

UPR pre-session 4 April 2012, Geneva
Statement by Privacy First

Ladies and gentlemen,

My name is Vincent Böhre. I am director of operations at Privacy First, an independent foundation which is based in Amsterdam. Privacy First was established in March 2009, mainly out of concern that the Netherlands was silently sleepwalking into a surveillance State.

1) GENERAL OVERVIEW

Since '9/11', especially since the Madrid and London bombings of 2004 and 2005, the Netherlands has adopted numerous measures which either infringe or violate the right to privacy as protected under Article 8 of the European Convention on Human Rights and Article 17 of the International Covenant on Civil and Political Rights. Many of these measures were introduced in the name of 'counter-terrorism', yet mostly without their necessity having been established and often without any element of choice for individual citizens. Examples include massive storage of telecommunications (called 'data retention'), biometric passports, ID cards and related databases, RFID-cards for public transport, Automatic Number Plate Recognition, Passenger Name Records and body-scans at airports, Electronic Child Records and Electronic Health Records, loss of medical privacy and professional confidentiality due to compulsory registration and application of Diagnosis Treatment Combinations (DBC's), heavily increased CCTV surveillance, preventive searching of persons and houses without reasonable suspicion and automatic profiling, telephone and internet wiretapping with limited judicial oversight. All of these measures should either be abolished or amended in order to make them comply with the right to privacy and data protection. This includes the modern principle of 'privacy by design', making digital systems 'privacy-proof' from the moment they are being designed on the technical drawing-board. In this regard, the current UPR process presents an excellent opportunity for international scrutiny and the sharing of best practices between UN Member States.

Four years ago, during its first UPR session in April 2008, the Netherlands rightly received the following recommendation:

“While implementing anti-terrorism measures, *respect* international human rights obligations (...) and consider *revising* all anti-terrorism legislation to bring it in line with the *highest* human rights standards.”

Although having formally accepted this recommendation, the Netherlands has hardly acted upon it during the last 4 years. On the contrary, the Netherlands has done a lot to deserve the exact same recommendation again during the upcoming UPR session in May this year. And perhaps this time, in order to make any real impression and have any effect, this time it should be formulated stronger and be more specific. To this end, and with reference to our shadow report which we submitted to the UN in November 2011, we hereby propose the following questions and recommendations:

2) BIOMETRICS

First of all, in the field of biometrics, we recommend you to urge the Netherlands to withdraw its long-term plans to develop a national biometric database, mainly due to the privacy and security risks involved. A relevant question in this field relates to the Dutch national ID card: why are Dutch citizens still obliged to have their fingerprints stored on their ID cards, despite the Dutch government having admitted biometric error rates as high as 25% and having promised to scrap the fingerprint requirement 12 months ago? Why does it take so long to adjust relevant Dutch legislation so that people can apply for ID cards without having to register their fingerprints? Due to similar privacy and security concerns as well as risks of ‘ethnic profiling’, we also recommend you to urge the Netherlands not to introduce mobile fingerprint scanners for the Dutch police.

3) ANPR & @MIGO-BORAS

Secondly, in the field of Automatic Number Plate Recognition (ANPR), we recommend you to urge the Netherlands to either revoke its current ANPR Bill or to bring it in line with the highest privacy standards, hence excluding all ‘no-hits’ from its reach and redeveloping the ANPR system in compliance with modern demands of ‘privacy by design’. In addition, with regard to the current policy proposal of the Dutch government to introduce ‘ANPR-like’ CCTV border control (called @MIGO-BORAS) we recommend you to enquire why the Dutch government seems unwilling to draft specific legislation on this topic, since without such legislation the right to privacy will *a priori* be collectively violated.

4) GENERAL RECOMMENDATION

Finally, also on behalf of the Dutch section of the International Commission of Jurists (NJCM), Bits of Freedom and the Dutch Platform for the Protection of Civil Rights, we recommend you to insist that the Netherlands develops a set of criteria for all legislation, policies and enforcement measures restricting the right to privacy. The privacy risks and impact of all legislation and policies should be analysed in advance. The criteria should also be applied to existing policies. All privacy infringing policies should be periodically reviewed and thoroughly evaluated after implementation.

We will be happy to further discuss these topics and other privacy issues, questions and recommendations with you, either here in Geneva after this pre-session or in The Hague over the coming weeks.

Thank you for your attention.