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**Migration, Nationality and
Detention**

Assisting Dutch Nationals Imprisoned Abroad

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'For those arrested outside their own country, detained hundreds of miles from home, unable to speak the local language, ignorant of the local legal system and with no idea of who to turn to for help, consular assistance provides a lifeline. It is, however, a public service which has been subject to almost no detailed examination whether by academic institutions, bodies like Fair Trials International or even Ministries of Foreign Affairs themselves.'

Fair Trials International, November 2009.

Introduction

Worldwide just over 10 million people are in prison² and more than 460,000 are confined in a country of which they do not have the nationality. This is a considerable sum and it is likely that the total number will continue to rise due to further globalisation. In the European Union, more than one in six prisoners is a foreign national.³ Heterogeneous prison populations are more complex and therefore more difficult for prison staff to manage.⁴ Foreign national prisoners are also considered a 'vulnerable group'⁵ by international monitoring bodies, as they face additional difficulties as a result of their foreign status and have fewer opportunities to exercise their statutory rights. It is also more difficult for them to prepare for their resettlement and address offending behaviour, which is costly for societies as a whole.

Despite the high number of foreign national prisoners in many penal systems, they remain, in many respects, a 'forgotten' group of prisoners. This article examines the particular circumstances of imprisoned Dutch nationals, of whom 2,500 are incarcerated outside the Netherlands.⁶ Drawing on a wider research project with this group it explores how these prisoners experience incarceration, and the particular needs they

have as foreign national prisoners, such as legal information, help in contacting the outside world and preparation for release.⁷ In this context, the article examines the unusually high level of support and consular assistance that is provided to Dutch prisoners abroad, and the impact that it had on their detention experience in prison and their preparation for release.

To gather the data, I sent a questionnaire to all Dutch nationals in foreign prisons, to all prisoners' families, and to a selection of consular staff. In addition to that quantitative data I interviewed 46 prisoners during their period of confinement abroad and 10 after release. I also interviewed some of their relatives, staff at the Ministry of Foreign Affairs, and a selection of staff and volunteers at the International Office of the Dutch Probation Service and 'Epafras'. The latter is a religious organisation that provides support and assistance alongside the Ministry and the Probation Service.⁸

Profile of Dutch nationals detained abroad

In the last 25 years the total number of Dutch prisoners abroad has more than quadrupled: from 579 in 1988 to 2,459 in 2012.⁹ This group is similar in number to the British nationals incarcerated overseas (2,582), despite the fact that the British national population is nearly four times the size of the Netherlands.¹⁰

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2. World Prison Brief, International Centre for Prison Studies at www.prisonstudies.org/info/worldbrief
3. Kalmthout, v. A.M., F. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisons*, (2007) p 7.
4. 14th CoE Conference of Directors of Prison Administrations (CDAP), Vienna, 19-21 November 2007.
5. 4th Annual Report SPT (3 February 2011) Paragraph 107. j) and CoE, CPT Standards (2010) §52, p 16.
6. TK 30010 Letter nr. 18 by Minister of Foreign Affairs to Parliament 'Gedetineerdenbegeleiding buitenland' 10th July 2012, p 1.
7. UNODC Handbook on Prisoners with special needs (2009) p 80-88.
8. The research reported here was collected for a PhD thesis due to be completed in 2013. The data are based on a questionnaire distributed to 2,606 Dutch nationals in foreign prisons (response 584 from 54 countries), a questionnaire for prisoners' family (response 248) and questions for consular staff at Dutch diplomatic missions (response 83 countries). The qualitative data consist of in-depth interviews with Dutch prisoners during detention (46), ex-prisoners (10), relatives of prisoners (15), consular staff at diplomatic missions (14), consular staff at ministry of Foreign Affairs (4), visiting volunteers of Dutch Probation Service (11), staff from International Office of Dutch Probation Service (5), chaplains of Epafras (8), staff from Epafras (2) and letters from prisoners (48).
9. Dutch Ministry of Foreign Affairs, June 2012.
10. BBC about Foreign Office figures in article 'Over 1,000 Britons are jailed over drugs abroad', 3rd February 2010.

