



## ● RECORDING DISSENT

# CAMERA SURVEILLANCE AT PEACEFUL PROTESTS IN THE NETHERLANDS

RESEARCH  
BRIEFING

AMNESTY  
INTERNATIONAL



# CONTENTS

<b>EXECUTIVE SUMMARY</b>	<b>3</b>
<b>METHODOLOGY</b>	<b>5</b>
<b>1. DIGITAL TECHNOLOGY IN POLICING PROTESTS: PRACTICE AND POLICY IN THE NETHERLANDS</b>	<b>7</b>
1.1 Digital surveillance tools are everywhere	7
1.2 Video surveillance cars, drones and more	8
<b>2. THE COLLECTION OF DATA</b>	<b>11</b>
2.1 Looking right at you: interference with privacy	11
2.2 It's unpredictable: lack of regulation	12
2.3 Cameras are not protecting us: no legitimate aim	15
2.4 We are not here to cause trouble: inadequate assessment of necessity and proportionality	17
<b>3. WHAT HAPPENS WITH THE DATA</b>	<b>19</b>
3.1 Without consent or even without you knowing: lack of transparency and accountability	19
3.2 Are they running my face through a database?: facial recognition technology	21
3.3 Our message is not wanted: discriminatory impact	23
3.4 Cameras make you cautious: the chilling effects of surveillance	26
<b>RECOMMENDATIONS</b>	<b>30</b>
<b>ANNEX: EXAMPLES OF CAMERA USE PROVIDED BY THE POLICE</b>	<b>32</b>

In the Netherlands, the police monitor peaceful protesters with highly advanced cameras such as drones and video surveillance cars. This practice violates the right to privacy, has a chilling effect on the right to peaceful assembly and may have discriminatory effects. Amnesty International calls for the prohibition of mass surveillance tools and for robust safeguards for all camera surveillance during protests.

# EXECUTIVE SUMMARY

This briefing is part of Amnesty International’s global flagship campaign “Protect the Protest” which challenges the repression of peaceful protest, acts in solidarity with those targeted and supports the causes of social movements pushing for human rights change. This briefing zooms in on the surveillance of protest in the Netherlands, in particular by the use of cameras. It details the practice and policy of camera surveillance in the Netherlands, and explains the impact on the rights of protesters.

This briefing is based on an analysis of the laws and policies that govern surveillance and the policing of protests; observations from selected protests from 2022 to 2024; interviews with the police; and interviews with five individuals who have organised protests from 2020 to 2024. On 9 September 2024, a draft briefing was shared with the Ministry of Justice and Security, the Ministry of Interior and Kingdom Relations, and the police, and their responses and reflections have been incorporated into the briefing as appropriate.

Amnesty International’s research finds that the police record protesters with an array of digital tools, such as advanced drones and video surveillance cars, a network of municipal cameras in public spaces, bodycams, handheld video cameras, or simply their own mobile phones. In response to questions from Amnesty International, the police held that the aim of the deployment of cameras is to have an adequate overview of the assembly in order to ensure it is “orderly and safe”. The policies and practices of authorities show that they view protests first and foremost as a risk to be managed, rather than as the exercise of a human right which states have a duty to facilitate.

As per international human rights law, protests should not be seen as opportunities for surveillance for the pursuit of broader law enforcement objectives through the use of digital technologies. The surveillance of protests can impact people’s human rights, including their rights to privacy and the freedom of peaceful assembly. As a result, such surveillance can only be permissible under international human rights law when it is conducted in a lawful manner, for a legitimate aim, and is both necessary and proportionate. Any use of cameras should be subject to oversight and other human rights safeguards.

The manner in which police deploy surveillance for protests, does not meet these standards. The police rely on the broad and generic powers from Article 3 of the Dutch Police Act to decide on surveillance measures. Dutch laws and policies are not formulated with sufficient precision to inform protesters when they may be subject to camera surveillance, and thus cannot be considered clear or detailed enough to guarantee against the risk of abuse and arbitrariness. The police omit to explain to organisers, protesters and the general public the reasons for camera surveillance, such as concrete indications of offences being committed. The lack of transparency and communication may lead protesters to assume that the cameras are not used for protection reasons, but for general surveillance and intimidation.

**“It’s unpredictable. I’ve seen camera surveillance in all forms (...) Police in uniform photographing, and the camera cars with a telescopic camera on the roof. (...) I never experienced that the police informed us. A car like that, it’s just there or it isn’t.” – Paul, a climate activist**

The criteria used by the Dutch police to conduct risk assessments and determine how to deploy surveillance tools at a particular protest do not always lead to individualised assessments based in necessity and proportionality; instead these criteria are indicative of a threat-based mindset often found in the context of assemblies, where the police perceive protesters themselves as creating risks.

Furthermore, the lack of non-discrimination measures and the chilling effect of surveillance on protests are of great concern. Camera surveillance may discourage people from taking part in assemblies due to fear of surveillance, as it is often the ability to be part of an anonymous crowd that allows many people to participate in peaceful assemblies. In their interviews with Amnesty

International, protesters said they feared that their identity could be logged and that this could have negative repercussions. Chilling effects may be especially pronounced for people who, due to their circumstances or identities, may have more to fear from the use of their data by state authorities.

**“Here at work, almost no one knows about me, that I have these opinions. I would want to work at a ministry one day. If I would have a stamp behind my name somewhere, then I might never get in, so I want to avoid that. Those fears are really deep with everyone in our group. (...) What happens to those images? Are they kept for a long time? Are they matched with other images? In terms of facial recognition for example, are they running my face through a database, and can they see I’ve participated ten times before?” – S., organiser of protests against COVID-measures**

Migrants are especially vulnerable when it comes to camera surveillance. In the Netherlands, all people who apply for a residence permit are included in a facial recognition database called ‘Catch Aliens’. The police have stated multiple times that they do not use facial recognition technology in real-time (live), but the cameras on video surveillance cars provide the technology to do so. Plus, facial recognition technology can be used retrospectively, which is just as invasive and rights-violating as real-time use. All use of facial recognition technology for identification amounts to indiscriminate mass surveillance and therefore violates the rights to privacy and freedom of expression, association and peaceful assembly.

Therefore, this briefing finds that the policies and practices underlying the police’s surveillance of protests are often inconsistent with human rights law and standards – including the rights to privacy, peaceful assembly and non-discrimination – and present grave human rights risks.

#### **Recommendations include:**

**1) Regulate the use of camera surveillance by law**

Only allow for camera surveillance in the context of protests when strictly necessary and proportionate for the purpose of:

- a) crowd safety;
- b) the prevention, investigation and prosecution of a serious criminal offence that is actually taking place or where there is reasonable suspicion of imminent criminal behaviour;
- c) the evaluation and/or accountability of police actions.

Establish a presumption of non-retention for data collected in the context of a protest, unless retention is necessary and proportionate and only available for the purpose of:

- a) the investigation and prosecution a specific serious criminal offence;
- b) the evaluation and/or accountability of police actions.

**2) Ban biometric technologies**

Ban the development, production, sale, export and use of biometric technologies, such as facial recognition technology for identification, by all public and private actors.

**3) Ensure human rights impact assessments**

Introduce a mandatory requirement for the police to conduct and publish human rights impact assessments prior to the introduction of digital technologies such as video surveillance cars and drones.

**4) Ensure public accountability and transparency**

Require the police to register all decision-making regarding cameras and other digital technologies used in the context of a protest in publicly available databases. The registrations should be appropriate for examination of human rights impact, including possible discriminatory effects. Ensure the investigation of all allegations of human rights violations, publish the findings and ensure the right to an effective remedy.

# METHODOLOGY

This briefing is part of Amnesty International’s global flagship campaign “Protect the Protest” which challenges repression of peaceful protest, acts in solidarity with those targeted and supports the causes of social movements pushing for human rights change. On 8 July 2024, Amnesty International published the report *Under Protected and Over Restricted: The state of the right to protest in 21 European countries*.<sup>1</sup>

In the Netherlands, Amnesty International has been researching and monitoring protests since 2016. Recent publications include a report on the right to protest in the Netherlands and the need for improvements in rules and practice (*Demonstratierecht onder druk: Regels en praktijk in Nederland moeten beter*, 2022, available in Dutch) and the report *Unchecked Power: ID checks and collection of data from peaceful protesters in the Netherlands* (2023). Amnesty International’s work on surveillance of protest in the Netherlands further includes a campaign against state efforts to expand social media monitoring powers (2021-2023); a joint call by civil society organizations and social movements to the data protection authority to investigate large-scale unlawful data processing by the Dutch police (2023); a letter to parliament calling for a halt on experiments with facial recognition technology and online monitoring (2023); a memo on children’s protest rights after the police reported parents participating with children in a protest to “Veilig Thuis”, a reporting and advice point for child abuse and domestic violence (2024); and a letter to council members of the municipality of Amsterdam regarding a proposed ban on displaying “provocative behaviour” online (2024). These and other outputs are available on [Amnesty.nl/tech](https://www.amnesty.nl/tech)

This briefing builds on the existing research, focussing in particular on camera surveillance as one of the ways in which protesters are surveilled. It is based on Amnesty International’s findings from monitoring protests since 2022, including observations at 24 protests of various movements in different cities between November 2022 and May 2024. Considerations that played a role in deciding which protests to monitor included staff availability and Amnesty International’s assessment of the risk of human rights violations at the protest. Amnesty International monitored protests where it assessed the risk of violations to be higher.

The research further includes analysis of the laws and policies that govern surveillance and the policing of protests in the Netherlands, including what gaps exist in these instruments. Amnesty International reviewed Dutch laws and policies and interviewed authorities on practices to assess whether camera surveillance during assemblies is compliant with international human rights law and standards on the rights to privacy, freedom of assembly, and non-discrimination.

To gain insight into the impact of camera surveillance on protesters, Amnesty International supplemented the analysis with interviews of five individuals who regularly organize protests in the Netherlands. In addition to the experiences of activists mentioned in this briefing, several protesters also contacted Amnesty International to report police officers photographing them with mobile phones. In email exchanges, Amnesty International advised them about their rights and the possibility to submit complaints about unlawful data processing to the police. Amnesty International also spoke to approximately 70 protesters during five network meetings (2022-2024) in the context of the global flagship campaign, about their views and experiences with, among other topics, surveillance. Their views are also reflected in the briefing.

The interviews were conducted one-on-one with the following five individuals:

- Ali, organizer of protests in solidarity with Palestine
- S., organizer of protests against COVID-measures (Samen voor Nederland)
- Marisella, organizer of anti-racism protests (Kick Out Black Pete)

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<sup>1</sup> Amnesty International, *Europe: Under Protected and Over Restricted: The state of the right to protest in 21 European countries*, 8 July 2024, Chapter 9: Surveillance, monitoring, collection, analysis and storing of protesters’ data, <https://www.amnesty.org/en/documents/eur01/8199/2024/en/>

- Paul, organizer of climate protests (Extinction Rebellion)
- E., organizer of protests related to human rights concerns in China

For the interviews, Amnesty International selected protesters from movements in the Netherlands that reported concerns about surveillance during their assemblies. The movement against COVID-measures, *Samen voor Nederland*, is currently protesting less but it was during their protests in 2020-2021 that the use of camera surveillance emerged most visibly. Kick Out Black Pete is an anti-racism movement which has been protesting against the character of Black Pete, a figure traditionally part of the annual feast of Sinterklaas, since 2014. During the writing of this briefing, in the first half of 2024, most protests focussed on solidarity with Palestine or climate change (Extinction Rebellion). The experiences of E. also shed a light on the impact of cameras on Chinese students in the Netherlands, who fear intimidation from Chinese authorities.

The interviews were conducted in person in May-June 2024. The participants gave informed consent to have their story included in this briefing. No incentives were provided by the organization in exchange for interviews. Two participants, S. and E., requested anonymity. To include their stories, a pseudonym has been used and all potentially identifying information has been omitted from this briefing. The other three participants wished to share their identity publicly.

The activists were selected for this research based on existing contacts and networks. The activists have been participants in the organization's network during the Right to Protest campaign. The information they shared was corroborated by news coverage and the findings of Amnesty International observers.

Amnesty International further interviewed officials from the police on 30 August 2023 and 18 December 2023. Amnesty International also shared preliminary findings with the police on 19 December 2023 and submitted additional questions on 10 May 2024, via e-mail. The police were given the opportunity to respond and provide comments and clarifications. The police responded to the preliminary findings with comments and clarifications on 1 March 2024 and answered the additional questions on 31 May 2024 and 14 June 2024. These responses have been taken into account in the final text.

