



Office for Democratic Institutions and Human Rights

# **THE NETHERLANDS**

## **PARLIAMENTARY ELECTIONS**

**17 March 2021**

**ODIHR Election Expert Team**  
**Final Report**



**Warsaw**  
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**THE NETHERLANDS**  
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**ODIHR Election Expert Team Final Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the Government of the Netherlands to observe the 17 March 2021 parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Expert Team (EET), which focused on the legal framework and the implementation of alternative voting methods, including for persons with disabilities, as well as campaign finance rules and the complaints and appeals processes.

The legal framework for parliamentary elections is comprehensive and adequately structured to provide for the conduct of democratic elections. Legislative changes since the last parliamentary elections include the establishment of a permanent register of voters abroad, the obligation to publish voting results by polling station and new requirements for the accessibility of polling stations to voters with disabilities. The Elections Act was amended ahead of these elections by a temporary law to facilitate the conduct of elections during the COVID-19 pandemic. The temporary law meets the criteria for legislation in emergency situations, including the necessity and proportionality of the measures introduced.

Elections are principally administered by municipal authorities, with organizational support and methodological guidance from the Ministry of the Interior and Kingdom Relations (MoIKR) and the Electoral Council (EC), an independent administrative body. Measures to address the challenges arising from COVID-19 were undertaken well in advance, including the identification of suitable polling and counting locations and the procurement of protective equipment. The recruitment of polling staff was facilitated by a campaign conducted by the MoIKR. All levels of the election administration operated professionally and enjoyed the confidence of stakeholders.

The temporary law introduced early voting and expanded the use of proxy voting and postal voting. ODIHR has previously recommended a review of proxy voting given the potential challenges the practice poses to the secrecy and equality of the vote, and indications of higher incidence of voting by men on behalf of women in some communities. Voting by post, previously available only for voters abroad, was automatically provided to all voters aged over 70. Overall, postal voting was efficiently administered. In order to address a common mistake made by voters with the ballot return envelopes, the MoIKR introduced a late change in the rules on processing postal ballots, which reduced the number of potentially invalid votes. Early voting on 15 and 16 March was positively perceived by the stakeholders, with many municipalities opening more polling stations than required by law.

The authorities at all levels attached importance to improving access for people with disabilities and subscribed to a joint action plan ahead of these elections. Recent amendments require all polling stations to be accessible for voters with physical disabilities, enabling many of them to vote independently. Municipal authorities were encouraged to equip designated polling stations for voters with sensory impairments, but further efforts are needed to eliminate barriers for such voters.

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<sup>1</sup> The English version of this report is the only official document. An unofficial translation is available in Dutch.

The legal framework regulates public funding and sets out disclosure requirements for electoral contestants, thus providing a degree of transparency of campaign contributions. Parties and candidates may receive unlimited donations from private individuals and legal entities, including from abroad. Anonymous donations of up to EUR 1,000 are permitted with no requirement for registration, which reduces transparency. Electoral contestants do not report on campaign expenditures. Prior recommendations to introduce more transparency of financing and an independent oversight authority remain unaddressed.

The electoral dispute resolution system is trusted by stakeholders and appears to be capable of timely and effective adjudication of the complaints submitted, despite the absence of specific deadlines for some of the potential complaints. There is no possibility to appeal election results in court, which is at odds with international standards and good practice.

In line with the ODIHR's standard methodology, the ODIHR EET did not undertake a comprehensive and systematic observation of election-day procedures. The limited number of polling stations visited during the early voting and on election day were well equipped with election materials and personal protective equipment. Long queues of voters formed outside of some polling stations, but social distancing was observed. Polling staff were knowledgeable about the procedures and followed the health protocols. Counting was transparent. The final turnout announced by the Electoral Council was 78.7 per cent.

This report offers recommendations to support efforts to further align elections in the Netherlands with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations focus on evaluating proxy voting to ensure equal suffrage and a secret ballot, the introduction of additional voting methods for voters in places of detention, the supervision of political finance through an independent body, the registration of all campaign contributions including those in-kind, the introduction of reasonable limits on donations, the regulation of foreign donors and the ability to appeal to court against election results as the final authority. ODIHR stands ready to assist the authorities to address the recommendations contained in this and previous reports.