In 2012 Dutch nationals were incarcerated in nearly 100 different countries. While the total number of Dutch prisoners has stabilised in the last few years, the range of countries in which they are detained has increased considerably, expanding from 57 in 1995 to 99 in 2012. The most frequent destinations are Germany, Spain, France, the Dominican Republic, Peru, the United Kingdom, Italy, Belgium, the United States and Brazil. The country in which by far the largest number of Dutch nationals is imprisoned, is Germany, which is the largest neighbour of the Netherlands and frequently visited by Dutch citizens. Just over half of Dutch prisoners are imprisoned in the EU, down from three quarters in 1995. South American countries currently imprison the largest group of Dutch nationals outside the EU.

In total, 85 per cent of Dutch prisoners abroad are male and, compared to prisoners in the Netherlands, quite old, with an average age of 41 years compared to 34 years in the Netherlands.¹¹ Less than half (43 per cent) of the Dutch prisoners were born in the Netherlands and 12 per cent were born in one of the countries of the Kingdom of the Netherlands like Aruba, Curaçao, Sint Maarten or in one of the Dutch special municipalities in the Caribbean, Bonaire, Sint Eustatius and Saba.¹² Others were born in places that have seen high migration to the Netherlands, such as Turkey, Morocco and the Dominican Republic, and the former Dutch colony of Surinam.

Nearly two thirds of Dutch nationals imprisoned abroad are incarcerated for drug-related offences. A similar proportion exhibited a range of personal problems before they were arrested related to money, relationships, housing. Two-thirds were addicted to alcohol, drugs or gambling. Many suffered from mental and physical difficulties.¹³ Nearly half of those imprisoned for drugs reported they had engaged in smuggling to 'pay debts.' Three quarters of them claimed they had 'no idea' of the risks involved in smuggling drugs and that they were unaware of the (severe) punishments it would incur. The Netherlands is known for its tolerant approach towards (soft-) drugs and possession of a small amount of soft drugs for

personal use is not prosecuted. The Netherlands is a transit — and distribution country for drugs that contains an active manufacturing industry of synthetic drugs. It is therefore not all that surprising that immigration and custom authorities pay special attention to Dutch nationals when they cross borders.

Detention experience

Since 24 months I am in prison, it is the most difficult period in my life.
(Prisoner, Belgium)

Dutch nationals are usually held under the same prison conditions as national prisoners. Many complained about poor physical conditions though most were able to maintain their personal hygiene.

They were also broadly dissatisfied with the food they received. There was a particular difference between those held in prisons in the EU and those incarcerated further afield where penal systems still rely on family members to bring in food. Such places necessarily disadvantaged foreigners who were less likely to have relatives able to offer this service.

The prison food is horrible. I am paying another prisoner for a self-made meal. Because I do not receive visitors it is difficult to obtain ingredients myself. I am therefore dependant on others to receive food. (Prisoner, Morocco)

Wherever they were held, Dutch prisoners were often unaware of prison rules and their rights. Despite the fact that several prison authorities have translated the rules in different languages, in practice it depends on the cooperation of prison staff to actually make prisoners aware of the availability of these documents.¹⁴ The lack of adequate (free) legal support was also often a problem. Not unexpectedly, prisoners complained about language difficulties, lack of awareness of procedures, high fees and complicated legal cases. Many were unable to prepare their legal case, receiving inadequate assistance from an interpreter during their legal case. These practices are against internationally binding rules.¹⁵

Wherever they were held, Dutch prisoners were often unaware of prison rules and their rights.

11. Mol G.D., I. Henneken-Hordijk, *Gedetineerd in Nederland 2007*, DJI (2008) p 41.

12. Ministry of Foreign Affairs, 2007.

13. *Vast(gelopen) in den vreemde*, p53.

14. Kalmthout, v. A.M., F. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisons*, (2007) p 21.

15. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) imposes specific and detailed obligations around the process of criminal trials in order to protect the rights of the accused.

Despite the physical distance from their families, most Dutch prisoners managed to maintain contact with the outside world. Due to the costs associated with traveling to see them, only one in three reported being visited by a relative. Instead, they were largely dependent on telephone calls and postal services, the latter of which was often expensive and the former unreliable. Dutch prisoners were usually aware of their right to contact their diplomatic mission and able to establish contact with officials.

They were very negative about their inclusion in the general life of the prison. Many criticised interaction with prison staff. Linguistic barriers were seen as one of the reasons for this but also because they felt that they were treated as a 'number' rather than a human being. They were less negative about their interaction and communication with other prisoners, although they were critical about a general lack of activity.