On 9 September 2024, a draft briefing was shared with the Ministry of Justice and Security, the Ministry of Interior and Kingdom Relations, and the police. The Ministry of Justice and Security and the Ministry of Interior and Kingdom Relations responded that they did not find any factual inaccuracies. The police pointed out a number of factual inaccuracies and shared additional information. Amnesty International made efforts to process their comments accordingly. Where Amnesty International's explanation or appreciation of information substantially differs from that of the police, this is explicitly stated in the briefing.

Amnesty International thanks all those who participated in this research for their time and for sharing their stories.

# 1. DIGITAL TECHNOLOGY IN POLICING PROTESTS: PRACTICE AND POLICY IN THE NETHERLANDS

## 1.1 DIGITAL SURVEILLANCE TOOLS ARE EVERYWHERE

Around Europe, states' law enforcement and security agencies are increasingly using sophisticated digital tools to carry out targeted and mass surveillance of protesters; and track, monitor, collect, analyse and store their information.<sup>2</sup> The Netherlands is one of the countries at the forefront of experiments with digital surveillance tools. In 2019, the Human Rights Committee expressed concerns towards the Netherlands in relation to "increasing degree of police surveillance (...) during peaceful assemblies, which reportedly [has] a chilling effect on demonstrations".<sup>3</sup>

The use of camera surveillance as described in this briefing is part of a broader, worrying trend where law enforcement authorities turn to digital tools to monitor protesters and collect and store their information. Often, several surveillance tools and databanks are used in conjunction, and in ways that may violate human rights such as the right to privacy, the right of peaceful assembly and the right to non-discrimination. In previous research, Amnesty International described how Dutch authorities gather information about protesters via identity checks during peaceful assemblies, online monitoring and knocking on activists' doors to ask questions about their participation in protests.<sup>4</sup> Already in 2020, legal experts expressed concerns on the impact of drones on the right to privacy,<sup>5</sup> and in 2022 the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) imposed a fine on the police for the use of camera cars without prior privacy risk assessment.<sup>6</sup>

Amnesty International has been researching and monitoring protests in the Netherlands since 2016, and recently published reports on the need for better protection of protest rights in general,<sup>7</sup> as well as against surveillance in particular.<sup>8</sup> Through this work, it is evident that the authorities in the Netherlands view protests first and foremost as a risk to be managed, rather than as the exercise of a human right which states have a duty to facilitate. The aims of policing policies and practices appear to be geared towards gathering information from a control perspective and a threat-based mindset.<sup>9</sup> Digital tools are designed and deployed to monitor and police people, social movements and organisations, often without their knowledge. This briefing focusses on camera surveillance in particular, which Amnesty International's research indicates is increasingly being used by authorities to police demonstrations.

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<sup>2</sup> Amnesty International, *Europe: Under Protected and Over Restricted: The state of the right to protest in 21 European countries*, 8 July 2024, Chapter 9: Surveillance, monitoring, collection, analysis and storing of protesters' data, <https://www.amnesty.org/en/documents/eur01/8199/2024/en/>

<sup>3</sup> HRC, Concluding observations: the Netherlands, 22 August 2019, UN Doc. CCPR/C/NLD/CO/5, para. 60.

<sup>4</sup> Amnesty International, *Unchecked Power: ID checks and collection of data from peaceful protesters in the Netherlands*, June 2023, <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>

Amnesty International, *Europe: Under Protected and Over Restricted: The state of the right to protest in 21 European countries*, 8 July 2024, Chapter 9: Surveillance, monitoring, collection, analysis and storing of protesters' data, <https://www.amnesty.org/en/documents/eur01/8199/2024/en/>

<sup>5</sup> Trouw, 'Drones controleren of u zich aan de coronaregels houdt, maar mag dat eigenlijk wel?' 1 April 2020.

<sup>6</sup> Autoriteit Persoonsgegevens, 'Boete mobiele camera-auto's Rotterdam', 21 December 2022, <https://www.autoriteitpersoonsgegevens.nl/documenten/boete-mobiele-camera-autos-rotterdam>

The protection of fundamental rights in the deployment of new, high-risk technologies (including facial recognition technology) for security purposes is also one of the priorities of the Dutch Data Protection Authority. See: Autoriteit Persoonsgegevens, *Jaarplan 2024: Beschermen van burgers in een digitale wereld*, 21 December 2023, <https://www.autoriteitpersoonsgegevens.nl/uploads/2023-12/AP%20jaarplan%202024.pdf>

<sup>7</sup> Amnesty International Netherlands, *Demonstratierecht onder druk: Regels en praktijk in Nederland moeten beter*, November 2022, p. 6, <https://www.amnesty.nl/wat-we-doen/demonstratierecht-in-nederland/rapport>

<sup>8</sup> Amnesty International, *Unchecked Power: ID checks and collection of data from peaceful protesters in the Netherlands*, June 2023, <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>

<sup>9</sup> Amnesty International, *Unchecked Power: ID checks and collection of data from peaceful protesters in the Netherlands*, June 2023, <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>



## 1.2 VIDEO SURVEILLANCE CARS, DRONES AND MORE

In the Netherlands, the police have access to a range of surveillance tools. They may for example use advanced video surveillance cars (*video surveillance auto*, VSA) or drones, the footage of which can be streamed live to the police control room during an assembly.<sup>10</sup> The footage of these cameras can be stored in police databanks.<sup>11</sup> In addition the police also record protesters with handheld video cameras or simply their own mobile phones. The use of camera surveillance during assemblies emerged most visibly during protests against COVID-measures, when the police experimented with drones to monitor the assemblies,<sup>12</sup> and an assembly for housing rights in Rotterdam in 2021, when the police released snippets of their footage of the protest in an effort to counter the public criticism about their use of force.<sup>13</sup>

Nowadays, camera surveillance has become a more common tool in policing protests. Paul, organizer of climate protests, told Amnesty International he was followed by a police car after an assembly in Rotterdam:

**“We were with a group of approximately 40 people, and at that point our protest was finished, and a camera car was driving with us as we walked towards the subway station. (...) We were walking in smaller groups, and the assembly was over. We were walking in the pouring rain. And the car kept driving with us. When we crossed the street, it had to take a detour, but then it drove with us again, really up until the station. For about twenty minutes it followed us. (...) It visibly follows you and the camera on the roof kept turning towards us.”**

The car that Paul describes is one of the police’s video surveillance cars. They are equipped with an advanced Hikvision camera on top that has deep learning capabilities, focused on human and vehicle classification.<sup>14</sup> The Dutch police have been using these cars with these cameras for over ten years and currently have six video surveillance cars at their disposal. Two new vehicles are being developed.<sup>15</sup> According to the manufacturer’s description, these cameras can allegedly:

- detect people and vehicles up to 58 meters away;
- observe details such as distinctive clothing up to 23 meters;
- recognize individuals with a high degree of certainty up to 11 meters;
- identify individuals ‘beyond a reasonable doubt’ up to 8 meters.<sup>16</sup>

The police also employ drones, which are sometimes less visibly present. Marisella, an activist involved in anti-racism protests, explained in an interview with Amnesty International that she suspects the police used a drone to follow her after she left an assembly in Hoorn:

**“Everything went well but riots broke out after the assembly. We were completely unaware of that at the time, it wasn’t about our demonstration at all, but the police wanted to blame us. (...) Everyone had already left the protest. I got a call and the police officer said: we see you, turn the car around. And I thought, how do you know where I am? We didn’t see any police cars around us. (...) We were told to come to the town hall afterwards. There we were, two women up against the mayor, eight policemen and someone from the municipality. And they pressured us to distance ourselves from those riots we had nothing to do with.”**

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<sup>10</sup> The police use the term ‘video vehicle’ (*videovoertuig*) instead of video surveillance car.

<sup>11</sup> Interview with the police on drones, 30 August 2023.

<sup>12</sup> NOS, ‘Politie koopt tientallen extra drones voor allerlei nieuwe taken’, 16 November 2020; Parool, ‘Van drones tot preventief fouilleren, alles werd uit de kast gehaald op het Museumplein’, 26 January 2021.

<sup>13</sup> NRC, ‘Politie is klaar met ‘trial by social media’’, 1 November 2021. See also Box III.

<sup>14</sup> In particular: 4 MP ColorVu Fixed Mini Dome Network Camera, <https://www.hikvision.com/uk/products/IP-Products/Network-Cameras/Pro-Series-EasyIP-ds-2cd2547g2-ls/>

<sup>15</sup> Response of the police to Amnesty’s questions on camera surveillance, 14 June 2024.

<sup>16</sup> In particular: 4 MP ColorVu Fixed Mini Dome Network Camera, <https://www.hikvision.com/uk/products/IP-Products/Network-Cameras/Pro-Series-EasyIP-ds-2cd2547g2-ls/>



In response to a draft version of this briefing, the police noted that following a car with a drone is not part of police practice – they work with drones from a fixed location.<sup>17</sup> The police started using drones in 2017. During protests against the COVID-measures, there was an increase in the use of drones.<sup>18</sup> The drones were equipped with speakers and a recorded message requesting people to adhere to distancing rules.<sup>19</sup> Footage of the drone used during the assembly for housing rights in Rotterdam shows that the drones have a zoom function that can clearly capture license plates and protest signs.<sup>20</sup> Individuals seem to be recognizable as well, though faces are blurred in the footage that was made public. However, in an interview with Amnesty International, the police stated that faces are in principle *not* recognizable on the drone images, though they acknowledged there may be situations where people may be identified due to distinctive clothing.<sup>21</sup> The police currently use two types of drones:

- The *Mavic 2* for the purpose of forensic investigations, such as crime scene mapping and major, serious traffic accidents.<sup>22</sup>
- The *Matrice 300* for the purpose of public order, such as events and demonstrations, and supervision of water and roads.<sup>23</sup> According to the police, the Matrice is larger, more stable and contains a better camera.<sup>24</sup> The police have 16 *Matrice 300* drones available nationally.<sup>25</sup>

Between November 2022 and May 2024, Amnesty International observed camera surveillance during five peaceful protests on climate change,<sup>26</sup> two anti-racism protests,<sup>27</sup> one farmers' protest,<sup>28</sup> one protest for housing rights,<sup>29</sup> and five protests in solidarity with Palestine.<sup>30</sup> In addition to drones and video surveillance cars, Amnesty International observed that the police employed additional methods of surveillance including bodycams, watercannons with cameras, cameras attached to lampposts and mobile phones. The police also have access to a vast network of municipal cameras in public spaces.<sup>31</sup> In total, there are 337,609 cameras in public spaces that the police may access, consisting of cameras owned by citizens (75,218), businesses (239,499) and the government (22,892).<sup>32</sup>

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<sup>17</sup> Response of the police to the draft briefing, 23 September 2024.

<sup>18</sup> Response of the police to Amnesty's questions on camera surveillance, 14 June 2024; response of the police to the draft briefing, 23 September 2024.

<sup>19</sup> Response of the police to Amnesty's questions on camera surveillance, 14 June 2024.

<sup>20</sup> Politie Eenheid Rotterdam, 'Beelden woondemonstratie 17 oktober 2021', 1 November 2021, <https://www.youtube.com/watch?v=fqJTdLeJxYo>

<sup>21</sup> Interview with the police on drones, 18 December 2023.

<sup>22</sup> Response of the police to Amnesty's questions on camera surveillance, 22 September 2023. On 1 March 2023, the police confirmed in response to Amnesty's draft findings that they use the following drone:

<https://droneland.nl/dji-mavic-2-pro>

<sup>23</sup> Response of the police to Amnesty's questions on camera surveillance, 22 September 2023. On 1 March 2023, the police confirmed in response to Amnesty's draft findings that they use the following drone:

<https://droneland.nl/dji-matrice-300>

<sup>24</sup> Interview with the police on drones at demonstrations, 18 December 2023.

<sup>25</sup> Response of the police to Amnesty's questions on camera surveillance, 14 June 2024.

<sup>26</sup> Cameraman taking photos and videos at a climate protest at Airport Schiphol on 5 November 2022; police officers taking photos of climate activists in The Hague on 26 November 2022; a VSA and drone at a climate protest in The Hague on 28 January 2023; two drones and cameras on watercannons and lampposts at a climate protest in The Hague on 3 November 2023; a drone and police officers taking photos at a climate protest in Haarlem on 12 April 2024.

