the recommendations to the Dutch authorities were shared with the Ministry of Justice and Security, the Ministry of Interior and Kingdom Relations, and the police. Amnesty International did not receive a substantive response to the executive summary and recommendations.

The analysis in this report is based on the Netherlands' obligations under international human rights law and standards, including the case law of the European Court on Human Rights (ECHR) regarding the right to freedom of peaceful assembly, the right to privacy, the right to data protection and the right to an effective remedy. Amnesty International also analysed Dutch legislation and case law to examine the scope and interpretation of the legal grounds on which the police conduct the ID checks and the subsequent processing of personal data obtained from protesters. The legal framework that is applied in this report is included in the text boxes throughout the chapters.

Amnesty International thanks all those who participated in this research for their time and for sharing their stories.

1. DIGITAL SURVEILLANCE TOOLS AND REPRESSIVE POLICING OF PROTESTS

“The digital age has opened new space for the enjoyment of the rights to freedom of peaceful assembly and association. There are numerous examples across the globe which demonstrate the power of digital technology in the hands of people looking to come together to advance democracy, peace and development. However, the digital revolution has also brought a range of new risks and threats to these fundamental rights. (...) States have used technology to silence, surveil and harass dissidents, political opposition, human rights defenders, activists and protesters.”

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 17 May 2019, UN Doc. A/HRC/41/41, para. 2-3.

Throughout history, protests have been a vehicle for advancing human rights. The right to peaceful assembly enables people to express dissent, opinions and ideas, expose injustice and abuse, and demand accountability from those in power. Protesting can be a peaceful and dynamic way of exercising the human rights to freedom of expression and freedom of assembly. A number of provisions enshrined in various international and regional human rights treaties protect fundamental protest rights. States have a duty to respect, protect and facilitate all demonstrations.¹ In practice, this means that the state must refrain from unduly interfering with the exercise of this right, protect protesters from violence, provide services (such as traffic management if necessary), and communicate with those organising or participating in a protest to ensure its peaceful conduct.

Yet states too often view protests not as the exercise of a human right, but as a threat to public order. Over the past years, Amnesty International has found that states are increasingly imposing obstacles to protest rights.² In the Netherlands as well, Amnesty International has documented a wide array of undue restrictions on protests in 2022 report *Demonstratierecht onder druk*. These include unnecessarily complicated notification procedures, unlawful arrests, and legislation that criminalises participation in a protest that has

¹ International Covenant on Civil and Political Rights, Art. 21. European Convention on Human Rights, Art. 11; European Court of Human Rights, *Guide on Article 11 of the European Convention on Human Rights. Freedom of assembly and association*, 31 August 2022, para. 33 echr.coe.int/documents/guide_art_11_eng.pdf

With reference to: ECtHR 15 October 2015, no. 37553/05 (*Kudrevičius and Others v. Lithuania*), para. 158; ECtHR 20 February 2003, no. 20652/92 (*Djavit An v. Turkey*), para. 57. See also: ECtHR 5 December 2006, no. 74552/01 (*Oya Ataman v. Turkey*), para. 39; European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines on freedom of peaceful assembly*, derde editie, 15 July 2020, par. 22, [venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)

² Amnesty International, *Protect the Protest! Why we must save our right to protest*, 2022, p. 35, [amnesty.org/en/documents/ACT30/5856/2022/en/](https://www.amnesty.org/en/documents/ACT30/5856/2022/en/)

not been notified to the authorities.³ States should aim to addressing the concerns raised through protests and promote dialogue between authorities and protesters, as well as with society as a whole, in order to find solutions to societal concerns. But instead, states often respond to protests with threats, smear campaigns and stigmatisation and repressive policing of peaceful protesters. States are also turning to digital tools as a means to surveil protesters, invade their privacy and track them down after participating in a protest.⁴ Enhanced and advanced surveillance tools have made it possible for authorities to collect more and more personal data, and technology has enabled increasingly complex data processing.

Amnesty International's research have revealed that one of the ways in which the Dutch police conduct surveillance of protesters is through ID checks. The request of a police officer to show ID may appear trivial, but as the following chapters will explain, these checks are used as surveillance tools: each and every singular ID check carried out by the police is recorded in police databanks. ID checks can also be intimidating, and make protesters feel that they are doing something wrong. Such intimidation was explained by Esther, for example, who participated in a protest in April 2022 against the monarchy at King's Day, a national holiday in the Netherlands:

“Because of my protest sign about the high costs of our monarchy, I was stopped several times by the police for an ID check. When I was near a platform, I was taken away and had to stand a bit further away. Eventually I had to hand in my sign, only realising later that no one could have forced me to do so. (...) For a moment I did not feel at all like I was living in a free country. (...) I had to show my ID four times that King's Day. (...) The frustrating thing is that I was not told what the reason was and what was done with my data. I think I did ask, but I did not get a clear answer. I got the idea that perhaps I was considered dangerous, and I wondered if my data were kept and if my presence on that day could work to my disadvantage in the future, for example if I would want to work in the government.”⁵

Identity checks are only one of the many ways in which protesters are subjected to surveillance. The police also collect and process data from social media,⁶ and deploy camera surveillance during protests, including with CCTV cameras, police phones, telephoto-lens cameras and cameras mounted on police cars.⁷ In a recent case, the police infiltrated an online group chat of activists under a false name, with the purpose of gathering information on upcoming protests.⁸ Other protesters have found the police knocking at their doors and asking questions about their participation in protests.⁹ Ten out of 50 people interviewed reported being visited at home by the police.

Other surveillance technologies, such as drones,¹⁰ facial recognition,¹¹ and online social media monitoring tools,¹² are being rolled out by the police as experiments, in an uncontrolled and non-transparent manner. All of these surveillance methods impact the right to privacy and the right to freedom of peaceful assembly, yet the legal basis for the use of such methods is unclear. Dutch law does not contain specific provisions for

³ Amnesty International Netherlands, *Demonstratierecht onder druk. Regels en praktijk in Nederland moeten beter*, 2022, [amnesty.nl/content/uploads/2022/11/AMN_22_33_demonstratierecht-onder-druk.pdf?x71340](https://www.amnesty.nl/content/uploads/2022/11/AMN_22_33_demonstratierecht-onder-druk.pdf?x71340)

⁴ See for example: Amnesty International, *Ban the scan*, New York City, 2022, online publication, banthescan.amnesty.org/nyc/

⁵ E-mails from Esther, 9 June 2022 and 21 March 2023.

⁶ E. van den Berg and T. Berbers, 'Hoe de politie undercover gaat op een 'online buurtfeest'', NRC, 27 May 2021, nrc.nl/nieuws/2021/05/27/infiltreren-in-een-online-buurtfeest-a4045202; W. Landman and S. Groothuis, *Politiewerk op het web. Een verkennend onderzoek naar online gegevensvergaring door de politie*, Politie & Wetenschap, 2022, politiewetenschap.nl/publicatie/politiewetenschap/2022/politiewerk-op-het-web-380

⁷ Amnesty observed the use of cameras to photograph participants in assemblies in a significant proportion of the demonstrations which we monitored. Amnesty monitored approximately 25 demonstrations from 2016-2022.

⁸ Investico, 'Onderzoek: demonstratierecht in de knel, van koffie naar klappen', 22 March 2023, platform-investico.nl/artikel/onderzoek-demonstratierecht-in-de-knel/

⁹ RTV Noord, 'Aardbevingsdemonstranten krijgen politiebezoek vanwege bezoek minister Wiebes', 9 January 2017, rtvnoord.nl/nieuws/188610/aardbevingsdemonstranten-krijgen-politiebezoek-vanwege-bezoek-minister-wiebes

Leeuwarder Courant, 'Politie bezocht organisatoren demonstratie', 10 January 2018, lc.nl/binnenland/Politie-bezocht-organisatoren-demonstratie-22809300.html

For another more recent example, see: DUIC, 'Gemeente Utrecht wilde een gesprek met klimaatactivist Rozemarijn: 'Zien ze mij als potentiële terrorist?', 2 February 2022, duic.nl/algemeen/gemeente-utrecht-wilde-een-gesprek-met-klimaatactivist-rozemarijn-zien-ze-mij-als-potentiele-terrorist/

¹⁰ AD, 'Politie gebruikt steeds vaker drones', 16 November 2020,

¹¹ Politie, 'Gezichtsherkenning mogelijk ná voorafgaande toets', 24 February 2023,

The police state that they do not use facial recognition technology on real-time bases with camera images recorded in public areas. For more on this, see: Response of the Dutch police and Ministry of Justice and Security, 19 January 2023.

¹² E. van den Berg and T. Berbers, 'Hoe de politie undercover gaat op een 'online buurtfeest'', NRC, 27 May 2021; W. Landman and S. Groothuis, *Politiewerk op het web. Een verkennend onderzoek naar online gegevensvergaring door de politie*, Politie & Wetenschap, 2022; Inspectie Justitie en Veiligheid, *Rapport demonstraties in coronatijd*, 5 November 2020, inspectie-jenv.nl/Publicaties/rapporten/2020/11/05/rapport-demonstraties-in-coronatijd

ID checks or other surveillance methods during assemblies,¹³ nor do the police have written or unwritten policies in place for human rights protection in this context.¹⁴

Surveillance of protests fits within a worrying trend in the Netherlands where police policies and practices are increasingly geared towards gathering information. The police have been investing in ‘information-driven policing’ (*informatiegestuurde politie*).¹⁵ The trend of information-driven policing is inextricably linked to the broader context of control culture and a threat-based mindset within the police.¹⁶ The police claim that more information will lead to more effective policing, allowing them to control risks and intervene before harm even occurs (‘preventive action’).¹⁷ Control culture and a threat-based mindset infringe on people’s rights and freedoms: the police focus not on the right to privacy or the right to freedom of peaceful assembly, but on gathering any information, including personal data, that they think may be relevant in the future. In the 2020 report *We Sense Trouble*,¹⁸ Amnesty International expressed concerns about the trend of “information-driven policing” and concluded that automated data collection to identify potential offenders puts human rights at risk in the following ways:

- Criteria for the inclusion of people in police databanks are often broadly defined and lack transparency, violating the principle of legal certainty;
- Personal data is collected or re-used without people being aware, in databanks that violate the right to privacy and data protection laws;
- People whose personal data is registered in police databanks often cannot seek effective remedy and redress for human rights violations due to a lack of transparency.¹⁹

In the context of public assemblies, the police gather information about demonstrations and people who participate in them to enhance their ‘information position’.²⁰ The police collect information on groups and individuals, their intentions, their modes of operation, expected actions and reactions, scenarios to be considered, and possible implications and risks for managing demonstrations.²¹ In response to FoI requests on surveillance during demonstrations, the police have refused to disclose documents about methods of data collection, tactics, practices and operational decisions.²² The police have argued:

“Because large events, in particular also demonstrations, take place regularly, it is essential that, on the basis of the experiences gained and the information acquired, an appropriate approach can be developed to prevent disturbance of public order, to allow these gatherings to take place in relative peace and quiet, and to be able to vigorously detect and prosecute criminal offences. This is at risk, if, through disclosure, insight is gained into tactics, working methods and information position of the police.”²³

¹³ The police refer to the general policing task described in Article 3 of the Dutch Police Act. Chapter 3.3 explains that this legal basis does not meet human rights standards.

¹⁴ Response of the Dutch police and Ministry of Justice and Security, 19 January 2023. The police are currently working on an ‘ethical framework’ for the deployment of drones. In addition, the police recently published their framework for facial recognition technology. See: Politie, *Gezichtsherkenning mogelijk ná voorafgaande toets*, 24 February 2023,

¹⁵ W. Landman and L. Kleijer-Kool, *Boeven vangen. Een onderzoek naar proactief politieoptreden*, 2016, p. 32; M. den Hengst, T. ten Brink and J. ter Mors, *Informatiegestuurd politiewerk in de praktijk*, 2017, p. 21-24.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Amnesty International, *We Sense Trouble: automated discrimination and mass surveillance in predictive policing in the Netherlands*, September 2020.

¹⁹ Amnesty International, *We Sense Trouble: automated discrimination and mass surveillance in predictive policing in the Netherlands*, September 2020, p. 12-13. The police themselves do not speak of police ‘databanks’ but call them ‘police systems’ or ‘police registration systems’.

²⁰ Response to FoI requests, see: Politie, ‘Korpsleiding, Besluit op Wob-verzoek’, 14 December 2021; Politie Eenheid Amsterdam, ‘Besluit Wob-verzoek cameratoezicht demonstraties Museumplein’, 30 November 2021; Politie Eenheid Den Haag, ‘Besluit Wob-verzoek inzake demonstraties van Extinction Rebellion op 6 januari 2021 en 10 mei 2021’, 29 April 2022; Politie Eenheid Limburg, ‘Besluit Wob-verzoek pro-Palestinabetogingen Vrijthof Maastricht mei 2021’, 30 November 2021; Politie Eenheid Oost-Brabant, ‘Besluit Wob-verzoek intocht Sinterklaas Den Bosch 17 november 2019’, 13 October 2021; Politie Eenheid Oost Nederland, ‘Besluit op grond van Wob’, 30 November 2021; Politie Eenheid Zeeland-West Brabant, Besluit op grond van Wob, 10 November 2021.

²¹ *Ibid.* See also: Investico, ‘Onderzoek: demonstratierecht in de knel, van koffie naar klappen’, 22 March 2023,

²² *Ibid.*

²³ Response to FoI requests, see: Politie, ‘Korpsleiding, Besluit op Wob-verzoek’, 14 December 2021, Annex I, page 1-2; Politie Eenheid Amsterdam, ‘Besluit Wob-verzoek cameratoezicht demonstraties Museumplein’, 30 November 2021, p. 2; Politie Eenheid Den Haag, ‘Besluit Wob-verzoek inzake demonstraties van Extinction Rebellion op 6 januari 2021 en 10 mei 2021’, 29 April 2022, p. 3; Politie Eenheid Limburg, ‘Besluit Wob-verzoek pro-Palestinabetogingen Vrijthof Maastricht mei 2021’, 30 November 2021, p. 3; Politie Eenheid Oost-Brabant, ‘Besluit Wob-verzoek intocht Sinterklaas Den Bosch 17 november 2019’, 13 October 2021, p. 3; Politie Eenheid Oost Nederland, ‘Besluit op grond van Wob’, 30 November 2021, p. 4; Politie Eenheid Zeeland-West Brabant, Besluit op grond van Wob, 10 November 2021, p. 3.

Such an argument starkly reveals that the authorities view protests first and foremost as a risk, instead of the exercise of a human right that they are under a duty to facilitate.²⁴ This must change. Facilitating protest should be the first priority. Surveillance or even the threat of it may have a chilling effect on the right to peaceful assembly, discouraging people from taking part in protests.²⁵ Disproportionately surveilling people who take part in peaceful protest can be stigmatising, and can delegitimise people who exercise their right to freedom of peaceful assembly. This may deter others from publicly joining in or sympathising with their actions. The criminalisation of peaceful protesters – by arresting, detaining or prosecuting them – sometimes involves tactics used by governments to “set a warning example”, and thus silence dissent and instil fear in the wider population to deter them from joining further protests or actions.²⁶

As a rule, authorities should refrain from the use of disproportionate surveillance tools in the context of peaceful assemblies, as these measures can amount to intimidation and harassment of protesters and may have a chilling effect on the exercise of the right to freedom of peaceful assembly. In the context of peaceful assemblies, surveillance may only be justified on a targeted basis, where there is a reasonable suspicion that someone is engaging in or planning to engage in serious criminal offences, and under the very strictest rules, based on the principles of necessity and proportionality and providing for close judicial supervision.²⁷ People should be able to exercise their protest rights free from unlawful or disproportionate surveillance. The use of surveillance techniques for the indiscriminate and untargeted surveillance of people exercising their right to peaceful assembly, both in physical and digital spaces, should be prohibited.²⁸

²⁴ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para 8.

²⁵ Amnesty International, *Protect the Protest! Why we must save our right to protest*, 2022, p. 19 and 34.

²⁶ Amnesty International, *Protect the Protest! Why we must save our right to protest*, 2022, p. 30.

²⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 17 May 2019, UN Doc. A/HRC/41/41, para. 57.

²⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 17 May 2019, UN Doc. A/HRC/41/41, para. 57.

2. MONITORING PROTESTERS THROUGH UNLAWFUL ID CHECKS

2.1 MISUSE OF ID CHECKS TO IDENTIFY PEACEFUL PROTESTERS

During demonstrations, the police regularly demand ID to identify people who participate in protests and gather information about assemblies and the people who participate in them. In the Netherlands, police officers have broad powers to demand ID “to the extent reasonably necessary for the performance of the police task” (as will be further explained in Section 2.3).²⁹ During assemblies, the police use this power to check participants who are not suspected of involvement in any criminal wrongdoing. Robert described his experience with an ID check during an anti-racism demonstration in Alkmaar in November 2020:

“At one point, seven or nine police officers were surrounding us, although there were only four of us. We were told we were doing something that was not allowed, so they wanted to see our ID. We thought: we are not breaking any rules, so you should not ask us for ID. Someone asked if the officer could identify herself. She pointed to her uniform and said: this is my ID. She did not want to reveal her name. And they frisked the people who did not want to show their ID. That was really uncomfortable. I continued to feel helpless about that for days. When it was over, the police officer said that we did in fact have the right to demonstrate. But by then it had already happened, with so many people surrounding you. They invoke their position of power. I very quickly gave my ID because I was afraid of being searched. They passed it on; I think three or four police officers looked at it. (...) At other demonstrations I have also encountered a lot of obstruction. In my experience, the contact with the police and the municipality is very intimidating and frustrating. I feel like they are attempting to make me refrain from demonstrating.”³⁰

According to the police, the purpose of the ID check is maintaining public order.³¹ The police emphasise that they use their power to facilitate the right to freedom of peaceful assembly, for example by identifying people who (are threatening to) disrupt the demonstration. According to the police, bringing them out of anonymity has a chilling (‘dempend’) effect.³² However, one police officer told an investigative journalist that ID checks serve to “take activists out of the comfortable anonymity of the masses”.³³ This relates to another goal of the checks: to gather information. The police argue that these checks may be necessary to assess risks and scenario’s – so they can maintain public order and advise the mayor.³⁴ As a result, peaceful

²⁹ Police Act (*Politiewet*), Article 8; Compulsory Identification Act (*Wet op de identificatieplicht*), Article 1; Instructions on compulsory identification for the exercise of powers pursuant to the Compulsory Identification Act 30 December 2016 (*Instructie identificatieplicht over de uitoefening van bevoegdheden op grond van de Wet op de identificatieplicht*) (Government Gazette 2016, 70055).

