



Office for Democratic Institutions and Human Rights

THE NETHERLANDS
EARLY PARLIAMENTARY ELECTIONS
9 June 2010

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

29-31 March 2010



Warsaw
30 April 2010

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I. INTRODUCTION

On 17 March 2010, in accordance with OSCE commitments, the Permanent Delegation of the Kingdom of the Netherlands to the OSCE invited the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to observe the 9 June early parliamentary elections. The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to the Netherlands from 29-31 March which was composed of Mr. Nicolas Kaczorowski, Head of the OSCE/ODIHR Election Department and Mr. Drew Hyslop, OSCE/ODIHR Election Adviser.

The purpose of the OSCE/ODIHR NAM was to assess the pre-electoral environment and the preparations for the early parliamentary elections, and to advise on a possible election observation or assessment activity. The OSCE/ODIHR NAM met with the Ministry of Foreign Affairs, Ministry of Interior and Kingdom Relations, Electoral Council, Council of State, municipal authorities, political parties, media and civil society representatives. A full list of meetings is included as an annex to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs and the Ministry of Interior and Kingdom Relations for their assistance and co-operation in organizing the NAM. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

II. EXECUTIVE SUMMARY

The Kingdom of Netherlands is a constitutional monarchy with a parliamentary system of government. It consists of 12 provinces, the Netherlands Antilles and Aruba. The parliament of the Netherlands (*Staten Generaal*) is bicameral with a first chamber (*Eerste Kamer*) comprising of 75 members indirectly elected by 12 provincial assemblies and a second chamber (*Tweede Kamer*) consisting of 150 members directly elected for a four-year term in a single nationwide constituency through a system of proportional representation.

The most recent government collapsed in February 2010, after negotiations within government broke down over the continued deployment of Dutch forces in Afghanistan. As a consequence, early parliamentary elections were called. The elections are being held just months after the 3 March local elections that received significant attention for the success of right wing parties and for reported election malfeasance in some areas.

Parliamentary elections are regulated primarily by the Charter of the Kingdom of the Netherlands, the Constitution and the recently amended Elections Act. Electoral reform is ongoing in the Netherlands. Recent amendments were made to the Elections Act, some of which directly implement previous OSCE/ODIHR recommendations.

Election legislation allows for complaints on some issues to be appealed to the Council of State, including in the field of voter registration, registration of the name of a political group and the validation of candidate lists. However, there are issues that are explicitly not subject to appeal to a court, including voting procedure, vote counting and the results in elections of members of representative bodies.

Elections in the Netherlands are administered by a three-tiered, decentralized structure. This includes the Electoral Council (EC), 19 Principal Electoral Committees (PEC), and some 10,000 Electoral Committees which act as polling stations. The Ministry of Interior and Kingdom Relations (MoIKR) and municipal executives also play an important role in the organization of an election. All interlocutors expressed a high level of confidence in the conduct of the elections and in the impartiality and transparency of the election administration. Such confidence was not assessed as having been diminished by irregularities reported during the local elections thanks to the swift and open manner by which the authorities addressed alleged irregularities and considered measures to mitigate possible re-occurrence.

The Netherlands enjoys a high degree of political pluralism. Sixty-one national political groups have been registered for the upcoming elections. On election day, voters will be offered a genuine choice between distinct political alternatives. Most political parties met stated that they expected the campaign to be active and hard fought. Many interlocutors also noted an increasingly polarized political scene, with strong rhetoric being used by some politicians. The campaign period is largely unregulated. There are no limits or restrictions on campaigning before or even on election day. Legislation is also silent on campaign financing, although preparatory work is underway to introduce legal regulations in this regard.

There is a pluralistic media landscape in the Netherlands, with 23 public broadcasters and hundreds of other broadcast, radio and print outlets, presenting a diversity of opinions. For national elections, each party which fields candidates in all 19 electoral districts receives free airtime on public radio and television. Apart from that, the conduct of the media during elections is left unregulated.

Different voting methods are at the disposal of voters. They can cast their ballots in person in any polling station in the municipality where they reside, presenting a voting card with special security features and photo identification. They can also choose to vote by proxy or by post. There are no voter lists in polling stations on election day. Instead, there are lists of voting cards that can no longer be used to vote. The system in place seems to provide safeguards against possible multiple voting.

