

# FAMILIES IN THE CROSSHAIRS: A HUMAN RIGHTS ANALYSIS OF THE NETHERLANDS' NATIONAL SECURITY POLICIES

Submission to the U.N. Special Rapporteur on the  
promotion and protection of human rights and  
fundamental freedoms while countering terrorism

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**DUKE LAW** | INTERNATIONAL  
Human Rights Clinic

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DECEMBER 2020

## ABOUT US

Established in 2013, the International Human Rights Clinic at Duke University School of Law in North Carolina, United States, provides an integrated approach to human rights education, advocacy, and scholarship and undertakes teaching, research, and fieldwork that focuses on domestic, regional, and international institutions and the protection of human rights. The International Human Rights Clinic allows students to build an experiential bridge between law school and practice and to critically engage with cutting-edge human rights issues, strategies, tactics, institutions, and law in domestic, regional, and international settings. Clinical Professor of Law Jayne Huckerby serves as the inaugural Clinic Director and Clinical Professor of Law (Teaching) Aya Fujimura-Fanselow is the Clinic's Supervising Attorney.

## METHODOLOGY

This submission is based on a longer report forthcoming in early 2021 entitled *Families in the Crosshairs: A Human Rights Analysis of the Netherlands' National Security Policies*. It is based on interviews that were conducted by the Duke Law International Human Rights Clinic with non-governmental organizations, academics, and other key stakeholders, as well as on a review of primary publications and extensive secondary research.

## INTRODUCTION

To date, the implications of national security policies for the family—both as a unit and for individual family members—have in large part escaped scrutiny.<sup>1</sup> This is the case with administrative and criminal measures that impact the family unit or members directly (e.g., interrogations or counter-terrorism financing prosecutions of relatives of terrorism suspects) or indirectly (e.g., the effects for relatives of citizenship revocation or cancellation of welfare benefits of sanctioned individuals). And it is also true of preventive approaches that mobilize a range of care professionals to provide the State with unprecedented access to, and control of, families—particularly in those countries with robust welfare infrastructures. A range of national security measures that unduly target women on the basis of their familial relationships (e.g., training mothers in anti-radicalization tactics) or undermine gender equality, also necessarily impact individual family members and the family as a whole.

Many reasons account for this failure to sufficiently identify how national security policies both mobilize and impact families. Some of these programs are in areas routinely characterized by confidentiality (e.g., custody decisions).<sup>2</sup> Many interventions occur at the local level, centering actors who are atypical national security stakeholders (e.g., social workers)<sup>3</sup> and whose decision-making sites and processes may be quite diffuse, informal, and opaque, and overall, not easily amenable to sustained external scrutiny. Constituting significant incursions into the privacy and intimacy of family life—and with the fate of family members often on the line—such adverse impacts can also generate a particular stigma, discrimination, and fear

that contributes to under-reporting by those affected. Siloing of the human rights norms that govern the family from those traditionally seen as being most relevant to counter-terrorism and preventing or countering violent extremism (P/CVE) measures also contributes to this lacuna.

The report on which this submission is based—*Families in the Crosshairs: A Human Rights Analysis of the Netherlands' National Security Policies*—seeks to fill this gap. It provides a comprehensive account of the ways in which national security policies in the Netherlands both involve and impact families and family members. These impacts fall into a series of inter-linked categories that taken as a whole also show the various tensions that characterize how families are perceived and treated, whether this be as government allies, threats, or sometimes simultaneously both. The impacts include those that come from: preventive policies, particularly the securitization of care services; criminalization and detention; administrative and surveillance measures; counter-terrorism financing; focus on “jihadism;” non-repatriation of persons allegedly linked to ISIS; citizenship and marriage; child protection measures; individual- and group-level support for families; and the burqa and niqab ban. The final part of this submission outlines the core international human rights obligations of States regarding the family and national security. This includes obligations related to equality and non-discrimination, requirements that explicitly address the family, and a range of other rights that also inherently impact family relations, such as the best interests of the child and the right to religion.

## FAMILIES AND THE NETHERLANDS' NATIONAL SECURITY POLICIES

### Overview of national security measures

The Netherlands notes that it “is working to combat terrorism in a variety of ways.”<sup>4</sup> Children, families, and women receive scant explicit mention in the current central national security measures including the National Security Strategy 2019,<sup>5</sup> the National Counterterrorism Strategy for 2016–2020,<sup>6</sup> and the 2014 Comprehensive Action Programme to Combat Jihadism.<sup>7</sup> Children and families are mentioned under two “areas of intervention” in the National Counterterrorism Strategy for 2016–2020. This first mention is under “prevent,” “stop[ping] potential extremists and terrorists from travelling” and includes paying “particular attention . . . to children aged under 18,” with “[s]upport . . . provided, in . . . some cases by child protection agencies, to limit the effects of trauma and combat the threat of violence.”<sup>8</sup> The second mention is under “prepare,” with one element of “follow-up” entailing that “[p]articular attention will be paid to victims, their families and vulnerable groups” after “an attack or violent incident.”<sup>9</sup> In addition, the National Counterterrorism Strategy for 2016–2020 later notes that given “the return of a significant number of trained and experienced foreign terrorist fighters to Europe,” their children “could pose a threat as they grow older”<sup>10</sup> and further provides that while women may not be “trained and deployed in armed combat . . . as they too are confronted with violence and trauma, they could also – in time – commit acts of violence.”<sup>11</sup> References to children and family in the Comprehensive Action Programme to Combat Jihadism include measures under the categories of: “[r]isk reduction of jihadist travelers,”<sup>12</sup> “travel interventions,”<sup>13</sup> “counteracting radicalization,”<sup>14</sup> and “information exchange and cooperation.”<sup>15</sup>

### Prevention and securitization of care services

The focus of the Netherlands’ “comprehensive approach”<sup>16</sup> on localized prevention,<sup>17</sup> countering violent extremism,<sup>18</sup> and emphasis on intelligence-gathering,<sup>19</sup> involves a range of actors, including those that traditionally interact directly with—and therefore have implications for—the family. For example, alongside “intelligence services, local government, security services, police, the private sector,”<sup>20</sup> the national security apparatus includes “youth care workers, mental health services, and the education and health sectors.”<sup>21</sup> The family is also explicitly identified as a site of inquiry for these various actors. For example, early detection by “local security professionals” focuses on factors including “whether the youth had recently been . . . experiencing family problems.”<sup>22</sup> Similarly, community police officers “when gathering information on extremism,” focus not only on individuals, but on households as well,<sup>23</sup> directly implicating the family.

Family impacts also arise from the various intersections of the security and welfare services, particularly at the local level.<sup>24</sup> For example, teachers and youth workers are asked to “recognise” and then “report their suspicions of radicalization to the police and criminal justice authorities, if necessary.”<sup>25</sup> This has raised concerns about the securitization of frontline care professionals and the ways in which security agencies might improperly leverage care services to get unprecedented access to families.<sup>26</sup> This responsibility to report youth to the security chain is not uncontroversial within the social services themselves; for example, it can cause youth workers to “worry” “that they are relinquishing the ‘fate’ of the person in question to the security chain.”<sup>27</sup> In addition to these adverse individual effects, detrimental societal impacts can also result from the overreach of prevention actors: “the good intentions of prevention professionals are encouraging them to go the proverbial ‘extra mile’ to meet their own perceived responsibility. This leads to increasing social control in neighbourhoods and can be experienced as stigmatising and confrontational by sections of the communities involved.”<sup>28</sup>

### Criminalization and detention

The Dutch government identifies “enforcing criminal law” as “a vital part of combating extremism and terrorism.”<sup>29</sup> This focus on criminalization has a variety of impacts that implicate families and family life:

- Statements or other information given to police by family members seeking to either get the assistance of, or even to help, authorities with regard to their relatives who have traveled to Iraq or Syria are subsequently—sometimes years later—used as evidence in criminal cases against family members, which causes resentment toward authorities as well as discord within families. Families themselves are also often seen as a potential national security threat, as evidenced by their being investigated and interrogated in relation to the activities of their relatives.<sup>30</sup>
- A range of activities linked to families are criminalized as a direct result of the government’s own policies. For example, the government’s position that it “does not actively repatriate FTFs [foreign terrorist fighters] and their children from camps in Syria but escorts back those FTFs who report to a Dutch diplomatic mission,”<sup>31</sup> creates situations where family members send money to Iraq or Syria to assist stranded relatives in ways that can be subsequently penalized under counter-terrorism financing laws.<sup>32</sup> Such policies of non-repatriation act in concert with the breadth of anti-terrorism laws to the detriment of families.<sup>33</sup>
- The enjoyment of family life is often hindered for those detained on suspicion or conviction of terrorism. In the Netherlands, an individual suspected or convicted of a terrorist

offense is placed in a separate prison ward known as *Teroristen Afdelingen* (TA) in the Penitentiary Institutions (PI) De Schie or Vught.<sup>34</sup> There are “significant limitations on the meaningful human contact detainees have with others,” including family members,<sup>35</sup> with such “limited family visits and calls” causing “isolation” and a “fragile family situation.”<sup>36</sup> These visits are arranged with family members only after a “lengthy screening process”<sup>37</sup> and can involve limited physical contact including for children who “cannot, for example, sit on the detainee’s lap or hug their parent.”<sup>38</sup> Family visits are also subject to “blanket and routine monitoring,” which has “reduced such visits to superficial encounters, rather than meaningful opportunities for detainees to maintain family relations.”<sup>39</sup> In some cases, detainees choose to stop or not have contact in the first place “with close family members because they or their family members did not want to subject themselves or their loved ones to the screenings, monitoring, and other security procedures.”<sup>40</sup> Documented “frequent and routine”<sup>41</sup> invasive full-nudity searches of detainees after and sometimes before visits with family members (including children)<sup>42</sup> at least prior to a policy change in late 2017<sup>43</sup> were “so frequent and so humiliating that many detainees avoid them by refusing to meet with family members in person, opting instead to meet them behind a transparent glass wall or not at all.”<sup>44</sup> And because detainees are always monitored, conjugal visits are effectively eliminated, meaning that detainees and their partners are unable to start or continue families.<sup>45</sup>

- Prolonged periods of criminal investigations and cases—as well as these conditions of imprisonment—can adversely impact care professionals’ decision-making processes and related outcomes concerning the family. For example, female returnees from abroad are now automatically placed in the TA and separated from their children,<sup>46</sup> resulting in an absence of, or limited contact with, their children<sup>47</sup> affecting their ability to develop bonds with them at a critical age, which can in turn negatively impact assessments by child protection services in making final decisions on parental rights.
- Family life is also implicated by post-release monitoring of those suspected or convicted of terrorism. The Netherlands adopts a highly localized approach to reintegration that mixes both “security as well as care providers,”<sup>48</sup> the general challenges of which have been noted above.<sup>49</sup>

## Administrative and surveillance measures

In the Netherlands, key administrative measures include citizenship revocation, travel bans, seizure or refusal to issue passports or other identity documents, pre-charge and pre-trial detention,<sup>50</sup> and various control orders.<sup>51</sup> The latter have attracted concerns with regard to the “right to private and family life,”<sup>52</sup> including particularly the “ban on being in the vicinity

of certain persons,”<sup>53</sup> also referred to as a “ban on contact.”<sup>54</sup> The ban on leaving the Netherlands was also anticipated to have “consequences for the maintenance of one’s family life for those who have family members abroad.”<sup>55</sup> Administrative measures to “disrupt” the activities of “facilitators and disseminators of jihadist propaganda” through “investigation into housing or benefits fraud, nuisance reports or youth care reports”<sup>56</sup> necessarily also involve a focus on family members. The administrative measure of “termination of social welfare benefits” of Dutch foreign terrorist fighters abroad<sup>57</sup> can similarly adversely “affect[ ] the relatives of targeted individuals.”<sup>58</sup> Indeed, family members of foreign fighters are “confronted with consequences of the extremist behavior of their child/family member, in the form of sometimes severe legal repercussions, administrative measures and public exposure.”<sup>59</sup> The full impact of these measures is unknown and difficult to ascertain, given both family members’ reluctance to raise them due to fear of stigma and the fact that individuals may be unaware that they are the targets of these measures, such that they and their family members may experience impacts in their daily lives without knowing that they stem from these measures.