³⁰ Interview with Robert, 19 July 2021.

³¹ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

³² Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

³³ Investico, ‘Onderzoek: demonstratierecht in de knel, van koffie naar klappen’, 22 March 2023,

³⁴ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

protesters like Robert, who was not disrupting the demonstration, are checked too. The use of ID checks to identify people who participate in demonstrations and to gather information about activists and protests fits within the police practice of building their “intelligence position” through various surveillance methods.³⁵

These checks constitute an interference in the right to privacy, especially because they include far-reaching processing of personal data.³⁶ The interference goes far beyond simply retrieving a name and address.³⁷ During a check, the police officer scans the protestor’s ID to obtain personal data. An app on the police officer’s phone enables them to query 14 different databanks. By scanning ID, police officers retrieve personal data about the protester, including name, date and place of birth, residence and police registrations. The app also shows how many times the protester’s name has been checked before and how many times that subsequently led to a physical check³⁸ (chapter 3 explains the data processing in more detail). Protesters are often unaware that their personal data is being processed, either because they do not know about the databanks or because they do not notice that their ID is not merely subjected to a visual check, but also scanned. The police do not inform them of this during the check. The fact that the ID checks are usually conducted in public makes the interference more serious, since people may experience humiliation and embarrassment when bystanders see them being checked by police.³⁹

Human rights law requires that any interference with the right to privacy adheres to a strict set of criteria: it must pursue a legitimate aim, be in accordance with the law, and be “necessary” – meaning that the interference must be proportionate to achieve the legitimate aim. Box I below further explains the criteria. The sections following Box I assess the Dutch practice against these norms and reveal that the ID checks during protests that were researched for this report fail to meet these criteria, and therefore constitute violations of the right to privacy.

BOX I: ID CHECKS DURING ASSEMBLIES AND THE RIGHT TO PRIVACY

A violation of the right to privacy has occurred where there is an interference with that right, and that interference goes further than what is considered lawful under international human rights law.

The European Court of Human Rights has held that the obligation for people to carry an identity card and to show it to police when requested may interfere with the right to privacy, under certain specific circumstances.⁴⁰ The Court has held that there may be *no interference* when the check consists of merely viewing an ID showing limited personal information.⁴¹ But a check does amount to an interference when, for example, coercive powers are used to require an individual to submit to an identity check and a detailed search of their person, clothing and personal belongings.⁴² The stopping and searching of persons in public has also been qualified as an interference with the right to privacy.⁴³ The interference is considered to be more serious if it takes place in public, because of an element of humiliation and embarrassment,⁴⁴ or when a person is targeted for a check on account of specific physical or ethnic characteristics.⁴⁵

The privacy infringement caused by ID checks during assemblies should be considered similar in nature to the preventive searches of persons, because both entail preventive ‘stop and checks’ in public. Normally, searching a person would be a more serious interference than a mere ID check, but the far-reaching and untransparent processing of personal data that accompanies such ID checks, plus the

³⁵ Interview with officials from the intelligence unit of the National Police on 31 January 2022; and response to FoI requests, see: Politie, ‘Korpsleiding, Besluit op Wob-verzoek’, 14 December 2021; Politie Eenheid Amsterdam, ‘Besluit Wob-verzoek cameratoezicht demonstraties Museumplein’, 30 November 2021; Politie Eenheid Den Haag, ‘Besluit Wob-verzoek inzake demonstraties van Extinction Rebellion op 6 januari 2021 en 10 mei 2021’, 29 April 2022; Politie Eenheid Limburg, ‘Besluit Wob-verzoek pro-Palestinabetogingen Vrijthof Maastricht mei 2021’, 30 November 2021; Politie Eenheid Oost-Brabant, ‘Besluit Wob-verzoek intocht Sinterklaas Den Bosch 12 november 2019’, 13 October 2021; Politie Eenheid Oost-Nederland, ‘Besluit op grond van Wob’, 30 November 2021; Politie Eenheid Zeeland-West Brabant, Besluit op grond van Wob, 10 November 2021.

³⁶ For more on the right to privacy and police databanks, see box II on page 18.

³⁷ The ECtHR found the latter does not constitute an infringement; see: ECtHR 9 September 1992, no. 16810/90 (*Reyntjens v. Belgium*), p. 152.

³⁸ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

³⁹ ECtHR 12 January 2010, no. 28/06/2010 (*Gillan and Quinton v. the United Kingdom*), para. 63.

⁴⁰ ECtHR 18 October 2022, no. 215/19 (*Basu v. Germany*), para. 22.

⁴¹ ECtHR 9 September 1992, no. 16810/90 (*Reyntjens v. Belgium*), p. 152.

⁴² ECtHR 12 January 2010, no. 28/06/2010 (*Gillan and Quinton v. the United Kingdom*), para. 63; ECtHR 14 January 2021, no. 59648/13 (*Vig v. Hungary*), para. 49.

⁴³ ECtHR 12 January 2010, no. 4158/05 (*Gillan and Quinton v. the United Kingdom*), para. 61-65.

⁴⁴ ECtHR 12 January 2010, no. 28/06/2010 (*Gillan and Quinton v. the United Kingdom*), para. 63.

⁴⁵ ECtHR 18 October 2022, no. 215/19 (*Basu v. Germany*), para. 25-27.

check being carried out in the context of the exercise of a human right, adds to the seriousness of the interference.⁴⁶

Any government interference with the right to privacy must adhere to a strict set of criteria provided in international standards. An interference with the right to privacy must pursue a legitimate aim, be in accordance with the law, and be necessary, as provided under Art. 8(2) ECHR. These criteria are cumulative, meaning that all three criteria must be fulfilled for the interference with the right to privacy to be justified.⁴⁷ In the context of demonstrations, international standards protecting the freedom of assembly must also be taken into account.

First, the interference must pursue a legitimate aim, namely that of “national security, public safety or the economic well-being of a country, the prevention of disorder or crime, the protection of health or morals, and the protection of rights and freedoms of other persons”.⁴⁸ The processing of personal data through surveillance tools may only be employed where the interference can be justified based on strictly proven and proportionate grounds of national security or public order.⁴⁹ Case law from the European Court of Human Rights states that the legitimate aim used to justify an interference must be narrowly interpreted, especially when it comes to “the prevention of disorder”.⁵⁰ In the Netherlands, local authorities often base restrictions on the right to assembly on the aim of “maintaining public order”, which constitutes a much lower threshold.⁵¹ Section 2.2 explains how the police have put forward the same reasoning when it comes to ID checks.

Secondly, the measure must be in accordance with the law.⁵² This requires first that the measure has some basis in domestic law. It also refers to the quality of the law that provides the legal grounds for interference.⁵³ The law should be accessible to the persons concerned (accessibility) and have foreseeable effects (foreseeability).⁵⁴ The foreseeability requirement entails that the law must be formulated with sufficient precision to enable a person to regulate their conduct accordingly.⁵⁵ The law must be sufficiently clear in its terms to give people a sufficient indication as to the circumstances and conditions under which public authorities are empowered to resort to the measures that interfere with privacy rights.⁵⁶ The law must indicate the scope of discretion granted to the authorities and the manner of its exercise to protect against arbitrary interference.⁵⁷ When it comes to surveillance of protests, measures should be strictly regulated and follow a published policy that protects against arbitrary or unlawful interference.⁵⁸ States should regulate the procedures for any information gathering during public assemblies, be it through recording devices, closed-circuit television or undercover policing, into national legislation and the policies of law enforcement agencies.⁵⁹ Section 2.3 addresses the lack of legal basis for ID checks.

Thirdly, for the interference to be necessary, the interference must correspond to a “pressing social need” that is proportionate to the legitimate aim pursued. The interest of the state, which has to indicate

⁴⁶ For more on the right to privacy and police databanks, see box II on page 18.

⁴⁷ ECtHR 30 July 1998, no. 27671/95 (*Valenzuela Contreras v. Spain*), para. 46.

⁴⁸ European Convention on Human Rights, Art. 8, para 2.

⁴⁹ Guidelines on freedom of peaceful assembly, 15 July 2020, para. 71.

⁵⁰ ECtHR 15 November 2018, no. 29580/12 (*Navalny v. Russia*), para. 122. In light of the object and purpose of the Convention, the effective protection of human rights, clauses that permit interference with such rights should be interpreted restrictively. ECtHR 15 October 2015, no. 27510/08 (*Perinçek v. Switzerland*), para. 149-151.

⁵¹ Amnesty International Netherlands, *Demonstratierecht onder druk. Regels en praktijk in Nederland moeten beter*, 2022, p. 28-29.

⁵² ECtHR 18 October 2016, no. 61838/10 (*Vukota-Bojić v. Switzerland*), para. 66.

⁵³ ECtHR 30 July 1998, no. 27671/95 (*Valenzuela Contreras v. Spain*), para. 46.

⁵⁴ ECtHR 30 July 1998, no. 27671/95 (*Valenzuela Contreras v. Spain*), para. 46. See also ECtHR, no. 27798/95 (*Amann v. Switzerland*), para. 50; ECtHR 25 March 1998 (*Kopp v. Switzerland*), para. 55; ECtHR 10 February 2009, no. 25198/02 (*Iordachi and Others v. Moldova*), para. 50; ECtHR 2 August 1984, no. 8691/79 (*Malone v. the United Kingdom*), para. 66.

⁵⁵ ECtHR 2 August 1984, no. 8691/79 (*Malone v. the United Kingdom*), para. 66.

⁵⁶ ECtHR 2 August 1984, no. 8691/79 (*Malone v. the United Kingdom*), para. 67; ECtHR 26 March 1987, no. 9248/81 (*Leander v. Sweden*), para. 51; ECtHR 24 April 1990, no. 11105/84 (*Huvig v. France*), p. 29; ECtHR 4 May 2000, no. 28341/95 (*Rotaru v. Romania*), p. 55; ECtHR 2 September 2010, no. 35623/05 (*Uzun v. Germany*), para. 62; ECtHR 18 May 2010, no. 26839/05 (*Kennedy v. the United Kingdom*), para. 159.

⁵⁷ ECtHR 4 December 2008, no. 30562/04 (*S. and Marper v. the United Kingdom*), para 95.

⁵⁸ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 61; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 74.

⁵⁹ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 78.

a pressing social need, must be balanced against the seriousness of the interference with people's right to respect for their private life.⁶⁰ In order to determine whether measures were "necessary in a democratic society", the European Court of Human Rights considers whether, in light of the case as a whole, the reasons adduced to justify the measures were relevant and sufficient, and whether the measures were proportionate to the legitimate aims pursued. Section 2.4 sets out how ID checks during protests, without suspicion of criminal wrongdoing, fail to meet this requirement.

2.2 PROTEST RIGHTS SUPPRESSED BY A THREAT-BASED MINDSET

Any interference with the right to privacy must pursue a legitimate aim.⁶¹ In general, the government states that the interference caused by ID checks is in the interest of public safety and the prevention of illegal acts.⁶² They argue that the power to carry out checks is necessary for effective crime control and law enforcement.⁶³ Under human rights law, this is a legitimate aim for an interference.⁶⁴ An ID check during a protest may indeed at times be considered necessary for effective crime control and law enforcement, for example when people are using or threatening to use violence towards peaceful protesters or bystanders.⁶⁵ When the police have evidence that imminent unlawful activities are planned to take place during a protest, an ID check may be necessary to prevent crime.⁶⁶ In such cases, the legality (see Section 2.3) and necessity (see Section 2.4) of the check must be assessed.

In the context of demonstrations, however, the police interpret the aim more broadly: gathering information is deemed necessary to assess potential future risks, and prevent public order disturbances.⁶⁷ According to the police, gathering information about protesters is necessary for the prevention of disorder or crime, because demonstrations can disrupt public order.⁶⁸ During a check, the police remove a person's anonymity by addressing them and asking for personal data. The police can then assess whether risks for public order can be expected due to the presence of that person.⁶⁹ According to the police, there may be particular cause for a check if an assembly has not been notified to the authorities. The police argue that in such cases, a check may be necessary to assess risks and scenarios and subsequently carry out police tasks – such as maintaining public order – and to advise the mayor.⁷⁰ Amnesty International's research reveals that the police also carry out ID checks at notified assemblies. The police maintain, however, that checks are usually not needed when an assembly has been notified, because in that case the police already know who the organiser is. The organiser has usually provided authorities with information that the police use for their risk assessments. According to the police, checks may still be carried out when assemblies are notified, but only to verify that the police are dealing with the right person.⁷¹ Yet even when organisers go to greater lengths to help the police with facilitating the assembly, they are still checked. For example, Dewi, campaign manager for a climate organisation, explained:

⁶⁰ ECtHR 26 March 1987, no. 9248/81 (*Leander v. Sweden*), para. 58-59; ECtHR 4 December 2008, no. 30566/04 (*S. and Marper v. the United Kingdom*), para. 125.

⁶¹ European Convention on Human Rights, Art. 8, para 2.

⁶² Parliamentary Papers 2003-2004, 29 218, no. 3.

⁶³ Parliamentary Papers 2003-2004, 29 218, no. 3.

⁶⁴ European Convention on Human Rights, Art. 8, para 2.

⁶⁵ See for example 'Politie Breda arresteert elf mensen die KOZP-betogers lastigvallen', *AD*, 13 November 2021,

'Drie verdachten 'aanslag' op Kick Out Zwarte Piet weer vrij, verbijstering over geweld groot', *AD*, 9 November 2019,

⁶⁶ Under international human rights law, 'public safety' is also considered a legitimate aim for an interference with a human right (see Box I).

⁶⁷ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

⁶⁸ Interview with officials from the intelligence unit of the National Police on 31 January 2022; and response to FoI requests, see: Politie, 'Korpsleiding, Besluit op Wob-verzoek', 14 December 2021; Politie Eenheid Amsterdam, 'Besluit Wob-verzoek cameratoezicht demonstraties Museumplein', 30 November 2021; Politie Eenheid Den Haag, 'Besluit Wob-verzoek inzake demonstraties van Extinction Rebellion op 6 januari 2021 en 10 mei 2021', 29 April 2022; Politie Eenheid Limburg, 'Besluit Wob-verzoek pro-Palestinabetogingen Vrijthof Maastricht mei 2021', 30 November 2021; Politie Eenheid Oost-Brabant, 'Besluit Wob-verzoek intocht Sinterklaas Den Bosch 17 november 2019', 13 October 2021; Politie Eenheid Oost Nederland, 'Besluit op grond van Wob', 30 November 2021; Politie Eenheid Zeeland-West Brabant, Besluit op grond van Wob, 10 November 2021.

⁶⁹ Response of the Dutch police, 10 March 2023.

⁷⁰ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

⁷¹ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

“As a campaign manager, I am often involved in protests, usually as a spokesperson for the press. My ID has been checked a lot. (...) Often, I get asked for ID whether I introduce myself as an organiser or not, because I talk to journalists. Then the police will ask who I am. Sometimes they scan my ID, sometimes they make notes. Usually, they just ask me to identify myself. Our policy is to cooperate. We are usually willing to say who we are when we organise an action.”⁷²

The police practice of gathering information from protesters through ID checks may be intimidating. The police invoke maintaining public order as a legitimate goal of the interference, but this cannot be considered proportionate for three reasons.

First, the idea that demonstrations must be monitored for the prevention of disorder or crime goes against the presumption of peacefulness of demonstrations. Authorities should presume assemblies are peaceful and engage with organisers and participants in good faith.⁷³ They have an obligation to safeguard the right to assembly, ensure its exercise without discrimination, and refrain from applying any unreasonable restrictions.⁷⁴ People should be able to exercise their right to peaceful assembly without unnecessary barriers: freedom of assembly should be the rule, and restrictions the exception.⁷⁵ Authorities should not only refrain from unwarranted interferences, but in fact have the positive duty to facilitate assemblies.⁷⁶ By surveilling people who participate in assemblies, authorities act on the exact opposite premise: they presume organisers and participants may cause disorder and engage in criminal activity. Instead of viewing assemblies as the exercise of a human right, the police approach demonstrations as a risk to public order by definition, and ID checks are one of the tools that the police use to monitor protesters for such activity. The UN Special Rapporteur on the rights of freedom of peaceful assembly and of association has found that states often invoke national security and public order concerns to justify interfering in assemblies, when measures in reality are often taken to target dissent.⁷⁷ That is not a legitimate aim for authorities to intervene. Dissent is a legitimate part of the rights to peaceful assembly and association.⁷⁸ The Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasised that surveillance against people who protest may only be justified on a targeted basis, where there is a reasonable suspicion that someone is engaging in or planning to engage in serious criminal offences, and under the very strictest rules, operating on the principles of necessity and proportionality and providing for close judicial supervision.⁷⁹

Second, while the interest of public safety and the prevention of illegal acts may be legitimate aims for an interference,⁸⁰ these aims should be interpreted narrowly in the context of an assembly.⁸¹ In the context of demonstrations, local Dutch authorities often interpret these aims too broadly, restricting demonstrations by citing the need to prevent any disruption of what they claim would constitute public order.⁸² Local authorities not uncommonly cite “maintaining public order” as a legitimate aim for interferences with the right to assembly, in an attempt to prevent disruption of traffic, or of regular life for bystanders, local businesses or the public in general. However, a temporary disruption to daily life should be tolerated to ensure the protection of the well-established right to freedom of peaceful assembly.⁸³ Under international standards, ‘public order’ refers to the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights, including the right of peaceful assembly.⁸⁴ An appeal to the aim of the prevention of disorder may only be considered

⁷² Interview with Dewi, 13 July 2021.

⁷³ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 17; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 18.

⁷⁴ ECtHR 20 February 2003, no. 20652/92 (*Djavit An v. Turkey*), para. 57; UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 8.