These elections will be the first national elections to be held since the repeal of electronic voting in 2008. The decision to abandon electronic voting was made following a thorough, comprehensive and inclusive review process. While supported by political parties in parliament, the return to paper ballots presented practical challenges during the local elections. In particular, municipal authorities have highlighted the additional burden for the count and tabulation process. This has resulted in occasional mistakes during the first count at the polling stations, and has extended the time required for the results to be made public. The local elections underscored the need for additional training of election

officials, especially on the voting procedures and for an increased number of polling officials. Steps are being taken by the authorities to address these challenges.

Since the OSCE/ODIHR Election Assessment Mission to the Netherlands in 2006, recommendations made have been considered by Dutch authorities, and a number have been implemented in line with the Istanbul commitment to follow-up promptly on OSCE/ODIHR recommendations. The prompt and resolute actions taken by national and municipal authorities to remedy problems and address irregularities noted during the recent local elections, in good time before the parliamentary elections, demonstrates the resilience of the democratic process and underscores the well-functioning system of checks and balances in the Netherlands.

The transparent and accountable manner in which reforms have been implemented, as well as the broad support for their implementation by all parties, indicate that little benefit is likely to be derived from a significant presence by the OSCE/ODIHR on election day. However, based on the findings outlined in this report, longer-term issues related to the shift away from electronic voting – a first in the OSCE area – as well as the largely unregulated campaign period, the primarily self-regulated media landscape, and the restriction on complaints and appeals during some parts of the electoral process might benefit from closer scrutiny. For this reason the OSCE/ODIHR recommends the deployment of an Election Assessment Mission (EAM) for the upcoming 9 June 2010 early parliamentary elections in the Netherlands.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

The Kingdom of Netherlands is a constitutional monarchy with a parliamentary system of government. It consists of 12 provinces, the Netherlands Antilles and Aruba. The Netherlands, the Netherlands Antilles and Aruba conduct their internal affairs autonomously and pursue their common interests on a basis of equality. The Head of State is Queen Beatrix, in power since 1980. The Netherlands, Netherlands Antilles and Aruba elect their own independent parliaments and have their own executive branches.

The parliament of the Netherlands (*Staten Generaal*) is bicameral with a first chamber (*Eerste Kamer*) comprising of 75 members indirectly elected by 12 provincial assemblies and a second chamber (*Tweede Kamer*) consisting of 150 members directly elected for a four-year term. The executive branch of government is formed by the Council of Ministers, headed by the Prime Minister. The Council of Ministers is appointed and dismissed by the monarch.

The Netherlands enjoys a high degree of political pluralism. Since 2002 the centre-right Christian Democratic Appeal (CDA) headed by Jan Peter Balkenende has led four consecutive governments. The most recent government was formed after early elections in 2006, and consisted of CDA (with 41 seats in the second chamber), the center-left Labour Party (PvdA, with 33 seats) and the Christian Union (with 6 seats).¹ The coalition

¹ Other parties in parliament include the Socialist Party (SP, 25 seats) the center-right People's Party for Freedom and Democracy (VVD, 22 seats), the nationalist Party for Freedom (PVV, 9

collapsed in February 2010, after negotiations within government broke down over the continued deployment of Dutch forces in Afghanistan.

The early parliamentary elections are being held just months after the 3 March local elections that received significant media attention for the success of right wing parties and for election malfeasance in some areas. They will also be the first national elections to be held since the repeal of electronic voting in May of 2008.

The OSCE/ODIHR deployed an Election Assessment Mission in 2006 for the early parliamentary elections. Since the issuance of its final report, Dutch Authorities have been active in implementing some of the recommendations made.

B. LEGISLATIVE FRAMEWORK

Parliamentary elections are regulated primarily by the Charter of the Kingdom of the Netherlands, the Constitution and the Elections Act.² The Charter and the Constitution enshrine the principles of universal and equal suffrage as well as that of free and secret voting. The Elections Act, last amended on 29 October 2009, also regulates local and European parliament elections.