More generally, there are a range of significant “criminal and administrative consequences experienced by families in which a member exhibits extremist behavior.”<sup>60</sup> These include: “[a]rrest of family member,” “[h]ouse raids,” “[p]olice interrogation,” “[d]etention of family members in terrorist wing,” “[i]nvolvement of youth care organisations,” “[d]eregistration in municipal registration system (GBA),” “[p]assport measure,” and “[t]hreat of) other children being put into fostercare.”<sup>61</sup> Concerns about the government’s “sweeping surveillance and interception powers”<sup>62</sup> and the impacts on “various fundamental privacy rights and the right to confidentiality of communication”<sup>63</sup> are also relevant to assessing the impacts of national security on families.

## Counter-terrorism financing

The Netherlands has taken a range of measures to counter terrorist financing.<sup>64</sup> Yet in practice, “[a]lmost all” convictions for terrorist financing and “most” investigations concern financing of “friends or family members who have traveled to jihadist conflict zones (‘uitreizigers’).”<sup>65</sup> For family members, these cases can involve relatively small sums and include actions prompted by the government’s own detention, as well as non-repatriation policies. For example, on the latter, cases have been brought concerning family members’ use of third persons to send money to women and children in camps in Syria.<sup>66</sup> On the former, Dutch authorities have sought to prosecute a female relative of a detainee in the TA for sending money through the relevant government ministry to his prison account while he was on the sanction list. An “exponential expansion”<sup>67</sup> of this National Sanction List for Terrorism<sup>68</sup> necessarily impacts family members of those whose assets are frozen.

Sanctions regimes can even extend as far as impacting the in-laws of listed individuals. In a recent case, parents in the Netherlands were penalized for sending money to their daughter in Syria—where defense counsel asserted they had “no reason to think that [the] daughter would use the money for anything other than for setting up an escape to the Netherlands, necessary living expenses of her children and necessary medical care”<sup>69</sup>—who was married to a sanctioned individual.<sup>70</sup> This raises questions about the reach of counter-terrorism financing laws, as well as the potential risk that gender and other stereotypes inform assumptions about marital relationships that in turn impact legal outcomes.

## Focus on “jihadism”

The Netherlands’ emphasis on the risks associated with “jihadists”—which it understands to “still constitute the principal terrorist threat to the Netherlands”<sup>71</sup>—can create discriminatory treatment of different families in the Netherlands. In practice, this focus on Muslim individuals—and youths in particular—has been identified in the approaches of community police officers,<sup>72</sup> local security professionals,<sup>73</sup> and youth workers.<sup>74</sup> For example, on the latter, the failure of prevention efforts to distinguish explicitly “between radicalisation and (violent) extremism” combined with the focus on Muslim youths<sup>75</sup> “has created a one-sided view and has influenced the threshold for reporting persons (names) to the security chain,” with “far right-wing and left-wing extremists or forms of nationalism . . . not labelled as a risk.”<sup>76</sup> Such inconsistency in approaching different forms of extremism can result in “stigmatisation, discrimination, and unjustified profiling,”<sup>77</sup> with serious consequences not only for individuals, but more broadly for their families and neighborhoods.<sup>78</sup>

## Non-repatriation of persons allegedly linked to ISIS

As of October 2020, there were approximately 15 Dutch men, 25 Dutch women, and 75 Dutch children in Syria, and one Dutch person in Iraq.<sup>79</sup> These nationals remain because the Dutch government has infrequently actively repatriated its citizens from Iraq or Syria. For example, in 2019, two orphans were brought back to the Netherlands by French authorities<sup>80</sup> in a case the government described as “exceptional.”<sup>81</sup> In June 2020, only in the context of a possible dismissal of a criminal case against a Dutch woman located in Syria, did the Minister of Justice and Security indicate the government’s preference for her to be tried in the Netherlands and detail efforts the government was taking on her repatriation.<sup>82</sup> Later the same month, the Hoge Raad (Dutch Supreme Court) affirmed the government’s position that it was not required to repatriate 23 women and 55 children held in Syria.<sup>83</sup> While the court allowed for the possibility that specific extreme cases demanding repatriation (rather than a general case involving 23 women and their children) could be brought,<sup>84</sup> in October 2020 a Dutch

court ruled that the government was not obliged to repatriate a Dutch-Moroccan woman with “an intellectual disability and psychological and physical problems.”<sup>85</sup>

The Dutch government’s refusal or delay in making efforts to proactively repatriate has a series of adverse consequences. Conditions in Al-Hol camp comprise “squalid living conditions,”<sup>86</sup> with “significant psychological impact, particularly on children.”<sup>87</sup> Additionally, as the case on behalf of the 23 women and 55 children held in Syria proceeded, “some of the group have relied on people smugglers to escape the camps and their current whereabouts are unknown.”<sup>88</sup> This overarching stance of non-repatriation exists alongside, and in contrast to, efforts by child protection services in the Netherlands who have worked with families to ensure readiness to receive related Dutch children.<sup>89</sup>

Additionally, between October 2019 and October 2020, it is estimated that seven Dutch citizens were sent by Turkish authorities to the Netherlands,<sup>90</sup> either because they had arrived at the Dutch consulate in Ankara or were detained in Turkey.<sup>91</sup> This figure includes a woman and child who had paid smugglers to take them from Al-Hol to Turkey,<sup>92</sup> as well as two women and the two children of one of the women.<sup>93</sup> Being sent from Turkey to the Netherlands is not cost-free, and includes women having to pay smugglers to get to Turkey.<sup>94</sup> Additional costs include maternity DNA testing (to determine whether the woman tested is the biological mother of the child tested) while in Turkey that meets the Dutch government’s quality assurance standards. On return, women are placed in the TAs and separated from their children,<sup>95</sup> the effects of which are addressed above and include a series of barriers to the enjoyment of family life while in detention.<sup>96</sup>

## Citizenship and marriage

Rules on citizenship adversely impact families particularly with regard to citizenship revocation and nationality of minor children. Revocation of Dutch citizenship of dual nationals on national security grounds has “concern[ing]” “implications . . . for their family members.”<sup>97</sup> As revocation is only possible for dual nationals, it disproportionately affects Moroccan-Dutch and Turkish-Dutch nationals,<sup>98</sup> with such discrimination causing further stigmatization of the individual, as well as their family and community. Dutch citizenship has been revoked in 21 cases and in all of these cases there has also been a declaration of “undesirability.”<sup>99</sup> For those individuals abroad, this combination “prevents” them “returning to the Netherlands *in a legal manner*. In this way, an actual return is made difficult.”<sup>100</sup> The adverse impacts on family life of those remaining in Iraq and Syria are addressed above,<sup>101</sup> and are additional to the impacts that non-repatriation policies also create for family members in the Netherlands.<sup>102</sup>



As stripping citizenship of a parent does not then revoke the citizenship of their children, this can have particular impacts where a parent is no longer Dutch but his or her children are. For example, this would become important in a context where the repatriation of children without their parents is contemplated.<sup>103</sup> It also determines whether consular advice is even given to those persons who arrive at the Dutch consulate in Ankara, Turkey, as well as whether they are sent back to the Netherlands. For example, in November 2019, the Turkish government sent back to the Netherlands<sup>104</sup> a woman—who had been stripped of her Dutch nationality and declared undesirable just prior to her arrival at the consulate<sup>105</sup>—and her two Dutch children over the objections of the Dutch government,<sup>106</sup> which reportedly emphasized to the Turkish government that her citizenship had been revoked.<sup>107</sup> As a returnee, she is presently in custody<sup>108</sup> and if her citizenship revocation is upheld, there is a potential for her to be deported to Morocco either with or without her Dutch children.

Other Dutch rules on citizenship also uniquely impact the question of nationality of minors when applied in national security contexts. For example, under Dutch law, a child is automatically Dutch if they are born to a Dutch mother.<sup>109</sup> In practice, proving this maternal parentage for children born in Iraq or Syria requires DNA testing—as many children born in ISIS territories lack proper documentation, or only have ISIS-issued documents<sup>110</sup> which the Dutch government does not recognize.<sup>111</sup> This creates an additional hurdle, including because quality assurance standards on testing required by the Dutch government narrow the locations where this testing can occur (e.g., in Turkey or the Netherlands and not in the camps in Syria). If it is the child's father who is Dutch, the process is more complicated. If the father is validly married to the non-Dutch mother, Dutch nationality will pass to the child.<sup>112</sup> But as Dutch authorities fail to recognize<sup>113</sup> the marriage of those in ISIS territory,<sup>114</sup> the only other route to Dutch citizenship for the minor is to be acknowledged by their father before their birth or alternatively by their seventh birthday,<sup>115</sup> a process that is difficult and can cause delays in recognizing the Dutch citizenship of minor children and having them access the government's care to which they are entitled.

## Child protection measures

The national security approach in the Netherlands—including the nature of co-operation between security and care services, as well as the detention and criminal investigations of parents(s) for terrorism-related charges—has a number of impacts on child protection measures. Briefly, in the Netherlands, the decision on whether to take a child protection measure that is in the child's best interests<sup>116</sup> is led by the Raad voor de Kinderbescherming (RvdK) (Child Care and Protection Board).<sup>117</sup> Child protective measures are, for example, taken if a minor is involved in a suspected departure.<sup>118</sup> The persistence of these measures (e.g.,

maintenance of provisional supervision orders and extension of the time of custodial placements outside of the home) has been closely scrutinized by the courts since 2014.<sup>119</sup>

When it comes to returnees from abroad, the RvdK and Jeugdzorg<sup>120</sup> work with families in the Netherlands in anticipation of the arrival of returnee children. On arrival, children are either placed with a family member, in foster care, in a family home, or in a closed environment, while their parent is imprisoned in the TA. Within two weeks, there is a hearing that usually confirms this placement arrangement; subsequently, within three months there is another hearing to issue both a supervision order (*onder toezichstelling*) and an order removing decision-making rights on children (*Uithuisplaatsing*) against the returnee. Child protection measures are meant to be finalized within a maximum of one year, and in practice with returnees it often does take the maximum period because of a variety of factors, including the length of the criminal case proceeding against the parent(s).