⁷⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, UN Doc. A/HRC/20/27, para. 16.

⁷⁶ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 8.

⁷⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 17 May 2019, UN Doc. A/HRC/41/41, para. 40-42.

⁷⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 17 May 2019, UN Doc. A/HRC/41/41, para. 40-42.

⁷⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 17 May 2019, UN Doc. A/HRC/41/41, para. 57.

⁸⁰ European Convention on Human Rights, Art. 8, para 2.

⁸¹ ECtHR 15 November 2018, no. 29580/12 (*Navalny v. Russia*), para. 122.

⁸² De Nationale Ombudsman, *Demonstreren, een schurend grondrecht?*, 14 March 2018, p. 49. See also Amnesty International Netherlands, *Demonstratierecht onder druk. Regels en praktijk in Nederland moeten beter*, 2022, p. 28-29.

⁸³ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, paras. 7 and 44.

⁸⁴ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 44.

legitimate when the measures taken go no further than what is strictly necessary and proportionate – taking into account the significant degree of tolerance that states must allow for potentially disruptive protests. Any threat must be sufficiently tangible and present, and should not generally relate to minor, isolated or sporadic risks of disorder. In *Alekseyev v. Russia*, the European Court of Human Rights for instance held that the mere existence of a *risk* of a violent clash is insufficient to legitimise state interference.⁸⁵

Third, the right to freedom of peaceful assembly allows protesters a certain level of anonymity, or at least a reduced likelihood of being identified.⁸⁶ In addition to Dewi's story mentioned above, another organiser, Marleen, said her ID had been checked frequently because she often takes on the role of spokesperson with the police (*police liaison*) during assemblies.⁸⁷ Three other protesters reported that their ID had been checked in situations where they were organising a peaceful assembly.⁸⁸ The police may ask organisers to make themselves known to the police in order to be able to communicate about any problems, if it becomes necessary. However, organisers need not acquiesce to this request if they choose not to. Further, communication between the police and organisers does not require ID checks or the collection of information about organisers for police databanks. Most organisers, like Dewi and Marleen, introduce themselves to the police on their own initiative. They make themselves recognisable as organisers by wearing high-visibility vests during the demonstration and seek contact with police officers of their own accord. Despite these efforts, the police routinely seek more information and demand ID. Amnesty International organisers, too, have found that their ID is demanded even when they are recognisable by wearing Amnesty branded vests and name tags, they have introduced themselves to the police by name, and the demonstration is going exactly as planned and was notified to the authorities. Additionally, organisers might not feel comfortable seeking contact with the police if they belong to a group that often experiences systemic discrimination and/or violence by police. In these cases, too, the police have the obligation to protect and facilitate a protest. Even if a protest does not have a formal or named organiser, the police should facilitate the peaceful assembly.⁸⁹ If there are no formal organisers, the police can communicate with participants in an assembly through clear and audible statements.⁹⁰ The mere fact that organisers are not apparent to the police does not increase the necessity of ID checks.

BOX II: OBLIGATION FOR POLICE TO IDENTIFY THEMSELVES

Robert recounted that during his ID check, the police officer refused to identify herself to the protesters.⁹¹ Another protester, Birgit, reported a similar experience.⁹² It is important to note that both national law and international standards require law enforcement officials exercising their powers to identify themselves upon request by those subject to these powers, so they can be held accountable.⁹³ International standards state that all uniformed law enforcement officials conducting policing of demonstrations must wear identity badges in visible places.⁹⁴

⁸⁵ ECtHR 21 October 2010, nos. 4916/07, 25924/08 and 14599/09 (*Alekseyev v. Russia*), para. 75.

⁸⁶ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 60; Report of the UN Special Rapporteur (2014), UN Doc. A/HRC/26/29, 14 April 2014, para. 32.

⁸⁷ Interview with Marleen, 8 July 2021.

⁸⁸ Interview with Emma, 8 July 2021; interview with Ivo, 21 July 2021; e-mails from Ana, 22 December 2022 and 9 January 2023.

⁸⁹ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 21 and 23.

⁹⁰ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 38.

⁹¹ Interview with Robert, 19 July 2021.

⁹² E-mail from Birgit, 31 October 2022.

⁹³ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 65; Official instructions for the police, the Royal Marechaussee and other investigating officers (*Ambtsinstructie voor de politie, de Koninklijke Marechaussee en andere opsporingsambtenaren*) (Government Gazette 2007/172), Article 2.

⁹⁴ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 89; Amnesty International Netherlands, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, August 2015, p. 80; Amnesty International Netherlands, *Policing Assemblies*, December 2013, p. 18 en 19.

2.3 UNCONTROLLED DISCRETIONARY POWER

Any interference with the right to privacy must be provided for by law. This requires an assessment of the legal basis. In the Netherlands, police officers have broad discretionary powers to demand ID from people under the *Compulsory Identification Act*.⁹⁵ The subsequent data processing is based on another law, which will be discussed in Chapter 3.

Under the *Compulsory Identification Act*, every person of 14 years or older has the duty to show ID to a law enforcement officer upon the first demand.⁹⁶ The police however has the power to demand ID “to the extent reasonably necessary for the performance of the police task”.⁹⁷ There is an essential difference between demanding an ID and merely requesting, in which case a citizens would not have to comply. Dutch law does not require any suspicion of a criminal offense for an ID check. It may also be that the police officer finds a check necessary to “maintain public order”.⁹⁸ As noted in Section 2.2, the police maintain that gathering information about protesters is necessary for the prevention of disorder or crime.⁹⁹ The law also prescribes which types of IDs are considered valid. Showing a business card, public transport card or student pass is not considered valid proof of a person’s identity.¹⁰⁰

The *Compulsory Identification Act* fails to meet the requirements of international human rights law regarding the quality of the legislation that provides the legal grounds for interference (see Box I). It is insufficiently prescriptive to give an adequate and comprehensive indication as to the circumstances and conditions under which authorities are empowered to require ID. Such powers are not in accordance with the European Convention on Human Rights, as they are a violation of the right to privacy. The following sections explain that the *Compulsory Identification Act* lacks the needed safeguards against abuse set out by the European Court of Human Rights in *Gillan and Quinton v. the United Kingdom*.¹⁰¹

Firstly, the *Compulsory Identification Act* does not require the law enforcement official to assess the proportionality of a check.¹⁰² Police guidelines on proactive controls also provide no guidance on proportionality. The guidelines emphasise that proactive controls should be carried out “in a professional manner”. According to the guidelines, selection for proactive controls should be based on “objective grounds”, such as “unusual behaviour”.¹⁰³ The instructions accompanying the Act, established by the chief of police,¹⁰⁴ merely state that checks may be carried out “to the extent reasonably necessary”.¹⁰⁵ The instructions do not explain how this should be assessed per case. The instructions include a non-exhaustive list of situations in which identification may be demanded, which includes “events such as football matches and protests in case of riots or (imminent) escalation”.¹⁰⁶ In this way, the instructions leave ample room for interpretation.

⁹⁵ Police powers to demand proof of identify were initially codified in 1994 in the Compulsory Identification Act (*Wet op de identificatieplicht*). In 2005, these powers were significantly broadened by the Extended Compulsory Identification Act (*Wet op de uitgebreide identificatieplicht*).

⁹⁶ Compulsory Identification Act (*Wet op de identificatieplicht*), Article 2, ‘Duty to Show’ (Toonplicht)

⁹⁷ Police Act (*Politiewet*), Article 8; Compulsory Identification Act (*Wet op de identificatieplicht*), Article 1; Instructions on compulsory identification for the exercise of powers pursuant to the Compulsory Identification Act 30 December 2016 (*Instructie identificatieplicht over de uitoefening van bevoegdheden op grond van de Wet op de identificatieplicht*) (Government Gazette 2016, 70055).

⁹⁸ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

⁹⁹ Interview with officials from the intelligence unit of the National Police on 31 January 2022; and response to FoI requests, see: Politie, ‘Korpsleiding, Besluit op Wob-verzoek’, 14 December 2021; Politie Eenheid Amsterdam, ‘Besluit Wob-verzoek cameratoezicht demonstraties Museumplein’, 30 November 2021; Politie Eenheid Den Haag, ‘Besluit Wob-verzoek inzake demonstraties van Extinction Rebellion op 6 januari 2021 en 10 mei 2021’, 29 April 2022; Politie Eenheid Limburg, ‘Besluit Wob-verzoek pro-Palestinabetogingen Vrijthof Maastricht mei 2021’, 30 November 2021; Politie Eenheid Oost-Brabant, ‘Besluit Wob-verzoek intocht Sinterklaas Den Bosch 17 november 2019’, 13 October 2021; Politie Eenheid Oost Nederland, ‘Besluit op grond van Wob’, 30 November 2021; Politie Eenheid Zeeland-West Brabant, Besluit op grond van Wob, 10 November 2021.

¹⁰⁰ Compulsory Identification Act (*Wet op de identificatieplicht*), Article 1.

¹⁰¹ ECtHR 12 January 2010, no. 4158/05 (*Gillan and Quinton v. the United Kingdom*). The European Court of Human Rights assessed the legal basis for preventive searching of persons. The privacy infringement caused by ID checks during assemblies should be considered similar in nature (see Box I).

¹⁰² ECtHR 12 January 2010, no. 4158/05 (*Gillan and Quinton v. the United Kingdom*), para. 80.

¹⁰³ Politie, ‘Handelingskader professioneel controleren’, 13 November 2020.

¹⁰⁴ The instructions were established by the chief of police together with the Commander of the Royal Marechaussee and the Directors of special investigative services, see: Instructions on compulsory identification for the exercise of powers pursuant to the Compulsory Identification Act 30 December 2016 (*Instructie identificatieplicht over de uitoefening van bevoegdheden op grond van de Wet op de identificatieplicht*) (Government Gazette 2016, 70055).

¹⁰⁵ Translation of: “voor zover dat redelijkerwijs noodzakelijk is”. Instructions on compulsory identification for the exercise of powers pursuant to the Compulsory Identification Act 30 December 2016 (*Instructie identificatieplicht over de uitoefening van bevoegdheden op grond van de Wet op de identificatieplicht*) (Government Gazette 2016, 70055).

¹⁰⁶ Translation of: “bij evenementen zoals voetbalwedstrijden en demonstraties in geval van rellen of (dreigende) escalatie”. Instructions on compulsory identification for the exercise of powers pursuant to the Compulsory Identification Act 30 December 2016 (*Instructie identificatieplicht over de uitoefening van bevoegdheden op grond van de Wet op de identificatieplicht*) (Government Gazette 2016, 70055).

There is one element in the instructions that might offer some protection: it is not permitted to demand proof of identity from larger groups “without cause”.¹⁰⁷ But even this one exception does not hold up in practice. The instructions do not specify in any way the causes that would be considered legitimate in such cases, and what constitutes a “larger group” is left to the police’s interpretation. Amnesty International’s research found three cases of ID checks of groups during assemblies, where the cause was unclear. In the first case, the police checked all participants of a protest by several climate groups in Rotterdam in February 2021. The police surrounded the group of participants after some of them formed a blockade at the Erasmus Bridge. Three protesters recounted how the police ordered everyone to leave the bridge, then proceeded to surround all of the protesters (approximately 80 in total) and subjected everyone to ID checks.

One of the spokespersons of the protest, Anne, explained that the communication from the police were unclear:

“The police asked me if I could make sure that people would move away from the bridge. I communicated this to the group of protesters. (...) But the police then gave no further announcement. They had used me to issue the command, although that is not my task as spokesperson, and it had not been communicated to me either. (...) Then, from the north side of the bridge, the police marched up to us very abruptly, with dogs. It all happened so fast that people were surprised. People fell over each other. The police started pushing and shouting, personally and aggressively targeting individuals. That is exactly what we had wanted to prevent as spokespersons, but we were not given a chance. Eventually we were forced off the bridge and surrounded by police officers. (...) No one was allowed to leave without showing ID. Three people who could not identify themselves were arrested.”¹⁰⁸

Savannah, a photographer at the protest, was checked too:

“I heard several people also reported excessive police force. The police only asked us to leave once. Some people listened, but still I saw the police immediately proceeded to push protesters away from the bridge, sometimes hitting them with batons. I obeyed the police command to leave (I was one of the few people who heard the order) and together with another photographer, I stood outside the group after police had surrounded everyone. Yet I was pushed into the group by the police at the end.”¹⁰⁹

In January 2021, during an assembly of a climate group in front of the Ministry of Economic Affairs and Climate in The Hague, the police requested all protesters to show ID, without explanation as to why this was necessary. Afterwards, 15 protesters were taken into police custody.¹¹⁰ The video footage of the assembly shows one police officer taking the collected identity cards to the police car, and another police officer photographing or taking a video of protesters.¹¹¹ One of the protesters, Hannah, said:

“When our IDs were checked, it felt as if we were doing something that was not allowed, but we were exercising our right to peaceful protest. It has a frightening feeling, a chilling effect, when the police check who you are during a demonstration. We are concerned citizens standing up, peacefully and well within the law, for a liveable future, so there is no reason to check us.”¹¹²

Another respondent, Kiki, mentioned ID checks during the climate march in The Hague in March 2021. Kiki was monitoring the protest with the Dutch section of the International Commission of Jurists (NJCM) at the time. She said:

“During the climate march in The Hague, I saw that participants were asked for their ID. Many participants were asked what they came for by police officers. There was another protest nearby, against Covid measures, which I believe had been prohibited. I assume that the police felt that was a good enough reason for ID checks, but that seems disproportionate to me.”¹¹³

¹⁰⁷ Translation of: “Voorbeelden van concrete situaties waarin de uitoefening van de bevoegdheid tot identiteitscontrole niet zonder meer op zijn plaats is, zijn: (...) grotere groepen personen zonder verdere aanleiding in het algemeen controleren op het identiteitsbewijs”. Instructions on compulsory identification for the exercise of powers pursuant to the Compulsory Identification Act 30 December 2016 (Instructie identificatieplicht over de uitoefening van bevoegdheden op grond van de Wet op de identificatieplicht) (Government Gazette 2016, 70055).

¹⁰⁸ Interview with Anne, 21 July 2021.

¹⁰⁹ Interview with Savannah, 13 July 2021.

¹¹⁰ Hart van Nederland, ‘Actievoerders Extinction Rebellion opgepakt in Den Haag’, 6 January 2021. Protesters contacted Amnesty about the arrests on Twitter. Amnesty then noticed the ID checks in the video footage:

¹¹¹ See the livestream on Facebook between min. 9:00 and 26:00:

¹¹² E-mail from Hannah, March 2023.

¹¹³ This case was first mentioned by respondent Marjolein, interview 20 July 2021; she referred Amnesty to Kiki, who confirmed by e-mail, 16 March 2023.

All in all, apart from the requirement that checks may only be carried out “to the extent reasonably necessary”, as mentioned above, Dutch law does not limit ID checks during peaceful assemblies in any way. The Dutch law does not limit ID checks to given times or areas, and does not require any reasonable suspicion of involvement in a crime or offence. In *Gillan and Quinton v. the United Kingdom*, the European Court of Human Rights found such broad powers insufficiently circumscribed against abuse. The European Court of Human Rights has warned that such broad discretion creates a risk of arbitrariness and discriminatory use of powers.¹¹⁴ They are therefore not “in accordance with the law” and are thus in violation of the right to privacy.¹¹⁵ Dutch law similarly affords the police broad discretion to carry out checks, which poses substantial risks for arbitrary interference and discrimination, and fails to meet the requirement of legality.¹¹⁶

In 2013, Amnesty International expressed concern that the broad discretion of the police to conduct ID and other proactive checks poses a significant risk to human rights, due to the lack of effective safeguards against violations.¹¹⁷ In response to Amnesty International’s report, the Dutch government and police announced initiatives such as training, improvements of the complaints procedures and further research.¹¹⁸ Steps were also taken to improve police treatment and police community relations, a more diverse police corps and to introduce a code for professional stop and checks.¹¹⁹

Yet the risks of arbitrariness and discriminatory use of powers remain, as the authorities to this day have not taken any legal measures to limit the police’s discretionary power, nor to improve systematic oversight of proactive checks.

Due to the broad discretionary power and vague laws, the reasons for ID checks can be unclear to people. It can also be unclear to citizens whether a police officer is *demanding* to see their ID based on the law, or merely *requesting* (in which case citizens would not have to comply). The Dutch police rely with such a request on what they call the principle that they are ‘free to ask’ (*Vragen staat vrij*).¹²⁰ According to the police, an officer is, like any other citizen, free to approach someone.¹²¹ In the context of ID checks, this means that a police officer will usually first *request* a protester to identify themselves. If a protester refuses to show ID, a police officer will proceed to demand ID (*vorderen*). In theory, when a police officer requests to see ID, it is merely a question, for which no legal basis is considered necessary, and the person may refuse to show identification. In practice, however, people tend to perceive a request from a police officer as a mandatory obligation.

Respondents said that they were not always sure whether the police had requested or demanded their ID, showing that the difference between a request and a demand is unclear. Ella, who participated in protests for climate, explained:

“The police have checked my ID during demonstrations. After a protest, you’re just hanging around a bit, and then the police come and demand your ID. This is completely unnecessary. (...) These checks are intimidating and annoying. It usually involves an official demand for ID, but even when it is merely a request, many people just show it. Most people simply listen to a person in uniform.”¹²²

Police officers should be aware that both their verbal and non-verbal communication may be perceived by organisers and participants as intimidation.¹²³ As explained in Chapter 1, authorities have an obligation to facilitate protests. This includes effective communication and collaboration among all relevant parties, based on open dialogue and mutual trust.¹²⁴

¹¹⁴ ECtHR 12 January 2010, no. 4158/05 (*Gillan and Quinton v. the United Kingdom*), para. 85.

¹¹⁵ ECtHR 12 January 2010, no. 4158/05 (*Gillan and Quinton v. the United Kingdom*), para. 83-87.

¹¹⁶ See also: Amnesty International, ‘France: Systemic Police Discrimination Requires Reforms’, 27 January 2021, Amnesty International, ‘IMK: Abschiebungen nach Syrien und Afghanistan stoppen, rassistische bekämpfen!’, 15 June 2021,

¹¹⁷ Amnesty International Netherlands, *Proactief politieoptreden vormt risico voor mensenrechten. Etnisch profileren onderkennen en aanpakken*, 2013.