Recent changes to the Elections Act allow voters to cast a ballot in person at any polling station in the municipality where they are authorized to vote, and include a requirement for all voters (including proxy voters) to provide proof of identification, as well as a requirement that 25 per cent of a municipalities polling stations are accessible for voters with disabilities. Furthermore, following a decision of the cabinet to return to a solely paper and red pencil based voting system, the new legislation also removes all reference to electronic voting methods.

The Elections Act permits observers to witness the course of elections and to be present in polling stations, thus enhancing transparency and accountability. In addition, any voter is authorized to be in the polling station while the electoral committee is in session, so long as they do not create a disturbance or hinder the progress of the session.

Election complaints are first made to the election body in question. Election legislation allows for complaints on some issues to be appealed to the Council of State, the country's highest administrative court with general jurisdiction. This includes appeals in the field of voter registration, registration of the name of a political group and the validation of candidate lists. However, there are also issues that are explicitly excluded from appeal in the General Administrative Law Act, including voting procedure, vote counting and the results in elections of members of representative bodies. Serious electoral violations fall under the penal code and under the jurisdiction of criminal courts.

seats), the Green Left (GroenLinks, 7 seats), the liberal Democrats 66 (D66, 3 seats), the animal rights focused Party for Animals (PvdD, 2 seats), and the orthodox protestant Political Reformed Party (SGP, 2 seats).

² Additional election-related legislation includes the General Administrative Law Act, the Civil Code, the Penal Code and the Political Parties Subsidisation Act. Furthermore, the Ministry of the Interior and Kingdom Relations (MoIKR) issues regulations on aspects of elections not specifically addressed in legislation.

C. ELECTORAL AND VOTING SYSTEM

Members of the second chamber of parliament are elected through a proportional list system in a single nationwide constituency without a legal threshold. The Netherlands is divided into 19 electoral districts for administration of the elections only; all votes cast for candidates in each district are combined during the tabulation of results. However, the system provides for preferential voting, as each voter votes for a particular candidate. It is only through the candidate chosen that a vote is attributed to the respective electoral list.

The number of seats allocated to each candidate list is determined by dividing the total number of votes cast by 150 (number of mandates in the second chamber of parliament) to determine the electoral quota. Once the allocation of seats to parties has been determined, the names of the elected candidates are specified in accordance with the numbers of votes cast for each candidate. This procedure begins from the top of the list and moves down until the party's entitlement to seats is filled. However, a candidate who obtains at least 25 per cent of the electoral quota is declared elected automatically regardless of his or her number on the list.

Votes can be cast in a polling station in the municipality one resides in, in another municipality, by proxy or by post. To vote in a polling station, a voter or his/her proxy must present a voting card and show appropriate identification. Voting cards containing security features are mailed at least two weeks before election day; those who lose their voting card can apply for a replacement. Voters must apply specially to vote outside of his/her home municipality or by postal ballot. Postal votes are sent to the mayor of The Hague who designates electoral committees exclusively intended for postal voting.

The Elections Act provides for proxy voting when a voter does not expect to be able to vote on election day, permitting another voter to cast a vote on his or her behalf. A voter may cast up to two proxy votes, and must vote himself or herself at the same time. While proxy voting is a long established tradition in the Netherlands, and commands a high level of public support, such a system is at odds with the principles of equality (one person, one vote) and secrecy of the vote. The exact level of proxy voting is not known, as it will be counted for the first time only for the upcoming elections, but is estimated to be between 10 and 20 per cent of the overall turnout.

D. ELECTION ADMINISTRATION

Elections in the Netherlands are administered by a three-tiered, decentralized structure. This includes the Electoral Council (EC), 19 Principal Electoral Committees (PEC), and some 10,000 Electoral Committees which act as polling stations. The MoIKR and municipal executives also play an important role in the organization of an election. The second chamber of parliament is responsible to certify its own final results.

The EC acts as a central electoral committee for elections to the second chamber of parliament, though it has no formal authority over lower level commissions. Its primary functions are to certify the registration of candidates and lists and to tabulate results. The EC also acts as an advisory body on elections to the government and parliament, and may provide advice to municipalities, parties and the public on electoral reform. The EC is composed of seven members, selected by the government and appointed by the queen

through a competitive application process. Members are appointed for up to two six-year terms. The EC meets one to two times per month, in meetings that are closed to the public.

