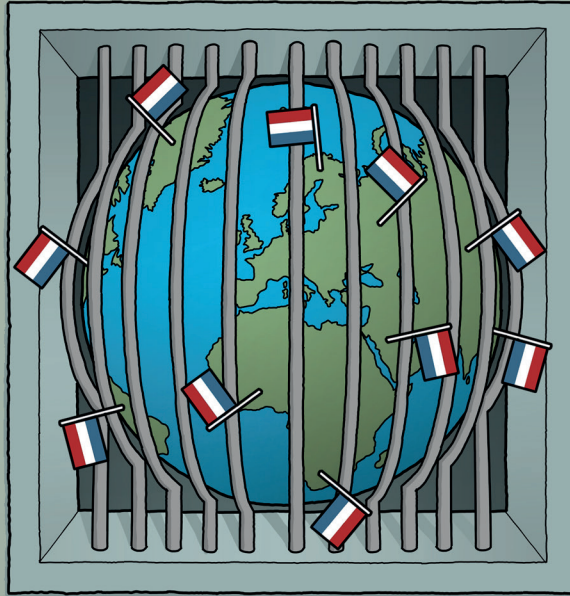


# DETAINED ABROAD



**Assisting Dutch nationals  
in foreign detention**

**Femke Hofstee-van der Meulen**

## Summary

### Summary Detained abroad – Assisting Dutch nationals in foreign detention

*'For those arrested outside their own country, detained hundreds of miles from home, unable to speak the local language, ignorant of the local legal system and with no idea of who to turn to for help, consular assistance provides a lifeline. It is, however, a public service which has been subject to almost no detailed examination whether by academic institutions, bodies like Fair Trials International or even Ministries of Foreign Affairs themselves.'*

**Fair Trials International, November 2009**

In recent decades prison populations have become less homogeneous. In prisons all around the world a huge range of nationalities and languages can be found alongside cultural and religious diversity. Foreign national prisoners (FNPs) are detained in relatively large numbers. This is particularly true for countries in the European Union (EU), where on average nearly one in every five prisoners is a foreigner. FNPs are persons who are detained in relation to a criminal offence in a country of which they are neither a national nor a resident and to whom another country is entitled to provide consular assistance.

The book *Foreigners in European Prisons*<sup>1</sup> revealed that in the European Union FNPs encounter many difficulties in daily prison life as a result of their foreign status, language difficulties and distance from their families. In practice, prison authorities are often not fully aware of the problems FNPs face and they do not address their special needs. As a result FNPs often feel socially excluded and are unable to exercise their rights. One of their rights is to receive consular assistance from consular staff from their country of origin. In practice only a few countries provide consular assistance to their nationals in foreign detention. One of these countries is the Netherlands.

Consular authorities are, based on article 36.1 (c) of the universally accepted Vienna Convention on Consular Relations, entitled to visit their nationals in foreign detention and to give them assistance. Dutch nationals also receive, besides consular assistance from diplomatic staff, support from the International Office of the Dutch Probation Service and from the religious organisation Epafras. These two organisations, which are based in the Netherlands, have a strong network of volunteers who visit Dutch FNPs on a regular basis. Both the International Office and Epafras have been providing such assistance for over three decades. In the study *Foreigners in European Prisons* this practice was identified as a good practice. However, whether the consular assistance received by Dutch FNPs is indeed a good

1 A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkler, *Foreigners in European Prisons* (Wolf Legal Publishers, Nijmegen 2007)

practice has never been evaluated. This, in combination with the high number of FNPs and the fact that both prison and consular authorities are often not aware of the difficulties which they encounter, was the incentive to start this thesis. The aim of this research is to contribute to existing literature on FNPs. The goal is that the outcome of this thesis will inspire and stimulate prison and judicial authorities, diplomatic missions and civil society organisations to address FNPs' distinctive rights and needs adequately. It would be beneficial when FNPs will be treated, as are females and juveniles, as a special group of prisoners.

The central research question of this thesis is *does consular assistance, as received by Dutch FNPs, contribute to their detention experience, special needs and resettlement?* This research question is studied by combining a literature study with receiving input from questionnaires addressed to Dutch FNPs and relevant others.<sup>2</sup> Based on the main research question nine research questions have been formulated. The first four questions are based on desk research and the five others on field research. Since each research question is tackled in a separate chapter this summary will provide insight per chapter/research question.

