

-This information has been collated from the Netherlands draft self-assessment in the context of the UNCAC convention. -

Article 6: Preventive anti-corruption body or bodies

Article 6, paragraph 1

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

a) implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

b) Increasing and disseminating knowledge about the prevention of corruption.

In the Netherlands there are general independent institutions that play a role in preventing corruption and promoting integrity:

Court of Audit

The Court of Audit is a High Council of State: an independent institution and thus not part of the government or Parliament. The Supreme Audit Institution investigates whether the Central Public Administration is spending public money efficiently and lawfully. Its statutory duty is to audit the income and expenses of the Central Public Administration as well as to report on these matters once a year to Parliament on Accountability Day. Based on the opinion of the Supreme Audit Institution, Parliament decides whether to discharge the government from any liability. The Supreme Audit Institution also reports to Parliament on the outcomes of separate investigations, so Members of Parliament can decide whether a Minister is pursuing an effective policy.

The Supreme Audit Institution decides for itself what to investigate. Members of Parliament, Ministers and State Secretaries sometimes request an investigation. These requests are often complied with in practice if the powers of the Supreme Audit Institution would have an added value. Signals and reactions from society can also be taken into account during current investigations.

The Central Public Administration must account for its income, its expenditure and the use of its statutory powers. In order to audit these aspects, the Supreme Audit Institution has powers that are laid down in the Government Accounts Act (*Comptabiliteitswet*). All Ministries and other government organisations that fall under the Central Public Administration can be audited. Organisations that do not form part of the Central Public Administration but which perform public duties can also be audited, such as the National Police. The Supreme Audit Institution is entitled to access all relevant information that it requires, including confidential information.

The Minister of the Interior and Kingdom Relations manages the budget of the Supreme Audit Institution, which amounts to more than 31 million euros for 2018. There are around 270 employees, all playing a role in increasing integrity.

National Ombudsman

The National Ombudsman deals with complaints from the general public about the public administration and informs public administration agencies on how they can improve their services. The National Ombudsman can start an investigation in response to problems or complaints. Everyone involved must cooperate in such an investigation.

The National Ombudsman is an independent and impartial office. Around 170 specialists assist the National Ombudsman in its work (of which 69.4% are female and 30.6% are

male). These specialists work in four investigative teams. The Facilities Department, IT, Secretariat, Communication and Library, Strategy and Policy, and Personnel and Finance all support the Office of the National Ombudsman in a different manner. The Bureau of the National Ombudsman is headed by a managing director. The Minister of the Interior and Kingdom Relations manages the budget of the National Ombudsman. The Minister also respects the independence and impartiality of the National Ombudsman. The budget of the National Ombudsman for 2017 is more than 18 million euros.

Knowledge of the law and public administration are the starting points for selecting a new ombudsman. Knowledge of public administration agencies and the way that these agencies operate is very important for National Ombudsman employees. It is also important that employees who deal with complaints have an understanding of the everyday life of the citizens concerned.

The National Ombudsman is a High Council of State. These High Councils are independent of the government. The Lower House of Parliament appoints the National Ombudsman and the Deputy National Ombudsman for a period of six years. The same person can then be reappointed for a further six years. The National Ombudsman issues a report to the Lower House of Parliament each year. The Lower House of Parliament may only dismiss the National Ombudsman on special statutory grounds; for example, if the Ombudsman does something to betray the confidence in it.

If the Lower House of Parliament requires a new ombudsman, it announces a vacancy for this purpose. A special committee oversees the selection procedure and advises the Lower House of Parliament in this regard. This committee consists of the Vice-President of the Council of State, the President of the Supreme Court of the Netherlands and the President of the Supreme Audit Institution.

The National Ombudsman can only deal with complaints after they have been reported by the complainant to the public administration agency that is the subject of the complaint. If the Ombudsman is unable to deal with a complaint, this fact will be explained in a letter or telephone call. The complainant will then be referred to another institution that can provide assistance. If a complaint can be accepted for processing, there are a number of investigative options. The Ombudsman chooses the option that is the most suitable for each complaint. The options are as follows.

- An intervention: discussing with the public administration agency whether a quick solution can be found.
- A mediation interview: during a mediation interview, mediators from the Bureau of the National Ombudsman try to improve contact between the complainant and the public administration agency.
- An investigation with a report: a written investigation starts with a letter from the National Ombudsman to the complainant and the public administration agency. Both sides are given the opportunity to clarify their positions and can then respond to each other's answers. Next, a report is drawn up, setting out the Ombudsman's opinion of the public administration agency's actions.
- An investigation with a letter: an investigation is sometimes concluded with a letter, rather than a report, to the complainant and the public administration agency.