## **II. INTRODUCTION AND ACKNOWLEDGMENTS**

Following an invitation from the Government of the Netherlands to observe the 17 March 2021 parliamentary elections and based on the findings and conclusions of the Needs Assessment Mission (NAM) undertaken between 19 and 22 January 2021, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Expert Team (EET). The ODIHR EET, based in The Hague, was deployed between 6 and 22 March 2021 and consisted of four experts drawn from four OSCE participating States.

The ODIHR EET examined the legal framework and the implementation of alternative voting methods, including for persons with disabilities, as well as campaign finance rules and the complaints and appeals processes. Correspondingly, this report is limited in scope and does not offer a broad assessment of the electoral process. Specific areas under review were assessed for their compliance with OSCE commitments and other international obligations and standards for democratic elections, as well as with national legislation. In line with ODIHR methodology, the EET did not undertake a systematic observation of the election-day procedures, but visited a limited number of polling

stations. The February 2021 ODIHR NAM report and previous ODIHR reports on elections in the Netherlands provide additional details and context for this report.<sup>2</sup>

The ODIHR EET wishes to thank the Ministry of Foreign Affairs for the invitation to observe and the Ministry of the Interior and Kingdom Relations (MoIKR) for its co-operation and assistance. The ODIHR EET also expresses its appreciation to the Electoral Council (EC), the Council of State (CoS), the Commission on Political Party Finance, the Association of the Netherlands Municipalities, municipal authorities, political parties, academia, and representatives of other institutions and civil society organizations for sharing their views.

### III. BACKGROUND

The Netherlands, the largest part of the Kingdom of the Netherlands, is a constitutional monarchy with a parliamentary system of government.<sup>3</sup> The bicameral parliament comprises the 150-member lower chamber (House of Representatives) and the 75-member upper chamber (Senate). Members of the House of Representatives are elected by direct universal suffrage, while those of the Senate are elected by provincial councils. The government (headed by the Prime Minister) is appointed and dismissed by the monarch, following initial approval by the parliament. Members of both chambers serve four-year terms.

Members of the House of Representatives are elected through the system of proportional representation with an open list. Voters can select one candidate from the list and their choice will also count as a vote for that list. The threshold for representation is the natural electoral quota and seats are distributed at the national level among the lists which obtained enough votes for representation.<sup>4</sup> Political parties contesting elections to the House of Representatives may present a list of candidates in any of the country's 20 electoral districts. In total, 37 parties registered to contest these elections with 1,579 candidates. Of the 37 contesting parties, 20 were on the ballot in all electoral districts.

### IV. LEGAL FRAMEWORK

The legal framework for parliamentary elections is comprehensive and adequately structured to provide for the conduct of democratic elections. Legislative changes since the last parliamentary elections include the establishment of a permanent register of voters abroad, the obligation to publish voting results by polling station, and new requirements for accessibility of polling stations for voters with disabilities. A number of ODIHR's prior recommendations remain unaddressed, including those related to campaign finance regulation and electoral dispute resolution.

The 1954 Charter of the Kingdom of the Netherlands establishes the political relations between the constituent entities of the Kingdom and includes the basic principles of elections such as free and

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<sup>2</sup> See [all previous ODIHR reports on the Netherlands](#).

<sup>3</sup> The Kingdom of the Netherlands also comprises Aruba, Curaçao, and Sint Maarten in the Caribbean.

<sup>4</sup> The natural electoral quota is calculated by dividing the total number of votes by the number of seats in the House. First, party lists are allocated "full seats" based on the number of natural quotas in their vote share. Within each list, candidates who received preference votes amounting to at least 25 per cent of the electoral quota are deemed elected, regardless of their position on the list. Otherwise, the distribution of seats to candidates follows their order on the list. The seats remaining after the "full seat" allocation are distributed according to the D'Hondt formula.

secret ballot. The 2002 Constitution is legally subordinated to the Charter and contains, among other provisions, the conditions for the right to vote and the right to stand for political office. The 1989 Elections Act regulates the competences of election administration bodies, candidate registration, and the procedures for various elections. The 1989 Elections Decree unifies prior regulations and details selected sections of the Elections Act. Other relevant legislation includes the 2013 Political Finance Act, the 2009 General Administrative Law Act, and 1994 Criminal Code. The Netherlands is party to the major international and regional instruments related to democratic elections.