## **1. What is the situation of FNPs worldwide; do they have any distinctive rights and needs?** (Chapter 3)

Worldwide the prison population consists of over 10 million prisoners. Although it is important to exercise caution when using figures for FNPs as, for example, countries do not always use the same definition for FNPs, it is possible to confirm there are nearly half a million FNPs detained abroad. This is on average 5% of the total prison population. The highest percentage of FNPs can be found in the Middle East, where more than one in three prisoners is a foreigner. There are various explanations for the relatively high number of FNPs. Globalisation has contributed to increased mobility. Despite the fact that there is little evidence that foreign nationals commit more serious crimes than nationals, they have more chance of being arrested and of receiving a prison sentence. This is due to their foreign appearance, the fact that they do not speak the national language, their limited awareness of their legal rights, reduced access to legal support, and because FNPs are generally excluded from non-custodial sentences and measures. Their over-representation during pre-trial detention is demonstrated in figures provided by the Council of Europe.

International legally binding human rights instruments are, with the exception of the right to have access to an interpreter, relatively silent on issues faced by FNPs. There is, for example,

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2 Quantitative data have been collected by sending out questionnaires to all (2,606) Dutch FNPs (22% response rate from 54 countries), 1,250 relatives of prisoners (22% response rate) and 137 diplomatic missions (69% response rate). Qualitative data have been collected by conducting interviews with prisoners (48) in nine countries, consular staff (27), volunteers and staff of the International Office (23), chaplains and staff of Epafra (8), relatives of prisoners (15), ex-prisoners (11), others (11) and letters from prisoners (46).

no obligation for countries to provide information about rules and rights in a language the prisoner can understand. However recently, within the EU, minimum standards have been set for defence rights. EU nationals who are suspected or accused of a criminal offence in an EU country where they do not speak or understand the language are supposed to receive, without delay, interpretation during criminal proceedings, including police questioning and court hearings. EU Member States are furthermore requested to provide such detainees with a written translation of all essential documents, including the decision to deprive them of their liberty, the charges and the judgement. Furthermore, EU nationals are entitled to be informed in a language they can understand about their rights (*Letter of Rights*) in prisons in the EU. Despite the fact that these EU directives are supposed to be implemented in national law and in practice, this is not yet the case.

There is one specific FNP right which is not legally binding but which is universally accepted by prison authorities. This is the right of FNPs to make, with their permission, contact with the diplomatic mission and to receive consular assistance. According to Article 36.1 b) of the Vienna Convention on Consular Relations the authorities have a duty to inform FNPs about their right to make contact with the diplomatic mission and they should, upon request by the FNP, notify the latter of the detention. The fact that receiving consular assistance is not a legally protected right makes its provision a matter for government policy. In practice not many FNPs receive consular assistance from their diplomatic mission. It seems that States are hardly aware when their nationals are detained abroad.

Literature and reports by independent monitoring bodies show that FNPs face particular difficulties due to their foreign status, the fact that they do not speak the language, their distance from their families and to a lesser extent cultural and religious differences. Prison authorities fail in their duty to protect FNPs adequately and to address their needs, and FNPs can therefore be considered a vulnerable group of prisoners. The FNP needs concern their *well-being and treatment*; their *awareness of legal procedures and rights*; *contact with the outside world*; and their *social inclusion within prison*. One need that is hardly mentioned in the research literature and which is added in this thesis is their need to *prepare for release and to receive aftercare*.

## **2. What is the background and location of Dutch nationals in foreign detention? (Chapter 4)**

Over the last 25 years the number of Dutch FNPs has quadrupled, from 579 in 1988 to 2,262 in 2015, making the Netherlands a leader in comparison with other neighbouring countries. There are several explanations for the fact that the Dutch FNP population is so considerable. Firstly, it is the tolerant Dutch approach towards drugs for personal use and the fact that the Netherlands is both a transit and distribution country for drugs and a manufacturer of synthetic drugs. Most countries have a punitive and harsh approach towards drug crimes and