Dutch prisoners found it difficult to participate in reintegration activities and they did not feel prepared to return to society. In the questionnaire they indicated a long catalogue of needs once released. At the top of their list was the essential requirement of finding a place to stay and an income, followed by needing to see a doctor and to arrange paperwork. Most prisoners regarded their experience of imprisonment as the most important personal reason for not reoffending. One man explained that his confinement abroad felt like a 'nightmare.' His experiences had made him also cynical and suspicious. Another, who had smuggled drugs, concluded that the promised profit of his criminal act was inextricably outweighed by his loss of freedom. A third man felt he was in the middle of a bad 'B-movie' in which he had to be on his guards all the time. Relatives of prisoners reiterated these views, giving more examples of the negative impact of the imprisonment abroad. For one mother it was a 'devastating period' when she felt completely powerless and uncertain about the outcome of the case and how her son could survive.

Ex-prisoners who returned to the Netherlands found it very difficult to reintegrate. Several admitted during imprisonment that they felt 'scared' about their release and what would happen. One ex-prisoner indicated that the period after release was more challenging than his confinement. He felt completely on his own and unable to solve his new problems. Most

prisoners experienced difficulties, especially in the first weeks and months after release. Obstacles included becoming registered again in a municipality, obtaining official papers, finding a shelter or housing and an income. Municipalities in the Netherlands deregister persons who have not been living in their community for a while, so while they are responsible for providing aftercare to ex-prisoners in their community, without an official registration it is not possible to receive support or to make use of a shelter. As a result many, ex-prisoners have to rely for months on support from their families. One prisoner who already knew he could not receive support from his family expected to camp at Amsterdam Central train station.

Consular assistance to Dutch nationals in foreign detention

In contrast to their sense of being without help after release, a number of the prisoners I interviewed had received considerable assistance during their imprisonment from a range of Dutch organisations and individuals. Whether the Netherlands provides consular assistance to Dutch nationals is up to the Ministry of Foreign Affairs and other organisations involved. In practice the Netherlands consistently provides consular assistance to Dutch

nationals in foreign prisons, although this is not an absolute right. There is no Dutch Consular Act, like that in Germany, from which prisoners can derive rights, and the starting point of the Dutch Ministry of Foreign Affairs is that, under existing international law, states are not formally required to provide consular assistance.¹⁶

There are three main organisations in the Netherlands that provide consular assistance to Dutch nationals in foreign detention. These are the Consular Affairs and Migration Policy Department at the Dutch Ministry of Foreign Affairs in cooperation with the Dutch diplomatic missions, the International Office of the Dutch Probation Service¹⁷ and the religious foundation Epafra. Each organisation has its own aims.

The conditions under which Dutch nationals are imprisoned abroad and the kind of consular assistance they receive (or not) has been under discussion in the parliament and in the press over the last 25 years. Widespread concerns about these conditions have led

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16. Letter from Minister of Foreign Affairs to Dutch parliament in 2002. This statement was supported by a court decision of the Court in The Hague in 2004 and a decision of the Dutch National Ombudsman in 2006.

17. Dutch translation for 'Bureau Buitenland'.

to the establishment of the International Office of the Dutch Probation Service and Epafras. Consular assistance and NGO assistance to Dutch nationals abroad have developed in close cooperation with the Dutch Parliament. The two basic principles of providing consular assistance by the Ministry of Foreign Affairs are to ensure that Dutch nationals are treated correctly in accordance with the rules, and that they are held in humane prison conditions. The main aim of the Dutch Probation Service for providing assistance is to limit the damaging effects of detention and to prevent recidivism.¹⁸ Epafras provides assistance in order to guarantee that Dutch nationals in foreign detention can receive pastoral care.

Evaluation of consular assistance

According to data from the Ministry of Foreign Affairs, the International Office of the Dutch Probation Service and Epafras, more than 14,000 visits were carried out to Dutch nationals in foreign detention in 2010. This is on average more than 5.5 visits per prisoner. Practically all Dutch prisoners who responded to the questionnaire said they received assistance from the Ministry of Foreign Affairs. Most frequently representatives from these organisations visit Dutch citizens in prison (on average two per year), provide them with information about legal proceedings in their country of confinement and, in the case of the consular staff, make contact with their relatives to notify them of the arrest and in case there are emergencies. Consular staff bring along a monthly gift of €30 to those detained outside Europe and, when necessary, toiletries and medicines. Around half of the prisoners are visited by volunteers of the International Office of the Dutch Probation Service. These volunteers live abroad and visit Dutch prisoners every six weeks in order to maintain contact and to monitor their situation. They further help, in cooperation with staff at the International Office in the Netherlands, to arrange matters at home in the Netherlands and to prepare them for release. In some countries prisoners can follow an educational course, which is provided via the Dutch Probation Service. Chaplains of Epafras travel on a voluntary basis abroad to visit Dutch national prisoners to have a

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personal conversation with them once or twice per year. Epafras further publishes a magazine that is sent periodically to all Dutch nationals in foreign detention.