Indeed, various concerns arise because of a mismatch between the timing of the criminal and family processes, as well as the different bases on which decisions are made in each. For example, during the criminal case, prolonged detention in TAs under harsh conditions, including strict limits on contact with children,<sup>121</sup> is consequential; the longer that parents are away from their child and without the opportunity to form meaningful relationships, the more complicated it can be to arrange the family to be together post-release. Criminal cases and the perspective of the Intelligence and Security Service (AIVD) also do not center the best interests of the child, whereas for the RvdK “the most important thing in investigations and advice on returnees is that every child has the right to protection.”<sup>122</sup>

There can, however, also be a risk that the determination of what is in the best interests of the child can be skewed by an undue reliance on the (little) information that security services provide. For example, the RvdK has been criticized for taking steps based solely on an AIVD report;<sup>123</sup> indeed, the “official message” that AIVD transmits to agencies about a particular person “weighs heavily” such that it “usually lead(s) to a measure” against the person.<sup>124</sup> Where children are placed with family members, as well as where the child is returned to a parent, there are also concerns about ongoing and unduly close monitoring by State agencies. Here, the close co-operation between various security and welfare entities as well as ongoing suspicion of families creates an impression of the government's omnipresence that subjects all aspects of the family's life to the ongoing purview of the State.

## Individual- and group-level support for families

The government supports a variety of measures under the rubric of providing family members with support. For example, the

Dutch government funds the Landelijk Steunpunt Extremisme (National Extremism Support Center)<sup>125</sup> and its services include both individual “family support” for those “concerned about the extreme ideology of a family member, a family member who is or has been in a conflict zone or a family member suspected of terrorism,” as well as group-based support through “[c]ontact with fellow sufferers.”<sup>126</sup> There are also city-level government initiatives; for example, the City of Rotterdam has “[f]ather and Mother Groups” that are “interventions aimed at increasing (vulnerable) parents [sic] knowledge and skills.”<sup>127</sup> The Dutch government also supports community organizations that have initiated programs with families, such as Steunpunt Sabr.<sup>128</sup> This organization runs “a support group for parents whose children have left for Syria,”<sup>129</sup> as well as Oumnia Works, which was originally a “a radicalisation awareness programme for mothers”<sup>130</sup> and now focuses on parents or educators more broadly.<sup>131</sup>

In the Netherlands, concerns with these programs that target the family and that have a national security nexus include: transparency about whether participants are aware they are participating in government-supported programs; co-option of community programs and organizations; undue pressure on Muslim mothers, as well as stereotypes about the role of women in families; and whether, and under what circumstances, information from these programs is shared with the government. Initiatives to support the family are also seen as sitting in tension with other programs that criminally target family members, such as counter-terrorism financing investigations and convictions.

## Burqa and niqab ban

The Netherlands’ Partial Ban on Face-Covering Clothing Act that went into effect on August 1, 2019<sup>132</sup> has a range of adverse impacts on Muslim women and their families. The law bans “clothing that completely covers the face or covers the face in such a way that only the eyes are uncovered or made unrecognizable”<sup>133</sup> on “public transport or in and around government, healthcare or educational institutions.”<sup>134</sup> In practice, this means, for example, that the law bans face coverings in hospitals and pharmacies and that a person “may not enter . . . a school, town hall or train wearing a burka.”<sup>135</sup> First proposed by the far-right in 2005,<sup>136</sup> supporters of the ban have emphasized that face-coverings are “oppressive” toward Muslim women, prevent “integration,” and could be used to disguise “a radicalized Muslim terrorist.”<sup>137</sup>

Indeed, while the ban has also been justified in general terms as necessary for communication and safety<sup>138</sup> in practice it “disproportionately” impacts Muslim women,<sup>139</sup> as well as their families. Specific impacts include verbal harassment, threats, and physical aggression against Muslim women in various locations (e.g., supermarkets),<sup>140</sup> including by people who believe face coverings are banned everywhere.<sup>141</sup> Several

women reported aggressive acts taken against them in front of their children, including while taking children to school.<sup>142</sup> Because women cannot enter government buildings without wearing face coverings, this has compromised access to services that relate to the welfare of the family, such as child protection services,<sup>143</sup> and hampered meaningful family relations (e.g., by women and their children not visiting elderly relatives in facilities).<sup>144</sup> Overall, women have reported feeling unwilling to leave their homes and avoiding locations where the ban applies (e.g., public transport).<sup>145</sup> This has myriad impacts, including on women’s freedom of religion,<sup>146</sup> ability to seek job opportunities<sup>147</sup> and equality within their families, as well as the community, “as many women no longer dare to venture out and participate less in public life.”<sup>148</sup> According to one woman, the ban has meant that she has gone from being an “independent mother” to a “dependent housewife.”<sup>149</sup>



## INTERNATIONAL HUMAN RIGHTS OBLIGATIONS REGARDING THE FAMILY AND NATIONAL SECURITY

While States have a responsibility to set up the necessary legal and regulatory environment to combat terrorism and to prevent or counter violent extremism, this is not an unlimited prerogative. Rather, States must ensure that their measures comply with their international law obligations, including international human rights law.<sup>150</sup> When it comes to families, these obligations include a series of human rights guarantees related to equality and non-discrimination,<sup>151</sup> requirements that explicitly address the family, and a range of other rights that also inherently impact family relations, such as the best interests of the child<sup>152</sup> and the right to religion.<sup>153</sup>

Taken together, these guarantees under international human rights law protect both the family as a unit and the individual members within the family,<sup>154</sup> requiring States to protect and assist the family as a whole and also to ensure the individual rights of members to participate in family life. As international obligations on the family particularly include compliance with human rights guarantees related to gender equality,<sup>155</sup> a gender and human rights-based analysis of counter-terrorism and P/CVE is central to understanding how these policies also involve and impact families. Additionally, it is important to recall that policies of governments that affect families (e.g., of detention or non-repatriation) also implicate a range of other rights guarantees, including the rights to life and to be free from torture and cruel, inhuman, or degrading treatment or punishment.<sup>156</sup>

In assessing and remedying existing or future<sup>157</sup> impacts, the relevant international human rights legal framework related to families and national security includes requirements that States must:

- *Guarantee equality and non-discrimination both “within and between families.”*<sup>158</sup> International law’s general prohibition of discrimination (both direct and indirect) on proscribed grounds—including of sex and gender<sup>159</sup>—as well as requirements of equality,<sup>160</sup> apply to all aspects of family relations. This means that the State is prohibited from “discriminating against any form of family or against the individual members of the family.”<sup>161</sup> On the latter, States also have explicit “positive as well as negative obligations to ensure that all family members are treated equally and without discrimination,”<sup>162</sup> including women and children.<sup>163</sup> In the Netherlands, national security policies that disproportionately impact Muslim families<sup>164</sup> (e.g., through monitoring by local professionals<sup>165</sup> and citizenship revocation for dual nationals<sup>166</sup>); create gender inequalities within families (e.g., as with the ban on partial face-coverings<sup>167</sup>); and target women as “conduits of the prevention and countering of violent extremism,”<sup>168</sup> including on the basis of stereotypes (e.g., as with mother’s
- trainings to address radicalization<sup>169</sup>) all implicate guarantees of non-discrimination and equality both in and between different families. As such, all such differentiations “must be justified as being objective, reasonable and proportional”<sup>170</sup> to comply with international human rights law.
- *Protect the best interests of the child.* The human rights guarantee of “the best interests of the child”<sup>171</sup> is of core significance in all areas of family law and policy.<sup>172</sup> Under international human rights law, “[p]reventing family separation and preserving family unity are important components of the child protection system,”<sup>173</sup> with separation being a “last resort measure.”<sup>174</sup> Child protection measures that are unduly influenced by security rather than best interests considerations<sup>175</sup> are antithetical to this requirement.<sup>176</sup> The non-repatriation of Dutch children from Syria<sup>177</sup> also engages the Dutch government’s human rights obligations with regard to children,<sup>178</sup> that inter alia require that children be given “special protection”<sup>179</sup> and “must always be treated primarily as victims.”<sup>180</sup>
  - *Not impermissibly interfere with privacy and family life.*<sup>181</sup> This includes the obligation to “refrain from unlawful or arbitrary interferences with the family life”<sup>182</sup> and privacy,<sup>183</sup> “the obligation to respect the responsibilities of parents towards their children,”<sup>184</sup> and the “obligation to refrain from interfering with child-family relations.”<sup>185</sup> Under international law, this “right to family life also applies in relation to persons deprived of liberty, who should be allowed to communicate with their families, subject only to reasonable restrictions established by law.”<sup>186</sup> In the national security context, broad or unclear definitions (e.g., of radicalization)—including when combined with a discriminatory focus on Muslims as individuals and families—can cause arbitrary or unlawful interference with the right to privacy and family life through surveillance<sup>187</sup> or youth worker intervention.<sup>188</sup> In the Netherlands, the rights of family members to participate in family life and guarantees of privacy are also implicated by: unduly restrictive detention conditions for those suspected or convicted of terrorism;<sup>189</sup> discriminatory targeting of families through whole-of-government approaches that mobilize care services without robust checks<sup>190</sup> in ways that suggest “overselection and overreporting;”<sup>191</sup> and urban housing policy that might circumscribe freedom to choose one’s residence<sup>192</sup> based on national security grounds.<sup>193</sup>
  - *Provide protection and assistance to the family.*<sup>194</sup> Human rights law has “long recognized that the family is the fundamental unit of society and that it performs valuable functions for its members and for the community as a whole.”<sup>195</sup> As such, States have “obligations to take positive measures to ensure the well-being of the family and its members.”<sup>196</sup> This includes measures that “contribute to the maintenance of family relations, alleviate the negative impact of dissolu-

tion or ensure equality among family members,” as well as “ensuring social protection, including, the provision of financial assistance, care policies and tax privileges.”<sup>197</sup> Non-repatriation policies that undermine the rights of women and children in Syria;<sup>198</sup> programs that securitize individual and/or group-level family support without clear transparency around their links to national security;<sup>199</sup> criminalization of family relationships through over-broad counter-terrorism financing laws;<sup>200</sup> and administrative measures that curtail welfare benefits for family members of sanctioned individuals<sup>201</sup> all implicate States’ obligations to protect and assist families.