therefore judges order long sentences. The fact that the percentage of Dutch FNPs detained for drug offences has dropped in recent years might explain why the total number of Dutch FNPs has started to decrease after a long period of growth. Secondly, the Netherlands have a rather broad concept of who constitutes a Dutch citizen. Dutch citizenship is determined by birth to at least one Dutch parent irrespective of the place of birth. The Kingdom of the Netherlands consists also of overseas countries and municipalities. It is therefore not surprising that more than half of the Dutch FNPs were born outside the Netherlands and sometimes do not speak Dutch. Thirdly, the fact that Dutch FNPs receive consular assistance is an incentive for Dutch FNPs and/or their families to notify the Dutch diplomatic mission about their detention abroad. This can be illustrated by the considerable growth in numbers when the Ministry announced that Dutch FNPs detained outside the EU would receive a monthly financial allowance. In 2015 Dutch FNPs were detained in 102 different countries. Popular countries are 'neighbouring' countries such as Germany, Spain, France, United Kingdom and Belgium, but also the Dominican Republic, Peru and the USA. A study revealed that two thirds of the Dutch FNPs had financial problems before they were arrested. Compared to prisoners in Dutch prisons, Dutch FNPs are significantly older. The percentage of female FNPs is double that size compared to the situation in Dutch prisons.

### **3. How is consular assistance to Dutch FNPs organised in the Netherlands, and what do the different organisations involved aim to achieve? (Chapter 5)**

Although Dutch FNPs have no right to claim consular assistance from the Dutch authorities, they can receive it in practice. The Ministry of Foreign Affairs has committed itself in Parliament to providing assistance to Dutch FNPs and to founding its assistance on two basic principles. The first is to monitor the correct application of the rules by the country of detention and the second to monitor whether Dutch FNPs are held in humane prison conditions. If Dutch FNPs do not receive all the opportunities provided for in national law and/or the conditions and treatment are not humane according to international standards, the Ministry can bring this to the attention of the local authorities. Although these two basic principles are significant and meaningful, they stand in conflict with the principle of the Ministry not to interfere in 'internal affairs' of foreign countries. The Dutch Court of Audit stated that the Ministry lacked adherence to the two basic principles.

The Ministry of Foreign Affairs finances both the International Office and Epafras in providing consular assistance to Dutch FNPs. The International Office has a network of around 300 Dutch volunteers who live in 50 countries. They visit on average every two months Dutch FNPs in their region. Epafras has a network of 45 chaplains (priests, pastors, imams) who carry out visits from the Netherlands to Dutch FNPs in around 70 countries. These visits take place once or twice per year.

The central aim of the International Office is to reduce harm during detention and prevent re-offending. The main aim of Epafras is to provide Dutch FNPs with spiritual and diaconal

support. The fact that Dutch FNPs can generally receive visits from volunteers and staff from non-governmental organisations as well as visits from consular staff demonstrates that most prison authorities are prepared to interpret the Vienna Convention on Consular Relations broadly.

#### **4. How is the resettlement of ex-prisoners arranged in the Netherlands and what are the factors that are considered to be effective in stimulating their resettlement? (Chapter 6)**

The aim of preparing prisoners as much as possible for reintegration into society is firmly anchored in the Dutch Penitentiary Act. The focus on resettlement, reframed in the aim to reduce recidivism, is also laid down in the coalition agreement of the Dutch government and in the agreement between the Ministry of Security and Justice and the Association of Netherlands Municipalities. Detention is not seen as an isolated period and aftercare is tied up with and builds on processes that have already started during detention. To increase a smooth transition into society new prisoners are screened on five *basic necessities for return to society*.<sup>3</sup> Municipalities, which are responsible for aftercare, are informed about the specific needs of their inhabitants in prison. The Probation Service can be commissioned to assess the risks, needs and responsivity of the individual offender on the basis of a diagnostic tool. This tool is based on the so-called *What Works* principles that are in the Anglo-Saxon world generally acknowledged to reduce reoffending. The adage is that the bigger the risks and needs of the offender, the more intensive the intervention should be. According to representatives of the *What Works* school it is important to look at the setting (*How does it work?*) and the person who provides the intervention (*Who works?*) as well. Interventions should therefore not be analysed in isolation but should be considered in context. Tailor-made assistance and a positive working relationship between the prisoner and the person who delivers the intervention are considered to contribute to its effectiveness.