PECs consist of five members and three alternates. The mayor of the main municipality of the district chairs the PEC. The PEC registers candidates' lists for the district. After polling, the municipalities submit details of votes cast to the PEC, which determines the votes for each candidate and the total for each party, and announces the results. An official report is sent the same day to the EC.

The 431 individual municipalities each have at least one electoral committee. The approximately 10,000 electoral committees consist of a chair and between two and six members, together with sufficient number of alternates. Electoral committees are not permanent bodies and are appointed by the municipal executive. They are responsible for carrying out the election on election day.

The MoIKR oversees the overall conduct of elections at national level. It establishes the regulations and appoints the 19 PEC members for parliamentary elections, the 431 mayors and the heads of local government administration. At a local level municipal executives are responsible for administering elections, for maintaining computerized voter registers, and for distributing voter registration cards. The municipal executive also decides the location of polling stations and compiles all the results for the municipality.

After elections, the Credentials Committee of the second chamber of parliament reviews the final results and recommends the certification of those elected. It may recommend a recount, or repeat voting in all or parts of the country. It can also make recommendations on improvements to the electoral process to the MoIKR.

A high level of confidence in the conduct of the elections and in the impartiality and transparency of the election administration traditionally exists in the Netherlands. Although some irregularities were reported during the 3 March local elections, they were generally not assessed by those met with the OSCE/ODIHR NAM as negatively impacting this view. However, some highly contested areas saw the deployment of party observers during the local elections. While the larger parties are not intending to send party observers for the parliamentary elections, some interlocutors stated they expected the practice of party observers to continue.

The 3 March local elections saw a number of challenges. Pollworkers were no longer used to paper and red pencil voting which slowed down the process and at times led to long queues. In addition, some voters were not familiar with new procedures such as the presentation of a valid ID to vote. Also, election malfeasance was reported in a small number of instances, such as family voting and allegations of abuse of proxy voting. In Rotterdam, these challenges emerged in the context of fierce political competition that led to a close result.

In the case of Rotterdam, in response to the initial reports about irregularities, the mayor immediately formed a committee to review the situation. Following a thorough review, the mayor advised the municipal council to organize a recount. The municipal council agreed to organize a recount and also took a number of additional steps to ensure that confidence in the process would be maintained. The council's Credentials Committee

quickly produced a public report, and voters were given the chance to submit additional election-related complaints through a website and a toll-free number and were informed of the opportunity through newspapers. The prosecutor also investigated whether those involved in irregularities on 3 March should be brought to court.

Part of the report by the Credentials Committee included recommendations on how to address issues in future elections. Steps recommended included more detailed plans for the organization of polling stations, increased training for staff, increased training for voters, fewer voters allocated per polling station and more staff in polling stations. Plans are underway to implement these recommendations for the upcoming parliamentary elections. Overall, the entire process was conducted in a transparent manner, with regular press conferences and with every stage of the process open to all interested parties.

E. VOTER REGISTRATION

For elections to the second chamber of parliament, suffrage is granted to all Dutch nationals who have reached the age of 18, unless there is a final court decision depriving a citizen of the right to vote. In a change from previous elections, mental incapacity is no longer a ground for disqualification from voting. In addition, Dutch nationals residing in the Netherlands Antilles or Aruba are not entitled to vote in parliamentary elections in the Netherlands unless they have resided in the Netherlands for at least 10 years, or are Dutch public servants, or a dependant of a Dutch public servant.

There are approximately 12.5 million registered voters in the Netherlands. Voter registers are drawn from the population register (based on residence) and are maintained by municipal authorities. Dutch nationals who live abroad and are not registered in a municipality can register in the municipality of The Hague.

There are no voter lists in polling stations on election day. Instead, there are lists of voting cards which cannot be used to cast a vote, such as those that have been replaced, those that have been established as stolen or unlawfully in circulation, or whose holder submitted a written application to vote by proxy, has been issued a postal vote or has died. The system in place seems to safeguard against possible multiple voting.