¹¹⁸ *Parliamentary Papers* 2013-2014, 29 628, no. 423.

¹¹⁹ *Parliamentary Papers* 2016-2017, 30 950, no. 105.

¹²⁰ Politie, *De dynamische verkeerscontrole. Het ‘Blauwe’ Boekje*, January 2015, p. 27-40; Hoekendijk, *Strafvordering voor de hulpofficier*, 2015, p. 42-43.

¹²¹ Politie, *De dynamische verkeerscontrole. Het ‘Blauwe’ Boekje*, January 2015, p. 27-40; Hoekendijk, *Strafvordering voor de hulpofficier*, 2015, p. 42-43.

¹²² Interview with Ella, 22 July 2021.

¹²³ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 38-39.

¹²⁴ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 38-39.

BOX III: ID CHECKS BY OTHER AUTHORITIES – THE ROYAL DUTCH MARECHAUSSEE

In addition to the police, the officers from the Royal Dutch Marechaussee (*Koninklijke Marechaussee*) also have the power to subject people to ID checks.¹²⁵ Protesters also reported ID checks by the Royal Dutch Marechaussee during assemblies. Rozemarijn, who organised ‘Climate Vigils’ (*Klimaatwaken*) writes about ID checks during their actions in her book:

“Members of the military police walked away with their ID, photographing them and taking notes. It was all very unclear, and it made the [protesters] nervous. What exactly is happening with their data? I contacted the Royal Dutch Marechaussee and explained that the checks were distracting to the introspective nature of the vigils, and I asked why this is necessary. He said nothing could be done about it but told me no records were being kept. Later, [another protester] discovered that a list was being kept. He did not get his hands on the list himself, but the officer counted 192 names, almost exactly the number of people who participated in the Climate Vigils. I called the Royal Dutch Marechaussee for an explanation. He called me back later that morning, said that no one of the higher-ups or staff he spoke with knew anything about a list; it must have been an action by one individual. We believe little of this, given how exhaustive the list was.”¹²⁶

2.4 DISPROPORTIONATE CHECKS WITHOUT SAFEGUARDS

In addition to a legitimate aim and a legal basis, human rights law requires any infringement of the right to privacy to be “necessary in a democratic society”. This means that the interference must correspond to a “pressing social need” that is proportionate to the legitimate aim – in this case, as the police states, the aim of preventing disorder or crime. The previous sections already explained that the checks do not have a sufficient legal basis and that the stated aim is questionable. But even if the police’s aim were to be accepted as legitimate, and even if the Dutch state were to draft a new bill, checks of peaceful protesters would still be considered an illegitimate interference in the right to privacy. Even under those circumstances, checks of peaceful protesters cannot be considered to have met the requirement of being necessary.

As described in Section 2.3, police officers have broad discretionary powers to demand ID from people even when there is no reasonable suspicion of a criminal offence. ID checks in the context of demonstrations may only be considered necessary when there is a reasonable suspicion of a criminal offence based on individualised and objectively verifiable indicators. The mere fact that the police associate someone with a peaceful assembly is not a reasonable ground for stopping and checking them. Even where there is reasonable suspicion of a criminal offence, an ID check at an assembly would only be lawful under international human rights law where it is proportionate. In other words, minor criminal acts, such as dropping litter or obstructing traffic, would not justify such checks where the person being stopped is exercising their right to freedom of peaceful assembly.

Like stop and search powers, ID checks must be exercised based on reasonable suspicion of the commission or threat of a serious offence, and must not be used in a discriminatory manner.¹²⁷ Any other ID check during a peaceful assembly must be considered disproportionate; starting from the presumption of peacefulness of a demonstration, there is simply no justification for it. Since ID checks may be deployed as surveillance methods, authorities should only resort to ID checks during demonstrations where there is clear evidence that imminent unlawful activities are planned to take place during a protest and that an ID check would be proportionate.

The same applies to requiring personal information from organisers and participants by recording digital images of protesters. The report of the UN Special Rapporteur states that the use of recordings must

¹²⁵ Police Act (*Politiewet*), Article 8, para. 3. The Royal Dutch Marechaussee is part of the military, tasked with specific policing tasks such as policing the borders and security tasks in areas such as airports and around parliamentary buildings.

¹²⁶ Rozemarijn van ‘t Einde, *Rebelleren voor het leven. Een dominee in actie voor klimaatrechtvaardigheid*, 2023, p. 25.

¹²⁷ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 83. See also: Amnesty International, ‘France: Systemic Police Discrimination Requires Reforms’, 27 January 2021, Amnesty International, ‘IMK: Abschiebungen nach Syrien und Afghanistan stoppen, rassistismus bekämpfen!’, 15 June 2021,

incorporate legality, necessity and proportionality tests.¹²⁸ Since recording methods are considered highly intrusive, the standards for these tests are very high.¹²⁹ In all cases, there should be sufficient safeguards against abuse.¹³⁰ This is a very high threshold. As explained in Chapter 1, surveillance against people who take part in protests may only be justified on a targeted basis, where there is a reasonable suspicion that someone is engaging in or planning to engage in serious criminal offences, and under the very strictest rules, operating on the principles of necessity and proportionality and providing for close judicial supervision.¹³¹ The use of surveillance techniques for the indiscriminate and untargeted surveillance of people exercising their right to peaceful assembly, both in physical and digital spaces, should be prohibited.¹³²

BOX IV: DISCRETIONARY POWER = RISK OF ETHNIC PROFILING

Broad and vague powers to stop, check or search individuals can lead to arbitrary and discriminatory use of such powers. This not only includes the *Compulsory Identification*; among others also powers for traffic controls, preventive body searches, and immigration control (checks for illegal stay) give Dutch police officers ample scope for exercising their own discretion in deciding which individuals they wish to stop or check. These powers also allow for stops, check and searches of people who are not suspected of any criminal wrongdoing.

Due to these broad powers, combined with subconscious assumptions, stereotypes and ‘information-driven policing’, ethnic profiling has long been a problem in the Netherlands. In 2013, Amnesty International published a detailed analysis of how proactive policing and vague powers to stop, check and search people were driving ethnic profiling in the Netherlands.¹³³ In 2020 Amnesty International showed how the de facto bank power for traffic stops had been misused in an experiment with automated risk profiling (‘predictive policing’).¹³⁴ In the same year, Amnesty International and others filed a lawsuit against ethnic profiling in border controls. In 2023, the court ruled that the existing approach to border controls result in discrimination and therefore changes should be made.¹³⁵

As a result of current practices, certain groups are more impacted by police stops than others – i.e. over-policed groups who have cause to fear discriminatory and otherwise unlawful police interventions. Organisers of anti-racism protests have told Amnesty International how they take extra precautionary measures to minimise any chance of unsolicited contact with the police. They try to refrain from any behaviour that could be perceived by the police as disorderly and thus warranting a check. They attribute this cautionary attitude to experiences with discriminatory traffic stops and ID checks in their daily lives. Additionally, organisers and anti-racism protesters have experienced

¹²⁸ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 74.

¹²⁹ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 74.

¹³⁰ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 75.

¹³¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 17 May 2019, UN Doc. A/HRC/41/41, para. 57.

¹³² Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 17 May 2019, UN Doc. A/HRC/41/41, para. 57.

¹³³ Amnesty International, 2013, *Stop and search powers pose a risk to human rights. Acknowledging and tackling ethnic profiling in the Netherlands*.

¹³⁴ Amnesty International, 2020, *We sense trouble. Automated discrimination and mass surveillance in predictive policing in the Netherlands*.

¹³⁵ Amnesty International, ‘Rechtszaak tegen Marechaussee vanwege etnisch profileren’, [amnesty.nl/wat-we-doen/landen/mensenrechten-nederland/rechtszaak-koninklijke-marechaussee](https://www.amnesty.nl/wat-we-doen/landen/mensenrechten-nederland/rechtszaak-koninklijke-marechaussee)

disproportionate use of force and mass arrests by the police during their peaceful protests against Black Pete¹³⁶ in Dordrecht in 2011,¹³⁷ Gouda in 2014,¹³⁸ and Rotterdam in 2016.¹³⁹

While the Dutch police and national government acknowledge that ethnic profiling is a problem, this has not led to effective measures for prevention of this practice. Amnesty International has repeatedly called for statutory safeguards, clear guidelines for exercising police powers, and systematic registration of all stop and checks for evaluation, e.g. by introducing stop and search forms.¹⁴⁰ On a stop form, a police officer provides various information, including their identity, the motive behind the stop and preventive check, and the outcome of the check. The form should also indicate relevant personal details about the stopped person, such as gender, age, ethnic origin and other protected grounds. Stop forms contribute to the monitoring of discriminatory practices by the police and can be used for statistics on police practices for evaluation of stop and searches and police accountability.¹⁴¹

¹³⁶ For years there has been controversy over the participation of Black Petes (Zwarte Pieten) at Saint Nicholas (Sinterklaas) celebrations. People blacken their faces, wear frizzy-haired wigs and page costumes and as such perpetuate negative stereotype and denigrating image of Africans and people of African descent.

¹³⁷ The National Ombudsman has concluded that the arrest of two protesters in Dordrecht in 2011 was unlawful and that disproportionate use of force had been used against one protester. De Nationale Ombudsman, *Rapport over een klacht over de regionale politie-eenheid Rotterdam*, 15 October 2014,

¹³⁸ During a celebration of Sinterklaas in Gouda in 2014 the police arrested 90 anti-racism protesters, see e.g.: *RTL Nieuws*, 'Negentig mensen aangehouden bij intocht', 15 November 2014, .

¹³⁹ In 2016, around 200 anti-racism activists protesting against Black Pete were arrested. According to Amnesty, disproportionate use of force had been used during the arrest of some:)

The Public Prosecution Office announced more than a year later that the vast majority of them would not be prosecuted and their cases were dismissed: *NRC*, 'Geen vervolging 168 demonstranten tegen Zwarte Piet', 12 January 2018,

¹⁴⁰ Amnesty International, *Proactief politieoptreden vormt risico voor mensenrechten. Etnisch profileren onderkennen en aanpakken*, 2013, p. 47-49.

¹⁴¹ Amnesty International, *We Sense Trouble: automated discrimination and mass surveillance in predictive policing in the Netherlands*, September 2020, p. 42.

3. REGISTRATION OF PROTESTS IN POLICE DATABANKS

3.1 MISUSE OF ID CHECKS TO PROCESS PERSONAL DATA FROM PEACEFUL PROTESTERS

During a check, the police officer scans the ID using an application on a mobile phone.¹⁴² The application enables a police officer to search all kinds of databases on the spot. By scanning the ID, police officers retrieve personal data about the protester from 14 different databanks, including their name, date and place of birth, residence, and how often they appear in the police databanks.¹⁴³ Approximately 30,000 police officers with access to a police phone are authorised to access these records.¹⁴⁴ ID checks are automatically registered in the databanks and police officers can add any information they consider relevant.¹⁴⁵ The data processing usually takes place unknown to the person being checked, but Marisella, an anti-racism activist, mentioned that the officer commented on her personal data during a check:

“When my ID was checked, the police officer said, ‘you have been involved with the police more often’. That shocked me. Turned out the officer was referring to crimes I had reported to the police.”¹⁴⁶

Since November 2020, police officers’ searches through the application are logged automatically.¹⁴⁷ When a police officer checks a protestor’s ID, the check is automatically added to the databank, *and* the police officer can view how many times the protester has been checked before, and where and when the previous check(s) took place.¹⁴⁸ The police officer may view this during the check, and afterwards other police officers are able to check the registered data on that person’s participation in assemblies.¹⁴⁹ Recently, journalists uncovered that police routinely request protesters’ data from police databanks, and even retrieve data on their parents and children from municipal records (*Basisregistratie personen, BRP*).¹⁵⁰ The police consulted the municipal records of activists who had never been arrested before, sometimes on a large number of

¹⁴² Interview with officials from the intelligence unit of the National Police (on 31 January 2022). The app is called *MEOS* (“Mobiel Effectief Op Straat”, or Mobile Effective on the Street). See also: W. Landman and L. Kleijer-Kool, *Boeven vangen. Een onderzoek naar proactief politieoptreden*, 2016, p. 32; M. den Hengst, T. ten Brink and J. ter Mors, *Informatiegestuurd politiewerk in de praktijk*, 2017, p. 47. Confirmed by the police in Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

¹⁴³ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

¹⁴⁴ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

¹⁴⁵ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

¹⁴⁶ E-mail from Marisella, 13 January 2023.

¹⁴⁷ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

¹⁴⁸ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

¹⁴⁹ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

¹⁵⁰ Investico, ‘Politie verzamelt op grote schaal persoonsgegevens demonstranten’, 10 March 2023.

occasions.¹⁵¹ The municipal records of one activist, Marisella, were consulted more than 300 times.¹⁵² She has never been arrested or convicted for any crime.¹⁵³ In a response to the media, the police admitted there is no specific policy on retrieving activists' personal data. The goal of the data processing is logged in "very general" terms, such as "for law enforcement in a specific case".¹⁵⁴

In addition to logging ID checks, police officers may add notes in the police systems appended to an ID check. Within 24 hours of the check, the police officer has the discretionary power to decide whether and how they register the protester. This is called an 'entry' ('*mutatie*'). Entries are notes that may be based on the observations of the police officer, reports from third parties or information the protester shared with the police officer. The entry includes recording the protester as a suspect, person involved (*betrokkene*), witness or declarant (someone who reported a crime to the police (*aangever*)). Participants in demonstrations are usually registered as "persons involved". Entries can also be linked to a project code.¹⁵⁵ A project code may be linked to a large assembly, protest or demonstration. The purpose of the project code is for the police to assess the risks to public order and determine the police presence. Police analysts may conduct a search based on the project code, which calls up all relevant entries.¹⁵⁶

Amnesty International has assisted 20 protesters in requesting their personal data from the police. Seventeen of them were registered in police databanks as a "person involved" in one or more demonstration(s). Marisella recalled how she was taken aback by the manner in which the police spoke of her in their entries:

"I started a procedure to access my data, because there is a part that I had not been allowed to see yet. What struck me most in what I did see of the records was the tone in which I was referred to. Commenting on our protest, an officer was quoted as saying, among other things: 'they discriminate against us white people too'."¹⁵⁷

Chapter 2 concluded that the ID checks taking place in the Netherlands during demonstrations are in violation of human rights. The processing of personal data in police databanks after an ID check constitutes another interference that violates human rights norms. Specific human rights norms apply to the processing of personal data in police databanks (see Box II). The following sections explain that the data processing that follows ID checks is not in line with human rights standards, and therefore violates the right to privacy.

BOX V: POLICE DATABANKS AND THE RIGHT TO PRIVACY

The European Court of Human Rights has classified personal data and data on movements in the public space as "data relating to the private life".¹⁵⁸ Specific human rights standards apply when data is processed in the context of criminal law enforcement. The systematic collection and storing of data by authorities in the context of criminal law enforcement constitutes an interference with a person's private life,¹⁵⁹ even if such data has been collected in a public space or solely concerned the person's professional or public activities.¹⁶⁰ Regarding the monitoring of public spaces, the European Court of Human Rights has stated:

"A person who walks down the street will, inevitably, be visible to any member of the public who is also present. Monitoring by technological means of the same public scene [...] is of a similar character. Private life considerations may arise, however, once any systematic or permanent record comes into existence of such material from the public domain."¹⁶¹

¹⁵¹ Investico, 'Politie verzamelt op grote schaal persoonsgegevens demonstranten', 10 March 2023.

¹⁵² Investico, 'Politie verzamelt op grote schaal persoonsgegevens demonstranten', 10 March 2023. An article based on the Investico article was also published in a national newspaper: Trouw, 'Politie vraagt op grote schaal gegevens op van demonstranten. 'Het lijkt wel een politiestaat'', 10 March 2023. Marisella has confirmed she is the organiser for the action group Kick Out Zwarte Piet mentioned in the relevant paragraphs of the Investico/Trouw articles on 10 March 2023.

¹⁵³ Confirmed by Marisella, 10 March 2023.

¹⁵⁴ Investico, 'Politie verzamelt op grote schaal persoonsgegevens demonstranten', 10 March 2023.

¹⁵⁵ Response of the Dutch police, 10 March 2023.

¹⁵⁶ Response of the Dutch police, 10 March 2023. An example of a code is "CTER05" for animal and environmental extremism (*dieren en milieu extremisme*). See: Sluitvion, 'Sluit VION! Onder repressie...', 23 April 2021,

¹⁵⁷ E-mail from Marisella, 13 January 2023.

¹⁵⁸ For personal data, see: ECtHR 16 November 2004, no. 29865/96 (*Ünal Tekeli v. Turkey*), para. 42. For data on movements in the public space, see: ECtHR 2 September 2010, no. 35623/05 (*Uzun v. Germany*), para. 52; and data on movements by train or air in surveillance databanks: ECtHR 4 May 2000, no. 30194/09 (*Shimovolos v. Russia*), para. 66.

¹⁵⁹ ECtHR 16 February 2000, no. 27798/95 (*Amann v. Switzerland*), para. 65-67; ECtHR 7 July 2015, no. 28005/12 (*M.N. and others v. San Marino*), para. 53.

¹⁶⁰ ECtHR 21 June 2011, no. 30194/09 (*Shimovolos v. Russia*), para. 64-66; ECtHR 2 September 2010, no. 35623/05 (*Uzun v. Germany*), para. 51-53.

¹⁶¹ ECtHR, 25 December 2001, no. 44787/98 (*P.G. and J.H. v. the United Kingdom*), para. 57.

The Court further stated that a number of circumstances may add to the *seriousness* of the interference, such as whether information included sensitive data,¹⁶² or was subsequently used or consulted by a third party,¹⁶³ and whether the person has in any way been inconvenienced as a result of the information being stored.¹⁶⁴ These circumstances should be taken into account in assessing the justification for the interference in the right to privacy.

The ID checks discussed in this report took place during peaceful protests and were reported by protesters who were not suspected of any crime. Even stricter criteria should apply for data processing where the affected people are not part of any criminal investigation.