#### **5. How do Dutch FNPs experience their detention abroad, and are the findings in line with what has been published in the literature? (Chapter 7)**

This study reveals that Dutch FNPs are held abroad under the same prison conditions as national prisoners. This means that the majority share a cell and there are prisoners who live in cramped conditions. In general Dutch FNPs do not feel safe, especially when they are detained outside the EU. Discrimination is seen as part of prison life and many of them experience it themselves. Dutch FNPs regard discrimination as being a direct consequence of their foreign nationality. Despite international regulations, prisoners are not properly made aware by the prison authorities of the rules, rights and procedures in prison. This omission puts foreigners in a disadvantaged position, especially when taking into consideration that

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3 These basic necessities are: work/income, accommodation, valid proof of identity, debt rescheduling plan, and suitable addiction or psychiatric care.

many prisoners do not receive proper legal support or the services of an interpreter. Most Dutch FNPs are capable of establishing contact with their families despite the physical distance. They are however not satisfied with the opportunities for communication. Postal services are often unreliable, because of censorship prison staff sometimes read letters, and making a phone call is expensive. In some countries telephone numbers need to be verified and approved by the prison authorities. Only one third of the prisoners receive visitors. Dutch FNPs are negative about the lack of activities in prison. The fact that around half of them can work shows, however, that they are not excluded from activities as is sometimes mentioned in the research literature. Access to religious care is sufficiently catered for. Dutch FNPs are critical about the quality of healthcare in prison, especially those detained outside the EU. They are further negative about their interaction with prison staff. Linguistic barriers are seen as one of the reasons but also the fact that they are treated as a 'number' rather than a human being. Even though prisoners generally get along well with other prisoners, violence and ill-treatment do occur. There is a lack of opportunities to prepare for reintegration after release. Nearly three quarters of the prisoners have no opportunity to prepare for resettlement and it is therefore not surprising that an even larger group feels incapable of and ill-prepared for returning to society.

## **6. What kind of consular assistance do Dutch FNPs receive in practice and which types of assistance do they regard as the most important? (Chapter 8)**

A staggering 94% of Dutch FNPs who participated in the questionnaire received support from the Netherlands. In total 88% received assistance from the Ministry; 52% from the Probation Service and 40% from Epafra. This achievement is admirable and it demonstrates that the Netherlands is not only willing but also capable of reaching out to Dutch FNPs. It is further remarkable that nearly a quarter of them are visited within one week of their arrest and more than half within one month. Those detained outside the EU are even visited significantly faster than those in the EU.

This study shows that Dutch FNPs are very positive about the support they receive and they regard many different types of assistance as very important. A personal visit by consular staff is seen by them as the most important type of assistance they can receive from the Netherlands. Consular staff also regard a personal visit as a good way to monitor the prisoners' well-being, health, detention situation and the progress of their legal case. More than two thirds of the prisoners, however, do not have the impression that the Ministry is monitoring either their treatment or their legal case. This is probably a direct consequence of the formal approach of the Ministry to not interfere in the *internal affairs* of another country. As long as Dutch FNPs are not treated worse than other prisoners the Ministry avoids taking action, even if the prison conditions and treatment are below international standards. Taking into consideration the often severe detention conditions under which Dutch FNPs are detained,

it is peculiar that the Ministry seldom appeals to foreign authorities when international human rights law is breached.

The Probation Service is, thanks to its large network of volunteers, able to reach out to more than half of the Dutch FNPs who participated in this study. Around one third of them received a visit by a volunteer. It is remarkable that the assistance Dutch FNPs receive from the Probation Service is focussed on the detention period and hardly at all on preparing them for release, although this latter is the main aim of the Probation Service. Only 11% of the prisoners receive this kind of support. The chaplains of Epafras are able to reach out to less than half of the Dutch FNPs who were questioned. Epafras is well known by prisoners for its magazine *Gezant*. Despite the fact that the magazine is distributed to all prisoners, in practice only one third of them receive it. This is regrettable also because the magazine is very popular.

## **7. What is the impact of consular assistance on the detention experience and the special needs of Dutch FNPs? (Chapter 9)**

Dutch FNPs who receive consular assistance experience their detention as less negative than those who do not receive assistance. Although the control group is rather small, it is possible to see the impact of consular assistance on various aspects of the detention experience. Those who receive assistance feel for example less unsafe, more informed about the prison rules and procedures and less disconnected from the outside world. They also have better interactions with prison staff and live with higher expectations for the future. The most positive impact measured relates to improved interaction with fellow prisoners. Explanations for this given in interviews were that the interest of official bodies from outside the prison helps them to be treated better by other prisoners. Dutch FNPs are also positive about the impact of consular assistance on the needs that are identified in research literature as typical of FNPs.

The types of assistance with the highest impact are: information on legal procedures and prisoners' rights provided by the Ministry (*awareness of legal procedures and rights*); the magazine *Gezant* provided by Epafras (*contact with outside world*); and personal visits from the three organisations (*well-being and treatment*).