The right to vote is granted to all citizens over the age of 18. Positively, there are no limitations to the right to vote due to intellectual disabilities. The right to vote can be suspended by a Court decision as an additional sanction for individuals convicted of certain crimes and sentenced to a custodial sentence exceeding one year.<sup>5</sup> The right to stand is granted to all eligible voters. There is no age requirement for candidacy but one must turn 18 in order to take a seat in parliament, thus a younger candidate could be elected but would only be able to take up mandate upon reaching the age of 18.

#### **A. TEMPORARY COVID-19 ELECTIONS ACT**

The Temporary COVID-19 Elections Act (the temporary Act) was enacted on 4 November 2020, following broad political consensus, to address measures for local elections of 18 November 2020. Subsequently, the temporary Act was amended to introduce measures for parliamentary elections and introduce temporary deviations from the Elections Act. The consolidated temporary Act came into force on 3 January 2021 and expired on 1 July 2021. The temporary Act took into consideration the general criteria for legislation in emergency situations, namely, that the measures be necessary for overcoming the challenges of pandemic, that they be proportionate, and temporary.<sup>6</sup>

The temporary Act introduced changes to election procedures in line with public health measures, expanded voting by proxy, introduced early voting and voting by post for elderly voters residing in the country, and extended the deadline for receiving postal ballots from voters abroad. The limited expansion of in-country postal voting to elderly citizens only was challenged in court, which rejected the lawsuit.<sup>7</sup> Specific rules regarding the sanitation of polling stations and personal protective measures were introduced by a ministerial order.

#### **B. PARTICIPATION OF WOMEN**

Equal rights for all persons are laid down in the Constitution. Women are active in public life, although not always equally represented. One third of the members of the Senate are women, as are one third of MPs of the outgoing House of Representatives; 89 out of 324 mayors are women, as are 7 out of 16 ministers in the outgoing cabinet. There are 2 female members of the Electoral Council (out of 7) and 22 female councillors in the Council of State (out of 72).<sup>8</sup> There are no mandatory

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<sup>5</sup> According to the Electoral Council, in practice this penalty has not been imposed for years.

<sup>6</sup> The [explanatory memorandum](#) for the Temporary Act and subsequent [amendments](#) provides detailed rationale for each measure. See also Section II.B of the [2020 Venice Commission Report 'Respect for Democracy, Human Rights and the Rule of Law during States of Emergency: Reflections'](#).

<sup>7</sup> In a proceeding submitted to the District Court of The Hague on 2 February 2021, the Party for the Animals (PvDD) demanded that the State make postal voting possible in the upcoming parliamentary elections for all voters. The Court rejected the claim, holding that an order to legislate was not in the power of the judiciary and that the right to vote was not impaired since the State created alternative additional voting opportunities for all.

<sup>8</sup> In its [2016 Concluding observations on the Netherlands' 6<sup>th</sup> periodic report](#), the CEDAW Committee recommended to "[c]ontinue to take targeted measures to further increase the representation of women in

quotas or other temporary special measures in the law to promote women's participation.<sup>9</sup> Parties often voluntarily set targets for the representation of women in their candidate lists. In these elections, there were 81 women among the top ten candidates (40.5 per cent) on the lists of the 20 parties which presented candidates in all electoral districts, and 6 of these lists were led by women. The list of one political party (*Staatkundig Gereformeerde Partij, SGP*) did not include any women.<sup>10</sup> All ODIHR EET interlocutors from women's organizations spoke in favour of legal temporary special measures to achieve equal representation for women, noting, however, that the introduction of such measures has not been part of the political debate.