3.2 RIGHT TO PRIVACY AT RISK DUE TO DATA MINING

Chapter 2 concluded that using ID checks to gather personal data from protesters for the purpose of obtaining information and conducting risk assessments cannot be considered a proportionate interference with the right to privacy. The same holds for the data processing that follows ID checks. It is important to reiterate that the legitimate aim used to justify an interference must be narrowly interpreted, especially when it comes to “the prevention of disorder” and/or “maintaining public order”.¹⁶⁵

The police argue that they need information in order to determine how to facilitate a demonstration. Information that the police regard as relevant includes notes on their first-hand experience, information about previous demonstrations on the same issue, or information about the person who submits the notification.¹⁶⁶ For example, in September 2022, Amnesty International organised a demonstration for refugee rights in front of the Dutch parliament, along with OxfamNovib, the Dutch Council for Refugees (*Vluchtelingenwerk*), *Humanistisch Verbond* and *Pax voor Vrede*. Two police officers requested that an Amnesty International staff member, Maarten, who was one of the organisers, to identify himself. When he asked why this was necessary, the police claimed that they needed to verify that he was the organiser and to record how the protest went in the event that he organised another demonstration. Maarten explained:

“At almost every protest or action I organise, I have to discuss the reason why the police are asking for my ID. If I refuse a police demand, I will be arrested, and the action will effectively be terminated. I'm there to protest, not to argue with the police. In addition, any check is registered with the police. That doesn't feel right because it's not clear what happens to that data.”¹⁶⁷

The police may use previous experience in their preparations for facilitating a protest; for example, more police officers may be deployed if there is a greater risk of confrontations between different groups of protesters. However, gathering personal data for police databanks through checks cannot be considered necessary for police tasks. Participation in assemblies is not an indication of any risk for public order or criminal wrongdoing, but the exercise of a human right. The processing of protesters' personal data by the police stigmatises their cause and their right to assembly.¹⁶⁸ It is only in cases where the police have credible and sufficiently concrete information that imminent unlawful activities are planned to take place during a protest that interference with privacy during a demonstration might be necessary for public safety and the prevention of a crime, and therefore in particular for the protection of the (otherwise) peaceful protest. In such circumstances, the severity of the imminent unlawful activities would need to be weighed against the restrictions on the rights to freedom of peaceful assembly and of privacy – with ID checks only carried out where they are proportionate. The following sections explain that the processing of personal data to gather

¹⁶² ECtHR 6 June 2006, no. 62332/00 (*Segerstedt-Wiberg and others v. Sweden*), para. 71-72.

¹⁶³ ECtHR 16 February 2000, no. 27798/95 (*Amann v. Switzerland*), para. 69-70.

¹⁶⁴ ECtHR 6 June 2006, no. 62332/00 (*Segerstedt-Wiberg and others v. Sweden*), para. 68.

¹⁶⁵ ECtHR 15 November 2018, no. 29580/12 (*Navalny v. Russia*), para. 122. In light of the object and purpose of the Convention, which is the effective protection of human rights, clauses that permit interference with such rights should be interpreted restrictively. ECtHR 15 October 2015, no. 27510/08 (*Perinçek v. Switzerland*), para. 149-151. See also: Amnesty International Netherlands, *Demonstratierecht onder druk. Regels en praktijk in Nederland moeten beter*, 2022, p. 28-29.

¹⁶⁶ Interview with officials from the intelligence unit of the National Police on 31 January 2022; and response to FoI requests, see: Politie, 'Korpsleiding, Besluit op Wob-verzoek', 14 December 2021; Politie Eenheid Amsterdam, 'Besluit Wob-verzoek cameratoezicht demonstraties Museumplein', 30 November 2021; Politie Eenheid Den Haag, 'Besluit Wob-verzoek inzake demonstraties van Extinction Rebellion op 6 januari 2021 en 10 mei 2021', 29 April 2022; Politie Eenheid Limburg, 'Besluit Wob-verzoek pro-Palestinabetogingen Vrijthof Maastricht mei 2021', 30 November 2021; Politie Eenheid Oost-Brabant, 'Besluit Wob-verzoek intocht Sinterklaas Den Bosch 17 november 2019', 13 October 2021; Politie Eenheid Oost-Nederland, 'Besluit op grond van Wob', 30 November 2021; Politie Eenheid Zeeland-West Brabant, 'Besluit op grond van Wob', 10 November 2021.

¹⁶⁷ Interview with Maarten, 22 March 2023.

¹⁶⁸ Compare with ECtHR 4 December 2008, no. 30562/04 and 30566/04 (*S. and Marper v. the United Kingdom*), p. 122.

information about protests fails to meet the criteria of legality (see Section 3.3) and necessity (see Section 3.4).

3.3 LACK OF LEGALITY FOR TRACKING PROTESTERS IN POLICE DATABANKS

The processing of personal data following ID checks during protests is not in accordance with the law because the Dutch police lack the authority to process personal data obtained from protesters. There is no legal basis for the processing of protesters' personal data through police databanks. For lack of any specific law, the police refer to their general task description enshrined in Article 3 of the *Police Act* as the alleged legal basis for the data processing. According to the police, Article 3 of the *Police Act* also provides the basis for the deployment of cameras during assemblies – including drones, bodycams, police cars with cameras, and photo and video cameras from mobile phones.¹⁶⁹ The provision states the following:

Article 3 of the Police Act

“The police have the task, subordinate to the competent authority and in accordance with the applicable rules of law, of ensuring effective law enforcement and rendering assistance to those who need it.”¹⁷⁰

In Dutch legal doctrine, Article 3 of the *Police Act* is regarded as providing the legal basis for measures by the police only when the measure amounts to at most a minor interference with the fundamental rights and freedoms of a person.¹⁷¹ In the 2020 report *We Sense Trouble*, Amnesty International explained that Article 3 of the *Police Act* cannot be cited as grounds for the processing of personal data for police purposes and for technologically advanced investigation methods.¹⁷² The legal basis used by the police does not meet international human rights standards. Interference with human rights by using these methods is far from minor in nature. On the contrary, the European Court of Human Rights has recognised that the protection of personal data is of fundamental importance to a person's enjoyment of their right to privacy.¹⁷³ People have the right to data protection: data must be processed lawfully and with regard to data protection standards, as set out in international human rights law.¹⁷⁴ The storage of personal data in police databanks can only be permissible when national legislation contains sufficient data protection safeguards.¹⁷⁵

Among other things, the right to data protection requires sufficient specification of the purpose of any data processing.¹⁷⁶ The way that personal data is processed following ID checks fails to meet this requirement, since the aim is not sufficiently specified in Article 3 of the *Police Act*. The discretion of authorities to decide who is registered in police databanks should be prescribed in a sufficiently clear manner.¹⁷⁷ The European Court of Human Rights has emphasised that this is important because surveillance technologies are being developed in a way that is difficult for citizens to understand, especially when automated and systematic data collection is technically possible and becomes widespread.¹⁷⁸ The development of such technologies should therefore be accompanied by the corresponding development of legal safeguards that protect human

¹⁶⁹ Response of the Dutch police and Ministry of Justice and Security, 19 January 2023.

¹⁷⁰ Translation of: “*Artikel 3 Politiewet. De politie heeft tot taak, in ondergeschiktheid aan het bevoegd gezag, en in overeenstemming met de geldende rechtsregels, te zorgen voor de daadwerkelijke handhaving van de rechtsorde en het verlenen van hulp aan hen die deze behoeven.*”

¹⁷¹ Translation of: “*niet meer dan geringe inbreuk op de grondrechten*”. Supreme Court of the Netherlands, 19 December 1995, ECLI:NL:HR:1995:ZD0328 (Zwolsman).

¹⁷² Amnesty International, *We Sense Trouble: automated discrimination and mass surveillance in predictive policing in the Netherlands*, September 2020, p. 34.

¹⁷³ ECtHR 17 March 2010, no. 16428/05 (*Gardel v. France*), para. 62.

¹⁷⁴ See e.g. Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, ETS No. 108, 28 January 1981. The Convention was modernised in 2018. See also Council of Europe, Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data. Within the EU, Article 8 of the Charter of Fundamental Rights of the European Union enshrines a specific right to the protection of personal data. EU law also provides for a specific regime for the processing of personal data by the police for the purpose of the prevention of criminal offences, set out in Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, known as the Law Enforcement Directive (LED).

¹⁷⁵ ECtHR 17 March 2010, no. 16428/05 (*Gardel v. France*), para. 62. See also: ECtHR 17 March 2010, no. 5335/06 (*B.B. v. France*); ECtHR 10 May 2010, no. 22115/06 (*M.B. v. France*).

¹⁷⁶ Convention for the protection of individuals with regard to the processing of personal data (Convention 108+), Article 5 para. 4 (b); European Convention on Human Rights, Art. 8, para. 2; ECtHR 10 October 2006, no. 7508/02 (*L.L. v. France*), para. 46; Charter of Fundamental Rights of the European Union, Article 8 para. 2; EU Directive 2016/680, Article 4 para. 1 (b).

¹⁷⁷ ECtHR 6 June 2006, no. 62332/00 (*Segerstedt-Wiberg a.o. v. Sweden*), para. 76.

¹⁷⁸ ECtHR 6 June 2016, no. 37138/14 (*Szabó and Vissy v. Hungary*), para. 68.

rights.¹⁷⁹ The law providing the legal basis for interference must specify procedures for data processing,¹⁸⁰ and describe the criminal offenses for which measures may be deployed.¹⁸¹ The European Court of Justice (CJEU) similarly requires such legislation to contain objective criteria to restrict data processing by authorities.¹⁸² European Union law on data protection requires data to be collected only for specified, explicit and legitimate purposes and not processed in a manner that is incompatible with those purposes.¹⁸³ National law regulating data processing must specify at least the objectives of the processing, the personal data to be processed and the purpose of the processing.¹⁸⁴

Article 3 of the *Police Act* does not meet these criteria. It does not provide legal basis for the collection and storage of personal data regarding people's participation in assemblies in the absence of connection to a criminal offence. These effects are not foreseeable from the general description of the police task, because Article 3 does not offer any indication as to the circumstances under which the police may collect personal data from someone who organises or participates in an assembly. Article 3 of the *Police Act* does not indicate the scope of discretion granted to the police to collect the data, nor does it clarify the manner in which the police may exercise that discretion, as required by human rights case law.¹⁸⁵ Similarly, Article 3 of the *Police Act* does not provide any details as to the nature of offences that may give rise to interference with the right to privacy.¹⁸⁶ The relevant article simply does not refer to data collection at all.

In general terms, any police processing of data is regulated by the Dutch Police Data Act (*Wet politiegegevens*). This law prescribes adherence to data protection principles but does not provide powers to process data after an ID check. Nor does it clarify under what circumstances, if any, data obtained from protesters may be processed. According to the interpretation of the police, any police officer may decide at their own discretion to check the ID of a protester, thus automatically processing that person's personal data in the police databanks; in addition, the police officer has sole discretion to decide what other information to add to the police databanks. The data processing that takes place here does not meet the criterion of legality and thus violates the right to privacy.

3.4 DISPROPORTIONATE SURVEILLANCE AND VIOLATION OF DATA PROTECTION NORMS

Section 3.3 explained that Article 3 of the Dutch *Police Act* fails to meet the legality requirement of human rights law. The processing of protesters' personal data is therefore in violation of the right to privacy. But even if legislation had been created that allowed for the processing of protesters' personal data, it could not be considered necessary to process personal data of people who organise or participate in protests without individualised suspicion of a crime or offence. This must always be considered disproportionate. Data protection law requires authorities to ensure that they only process personal data as far as it is adequate, relevant and not excessive in relation to the purpose for which it is processed (the principle of *data minimisation*).¹⁸⁷ The processing of data following ID checks during assemblies is not based on data minimisation, but data maximisation: as discussed above, police officers have broad discretion to check people, register their personal data, and access data from numerous other databanks.

Allegedly for the purpose of preventing disorder and crime, the police operate on the assumption that they may collect and analyse data from participants in peaceful assemblies – without any indication whatsoever as to whether they are intending to commit a criminal offence. The police assume that the data from previous protests may be relevant to their tasks, arguing that vandalism, disorder and violence can take

¹⁷⁹ ECtHR 2 September 2010, no. 35623/05 (*Uzun v. Germany*), para. 61; ECtHR 6 June 2016, no. 37138/14 (*Szabó and Vissy v. Hungary*), para. 66-68 and 89; ECtHR 18 October 2016, no. 61838/10 (*Vukota-Bojić v. Switzerland*), para. 67.

¹⁸⁰ ECtHR 24 April 1990, no. 11801/85 (*Kruslin v. France*), para. 35; ECtHR 24 April 1990, no. 11105/84 (*Huvig t. France*), para. 34; ECtHR 16 February 2000, no. 27798/95 (*Amann v. Switzerland*), para. 76; ECtHR 4 May 2000, no. 28341/95 (*Rotaru v. Romania*), para. 57; ECtHR 4 May 2000, no. 30194/09 (*Shimovolos v. Russia*), para. 69; ECtHR 29 June 2006, no. 54934/00 (*Weber and Saravia v. Germany*), para. 95; ECtHR 13 November 2012, no. 24029/07 (*M.M. v. the United Kingdom*), para. 206.

¹⁸¹ ECtHR 16 February 2000, nr. 27798/95 (*Amann v. Switzerland*), para. 58; ECtHR 29 June 2006, nr. 54934/00 (*Weber and Saravia v. Germany*), para. 95; ECtHR 4 December 2015, nr. 47143/06 (*Roman Zakharov v. Russia*), para. 231 and 243.

¹⁸² See for example CJEU 6 October 2015, C-362/14 (*Schrems v. Data Protection Commissioner*).

¹⁸³ EU Directive 2016/680, Article 4, para. 1 (b).

¹⁸⁴ EU Directive 2016/680, Article 8, para. 2.

¹⁸⁵ ECtHR 2 August 1984, no. 8691/79 (*Malone v. the United Kingdom*), para. 67; ECtHR 26 March 1987, no. 9248/81 (*Leander v. Sweden*), para. 51; ECtHR 24 April 1990, no. 11105/84 (*Huvig v. France*), p. 29; ECtHR 4 May 2000, no. 28341/95 (*Rotaru v. Romania*), p. 55; ECtHR 2 September 2010, no. 35623/05 (*Uzun v. Germany*), para. 62; ECtHR 4 December 2008, no. 30562/04 (*S. and Marper v. the United Kingdom*), para. 95.

¹⁸⁶ ECtHR 18 May 2010, no. 26839/05 (*Kennedy v. the United Kingdom*), para. 159.

¹⁸⁷ Convention for the protection of individuals with regard to the processing of personal data (Convention 108+), Article 5 para. 4 (c); EU Directive 2016/680, Article 4 para. 1 (c) and Article 7.

place at demonstrations.¹⁸⁸ The police's discretionary power to perform ID checks and make entries in records allows for the data relating to assemblies to be stored in police databases without any differentiation between facts and personal observations, and without proper assessment of its relevance to any real danger or specific criminal offence. This is in clear violation of EU data protection law.¹⁸⁹ As a result, personal data are unlawfully being stored in police databanks, in violation of privacy and data protection standards. This is even more serious since the entries about participation in public assemblies can provide insight into someone's political opinions, which are considered sensitive personal data and therefore subject to additional legal protections.¹⁹⁰

According to the Dutch police, records resulting from checks at assemblies are generally stored for five years and can be accessed by approximately 30,000 police officers. After that, they may be retained for another five years in a secured environment, where the data may only be retrieved by a limited number of 'gatekeepers' (*poortwachters*) for accountability reasons and complaints handling. This rule is not applied strictly: according to the police data may be processed further for other purposes, to which other processing terms apply.¹⁹¹ Moreover, data collection does not stop after the ID check. Once someone is added to the police databases, their records are automatically updated. The personal data of people included in the databanks is automatically supplemented and cross-checked by information from the Personal Records Database (*Basisregistratie Personen*). These municipal records include previous and current addresses, marriages, and birth records for any children.¹⁹² The automated data processing applies to anyone in the police databanks and continues even if the person has died.

The police aim to implement a new policy, which would only allow for specific groups or selected individuals to be subjected to automated data processing.¹⁹³ In spite of implementing this new policy the police have denied that the current practice is unlawful. The police claim that implementation of the policy is progressing slowly because it is difficult to turn off the applications involved.¹⁹⁴ The police also claim that automated data processing is needed to keep records up to date, so that the police can contact a declarant or witness during an investigation. The police have stated that nothing is done with the data provided unless an officer submits a targeted query.¹⁹⁵

One protester, Sander, reported that the police accessed his home address after an ID check and visited him subsequently at home to ask further questions:

"In January 2022, me and about 10 others organised a protest at the photo op of the newly formed Cabinet. The police checked our IDs. Now, fast forward to March 2022: two police officers showed up at my door four times in one week. It was a local police officer plus someone who did not introduce himself. I was not at home, because I travel a lot for my job. But I compiled reports of everything, based on what my roommate told me about those visits. Weeks later, I called the local police officer because I still wanted to know their reason for these visits. He told me some vague story about wanting to 'get acquainted' because of my ID check in January. None of the other activists who were checked [at the protest in January 2022] have had similar experiences."¹⁹⁶

In addition, the police databanks and the way in which they are used are not in line with data protection standards regarding protection against unauthorised or unlawful processing.¹⁹⁷ Access to the records about participation in public assemblies is not limited to specific police officers. Instead, all police officers with access to a police phone (approximately 30,000 officers) are authorised to access these records. The police

¹⁸⁸ Response to Fol requests, see: Politie, 'Korpsleiding, Besluit op Wob-verzoek', 14 December 2021; Politie Eenheid Amsterdam, 'Besluit Wob-verzoek cameratoezicht demonstraties Museumplein', 30 November 2021; Politie Eenheid Den Haag, 'Besluit Wob-verzoek inzake demonstraties van Extinction Rebellion op 6 januari 2021 en 10 mei 2021', 29 April 2022; Politie Eenheid Limburg, 'Besluit Wob-verzoek pro-Palestinabetogingen Vrijthof Maastricht mei 2021', 30 November 2021; Politie Eenheid Oost-Brabant, 'Besluit Wob-verzoek intocht Sinterklaas Den Bosch 17 november 2019', 13 October 2021; Politie Eenheid Oost Nederland, 'Besluit op grond van Wob', 30 November 2021; Politie Eenheid Zeeland-West Brabant, Besluit op grond van Wob, 10 November 2021.