- *Guarantee the freedom of religion or belief.* This includes the freedom to adopt, change, or renounce a religion or belief,<sup>202</sup> freedom from coercion,<sup>203</sup> the right to manifest one’s religion or belief,<sup>204</sup> and the freedom to worship.<sup>205</sup> Impermissible limitations often target “the right of parents to ensure the religious and moral education of their children according to their convictions”<sup>206</sup> and can also occur in “family law matters, such as custody of children,”<sup>207</sup> a pattern that has been noted in national security contexts.<sup>208</sup> In the Netherlands, discrimination against Muslim families,<sup>209</sup> as well as the disproportionate impacts of the ban on partial face-coverings on Muslim women<sup>210</sup> implicate freedom of religion guarantees of relevance to family life.<sup>211</sup>
- *Ensure economic, social, and cultural rights.* This includes the rights to food, work, social security, an adequate standard of living, health, housing, and education.<sup>212</sup> States that are obliged to guarantee economic, social, and cultural rights must progressively realize these rights using their maximum available resources and on the basis of non-discrimination.<sup>213</sup> National security measures that may implicate these rights for families include the administrative measure of suspending welfare benefits,<sup>214</sup> as well as urban

housing policy that may allow exclusion based on national security-related grounds.<sup>215</sup>

- *Guarantee rights to sexual and reproductive health.* International human rights law guarantees reproductive rights through the rights to, among others, health,<sup>216</sup> non-discrimination and equality,<sup>217</sup> privacy,<sup>218</sup> freedom from torture and other cruel, inhuman or degrading treatment or punishment,<sup>219</sup> and life.<sup>220</sup> This includes the right to family planning,<sup>221</sup> which may be implicated by custodial conditions in the Netherlands that prevent decision-making on number and spacing of children.<sup>222</sup>
- *Exercise due diligence to prevent, investigate, and punish actions by non-State actors.* Under international human rights law, States have an obligation to protect individuals against human rights abuse by private or non-State actors.<sup>223</sup> Where a State fails to exercise due diligence, it incurs international responsibility, meaning that the State must then provide an effective remedy for affected victims.<sup>224</sup> Private abuses traceable to government policies that have a national security nexus—including verbal and other harassment against Muslim women through the Netherlands’ ban on partial face-coverings<sup>225</sup>—engage States’ due diligence obligations.
- *Apply the above obligations extraterritorially to those within the State’s jurisdiction.* Under international human rights law, States’ human rights obligations apply extraterritorially to those individuals and entities within their jurisdiction.<sup>226</sup> Such jurisdiction is established, for example, when States exercise “effective control” either when acting individually or as members of international or inter-governmental institutions.<sup>227</sup> Under international human rights law, a State’s extraterritorial jurisdiction extends to its nationals in Syria.<sup>228</sup>

## ENDNOTES

- 1 For examples of attention to this question, see, e.g., Fatima Ahdash, *The Interaction Between Family Law and Counter-terrorism: A Critical Examination of the Radicalisation Cases in the Family Courts*, 30 CHILD & FAM. L. Q. 389 (2018); Fatima Ahdash, *Childhood Radicalisation and Parental Extremism: How Should Family Law Respond? Insights from a Local Authority v X, Y and Z*, 4 ASIAN Y.B. HUM. RTS. & HUMAN. L. 160 (2020).
- 2 See Jayne C. Huckerby, *In Harm's Way: Gender and Human Rights in National Security*, 27 DUKE J. OF GENDER LAW & POLICY 179, 198 (2020).
- 3 See generally Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, U.N. Doc. A/HRC/43/46, ¶ 32 (Feb. 21, 2020) (noting the involvement of "various actors in society, including teachers, social workers, medical staff and other health-care professionals, prison staff, neighbours and family members, community leaders and members of faith-based groups").
- 4 *Counterterrorism*, GOV'T OF THE NETHERLANDS, <https://www.government.nl/topics/counterterrorism-and-national-security/counterterrorism> [https://perma.cc/C9DY-3DAM].
- 5 NAT'L COORDINATOR FOR SEC. AND COUNTERTERRORISM, NAT'L SECURITY STRATEGY (2019), <https://english.nctv.nl/topics/national-security-strategy/documents>.
- 6 NAT'L COORDINATOR FOR SEC. AND COUNTERTERRORISM, NAT'L COUNTERTERRORISM STRATEGY 2016–2020 (2016).
- 7 NAT'L COORDINATOR FOR SEC. AND COUNTERTERRORISM, THE NETHERLANDS COMPREHENSIVE ACTION PROGRAMME TO COMBAT JIHADISM: OVERVIEW OF MEASURES AND ACTIONS (2014) [hereinafter THE NETHERLANDS COMPREHENSIVE ACTION PROGRAMME TO COMBAT JIHADISM].
- 8 NAT'L COUNTERTERRORISM STRATEGY 2016–2020, *supra* note 6, at 14.
- 9 *Id.* at 19.
- 10 *Id.* at 25.
- 11 *Id.*
- 12 THE NETHERLANDS COMPREHENSIVE ACTION PROGRAMME TO COMBAT JIHADISM, *supra* note 7, at 4 ("Everyone—and this includes friends and family—who directly or indirectly makes funds available to . . . [verified departees who join a terrorist militia] risks prosecution" (*id.* at 7); "Assistance with (re)establishing contact with family . . . for jihadists who want to leave the jihadist movement." (*id.* at 8)).
- 13 *Id.* at 11 ("If a minor is involved in a suspected departure, child protective measures are taken. The Child Care and Protection Board initiates an investigation, unless application of juvenile criminal law is called for. Based on its investigation, the Board may request the court to (temporarily) place the minor under supervision or to place him in (foster) care, or to take other fitting measures.").
- 14 *Id.* at 17 ("A support facility is being set up based on the German ('Hayat') model in which family members, friends or people related in another way (for example teachers) of radicalised, radicalising individuals or departees, are supported and if need be, are brought into contact with people in the same situation.").
- 15 *Id.* at 27 ("Specialised teams that have knowledge and skills in tackling jihadism are being set up within relevant organisations. Such teams are already in place at the . . . Child Care and Protection Board.").
- 16 NAT'L COUNTERTERRORISM STRATEGY 2016–2020, *supra* note 6, at 3.
- 17 *Id.* at 13 ("Intervening in radicalisation processes at an early stage" involves "[e]ducational institutions, government agencies, associations, community groups and professionals [that] will all have the knowledge and expertise needed to flag worrisome behaviour and radicalisation early on and tackle them."). See also U.S. Dep't of State, *Country Reports on Terrorism 2019: The Netherlands* (2019), <https://www.state.gov/reports/country-reports-on-terrorism-2019/netherlands> [https://perma.cc/5LBW-62SW] ("Community police officers are the cornerstone of the local approach to prevention. Other stakeholders include local governments, with the support of the Office of the National Coordinator for Security and Counterterrorism, the public prosecutor's office, social workers, child protective services, educators, and community leaders. This approach prioritizes the use of preventive measures, including mentoring, counseling, and access to job-training programs and other social services.").
- 18 Annemarie van de Weert & Quirine A.M. Eijkman, *Early detection of extremism? The local security professional on assessment of potential threats posed by youth*, 73 CRIME, L. & SOC. CHANGE 491 (2019) (noting that "the broad approach to counterterrorism employed in the Netherlands is often cited as a universal example of CVE-policy" (*id.* at 495) and that "[b]ecause of [CVE's] broad approach, municipalities and frontline professionals (such as youth workers, civil servants responsible for public order and safety, and community police officers) find themselves placed at the intersection of providing social care and guaranteeing community security" (citations omitted) (*id.* at 492)).
- 19 NAT'L COUNTERTERRORISM STRATEGY 2016–2020, *supra* note 6, at 11 (the objective of "Procure" is to "timely gather and assess intelligence about (potential) threats to our national security and our interests abroad."). The Strategy identifies "local networks and contacts working in the mental health, education, social services and healthcare sectors" as a source of information "relevant for combating extremism and terrorism and for increasing the public authorities' intervention capability." *Id.* at 12.
- 20 NAT'L COUNTERTERRORISM STRATEGY 2016–2020, *supra* note 6, at 9.
- 21 *Id.* See also U.S. Dep't of State, *supra* note 17.
- 22 van de Weert & Eijkman, *supra* note 18, at 499.
- 23 Annemarie van de Weert & Quirine A. M. Eijkman, *In Every Artery of Society? How Dutch Community Police Officers Perceive Their Role in Early Detection of Violent Extremism among Youth*, 00 POLICING: J. POL'Y & PRAC. 1, 7 (2020).
- 24 NAT'L COUNTERTERRORISM STRATEGY 2016–2020, *supra* note 6, at 14 ("Identifying individuals with a potential for ideologically motivated violent behaviour early on and determining their readiness to commit acts of violence is no easy task. Identifying and tackling these individuals is primarily a local responsibility, entailing close cooperation between mental health services, the police, and intelligence and security services.").
- 25 *Counterterrorism*, GOV'T OF THE NETHERLANDS, *supra* note 4.
- 26 Annemarie van de Weert & Quirine A.M. Eijkman, *Subjectivity in detection of radicalization and violent extremism: A youth worker's perspective*, BEHAVIORAL SCIENCES OF TERRORISM AND POLITICAL AGGRESSION 191, 208 (2018) ("Finally, because social workers work closely with the security chain, we need to ask ourselves whether this partnership could have unforeseen effects. Could criminal justice partners make use of local social workers to collect information in local areas and about families and people to which the police have no access?").
- 27 *Id.* at 205.
- 28 *Id.* at 208.
- 29 NAT'L COUNTERTERRORISM STRATEGY 2016–2020, *supra* note 6, at 20.
- 30 See, e.g., Amy-Jane Gielen & Annebregt Dijkman, *Evidence-based informed policy design for support groups for families of foreign fighters: Ex ante application of realistic evaluation and review*, 20 J. FOR DERADICALIZATION 232, 249 (2019).
- 31 U.S. Dep't of State, *supra* note 17.
- 32 See *infra* notes 64–70.
- 33 Jonathan Horowitz & Douthie Lettinga, *Detaining 'Terrorists': Challenges, solutions and the lessons we've learned*, PENAL REFORM INT'L (Nov. 13, 2018), <https://www.penalreform.org/blog/detaining-terrorists-challenges-solutions-and-the-lessons-weve/> [https://perma.cc/HJ3R-U6CZ] ("The Netherlands defines criminal acts with a 'terrorist intention' in a broad manner. Acts of terrorism under Dutch domestic law can include . . . providing small amounts of cash to a relative who is travelling abroad.").
- 34 INSPECTORATE OF JUSTICE AND SECURITY, MINISTRY OF JUSTICE AND SECURITY, THE TERRORIST DETENTION UNITS IN THE NETHERLANDS 10 (2019), <https://www.inspectie-jenv.nl/binaries/inspectie-venj/documenten/rapporten/2019/09/16/the-terrorist-detention-units-in-the-netherlands/The+Terrorist+Detention+Units+in+the+Netherlands+-+Report.pdf> [hereinafter THE TERRORIST DETENTION UNITS IN THE NETHERLANDS].
- 35 Open Society Justice Initiative & Amnesty Int'l, *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism*, at 31 (2017) [hereinafter *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in Context of Counterterrorism*].
- 36 *Id.* at 42.
- 37 *Id.* at 31.
- 38 *Id.* at 16.
- 39 *Id.* at 47.
- 40 *Id.* at 48.
- 41 U.N. Comm. Against Torture, *Concluding Observations on the seventh periodic report of the Netherlands*, U.N. Doc. CAT/C/NLD/CO/7, ¶28 (Dec. 18, 2018).
- 42 *Id.*
- 43 Open Society Justice Initiative & Amnesty Int'l, *Inhuman and Unnecessary: Submission to the U.N. Committee against Torture, Ill-treatment in the Context*

of Counter-Terrorism and High-Security Prisons in the Netherlands, at 11 (2017).

44 *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism*, *supra* note 35, at 8.

45 *Id.* at 48 (“One partner explained that even though it was her husband who was convicted, she too was being punished because under the TA’s rules ‘I don’t have the right to have a child of my own . . . I didn’t do anything wrong, my husband got a punishment, not me.’”).

46 Judge: *The Netherlands does not need to bring back a confused...*, AL KHALEEJ TODAY (Oct. 15, 2020), <https://alkhaleejtoday.co/international/5098140/Judge-The-Netherlands-does-not-need-to-bring-back-a-confused.html> [<https://perma.cc/S6TJ-HGSU>].