*Consideration should be given to introducing temporary special measures in the legal framework to promote women's participation in elected office. Such measures could include quotas and placement requirements for candidate lists, as well as linking public subsidies for political parties to the representation of women among party members and candidates.*

## V. ELECTION ADMINISTRATION AND ALTERNATIVE VOTING METHODS

Elections are principally administered by municipal authorities, with organizational support and methodological guidance from the MoIKR and the Electoral Council (EC), an independent administrative body.<sup>11</sup> Among the responsibilities of the EC are the registration of the names and logos of the political parties wishing to contest the elections, the registration of candidate lists, the aggregation of voting results, and the allocation of mandates.

Municipal authorities are responsible, among other tasks, for maintaining voter registers, mailing voting passes to eligible voters, identifying polling station premises, recruiting and training staff for polling station committees (PSCs), procuring electoral materials, providing information to voters, and reporting voting results to district election committees.<sup>12</sup> Decentralized election administration leads to some variation of practices between the municipalities on issues such as PSC training and management.<sup>13</sup> At the same time, decentralization also fosters the development and sharing of innovative approaches and tools.<sup>14</sup>

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political and public life, in particular in local government, academic institutions and the foreign service" (paragraph 32).

<sup>9</sup> Paragraph 3 of the [OSCE Ministerial Council Decision 7/09](#) calls on participating States to "encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender balanced representation in elected public offices at all levels of decision-making".

<sup>10</sup> In 2010, the Supreme Court ruled that the state was obliged to take effective measures that would lead to SGP granting the right to stand to women. The SGP appealed to the European Court of Human Rights (ECtHR), which [decided](#) that the application was ill-founded and therefore inadmissible.

<sup>11</sup> The EC consists of seven members (currently, five men and two women), individually appointed by the government for four-year terms, which may be renewed twice. The EC has its own secretariat and budget.

<sup>12</sup> For parliamentary elections, the country's 255 municipalities are grouped into 20 electoral districts (19 in Europe and one encompassing the three overseas municipalities of Bonaire, Sint Eustatius, and Saba). District election committees (DECs) are responsible for aggregating voting results in the district. They are *ex officio* headed by the mayor of the municipality in which the DEC has its seat.

<sup>13</sup> For example, on election day in The Hague municipality two PSCs of five members managed each polling station in shifts: one from 7:30 until 16:00, the other from 16:00 until the completion of the ballot count. In Leiden municipality, one PSC of seven members had rotating hours throughout the day, so that at least four members were present at any given time, and three additional PSC members joined for the ballot count at 21:00.

<sup>14</sup> For example, the *Stembureau-App* application, originally developed in Rotterdam, was used for managing polling stations and checking the validity of voting passes by 16 municipalities.

All levels of the election administration operated professionally and enjoyed the confidence of stakeholders. Municipal electoral officials met by the ODIHR EET explained that while these elections posed new challenges, preparations for addressing COVID-19 pandemic were undertaken well in advance, including the identification of suitable polling and counting locations and the procurement of protective equipment. Although the pandemic resulted in many experienced former staff not volunteering to be PSC members for these elections, sufficient numbers of polling staff were recruited, owing also to a campaign conducted by the MoIKR.<sup>15</sup> Polling staff were trained through online tools developed by the MoIKR, but some municipalities also used their own tools, tailored to the municipality's PSC training needs.

In previous parliamentary elections, in addition to the traditional method of voting in person at a polling station, voters could alternatively cast their ballot through a proxy, and voters abroad voted by post. The temporary Act expanded the use of proxy voting and postal voting methods, and added the option of early voting in polling stations.