<sup>27</sup> A drone at an anti-racism protest in Staphorst on 19 November 2022; a temporary camera (which was destroyed) at an anti-racism protest in De Lier on 18 November 2023. The use of a drone on 19 November 2022 was confirmed in: Inspectie Justitie en Veiligheid, *Politieoptreden bij de demonstratie van Kick Out Zwarte Piet in Staphorst*, 2 November 2023, footnote 69, <https://www.inspectie-jenv.nl/actueel/nieuws/2023/11/02/inspectie-kritisch-op-politieoptreden-bij-beoogde-demonstratie-staphorst>

<sup>28</sup> A VSA with a regular camera at a farmers' protest in The Hague on 3 November 2023.

<sup>29</sup> A VSA with a regular camera at a protest for housing rights in Zaandam on 22 April 2023.

<sup>30</sup> Drone at Pro-Palestina protest in Utrecht on 19 October 2023; drone at Pro-Palestina protest in The Hague on 11 January 2024; VSA at Pro-Palestina protest in The Hague on 8 March 2024; drone and VSA at Pro-Palestina protest in Amsterdam on 7 May 2024; drone at Pro-Palestina protest in Amsterdam on 8 May 2024.

<sup>31</sup> The legal basis for these cameras is Article 151c of the Municipality Act. The police is the only authority that may use the images. The chief of police is the data controller and the data are processed under the Police Data Act. The police confirmed the use of municipal cameras, drones and video surveillance cars in interviews with Amnesty: Interview with the police on surveillance of protest, 30 August 2023; Interview with the police on drones, 18 December 2023.

<sup>32</sup> EenVandaag, 'Steeds meer camera's in de openbare ruimte: dit zijn de gevolgen voor jouw privacy', 16 August 2024. In their response to the draft briefing, the police emphasised that they may only access cameras owned by citizens and businesses in the context of the investigation of a crime.

Marisella told Amnesty International she knows the police may use the municipal cameras, and is always aware of the cameras when she is walking in her place of residence:

**“We had a demonstration in Hoorn and there are municipal cameras there. (...) The assembly had ended, and we were walking towards the train station and then we were stopped. They knew which way we were going. They were waiting for us and demanded our ID. That makes no sense when you’re not demonstrating anymore, plus they already know who we are. (...) We always joke about that when we are walking in Hoorn. We wave to the camera, like hey, don’t worry, we are not protesting today. I really believe that when they see us, the alarm bells go off.”**

Video surveillance per se need not always amount to a human rights violation. However, as this briefing explores, in the Netherlands, protests are subjected to video surveillance in a manner inconsistent with human rights. Police told Amnesty International that they are working on internal policies for the development of drones and the use of camera images. However, policies on these issues alone are not sufficient to ensure human rights compliance. As the next chapters will detail, more robust legal safeguards are needed for when and how all forms of video surveillance are used and how data is processed and stored to effectively protect the rights to privacy, peaceful assembly, and non-discrimination.

## 2. THE COLLECTION OF DATA

### 2.1 LOOKING RIGHT AT YOU: INTERFERENCE WITH PRIVACY

**“That camera is looking straight towards you. I do experience that as intimidating. (...) If you are being filmed or photographed right in your face while you’re doing nothing more than peacefully protesting, that’s when questions are going through my head like: what is this for? Why are you doing this? Did I do something or are you looking for something?” – Paul, climate activist, about video surveillance cars**

Camera surveillance during protests can impact the right to privacy. The right to privacy includes not only freedom from intrusion into people’s private lives, but also the right to control information about yourself, and the right to a space in which people can freely express their identities.<sup>33</sup> The right to privacy therefore also applies when authorities are monitoring a public space,<sup>34</sup> in particular when personal information (any information relating to an identified or identifiable individual, such as images) is gathered and stored.<sup>35</sup> Under human rights law and standards, people ‘have a legitimate expectation of a degree of anonymity in online and offline spaces.’<sup>36</sup> The Office of the High Commissioner of Human Rights (OHCHR) stated:

**“Privacy can be considered as the presumption that individuals should have an area of autonomous development, interaction and liberty, a ‘private sphere’ with or without interaction with others, free from State intervention and from excessive unsolicited intervention by other uninvited individuals.”<sup>37</sup>**

The European Court of Human Rights has found that the collection and storing of data by authorities on particular individuals constitutes an interference with those persons’ private lives, even if that data concerned exclusively the person’s public activities.<sup>38</sup> Moreover, processing information about participation in protests can qualify as the processing of special categories of sensitive data attracting a heightened level of protection, since it reveals political opinions or religious beliefs.<sup>39</sup> The processing of such *sensitive data* adds to the seriousness of the interference,<sup>40</sup> as does the fact that data is used for *police purposes*.<sup>41</sup>

Human rights law requires that any interference with the right to privacy adheres to a strict set of criteria: it must be in accordance with the law (legality), pursue a legitimate aim, and be necessary and proportionate— meaning that the interference must be proportionate to achieve the legitimate

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<sup>33</sup> Amnesty International, *Surveillance giants: How the business model of Google and Facebook threatens human rights*, November 2019, <https://www.amnesty.org/en/documents/pol30/1404/2019/en/>

<sup>34</sup> UN Human Rights Council, *The right to privacy in the digital age: report of the United Nations High Commissioner for Human Rights*, 3 August 2018, A/HRC/39/29, par. 6. See also: European Court of Human Rights 2 September 2010, no. 35623/05 (*Uzun v. Germany*), par. 52; European Court of Human Rights 21 June 2011, no. 30194/09 (*Shimovolos v. Russia*), par. 66.

<sup>35</sup> UN Human Rights Committee, *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988; European Court of Human Rights 25 December 2001, no. 44787/98 (*P.G. and J.H. v. the United Kingdom*), par. 57.

<sup>36</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 71 (d); UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, paras. 17-20.

<sup>37</sup> UN Human Rights Council, *The right to privacy in the digital age: report of the United Nations High Commissioner for Human Rights*, 3 August 2018, A/HRC/39/29, par.5.

<sup>38</sup> European Court of Human Rights 4 October 2023, no. 11519/20 (*Glukhin v. Russia*), par. 67.

<sup>39</sup> European Court of Human Rights 4 October 2023, no. 11519/20 (*Glukhin v. Russia*), par. 76.

<sup>40</sup> European Court of Human Rights 6 June 2006, no. 62332/00 (*Segerstedt-Wiberg and others v. Sweden*), par. 71-72.

<sup>41</sup> European Court of Human Rights 4 December 2008, no. 30566/04 (*S. and Marper v. the United Kingdom*), par. 103.

aim.<sup>42</sup> Since recording methods are considered highly intrusive, the standards for these tests are very high.<sup>43</sup> The following sections assess the Dutch practices and policies and explain that they fail to meet international human rights norms, therefore constituting a violation of the right to privacy.



### BOX I: WHEN IS A CAMERA MORE THAN A CAMERA?

While filming is not *per se* a violation of human rights, in certain context it may raise severe human rights risks. One such context is protests, where – as this briefing demonstrates – filming of any sort, but especially filming that takes place using digital technologies capable of storing personal data about participants, affects human rights.

The human rights risks are more pronounced when the use of cameras is not governed by adequate and transparent safeguards and may have disproportionate impacts on marginalised groups.

Some forms of surveillance are, by their nature, incompatible with human rights in any context. Amnesty International calls for a ban on such incompatible technologies that include untargeted mass surveillance, the use of facial recognition technology for identification (further explained in Section 3.2), and highly invasive forms of spyware.<sup>44</sup>

## 2.2 IT'S UNPREDICTABLE: LACK OF REGULATION

International human rights law requires any interference to be *in accordance with national law* (the legality test). Domestic laws must be sufficiently clear in their terms to give people a sufficient indication as to the circumstances and conditions under which public authorities are empowered to resort to measures that interfere with privacy rights.<sup>45</sup> Police cannot rely on blanket authorizations that confer broad discretion in recording or monitoring protests.<sup>46</sup> When authorities collect and process personal data, it is essential to have clear, detailed rules governing the scope and application of measures and the storage, use and deletion of data, to provide sufficient guarantees against the risk of abuse and arbitrariness.<sup>47</sup>

Safeguards around the use of video surveillance are especially important given technical advances by which many existing video cameras can be connected to more complex systems of data storage and analysis, including facial recognition technology and other biometric surveillance technologies.<sup>48</sup> Since surveillance technologies are being developed in a way that is difficult for people to understand,

<sup>42</sup> Article 8 (2) European Convention on Human Rights; Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/41/35, 2019, para. 24.

<sup>43</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, par. 74.

<sup>44</sup> See, e.g. <https://www.amnesty.org/en/petition/ban-the-scan-petition/> and <https://www.amnesty.org/en/latest/news/2023/10/global-predator-files-investigation-reveals-catastrophic-failure-to-regulate-surveillance-trade/>

Similarly, the UN Special Rapporteur on the Right to Freedom of Peaceful Assembly has noted: “Some technological measures are incompatible with the obligation to facilitate the right to peaceful assembly and must not be used in a protest context. These include but are not limited to... indiscriminate and/or untargeted surveillance, surveillance on the basis of group affiliation, and the use of spyware or other forms of equipment interference targeting the digital devices of participants.” See: UN Special Rapporteur on the rights to peaceful assembly and of association, Clément Nyaletsossi Voule, Human Rights Compliant uses of digital technologies by law enforcement for the facilitation of peaceful protests, para. 15, <https://www.ohchr.org/sites/default/files/2024-03/Toolkit-law-enforcement-Component-on-Digital-Technologies.pdf>

<sup>45</sup> European Court of Human Rights 2 August 1984, no. 8691/79 (*Malone v. the United Kingdom*), par. 67; European Court of Human Rights 26 March 1987, no. 9248/81 (*Leander v. Sweden*), par. 51; European Court of Human Rights 24 April 1990, no. 11105/84 (*Huvig v. France*), p. 29; European Court of Human Rights 4 May 2000, no. 28341/95 (*Rotaru v. Romania*), p. 55; European Court of Human Rights 2 September 2010, no. 35623/05 (*Uzun v. Germany*), par. 62; European Court of Human Rights 18 May 2010, no. 26839/05 (*Kennedy v. the United Kingdom*), par. 159.

<sup>46</sup> UN Special Rapporteur on the rights to peaceful assembly and of association, Clément Nyaletsossi Voule, Human Rights Compliant uses of digital technologies by law enforcement for the facilitation of peaceful protests, para. 10, <https://www.ohchr.org/sites/default/files/2024-03/Toolkit-law-enforcement-Component-on-Digital-Technologies.pdf>

<sup>47</sup> European Court of Human Rights 4 October 2023, no. 11519/20 (*Glukhin v. Russia*), par. 77; European Court of Human Rights 4 December 2008, no. 30566/04 (*S. and Marper v. the United Kingdom*), par. 99; European Court of Human Rights 11 June 2020, 74440/17 (*P.N. v. Germany*), par. 62.

<sup>48</sup> See, e.g. Amnesty International, *Automated Apartheid: how facial recognition fragments, segregates and controls Palestinians in the OPT*, May 2023, <https://www.amnesty.org/en/documents/mde15/6701/2023/en/>

especially when it comes to automated and systemic data collection, the discretion of authorities should be prescribed in a sufficiently clear manner.<sup>49</sup> Law enforcement officials should be transparent about digital technologies used in the context of protests and their manner of use.<sup>50</sup>

There should be clear and publicly available guidelines on the use of digital recording in assemblies in line with international standards on privacy to prevent an unlawful interference with the right to privacy and the right to freedom of peaceful assembly and without creating a chilling effect on participation in assemblies (chapter 3 will further elaborate on the chilling effect of camera surveillance).<sup>51</sup>

Nevertheless, the police use new technologies such as camera surveillance cars and drones without such detailed and transparent legal regulations. Under Dutch law, there are no specific legal frameworks for the police to conduct camera surveillance in the context of assemblies, nor are there specific laws on the use of drones or video surveillance cars.<sup>52</sup> As a consequence, it is unclear for protesters whether and when the police will deploy camera surveillance and what happens with recordings. They don't know for what reasons or under which circumstances the police may deploy cameras. In an interview with Amnesty International, Paul stated:

**“It’s unpredictable. I’ve seen camera surveillance in all forms (...) Police in uniform photographing, and the camera cars with a telescopic camera on the roof. (...) I never experienced that the police informed us. A car like that, it’s just there or it isn’t.”**

The police maintain there is a legal basis, referring to the broad and generic powers from Article 3 of the Dutch Police Act:

**Article 3 of the Police Act:**

**The police have the task, subordinate to the competent authority and in accordance with the applicable rules of law, of ensuring effective law enforcement and rendering assistance to those who need it.<sup>53</sup>**

However, Article 3 of the Dutch Police Act is not formulated with sufficient precision to inform protesters when they may be subjected to camera surveillance. It does not confer specific policing powers, but merely sets out the police’s roles. It is too broad and vaguely worded and does not contain safeguards to prevent misuse.<sup>54</sup> Dutch law does not contain criteria to assess when camera surveillance is deemed necessary for ‘ensuring effective law enforcement’ and/or ‘rendering assistance to those who need it’. Matters of data protection law, such as storage periods, are regulated in the Dutch Police Data Act (see box II on the next page). But these norms do not clarify under which circumstances the police may resort to drones or video surveillance cars in the context of a demonstration and how human rights are protected in such instances.<sup>55</sup>

<sup>49</sup> European Court of Human Rights 6 June 2016, no. 37138/14 (*Szabó and Vissy v. Hungary*), par. 68.

