

**COMMENTARY ON THE 2001 MEMORANDUM ON  
HUMAN RIGHTS POLICY**

No. 23, September 2001

## Foreword

On 19 June 2001, on the recommendation of the Permanent Committee on Foreign Affairs and in accordance with Article 17 of the Framework Act on Advisory Councils, the House of Representatives of the States General invited the Advisory Council on International Affairs (AIV) to issue an advisory report on the government's Memorandum on Human Rights Policy (see Appendix I for the letter of request).

This report should be regarded as the AIV's comments on the 2001 Memorandum on Human Rights Policy (hereinafter, 'the Memorandum'). The AIV decided not to prepare a 'shadow memorandum' presenting a detailed recommendation for the human rights policy of the Dutch government, since it has advised the government on many aspects of foreign policy in the past, as did the former Advisory Committee on Human Rights and Foreign Policy (ACM). References to these advisory reports appear in a number of places. Following the introduction, in which the AIV gives its general opinion of the Memorandum, various sections of the Memorandum are discussed in greater detail. The titles of the different sections in the report therefore correspond to those in the Memorandum.

The report was prepared by a subcommittee of the AIV's Human Rights Committee (CMR). The Committee consists of the following members: Prof. P.R. Baehr\* (chair of the subcommittee), Prof. C.E. von Benda-Beckmann-Droogleever Fortuijn\* (vice-chair), Prof. T.C. van Boven\*, Dr M.C. Castermans-Holleman\*, Prof. C.P.M. Cleiren, Prof. P. Cliteur\*, T. Ety\*, Prof. C. Flinterman\* (chair), Prof. W.J.M. van Genugten, L.Y. Gonçalves-Ho Kang You, C. Hak\*, M. Koers-van der Linden, F. Kuitenbrouwer\*, A.L.E.C. van der Stoel\*, J.G. van der Tas\* and H.M. Verrijn Stuart. The members marked with an asterisk (\*) contributed to the work of the subcommittee that prepared the draft advisory report.

A further contribution to the preparation of the report was provided by Prof. N.J. Schrijver of the Permanent Committee on Development Cooperation (COS). The secretariat was headed by T.D.J. Oostenbrink (secretary of the CMR), who was assisted by W. Neeft (trainee).

The AIV adopted this advisory report on 7 September 2001.

## Introduction

In the foreword to the 1979 Policy Document on Human Rights and Foreign Policy,<sup>1</sup> the two Ministers presenting the document expressed the hope that it 'would contribute to an integrated approach to the issue of human rights in the exchange of views between government and the parliament.' At the same time, they hoped that the 1979 Policy Document would also prove useful to interested parties outside parliament 'in terms of its description of historical developments and existing instruments provided in the document, as well as the explanation of the problems surrounding the policy.' Finally, the Ministers were keen 'to emphasise that when the government acts to promote respect for and observance of human rights anywhere in the world, it is pursuing a policy that has already been conducted for many years and is in line with the intellectual and political climate in our country'.

The 2001 Memorandum on Human Rights Policy lacks such a foreword. The purpose of the Memorandum is described on page 2. It consists of providing (1) a look at the present state of Dutch human rights policy ('the effective integration of policy') and (2) a review of recent efforts by the Dutch and others and the results achieved in relation to a number of key human rights issues and target groups. This raises questions regarding the adequacy of this 'purpose', which may be described as being on the thin side. The Memorandum places too much emphasis on the achievements of existing human rights policy, and too little emphasis on its shortcomings. Incidentally, this problem is further compounded by the authors' choice of words.<sup>2</sup> The question of how the government intends to put various proposals into practice also presents itself on a number of occasions.

The government states in the Memorandum that the 1979 Policy Document 'still forms the cornerstone of its policy.' (Memorandum, p. 1). This presumably refers to Parts III (Analysis) and IV (Policy Conclusions) of the 1979 Policy Document, in which one finds the oft-cited statement that human rights form a key component of Dutch foreign policy. This important observation is wholeheartedly endorsed by the AIV, but it does not alter the fact that certain parts of the 1979 Policy Document have meanwhile become

1 The official title of the document was: '1979 Memorandum on Human Rights and Foreign Policy'. To indicate the difference between this document and the memorandum 2001, the AIV is using in this report: 'the 1979 Policy Document'. See also: House of Representatives of the States General, 1978-1979 session, Parliamentary Papers 15 571, nos. 1 and 2.