#### A. PROXY VOTING

Any voter who wishes to do so may authorize someone (a proxy) to vote on her or his behalf. This may be done by simply providing the chosen proxy who resides in the same municipality with a signed voting pass.<sup>16</sup> A proxy residing outside the voter's municipality may be authorized through an application to the mayor. A proxy may cast the additional vote in a polling station only together with her or his vote, upon presentation of the signed voting pass and (copy of) the identification document of the represented person. Under the temporary Act the number of proxy votes which may be cast by one person was increased from two to three. The Electoral Council announced that some 8.8 per cent of the votes were cast through a proxy.<sup>17</sup>

In the reform agenda developed after the 2017 parliamentary elections, the Association of the Netherlands Municipalities (VNG) and the Dutch Association for Civil Services (NVVB) recommended the abolition of proxy voting and its replacement with early voting. This recommendation has not yet been adopted. ODIHR has previously recommended that the practice of proxy voting be reviewed, given the potential challenges to secrecy and equality of the vote and indications of higher incidence of voting by men on behalf of women in some communities, as well as the impossibility of verifying that the proxy voted as intended. Although soliciting proxy votes is prohibited by law, several ODIHR EET interlocutors recalled instances in past elections when political actors openly encouraged their activists to "harvest" proxy votes.

*Consideration should be given to exploring alternative voting methods which duly uphold OSCE commitments and other international standards for democratic elections.*

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<sup>15</sup> PSC members are recruited by municipalities through an open call for applications. Due to anticipated withdrawals, municipalities and the MoIKR also formed reserve pools of trained staff.

<sup>16</sup> A voting pass (*stempas*) is sent by the municipality to each registered voter ahead of the election and is required for exercising the right to vote. A voting pass has a serial number and security features and enables the voter to cast a ballot at any polling station within the municipality. If a voting pass is lost, a replacement may be requested from the municipality up to five days before election day. Voters who wish to vote outside their municipality may request a "voter's pass" (*kiezerpas*).

<sup>17</sup> In these elections, of the 10,462,677 votes cast, 917,698 or some 8.4 per cent were by proxy. In the 2017 parliamentary elections, some 9.1 per cent of voters used this voting method.



For voters in places of detention, proxy voting was effectively the only option to vote, with the exception of elderly detainees over the age of 70 (see *Postal voting* below). ODIHR EET interlocutors from human rights organizations reported that many prisoners experienced barriers with exercising their right to vote, including the unavailability of identification documents and of anyone who could act as a proxy.<sup>18</sup>

*Additional voting methods should be introduced for voters in places of detention, enabling them to exercise their right to vote personally and by a secret ballot.*

## **B. POSTAL VOTING**

Prior to these elections, postal voting was only available to voters abroad. Voting from abroad is administered by the Hague municipality. Since April 2017, a permanent register of voters abroad was created, replacing the previous system of registering anew for each election. The new register is thought to have contributed to the increased number of voters abroad compared to the previous parliamentary elections.<sup>19</sup> Under the temporary Act, the deadline for receiving the postal votes from abroad was extended until five days after election day, at 12:00 on 22 March.

Similarly to the previous parliamentary elections, voters abroad voted with a different, much smaller ballot, which included party names and logos, as well as numbers for places on the list, but not the candidates' names.<sup>20</sup> This design enabled voters abroad to opt to receive the ballot by email and print it themselves. According to the MoIKR, draft amendments to the Elections Act pending in parliament will allow trials of this ballot design for in-country voting. These trials are seen as a step towards introducing a machine-readable ballot.<sup>21</sup> If adopted, these amendments would also address a prior ODIHR recommendation to consider a more user-friendly and accessible ballot format.<sup>22</sup>

The temporary Act introduced the option of postal voting for voters aged over 70 residing in the country. While the EC and some political parties supported the extension of postal voting to all voters, many municipalities were concerned about their capacities to handle postal voting on a large scale. No prior application was required for access to the postal ballot and some 2.4 million eligible voters automatically received postal vote packets. Voting passes of these voters ("voting-plus pass") enabled them to vote by post or another method of their choice.

The postal vote packet included the ballot, the ballot envelope, the return envelope with the pre-printed return address, and voting instructions. In the return envelope, voters sent back ballots sealed in the ballot envelope, as well as signed voting passes, which they received separately. Return envelopes could be sent by post or dropped off at the designated drop-off points, the list of which could be found on the municipality's website or in voter information materials.<sup>23</sup> Returned postal votes were securely stored by the municipalities.