<sup>50</sup> UN Special Rapporteur on the rights to peaceful assembly and of association, Clément Nyaletsossi Voule, Human Rights Compliant uses of digital technologies by law enforcement for the facilitation of peaceful protests, para. 22, <https://www.ohchr.org/sites/default/files/2024-03/Toolkit-law-enforcement-Component-on-Digital-Technologies.pdf>

<sup>51</sup> Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), CCPR/C/GC/37, para. 94;

<sup>52</sup> Flying with drones in the Netherlands is limited under national and EU-regulations. For certain categories, you need permission from the supervisor of the Ministry of Infrastructure and Water (Dutch Human Environment and Transport Inspectorate, *Inspectie Leefomgeving en Transport*). The Dutch police have a national exemption and may fly drones anywhere in the country. See: Politie, *Is er toezicht op de drone-inzet van de politie?* <https://www.politie.nl/informatie/is-er-toezicht-op-de-drone-inzet-van-de-politie.html>

Human Environment and Transport Inspectorate, *Drones for residents of the European Union*, <https://english.ilent.nl/topics/rpas---remotely-piloted-aircraft-systems-drones>

<sup>53</sup> Translation of: “Artikel 3 Politiewet. De politie heeft tot taak, in ondergeschiktheid aan het bevoegd gezag, en in overeenstemming met de geldende rechtsregels, te zorgen voor de daadwerkelijke handhaving van de rechtsorde en het verlenen van hulp aan hen die deze behoeven.”

<sup>54</sup> Amnesty International, *We Sense Trouble: automated discrimination and mass surveillance in predictive policing in the Netherlands*, September 2020, p. 34 <https://www.amnesty.org/en/documents/eur35/2971/2020/en/>

Amnesty International, *Unchecked Power: ID checks and collection of data from peaceful protesters in the Netherlands*, June 2023, p. 28 <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>

<sup>55</sup> See also UN Special Rapporteur on the rights to peaceful assembly and of association, Clément Nyaletsossi Voule, Human Rights Compliant uses of digital technologies by law enforcement for the facilitation of peaceful protests, para. 11, <https://www.ohchr.org/sites/default/files/2024-03/Toolkit-law-enforcement-Component-on-Digital-Technologies.pdf>



## BOX II: STORAGE OF DATA

In order for the use of camera surveillance at a protest to meet the test of legality, legitimate aim, necessity and proportionality, the storage of data must be strictly limited. Authorities should further take into account the data protection norms laid down in the Data Protection Convention,<sup>56</sup> and the right to the protection of personal data enshrined in Article 8 of the Charter of Fundamental Rights of the EU.<sup>57</sup>

Under Dutch law, data may currently be processed for broader purposes than ‘investigating and prosecuting crime’. The Dutch Police Data Act allows the processing of data “for the performance of daily policing duties” for one year.<sup>58</sup> Data may be processed for longer periods of time in case of an investigation for the purpose of maintaining law and order in a specific case,<sup>59</sup> or when the purpose of the data processing is to gain insight into the involvement of individuals in certain serious threats to the rule of law.<sup>60</sup> In practice, the regional police unit in The Hague adheres to a retention period of four weeks, following the data processing laws for public order cameras.<sup>61</sup> The police could not confirm whether this is the practice in all police units across the country.<sup>62</sup> The data may also be shared with other parties such as the public prosecutor’s office, mayors or intelligence agencies if regarded necessary.<sup>63</sup>

The police are planning to establish an internal policy for camera images, and told Amnesty International this policy will take into account the deployment, processing and retention of camera images in the context of demonstrations.<sup>64</sup> According to police representatives, the aim is for this policy to allow for a retention period of four weeks as guiding principle for all images gathered in the context of a demonstration.<sup>65</sup> The police maintain that the legislature considers a four week period proportionate, referring to the retention period for images from public order cameras.<sup>66</sup> Amnesty International emphasises that storing all collected data for four weeks without further assessment cannot be considered necessary or proportionate. There should be a presumption of non-retention for digital data collected with respect to a protest, unless retention is necessary and proportionate and only available for the purpose of a) the investigation and prosecution of a specific serious criminal offence, or b) the evaluation and/or accountability of police actions.<sup>67</sup>

On numerous occasions, the police referred to Article 3 of the Police Act for experiments with digital surveillance tools that are capable of violating human rights, such as discriminatory predictive policing systems,<sup>68</sup> and unlawful ID-checks and subsequent data processing during peaceful protests.<sup>69</sup> Amnesty International has previously raised concerns about this, and the Dutch Data Protection

<sup>56</sup> Council of Europe, *Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data*, 17-18 May 2018.

<sup>57</sup> EU law also provides for a specific regime for the processing of personal data by the police for the purpose of the prevention of criminal offences, in *Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data*, known as the Law Enforcement Directive (LED).

<sup>58</sup> Article 8 Police Data Act.

<sup>59</sup> Article 9 Police Data Act.

<sup>60</sup> Article 10 Police Data Act.

<sup>61</sup> Interview Police The Hague, 30 August 2023; Article 151c Municipalities Act.

<sup>62</sup> Response of the police to Amnesty’s draft findings, 1 March 2024.

<sup>63</sup> Response of the police to Amnesty’s questions on camera surveillance, 21 June 2024; Articles 16-24 Police Data Act.

<sup>64</sup> Response of the police to Amnesty’s questions on camera surveillance, 22 September 2023.

<sup>65</sup> Response of the police to Amnesty’s draft findings, 1 March 2024.

<sup>66</sup> Response of the police to the draft briefing, 23 September 2024.

<sup>67</sup> See also UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyatsossi Voule, A/HRC/55/60, 31 January 2024, par. 53 (b).

<sup>68</sup> Amnesty International, *We Sense Trouble: automated discrimination and mass surveillance in predictive policing in the Netherlands*, September 2020, <https://www.amnesty.org/en/documents/eur35/2971/2020/en/>

<sup>69</sup> Amnesty International, *Unchecked Power: ID checks and collection of data from peaceful protesters in the Netherlands*, June 2023, <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>



Authority has noted that the police interpret Article 3 of the Police Act too broadly in the context of camera surveillance.<sup>70</sup>

Still the Minister of Justice and Security recently reiterated the position that mobile cameras, such as mobile camera cars, bodycams and drones, can be deployed under Article 3 of the Dutch Police Act. According to the Minister, this legal basis is sufficient for current practices. The Minister stated she sees ‘no reason to create an additional legal basis for the deployment of technical surveillance devices such as mobile cameras’.<sup>71</sup>

Amnesty International emphasizes that Article 3 of the Police Act cannot be referred to as a blanket authorization of the use of digital technologies in information-gathering in general nor in the context of peaceful protest. Using Article 3 as the basis for surveillance methods is inconsistent with the principle of legality required by international human rights law.

The intention of the police to develop internal policies on communication, authorization and storage limits is not enough to cover the lack of legal basis.<sup>72</sup> There is a need for clear and binding regulation formulated in a way that it is foreseeable for the public when digital surveillance tools can be deployed and how recordings may be used. The police should ensure that the overall approach guiding any use of digital technologies in the context of protests is premised on a limiting principle to circumscribe the use of such technologies, rather than an authorizing principle intended to expand their use.<sup>73</sup>

## 2.3 CAMERAS ARE NOT PROTECTING US: NO LEGITIMATE AIM

Any decision to utilize camera surveillance must be proportionate to achieve a *legitimate aim*. Authorities should note that the test of whether an interference for such an aim is justified, is very strict.<sup>74</sup> The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasizes:

**“Any use of digital technology to facilitate a protest should be solely aimed at enabling the right to freedom of peaceful assembly. Protests should not be seen as opportunities for surveillance or the pursuit of broader law enforcement objectives through the use of digital technologies.”<sup>75</sup>**

The European Court of Human Rights has similarly held that interests of public safety and the prevention of illegal acts may be legitimate aims for an interference,<sup>76</sup> but that these aims should be interpreted narrowly in the context of an assembly.<sup>77</sup> In the context of demonstrations, local Dutch authorities often interpret these aims too broadly, restricting demonstrations by citing the need to prevent any disruption of what they claim would constitute public order.<sup>78</sup> They not uncommonly cite

<sup>70</sup> Autoriteit Persoonsgegevens, *Verwerking van politiegegevens door de inzet van mobiele camera auto's in gemeente Rotterdam*, December 2022, <https://www.autoriteitpersoonsgegevens.nl/documenten/onderzoeksrapport-mobiele-camera-autos-rotterdam>

<sup>71</sup> Letter of the Minister of Justice and Security, ‘Reactie op brief Autoriteit Persoonsgegevens inzake het thema Vrijheid en Veiligheid’, 19 June 2024.

<sup>72</sup> See also Amnesty International, ‘Positie Amnesty ‘Kwaliteitskader Big Data’ van het OM en de Nederlandse politie’, May 2021,

<https://www.amnesty.nl/wat-we-doen/tech-en-mensenrechten/predictive-policing>

Bits of Freedom, ‘De politie trekt zich van niemand wat aan bij de inzet van gezichtsherkenning’, 27 March 2024,

<https://www.bitsoffreedom.nl/2024/03/27/de-politie-trekt-zich-van-niemand-wat-aan-bij-de-inzet-van-gezichtsherkenning/>

<sup>73</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, para. 62 (a).

<sup>74</sup> See for example European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines on freedom of peaceful assembly*, 15 July 2020, par. 71;

UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, para 39.

<sup>76</sup> European Convention on Human Rights, Art. 8 (2).

<sup>77</sup> European Court of Human Rights 15 November 2018, no. 29580/12 (*Navalny v. Russia*), par. 122; European Court of Human Rights 15 October 2015, no. 27510/08 (*Perinçek v. Switzerland*), par. 149-151.

<sup>78</sup> De Nationale Ombudsman, *Demonstreren, een schurend grondrecht?*, 14 March 2018, p. 49,

<https://www.nationaleombudsman.nl/publicaties/onderzoeken/2018015-demonstreren-een-schurend-grondrecht>



“maintaining public order” as a reason for interferences, in an attempt to prevent disruption of traffic, or of regular life for bystanders, local businesses or the public in general.