Whistleblowers Authority

The Whistleblowers Authority is available for people who wish to report a work-related situation of abuse. The Whistleblowers Authority provides advice and support, while it also investigates if necessary. Its service is confidential, independent and free of charge.

The organization is divided among an Advisory Department, an Investigations Department, a Knowledge & Prevention Department and a small general staff

component. The office is headed by a director. The Advisory Department advises people who suspect a work-related situation of abuse. At the request of a whistleblower, the Investigations Department can investigate a work-related situation of abuse or their treatment by the employer following the report of a situation of abuse. The Advisory Department and the Investigations Department work independently from each other and do not exchange any information. The Knowledge & Prevention Department develops guidelines and practical instruments for employers.

The Whistleblowers Authority is an independent administrative body. The Authority is accountable to the Minister of the Interior and Kingdom Relations only for its financial management. The Minister of the Interior and Kingdom Relations cannot determine the policy of the Authority. The Minister also cannot reverse any of its management decisions. The Minister may not request information on matters being dealt with by the Authority. The executive board members of the Whistleblowers Authority are appointed by Royal Decree. The executive board reports directly to the Houses of Parliament. It is important that the information provided can never be traced back to specific whistleblowing cases. The Whistleblowers Authority's annual budget for 2018 is 3 million euros.

Employees may make reports if they believe that there is a situation of abuse within the organisation where they work. A report must relate to a situation of abuse of social relevance, such as a violation of a statutory rule, danger to public health, danger of harm to the environment, or danger to the effective functioning of a public administration agency or company because of improper acts or omissions. In principle, employees must first report such matters internally to their employer. If that report is ignored or not dealt with satisfactorily, a report may be made to an external body. This body is normally an inspectorate or supervisory authority. In some cases, the Investigations Department of the Whistleblowers Authority can also be requested to conduct an investigation.

The Whistleblowers Authority has the power to request information and visit workplaces. The employer and employee are obliged to attend if requested.

The Whistleblowers Authority has made arrangements for cooperation with the Public Prosecution Service and the National Ombudsman. An investigation by the Whistleblowers Authority into a situation of abuse can coincide with a criminal investigation under the authority of the Public Prosecution Service. The investigations can be conducted simultaneously, after coordination between the Public Prosecution Service and the Authority. If necessary, the Public Prosecution Service can request information from the Whistleblowers Authority's investigation. If the National Ombudsman receives a complaint that the Whistleblowers Authority may investigate, the Ombudsman will refer the complainant to the Authority, as the National Ombudsman and Whistleblowers Authority do not investigate complaints simultaneously.

Article 6, paragraph 2

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

In addition to the information provided above it can be stated that in the Netherlands the Whistleblowers Authority is an independent administrative body, which means that the Minister in principle does not bear responsibility for the execution of the duties and powers exercised by the Authority. Naturally, this fact also means that the Minister cannot interfere or intervene in individual cases. However, the Minister is responsible for

ensuring that the Authority has sufficient funds at its disposal to function effectively, as well as for overseeing the organisation's financial management and administrative processes. In derogation from the Framework Act on Independent Government Agencies (*Kaderwet zelfstandige bestuursorganen*), the Whistleblowers Authority Act (*Wet Huis voor Klokkeluiders*) prevents the Minister from laying down policy on the responsibilities of the Authority. Neither does the Minister have the power to quash any decisions of the Authority. These exceptions to the powers provided by the Framework Act in respect of other independent government agencies in general match the nature of the Authority's responsibilities. After all, the Authority's responsibilities are such that they require the Authority to have a position in respect of the Minister which is as independent as possible.

The High Councils of State are themselves responsible for their budgetary management and draw up their own budgets. Both the Court of Audit and the National Ombudsman are responsible for the management and scale of their own budgets. In accordance with the Compatibility Act (2016), article 4.4., they are responsible for budgetary management, financial management, operational management and the relevant administrative activities. The Colleges themselves estimate the expenditure and income they consider necessary for the tasks they must implement. They report this to the Minister of the Interior and Kingdom Relations (BZK) who combines them in a single budget statement, chapter IIB of the Government Budget.

It is the task of the Minister to assess proposals within the total of the Government Budget, in other words whether there are sufficient funds available and whether they are proportionate to Cabinet policy. Any differences of opinion that may arise about proposals are settled officially and if settlement proves impossible, may be escalated up the political-administrative ladder; in reality a situation never arises in which no consensus is arrived at.