As mentioned earlier Dutch FNPs qualify a personal visit as the most important type of consular assistance they can receive. Prisoners clarified that they expect from consular staff that they keep a certain level of distance during the visit. Their visits give prisoners a certain standing and feeling of protection. Prisoners highly appreciate the personal attention they receive from volunteers of the Probation Service. The visits by chaplains of Epafras are also highly appreciated. The conversations with them reflect on life rather than on religion. One of the findings in this research is the powerful impact of volunteers. Once prisoners understand that it is a voluntary service, they place the assistance in a different perspective.



This kindness was truly appreciated and some of them were emotionally touched by this. Thanks to the personal attention they feel that there are people who 'believe' in them.

While reflecting on consular assistance that is provided by the Netherlands, it is important to note that it is focussed on the well-being of the prisoner. It does not, however, address the root causes of the difficulties that Dutch FNPs face. The fact that prisoners are detained in degrading conditions, are treated inhumanely and do not receive a fair trial is not addressed, even if the difficulties are directly connected to prison and/or judicial authorities not adhering to international, legally binding rules. This means that there is no preventive element in the assistance and that the Ministry does not adhere to its two basic principles. A firmer position by the Ministry on behalf of Dutch FNPs is recommended.

## **8. What are the expectations, needs and experiences of Dutch FNPs in relation to their resettlement in the Netherlands? (Chapter 10)**

Nearly nine out of ten Dutch FNPs expect to return to the Netherlands upon release from detention abroad. Annually, around 650 prisoners return to the Netherlands. Nearly half of them plan to go to Amsterdam or Rotterdam. Upon return they expect to need to address several needs. The four most frequently mentioned are: finding a home, finding work, applying for social benefits and arranging official documents. One in three prisoners need to find shelter directly after release. Most prisoners expect support after release from family and friends but also from Dutch authorities such as the Probation Service, municipalities and other authorities. Despite the long list of needs and the fact that in practice no organisations provide aftercare, Dutch FNPs do not expect to re-offend after release. Dutch FNPs are also very clear about the factors that would prevent them from re-offending. The most important factor is having a regular income, a house and support from others. It is interesting to see that a majority of prisoners regard their detention experience abroad as the most important reason for refraining from re-offending. Interviews with ex-prisoners revealed that it is however very difficult to resettle in Dutch society after detention abroad. The two main reasons are the bureaucratic obstacles which they have to overcome, combined with a complete lack of attention and support from the local authorities. Municipalities are responsible for providing aftercare to ex-prisoners but often they are not aware of their citizens in foreign detention. When a citizen is abroad for longer than eight months the municipality automatically deregisters him or her. Without registration it is not possible to apply for social benefits or to obtain, for example, a personal public service number. This number is required to be permitted to work, open a bank account, to make use of healthcare and to obtain an identity card. If ex-prisoners manage to apply for social benefits they have to wait at least 56 days before the first payment is disbursed.

Studies show that the likelihood that an ex-prisoner will commit a new crime is highest in the first months after release. Studies show furthermore that providing supervision and assistance in the period immediately following release is the best way to avoid recidivism. Taking into consideration the main aim of the Probation Service, and the time and money that are invested in Dutch FNPs during detention, it is incomprehensible that Dutch nationals who return from detention abroad are left on their own and are overlooked by the Dutch authorities. This omission is even more striking when one sees that the aim of reducing recidivism is also laid down in the coalition agreement of the Dutch government. Whether Dutch FNPs do reoffend after release from detention abroad has never been measured. Further research is therefore desirable.

Those who were transferred to a Dutch prison to serve the remaining part of their sentence were less negative about their resettlement, because their needs were analysed upon arrival in the Dutch prison and municipalities were informed about issues that needed to be addressed after release.

## **9. What does the situation of Dutch FNPs say about the protection of their human rights?** *(Chapter 11)*

This research shows that Dutch FNPs face disadvantages on multiple levels, not only during detention but afterwards. States are responsible for protecting the human rights of those who are present on their territories, including prisoners of foreign origin. The situation of Dutch FNPs demonstrates that several basic human rights are infringed. The situation of FNPs in Dutch prisons, which are often regarded as ‘human rights-proof’, shows that these FNPs too are unable to exercise their rights equally. The failure of States to address the basic human rights of FNPs means that they can be held accountable in their own country, by monitoring bodies, by other countries, by human rights committees, courts and even by individuals. However in practice this hardly ever occurs. In order to exercise their rights FNPs are therefore dependent on their consular authorities. Receiving consular assistance is for Dutch FNPs, as mentioned earlier, not a legally protected right but a government policy. In order to protect the rights of Dutch FNPs it is therefore important that consular assistance will become codified in a Consular Act.