However, a temporary disruption to daily life should be tolerated to ensure the protection of the right to freedom of peaceful assembly.<sup>79</sup> An appeal to the aim of the prevention of disorder may only be considered legitimate when the measures taken go no further than what is strictly necessary and proportionate – taking into account the significant degree of tolerance that states must allow for potentially disruptive protests. Any threat must be sufficiently tangible and present, and should not generally relate to minor, isolated or sporadic risks of disorder. In *Alekseyev v. Russia*, the European Court of Human Rights for instance held that the mere existence of a risk of a violent clash is insufficient to legitimise state interference.<sup>80</sup>

In response to questions from Amnesty International, the police held that the aim of the deployment of video surveillance cars and drones is to have an adequate overview of the assembly in order to ensure it is “orderly and safe”. The police thereby refer to preventing unsafe situations, including unsafe traffic situations, and being able to intervene when a group wants to disrupt the assembly.<sup>81</sup>

However, the police omit to explain to organizers, protesters and the general public the concrete indications of offences being committed that could justify camera surveillance. The police simply do not explain their decision making in relation to each assembly. Ali, organizer of protests in solidarity with Palestine, told Amnesty International he feels camera surveillance is not protecting him:

**“Because those cameras, they are only specifically targeting the protesters and not the surroundings, not for safety. At least that’s my experience. What I’ve seen is that just every camera was stationed so that it was focused on us. Whereas I would think, look at those blind spots where people may come from. Those side streets, that’s where you should put a camera. We are peacefully demonstrating, and we’re being attacked.”**

Marisella, an anti-racism protester, also noted that when there was footage available of a group who violently disrupted their assembly, the police did not use it:

**“At a protest in Volendam in 2021, there was footage and they [the police] claimed that they didn’t have any. (...) They allegedly could not prosecute anybody, but they didn’t even investigate. (...) All the violence that had been used against us. They said they couldn’t identify a suspect. I sat down at my laptop for half an hour and identified 8 or 9 people with Facebook profiles and everything and handed that over to the Public Prosecutors Office. And still nothing was done. Then we started a legal proceedings, and the judge said the police should investigate, because that didn’t even happen.”**

The same anti-racism movement also faced violence from a hostile audience during a protest in Staphorst in November 2022. Hostile crowds of some 300 persons blocked a road to hinder protesters on their way to the assembly. Dozens of people intimidated protesters and Amnesty International observers, some even using violence.<sup>82</sup> The police employed a drone during the assembly, but to Amnesty International’s knowledge, the drone footage was not used for criminal investigations.<sup>83</sup>

The lack of transparency and communication may lead protesters to assume that the cameras are not used for protection reasons, but for general surveillance and intimidation. Authorities should clearly establish that recording may only take place for limited purposes: public safety in the sense of crowd

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Amnesty International Netherlands, *Demonstratierecht onder druk: Regels en praktijk in Nederland moeten beter*, November 2022, p. 28-29, <https://www.amnesty.nl/wat-we-doen/demonstratierecht-in-nederland/rapport>

<sup>79</sup> UN Human Rights Committee, General Comment No. 37 (2020) on the right of peaceful assembly (article 21), 17 September 2020, CCPR/C/GC/37, paras. 7 and 44.

<sup>80</sup> European Court of Human Rights 21 October 2010, nos. 4916/07, 25924/08 and 14599/09 (*Alekseyev v. Russia*), para. 75.

<sup>81</sup> Response of the police to Amnesty’s questions on camera surveillance, 14 June 2024.

<sup>82</sup> Amnesty, ‘Amnesty Nederland doet aangifte van bedreiging rond demonstratie in Staphorst’, 21 November 2022, <https://www.amnesty.nl/actueel/amnesty-nederland-doet-aangifte-van-bedreiging-rond-demonstratie-in-staphorst>

Inspectie Justitie en Veiligheid, ‘Rapport politieoptreden bij demonstratie van Kick Out Zwarte Piet in Staphorst’, 2 November 2023.

<sup>83</sup> Amnesty, ‘Omvang rellen in Staphorst onvoldoende bestraft’, 30 January 2024, <https://www.amnesty.nl/actueel/omvang-rellen-in-staphorst-onvoldoende-bestraft>

safety, the prevention, investigation and prosecution of a serious criminal offence that is actually taking place or where there is reasonable suspicion of imminent criminal behaviour; or aiding in the evaluation and/or accountability of police actions.

## 2.4 WE ARE NOT HERE TO CAUSE TROUBLE: INADEQUATE ASSESSMENT OF NECESSITY AND PROPORTIONALITY

In addition to being in accordance with the law (legality) and pursuing a legitimate aim, human rights law requires an interference to be *necessary and proportionate* – meaning that the interference must be the least restrictive means to achieve the legitimate aim.<sup>84</sup> An interference must correspond to a “pressing social need” that is proportionate to the aim,<sup>85</sup> and restrictions on peaceful assemblies should always be based on a differentiated or individualized assessment.<sup>86</sup>

Human rights law and standards require law enforcement agencies to make decisions on digital technologies on a case-by-case basis, aligned with the specific law enforcement objective and circumstances.<sup>87</sup> The threshold for using digital technologies for gathering information during a protest is high. Surveillance against individuals exercising their rights of peaceful assembly and association can only be conducted on a targeted basis, where there is reasonable suspicion that they are engaging in or planning to engage in serious criminal offences, under the very strictest of rules, and with close judicial supervision.<sup>88</sup> Law enforcement agencies should not use any means of mass surveillance, or other forms of unlawful surveillance, especially in the context of assemblies.<sup>89</sup>

As explained in the previous paragraph, Dutch law does not contain such requirements. The police state they determine surveillance measures on a case-by-case basis using risk assessments. The criteria used in risk assessments by police are not part of any official or public policy. In response to questions by Amnesty International, the police explained that the criteria they use to conduct risk assessments and determine how to deploy surveillance tools at a particular protest, are the following:

- The size of a demonstration (many participants);
- The mobility of a protest (for example a protest in the form of a road block);
- The need for crowd control;
- Safety of police officers (e.g. being able to signal someone throwing stones);
- An expected counterdemonstration.<sup>90</sup>

The police further shared three examples of decision-making with Amnesty International (see Annex). According to the police, applying the aforementioned criteria results in the use of cameras not at every protest, but only when “a balanced assessment has been made that a demonstration could lead to

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<sup>84</sup> Article 8 (2) European Convention on Human Rights; Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/41/35, 2019, para. 24.

<sup>85</sup> UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, par. 40. See also for example, European Court of Human Rights 15 October 2015, no. 37553/05 (*Kudrevičius and Others v. Lithuania*), par. 143.

<sup>86</sup> UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, par. 38.

<sup>87</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 62 (b).

<sup>88</sup> UN Human Rights Council, *Rights to freedom of peaceful assembly and of association: report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/HRC/41/41, 17 May 2019, par. 47; European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines on freedom of peaceful assembly*, 15 July 2020, para 172.

<sup>89</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 2016, para. 74; Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on Advancing accountability and ending impunity for serious human rights violations related to the exercise of the rights to freedom of peaceful assembly and of association, A/HRC/53/38, 2023, para. 20.

<sup>90</sup> Interview with the police on drones, 30 August 2023.

unsafe situations”.<sup>91</sup>The practice of making case by case assessments, if done in a manner consistent with human rights law, can help ensure that the use of surveillance in a particular instance is necessary and proportionate. However, the criteria the police use for their decisions to deploy surveillance tools are not in line with international human rights standards for multiple reasons.

First, the police criteria leave excessive room for interpretation and are not clearly linked to legitimate aims for an interference with human rights. For example, while the size or mobility of a protest may be a relevant factor, it does not in and of itself justify the need for surveillance measures. Even though the police may consider camera surveillance necessary for keeping an overview for crowd management purposes, consideration should be given to whether this is in fact necessary for the facilitation of the protest and/or a specific law enforcement aim, and what other less intrusive methods might be appropriate. The police’s decisions on surveillance tools should be strictly appropriate to the situation and proportionate to the context and actual threat.<sup>92</sup>

Second, the criteria are illustrative for the control culture perspective and a threat-based mindset often found in the context of assemblies: when authorities mention risks, they mostly refer to risks protesters could potentially create, not safety risks for the protesters and how to mitigate those.<sup>93</sup> The criteria ‘need for crowd control’, ‘safety of police officers’ and ‘counterdemonstration’ seem to assume that protests create unsafe situations, or even that protesters may not be peaceful and should pre-emptively be monitored. Amnesty International has previously noted that local Dutch authorities often interpret aims too broadly, restricting demonstrations by citing the need to prevent any disruption of public order.<sup>94</sup>

Ali explained that during the organization of a protest for solidarity with Palestine in Zwolle, he felt as if the burden is on protesters to show they are peaceful:

**“There was another group who organized an assembly in Zwolle and there were police cars and mounted police. (...) So we made it clear to the municipality and the police that we are a peaceful group. That we want to make sure everything goes smoothly. We’re not here to cause trouble or riot or whatever. We clearly communicated that. I think that’s why they made the choice: okay, then we will scale down.”**

This type of risk-based thinking from the police is problematic: authorities should operate from a presumption in favour of holding peaceful assemblies (*presumption of peacefulness*).<sup>95</sup> In most cases, peaceful assemblies cause little or no disruption. In cases where protests are inherently or deliberately disruptive, international law requires a significant degree of toleration from authorities.<sup>96</sup>

It follows from the above analysis that police’s decision to deploy camera surveillance is not always consistent with human rights law, and in many instances, it does not meet the tests of legality, legitimate aim, and necessity and proportionality. Such use of video surveillance constitutes a violation of the right to privacy.

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<sup>91</sup> Response of the police to the draft briefing, 23 September 2024.

<sup>92</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 64 (b).

<sup>93</sup> Amnesty International, *Unchecked Power: ID checks and collection of data from peaceful protesters in the Netherlands*, June 2023, <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>

<sup>94</sup> De Nationale Ombudsman, *Demonstreren, een schurend grondrecht?*, 14 March 2018, p. 49, <https://www.nationaleombudsman.nl/publicaties/onderzoeken/2018015-demonstreren-een-schurend-grondrecht>  
Amnesty International Netherlands, *Demonstratierecht onder druk: Regels en praktijk in Nederland moeten beter*, November 2022, p. 28-29, <https://www.amnesty.nl/wat-we-doen/demonstratierecht-in-nederland/rapport>

<sup>95</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, par. 18; UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, par. 17; European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines on freedom of peaceful assembly*, 15 July 2020, para 21 and 76.

<sup>96</sup> UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, para. 44.

## 3. WHAT HAPPENS WITH THE DATA

### 3.1 WITHOUT CONSENT OR EVEN WITHOUT YOU KNOWING: LACK OF TRANSPARENCY AND ACCOUNTABILITY

Human rights law requires the police to be transparent about their operations, decisions and protocols: for example, when and why drones and/or video surveillance cars are used in particular instances, how long the data is kept and how it is processed. International human rights law and standards prescribe that law enforcement officials make their operations transparent by making disaggregated data on law enforcement actions in the context of protests accessible to the public.<sup>97</sup> Law enforcement officials should develop a transparent record-keeping system for decisions and actions and orders, and the rationale behind them.<sup>98</sup>

Currently, police do not register the deployment of camera surveillance during protests for transparency or accountability. The police do register their employment when it comes to drones, but for ‘security reasons’ and internal use only.<sup>99</sup> The police told Amnesty International that they agreed it should be easier for the public to recognize that a drone belongs to the police.<sup>100</sup> As part of an internal policy for drones they are drafting, the police are considering measures for transparency and recognizability.<sup>101</sup> They consider transponders on drones to make them visible in a radar app, or communication on drone use via X (previously Twitter).<sup>102</sup>

Amnesty International requested an overview of the deployment of drones and video surveillance cars from the police, with reference to the date and place of assembly, motivation of the deployment, storage limits and police measures taken following the images. The police could not provide such an overview.<sup>103</sup> In response to questions of Amnesty International,<sup>104</sup> the police did share three examples (see Annex I). Amnesty International notes that such records should be accessible to the public. As mentioned above, protocols, procedures and guidance related to protests, including detailed lists of law enforcement equipment used for the facilitation of protests, should be publicly available.<sup>105</sup> Law enforcement officials should ensure transparent and auditable records of all decision-making concerning digital technologies used in the context of a protest.<sup>106</sup>

The lack of adequate safeguards and transparency around the use of cameras can lead to a chilling effect, because people may not know whether they are under surveillance, or how such surveillance may affect their rights.<sup>107</sup> Section 3.4 will go into further detail of the chilling effect of surveillance and explain the worries of protesters regarding potential consequences. Transparency is an important aspect, because deliberately ambiguous legal provisions and arbitrary enforcement of those provisions

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<sup>97</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 46 (e) and (f).

<sup>98</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 51 (b).

<sup>99</sup> Interview with the police on drones, 18 December 2023.

<sup>100</sup> Response of the police to Amnesty’s questions on camera surveillance, 14 June 2024.

<sup>101</sup> Response of the police to Amnesty’s draft findings, 1 March 2024.

<sup>102</sup> Interview with the police on drones, 18 December 2023.

<sup>103</sup> Response of the police to Amnesty’s questions on camera surveillance, 14 June 2024.

<sup>104</sup> Response of the police to Amnesty’s questions on camera surveillance, 14 June 2024 and 21 June 2024.

<sup>105</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, 51 (g).

<sup>106</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 53 (a).