¹⁸⁹ EU Directive 2016/680, Article 4 para. 1 (c) and Article 7.

¹⁹⁰ Convention for the protection of individuals with regard to the processing of personal data (Convention 108+), Article 6; EU Directive 2016/680, Article 10.

¹⁹¹ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023, with reference to the Dutch Police Data Act (*Wet politiegegevens*) and the privacy statement of the police, available on:

¹⁹² Gidi Pols, 'Politie spaart onnodig data van burgers op', Trouw, 25 July 2022,

¹⁹³ The police are working to reduce the number of people subjected to automated updates, because they do not consider it necessary to track everyone. Their efforts will first focus on people who are not suspects. The police will only take a short-term subscription to automated updates about these non-suspects, or will not subscribe to their updates at all. In 2022, the police started implementing changes to the registration system. Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

¹⁹⁴ Gidi Pols, 'Politie spaart onnodig data van burgers op', Trouw, 25 July 2022,

¹⁹⁵ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

¹⁹⁶ E-mail from Sander, September 2022.

¹⁹⁷ This is in violation of the Convention for the protection of individuals with regard to the processing of personal data (Convention 108+) Article 7; EU Directive 2016/680, Article 4 para. 1 (f).

emphasise that an officer should have a reason for consulting a system.¹⁹⁸ For example, a police officer who works in one part of the country should not conduct searches regarding crimes in another part of the country.¹⁹⁹ Search queries are logged, but the police do not check what has been queried.²⁰⁰ No technical measures have been taken to restrict police officers' authority to submit search queries to police databanks.²⁰¹ This comes as no surprise, since the whole premise of 'information-driven policing' is based on gathering and sharing vast amounts of data. The police's policy is to share, and non-sharing is the exception ('share, unless', or: '*delen, tenzij*').²⁰² Tens of thousands of police officers have access to records about participation in peaceful assemblies, even when they look up someone years later for something completely unrelated to the protest. The police can search records without any control or oversight. Protesters have no control over their personal data and what it is being used for (more on the lack of oversight and obstacles to the right to remedy in Chapter 5).

Collecting personal data on all these people, in the absence of any suspicion of criminal activity at all, is unnecessary and disproportionate.²⁰³ People have the right to organise and participate in peaceful assemblies without being under police surveillance and without having their data stored in police databanks for years, supplemented by automated updates of their life events. Authorities may use information to assess the best way to facilitate a protest, but they may only use personal data which is gathered in accordance with human rights standards. Moreover, they should always differentiate between different ways that people exercise their right to freedom of assembly and consider the specific circumstances of each case.²⁰⁴ There may be instances where the processing of personal data is necessary for the investigation of a crime, but an assessment needs to be carried out on a case-by-case basis, adhering to the human rights requirements of legality, proportionality and necessity. Moreover, the aim of facilitating the right to freedom of peaceful assembly and, closely connected, the presumption of peacefulness should be paramount.²⁰⁵

¹⁹⁸ Interview with officials from the intelligence unit of the National Police on 31 January 2022.

¹⁹⁹ Interview with officials from the intelligence unit of the National Police on 31 January 2022.

²⁰⁰ Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

²⁰¹ Interview with officials from the intelligence unit of the National Police on 31 January 2022.

²⁰² W. Landman and L. Kleijer-Kool, *Boeven vangen. Een onderzoek naar proactief politieoptreden*, 2016, p. 32; M. den Hengst, T. ten Brink and J. ter Mors, *Informatiegestuurd politiewerk in de praktijk*, 2017, p. 26.

²⁰³ Compare with ECtHR 4 December 2008, no. 30562/04 and 30566/04 (*S. and Marper v. the United Kingdom*), p. 119.

²⁰⁴ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 38.

²⁰⁵ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, paras. 36-40.

4. CHILLING EFFECT ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

4.1 CRIMINALISATION OF PROTEST

Most people will cooperate when the police request their ID. As explained in Section 2.3, even a “request” for ID which a protester technically may refuse is usually interpreted as a demand with which a protester feels they must comply. Amnesty International staff have also experienced that questioning whether an ID check is lawful often results in the police proceeding to demand their ID. Some organisations have a policy of cooperating with ID checks, as Dewi explained in Section 2.2, for example. Ivo, from another organisation, also stated that they have opted to cooperate with ID checks. He explained that his focus is on ensuring the protest is successful:

“I often get checked when I am coordinating a demonstration in The Hague. If I submitted the notification for a protest, then they ask me for ID. I am just so caught up in ensuring the protest is successful at that moment. They also check your ID if there was no notification submitted for the protest. In that case, they take your ID for quite a while, about half an hour. Our policy is to give our ID when asked.”²⁰⁶

When people are hesitant to comply right away, or if they question the legality of the check, the police officer usually says that they will be arrested if they do not comply. Failure to comply with a demand (*requisition, vordering*) to show ID constitutes a criminal offence under Dutch criminal law.²⁰⁷ The research for this report includes only two examples of people who refused to cooperate with ID checks. The first case concerned two protesters who reported that they were arrested after their assembly had already ended. Frank recounted how they were on their way back to the train station when the police approached them for ID checks:

“Ella and I participated in a protest at a company. The management of the company had spoken to us. Then the police came and asked for our ID. We didn’t think that was necessary. (...) We said we wouldn’t give our ID. The fact that the police were there is odd to begin with, but I didn’t feel like showing my ID. Then we were arrested.”²⁰⁸

In the second case a protester had consulted a lawyer who told her she did not have to show her ID. Birgit explained how her refusal to cooperate resulted in the authorities ending her participation in an assembly:

“When I arrived [at the assembly in Amsterdam], the police asked for my ID. I refused because they did not give me a reason. According to the lawyer I consulted, I did not have to show my ID. Nevertheless, I was arrested and taken away in handcuffs. (...) I feel like this has taken away my right to demonstrate. I have filed a complaint

²⁰⁶ Interview with Ivo, 20 July 2021.

²⁰⁷ Dutch Criminal Code (*Wetboek van Strafrecht*), Article 447e.

²⁰⁸ Interview with Frank, 21 July 2021.

with the police. The police officer did not give me his identification number, but I did get it from fellow protesters afterwards. I was left with bruising from the cuffs.”²⁰⁹

In other cases protesters were arrested because they did not have their ID on them. For example, the police arrested two protesters during the demonstration at Erasmus Bridge in Rotterdam (the peaceful assembly mentioned in Section 2.3) because they could not identify themselves.²¹⁰ In another case Ash, from an arrestee support group in Assen reported:

“At one of our protests in Emmen, 12 people were arrested. After three nights, four of them were still detained. We stood outside the police station, the three of us, waiting for them as arrestee support. Then the police approached us to ask for our IDs because of ‘suspicious behaviour’. Two of us showed ID, but a third did not have ID and was arrested and taken into the police station.”²¹¹

In Amsterdam, too, people faced the threat of arrest for providing arrestee support outside a police station. Two police vans arrived next to where the group had gathered, and the police checked the IDs of all those present. Andie described the scene:

“There were about 10 to 15 of us waiting in front of the police station. We had asked the people inside the station, and they said it was okay. But at one point, two police vans arrived. One of the officers said, ‘We want to check your ID; if you don’t cooperate you will be arrested’. We asked why, since we were just sitting there, and we had checked if it was allowed. But at the time, because of COVID, they could always say there were too many people gathered. (...) We found out later that the officers had been called because they were expecting another protest. It was very strange because we were just sitting there. They were quite aggressive, as in verbally aggressive. Then we all gave our ID, which they registered.”²¹²

Another protester, Jelle, added:

“The police demanded our ID with their batons in hand. That kind of intensified our feeling that the police wanted to pre-emptively monitor our actions. They already see a risk of public disorder when we go somewhere.”²¹³

In addition to being arrested, people may also face being searched or fined if they do not cooperate with an ID check. Alex for example said:

“The police officer said he would not fine me if I did not block the road again. Later, however, I did sit down again elsewhere, simply because I felt that the first time was far too short to manifest my views to the public. I had been picked up off the road within five minutes the first time.”²¹⁴

As mentioned in Section 2.1, participants in an anti-racism protest in Alkmaar said they feared they would be searched if they did not hand over their ID. Marisella was one of the two protesters who could not show ID. She was fined:

“I was fined for not having identification with me at a protest in Alkmaar. I had left it in the car. (...) I asked them to call the mayor, which resulted in the police apologising to us. Yet even after I showed my ID, I still received a fine in my mailbox for not showing my ID. I contested the fine in court. The judge ruled that the check was unlawful and the fine was annulled. We got lucky, because we filmed everything. The judge could see that there was no reason to demand IDs but also that my ID had been shown despite me having to take it out of my car first. They had also threatened to search us. I objected to the search on the spot. My fellow demonstrator let them search and paid the fine for not showing ID.”²¹⁵

Box VI below outlines that these arrests – or other forms of criminalizing peaceful protesters – violate the right to freedom of peaceful assembly.

²⁰⁹ E-mail from Birgit, 31 October 2022.

²¹⁰ Interview with Savannah, 13 July 2021; interview with Andie, 14 July 2021; interview with Anne, 21 July 2021.

²¹¹ E-mail from Ash, 10 November 2022.

²¹² Interview with Andie, 14 July 2021.

²¹³ Interview with Jelle, 21 July 2021.

²¹⁴ Interview with Alex, 21 July 2021.

²¹⁵ Interview with Marisella, 16 July 2021.



BOX VI: POLICE ARREST DURING PROTEST MAY VIOLATE THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

Arrest, or any other form of criminalizing a peaceful demonstrator, constitutes a restriction on the right to freedom of peaceful assembly. Human rights law allows restrictions on the right to freedom of peaceful assembly only in limited circumstances.²¹⁶ The term ‘restriction’ must be interpreted here as including measures taken before, during or after a demonstration.²¹⁷ An arrest, or any other interference with the right to assembly, constitutes a violation of human rights unless it is in accordance with the law, pursues one or more legitimate aims, and is “necessary in a democratic society” for the achievement of those aims.²¹⁸

First, the measure should have a legal basis in legislation that is accessible and foreseeable.²¹⁹ The law must be sufficiently precise to protect against arbitrary interference by authorities, and to clarify the scope and exercise of any discretion that it offers authorities.²²⁰

Second, the measure must pursue a legitimate aim. In restrictions placed on the exercise of the right to freedom of assembly, “the prevention of disorder” is one of the most cited aims.²²¹ International human rights law stresses, however, that this aim must be interpreted narrowly.²²² States should not rely on a vague definition of public order to justify overly broad restrictions on the right to peaceful assembly. A mere disturbance does not meet this criterion: a protest may cause a certain degree of disruption of public life.²²³ A measure may also be illegitimate if it pursues an ulterior motive, such as political persecution, either as a sole purpose or in addition to a legitimate aim.²²⁴

Third, any restriction must be “necessary in a democratic society”. It must answer a “pressing social need” and be proportionate to the legitimate aim.²²⁵ A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction²²⁶ or deprivation of liberty.²²⁷ The European Court of Human Rights has pointed out that an unlawful situation does not, in itself, necessarily justify a restriction of the right to freedom of assembly.²²⁸ Authorities must show a certain degree of tolerance towards peaceful demonstrations.²²⁹ A failure to comply with the notification requirement, for example, does not legitimise in itself an interference with the right to freedom of peaceful assembly.²³⁰

²¹⁶ International Covenant on Civil and Political Rights, Art. 21; UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 8. See also the European Convention of Human Rights, Art. 11, para. 2, and for relevant case law see for example ECtHR 15 October 2015, no. 37553/05 (*Kudrevičius and others v. Lithuania*), para. 100 and 164; ECtHR 27 January 2009, no. 16999/04 (*Samüt Karabulut v. Turkey*), para. 31; ECtHR 7 October 2008, no. 4327/02 (*Saya and others v. Turkey*), para. 39.

²¹⁷ ECtHR 26 April 1991, no. 11800/85 (*Ezelin v. France*), para. 39.

²¹⁸ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, paras. 39-41. See also: ECtHR 27 January 2009, no. 16999/04 (*Samüt Karabulut v. Turkey*), para. 31-39; ECtHR 7 October 2008, no. 4327/02 (*Saya and others v. Turkey*), para. 41.

²¹⁹ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 30. See also for example ECtHR 15 October 2015, no. 37553/05 (*Kudrevičius and others v. Lithuania*), para. 108-110.

²²⁰ *Ibid.* See also ECtHR 15 November 2018, no. 29580/12 (*Navalny v. Russia*), para. 115.

²²¹ European Court of Human Rights, *Guide on Article 11 of the European Convention on Human Rights. Freedom of assembly and association*, 31 August 2022, para. 59.

²²² UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, paras. 7 and 44; ; ECtHR 15 November 2018, no. 29580/12 (*Navalny v. Russia*), para. 120-122.

²²³ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, paras. 7 en 44; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para.32.

²²⁴ European Court of Human Rights, *Guide on Article 11 of the European Convention on Human Rights. Freedom of assembly and association*, 31 August 2022, para. 63. See for example: ECtHR 31 July 2014, no. 1774/11 (*Nemtsov v Russia*), para. 130; ECtHR 6 June 2016, no. 74568/12 (*Frumkin v. Russia*), para. 173; ECtHR 15 November 2018, no. 29580/12 (*Navalny v. Russia*), para. 164. See also UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 49.

²²⁵ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 40. See also for example, ECtHR 15 October 2015, no. 37553/05 (*Kudrevičius and Others v. Lithuania*), para. 143.

²²⁶ ECtHR 15 October 2015, no. 37553/05 (*Kudrevičius and others v. Lithuania*), para. 146; ECtHR 17 May 2011, ns. 28495/06 and 28516/06 (*Akgöl and Göl v. Turkey*), para. 43. See also UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 27.

²²⁷ ECtHR 15 October 2015, no. 37553/05 (*Kudrevičius and others v. Lithuania*), para. 146; ECtHR 18 June 2013, no. 8029/07 (*Gün and others v. Turkey*), para. 83. See also Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 45.

²²⁸ ECtHR 9 April 2002, no. 51346/99 (*Cisse v. France*), para. 50.

²²⁹ ECtHR 17 May 2011, ns. 28495/06 and 28516/06 (*Akgöl and Göl v. Turkey*), para. 43.

Under human rights law, arrest for not-showing an ID during a peaceful assembly does not meet the human rights criteria described in the box above. An arrest for not showing ID constitutes a serious interference with the right to freedom of peaceful assembly, as it effectively ends that person's exercise of this right. Dutch law provides a legal basis for arrest, since failure to comply with the demand to show ID constitutes a criminal offence under the Dutch Criminal Code.²³¹ However, such arrests during a peaceful assembly are considered to be in violation of international human rights law when they have no connection with the intended purpose of the law and are both unnecessary and disproportionate.²³² This seems to be the case when a participant in a peaceful assembly is arrested for not showing ID. No statistics are available, but the cases included in Amnesty International's research reveal a varied response from the police and public prosecution office. Some people who are arrested are released after a couple of hours and never hear about it again. Others are fined for a criminal offence. Then there are people, such as Marisella, who are not arrested but do receive a fine. Those refusing to pay the fine are usually prosecuted, but such legal proceedings sometimes also fail to materialise.

The lack of follow-up suggests that the authorities do not actually consider that there has been any behaviour that warrants punishment, thus showing how arbitrary the arrest was in the first place. It also gives the impression that the arrest is at least partially aimed at ending the person's participation in the assembly. The European Court of Human Rights has found that penalties for non-compliance with the lawful order of a police officer, imposed to prevent or to punish participation in an assembly, should be characterised as arbitrary and unlawful and do not meet the legality requirement.²³³ The problem is that where the authorities refrain from following through with a prosecution, they avoid judicial review of the legality of the arrest, limiting protesters in their routes for remedy (as will be further explained in Chapter 5).²³⁴

As noted before in this report, authorities must show a certain degree of tolerance towards peaceful demonstrations, and the term 'peaceful' must be interpreted broadly.²³⁵ The right to assembly also protects conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.²³⁶ The European Court of Human Rights has pointed out that even if there is an unlawful situation during a protest, this does not automatically justify any interference with the protesters' right to freedom of assembly.²³⁷ The European Court of Human Rights has held that a peaceful demonstration should not, in principle, be rendered subject to the threat of criminal sanctions or deprivation of liberty,²³⁸ and that regulations for demonstrations should not represent a covert obstacle to freedom of peaceful assembly.²³⁹ Accordingly, arrests of those peacefully engaging in protests will generally only be proportionate where the offence that is the basis of the arrest is sufficiently grave in nature.

4.2 DISCOURAGING FUTURE PROTESTS THROUGH UNLAWFUL CHECKS

Identity checks of protesters without reasonable suspicion of a criminal offence not only violate the right to privacy; they also contribute to a chilling effect on the right to freedom of peaceful assembly, potentially discouraging people from taking part in assemblies in the future. ID checks during demonstrations may pre-emptively dissuade people from exercising their right to assembly, causing them to fear surveillance or arrest if they take part in protests.

²³⁰ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, paras. 70-71. See also ECtHR 17 May 2011, ns. 28495/06 and 28516/06 (*Akgöl and Göl v. Turkey*), para. 41; ECtHR 27 January 2009, no. 16999/04 (*Samüt Karabulut v. Turkey*), para. 35.

²³¹ Dutch Criminal Code (*Wetboek van Strafrecht*), Article 447e.

²³² ECtHR 10 April 2012, no. 34320/04 (*Hakobyan and Others v. Armenia*), para. 107; ECtHR 11 February 2016, nos. 67360/11, 67964/11 and 69379/11 (*Huseynli and Others v. Azerbaijan*), para. 132.

²³³ ECtHR 10 April 2012, no. 34320/04 (*Hakobyan and Others v. Armenia*), para. 107; ECtHR 11 February 2016, nos. 67360/11, 67964/11 and 69379/11 (*Huseynli and Others v. Azerbaijan*), para. 132.

