

Don't criminalize human rights!

The proposal to criminalize irregular status is disproportionate and counter-productive

The Dutch Cabinet wants to make irregular status a criminal offence. The Cabinet also wants to make it impossible for those who have lived in the country without residence papers, to regularize their status, even when this legalization would be justified by relevant new evidence in relation to their cases. The Coalition '*Maak Mensenrechten niet strafbaar*' (Don't criminalize human rights) opposes these proposals, which will have wholly negative consequences for vulnerable groups in society, and will undermine social cohesion.

1) The proposals to criminalize irregular status force 'illegal' migrants to go underground

Those who are liable to be criminalized for their undocumented residence in The Netherlands will avoid all contacts with official and public servants, and will have fewer options for registering themselves. This means that illegal residence will – even more – become an underground phenomenon. Those people affected will be reluctant to register their children in schools, or at the doctor, and with other authorities. More children will live without a birth certificate, and be silent victims and witnesses of intimidation and violence on the streets, at work, and through sexual and domestic violence. They will be even less likely to report these abuses to the police. Instead of protecting these vulnerable people, the police will prosecute them. In this way, the Minister is supporting criminals and criminal organizations, which will benefit from these changes.

2) Endangering the protection of vulnerable people

It seems that in these proposals, some particularly vulnerable groups of 'illegals' will be protected, such as minors on their own. But if criminalization becomes the norm, then most underage minors will not realize that they are an exception to the general rule. There will be greater fearfulness and anxiety among voluntary organizations. In spite of the statement of Minister Leers that volunteers assisting people without valid papers will not result in prosecutions, helping undocumented people remains a crime in the letter of the law (Art 48, Section 2 Sr) which can therefore be brought into force, and used to make such help punishable. It is not up to Minister Leers to decide whether the Public Prosecutor's Office will indeed pursue cases against those organizations and individuals providing support to the undocumented. It is ironic that international discussions have led to the protection of especially vulnerable groups. The Cabinet has ratified international conventions on the Rights of the Child, on Women's Rights under the UN CEDAW Convention, the basic laws of the EU and the European Convention on Human Rights. By ratifying these instruments, The Netherlands has committed itself to meet its obligations under these treaties. Human rights must be protected in practice. Instead, this government is doing the opposite, by raising the barrier of criminalization.

3) Closing down options for legalization of status is undesirable

In the past few years, a number of migrants have been able to regularize their legal status, often through the help of support organizations. This was possible by using national

legislation and rulings, international human rights instruments, as well as appealing to the sense of fairness and justice of responsible decision-makers. If these options are closed down, then The Netherlands will be violating its human rights obligations, and forcing those affected into a long-term life lived in the margins of society.

4) Another negative impact: the loss of social cohesion

A few years ago, Minister Donner suggested that criminalizing irregular foreigners would make them (even) more vulnerable to exploitation and mistreatment. Moreover, he predicted that the result would be an increase in social problems and other forms of crime, including identity fraud and human trafficking. The general picture is that most people who live irregularly in The Netherlands have nothing to do with crime. Even cycling past a red traffic light can be fatal. Municipalities predict that in future, the problems associated with exploitation, overcrowded housing and people trafficking would increase and become systematic. There will be growing risks for public health. An increase in serious public disorders is likely under these circumstances since it will become difficult to combat these crimes, as witnesses will be invisible, and not forthcoming, in giving evidence.

Administrative and procedural problems will increase. There will be more unpaid bills, prosecutions will become more difficult, fines will not be collectable, imprisonment will increase. Overall, the stretched resources of the police, the courts and the prison system, will be under even more pressure. Additional resources now being allocated to the police will be diverted from the task of detecting and prosecuting crimes like theft and violence. The proposals to criminalize undocumented people seem counter-productive for a Cabinet that claims to be tough on crime.

5) Criminalization is unjust and unjustifiable

The Minister claims that he wants to reduce exploitation, trafficking and also abuses by crooked landlords. The Coalition '*Maak mensenrechten niet strafbaar*' (Don't criminalize human rights) calls on the Minister not to use immigration law – among other means – to punish the victims of such crimes.

6) Criminalization proposals are disproportionate and likely to affect legal migrants as well

To criminalize migrants without papers is a disproportionate response. In this way, every single migrant who – for whatever reason – does not have valid residency papers commits a criminal offence. This promotes an image of immigrants as criminals, encouraging hostility towards '*allochtonen*' (non-native people) in general. Tensions between foreigners and 'indigenous' Dutch people will worsen as a result. The impacts on social cohesion and coexistence will be wholly negative. The Coalition '*Maak mensenrechten niet strafbaar*' (Don't criminalize human rights) considers that for all parties involved (citizens and authorities) it is disproportionate to make irregular residence a crime. These proposals cast human rights principles aside, punish the most vulnerable people in our society, and even encourage more serious abuses by organized crime. This has very damaging and serious implications for public order and public safety in future, and for inter-group tensions. The Coalition is convinced that there need be no conflict between respect for human rights and public order and peaceful coexistence. On the contrary.