<sup>107</sup> UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, par. 10.

against critics of the authorities can have a chilling effect on protesters' rights.<sup>108</sup> In this respect, the UN Special Rapporteur stated:

**“In environments subject to rampant illicit surveillance, the targeted communities know of or suspect such attempts at surveillance, which in turn shapes and restricts their capacity to exercise rights to freedom of expression [and] association.”<sup>109</sup>**

The European Court of Human Rights similarly has noted that, where human rights safeguards around communication are inadequate,

**“widespread suspicion and concern among the general public that secret surveillance powers are being abused cannot be said to be unjustified... In such circumstances the menace of surveillance can be claimed in itself to restrict free communication”.**<sup>110</sup>

E. (organizer of protests on Chinese matters) told Amnesty International:

**“I would want all the pictures or videos taken to be with consent. (...) If you want to take a picture of us, you need to inform us and someone who doesn't want to be in the picture can go away. That would be the best scenario. I understand that's not possible all of the time. At least then I would want the cameras to be open and clear, even without our consent, we should know that we are being filmed and it's free for us to leave and we should be allowed to put on our masks. They claim we are not allowed to, but that should be our right. (...) But the reality is not like that. They take pictures without consent or even without you knowing.”**

E. further emphasized protesters are worried about what happens with the images, in particular when they are made by undercover police:

**“On the one hand, they are trying to hide their identities, but on the other hand, their cameras are on students. I find it not equivalent. (...) For other camera's, we will try to block our face and hide the ones who are more vulnerable in this time. International students, Palestinian students, especially Muslim students. To hide them in the crowd. (...) But when it's undercover police, what if you didn't know there were cameras? I find it to be most problematic. You don't know what they are using these pictures for.”**



### **BOX III: CAMERAS ARE NOT USED FOR ACCOUNTABILITY**

In October 2021, the police deployed a drone during an assembly for housing rights in Rotterdam (*Woonprotest*). At the time, the police referred to the use of the drone as an experiment.<sup>111</sup> After the assembly, protesters and politicians criticized the police for using violence during the protest.<sup>112</sup> Videos posted on social media showed the police beating people sitting on the ground with batons (*wapenstokken*). Amnesty International, as well

as the Dutch section of the International Commission of Jurists (*Nederlands Juristen Comité voor de Mensenrechten*) expressed their concerns on the police's actions.<sup>113</sup>

In response, the police released snippets of their footage of the protest in an effort to counter the public criticism about their use of force. The police referred to “trial by social media” and stated they hoped to refute “the frame” that the police had used force in a disproportionate manner. Amnesty International notes that the police seemed to use the drone footage for communication and public relations purposes, rather than taking the much-needed accountability for the police intervention that day.

<sup>108</sup> Laurent Pech, *The concept of chilling effect: Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU*, Open Society European Policy Institute, March 2021, p. 4, <https://www.opensocietyfoundations.org/publications/the-concept-of-chilling-effect>

<sup>109</sup> UN Human Rights Council, *Surveillance and human rights: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/41/35, 28 May 2019, para 21.

<sup>110</sup> European Court of Human Rights, 4 December 2015, no. 47143/06 (*Roman Zakharov v. Russia*) par. 171.

<sup>111</sup> NRC, ‘Politie is klaar met ‘trial by social media’’, 1 November 2021.

<sup>112</sup> NOS, ‘Politie verspreid dronebeelden woonprotest Rotterdam: ‘De maat is vol’’, 1 November 2021.

<sup>113</sup> NOS, ‘Verontwaardiging over politieoptreden tijdens woonprotest Rotterdam’, 18 October 2021.

In addition to transparency, communication between authorities and protesters is key. Protesters who spoke with Amnesty International mentioned that, in their experience, often there is no meaningful communication, because the police are not focused on facilitating their right of peaceful assembly. Marisella explained:

**“I’ve never experienced them saying, ‘Oh how nice that you’re using your right to protest’. They’re always looking at it from a safety perspective. And I feel like our message matters. I always have that feeling. In the way they treat us and the way they are telling us that it is dangerous. And then I think, yes, it is, but you also know that it has been proven for 13 or 14 years that the violence never comes from our side. So why are we subjected to all this repression? (...) I think there was one time, in Alkmaar, which went well and where they said: OK what do you guys need? And we’ll make sure you can demonstrate. And when we indicated our preferred place they thought along and said if you stand there, this may happen, but then we can do this and so on. We really complimented them for that way of working.”**

Protesters also mentioned receiving phone calls from the police or the police knocking on their door, unannounced, asking questions about their activism (see paragraph 3.1). Paul recalled the police visiting him at home and reaching out to him with questions:

**“I received a visit at home from police officers. Shortly after I organized a day with workshops in a community centre. I was the contact person for the community centre and at one point I received a call from the administrator saying there was a police officer who wanted to know exactly what we were going to do. (...) The police called and I asked them, if the pool club has a meeting are you calling them too asking what they’re doing? Well no they weren’t. It was a vague conversation, they were circling it. But in the end it came down to the fact that she was trying to recruit me as an informant. (...) I found that a very alienating experience, that you organize something like that which is completely within the lines, and then you’re singled out. (...) I found it baffling that I was approached for such a benign activity in such a way.”**

Needless to say, these approaches are not perceived as meaningful dialogue to protesters. Law enforcement officials may reach out to organizers to discuss (among other things) facilitation strategies,<sup>114</sup> but it is important they do so in a way that is honest and transparent, and that such engagement in dialogue remains voluntary for the organizers without negative repercussions on the authorities readiness to facilitate the assembly. Human rights standards require that the authorities are clear and open with organizers and participants about their policing intentions and plans (sometimes referred to as a ‘no surprises’ approach to protest policing).<sup>115</sup> Such an approach can help to prevent misunderstandings and avoid situations when assembly participants will be taken aback by something they may not have expected and what they do not understand – provided it is done in a constructive manner that maintains the facilitative attitude and is not done in a threatening way.

## **3.2 ARE THEY RUNNING MY FACE THROUGH A DATABASE?: FACIAL RECOGNITION TECHNOLOGY**

**“You just don’t know. What happens to those images? Are they kept for a long time? Are they matched with other images? In terms of facial recognition for example, are they running my face through a database, and can they see I’ve participated ten times before?” - S.**

Several protesters told Amnesty International they feared the police may use facial recognition technology for identification in the context of protesters. Facial recognition technology is biometric technology which can be used to identify, authenticate and categorize individuals by their face from images in a database. Facial recognition technologies for identification (also known as one-to-many or

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<sup>114</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 58 (a).

<sup>115</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 45-46.

1:n FRT) entail widespread bulk monitoring, collection, storage, analysis or other use of material and collection of sensitive personal and biometric data without individualised reasonable suspicion of criminal wrongdoing, which amounts to *indiscriminate mass surveillance*.<sup>116</sup> The technology is developed by scraping millions of images from social media profiles, police databases, and public sources such as newspapers. It creates a digital signature of the identified face, stores it, and searches records in a database or watchlist to find a match.<sup>117</sup>

Amnesty International believes that indiscriminate mass surveillance is never a proportionate interference with the rights to privacy, freedom of expression, and the freedom of association and of peaceful assembly. Around the world, facial recognition technologies are being used by authorities to stifle protest and harass minority communities.<sup>118</sup> In the campaign *Ban the Scan*, Amnesty International calls for a global ban on the development, production, sale, use and export of facial recognition technology that enable indiscriminate mass surveillance and discriminatory targeted surveillance.<sup>119</sup>

In 2024, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association affirmed that facial recognition technologies and other biometric systems must not be utilized to identify individuals who are peacefully participating in a protest.<sup>120</sup>

The Dutch police have stated multiple times that they do not use facial recognition technology in *real-time*,<sup>121</sup> but the cameras (currently, the brand Hikvision) on video surveillance cars provide the technology to do so: they come with a ‘face capture’ deep learning function. Thus the authorities say that although they have the capacity, they don’t use it. The Ministry of Justice is currently considering in which cases and under what conditions there might be a need for the use of real-time facial recognition technology.<sup>122</sup>

Facial recognition can already be used *retrospectively*.<sup>123</sup> The use of retrospective (post) facial recognition technology is just as invasive and rights-violating as live (real-time) systems.<sup>124</sup> The police have access to a database that can be used for facial recognition technology, which includes photos of people suspected of certain types of crimes and suspects whose “identity is in doubt”.<sup>125</sup> The latter category may include protesters who have refused to identify themselves.<sup>126</sup> Migrants may be especially vulnerable when it comes to camera surveillance, since in the Netherlands, all people who applied for a residence permit are included in a facial recognition database called ‘*Catch Vreemdelingen*’.<sup>127</sup>

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<sup>116</sup> The police stated in response to the draft briefing that they do not agree with this conclusion. The police emphasises that there are many different facial recognition systems for many different purposes. According to Amnesty International, every form of facial recognition technology used for identification is in violation of human rights, regardless of the purpose.

<sup>117</sup> Amnesty International, *Ban the Scan*, <https://banthescan.amnesty.org/>

<sup>118</sup> As documented by Amnesty International through the *Ban the Scan* campaign.

<sup>119</sup> Amnesty International, *Ban the Scan*, <https://banthescan.amnesty.org/>

<sup>120</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 71 (b); A/HRC/44/24, par. 53 (f).

<sup>121</sup> Interview Police The Hague, 30 August 2023.

<sup>122</sup> Letter of the Minister of Justice and Security, ‘Reactie op brief Autoriteit Persoonsgegevens inzake het thema Vrijheid en Veiligheid’, 19 June 2024.

<sup>123</sup> Response of the police to Amnesty’s questions on camera surveillance, 31 May 2024.

<sup>124</sup> Euronews, ‘Retrospective facial recognition surveillance conceals human rights abuses in plain sight’, 14 April 2023, <https://www.euronews.com/2023/04/14/retrospective-facial-recognition-surveillance-conceals-human-rights-abuses-in-plain-sight>

<sup>125</sup> Antwoord van Minister Grapperhaus (Justitie en Veiligheid), mede namens de Minister voor Rechtsbescherming, ontvangen 11 september 2019, vergaderjaar 2018-2019, nr. 3606; Article 55c *Wetboek van Strafvordering*.

<sup>126</sup> Bits of Freedom, ‘Minister komt met zorgwekkende antwoorden op Kamervragen over CATCH’, 11 September 2019, <https://www.bitsoffreedom.nl/2019/09/11/minister-komt-met-zorgwekkende-antwoorden-op-kamervragen-over-catch/>

In their response to the draft briefing, the police explained that protesters may only be added to the database under specific circumstances: a) when they are suspected of a crime punishable by at least four years in prison, or b) when they are suspected of a crime and refuse to identify themselves. The latter is only permissible if ordered by the public prosecutor’s office.

<sup>127</sup> In their response to the draft briefing, the police explained that the Minister of Justice and Security is responsible for the *Catch Vreemdelingen* database. The police emphasise that they may only access the database under certain circumstances, referring to Article 107 *Vreemdelingenwet*.



In November 2023, the *Royal Dutch Marechaussee* used facial recognition technology to identify participants of a protest on climate change, comparing photos taken at the protest with photos from police systems and public sources, including social media.<sup>128</sup> The approximately 400 protesters were suspected of unlawful trespassing on Schiphol Airport. In January 2024, the Public Prosecutor's Office announced they decided to dismiss all cases, partially because a substantial part of the identification process turned out to be incorrect or no longer verifiable.<sup>129</sup>

### 3.3 OUR MESSAGE IS NOT WANTED: DISCRIMINATORY IMPACT

When using digital technologies, the police should assess the creation of chilling effects on the free participation and exercise of fundamental freedoms, as well as any discriminatory impact.<sup>130</sup> Research has shown how digitised surveillance replicates dangerous forms of discrimination against racial and ethnic minorities in ways that criminalize the very existence of such populations, many of whom are already impacted by the effects of structural discrimination and vulnerability.<sup>131</sup> The right to non-discrimination is therefore crucial in the context of the growing digitization in policing.

#### BOX IV: ON INTERSECTIONALITY

The severity of impacts from a particular policy or measures – in this case surveillance -can significantly increase depending on age, gender, sexuality, race, class or caste, disability, socio-economic factors and more. Individuals may suffer additional or unique forms of discrimination due to a combination of different forms of discrimination they are subjected to. The concept of privacy also embraces multiple aspects of a person's identity, including elements such as gender identification, sexual orientation and ethnic identity.<sup>132</sup>

For instance, migrant and refugee children may be more vulnerable to invasive data collection and surveillance due to their age, limited autonomy, power imbalances between them and the adults collecting the data and even more limited understanding of the short and long-term implications of their data being collected. Governments need to take these factors into account when collecting data.<sup>133</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasises that already at the planning phase, the police should consider “the needs, risks and safety concerns of individuals and groups in situations of vulnerability”, such as by mitigating the risks for persons belonging to minority groups.<sup>134</sup> Specific, supportive and protective efforts should be made to facilitate the right to freedom of peaceful assembly of individuals or groups that may be vulnerable, or that have been subjected to discrimination or marginalization.<sup>135</sup> Discrimination through digital technology can

<sup>128</sup> Letter of the Minister of Justice and Security, 'Antwoorden Kamervragen over de waarschuwbrieven van het Openbaar Ministerie', 9 October 2023.