2 Some examples:

- 'The government is keen to work interactively with civil society in both the Netherlands and abroad in creating alliances that are capable of producing the best results in a wide range of settings.' (Memorandum, p. 2).
- 'We should like to see a closer conceptual link between the government's human rights policy and development cooperation, so as to generate a greater level of synergy between the two fields.' (Memorandum, p. 6).
- 'This means that we will have to ensure that multilateral standards – many of which have crystallised in the wake of initiatives taken by the Dutch government – have an even closer bearing on the day-to-day practice of bilateral relations.' (Memorandum, p. 7).
- The concept of 'good governance' receives ample attention in the Memorandum, but it is not discussed in a practical manner.

outdated. This does not apply so much to Parts I (Introduction) and II (Description), which are primarily of a descriptive nature, but Chapters 9 (Human rights and development cooperation) and 10 (Human rights in East-West relations), for example, are obviously no longer relevant in their original form. There have been, for instance, fundamental changes in East-West relations since 1979.<sup>3</sup> In addition, when re-examining other chapters, one is forced to ask oneself which parts the government still endorses. It would be remarkable, indeed, if a policy document produced more than twenty years ago were still to serve as an undiminished foundation of policy in this day and age. In view of the fact that the 1979 Policy Document is no longer accessible to everyone, it would have been worthwhile to indicate how the 1979 policy has fared in practice in the Dutch foreign policy context. The AIV therefore recommends that the government clearly indicate which of the 55 original policy conclusions it continues to endorse and which of them are no longer applicable and/or outdated. This would also provide an opportunity to formulate new policy conclusions that take account of the changed circumstances.

In Chapter VII of the Memorandum ('Special interest points for 2001 and other policy plans', p. 14 et seq.), some kind of philosophy behind the policy is presented: 'In practice ... certain choices need to be made. In the short term, the underlying considerations are primarily of a practical nature: What sort of developments are likely to occur? What sort of results can human rights policy expect to achieve? Is there an international momentum? Is there any reason why the Netherlands should take the lead?'. The AIV recognises that the government has certain ideals with regard to human rights, but the picture that emerges from the Memorandum is that day-to-day human rights policy is very much characterised by practical considerations. This 'pragmatic idealism' threatens to place the decision-making process (and, therefore, the setting of priorities, although the Ministers claim to be 'reluctant' to use the term in this context) in the field of human rights policy at the mercy of international developments. It is disappointing that no attempt was made to present a more up-to-date vision in the Memorandum. As a result, the 'special interest points and other policy plans' (Memorandum, pp. 14-16) come across as a somewhat random selection.

The AIV asked itself what main points ought to be addressed in a policy memorandum on human rights in the year 2001. In the AIV's opinion, a memorandum of this kind should at least address the following points.

#### *The importance of policy coherence*

In the AIV's opinion, human rights form a key component of overall government policy. There is virtually no policy issue that does not have a human rights angle. Human rights, including the classic civil and political rights, and also economic, social and cultural rights such as the right to education, housing, health and work, inform all areas of policy, albeit to varying degrees. Where this is not the case, or where it is not yet sufficiently recognised, a gradual but systematic adjustment needs to be made. This applies at both the national and the international level.

In addition, many of the effects of policy are felt across international borders. All Ministries should be aware of the fact – and more so than they are today – that the international human rights instruments to which the Netherlands is party, have significant

3 On these issues, the Memorandum refers in a more general sense to the government's subsequent progress reports of 1987, 1991 and 1997.

implications for Dutch policy. It should be noted that the Netherlands can be called to account by an international body, regardless of the policy area in question. In such cases, the Minister of Foreign Affairs bears ultimate responsibility. The traditional division between national and international policy no longer obtains, especially where human rights are concerned. Although issues such as racial discrimination, the treatment of vulnerable groups such as children and homosexuals and the status of refugees and displaced persons transcend national boundaries, they also have implications for national policies and the unity of external action. The AIV is of the impression that interdepartmental coordination on human rights policy on contents is less than adequate and recommends that the government address this problem in a serious manner.