## **10. Conclusions and recommendations** (Chapter 12)

This research demonstrates that Dutch FNPs experience considerable difficulties during their detention abroad as suggested in the research literature and reports by monitoring bodies. Since prison authorities are not sufficiently aware of these difficulties and because they are not addressed properly, Dutch FNPs are placed in a vulnerable position. The consular assistance which Dutch FNPs receive from the Netherlands has however a positive effect. Those who receive assistance are less negative about their detention experience and this positive

impact is visible in practically all aspects that were measured. This outcome demonstrates that foreign authorities and organisations can make a difference in the detention experience of their nationals who are detained abroad. Consular assistance, as received by Dutch FNPs, addresses to a certain extent their special needs. Personal visits are the most commonly received kind of assistance, the most appreciated and it also has a very positive impact on the prisoner's well being. The involvement of volunteers is very worthwhile. In conclusion, this study demonstrates that the Dutch model of consular assistance is a 'good practice'. It can become a 'best practice' when the Netherlands addresses concerns with the foreign authorities when the basic rights of Dutch FNPs are not respected. It is further necessary that adequate assistance will be provided to those who will resettle into the Dutch society after detention abroad.

Based on the results of this thesis the following recommendations have been formulated:

*Prison, judicial and consular authorities should:*

1. acknowledge that FNPs experience particular difficulties during detention with regard to both criminal proceedings and resettlement into society after release. FNPs should therefore be regarded as a vulnerable group with distinctive needs, in the same way as women and juveniles;
2. raise their awareness of the basic human rights of FNPs and analyse whether these rights are sufficiently protected in practice;
3. assess the situation of FNPs and develop policies that address their vulnerabilities. These policies must form part of a concrete action plan so that adequate and appropriate assistance can be provided;
4. provide assistance to FNPs to ensure they can exercise their basic rights and the authorities are advised to seek support from national and international governmental and non-governmental organisations;

*Consular authorities should:*

5. monitor whether their nationals detained abroad are treated humanely and can exercise their rights. The consular authority should notify the prison/judicial authorities of any concerns;
6. provide tailored assistance to their nationals with regard to their treatment, trial and resettlement;
7. discuss the situation of their nationals in foreign detention with other consulates. If it is found that the detention conditions, treatment, judicial process and resettlement of FNPs are violating national or international rules and standards, the consular authorities should raise this with the authorities of the country of detention;

*The Dutch Ministry of Foreign Affairs should:*

8. fully adhere to its two basic principles of consular assistance; improve their assistance to FNPs in cooperation with the actors involved, in particular the International Office of the Dutch Probation Service and Epafras; and monitor whether Dutch ex-FNPs are supported in resettling into the Dutch society;

*States should:*

9. draft, under auspices of the UN, special rules covering the treatment of FNPs, and gain support from States for their adoption and implementation;
10. codify the right of FNPs to receive consular assistance.

In recent decades prison populations have become less homogeneous. Statistics reveal that foreign national prisoners (FNPs) are detained practically everywhere in the world and very often in relatively large numbers. FNPs encounter multiple difficulties in daily prison life as a result of their foreign status, language difficulties and distance from their families. In practice, prison authorities are often not aware of the problems FNPs face, and they do not address their special needs. As a result, FNPs often feel socially excluded and are unable to exercise their rights. One of their rights is to receive consular assistance from consular staff from their country of origin. Only a few countries provide consular assistance to their nationals in foreign detention. One of these countries is the Netherlands.

This study provides insight into consular assistance as received by Dutch FNPs. This support is provided by the Ministry of Foreign Affairs in cooperation with the International Office of the Dutch Probation Service and the religious organisation Epafras. For the past three decades Dutch FNPs have been visited by representatives of these two organisations on a voluntary basis. This practice is unique in the world and has never been evaluated. This study measures the impact of the assistance given by the Netherlands on the detention experience of Dutch FNPs, their special needs and resettlement. The research is based on questionnaires received from 584 prisoners detained in 54 countries and over 140 interviews with prisoners, former prisoners, relatives, consular staff and staff and volunteers of the International Office of the Dutch Probation Service and Epafras.

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