47 THE TERRORIST DETENTION UNITS IN THE NETHERLANDS, *supra* note 34, at 22 (“To facilitate contact with family members, the PIs provide ‘read aloud programmes’, in which detainees read a story aloud on camera. The PIs send the video recording to children who are unable to visit . . . Detainees are allowed to receive a maximum of 3 people during a visit, plus 1 child aged under 12. PI Vught has stated that men and women are allowed to receive their children in the family room instead of in the visiting room. These visits are referred to as ‘Visits under Supervision’ and are supervised by the social worker working at the TA.”).

48 LIESBETH VAN DER HEIDE AND OLIVIA KEARNEY, INTERNATIONAL CENTRE FOR COUNTER-TERRORISM, THE DUTCH APPROACH TO EXTREMIST OFFENDERS, at 13 (2020), <https://icct.nl/app/uploads/2020/02/vanderheide-kearney-thedutchapproach.pdf>. See *id.* 12-13 (“In the context of reintegration of extremist offenders, local municipalities take the lead when individuals are released from prison. Within the Netherlands, a specific approach has been developed that is known as the local ‘Security House’ approach, where local partners develop a joint approach to complex cases including cases related to radicalisation and terrorism. Local partners include the TER-team, police, general prosecution, the Child Protection Board, the Dutch Custodial Services, youth services and dependent on the case, other actors such as mental health care providers, theologians, experts or local municipality officers can participate as well.”).

49 See *supra* notes 16–28.

50 THE DUTCH APPROACH TO EXTREMIST OFFENDERS, *supra* note 48, at 5–7.

51 These are pursuant to the March 2017 Temporary Law on Counterterrorism Administrative Measures. See generally, *Administrative Restriction of Freedoms of Jihadists*, WETENSCHAPPELIJK ONDERZOEK- EN DOCUMENTATIECENTRUM (2019), [https://english.wodc.nl/binaries/Cahier%202019-4\\_2863%20Summary\\_tcm29-381609.pdf](https://english.wodc.nl/binaries/Cahier%202019-4_2863%20Summary_tcm29-381609.pdf). See also *Administrative Restriction of Freedoms of Jihadists*, WETENSCHAPPELIJK ONDERZOEK- EN DOCUMENTATIECENTRUM, [https://english.wodc.nl/onderzoeksdatabase/2863-nulmeting-tijdelijke-wet-bestaurlijke-maatregelen-terrorisemebestrijding.aspx?refTitle=Dw7RutHdNDMs7SbbCPqKEu6yoN-qibZCNIRNHOF81PiMI-3cguoRfpS8q4j7tqmx2cJq8-wgM42VcjpIiUTqnikpk-7G04QtbSjrLEkT\\_fJmk1&refId=p2GEaQkDr31AOjZldEClxRMujQH2-gRP6FiK-fpbTsVboevAuwHpEsokxswgrc15FBrPKEdwnDkvGN5H44cOUkg2](https://english.wodc.nl/onderzoeksdatabase/2863-nulmeting-tijdelijke-wet-bestaurlijke-maatregelen-terrorisemebestrijding.aspx?refTitle=Dw7RutHdNDMs7SbbCPqKEu6yoN-qibZCNIRNHOF81PiMI-3cguoRfpS8q4j7tqmx2cJq8-wgM42VcjpIiUTqnikpk-7G04QtbSjrLEkT_fJmk1&refId=p2GEaQkDr31AOjZldEClxRMujQH2-gRP6FiK-fpbTsVboevAuwHpEsokxswgrc15FBrPKEdwnDkvGN5H44cOUkg2) (full text available in Dutch only).

52 Letter from Nils Muižnieks, Commissioner for Human Rights, Council of Europe to Dr. Ronald Plasterk, Minister of the Interior and Kingdom Relations of the Netherlands and Mr. Ard Van der Steur, Minister of Security and Justice of the Netherlands (Nov. 2, 2016), [https://rm.coe.int/ref/CommDH\(2016\)40](https://rm.coe.int/ref/CommDH(2016)40).

53 *Id.*

54 See *Administrative Restriction of Freedoms of Jihadists*, *supra* note 51, at 61.

55 Letter from Nils Muižnieks, *supra* note 52.

56 THE NETHERLANDS COMPREHENSIVE ACTION PROGRAMME TO COMBAT JIHADISM, *supra* note 7, at 13.

57 Bérénice Boutin, International Centre for Counter-Terrorism, *Administrative Measures Against Foreign Fighters: In Search of Limits and Safeguards*, at 17 (2016), <https://icct.nl/wp-content/uploads/2016/12/ICCT-Boutin-Administrative-Measures-December2016-1.pdf> (“Between December 2013 and September 2016, this measure was used 98 times, against Dutch residents who allegedly travelled with ‘jihadists intentions’ to Syria/Iraq.”).

58 *Id.* at 20.

59 Gielen & Dijkman, *supra* note 30, at 248.

60 *Id.* at 249.

61 *Id.* When “a member exhibits extremist behavior,” their families experience personal, psychological and social problems as well. Personal problems include: “[a]ddiction (drugs, alcohol),” “[p]revious trauma,” “[s]erious illness (e.g. cancer),” “[a]nxiety and panic disorders,” “[d]epression,” “[a]ggression regulation problems,” “[d]isturbed identity development,” and “[l]ow IQ/[i]ntellectually

disabled.” “Social psychological problems” include: “[d]ebts,” “[d]omestic violence,” “[d]ivorce,” “[s]chool drop out,” “[d]isturbed family relationships,” physical and emotional problems, “[p]rostitution/loverboy problems,” and “(multiple) negative experiences with seeking professional help.” Finally, the “[c]onsequences of extremist behaviour on personal and social level” consist of: “[m]ourning and trauma,” “[d]isrupted family relationships,” “[f]ixation on extremist/deceased family member instead of daily life,” “[l]oss of social network due to stigma,” “[h]arrassment at school, in the neighborhood,” “[n]ew family members (grandchildren, sons and [sic]),” “[d]isappointment and distrust towards government,” “[t]ense political discourse on extremism (e.g. hurtful statements by politicians, general public opinion),” “[i]ntrusive national and sometimes international press coverage, including incorrect reporting (e.g. alleged deaths),” “[u]nethical approach by researchers (e.g. setting up a FB support group, which is not meant for parents but for research),” “[i]ntrusive approach by other families and community organisations,” “[l]oss of feelings of privacy and autonomy,” “[f]eelings of stigmatization in the community and in society,” and “[c]ontact with relatives in conflict areas and thereby being exposed to jihadist propaganda, emirs, extremists/jihadists.”

62 H.R. Comm., *Concluding Observations on the Fifth Periodic Report of the Netherlands*, U.N. Doc. CCPR/C/NLD/CO/5, ¶ 54 (Aug. 22, 2019).

63 Court of The Hague, Case. No.: C-09-553023-KG ZA 18-476, ¶ 3.2 June 26, 2018. [Translation from Google Translate.]

64 *Counterterrorism and Nat’l Security*, GOV’T OF THE NETHERLANDS, <https://www.government.nl/topics/counterterrorism-and-national-security/counterterrorism> [<https://perma.cc/296K-6LSP>]; see generally, U.S. Dep’t of State, *supra* note 17.

65 *Dutch National Risk Assessment on Terrorist Financing 2019*, WETENSCHAPPELIJK ONDERZOEK- EN DOCUMENTATIECENTRUM, at 102 (2020), [https://english.wodc.nl/binaries/Cahier%202020-12\\_Summary\\_tcm29-457002.pdf](https://english.wodc.nl/binaries/Cahier%202020-12_Summary_tcm29-457002.pdf).

66 See, e.g., *Convicted jihadist arrested for terrorism financing*, NL TIMES (July 31, 2020), <https://nltimes.nl/2020/07/31/convicted-jihadist-arrested-terrorism-financing> [<https://perma.cc/2THH-FQMX>].

67 DR. MARA WESSELING & PROF. DR. MARIEKE DE GOEDE, AMSTERDAM INSTITUTE FOR SOCIAL SCIENCE RESEARCH & UNIVERSITY OF AMSTERDAM, EXECUTIVE SUMMARY COUNTER TERRORISM FINANCING POLICIES IN THE NETHERLANDS: EFFECTIVENESS AND EFFECTS (2013-2016), at 10 (2018), [https://english.wodc.nl/binaries/2689D\\_Summary\\_tcm29-372746.pdf](https://english.wodc.nl/binaries/2689D_Summary_tcm29-372746.pdf).

68 *National sanctionlist terrorism*, GOV’T OF THE NETHERLANDS, <https://www.government.nl/documents/reports/2016/01/15/national-terrorism-list> [<https://perma.cc/2ZFP-FD2X>].

69 Judgments from the Court of Rotterdam, ECLI:NL:RBROT:2020:1311 (¶ 4.1) and ECLI:NL:RBROT: 2020:1312 (¶ 4.1), Case. No.: 10 / 996676-17, Feb. 14, 2020, <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2020:1311> [<https://perma.cc/7KJJ-DT2P>] and <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2020:1312> [<https://perma.cc/V97T-B4V5>].

70 *Id.*

71 NAT’L COORDINATOR FOR SECURITY AND COUNTERTERRORISM, TERRORIST THREAT ASSESSMENT FOR THE NETHERLANDS 53, at 6 (2020), <https://english.nctv.nl/topics/terrorist-threat-assessment-netherlands/documents/publications/2020/11/03/terrorist-threat-assessment-netherlands-53>.

72 van de Weert & Eijkman, *supra* note 23, at 10 (“Due to special focus on religious extremism among Muslims in policy and trainings, there might be possible unequal treatment of various forms of extremism in society—such as Islamic, left or right.”).

73 van de Weert & Eijkman, *supra* note 18, at 499-500.

74 van de Weert & Eijkman, *supra* note 26, at 207.

75 *Id.* at 207.

76 *Id.* at 207-208.

77 van de Weert & Eijkman, *supra* note 18, at 499.

78 van de Weert & Eijkman, *supra* note 26, at 208.

79 Thomas Renard & Rik Coolsaet, *From bad to worse: The fate of European foreign fighters and families detained in Syria, one year after the Turkish offensive*, 130 SEC. POL’Y BRIEF 1, 5 (2020), [https://www.egmontinstitute.be/content/uploads/2020/10/SPB130\\_final.pdf?type=pdf](https://www.egmontinstitute.be/content/uploads/2020/10/SPB130_final.pdf?type=pdf).

80 *Aid program ready for orphans, 2 and 4, returning from ISIS war zone*, NL TIMES (June 12, 2019), <https://nltimes.nl/2019/06/12/aid-program-ready-orphans-2-4-returning-isis-war-zone> [<https://perma.cc/93E2-8PJU>].