#### *The importance of revaluating economic and social human rights*

The aforementioned philosophy emphasises the current importance of economic and social human rights. Economic and social rights should form an integral part of Dutch human rights policy. In many areas for example, in the context of the European Union but also in the context of global organisations such as the World Trade Organisation (WTO), the International Monetary Fund (IMF), the World Bank and the International Labour Organisation (ILO), issues arise that have repercussions for the economic and social rights of people inside and outside the Netherlands. In such cases, the importance of upholding these rights should always be paramount.

#### *The danger of automatically equating democracy with market forces*

It is often assumed nowadays that market forces somehow automatically further the democratic process. Such a relationship may exist in a stable climate, in which democratic decision-making processes have emerged on the basis of internationally accepted human rights norms, as set down, inter alia, in the Universal Declaration of Human Rights.<sup>4</sup> However, although this relationship cannot be ruled out, it is certainly not a foregone conclusion, and it is often more problematic than generally assumed. In other words, market forces do not necessarily conflict with fundamental human rights, but the latter also do not emerge per se as a result of the former. In the AIV's opinion, the assumptions that underlie the Memorandum in this area should therefore be subjected to critical reflection and further examination with regard to their practical effect in real situations. It should thus be indicated, for example, in which cases bilateral trade relations 'form a channel for highlighting human rights abuses.' (Memorandum, p. 10). In addition, criteria should be developed for decision-making with regard to the application of sanctions (see also Memorandum, p. 10).<sup>5</sup>

#### *Effective policy assessment*

In order to evaluate policy in a proper manner, its compatibility with national principles and internationally accepted standards in the field of human rights must be periodically

4 UDHR, Article 21: '(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right to equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.'

5 See also ACM, 'Human Rights and International Economic Relations', Advisory Report no. 12, The Hague, 1991.

assessed. Such assessment, in conjunction with periodic treaty-based reporting procedures, should be public and transparent, so that it lends itself to parliamentary control and public scrutiny. Although the government has expressed its intention to periodically update the review of recent policy efforts and results (Memorandum, p. 2, n. 1), thus providing a new means of gaining an insight into its policy, the AIV is of the opinion that this will not offer an adequate basis for the assessment of this policy. The AIV therefore recommends developing the necessary mechanisms, for example, in the framework of a future national human rights institution (see also *infra*), and public reporting by the government on the human rights situation in countries with which the Netherlands maintains relations, as well as on recent Dutch and EU human rights policy.<sup>6</sup>

### **Human rights violations and conflicts**

The Memorandum rightly points to the connection between human rights violations and conflicts. In fact, the two are often inextricably linked, as is apparent from the examples provided (Kosovo, Rwanda and Srebrenica). This connection also has repercussions for action in the United Nations Security Council, which, unlike in the past, now regularly discusses human rights issues. The Memorandum notes that, during its recent membership of the Security Council,<sup>7</sup> the Netherlands continually strove to urge others to accept that 'human rights abuses often form the starting point for a downward spiral of conflict and violence, resulting in even more widespread human rights violations', and to urge the UN to adopt a 'more integrated approach to this issue' (Memorandum, p. 3). A more detailed explanation of this sequence of events, on the basis of earlier reports, for example, would have been appropriate in this context.

It is also important to note that promoting respect for human rights in conflict situations has an important preventive function. In addition, it can play a positive and central role in post-conflict peace-building situations. Nevertheless, the nature of Ministers' recent experience concerning the effectiveness of policy instruments such as conflict prevention and conflict resolution from the point of view of human rights protection is not made sufficiently clear.

The Memorandum is relatively brief on the subject of refugee policy (Memorandum, p. 4). However, the topic ought to receive more attention in a memorandum on human rights. In this context, reference may be made, for instance, to the AIV's advisory report on asylum information.<sup>8</sup> In addition, attention was recently called to the fact that under Section 21(1) of the Aliens Act, an alien can be declared undesirable 'in the interests of the international relations of the Netherlands 'if there is evidence of their involvement in grave human rights violations in the country of origin.'<sup>9</sup> Obviously, it must be the Ministry of Foreign Affairs that determines whether this is the case. The AIV recommends conducting an investigation into how often and in which cases this occurs, and how this relates to the human rights situation in the country in question. In making

6 See also the contribution to a hearing on 18 June 2001 of the HOM on a report on the effects of human rights in *De mensenrechtenreflex, een reactie op de mensenrechtennotitie 2001* ('The Human Rights Reflex: A Response to the 2001 Memorandum on Human Rights Policy'), Utrecht, 11 June 2001.