²³⁴ See also Amnesty International Netherlands, *Demonstratierecht onder druk. Regels en praktijk in Nederland moeten beter*, 2022, p. 60-61.

²³⁵ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 44; ECtHR 17 May 2011, ns. 28495/06 and 28516/06 (*Akgöl and Göl v. Turkey*), para. 43.

²³⁶ *Guidelines on freedom of peaceful assembly*, 15 July 2020, para. 15; ECtHR 21 June 1988, no. 10126/82 (*Ärtze für das leben v. Austria*), par. 32.

²³⁷ ECtHR 9 April 2002, no. 51346/99 (*Cisse v. France*), para. 50.

²³⁸ ECtHR 15 October 2015, no. 37553/05 (*Kudrevičius and others v. Lithuania*), para. 146; ECtHR 17 May 2011, ns. 28495/06 and 28516/06 (*Akgöl and Göl v. Turkey*), para. 43; ECtHR 18 June 2013, no. 8029/07 (*Gün and others v. Turkey*), para. 83.

²³⁹ ECtHR 17 May 2011, ns. 28495/06 and 28516/06 (*Akgöl and Göl v. Turkey*), para. 41; ECtHR 27 January 2009, no. 16999/04 (*Samüt Karabulut v. Turkey*), para. 35.

In 2020, the UN Human Rights Committee recognised that the use of surveillance technology or data collection in the context of assemblies may have a chilling effect on the right of peaceful assembly.²⁴⁰ The UN Human Rights Committee stated that restrictions on the right to freedom of peaceful assembly must not be “discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect”.²⁴¹ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has similarly emphasised that the processing of personal data should not result in “suppressing rights or creating a chilling effect”.²⁴² The collection of information must never be aimed at intimidating or harassing participants or would-be participants in peaceful assemblies.²⁴³ Additionally, the European Court of Human Rights has stated that, in assessing the proportionality of restrictions placed on the freedom of assembly, the chilling effect must be taken into account. In legal academia, a chilling effect has been defined as:

“The negative effect any state action has on natural and/or legal persons, and which results in pre-emptively dissuading them from exercising their rights or fulfilling their professional obligations, for fear of being subject to formal state proceedings which could lead to sanctions or informal consequences such as threats, attacks or smear campaigns. State action is understood in this context as any measure, practice or omission by public authorities which may deter natural and/or legal persons from exercising any of the rights provided to them under national, European and/or international law, or may discourage the potential fulfilment of one’s professional obligations (as in the case of judges, prosecutors and lawyers, for instance).”²⁴⁴

A chilling effect can occur not only as a result of disproportionate sanctions to discourage people from exercising their rights, but also through the adoption of deliberately ambiguous legal provisions and arbitrary enforcement of those provisions against critics of the authorities.²⁴⁵ The European Court of Human Rights has recognised that enforcement measures during protests, such as the use of force to disperse a peaceful assembly, police arrest, detention and/or ensuing administrative conviction, may have the effect of discouraging the initial protesters and others from participating in similar assemblies in the future.²⁴⁶ The use of force by the police when arresting protesters not engaged in any acts of violence may also have a chilling effect on the protesters and others, discouraging them from taking part in similar public gatherings.²⁴⁷ A chilling effect may remain present even after protesters are acquitted or any charges against them are dropped, since the very act of prosecution could discourage them from taking part in similar gatherings in future.²⁴⁸

As stated above, it is clear that the police practice of monitoring protesters may have the effect of dissuading people from exercising their right to freedom of peaceful assembly. People find themselves forced to refrain from exercising their rights and organising or participating in legitimate activities. In some instances, protesters may change the way they choose to exercise their protest rights. Quinn said they had never notified the authorities about an assembly, because Quinn is stuck with incorrect police data, and wants to avoid surveillance and degrading treatment:

“I am trans and non-binary. I cannot change my passport, so my records contain outdated data. I have participated in organising an assembly, but I am never the one who submits the notification, because I am stuck with incorrect data.²⁴⁹ (...) Another reason for not submitting the notification is because I have experienced discrimination and trans hate from police officers at demonstrations. I have also seen this happen to fellow activists. For example, the police ask you to identify yourself, and then the police officer addresses you with the gender on your passport. When you indicate that you don’t want to be addressed that way because of your gender/trans identity, the police laugh and start using Mr/Mrs explicitly in every sentence, misgendering you.

²⁴⁰ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, paras. 10, 61 and 94.

²⁴¹ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 36.

²⁴² Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, para. 61.

²⁴³ *Ibid.*

²⁴⁴ Laurent Pech, *The concept of chilling effect: Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU*, Open Society European Policy Institute, March 2021, p. 4.

²⁴⁵ Laurent Pech, *The concept of chilling effect: Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU*, Open Society European Policy Institute, March 2021, p. 4.

²⁴⁶ ECtHR 29 November 2007, no. 25/02 (*Balçık and Others v. Turkey*), para. 41.

²⁴⁷ ECtHR 13 October 2020, nos. 35880/74 and 75926/17 (*Zakharov and Varzhabetyan v. Russia*), para. 90; ECtHR 10 November 2020, no. 75186/12 (*Navalnyy and Gunko v. Russia*), para. 88.

²⁴⁸ ECtHR 18 December 2007, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 (*Nurettin Aldemir and Others v. Turkey*), para. 34.

²⁴⁹ Interview with Quinn, 8 July 2021.

Another example is when a police officer searches you and touches your chest and genital area for a longer time compared to fellow activists who are cis, while laughing and then joking with fellow officers afterwards.”²⁵⁰

In December 2020, Quinn did take part in organising a demonstration against racism and refugee hate. However, they withdrew from the organisation when the police started calling around asking about them. When asked why they withdrew, Quinn said:

“It was a nexus of reasons, but mostly the behaviour of the police. (...) There were a lot of calls; I had recently been checked at an anti-racism protest, and I did not know what was going on. I started wondering if I might have done something, if something had been written about me; I just didn’t know what to think (...) Then I decided in consultation with a fellow organiser that I would withdraw, because we were afraid that the authorities would cancel the assembly if we did not do everything very precisely according to the rules. We did not want the demonstration to be cancelled because I was in the organisation.”²⁵¹

Quinn did attend the assembly, and said they were the only one checked for ID:

“When the assembly ended, the police and someone from the municipality approached me. They asked for my ID. I said that that was not necessary, and I did not want to show my ID. More police officers approached me. I asked whether it was a demand. They said ‘yes, or you will be taken to the police station’. At that point, I chose to give them my ID because I did not want to come with them. I was afraid of being arrested.”²⁵²

Identity checks may also have an impact on the right to peaceful assembly of people without an official residence status. The right to peaceful assembly applies to everyone equally, but people who do not have a residence status or are awaiting approval of their residence application might fear ending up in immigration detention after an ID check and potentially facing consequences for their status. It is important to emphasise that participation in a demonstration should not affect a person’s residence permit.²⁵³ There are also people who choose to stay anonymous during assemblies. This choice should not lead to their arrest.²⁵⁴ Yet in the Netherlands, this desire to stay anonymous is obstructed because of the risk of detention; if people refuse to identify themselves in any way to the police after a demand for ID, they may risk ending up in immigration detention.²⁵⁵ Ana, who organised a protest in front of an embassy in The Hague in September 2020, cooperated with an ID check in an effort to protect other participants against unlawful checks:

“Two police cars arrived at the embassy where we were protesting. A police officer asked for my identification and wrote down my name and ID number because I had been in contact with the police as an organiser of the protest. They did not ask for anyone else’s ID. (...) I gave my ID, which I had already decided I would, because there were two people who were part of the protest who are in a somewhat precarious legal situation here. To avoid any problems for them, I had decided to give my ID if it meant that others wouldn’t have to.”²⁵⁶

When the *Compulsory Identification Act* was originally proposed, the Dutch Association for the Judiciary (*Nederlandse Vereniging voor Rechtspraak*) raised concerns about the potential chilling effect of ID checks on the freedom of peaceful assembly and expression.²⁵⁷ In the Explanatory Memorandum to the Act, the government brushed these concerns aside with two arguments. First, the government claimed that a chilling effect would “not be very likely” as ID checks would be allowed only “to the extent reasonably necessary for the performance of the police task”, which would, according to the government, “make clear that hindering participation in regular societal activities cannot be part of this”.²⁵⁸ Second, the government claimed that its commitment not to register ID checks would be a safeguard against the possibility of a chilling effect.²⁵⁹ This commitment was included in the Explanatory Memorandum, but not in national law in the Netherlands. In response to parliamentary questions, the Minister of Justice and Security and the Minister of the Interior and

²⁵⁰ E-mail from Quinn, 10 January 2023.

²⁵¹ E-mail from Quinn, 10 January 2023.

²⁵² Interview with Quinn, 8 July 2021.

²⁵³ UN Human Rights Committee, General Comment 37 on the right of peaceful assembly (Article 21), 17 September 2020, UN Doc. CCPR/C/GC/37, para. 5. In the Netherlands, the Public Interest Litigation Project (PILP) wrote a memo on this topic after receiving questions from people who were afraid there would be consequences for participating in a protest. See: PILP, “Memo: The right to protest, civil disobedience and your residence permit”, 9 October 2019, available on africandefenders.org/guidelines-on-freedom-of-association-and-assembly-in-africa/

²⁵⁴ *Guidelines on freedom of peaceful assembly*, 15 July 2020, para. 153. See also African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 81.

²⁵⁵ See for example Rechtbank Amsterdam, 16 June 2017, ECLI:NL:RBAMS:2017:4159. For news articles on this case, see for example ‘Van Gogh-activisten: ‘Arrestatie is schending vrijheid van meningsuiting’, *AD*, 14 May 2017,

‘Activisten die in Van Gogh Museum tegen sponsorrelatie met Shell protesteerden, eindigden in cel’, 14 May 2017, *Volkskrant*,

²⁵⁶ E-mail from Ana on 22 December 2022.

²⁵⁷ *Parliamentary Papers* 2003-2004, 29 218, no. 3, p. 2.

²⁵⁸ *Parliamentary Papers* 2003-2004, 29 218, no. 3, p. 4-5.

²⁵⁹ *Parliamentary Papers* 2003-2004, 29 218, no. 3, p. 5.

Kingdom Relations stated that registering checked persons is only permissible when “necessary for the performance of the police task”.²⁶⁰ According to the Ministers, this would be the case when someone was checked on suspicion of a criminal offence. Apart from situations where someone is a suspect, they held it would be “hard to imagine” what purpose would be served by recording personal data for carrying out other police duties. For the tracking of movements of people against whom no specific suspicion of a crime exists, the Ministers referred to the powers of secret services.²⁶¹

In actual practice, both commitments are systematically being flouted by the police. In 2007, the National Ombudsman noted that the police carry out ID checks during demonstrations and that these may have an intimidating and even escalating effect. The National Ombudsman advised the police to only demand ID when needed for the investigation of a criminal offence, and only then when they actually intend to file a police report.²⁶² In a 2013 report on racial profiling, Amnesty International expressed concerns about the broadly defined powers and lack of systematic registration and evaluation of ID checks, traffic stops and preventive searches.²⁶³ In 2018, the National Ombudsman again emphasised that the police should only proceed to detain protesters if there is a reasonable suspicion of a specific criminal offense.²⁶⁴ The recommendations of the National Ombudsman and Amnesty International have not led to changes in national law or instructions on preventive checks. On the contrary, the research for this report revealed that the police regularly check IDs during demonstrations (as set out in Chapter 2), thus obstructing participation in peaceful assemblies. The checks are used for intelligence purposes – to process personal data of protesters in police databanks (as described in Chapter 3). For years, the police have been misusing their discretionary power to conduct ID checks to identify protesters and process their personal data.

The experiences of protesters presented in this chapter illustrate that, in addition to the privacy violations set out in Chapters 2 and 3, ID checks also affect the exercise of the right to freedom of assembly. The chilling effect of ID checks leads to an infringement that is disproportionate in relation to the state’s alleged aim of preventing disorder and crime, as people are checked merely to gather information about their presence when participating or organising a peaceful assembly. As explained in the previous chapters, it is only when a protester is required to show ID because of a reasonable suspicion of a serious crime, based on individualised and objectively verifiable indicators, that the restriction of human rights may be considered proportionate. Identity checks conducted for merely exercising a basic human right by participating in or organising a peaceful protest are a disproportionate infringement and may have a chilling effect. This is a violation of human rights.

²⁶⁰ *Parliamentary Papers* 2003-2004, 29 218, no. C, p. 9.

²⁶¹ *Parliamentary Papers* 2003-2004, 29 218, no. C, p. 9.

²⁶² De Nationale Ombudsman, *Demonstreren staat vrij*, 13 December 2007, p. 33.

²⁶³ Amnesty International Netherlands, *Proactief politieoptreden vormt risico voor mensenrechten. Etnisch profileren onderkennen en aanpakken*, 2013.

²⁶⁴ De Nationale Ombudsman, *Demonstreren, een schurend grondrecht?*, 14 March 2018, p. 25.

5. LACK OF ACCESS TO EFFECTIVE REMEDY

5.1 REMEDIES FOR ID CHECKS

The previous chapters explained that the unlawful ID checks constitute a violation of human rights. International human rights law requires an effective remedy and redress for human rights violations (see Box VII).



BOX VII: RIGHT TO EFFECTIVE REMEDY AND REDRESS

When human rights are violated, international law requires that people are guaranteed the right to an effective remedy and the right to adequate redress.²⁶⁵ Effective remedies are measures to repair the harm caused to victims of human rights violations.

The nature of the remedy required depends on the violation. Remedies may take various forms depending on the nature of the right violated, the harm suffered and the wishes of those affected.²⁶⁶ It may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²⁶⁷

The remedy must be effective in practice as well as in law.²⁶⁸ Options that are merely theoretically available are not enough; remedies must be accessible in practice.²⁶⁹ The promptness of the procedure should not be prioritised over the effectiveness of the remedy.²⁷⁰

In practice, effective legal remedies after an unlawful ID check are difficult to access. Identity checks during protests are not part of any criminal investigation. Most protesters simply comply with unlawful checks to continue their protest. Protesters explained that they feel they must endure unlawful ID checks in order to exercise their protest rights. If they do not cooperate with an unlawful check, this could lead to their arrest, immediately ending their participation in the demonstration. A protester who fails to cooperate is usually arrested but then released after a few hours. Some protesters receive a fine afterwards, while others do not

²⁶⁵ Under international human rights standards, the notion of access to justice is enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6 and 13; EU Charter of Fundamental Rights, Article 47. These rights are also provided for in other international instruments, such as UN International Covenant on Civil and Political Rights, Articles 2(3) and 14; UN Universal Declaration of Human Rights Articles 8 and 10; International Covenant on Economic, Social and Cultural Rights, Article 2; International Convention on the Elimination of All Forms of Racial Discrimination, Article 6.

²⁶⁶ European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European law relating to access to justice*, January 2016, p. 101.

²⁶⁷ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 21 March 2006, UN Doc. A/RES/60/147, para. 18.

²⁶⁸ ECtHR, 13 December 2012, no. 39630/09 (*El-Masri v. the former Yugoslav Republic of Macedonia*), para. 255.

²⁶⁹ ECtHR, 14 March 2002, no. 46477/99 (*Paul and Audrey Edwards v. the United Kingdom*), para 96; ECtHR 18 December 1996, no. 21987/93 (*Aksoy v. Turkey*) para. 95.

²⁷⁰ ECtHR, 2 February 2012, no. 9152/09 (*I.M. v. France*) para. 147.

hear anything from the police or the public prosecutor after their release. Similarly, ID checks are not systematically evaluated for legality or effectiveness by the police or an independent oversight mechanism.²⁷¹

When there is no prosecution, there is no judicial review of the legality of the ID check or the arrest. Not prosecuting may seem favourable, but even where there is no prosecution, the protester will remain registered in police databanks as a “suspect”, since a refusal to show ID qualifies as a criminal offence.²⁷² It also explains the lack of case law clarifying the standards.²⁷³ In order to reach the stage of prosecution, a protester would need to take additional steps to compel a decision to prosecute with the help of a lawyer. When there is no proof of any involvement in a criminal offence, the public prosecutor will formally dismiss the case. A “dismissal code” (*sepotcode*) will then be registered in the police databanks.²⁷⁴ Even then there will be no judicial review. The criminal procedure described here will presumably show that the check was unlawful, but it will offer no compensation and can therefore not be seen as an effective legal remedy.²⁷⁵

A protester could seek remedy and redress in a civil case, for example in the form of a declaratory statement of the unlawfulness of the ID check or financial compensation. Such a civil proceeding requires considerable resources and efforts. From the initial filing of a claim to a decision of a court could easily take a year.²⁷⁶ Expert legal counsel is needed, as well as financial resources to cover court fees.²⁷⁷ If the claimant loses the case, they risk having to reimburse the litigation costs of the state.²⁷⁸ The claimant has to prove the relevance of the cases and the damages – which is challenging, since these cannot be easily expressed in financial terms. There are also additional risks: the court might dismiss the case, arguing that the police complaints procedure (addressed in Section 5.3) is the proper way to address such a case, or might rule it a triviality (minor affair) without compelling interest, such that the costs do not outweigh the benefits of the case.²⁷⁹ Not many people will have the time and resources to do this. Amnesty International is not familiar with anyone who has tried to seek remedy through civil proceedings about ID checks. This suggests that the option to initiate civil proceedings does not provide an effective remedy in actual practice.

5.2 LACK OF TRANSPARENCY ON UNLAWFUL DATA PROCESSING

In addition to the unlawful checks, the unlawful processing also constitutes a human rights violation for which a remedy should be available. The problem is that most people are unaware of any processing of their personal data, since the police do not inform people about registrations and inquiries they carry out during and after ID checks.²⁸⁰ Theoretically, individuals can access any data registered about them in police records by submitting a request for access to personal data to the police.²⁸¹ Information about this is available on the website of the national government,²⁸² and a draft letter is available on the website of the National Data Protection Authority (*Autoriteit Persoonsgegevens*).²⁸³ Amnesty International staff has assisted 20 protesters in filing such access requests. Out of the 20, 16 of them found that the police had registered them as a participant in one or more assemblies. After an access request, people are allowed to inspect their own records, but only in person at the police station.²⁸⁴ The police permit a person to see the original records

²⁷¹ Confirmed in: Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

²⁷² Dutch Criminal Code (*Wetboek van Strafrecht*), Article 447e; Response of the Dutch police and Ministry of Justice and Security, 1 February 2023. The registration includes a record of arrest and a record of the offense. The police explained that this type of offense does not come up when someone applies for a certificate of good behaviour (“Verklaring Omtrent Gedrag”).