- 81 Peter Cluskey, *Dutch girl (11) flown home from Syria after three-year search*, IRISH TIMES (Jul. 30, 2019), <https://www.irishtimes.com/news/world/europe/dutch-girl-11-flown-home-from-syria-after-three-year-search-1.3972219> [<https://perma.cc/J27Z-EUHF>].
- 82 Kristel van Teeffelen, *Kabinet wil uitreiziger naar Syrië toch liever hier berechten [Cabinet would prefer to try travelers to Syria here]* (in Dutch), TROUW (June 18, 2020), <https://www.trouw.nl/cs-bd2c845b> [<https://perma.cc/NMZ9-EVF6>]. [Translation from Google Translate.]
- 83 Judgment from the Hoge Raad, ECLI:NL:HR:2020:1148, Case No. 19/05666, June 26, 2020, <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2020:1148> [<https://perma.cc/L2RE-KNVG>].
- 84 *Id.*
- 85 Judgment from the Court of the Hague, ECLI: NL: RBDHA: 2020: 10202, Case No. C-09-596550-KG ZA 20-692, Oct. 15, 2020, <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2020:10202> [<https://perma.cc/9KCH-E8HH>]. [Translation from Google Translate.]
- 86 *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, U.N. Doc. A/HRC/45/31, ¶ 71 (Aug. 14, 2020). See also Human Rights Watch, *"Bring Me Back to Canada" Plight of Canadians Held in Northeast Syria for Alleged ISIS Links* (2020), [https://www.hrw.org/sites/default/files/media\\_2020/06/canada0620\\_web\\_1.pdf](https://www.hrw.org/sites/default/files/media_2020/06/canada0620_web_1.pdf) (noting that in al-Hol and Roj, "[c]onditions in the camp annexes for non-Iraqi foreigners are particularly harsh" (*id.* at 17) and in al-Hol that "rations did not include fresh food, even for children. Latrines were overflowing, garbage littered the grounds, medical care and basic provisions such as diapers and sanitary towels were insufficient, and respiratory and gastrointestinal infections, as well as child malnutrition, were rampant." (*id.* at 21)).
- 87 U.N. Doc. A/HRC/45/31, *supra* note 86, at ¶ 73.
- 88 Devyani Prabhat, Faith Gordon, & Romyana van Ark, *Repatriation of Dutch Children in Syria Now Unlikely—But It Shouldn't be a Political Choice*, THE CONVERSATION (May 14, 2020), <https://theconversation.com/repatriation-of-dutch-children-in-syria-now-unlikely-but-it-shouldnt-be-a-political-choice-137960> [<https://perma.cc/W26W-94X9>].
- 89 See, e.g., *Aid program ready for orphans, 2 and 4, returning from ISIS war zone*, *supra* note 80.
- 90 Renard & Coolsaet, *supra* note 79, at 3.
- 91 See, e.g., *Turkey sends two ISIS women, plus two children, back to the Netherlands*, DUTCH NEWS.NL (Nov. 20, 2019), <https://www.dutchnews.nl/news/2019/11/turkey-sends-two-isis-women-plus-two-children-back-to-the-netherlands> [<https://perma.cc/L3EW-A9Z9>].
- 92 See, e.g., *id.*
- 93 Peter Cluskey, *Turkey repatriates two women to Netherlands over Isis membership*, IRISH TIMES (Nov. 20, 2019), <https://www.irishtimes.com/news/world/europe/turkey-repatriates-two-women-to-netherlands-over-isis-membership-1.4090014> [<https://perma.cc/Y3LV-CXRS>]; *Turkey sending ISIS women back to NL is "very disappointing"*, JUSTICE MIN. SAYS, NL TIMES (Nov. 20, 2019), <https://nltimes.nl/2019/11/20/turkey-sending-isis-women-back-nl-disappointing-justice-min-says> [<https://perma.cc/HA53-U2Z9>].
- 94 See, e.g., *Turkey deports ISIS bride and child back to the Netherlands*, DUTCH NEWS.NL (Dec. 29, 2019), <https://www.dutchnews.nl/news/2019/12/turkey-deports-isis-bride-and-child-back-to-the-netherlands> [<https://perma.cc/D628-DUBF>].
- 95 *Judge: The Netherlands does not need to bring back a confused....*, *supra* note 46.
- 96 See *supra* notes 34–45.
- 97 U.N. Doc. CCPR/C/NLD/CO/5, *supra* note 62, at ¶ 50.
- 98 *Rep. of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, E. Tendayi Achiume, U.N. Doc. A/HRC/44/57/Add.2, ¶ 60 (July 2, 2020) (citations omitted); Amicus Brief from the Mandate of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, The Dutch Immigration and Naturalisation Service, ¶ 36 (Oct. 23, 2018), [https://www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration\\_Amicus.pdf](https://www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration_Amicus.pdf).
- 99 *Summary, Evaluatie wijziging van de Rijkswet op het Nederlanderschap in het belang van de nationale veiligheid*, WETENSCHAPPELIJK ONDERZOEK—EN DOCUMENTATIECENTRUM (2020), [https://english.wodc.nl/binaries/3107\\_summary\\_tcm29-457201.pdf](https://english.wodc.nl/binaries/3107_summary_tcm29-457201.pdf).
- 100 *Id.* (italics in original).
- 101 See *supra* notes 86–88.
- 102 See *supra* notes 64–70.
- 103 Prabhat, Gordon, & van Ark, *supra* note 88 (noting that the "advocaat-generaal, Lodewijk Valk, who provides independent advice to the Dutch Supreme Court . . . stressed that the parents' wrong choices should not be held against the affected children. He also suggested that an assessment of whether to repatriate each of the children should be on a case-by-case basis. He suggested that a request to repatriate the children only might have had a higher likelihood of success.").
- 104 Cluskey, *supra* note 93.
- 105 Government Gazette of the Kingdom of the Netherlands 2019, no. 60309 (Oct. 31, 2019).
- 106 *Turkey sending ISIS women back to NL is "very disappointing"*, JUSTICE MIN. SAYS, *supra* note 93.
- 107 Cluskey, *supra* note 93.
- 108 *Judge: The Netherlands does not need to bring back a confused....*, *supra* note 46; *Turkey sending ISIS women back to NL is "very disappointing"*, JUSTICE MIN. SAYS, *supra* note 93.
- 109 See *Dutch citizen by birth or acknowledgement*, IMMIGR. AND NATURALISATION SERV., <https://ind.nl/en/dutch-citizenship/Pages/by-birth-or-acknowledgement.aspx> [<https://perma.cc/59DL-U2YW>].
- 110 See, e.g., Kathryn Hampton, *Born in the twilight zone: Birth registration in insurgent areas*, 101 INT'L REV. RED CROSS 507, 513 (2019).
- 111 NAT'L COORDINATOR FOR SEC. AND COUNTERTERRORISM & GEN. INTEL. AND SEC. SERVICE, THE CHILDREN OF ISIS: THE INDOCTRINATION OF MINORS IN ISIS-HELD TERRITORY, at 6 (2017), [https://radical.hypotheses.org/files/2018/01/Minderjarigen\\_bij\\_ISIS\\_ENG.pdf](https://radical.hypotheses.org/files/2018/01/Minderjarigen_bij_ISIS_ENG.pdf) ("In the event they return to the Netherlands they will have to submit to a DNA test in order to ascertain family relationships and accordingly obtain Dutch citizenship."); *id.* at n.4 ("Documents from ISIS-held territory are not officially recognised. Consequently, DNA testing will always be required.").
- 112 See *Dutch citizen by birth or acknowledgement*, *supra* note 109.
- 113 See generally, *Marriage, registered partnership and cohabitation agreements*, GOV'T. OF THE NETHERLANDS, <https://www.government.nl/topics/family-law/marriage-registered-partnership-and-cohabitation-agreements> [<https://perma.cc/MPU5-2ETM>].
- 114 See, e.g., *Nederlandse IS-strijder wil met gezin naar Nederland, maar kan dat wel?* ("Dutch IS fighter wants to go to the Netherlands with his family, but is that possible?"), NOS.NL (Mar. 3, 2019), <https://nos.nl/nieuwsuur/artikel/2274399-nederlandse-is-strijder-wil-met-gezin-naar-nederland-maar-kan-dat-wel.html> [<https://perma.cc/PP3V-WQ4K>].
- 115 See *Dutch citizen by birth or acknowledgement*, *supra* note 109.
- 116 RAAD VOOR DE KINDERBESCHERMING (RVDK), *About Us*, <https://www.kinderbescherming.nl/over-ons> [<https://perma.cc/9XFM-J8LX>] (" . . . it is always about the best interests of the child."). [Translation from Google Translate.]
- 117 RVDK, MINISTERIE VAN JUSTITIE EN VEILIGHEID, <https://www.kinderbescherming.nl>.
- 118 THE NETHERLANDS COMPREHENSIVE ACTION PROGRAMME TO COMBAT JIHADISM, *supra* note 7, at 11.
- 119 Judgment of the Central Netherlands District Court, ECLI:NL:RBMNE:2014:4180, Case No. C/16/376252 / JE RK 14-2035, Sept. 15, 2014, <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBMNE:2014:4180> [<https://perma.cc/8T3L-2J7K>] (withdrawing the temporary custodial supervision order in place as well as the crisis authorization for custodial placement and rejecting the request to extend the authorization for custodial placement for a period of four weeks). [Translation from Google Translate.]
- 120 Jeugdzorg Nederland, <https://www.jeugdzorgnederland.nl>.
- 121 See *supra* notes 34–45.
- 122 News release, RVDK, *Minister clear in letter to parliament about the role RvdK in returnees*, (Apr. 12, 2018), <https://www.kinderbescherming.nl/themas/radicalisering-van-jongeren/nieuws/2018/04/12/minister-in-kamerbrief-duidelijk-over-rol-rvdk-bij-terugkeerders> [<https://perma.cc/D8S2-SWDU>].
- 123 See Judgment of the Central Netherlands District Court, *supra* note 119, at ¶ 2.6 (noting that the Child Care and Protection Board's concerns "are not supported in any concrete facts or circumstances, but can only be traced back to the official message, the content of which has been disputed by the parents").
- 124 SUPERVISORY COMM. ON THE INTEL. AND SEC. SERVS., SUPERVISORY REPORT, THE

PROVISION OF DATA BY THE AIVD WITHIN THE NETHERLANDS ABOUT (ALLEGED) JIHADISTS, CTIVD No. 57, at 21 (adopted in 2018). [Translation from Google Translate.]

125 English, LANDELIJK STEUNPUNT EXTREMISME, <https://www.landelijksteunpuntextremisme.nl/internationaal/english> [https://perma.cc/Z6LS-G2Q7] (“LSE is funded by the Dutch government.”). See also Gielen & Dijkman, *supra* note 30, at 246 (“The organization is subsidized by the Ministry of Social Affairs and the Ministry of Justice and Security.”).

126 *Begeleiding en behandeling* (Guidance and Treatment), LANDELIJK STEUNPUNT EXTREMISME, <https://www.landelijksteunpuntextremisme.nl/dienstverlening/begeleiding> [https://perma.cc/B2B7-JCKF].

127 CITY OF ROTTERDAM, APPROACH TO RADICALISATION, EXTREMISM AND POLARISATION 2018–2022, at 9 (2018), <https://strongcitiesnetwork.org/en/wp-content/uploads/sites/5/2019/10/Approach-to-rad-extr-and-pol-2018-2022.pdf>.

128 STEUNPUNT, SABR, <http://www.steunpuntsabr.nl>; RADICALISATION AWARENESS NETWORK, *Preventing Radicalisation to Terrorism and Violent Extremism: Family support*, at 48–49 (2019), [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation\\_awareness\\_network/ran-best-practices/docs/family\\_support\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-best-practices/docs/family_support_en.pdf).