7 1999-2000.

8 'Asylum Information and the European Union', Advisory Report no. 8, The Hague, July 1999.

9 Amnesty International, *Wederzijds Wantrouwen* [Mutual Suspicion], Amsterdam, 2001, pp. 81-82.

this recommendation, the AIV refers in particular to statements in its advisory report on legal developments regarding violence against women.<sup>10</sup>

### **Human rights and development**

Furthermore, the Memorandum casts little light upon the connection between human rights and development cooperation. It is beyond doubt that, in the long term, goals such as good governance, education and public health also contribute to the development of the individual and society and stimulate consideration of and calls for respect for human rights. It might have been assumed, therefore, that the Ministers would have explained the influence of the desire to promote the protection of and respect for human rights on the government's choice of countries with which to enter into bilateral cooperation, as well as the standards by which it is determined whether or not such cooperation has been successful. It also remains unclear in which cases the threatened and/or actual discontinuation of the development relationship has borne results.

The Memorandum emphasises that 'it is no longer appropriate to see the furtherance of civil and political rights as being a traditional part of foreign policy and to regard the promotion of economic, social and cultural rights as an aspect of development cooperation.' The AIV endorses this assertion. Both economic, social and cultural rights and civil and political rights play a key role in the development and empowerment process. Precisely for this reason, it is unfortunate that economic, social and cultural rights receive such scant attention in the Memorandum. As in the past, the government continues to resist the idea of an individual right of complaint in this area (Memorandum, Annex, p. 22). The Memorandum was drafted before the decision of the UN Commission on Human Rights (of 20 April 2001) to appoint an independent expert to examine the question of such a draft optional protocol could be taken into account.<sup>11</sup> This decision was supported by the Netherlands, which is not a member of the Commission this year.<sup>12</sup> The AIV regards this decision as a cautious step towards the establishment of an individual right of petition; a step that is also in accordance with advisory reports issued by the former Advisory Committee on Human Rights and Foreign Policy (ACM) on the matter.<sup>13</sup> The view that economic and social rights are not enforceable by the courts is, in general terms, outmoded. Under certain circumstances, violations of the right to housing, the right to education and basic trade union rights can definitely be examined by a court. As early as 1995, with reference to a number of general comments issued by the UN Committee on Economic, Social and Cultural Rights, the ACM wrote that 'at present certain economic and social rights already lend themselves to enforcement through judicial procedures.' More recently, the AIV has pointed out that the classic distinction between what is and what is not legally enforceable does not correspond with the distinction between civil and political rights on the one hand, and

10 See AIV, 'Violence against Women: Legal Developments', Advisory Report no. 18, The Hague, February 2001, p. 20.

11 Resolution E/CN.4/RES/2001/30.

12 See the letter to the House of Representatives of the States General of 2 July 2001.

13 See, for example, ACM, 'World Conference on Human Rights', Advisory Report no. 17, 1993; and ACM, 'Economic, Social and Cultural Human Rights', Advisory Report no. 18, 1995.

economic, social and cultural rights on the other.<sup>14</sup>

### **Towards higher standards of compliance**

The AIV recognises that much has been achieved over the years in the area of international human rights norms. It disagrees, however, with the idea that general acceptance of the 'moral of the story' may be taken for granted. Even if this were the case, the AIV would still not endorse the view, expressed in the Memorandum, that there is now a complete set of human rights norms and that the focus should therefore be shifted to actual compliance and implementation (Memorandum, p. 7). On the contrary, society is constantly changing, and this means that the setting of standards ought to be a dynamic process in which the extent to which existing norms need to be adjusted or supplemented must be continuously assessed. One should consider, for example, all the forms of discrimination that exist, modern forms of slavery and traffic in human beings, the ever-changing constellation of vulnerable groups (e.g., homosexuals, Roma, indigenous peoples, minorities and the disabled), legal redress for the victims of serious human rights violations and new forms of violation of the physical and psychological identity of human beings. In the AIV's opinion, none of this alters the fact that it remains absolutely necessary to devote ample attention to compliance and implementation, as described in the Memorandum. In the process, it believes, everything must be done to prevent human rights violations that are not related to conflict and development – such as the use of the death penalty in countries like the United States, China and Saudi Arabia<sup>15</sup> and human rights violations such as torture and disappearances in many countries around the world – from dropping out of view.