<sup>129</sup> Openbaar Ministerie, 'Uitkomst nader onderzoek identificatie klimaatdemonstranten Schiphol', 12 January 2024.

<sup>130</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 61.

<sup>131</sup> Amnesty International, *Ban the Scan*, <https://www.amnesty.org/en/petition/ban-the-scan-petition/>

<sup>132</sup> European Court of Human Rights 4 December 2008, no. 30566/04 (*S. and Marper v. the United Kingdom*), par. 66.

<sup>133</sup> Amnesty International, *Digitally Divided: technology, inequality, and human rights*, October 2023, p. 14 <https://www.amnesty.org/en/documents/pol40/7108/2023/en/>

<sup>134</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 60 (d).

<sup>135</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 15.

be challenged, mitigated or prevented with appropriate and clear strategies by governments and cooperations, in consultation with the human rights community and other stakeholders.<sup>136</sup>

Amnesty International asked the police how they assess the impact of camera surveillance on human rights, in particular on the right of peaceful assembly and the right to non-discrimination, and what measures they have taken to protect human rights. In their response, the police made no reference to non-discrimination considerations:

**“The police deploy video vehicles and drones within the legal frameworks and are working on an ethical policy for drone deployment. With this policy, drone deployment can be carefully weighed in such a way that important relevant values are in an acceptable balance. Part of that consideration is ensuring that there are no unnecessary breaches of citizens’ privacy and that safety – including safety of protesters themselves – is guaranteed when there is a real risk of criminal offences being committed and/or public order is being disrupted; and that police and emergency services are able to act quickly and adequately.”<sup>137</sup>**

By omitting to take any non-discrimination measures, and not even assessing potential discrimination risks, the police failed their human rights obligations. Whether camera surveillance during protest is discriminatory in intent or impact is difficult to ascertain, because the police do not record their decisions to employ cameras at specific protests, nor their considerations in doing so. In Amnesty International’s desk research and monitoring, police surveillance appears to be employed during all types of protests by different movements. But surveillance may have a particular negative impact on racialized communities. As a result of current practices, certain groups are more impacted by police surveillance than others – i.e. over-policed groups who have cause to fear discriminatory and otherwise unlawful police interventions. The broad policing powers, discussed in chapter 2, combined with subconscious assumptions, stereotypes and ‘information driven policing’ create serious risks of discrimination.<sup>138</sup>

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<sup>136</sup> Amnesty International, *Digitally Divided: technology, inequality, and human rights*, October 2023, p. 10, <https://www.amnesty.org/en/documents/pol40/7108/2023/en/>

<sup>137</sup> Response of the police to Amnesty’s questions on camera surveillance, 14 June 2024.

<sup>138</sup> Amnesty International, *Unchecked Power: ID checks and collection of data from peaceful protesters in the Netherlands*, June 2023, p. 23, <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>



### BOX V: LACK OF DATA ON DISCRIMINATORY PRACTICES

Dutch authorities do not process disaggregated data on discrimination grounds in relation to policing practices, which is crucial to accurately assess potential discriminatory impacts, and introduce necessary remedial measures. International human rights law recommends states to collect and monitor disaggregated quantitative and qualitative data on law enforcement practices, including information on the prohibited grounds for racial discrimination, as part of their efforts to prevent and combat racial profiling.<sup>139</sup>

However, the Dutch cabinet and police have repeatedly argued that registration is not possible because “Dutch law prohibits the processing of race”, meaning using racial categories is not permitted.<sup>140</sup> This is contradictory given the fact that governmental organizations have frequently used data on race or nationality for other purposes, including risk profiling.<sup>141</sup>

Amnesty International’s research previously found that other forms of data and technology enabled tools in the criminal justice system, including predictive policing systems and ID-checks during protests, display discriminatory biases toward marginalised groups in ways that violate human rights law.<sup>142</sup> Ethnic profiling is a structural problem throughout the police, municipalities and other parts of government in the Netherlands.<sup>143</sup> Organisers of anti-racism protests told Amnesty International how they take extra precautionary measures to minimise any chance of unsolicited contact with the police.<sup>144</sup> While the Dutch police and national government acknowledge that ethnic profiling is a problem, this has not led to effective measures for prevention of this practice.<sup>145</sup>

Marisella mentioned numerous experiences where she felt the Dutch police treated anti-racism protesters differently because of their message. When Amnesty International asked what would be needed to make her feel safe during assemblies, she said:

**“No racist police, that would make a difference. Because you really notice how they approach you, what they say to you, you know? You notice that your message is not wanted. (...) Once in Rotterdam, a police officer started talking to people who were there, bystanders who were complaining, and the police officer literally said: yes, you should handcuff them and throw them in the river. (...) And I told him if anything happens to us, I know who not to go to. And he gave me this look, like shut up, or I don’t have anything to do with you. He didn’t answer me but gave me this look. This was in 2016. And I have to say, before that, I believed that if something happens to you, you can go to the police.”**

E. also felt discriminated by the police during a peaceful protest:

<sup>139</sup> UN Committee on the Elimination of Racial Discrimination, General recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, 17 December 2020, par. 50; European Commission against Racism and Intolerance, General Policy Recommendation 11 on combating racism and racial discrimination in policing, 29 June 2007, par. 40-43.

<sup>140</sup> See for example: Letter of the Minister of Justice and Security, 4 June 2019, 30 950 no. 176, p. 12.

<sup>141</sup> Amnesty International the Netherlands, *Etnisch profileren is overheidsbreed probleem: Nederlandse overheid moet burgers beschermen tegen discriminerende controles*, March 2024, p. 67-68.

<sup>142</sup> Amnesty International, *We Sense Trouble: automated discrimination and mass surveillance in predictive policing in the Netherlands*, September 2020, <https://www.amnesty.org/en/documents/eur35/2971/2020/en/>

Amnesty International, *Unchecked Power: ID checks and collection of data from peaceful protesters in the Netherlands*, June 2023, <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>

<sup>143</sup> Amnesty International the Netherlands, *Etnisch profileren is overheidsbreed probleem: Nederlandse overheid moet burgers beschermen tegen discriminerende controles*, March 2024, <https://www.amnesty.nl/actueel/het-kabinet-moet-burgers-beschermen-tegen-etnisch-profileren>

<sup>144</sup> Amnesty International, *Unchecked Power: ID checks and collection of data from peaceful protesters in the Netherlands*, June 2023, p. 23, <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>

<sup>145</sup> Amnesty International the Netherlands, *Etnisch profileren is overheidsbreed probleem: Nederlandse overheid moet burgers beschermen tegen discriminerende controles*, March 2024, p. 21-25, <https://www.amnesty.nl/actueel/het-kabinet-moet-burgers-beschermen-tegen-etnisch-profileren>  
In their response to the draft briefing, the police state that they take tackling ethnic profiling seriously and that they cannot be blamed for the difficulties in taking effective measures. They state that no measures have been found that are proven to be effective and refer to WODC, *Etnisch profileren door de politie*, 2023, p. 104-105.

**“Everybody was wearing a mask. The mask was not even mine; it was given by another person because I was having allergies at that time. I needed to put it on and they only arrested me. I think it was because I’m the only one who isn’t white to be honest. They took me away and they were constantly like “China, China, China”. So, they identified me as Chinese then took me away and I was like, I’m wearing this for medical purposes. They were like, but it’s not a medical mask. I do feel that it was a medical mask. I feel this is kind of discriminatory. And also, when they were trying to snatch people from the crowds, maybe because we are smaller but they target like, you know, the more international people with international background. Especially when you’re isolated, things like that.”**

Impacts of surveillance may be especially pronounced for people who, due to their circumstances or identities, may have more to fear from the use of their data by state authorities.<sup>146</sup> For example, chilling effects (further explained in the next paragraph) may be especially pronounced for someone like E., who also experiences intimidation from Chinese authorities who contact them and their family in mainland China because of their activism. Research of Amnesty International found that China-based family members of Chinese students in Europe and North America are targeted in retaliation for students’ overseas activism.<sup>147</sup> As organizer of protests related to Chinese matters, E. experiences this kind of intimidation from Chinese authorities when protesting in the Netherlands:

**“They take photos of the people who are in the demonstration. (...) It’s a common concern. And that causes terrible persecution for our people because they identify you and then threaten you with it. (...) I didn’t wear a mask in protests before, only when I saw there would be suspicious people from the Chinese embassy taking pictures. Then I would wear my mask. However in the Pro-Palestine protests, because they have violently treated students and they have literally arrested students. (...) In this kind of treatment, together with cameras and everything they are doing, I have to kind of wear a mask.”**

### **3.4 CAMERAS MAKE YOU CAUTIOUS: THE CHILLING EFFECTS OF SURVEILLANCE**

**“There are cameras not only from the police but also in public transport and in university buildings. (...) We are not sure what kind of footage will be used. We are never sure if the footage will be used by the police. (...) This causes concern for me. For example now when I enter university, even though I’m not doing anything but merely to attend my class or exam, but I think there will be cameras outside the university doors and if the police are looking for me, would they use that camera footage like to see that, to detect that I’m already in university and try to arrest me there? This has become the top concern that I can no longer meet my other classmates in university for our activities, even purely academic.” – E.**

As examples in the previous sections have illustrated, camera surveillance during protests may contribute to a chilling effect on the right of peaceful assembly, potentially discouraging people from taking part in assemblies due to fear of surveillance, as it is often the ability to be part of an anonymous crowd that allows many people to participate in peaceful assemblies.<sup>148</sup> The lack of regulation and transparency, the possible use of facial recognition technology, and experiences with discrimination create an environment in which protesters do not and cannot know when they might be recorded and what the consequences may be. For example, people may choose not to exercise their

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<sup>146</sup> See, Sarah Brayne, ‘Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment’, *American Sociological Review*, June 2014, <https://doi.org/10.1177/0003122414530398>

Amnesty international, *Trapped in the Matrix, Secrecy, Stigma and Bias in the Met’s Gang Database*, May 2018, <https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf>

Amnesty International, *Being ourselves is too dangerous: Digital violence and the silencing of women and LGBTI activists in Thailand*, May 2024, <https://www.amnesty.org/en/documents/asa39/7955/2024/en/>

<sup>147</sup> See also: Amnesty International, ‘China: Overseas students face harassment and surveillance in campaign of transnational repression’, 13 May 2024, <https://www.amnesty.org/en/latest/news/2024/05/china-overseas-students-face-harassment-and-surveillance-in-campaign-of-transnational-repression/>

<sup>148</sup> Kaye, Surveillance and human rights: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 28 May 2019 para 21.

right of peaceful assembly for fear that their identity could be logged and that this could have negative repercussions.<sup>149</sup>

In 2020, the UN Human Rights Committee recognized that the use of surveillance technology or data collection in the context of assemblies may have a chilling effect on the right of peaceful assembly.<sup>150</sup> States should refrain from restrictions that cause such a chilling effect:

**“The imposition of any restrictions [on the right of peaceful assembly] should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.”<sup>151</sup>**

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasises that “recording peaceful assembly participants in a context and manner that intimidates or harasses is an impermissible interference”.<sup>152</sup> Camera surveillance should not be used to categorise, profile or remotely identify individuals during protests,<sup>153</sup> and information-gathering conducted in the context of assemblies may never be aimed at intimidating or harassing participants or would-be participants in assemblies.<sup>154</sup>

A chilling effect may arise due to a combination of different types of surveillance, of which video surveillance is one form. Amnesty International spoke with protesters who mentioned various forms of surveillance as reasons for why they felt less comfortable protesting. For example, S. mentioned the police requesting your identity card (ID) during protests:

**“The fact that you’re being filmed doesn’t feel right, and I feel like that with surveillance in any form. You don’t know what will happen. I once had to show my ID and I thought OK, but what happens with this information? Do I now have a check mark behind my name somewhere or something? And I don’t even dare to ask details, because if you ask, maybe they’ll think I have something to hide. You get really paranoid sometimes. (...) All in all, it makes you feel uncomfortable. And that might be a reason to think next time, I won’t go because I will be on camera. And if they have me on camera five times, maybe they’ll investigate further, right? You just don’t know how it will be used.”**

In addition to cameras, S. also referred to personal data asked when you notify the authorities of your protest (in the Netherlands, you are required to notify authorities prior to the protest):

**“Here at work, almost no one knows about me, that I have these opinions. I would want to work at a ministry one day. If I would have a stamp behind my name somewhere, then I might never get in, so I want to avoid that. Those fears are really deep with everyone in our group. (...) The requirement that our name had to be on an application. We already found that frightening, like, what does this mean for our records? (...) Because you noticed the consequences. People were getting police at their door, saying “we heard you might be involved, are you going and what are your plans?”**

Marisella too mentioned concerns already at the notification procedure:

**“Sometimes we do the notification procedure for others. Because people find it scary to submit their name. (...) It varies per municipality, but sometimes the forms are so extensive. (...) In some they even ask for your social media accounts. (...) And people wonder what are they doing with that information? Are they going to watch me? (...) And we**

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<sup>149</sup> European Court of Human Rights 14 May 2006, no. 28793/02 (*Christian Democratic People’s Party v. Moldova*), par. 77; European Court of Human Rights 2 June 2008, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 (*Nurettin Aldemir and Others v. Turkey*), par. 34.