Prisoners are, in general, highly appreciative of the assistance they receive from the Ministry of Foreign Affairs. In particular, they value the visits by consular staff, the information they provide about the legal proceedings of the country of confinement and assistance with regards to transfer procedures. In terms of the work of the Dutch Probation Service, prisoners singled out the visits by the volunteers and the attention these volunteers paid to their personal situation. They were also happy with the magazine and chaplaincy visit organised by Epafras. The content of the magazine varies from news stories to interviews to stories from other prisoners and advertisements to become pen-pals. Prisoners report reading the magazine 'to pieces' due to the information it provides

about what is happening in the world and in the Netherlands. Several prisoners explained that the stories from fellow Dutch prisoners in other countries had made them more accepting of their situation by placing it in perspective.

Dutch prisoners who receive assistance are less negative about their experience of imprisonment compared to those who do not receive assistance from the Netherlands.¹⁹ This noteworthy outcome is true for all aspects of their incarcerated that were

measured. One could expect that receiving assistance has a positive influence on the well-being of the prisoner and that providing information about judicial proceedings makes prisoners more aware about the rules. However, an unexpected positive outcome was greater participation in the prison regime and better integration with other prisoners and staff. Assistance had a positive effect on how prisoners perceived matters of hygiene and medical care, feelings of safety and their involvement in activities. Prisoners were particularly impressed that visits by the Dutch Probation Service and Epafras were carried out by volunteers. The fact that someone they did not know beforehand made the effort to visit them on a regular basis and show real interest without being paid for it, was very powerful.

Prisoners appeared to be also very positive about the impact of assistance on the needs that are identified in literature as 'characteristic' for foreign

18. Annual Plan 2010 'Bureau Buitenland', p 5.

19. The fact that the differences are small is likely to be the result of the limited number of prisoners who had not (yet) received assistance from any of the organisations.

national prisoners. The fact that they were being visited gave them the feeling that they were not left on their own, it made them feel emotionally and spiritually supported and they felt that they were treated correctly because 'official' visitors were 'keeping an eye' on them. Information about rules and legal proceedings by consular staff and advice from visiting volunteers had a positive effect on them being aware about the rules and how things work in prison. Consular assistance enabled them to stay connected with the outside world while the work of visitors to let their relatives know about any problems was greatly appreciated. They also indicated that thanks to conversations with a chaplain they knew more about what they wanted in life and assistance from the Prison Service helped them to prepare for resettlement. In sum, Dutch prisoners are not only very satisfied with the different types of consular assistance they receive but it makes a difference to how they experience their incarceration and, more importantly, it addresses their needs.

Conclusion

Providing consular assistance to nationals in foreign detention can make a difference. The fact that in addition to consular staff, volunteers and chaplains

visit Dutch nationals in over 50 countries means that prison authorities accept that other people than consular staff carry out visits and provide assistance. This means that in practice a broad interpretation is given to Article 36 (c) of the Vienna Convention on Consular Relations, which states that consular staff has the right to visit their nationals in foreign prisons and to provide assistance. Further it means that it is possible to provide different types of assistance which can be applied according to the needs.

In interviews it became clear that prisoners were positively surprised by the fact that visitors from the Dutch Probation Service and chaplains from Epafras carried out visits and provided assistance on a voluntary basis. The fact that there are apparently people who, without any personal benefit, make an effort to visit them and show personal interest, made them feel very good because it made them feel human (again) and worthwhile. This phenomenon is called in sociology the 'Pygmalion effect' or 'Belief effect'.²⁰ The greater the expectation placed upon people, in this case a volunteer who shows personal interest and believes in the prisoner, the better they feel and perform. To what extent consular assistance and the involvement of volunteers leads to a crime-free life after release has never been studied but it might be worthwhile to do this in the future.

20. Ben Rovers, 'Ze deugen nergens voor': Het Belief effect in justitiële jeugdinterventies. Lector talk, 9 November 2007.