129 RADICALISATION AWARENESS NETWORK, *supra* note 128, at 48.

130 See *Radicalisation and violent extremism—focus on women: How women become radicalised, and how to empower them to prevent radicalisation*, Eur. Parl. Doc. PE 596.838, 63 (2017), [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596838/IPOL\\_STU\(2017\)596838\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596838/IPOL_STU(2017)596838_EN.pdf); see also, *Mothers Against Radicalisation: A Successful Approach*, CONFED. OF EUR. PROBATION, <https://www.cep-probation.org/mothers-against-radicalisation-a-successful-local-approach> [https://perma.cc/454M-SX9N] (“With the project Oumnia Works, the Dutch municipality of The Hague aims on mothers as a weapon against radicalization.”).

131 OUMNIA WORKS, <https://www.oumiaworks.nl/>.

132 Kingdom of the Netherlands, *Law of 27 June 2018*, 222 STAATSBLD VAN HET KONINKRIJK DER NEDERLANDEN [OFFICIAL GAZETTE OF THE KINGDOM OF THE NETHERLANDS] (Jul. 17, 2018), <https://zoek.officielebekendmakingen.nl/stb-2018-222.html> [https://perma.cc/JX24-UN5Q ] [Translation from Google Translate]; *What does the partial ban on face coverings entail?*, GOV'T OF THE NETHERLANDS, <https://www.government.nl/topics/ban-on-face-coverings-referred-to-in-the-media-as-the-%E2%80%98burka-ban%E2%80%99/question-and-answer/what-does-the-partial-ban-on-face-coverings-entail> [https://perma.cc/DX6E-2TX2].

133 Kingdom of the Netherlands, *Law of 27 June 2018*, *supra* note 132.

134 *What does the partial ban on face coverings entail?*, *supra* note 132.

135 *Where does the ban on face coverings apply?*, GOV'T OF THE NETHERLANDS, <https://www.government.nl/topics/ban-on-face-coverings-referred-to-in-the-media-as-the-%E2%80%98burka-ban%E2%80%99/question-and-answer/where-does-the-ban-on-face-coverings-apply> [https://perma.cc/MC86-5LH7].

136 Christine Hauser & Liam Stack, *Dutch Lawmakers Approve Partial Ban on Burqas and Niqabs*, NY TIMES (June 27, 2018), <https://www.nytimes.com/2018/06/27/world/europe/netherlands-face-covering-ban.html> [https://perma.cc/46LU-UZ97].

137 House of Representatives [Tweede Kamer] of the States General of the Netherlands, *Gedeeltelijk verbod gezichtsbedekkende kleding. Plenair debat [Plenary debate on the proposition of the Partial Ban on Face-Covering Clothing]*, Nov. 23, 2016, <https://debatgemist.tweedekamer.nl/debatten/gedeeltelijk-verbod-gezichtsbedekkende-kleding> [https://perma.cc/WFK8-MJB6].

138 House of Representatives [Tweede Kamer] of the States General of the Netherlands, *Instelling van een gedeeltelijk verbod op het dragen van gezichtsbedekkende kleding in het onderwijs, het penbaar vervoer, overheidsgebouwen en de zorg (Wet gedeeltelijk verbod gezichtsbedekkende kleding) [Institution of a partial ban on the wearing of face covering clothing in education, public transport, government buildings and care (Partial ban on face covering clothing)]*, 34 349, no. 3 (2015) at 4, [https://www.eerstekamer.nl/behandeling/20151127/memorie\\_van\\_toelichting/document3/f=vjzdr3tezz8.pdf](https://www.eerstekamer.nl/behandeling/20151127/memorie_van_toelichting/document3/f=vjzdr3tezz8.pdf) (“In those places where communication through looking each other directly in the face is necessary the ban will be in place. Wearing face covering clothing in these cases deprives fellow citizens of the opportunity to gauge reactions and intent of their potential partner in conversation. Because of this, communication is impeded to such a degree that it can affect the quality of education or healthcare as well as the safety in government buildings or public transit.”). [Translation from Google Translate.]

139 Hauser & Stack, *supra* note 136. See generally, IBTISSAM ABAÂZIZ, MELD ISLAMOFOBIE, ZWARTBOEK “BOEKVERBOD” [BLACK BOOK “BURQA BAN”] (2020),

<https://www.meldislamofobie.org/zwartboek-boekverbod/> [https://perma.cc/2VTF-QYYV]. [Translation from Google Translate.]

140 ABAÂZIZ, *supra* note 139, at 25–27.

141 *Id.* at 28–30.

142 *Id.* at 31–32.

143 *Id.* at 33–34.

144 *Id.* at 38, 40.

145 *Id.* at 38–41.

146 Amnesty Int'l, *What does Amnesty think of the law that partially bans face-covering clothing*, (July 30, 2019), [https://translate.google.com/translate?hl=en&prev=\\_t&sl=auto&tl=en&u=https://www.amnesty.nl/actueel/amnesty-wet-gezichtsbedekkende-kleding](https://translate.google.com/translate?hl=en&prev=_t&sl=auto&tl=en&u=https://www.amnesty.nl/actueel/amnesty-wet-gezichtsbedekkende-kleding) [https://perma.cc/ZG5E-YYJY] [Translation from Google Translate.]

147 ABAÂZIZ, *supra* note 139, at 38–39.

148 *Id.* at 38.

149 *Id.*

150 Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, U.N. Doc. A/HRC/31/65, ¶ 56(c) (Apr. 29, 2016) (emphasis omitted).

151 U.N. High Commissioner for Human Rights, *Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development*, U.N. Doc. A/HRC/31/37, ¶ 26 (Jan. 29, 2016) (“[I]nternational standards set forth at least two minimum conditions for the recognition and protection of families at the national level: first, respect for the principle of equality and non-discrimination, including the equal treatment of women; and second, the effective guarantee of the best interest of the child.”).

152 *Id.*

153 Special Rapporteur on Freedom of Religion and Belief, *Report of the Special Rapporteur on Freedom of Religion and Belief*, U.N. Doc. A/HRC/34/50, ¶¶ 28, 41 (Jan. 17, 2017).

154 H.R. Comm., *General Comment No.19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 39th Sess., ¶ 1 (July 27, 1990).

155 See, e.g., U.N. Doc. A/HRC/31/37, *supra* note 151, at ¶ 26; Comm. on the Elimination of Discrimination against Women (CEDAW), *General Recommendation No. 29: Article 16—Economic consequences of marriage, family relations and their dissolution*, U.N. Doc. CEDAW/C/GC/29, ¶ 7 (Oct. 30, 2013) (“the entitlement of women to equality within the family is universally acknowledged.”).

156 See, e.g., *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism*, *supra* note 35; *Submission by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the UN Special Rapporteur on arbitrary, summary and extra-judicial executions in the case of H.F. and M.F. v. France (Application no. 24384/19) before the European Court of Human Rights* (Sept. 28, 2020), [https://www.ohchr.org/Documents/Issues/Terrorism/SR/Final-Amicus\\_Brief\\_SRCT\\_SRSsummex.pdf](https://www.ohchr.org/Documents/Issues/Terrorism/SR/Final-Amicus_Brief_SRCT_SRSsummex.pdf).

157 See, e.g., A/HRC/31/65, *supra* note 150, at ¶ 56(c) (stating that the obligation to assess the gender and human rights impacts of national security policies is also anticipatory).

158 UNWOMEN, A CONTEMPORARY VIEW OF ‘FAMILY’ IN INTERNATIONAL HUMAN RIGHTS LAW AND IMPLICATIONS FOR THE SUSTAINABLE DEVELOPMENT GOALS (SDGs), at 11 (2017), <https://www.unwomen.org/en/digital-library/publications/2017/12/a-contemporary-view-of-family-in-international-human-rights-law>.

159 For the principle of non-discrimination on the basis of “sex” and “gender,” see, e.g., International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), arts. 2(1), 26, U.N. Doc. A/6316 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1967 [hereinafter IC-CPR] (see generally H.R. Comm., *General Comment No.18: Non-Discrimination*, 37th Sess., U.N. Doc. HRI/GEN/1/Rev.1 (Nov. 10, 1989) and H.R. Comm., *General Comment No. 28: Article 3 (Equality of Rights Between Men and Women)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000) [hereinafter H.R. Comm., *General Comment No. 28*]); International Covenant on Economic, Social and Cultural Rights G.A. Res. 2200A (XXI), art. 2(2), U.N. Doc. A/6316 (1966), entered into force Jan. 3, 1976 [hereinafter ICESCR]) (see also Comm. on Economic, So-



cial and Cultural Rights, *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights*, 34th Sess., U.N. Doc. E/C.12/2005/4, ¶14 (Aug. 11, 2005); Comm. on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, U.N. Doc. E/C.12/GC/20, ¶ 20 (July 2, 2009) [hereinafter Comm. on Economic, Social and Cultural Rights, *General Comment No. 20*]; Convention on the Elimination of all Forms of Discrimination Against Women, G.A. Res. 34/180, arts. 2, 34 U.N. GAOR Supp. (No. 46), U.N. Doc. A/34/46, entered into force Sept. 3, 1981 [hereinafter CEDAW] (see also CEDAW, *General Recommendation No. 28: The Core Obligations of States Parties Under Article 2 of the Convention on the Eliminations of All Forms of Discrimination against Women*, 47th Sess., U.N. Doc. CEDAW/C/GC/28, ¶ 5 (Dec. 16, 2010) [hereinafter CEDAW, *General Rec. No. 28*]). See also International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14), U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969 (see also Comm. on the Elimination of Racial Discrimination, *General Recommendation No. 25: Gender related dimensions of racial discrimination*, 56th Sess., U.N. Doc. A/55/18, annex V, ¶ 4 (Mar. 20, 2000)).

160 The obligation to ensure equality is referenced, for example, in ICCPR, *supra* note 159, art. 3; ICESCR, *supra* note 159, art. 3; and CEDAW, *supra* note 159, art. 3. See generally H.R. Comm., *General Comment No. 28, supra* note 159; Comm. on Economic, Social and Cultural Rights, *General Comment No. 16, supra* note 159; CEDAW, *General Recommendation No. 25: Temporary Special Measures*, art. 4(1), 30th Sess., (2004).

161 UN WOMEN, *supra* note 158, at 8.

162 *Id.* at 22.

163 See, e.g., ICCPR, *supra* note 159, art. 23(4); CEDAW, *supra* note 159, arts. 2, 5(b), 16; Convention on the Rights of the Child [hereinafter CRC], art. 2, 1577 U.N.T.S. 3 (Nov. 20, 1989).

164 See generally U.N. Doc. A/HRC/43/46, *supra* note 3, at ¶ 28 (“In certain countries, the agenda for preventing and countering violent extremism is focused exclusively on violent Islamist extremism, obscuring other forms of extremism and leading to stigmatization and polarization.”).

165 See *supra* notes 28, 71–78.

166 See *supra* notes 97–99. See also U.N. Doc. CCPR/C/NLD/CO/5, *supra* note 62, at ¶¶ 50–51; U.N. Doc. A/HRC/44/57/Add.2, *supra* note 98, at ¶ 60 (citations omitted); Amicus Brief from the Mandate of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, The Dutch Immigration and Naturalisation Service, *supra* note 98, at ¶ 36.

167 See *supra* notes 132–149. See also U.N. Doc. CCPR/C/NLD/CO/5, *supra* note 62, at ¶ 58 (noting the “concern[ ] by legislation that provides for a ban on face-covering clothing in public buildings and on public transport, which might restrict the right to freedom of religion beyond the level of necessity and proportionality. It is also concerned that the legislation, if enforced, may exacerbate the marginalization of Muslim women in the Netherlands (art. 2, 3 and 18).”).