The Memorandum provides little in the way of information concerning the organisational structure of the Ministry of Foreign Affairs in the field of human rights. An analysis of the manner in which the recent review of foreign policy and subsequent reorganisation have affected human rights policy would have been appropriate in this context. This would also have provided the Ministers with an opportunity to explain why the current organisational structure of the Ministry of Foreign Affairs in the field of human rights offers better guarantees for the effective implementation of all aspects of the government's human rights policy. Similar considerations also apply to the organisation of the activities of the House of Representatives of the States General, since it is divided into permanent committees corresponding with the responsibilities of the various Ministries and the traditional distinction between national and international policy. As already noted, human rights cannot be categorised in this manner. There is a danger, therefore, that essential issues in this area escape the attention of the permanent committees.

The AIV welcomes the appointment of an Ambassador-at Large for Human Rights, 'whose main job is to incorporate human rights considerations in all aspects of the government's foreign and development cooperation policy.' (Memorandum, p. 7). In view

14 See ACM, 'Economic, Social and Cultural Human Rights', Advisory Report no. 18, 1995, p. 5; and AIV, 'A European Charter of Fundamental Rights?', Advisory Report no. 15, May 2000, p. 12. Regarding the problem of justiciability, see Kitty Arambulo, *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights: Theoretical and Procedural Aspects* (Antwerp/Groningen/Oxford: Intersentia/Hart, 1999).

15 See, *inter alia*, AIV, 'Capital Punishment and Human Rights: Recent Developments', Advisory Report no. 3, The Hague, April 1998.



of the international commitments undertaken by the Netherlands, this should also extend to the work of the Ministries of the Interior, Economic Affairs, Defence, Finance, Justice, Social Affairs & Employment, and Public Health. After all, they are also frequently confronted with human rights issues. This applies to the Ministry of the Interior (integration of minorities, fundamental rights), the Ministry of Defence (peace operations), the Ministry of Economic Affairs (private-sector involvement, boycotts and embargoes, WTO), the Ministry of Justice (EU cooperation, asylum issues, aliens policy, etc.), the Ministry of Social Affairs & Employment (ILO, equal rights) and the Ministry of Health, Welfare and Sport (selection issues), as well as the Ministry of Finance (IMF, World Bank). These issues have unfortunately been omitted from the present Memorandum.

Meanwhile, it has almost become a cliché to observe that joint action against human rights violations in the EU framework is more effective than independent action by the Netherlands. For instance, the Memorandum notes that 'where human rights policy impinges on the EU's Common Foreign and Security Policy the ... aim at all times has been to achieve the maximum degree of harmonisation with its partners in the EU.' (Memorandum, p. 8) The Memorandum also poses (but does not answer) the question of what action should be taken if it becomes clear that the European partners do not share the Dutch viewpoint. The statement that 'where necessary, the Dutch can always add an individual touch to their human rights policy in their bilateral relations' is too noncommittal. The important and recurring question is whether or not individual countries (including the Netherlands) are watering down their own positions too much in order to agree on joint positions. The AIV is aware of the fact that the Netherlands is bound by the Treaties of Maastricht and Amsterdam to coordinate its policies with those of its EU partners and that EU human rights policy is likely to be more effective than independent action by the Netherlands. Taking a stand may come at the expense of policy effectiveness. None of this changes the fact, however, that it is still not clear to the average citizen what role the Netherlands plays within the European Union in the field of human rights, nor whether this role is in accordance with policy traditions and the views of society as a whole.

The planned enlargement of the European Union to include countries in Central and Eastern Europe is, unfortunately, not addressed in the Memorandum. The Dutch government would nevertheless be well advised to devote particular attention to this issue. In contrast to what is often assumed, the situation in these countries is still far from perfect, even after the fall of the Berlin Wall. In this context, it is sufficient to refer to the current plight of national minorities in these countries.<sup>16</sup> Since a number of these countries are candidates for EU membership, there is reason aplenty to continue paying very close attention to their human rights records.<sup>17</sup> Any examination of this kind should also consider the effects of the accession of Eastern European countries on EU human rights policy.