²⁷³ Another reason for the lack of case law is that Dutch judges are allowed to issue their rulings verbally in these cases: *Wetboek van Strafvordering*, Article 395.

²⁷⁴ Various dismissal codes are possible. If someone disagrees with the code chosen by the prosecutor, they can submit a complaint. The National Ombudsman found that the prosecutor often does not take these complaints seriously. Codes are included in judicial documentation and may have serious consequences, such as losing your job or being unable to work as a volunteer. See: Nationale Ombudsman, ‘Aanhoudende klachten over sepotcodes Openbaar Ministerie’, 9 December 2022,

²⁷⁵ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 21 March 2006, UN Doc. A/RES/60/147, para. 18.

²⁷⁶ Amnesty interview with legal expert in public interest cases, 12 April 2023.

²⁷⁷ Government of the Netherlands, ‘Moet ik een advocaat nemen voor mijn rechtszaak?’, See also: Government of the Netherlands, ‘Costs of judicial proceedings’,

²⁷⁸ De Rechtspraak, ‘Kostenveroordeling’,

²⁷⁹ Amnesty interview with legal expert in public interest cases, 12 April 2023.

²⁸⁰ Confirmed in Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

²⁸¹ Article 25 of the Dutch Police Data Act (*Wet politiegegevens*), Article 25.

²⁸² Government of the Netherlands, ‘Inzien, verbeteren en verwijderen politiegegevens’,

See also: Government of the Netherlands, ‘Accessing, rectifying and deleting data held by the police’,

²⁸³ Autoriteit Persoonsgegevens, ‘Politie’, autoriteitpersoonsgegevens.nl/nl/onderwerpen/politie-justitie/politie#faq

²⁸⁴ Confirmed in: Response of the Dutch police and Ministry of Justice and Security, 1 February 2023.

and take notes using pen and paper.²⁸⁵ The police does not but provide a copy of the records for people to take home or to their lawyers. The police records show the date and the 'role' of the person in question. In entries regarding participation in assemblies, the 'role' of the participant is qualified as "person involved" (*betrokkene*). Sometimes the entry includes notes by the police officer who carried out the ID check.

Amnesty International's research found that these records do not provide an exhaustive overview of personal data processing by the police. The police only provide access to entries in police databanks, not to other forms of data processing – such as communication among law enforcement officials about someone via e-mail or WhatsApp. The police reject requests for the latter as "excessive" and placing a "disproportionate burden on police capacity", as they are not systematically recorded.²⁸⁶ The police also do not provide insight into how many times someone's name has been searched by officers or for what reason.²⁸⁷ As for the latter, Amnesty International discovered that an access request at a municipality may provide some insight into data processings by the police.²⁸⁸ Some municipalities, such as Utrecht, offer extracts showing which authorities requested a person's data from the municipality. However, an access request submitted to a municipality does not inform the data subject of the police's reason for the inquiries, nor of any further data processing by the police, and does not clarify how to access remedy or redress for unlawful processing in the context of ID checks.

Some requests for access were denied (partly or fully) because of pending cases, or "to avoid adverse effects on the prevention, detection, investigation and prosecution of criminal offenses, the enforcement of penalties, and to protect public security and the rights and freedoms of others".²⁸⁹ This may constitute plausible grounds to restrict access, but there is a risk that it could be used widely as a reason to reject requests without further explanation.

If a protester finds that their data is incorrect or was unlawfully obtained, they may request rectification or deletion.²⁹⁰ Due to the long process of receiving access, Amnesty International found few examples of people requesting rectification or deletion. In any case, chances of such a request being successful are small, as the police maintain that ID checks and data processing are lawful.

Protesters could also file a complaint with the Data Protection Authority, but only after filing a formal complaint through the police complaints procedure (as described in Section 5.3 below).²⁹¹ Because the Data Protection Authority receives many complaints, it currently takes about six months before a complaint is addressed.²⁹² Amnesty International is not aware of any complaint regarding police ID checks filed with the Data Protection Authority. There are no public decisions or opinions of the Data Protection Authority about ID checks or any kind of data processing by the police in the context of peaceful assemblies.

²⁸⁵ Ibid; Rechtbank Midden-Nederland, 9 November 2022, ECLI:NL:RBMNE:2022:4592.

²⁸⁶ This follows from police decisions on data requests that people have shared with Amnesty.

²⁸⁷ The police stressed that "in principle" this will not be disclosed. In a phone call on 7 February 2023, the police explained that in relation to a very specific complaint, they could investigate how often police officers accessed someone's data. However, names of police officers will not be disclosed.

²⁸⁸ See also Section 3.1.

²⁸⁹ This follows from the police decisions on data requests that people have shared with Amnesty.

²⁹⁰ Article 28 of the Dutch Police Data Act (*Wet politiegegevens*), Article 28. See also: Government of the Netherlands, 'Accessing, rectifying and deleting data held by the police'.

²⁹¹ Autoriteit Persoonsgegevens, 'Klacht melden bij de AP'.

²⁹² Autoriteit Persoonsgegevens, 'Klacht melden bij de AP'.

5.3 SHORTCOMINGS IN COMPLAINTS PROCEEDINGS

BOX VIII: COMPLAINTS MECHANISMS

The European Convention on Human Rights requires that individuals be able to lodge a complaint with a complaints mechanism.²⁹³ A complaints mechanism should have the following characteristics to be considered as effective:

- The mechanism should be independent.²⁹⁴ To maintain independence, the mechanism should be separate from law enforcement agencies.²⁹⁵ The complaints mechanism does not need to be a judicial body, but it should adhere to similar standards.²⁹⁶
- The mechanism should be capable of delivering a legally binding, enforceable decision.²⁹⁷
- The mechanism should provide procedural safeguards.²⁹⁸ These should include access to judicial review of decisions.²⁹⁹

In addition to the formal legal proceedings outlined in the sections above, protesters can file a complaint with the police.³⁰⁰ However, this complaints procedure has serious shortcomings:

- *Lack of independence.* The handling of the complaint and the assessment of the case involve an internal procedure, carried out by the police themselves. It is linked to the law enforcement agency itself and cannot be considered independent.
- *No legally binding, enforceable decisions.* The complaints committee cannot issue binding judgements but can only advise the (regional) chief of police who makes a final decision regarding a complaint.
- *No effective access to judicial review of decisions.* If a complainant disagrees with the decision, they can appeal to the National Ombudsman.³⁰¹ The National Ombudsman is an independent organisation, but its decisions are non-binding – they are only advisory.³⁰² The National Ombudsman does not explicitly assess according to human rights. There is an independent monitoring human rights institute in the Netherlands, the Netherlands *Institute for Human Rights*, but it has no competence to pronounce on actions taken by the police.³⁰³
- *Complaints are not processed thoroughly.* Responses to complaints are often delayed, and many complaints are not referred to the police complaints committee at all.³⁰⁴ Only one per cent of the complaints are reviewed by a complaints committee.³⁰⁵ Police units usually try to resolve the complaint before it is referred to the committee, in the ‘first phase’ where the police speak to the complainant. If someone wants the complaint to be discussed by the complaints committee, the ‘second phase’, they must specifically indicate that preference to the police before the police consider the case closed.³⁰⁶ Only if the complainant asks for a formal decision will the police refer the complaint to the committee. In 2021, the National Ombudsman emphasised that it is the responsibility of the police to check whether the complainant is happy with the settlement before

²⁹³ ECtHR 8 July 1986, nos. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81 (*Lithgow and Others v. the United Kingdom*) para. 205; ECtHR 10 May 2001, no. 28945/95 (*T.P. and K.M. v. the United Kingdom*) para. 107.

²⁹⁴ ECtHR, 26 March 1987, no. 9248/81 (*Leander v. Sweden*), para. 77.

²⁹⁵ ECtHR, 4 October 2000, no. 35394/97 (*Khan v. the United Kingdom*) paras. 44-47.

²⁹⁶ ECtHR, 6 September 1978, no. 5029/71 (*Klass and Others v. Germany*) para. 67; ECtHR 4 May 2000, no. 28341/95 (*Rotaru v. Romania*) para. 69; ECtHR 13 November 2007, no. 33771/02 (*Driza v. Albania*) para. 116.

²⁹⁷ ECtHR, 25 March 1983, nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75 (*Silver and Others v. the United Kingdom*) paras. 114-115; ECtHR 26 March 1987, no. 9248/81 (*Leander v. Sweden*), para. 82.

²⁹⁸ ECtHR 13 December 2012, no. 22689/07 (*De Souza Ribeiro v. France*), para. 79; ECtHR 14 February 2017, no. 46721/15 (*Allanazarova v. Russia*), para. 93.

²⁹⁹ ECtHR 15 November 1996, no. 22414/93 (*Chahal v. the United Kingdom*) paras. 152-154.

³⁰⁰ The Justice and Security Inspectorate is currently conducting a follow-up study on improving the police complaint procedure. See: Inspectie Justitie en Veiligheid, ‘Onderzoek naar verbetering klachtbehandeling door de politie’, 7 June 2022.

³⁰¹ Nationale Ombudsman, *Professionele klachtbehandeling door de politie. Een onderzoek naar klachtbehandeling door de politie*, 19 January 2021, 2021/002. See also: Implementing rules on police complaints procedure (*Uitvoeringsregeling klachtbehandeling politie*) (Government Gazette 2018, 3393).

³⁰² Nationale Ombudsman, ‘Wat doet de Nationale Ombudsman?’.

³⁰³ College voor de Rechten van de Mens, ‘Klacht over een overheidsinstantie’.

³⁰⁴ Inspectie Openbare Orde en Veiligheid, *Klagen staat vrij. Een onderzoek naar de klachtbehandeling bij de politie*, 2007.

³⁰⁵ Politie, *Jaarverantwoording 2021*, p. 97.

³⁰⁶ Inspectie Openbare Orde en Veiligheid, *Klagen staat vrij. Een onderzoek naar de klachtbehandeling bij de politie*, 2007, p. 63-64.

closing the complaints procedure. If a person does not agree with the resolution, the police should refer the case to the complaints committee.³⁰⁷ Researchers found that many complainants feel that they had not achieved their goal by filing their complaint. What they had originally aimed to achieve was having the police acknowledge the mistake, holding the police officer(s) involved accountable, receiving an official apology, as well as measures to prevent such a mistake in the future, and compensation if appropriate.³⁰⁸

- *Lack of transparency.* The police publish only numerical data on the number of complaints and resolutions.³⁰⁹ The committee's advisory opinion and the decision of the chief of police are only available to the complainant and the police, and are not made public. Data on complaints about ID checks are not available. The complaint committees, which see only a fraction of all complaints filed, publish annual reports that provide little more insight,³¹⁰ despite their obligation to report on the complaints committee activities and on how complaints are handled for learning purposes.³¹¹
- *Lack of evaluation and learning.* Police officers are unaware of cases other than the ones they are directly involved in, and police units rarely exchange lessons learned from complaints committee advice.³¹² No public information is available on how many complaints were filed about unlawful ID checks and how these complaints were assessed. As a consequence, the police cannot properly reflect on complaints for the purpose of improving their practices.

The only formal decision following a complaint about an unlawful ID check that Amnesty International is aware of is one that involves an Amnesty International staff member who took part in a protest. In December 2018, he filed a complaint about an unlawful ID check during a protest in The Hague. It was not until 2.5 years later, in May 2021, that he received a decision. The decision affirmed that it is unlawful to demand identification from a protester simply because the person in question had notified authorities about the protest.³¹³ Nevertheless, as this report amply demonstrates, this practice has continued in The Hague, and in other cities.

³⁰⁷ Nationale Ombudsman, *Professionele klachtbehandeling door de politie. Een onderzoek naar klachtbehandeling door de politie*, 19 January 2021, p. 36-37.

³⁰⁸ Inspectie Veiligheid en Justitie, *Klachtbehandeling door de politie*, 5 February 2016, p. 20

³⁰⁹ Politie, 'Jaarverslagen', available on politie.nl/informatie/jaarverslagen-politie.html

³¹⁰ Politie, 'Jaarverslagen klachtencommissies', available on politie.nl/informatie/jaarverslagen-klachtencommissies.html

³¹¹ Implementing rules on police complaints procedure (*Uitvoeringsregeling klachtbehandeling politie*) (Government Gazette 2018, 3393).

³¹² Inspectie Veiligheid en Justitie, *Klachtbehandeling door de politie*, 5 February 2016, p. 20

³¹³ *Klachtencommissie voor de politie eenheid Den Haag*, no. 2018-0078500, 6 May 2021. A copy is available on Amnesty International Netherlands' website:

RECOMMENDATIONS

To the Dutch legislator:

1. Amend the legislation and accompanying instructions for ID checks to clarify that such checks may not be carried out during peaceful assemblies, unless there is a reasonable suspicion of a sufficiently serious criminal offence based on individualised and objectively verifiable indicators. Make it clear and unambiguous that the police may not 'ask' for ID if they have no legal authority to demand it.
2. Require police to systematically record ID checks and monitor practices for public accountability. The registrations should describe, among other things, the circumstances and reasonable suspicion, and should be appropriate for examination of possible discriminatory effects.
3. Strengthen data protection rights in the planned amendment of the Dutch Police Data Act (*Wet politiegegevens*).
4. Introduce effective remedies for unlawful ID checks and related unlawful arrest and detention, including immigration detention.

To the Dutch police and the Ministry of Justice and Security:

5. Assume that an assembly is peaceful by default, unless there is convincing evidence to the contrary. View peaceful assembly and protesters not as threats that must be monitored or controlled, but as the exercise of a human right that police have a legal obligation and thus duty to facilitate.
6. Stop the misuse of ID checks for the purpose of collecting information about peaceful assemblies or protesters. Organisers and participants should not be subjected to ID checks, unless there is a reasonable suspicion of a sufficiently serious criminal offence based on individualised and objectively verifiable indicators.
7. Systematically record ID checks and monitor practices for public accountability. The registrations should describe, among other things, the circumstances and reasonable suspicion, and should be appropriate for examination of possible discriminatory effects.
8. Commission an independent review of the police systems to identify people who are registered in police systems due to their involvement in peaceful assemblies. Conduct this review in cooperation with the Dutch Data Protection Authority, the National Ombudsman, human rights experts and with the meaningful participation of affected communities and individuals.
9. Inform people who have been registered in police systems due to their organisation of or participation in a peaceful assembly. Take appropriate measures to provide them with an effective remedy, including compensation and the deletion of records related to peaceful protest from the police systems. If personal data was shared with third parties, request deletion from other databanks as well.

To the Dutch Data Protection Authority:

10. Provide an explanation of standards and issue guidelines for the police on data processing in the context of the right to peaceful assembly, in particular on the interpretation and scope of Article 3 of the Dutch Police Act and the purposes and means of registering data in police databanks, including

the policy on deletion. Ensure transparency in this process, consult human rights experts and affected communities and individuals, and make guidelines publicly available.

11. Provide advice on legislative proposals, administrative regulations and internal policies of the Dutch police that are relevant to data processing in the context of peaceful assemblies, in particular on proposed revisions of the Dutch Police Data Act, taking into account international human rights standards.
12. Investigate the processing of personal data of peaceful protesters in police systems and enforce the right to privacy and the right to data protection. Consult the National Ombudsman, human rights experts and affected communities and individuals in this process.
13. Take appropriate measures in case of privacy violations by the police, such as administrative fines (Art. 35c (1) (c) Dutch Police Data Act) or incremental penalty payments (Art. 35c (1) (b) Dutch Police Data Act).

To the National Ombudsman:

14. Advise the police and other law enforcement authorities to refrain from ID checks in the context of peaceful assemblies, in the absence of sufficiently serious criminal conduct. Urge authorities to facilitate protest, rather than resort to measures for undue control.
15. Explicitly assess complaints on ID checks and data processing by the police with reference to human rights standards, in particular the right to privacy, the right to data protection, the right to non-discrimination and the right to peaceful assembly.
16. Provide guidance to authorities on effective remedies, taking into account the wishes of affected individuals such as: acknowledgement of mistakes, official apologies, measures to prevent such mistakes in the future, compensation if appropriate and accountability of the police officer(s) involved.

To the Data Protection Officer of the Dutch Police:

17. Inform, advise and issue recommendations about the processing of personal data of organisers and participants of peaceful assemblies, in compliance with the right to privacy and data protection, and pay explicit attention to the protection of the right to freedom of peaceful assembly and the right to non-discrimination.
18. Monitor compliance of data processing in the context of ID checks during peaceful assemblies by the Dutch Police with the right to privacy and data protection, and pay specific attention to the legality, necessity and proportionality of data processing in the context of the right to freedom of peaceful assembly. Intervene when data processing violates the rights of organisers and participants of peaceful assemblies.
19. Cooperate with the Dutch Data Protection Authority in the above.

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UNCHECKED POWER

ID CHECKS AND REGISTRATION OF PEACEFUL PROTESTERS IN THE NETHERLANDS

States are increasingly imposing obstacles to the right to protest. In the Netherlands, authorities are turning to surveillance tools, collecting data from social media, deploying camera surveillance during protests, and knocking on activists' doors with questions about their participation in protests. This report zooms in on the use of ID checks by the Dutch police as a surveillance tool. Through unlawful ID checks, the police process personal data from peaceful protesters in police databanks. This practice violates the right to privacy, has a chilling effect on the right to peaceful assembly and may have a discriminatory effect.

Amnesty International calls on the Dutch government to stop the misuse of ID checks for surveillance of protesters. Authorities should view protesters not as threats that must be monitored or controlled, but as people exercising a human right that police have a duty to facilitate. Organizers and participants of peaceful assemblies should not be subjected to ID checks, unless there is a reasonable suspicion of a sufficiently serious criminal offence based on individualized and objectively verifiable indicators.