168 U.N. Doc. A/HRC/43/46, *supra* note 3, at ¶ 40.

169 See *supra* note 130.

170 UN WOMEN, *supra* note 158, at 11. See, e.g., Comm. on Economic, Social and Cultural Rights, *General Comment No. 20, supra* note 159, at ¶ 13 (“Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.”).

171 See CRC, *supra* note 163, arts. 3(1), 9(1)(3), 18(1), 20(1), 21, 37(c), 40(2)(b) (iii). See generally Comm. on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)\**, U.N. Doc. CRC/C/GC/14 (May 29, 2013) [hereinafter Comm. on the Rights of the Child, *General Comment No. 14*].

172 U.N. Doc. A/HRC/31/37, *supra* note 151, at ¶ 26.

173 Comm. on the Rights of the Child, *General Comment No. 14, supra* note 171, at ¶ 60.

174 *Id.* at ¶ 61.

175 See *supra* notes 123–124.

176 See generally Ahdash, *The Interaction Between Family Law and Counter-terrorism: A Critical Examination of the Radicalisation Cases in the Family*

*Courts, supra* note 1 (noting that in the U.K. because “radicalisation and extremism have been treated as safeguarding and child protection concerns . . . the government has aligned the state’s duty to protect children and to promote their welfare with its interest in ‘preventing’ and countering terrorism.”).

177 See *supra* notes 31, 79–85.

178 See, e.g., Comm. on the Rights of the Child, *Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communications No. 79/2019 and No. 109/2019*, U.N. Docs. CRC/C/85/D/79/2019–CRC/C/85/D/109/2019, ¶¶ 9–10 (Nov. 2, 2020) (finding that France has extraterritorial jurisdiction over its minor nationals in Kurdish-controlled camps in Syria “as the State . . . has the capability and the power to protect the rights of the children in question by taking action to repatriate them or to provide other consular responses.” *Id.* at ¶ 9.7).

179 *Submission by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the UN Special Rapporteur on arbitrary, summary and extra-judicial executions in the case of H.F. and M.F. v. France (Application no. 24384/19) before the European Court of Human Rights, supra* note 156, at ¶ 31.

180 *Id.* at ¶ 30.

181 UN WOMEN, *supra* note 158, at 21.

182 *Id.*

183 See, e.g., ICCPR, *supra* note 159, art. 17(1) (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”); CRC, *supra* note 163, art. 16; International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, art. 14, 2220 U.N.T.S. 3 (Dec. 18, 1990).

184 UN WOMEN, *supra* note 158, at 21. See, e.g., CRC, *supra* note 163, art. 5.

185 UN WOMEN, *supra* note 158, at 21. See, e.g., CRC, *supra* note 163, art. 8.

186 A/HRC/31/37, *supra* note 151, at ¶ 34 (citations omitted).

187 See Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Rep. of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/23/40, ¶ 58 (Apr. 17, 2013) (“Vague and unspecified notions of ‘national security’ have become an acceptable justification for the interception of and access to communications in many countries.”).

188 van de Weert & Eijkman, *supra* note 26, at 207–208.

189 See *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism, supra* note 35.

190 See *supra* notes 24–28.

191 U.N. Doc. A/HRC/43/46, *supra* note 3, at ¶ 32.

192 U.N. Doc. CCPR/C/NLD/CO/5, *supra* note 62, at ¶ 52.

193 See, e.g., Justus Uitermark, Cody Hochstenbach, & Wouter van Gent, *The statistical politics of exceptional territories*, POLITICAL GEOGRAPHY, Vol. 57, 60, 61 (2016) (noting that 2016 amendments to urban housing law “allow[ed] municipalities to ban households suspected of extremism, criminality or causing nuisance.”).

194 See, e.g., ICCPR, *supra* note 159, art. 23(1); ICESCR, *supra* note 159, art. 10(1); and CRC, *supra* note 163, Preamble.

195 U.N. Doc. A/HRC/31/37, *supra* note 151, at ¶ 22.

196 UN WOMEN, *supra* note 158, at 23.

197 *Id.*

198 See *supra* notes 79–96.

199 See *supra* notes 125–131.

200 See *supra* notes 64–69.

201 See *supra* notes 57–58.

202 See ICCPR, *supra* note 159, art. 18(1); H.R. Comm., *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion*, U.N. Doc. CCPR/C/21/Rev.1/Add.4, ¶¶ 3, 5 (Sept. 27, 1993) [hereinafter H.R. Comm., *General Comment No. 22*].

203 See ICCPR, *supra* note 159, art. 18(2); H.R. Comm., *General Comment No. 22, supra* note 202, at ¶ 5.

204 See ICCPR, *supra* note 159, art. 18(1), H.R. Comm., *General Comment No. 22, supra* note 202, at ¶ 4.

205 H.R. Comm., *General Comment No. 22, supra* note 202, at ¶ 4.

206 A/HRC/34/50, *supra* note 153, at ¶ 41.

207 *Id.* at ¶ 28.

208 See generally Ahdash, *Childhood Radicalisation and Parental Extremism: How Should Family Law Respond? Insights from a Local Authority v X, Y and Z*, *supra* note 1.

209 See *supra* notes 71–78.

210 See *supra* notes 132–149.

211 See U.N. Doc. CCPR/C/NLD/CO/5, *supra* note 62, at ¶ 58. See also U.N. Doc. A/HRC/34/50, *supra* note 153, at ¶ 46 (noting that “rules prescribing certain dress codes in public institutions” can amount to discrimination against members of a religious minority “if those persons (often women) follow their conscience in following a particular dress code.”).

212 ICESCR, *supra* note 159, arts. 6, 7, 9, 11, 12, 13. See Comm. on Economic, Social and Cultural Rights, *General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/GC/23 (Apr. 27, 2016); Comm. on Economic, Social and Cultural Rights, *General Comment No. 19 The Right to Social Security (Art. 9)*, U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008); Comm. on Economic, Social and Cultural Rights, *General Comment No. 14 (2000) The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000); Comm. on Economic, Social and Cultural Rights, *General Comment 12 (Twentieth session, 1999) The Right to Adequate Food (Art. 11)*, U.N. Doc. E/C.12/1999/5 (May 12, 1999); Comm. on Economic, Social and Cultural Rights, *General Comment 11 (1999) Plans of Action for Primary Education (Article 14 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/1999/4 (May 10, 1999); Comm. on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, U.N. Doc. E/1992/23 (Dec. 13, 1991).

213 See Comm. on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties’ Obligations*, U.N. Doc. E/1991/23 ¶¶ 1, 2, 9, 10, 13 (Dec. 14, 1990). See also Comm. on Economic, Social and Cultural Rights, *General Comment No. 20, supra* note 159, at ¶ 7.

214 See *supra* notes 57–58.

215 See *supra* note 192–193.

216 Comm. on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/GC/22 (May 2, 2016) [hereinafter Comm. on Economic, Social and Cultural Rights, *General Comment No. 22*]. See also Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, U.N. Doc. A/66/254, ¶ 21 (Aug. 3, 2011); Comm. on the Rights of the Child, *General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24)*, U.N. Doc. CRC/C/GC/15, ¶ 56 (Apr. 17, 2013).

217 Comm. on Economic, Social and Cultural Rights, *General Comment No. 22, supra* note 216, at ¶ 10.

218 H.R. Comm., *K.L. v. Peru*, U.N. Doc. CCPR/C/85/D/1153/2003, ¶ 6.4 (Nov. 22, 2005). See, e.g., H.R. Comm., *General Comment No. 36: Article 6: Right to Life*, U.N. Doc. CCPR/C/GC/36, ¶ 8 (Sept. 3, 2019) [hereinafter H.R. Comm., *General Comment No. 36*].

219 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/HRC/31/57, ¶ 44 (Jan. 5, 2016). See also Comm. on Economic, Social and Cultural Rights, *General Comment No. 22, supra* note 216, at ¶ 10.

220 See, e.g., H.R. Comm., *General Comment No. 36, supra* note 218, at ¶ 8. See also Comm. on Economic, Social and Cultural Rights, *General Comment No. 22, supra* note 216, at ¶ 10.

221 See CEDAW, *supra* note 159, art. 16(1)(e) (protecting the right of women to “decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”). See also *id.* arts. 10, 12, 14. See also CRC, *supra* note 163, art. 24(2)(f); International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. res. 61/106, art. 23(1)(b), Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49, entered into force May 3, 2008.

222 See *supra* note 45.

223 H.R. Comm., *General Comment No. 36, supra* note 218, at ¶ 7; H.R. Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 80th Sess., ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (May 26, 2004) [hereinafter H.R. Comm., *General Comment No. 31*]; Comm. on Economic, Social and Cultural Rights, *General Comment No. 12: The Right to Adequate Food*, 20th Sess., ¶ 15, U.N. Doc. E/C.12/1999/5 (1999); Comm. on the Elimination of Discrimination against Women (CEDAW), *General Recommendation No. 19: Violence against women*, 11th Sess., ¶ 9, 1992; CEDAW, *General Rec. No. 28, supra* note 159, at ¶ 19; CEDAW, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations*, U.N. Doc. CEDAW/GC/30, ¶ 15 (Nov. 1, 2013) [hereinafter CEDAW, *General Rec. No. 30*]; Comm. Against Torture (CAT), *General Comment No. 3: Implementation of article 14 by States parties*, U.N. Doc. CAT/C/GC/3, ¶ 7 (Dec. 13, 2012) [hereinafter CAT, *General Comment No. 3*]; Comm. Against Torture (CAT), *General Comment No. 2: Implementation of article 2 by States Parties*, U.N. Doc. CAT/C/GC/2, ¶ 18 (Jan. 24, 2008) [hereinafter CAT, *General Comment No. 2*]; Comm. on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all forms of violence*, U.N. Doc. CRC/C/GC/13, ¶ 5 (Apr. 18, 2011).

224 CAT, *General Comment No. 3, supra* note 223, at ¶ 7; H.R. Comm., *General Comment No. 31, supra* note 223, at ¶ 8.

225 See *supra* notes 132–149.

226 See, e.g., H.R. Comm., *General Comment No. 36, supra* note 218, at ¶ 22; H.R. Comm., *General Comment No. 31, supra* note 223, at ¶¶ 10, 12; CAT, *General Comment No. 2, supra* note 223, at ¶¶ 7, 16; CEDAW, *General Rec. No. 30, supra* note 223, at ¶¶ 8–10, 15; International Court of Justice, *Armed Activities on the Territory of the Congo (Dem. Rep. of the Congo v. Uganda)*, 2005 I.C.J. 168 (Dec. 19, 2005), ¶¶ 177–79, 220, and ECtHR, *Jaloud v. The Netherlands*, App. No. 47708/08, Eur. Ct. H.R. (2014), ¶¶ 135–39, 152–53.

227 See *id.*

228 *Submission by the U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the U.N. Special Rapporteur on arbitrary, summary and extra-judicial executions in the case of H.F. and M.F. v. France (Application no. 24384/19) before the European Court of Human Rights, supra* note 156, at ¶¶ 1115; U.N. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the U.N. Special Rapporteur on arbitrary, summary and extra-judicial executions, *Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic* (2020), <https://www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf>; U.N. Docs. CRC/C/85/D/79/2019–CRC/C/85/D/109/2019, *supra* note 178, at ¶¶ 9–10.