16 See, *inter alia*, ACM, 'National Minorities, in particular in Central and Eastern Europe', Advisory Report no. 23, The Hague, November 1996.

17 Both the Commission and the European Parliament have recently looked at the issue of human rights. See Communication from the Commission to the Council and the European Parliament: The European Union's role in promoting human rights and democratisation in third countries, COM (2001) 252 final, Brussels, 8 May 2001; European Parliament resolution on human rights in the world in 2001 and the European Union's Human Rights Policy, Resolution A5-0193/2001 of 5 July 2001.

According to the Memorandum, legal proceedings and inter-state complaints are a 'last resort and have always been regarded as such' (Memorandum, p. 9). Such instruments, including inter-state complaints, are part of existing binding international treaties such as the ICCPR and the ECHR. These treaties have created a collective system of human rights in which inter-state complaints have been accorded an important role. The fact that such procedures, in particular, are regarded by many governments as a last resort is another matter, but this is not a reason to disregard them. The Memorandum notes that, as a state party to these treaties, the Netherlands should, where necessary, be prepared to make use of inter-state complaints as an instrument for the protection of human rights, 'but only as part of a concerted action involving as many states as possible' (Memorandum, p. 10). In fact, the Dutch government has apparently not found any cause for such action, as many years have passed since the Netherlands last resorted to the inter-state complaint procedure. The Dutch government ought to have explained in the Memorandum why, unlike in the past, there are no grounds for filing an inter-state complaint against Turkey, for example, despite the fact that the human rights situation there provides every reason for doing so. Furthermore, the Netherlands would be well advised to place greater emphasis on the conciliatory aspects of the complaint procedure. To this end, it may be necessary to review the excessively legalistic procedures currently laid down in various treaties. In this context, the AIV also wishes to point out that the Memorandum devotes no attention to the use of the various OSCE mechanisms that were created to strengthen the protection of human rights. The Memorandum also largely overlooks other positive instruments for fostering respect for human rights, such as providing special training for members of the police, the judiciary and the public prosecution service. In view of the importance of such instruments to complement more traditional remedies such as complaint procedures, it would have been appropriate for the government to state its opinion regarding the usefulness and effectiveness of these mechanisms and instruments in the Memorandum.

It should also be examined whether experiments with conciliation, such as those being conducted in several African countries, produce better results than court judgements. This interesting new type of procedure, of which the best-known examples are the Truth and Reconciliation Commission in South Africa and the Gacaca tribunals in Rwanda, deserves closer attention. In some cases, these procedures represent new forms of dispute settlement, while in other cases they build on existing, traditional forms. Many international aid organisations are actively taking part in these experiments. It is not clear, however, whether enough attention is being devoted to the question of to what extent the local population accepts these forms of dispute settlement and what effect they have on the conflict. In the AIV's opinion, the government should strive to produce a thorough analysis of the advantages and disadvantages of such procedures in light of the international system for the protection of human

### **Wider coalitions**

The Memorandum presents a rather rosy picture with regard to the relationship between the private sector and human rights. It claims that economic interests and human rights should coincide because 'no country wants to see its foreign trade suffer as a result of a poor human rights record' (Memorandum, p. 10) and 'Dutch commercial interests ... are also served in the long term by good governance and respect for human rights in the countries with which the Netherlands has commercial links.' (Memorandum, p. 11). Although this observation may be correct at a certain level of abstraction, it would be naive to assume that it is widely endorsed in the Dutch business community. In the short term, profitable business may be conducted with regimes

that violate human rights and, at the same time, ensure 'law and order' is maintained. In the context of promoting socially responsible business practice, a social conscience, of which it has recently declared itself a proponent, the government should use its policies to promote economic interests and human rights in conjunction with each other.