F. CANDIDATE REGISTRATION AND CAMPAIGN

Candidate and party registration is regulated in the Elections Act. Sixty-one political groups registered for the upcoming elections, and candidate list registration is to be completed by 27 April. Political groups wishing to register their names must submit their request, along with a deposit of 450 EUR to the EC which is reimbursed upon the submission of a candidate list. Candidate lists must be submitted to the PEC along with a deposit of 11,250 EUR and written declarations of support from at least 30 voters. Deposits and supporting signatures are required from those parties not represented in parliament, and the deposits are returned if they receive 75 per cent of the votes required for one mandate. Parties elected in the previous parliament, and running with the same list in all districts, can register centrally with the EC.

A party may have either up to 50 names on its list on the ballot, or twice the number of its incumbent representatives in parliament (up to a maximum of 80) – whichever is greater. All parties competing in the election are on a large, single ballot; the candidate

lists appear on the ballot in sequence according to the size of their party representation in the second chamber prior to the election. The ballot order for parties not represented in parliament is determined by drawing lots.

An unusual feature of the Dutch electoral framework is that although the law provides a minimum age requirement of 18 years to vote and be entitled to become a member of parliament, there is no such restriction on the right to stand for election. If elected, candidates younger than 18 are then placed on a 'reserve list', assuming the seat upon reaching the age of 18.

Most political parties met stated that they expected the campaign to be active and hard fought. Many interlocutors also noted an increasingly polarized political scene, with stronger rhetoric being used by some politicians than in prior years.

The campaign is largely unregulated. There are no limits or restrictions on campaigning before or even on election day. Television debates are expected on the eve of the election and campaign activities may continue during election day. Legislation is also silent on campaign financing, although preparatory work is underway to introduce legal regulations in this regard. This effort comes after the release of a report by the Council of Europe's Group of States Against Corruption (GRECO) on transparency of party funding. In addition to calling for regulations on campaign and party funding, the report also recommends assigning responsibility for monitoring political party funding to an independent body, most likely the EC.

G. MEDIA

The Netherlands enjoys a pluralistic media landscape, with 23 public broadcasters and hundreds of other broadcast, radio and print outlets, offering a diversity of opinions. The public broadcast system is relatively unique with broadcasters, addressing different political, age and religious groups, sharing space on three channels (*NOS 1, 2 and 3*). Most broadcasters require a minimum membership of 50,000 to qualify for the status of public broadcaster and to receive state subsidies. State broadcasters *NOS* and *NPS* do not function according to the model of membership-supported public broadcasters, but receive direct subsidies from the state. The largest private broadcasters include *RTL Nederland* and *SBS Broadcasting*.

A large diversity of media also exists in the print sector. Newspapers distributed free of charge (*'gratis kranten'*) which are mainly available in public places maintain a significant share of the market. There is a growing trend in Dutch media towards using the internet as a secondary outlet.

For national elections, each party which fields candidates in all 19 electoral districts receives a share of free airtime of 20 minutes on radio and 18 minutes on public television during the period preceding the election. The Media Authority (*Commissariaat voor de Media*) is responsible for the allocation of this airtime as well as for the allocation of annual free airtime for parties in parliament.

All media outlets met by OSCE/ODIHR NAM noted there would be special programming for the elections, including debates, programs on daytime news and news programs during the campaign period. All major stations are likely to have special

election programming on election night, and it is traditional to have a final debate on election night after the results are released.

Other than the provision of free airtime on public television there is no regulation of campaign coverage or campaign advertising in public or private media. Instead media is largely self-regulated. For journalists, a Press Council (*Raad voor de journalistiek*) provides a self-regulatory ethics board, which hears complaints. The Council is responsible for the examination of complaints against violations of good journalistic practice. Its opinions are published. Some outlets, such as *NOS* have their own independent ombudspersons who can make judgments on issues related to broadcasting.