<sup>150</sup> UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, paras. 10, 61 and 94.

<sup>151</sup> UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, par. 36.

<sup>152</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, UN Doc. A/HRC/31/66, par. 76.

<sup>153</sup> UN Human Rights Council, *Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaetsossi Voule, A/HRC/55/60, 31 January 2024, par. 32.

<sup>154</sup> UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, par. 61.

**as foundation think, oh well, we've been threatened before, and my data they already have registered ten times in the system. So we'll do it."**

It should be noted that requesting details of organizers' social media accounts goes beyond the minimal notification requirements that international human rights law standards suggest might be justified – notification systems are only permissible to the extent necessary to assist the authorities in facilitating the assembly and protecting the rights of others.<sup>155</sup> They may not represent a hidden obstacle to the freedom of peaceful assembly.<sup>156</sup>

Protesters fear not only repercussions from authorities, but also from people who oppose their message. Ali explained to Amnesty International he no longer feels able to participate anonymously in protests, and fears repercussions or online hate for participating in protests. He said:

**"Cameras do make you cautious. Which makes you wear face-covering clothes. (...) I started doing that when things got more grim. Since the PVV [the Party of Freedom] came to power and the far right started attacking us. Now it's time to keep myself and those around me a bit more safe. (...) And in addition, we are being photographed by opponents. There are pictures of us online on their websites. People posted faces of our protesters on Twitter [now X] saying, you should look up these people. You should go and get them."**

Marisella stated she wished it had been possible to participate anonymously, since she noticed the consequences when people who opposed her message found out who she was and where she lived:

**"At some point my name was out there and it went all over social media and everyone knew who I was. (...) I received threats from people on Facebook. I had to start legal proceedings. People have been convicted for threatening me. At one point Kick Out Black Pete had to provide security at my house because they came to my door in the middle of the night. (...) My daughter went out the door, she comes back and she's totally in shock. And she's holding this sticker. She says our door is full of them. At that moment I knew people had figured out where I lived. They delivered a message. I went offline right then. I had been threatened for a long time, I saw all kinds of things, but it was on socials. And at that moment, I still feel the physical pain, for my husband and my children. My husband, he really looked at me too, like: and now it's at our home. I'll never forget that."**

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<sup>155</sup> UN Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, CCPR/C/GC/37, par. 70.

<sup>156</sup> European Court of Human Rights, 7 February 2017, no. 57818/09 (*Lashmankin and others v. Russia*), para. 445.



## BOX VI: ANONYMITY, FACE COVERINGS AND HUMAN RIGHTS

As the experiences from E., S., Ali and Marisella illustrate, protesters may have legitimate reasons to participate anonymously. Yet camera surveillance is making it increasingly difficult to remain anonymous during a protest. Consequently, protesters may turn to face coverings to protect themselves. Protesters may cover their faces for an array of legitimate reasons: in addition to concerns about identification, protesters may wear masks for the purpose of protecting their health, want to protect themselves from tear gas, wear masks of public officials to express dissent, or cover their face as a form of expression, including religious expression. The use of face coverings in itself should therefore not be considered as constituting violent behaviour or indicating an intention to engage in violence.<sup>157</sup>

Under international human rights law standards, a ban on covering one's face in the context of protests should only be lawful where there are "reasonable grounds for arrest".<sup>158</sup> Such situations could occur, for example, when a person is engaging in or shows a clear intent to imminently engage in violence or if the face covering constitutes a symbol or form of expression that is directly and predominantly associated with advocacy of hatred that constitutes incitement to discrimination, hostility or violence.<sup>159</sup>

But in the Netherlands, a partial national ban on face coverings applies to a number of public places where assemblies could take place.<sup>160</sup> Some municipalities have also issued bans on face coverings in relation to assemblies.<sup>161</sup> Blanket prohibitions on face coverings are inherently disproportionate and discriminatory as they affect all individuals seeking to exercise their right of peaceful assembly and preclude consideration of the specific circumstances of each proposed assembly.<sup>162</sup> They are also gendered and racist in the harm they inflict, for example when they affect Muslim women and girls.<sup>163</sup>

<sup>157</sup> Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), CCPR/C/GC/37, para.60.

<sup>158</sup> Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), CCPR/C/GC/37, para.60.

<sup>159</sup> Amnesty International, *Under protected and over restricted: the state of the right to protest in 21 European countries*, 2024, p. 203-204, <https://www.amnesty.org/en/documents/eur01/8199/2024/en/>

<sup>160</sup> See Official Gazette 2018, 222, available at <https://zoek.officielebekendmakingen.nl/stb-2018-222.html>

<sup>161</sup> For example, in the Hague municipality, the guidelines state that "participants in the demonstration are not allowed to wear clothing that covers the face in order to be able to commit crimes unseen". See "Report a demonstration", <https://www.denhaag.nl/nl/vergunningen-enonthefingen/demonstratie-melden/#regels-tijdens-de-demonstratie>

<sup>162</sup> Amnesty International, *Under protected and over restricted: the state of the right to protest in 21 European countries*, 2024, p. 203-204, <https://www.amnesty.org/en/documents/eur01/8199/2024/en/>

<sup>163</sup> Amnesty International EU, "Regional overview of islamophobia in Europe: Submission to the CoE PACE Committee on Equality and Nondiscrimination", 21 September 2022, <https://www.amnesty.eu/news/regional-overview-of-islamophobia-in-europe-a-submission-to-thecouncil-of-europe-pace-committee-on-equality-and-non-discrimination/>



# RECOMMENDATIONS

To the Dutch legislature:

1) **Regulate the use of camera surveillance by law**

Only allow for camera surveillance in the context of protests when strictly necessary and proportionate for the purpose of:

- a) crowd safety;
- b) the prevention, investigation and prosecution of a serious criminal offence that is actually taking place or where there is reasonable suspicion of imminent criminal behaviour;
- c) the evaluation and/or accountability of police actions.

Establish a presumption of non-retention for data collected in the context of a protest, unless retention is necessary and proportionate and only available for the purpose of:

- a) the investigation and prosecution a specific serious criminal offence;
- b) the evaluation and/or accountability of police actions.

2) **Ban facial recognition technology**

Ban the development, production, sale, export and use of facial recognition technology for identification purposes, by all public and private actors.

3) **Ensure human rights impact assessments**

Introduce a mandatory requirement for the police to conduct and publish human rights impact assessments prior to the introduction of digital technologies such as video surveillance cars and drones.

4) **Ensure public accountability and transparency**

Require the police to register all decision-making regarding cameras and other digital technologies used in the context of a protest in publicly available databases. The registrations should be appropriate for examination of human rights impact, including possible discriminatory effects. Ensure the investigation of all allegations of human rights violations, publish the findings and ensure the right to an effective remedy.

To the Dutch police:

5) **Establish clear policies on the use of cameras**

Camera surveillance in the context of protests should only be considered when strictly necessary and proportionate for the purpose of:

- a) crowd safety;
- b) the prevention, investigation and prosecution of a serious criminal offence that is actually taking place or where there is reasonable suspicion of imminent criminal behaviour;
- c) the evaluation and/or accountability of police actions.

Establish a presumption of non-retention for data collected in the context of a protest, unless retention is necessary and proportionate and only available for the purpose of:

- a) the investigation and prosecution a specific serious criminal offence;
- b) the evaluation and/or accountability of police actions.

6) **Refrain from using biometric technologies**

Do not use biometric technologies, such as facial recognition technology for identification, that enable mass surveillance and discriminatory targeted surveillance. Clearly communicate that footage obtained from camera surveillance during peaceful assemblies will not be used for facial recognition technologies, either live or retrospectively.

7) **Conduct human rights impact assessments**

Conduct and publish human rights impact assessments for digital technologies which are currently in use, such as video surveillance cars and drones, and prior to the introduction of any other digital technologies introduced in the future.

8) **Ensure public accountability and transparency**

Register all decision making regarding digital technologies used in the context of a protest in publicly available databases. The registrations should be appropriate for examination of human rights impact, including possible discriminatory effects. Ensure meaningful engagement with impacted communities, civil society organisations, oversight bodies and human rights experts around the development and deployment of digital technologies, as well as in the implementation, monitoring and evaluation of policies and practices. Investigate complaints of human rights violations, make public the findings and take appropriate steps to allow for effective remedy and redress. Cooperate in investigations by oversight bodies such as the Dutch Data Protection Authority.

To the Dutch Data Protection Authority:

9) **Provide explanation and guidelines on data processing in the context of protests**

Take in consideration the interpretation and scope of Article 3 of the Dutch police Act and the purposes and means of registering data in police databanks. Ensure transparency in the process, consult human rights experts and affected communities and individuals, and make guidelines publicly available.

10) **Investigate the processing of personal data of peaceful protesters in police systems**

Enforce the right to privacy and the right to data protection. Consult the National Ombudsman, human rights experts and affected communities and individuals in this process.

11) **Take appropriate measures in case of privacy violations**

If appropriate, consider administrative fines (Art. 35c (1) (c) Dutch Police Data Act) or incremental penalty payments (Art. 35c (1) (b) Dutch Police Data Act).

# ANNEX: EXAMPLES OF CAMERA USE PROVIDED BY THE POLICE

## Example deployment of drone at an assembly

9 September 2023, assembly/blockade A12/Utrechtsebaan by Extinction Rebellion (XR)

- **Used drone:** DJI Matrice 300
- **Date and place assembly:** 9 September 2023, The Hague
- **Motivation for deployment:** the aim of the drone deployment was to generate a visual overview for police staff for the purpose of giving operational direction to colleagues on the ground, given that there was a real risk of public disorder.
- **Storage period:** 28 days
- **Actions taken:** no images of the drone were requested or used for investigation purposes. The images were only used for the purpose as described above.

## Example deployment video vehicle at an assembly

**Example 1:** 23 September 2023, assembly/blockade A12/Utrechtsebaan by Extinction Rebellion (XR) in combination with anti-Koran protests by Pegida at embassies in The Hague

- **Type of camera:** color PTZ camera (PTZ meaning Pan, Tilt, Zoom. A PTZ camera is a steerable camera that can move along three axes: horizontal, vertical, and zoom in/out).
- **Date and place assembly:** The Hague, 23 September 2023
- **Motivation for deployment:** visual of the movements of Pegida and the unfolding of the assemblies at various embassies. This was insufficiently possible through the available static (fixed) cameras. The risk in this operation concerned the possibility of violent counter-protests, given the circumstance that these often arise quickly. The video vehicle supported the police in getting an overview of the situation on the streets and recognising disorder.
- **Storage period:** 28 days
- **Actions taken:** no images were requested or used for investigation purposes. The images were only used for the purpose as described above.

**Example 2:** 12 October 2023, anti-Koran protest

- **Type of camera:** color PTZ camera.
- **Date and place assembly:** The Hague, 12 October 2023
- **Motivation for deployment:** at a prior Koran burning, public order had been disrupted by a group of people throwing stones and seeking confrontation. The video vehicle is mobile to get a picture of the situation at the scene on one hand and on the other hand, images can help us in a possible investigation. Fixed cameras were insufficient at the spot, hence the video vehicle.
- **Storage period:** 28 days
- **Actions taken:** no images were requested or used for investigation purposes. The images were only used for the purpose as described above.

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## Contact



info@amnesty.org



facebook.com/  
AmnestyGlobal



@Amnesty



amnesty.org



Amnesty International  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW, UK

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