The Memorandum also notes that more and more companies are developing their own codes of conduct, 'which is particularly good news, as self-regulation offers the best guarantees that standards will be upheld in practice.' (Memorandum, p. 13). This approach has been criticised widely and rightly as being 'too easy'. It is certainly true that the private sector is now confronted with the issue of human rights more often than in the past, especially at the international level, but the primary responsibility to monitor compliance with existing international agreements still belongs to the government. In the final instance, therefore, the government – not the private sector – must guarantee that these international standards are observed. Nevertheless, the government should try to forge a link between its own responsibility and the apparent growth in private sector interest in human rights. This may be achieved by encouraging multinational corporations (MNCs) that have drafted their own codes of conduct, or are interested in doing so, to link these codes to the OECD's code of conduct for MNCs,<sup>18</sup> which consists of guidelines drafted by governments with the active cooperation of international employers' federations and trade unions.

Non-governmental organisations receive abundant praise in the Memorandum. They 'have always played an indispensable role in safeguarding and promoting human rights.' (Memorandum, p. 13). The AIV endorses this sentiment insofar as it relates to serious and reliable human rights organisations such as, in the Netherlands, Amnesty International, Justitia et Pax, the Dutch section of the International Commission of Jurists (NJCM), and the Humanist Committee on Human Rights (HOM). However, not all NGOs are alike. Anyone can set up an 'NGO'. In some cases, the organisation consists of little more than the headed paper on which its statements are printed. Others serve as a cover for the promotion of government policies. These so-called GONGOs (government organised non-governmental organisations) are an alarming development. This means that, generally speaking, the NGO phenomenon should not be welcomed in the unreserved manner displayed in the Memorandum. A certain degree of differentiation is necessary.<sup>19</sup>

### **Special interest points for 2001 and other policy plans**

The importance of the International Criminal Court (ICC) is not adequately dealt with in the Memorandum. The Netherlands has now ratified the Statute of the Court. It looks as if the 60 ratifications required for the entry into force of the Statute will soon be achieved. The establishment of the ICC reminds us how important it is to build on the international law principle of universal jurisdiction, which applies to a limited number of

18 For the full text, see OECD Guidelines 2000, Doc. DAFFE/IME/WPG(2000)9 of 11 September 2000.

19 A few years ago, a Japanese researcher distinguished between the following variants: AGOs (anti-government organisations), BINGOs (business and industry NGOs), DONGOs (donor organised NGOs), FLAMINGOs (flashy minded NGOs), GRINGOs (government regulated and initiated NGOs), ODANGOs (ODA financed NGOs), QUANGOs (quasi-NGOs) and TRANGOs (transnational NGOs). See: Tatsuro Kunugi, 'The United Nations and Civil Society - NGOs Working Towards the 21st Century' (unpublished manuscript).

crimes.<sup>20</sup> At the end of 2000, the Minister of Justice announced in a letter to the House of Representatives of the States General that he would be presenting concrete proposals on this issue in the near future.<sup>21</sup> The Memorandum does not indicate whether universal jurisdiction may also have consequences for Dutch foreign policy in the field of human rights. In the AIV's opinion, it is imperative that the possible implications of universal jurisdiction for Dutch human rights policy are analysed in greater depth.

In addition, the Minister should ensure the swift ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Memorandum limits itself to mentioning twice (in identical language!) that the Netherlands was one of the first countries to sign the Protocol and that the ratification procedure has meanwhile been set in motion (Memorandum, Annex, pp. 1 and 24).<sup>22</sup> This will not suffice. Although the delay is connected to the fact that the Dutch ratification procedure (during which an implementing act must be passed and existing legislation must be amended) is traditionally very meticulous – and therefore relatively slow – further delays must be avoided at all costs.<sup>23</sup>

The AIV notes that the Memorandum makes no mention of the rights of homosexuals, who continue to suffer severe discrimination and persecution in many countries. In light of the social attitudes and legal rules that prevail in the Netherlands, the AIV would urge the Dutch government to make support of the rights of homosexuals an explicit part of its human rights policy.

The Memorandum is silent on the subject of a national human rights institution of the kind that already exists in many countries. Both the United Nations and the Council of Europe have, on a number of occasions and with the approval of the Netherlands, called upon governments to establish such national agencies. They now exist in many countries around the world, but not in the Netherlands. These government-established agencies are independent from the legislature, the executive and the judiciary and play a complementary role in the promotion and protection of human rights.<sup>24</sup> National

20 See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

21 See the letter from Minister Korthals of 8 December 2000, Parliamentary Paper 26 262 (ICC), no. 9. See also the recently published *Princeton Principles on Universal Jurisdiction*, Princeton, N.J., 2001.