H. ELECTRONIC VOTING

By the last national election in 2006, electronic voting had been introduced in municipalities covering some 98 percent of the electorate. A citizens' group "We do not trust voting computers" was able to demonstrate that it was possible to determine voters' choice, thus compromising the secrecy of the vote. Subsequently, parliament established three commissions on electronic voting. The first was to review the history of electronic voting in the Netherlands, the second was to assess the current electronic voting structure and make proposals for improvements, and the third was to decide on the way forward for the use of electronic voting in the Netherlands. Based on this thorough, comprehensive and inclusive review process, the electronic voting machines were decertified in October 2007 and then in May 2008 the Ministry of Interior decided to return to paper and red pencil system of voting.

While supported by political parties in parliament, there have been practical challenges associated with the return to paper ballots. In particular, municipal authorities have highlighted the additional burden for the count and tabulation process. In the last local elections, this resulted in occasional mistakes during the first count at the polling stations, and extended the time required for the results to be made public. Efforts are underway for the upcoming election to improve training on voting and counting paper ballots. There is also discussion in some areas such as Rotterdam of having fewer voters per polling station as well as more polling station staff, in part to reduce the burden and expedite the process.

IV. CONCLUSION

Since the OSCE/ODIHR Election Assessment Mission to the Netherlands in 2006, recommendations made have been considered by Dutch authorities, and a number have been implemented in line with the Istanbul commitment to follow-up promptly on OSCE/ODIHR recommendations. The prompt and resolute actions taken by national and municipal authorities to remedy problems and address irregularities noted during the recent local elections, in good time before the parliamentary elections, demonstrates the resilience of the democratic process and underscores the well-functioning system of checks and balances in the Netherlands.

The transparent and accountable manner in which reforms have been undertaken, as well as the broad support for their implementation by all parties, indicate that little benefit is likely to be derived from a significant presence by the OSCE/ODIHR on election day.

However, based on the findings outlined in this report, longer-term issues related to the shift away from electronic voting – a first in the OSCE area – as well as the largely unregulated campaign period, the primarily self-regulated media landscape, and the restriction on complaints and appeals during some parts of the electoral process might benefit from closer scrutiny. For this reason the OSCE/ODIHR recommends the deployment of an Election Assessment Mission for the upcoming 9 June 2010 early parliamentary elections in the Netherlands.

Annex: List of Meetings

Ministry of Foreign Affairs

Jelte van Wieren, Head, Good Governance Division; Human Rights, Gender Equality,
Good Governance and Humanitarian Aid Department
Rein Dekkers, Policy Officer OSCE, Security and Defense Policy Division; Security Policy
Department

Ministry of the Interior and Kingdom Relations

Diana van Driel, Division of Public Administration
Maria Gonzales, Division of Public Administration
Michel Siebes, Division of Public Administration
Henk Martijn, Constitutional Affairs Division

Electoral Council

Melle Bakker, Secretary Director

Council of State

Henk Lubberdink, Member of the Council of State
Mart Poot, Lawyer

Christian Democratic Appeal (CDA)

Jan Jaap van Halem, International Secretary

People's Party for Freedom and Democracy (VVD)

Han ten Broeke, Member of Parliament

Democrats 66 (D66)

Roy Kramer, Spokesperson and Political Adviser

Socialist Party (SP)

Eric Smaling, Member of Parliament

Labor Party (PvdA)

Paul Kalma, Member of Parliament
Pierre Heijnen, Member of Parliament

SDU Uitgevers

Herman Ruddjis, Project Manager

“We Do Not Trust Voting Computers”

Maurice Wessling

Dutch Media Authority (Commissariaat voor de Media)

Hans Ottenhoff, Policy Adviser

RTL Nederland

Pieter Klein, Editor

Dutch Public Broadcaster (NOS)

Peter Kloosterhuis, Head NOS Events

Rotterdam City Council

Yvonne van Stiphout, General Director

Drs. Jaap Paans, City Clerk

Peter Bijl, Executive Secretary

Yvonne van Velzen, Elections Office

Marjoleine van doorn, Project Director Elections

Adrie Hoogvliet, Controller Elections

Anja Pels, Communications

Steven Scheer, Civil Service

Labor Party (PvdA, Rotterdam Branch)

Marco Heijmen, Member of City Council

Leefbaar Rotterdam (Rotterdam Branch)

Marco Pastors, Member of City Council and Head of Leefbaar Rotterdam