22 Earlier this year, the AIV argued in favour of giving priority to the approval and ratification procedure for the Protocol ('Violence against Women: Legal Developments', Advisory Report no. 18, February 2001, p. 21). The report also contains a recommendation to the government to examine the scope for converting the UN Declaration on the Elimination of Violence against Women into a binding Protocol to the Convention on Women.

23 The AIV has meanwhile taken note of the government's decision of 24 August 2001 to submit the Protocol to parliament for approval without a vote.

24 See Paris Principles Relating to the Status of National Institutions, GA Res. 48/134 of 20 December 1993; and Dutch section of the International Commission of Jurists (NJCM), '*Een nationale mensenrechtencommissie in Nederland?: Handhaving van mensenrechten op nationaal niveau*' [A National Human Rights Committee in the Netherlands? Maintaining Human Rights at the National Level], Stichting NJCM-Boekerij, Leiden, March 2000.

human rights agencies of this kind operate or have already been operating for some time in many countries around the world, including the Nordic countries and (recently) Germany. They play an essential role within the framework of the foreign and national policies of those countries. In the Netherlands, a national human rights institution could play a key role in coordinating the activities of various existing agencies. It could contribute to the promotion of human rights in foreign policy and, in the short term, in the Netherlands itself. In addition, it could fill certain gaps in awareness-raising and education. The AIV recommends that either the House of Representatives or the government initiate an inquiry into the feasibility of such an institution.

### **Conclusion**

The AIV is pleased that the government commissioned the 2001 Memorandum on Human Rights Policy, which attempts to set out a human rights policy that responds to developments that have taken place since the publication of the 1979 Policy Document and the subsequent progress reports. At the same time, however, the AIV does not regard the Memorandum as an unmitigated success. Its principal objection is that the government has missed an important opportunity to put a number of relatively vague and loosely defined policy plans into practice and make arrangements to assess their implementation effectively. The AIV recognises that 'effective assessment' is not the same as a full and detailed description of all policy objectives and, furthermore, that the government is entitled to a certain freedom of operation that may give rise to different considerations and forms of action in different situations. The government rightly refers to its obligation and willingness to defend existing policies before Parliament and society. For that purpose, however, more clearly defined policy plans are indispensable. The 2001 Memorandum on Human Rights Policy would have been a most appropriate vehicle for presenting such plans.

The Hague, 19 June 2001

To the Acting Chair of the Advisory Council on International Affairs  
Prof. F.H.J.J. Andriessen  
PO Box 20061  
2500 EB The Hague

Dear Professor Andriessen,

The House of Representatives of the States General, on the recommendation of the Permanent Committee on Foreign Affairs requests you, in accordance with Section 17 of the Framework Act on Advisory Councils, to issue an advisory report on the government's Memorandum on Human Rights Policy (Parliamentary Paper 27 742, no. 1).

The Permanent Committee on Foreign Affairs will use the report in its preparations for the parliamentary debate with the government concerning the Memorandum.

The House would be most obliged if the advisory report could be available no later than 1 September 2001.

Yours sincerely,

(signed)

F.W. Weisglas  
Deputy President  
For the President of the House of Representatives of the States General

cc. The Minister of Foreign Affairs  
The Minister for Development Cooperation

**List of abbreviations**

<b>ACM</b>	Advisory Committee on Human Rights and Foreign Policy
<b>AIV</b>	Advisory Council on International Affairs
<b>COS</b>	Development Cooperation Committee
<b>CMR</b>	Human Rights Committee
<b>COM</b>	Document(s) concerning proposals of the European Commission
<b>EU</b>	European Union
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms
<b>HOM</b>	Humanist Committee on Human Rights
<b>ICC</b>	International Criminal Court
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ILO</b>	International Labour Organisation
<b>IMF</b>	International Monetary Fund
<b>Memorandum</b>	The 2001 Memorandum on Human Rights Policy
<b>MNC</b>	Multinational Corporation
<b>NGO</b>	Non-governmental Organisation
<b>NJCM</b>	Dutch section of the International Commission of Jurists
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>UDHR</b>	Universal Declaration of Human Rights
<b>WTO</b>	World Trade Organisation

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