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<sup>18</sup> According to these interlocutors, no polling stations were established in penitentiary institutions for these elections, and prisoners' leave requests were discouraged due to COVID-19.

<sup>19</sup> Over 94,000 compared to 80,000 in 2017. According to the Hague municipality, over 500,000 Dutch citizens reside outside the Netherlands.

<sup>20</sup> If a vote is cast only for the list, it counts as a preference for the first candidate on the list.

<sup>21</sup> Introduction of ballot scanners was recommended by the Van Beek Commission established in 2013 by the MoIKR to explore the use of new voting technologies.

<sup>22</sup> With 37 registered contestants, the ballot for these elections measured approximately 100 by 60 cm.

<sup>23</sup> In practice, voters could also bring their return envelopes to regular polling stations during the early voting and on election day. These votes were received by the PSC staff and passed on to the municipal election offices.

Counting of postal votes was set to start from 7:30 on 17 March. However, the municipalities were authorized by law to start opening return envelopes earlier, from the evening of 12 March, in order to extract the ballot envelopes and check the validity of voting passes. As the process of opening return envelopes began, it became clear that some voters had not followed the instructions and a significant number of postal votes could be deemed invalid. One common mistake appeared to be placing the voting pass together with the ballot in the ballot envelope. Following criticism in the media and after soliciting opinions from the Council of State (CoS) and the EC, on 16 March the MoIKR changed the instruction, allowing polling staff to open ballot envelopes to extract the voting passes, without revealing the voters' choices. This change was swiftly communicated and implemented. The effort to preserve the validity of postal votes was welcomed by the public. In the final results, invalid votes accounted for some 0.3 per cent of the total postal votes cast but this figure did not include discarded mail.<sup>24</sup>

Postal voting was overall efficiently administered. Several associations of the elderly were critical of the postal voting preparations and suggested that the procedure should have been made simpler, and voter information campaign should have been more extensive and less reliant on online resources. Many ODIHR EET interlocutors, including municipal electoral officials, were of the view that postal voting could be retained after the expiration of the temporary Act, but the design and procedures should be reviewed. Reliability of the post, regarded as a prerequisite for this voting method, is high.<sup>25</sup> Over 40 per cent of the voters entitled to vote by post did so, and more votes were cast by post than through a proxy.<sup>26</sup>

### C. EARLY VOTING

The temporary Act introduced early voting on the two days preceding the election day – 15 and 16 March. It mandated the municipalities to open a limited number of polling stations for early voting, depending on the number of registered voters.<sup>27</sup> Some municipalities chose to open more polling stations than required by law, based on their surveys of voter intentions and in order to encourage more people to vote early.<sup>28</sup>

While all voters wishing to do so were legally permitted to cast an early vote, the MoIKR and other authorities emphasized that the option should be used by the people who were particularly vulnerable to COVID-19 due to health reasons. This message may have contributed to the relatively low turnout during the early voting, which left some of the polling stations capacities prepared by the municipalities underutilized. Municipal authorities and other ODIHR EET interlocutors positively

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<sup>24</sup> According to the Electoral Council, 1,069,048 votes were cast by post, of which 3,080 were invalid and 1,181 were blank. A [civil society inquiry](#) estimated that about 65,000 returned mail items were discarded because the voting pass was invalid or missing or the ballot paper was not included.

<sup>25</sup> The postal service *PostNL* informed the ODIHR EET that its quality measures show between 95 and 98 per cent accuracy for the timeliness of delivery, and 99.8 per cent accuracy of delivery to the correct address. The [2002 Venice Commission's Code of Good Practice in Electoral Matters](#) recommends that "postal voting should be allowed only where the postal service is safe and reliable" (Guidelines, paragraph I.3.2.iii).

<sup>26</sup> In total, 1,069,048 votes were cast by post and 917,698 through a proxy.

<sup>27</sup> Municipalities with fewer than 10,000 registered voters were required to open 1 polling station (PS); between 10,000 and 30,000 – 2; between 30,000 and 60,000 – 4; between 60,000 and 100,000 – 8; between 100,000 and 350,000 – 10, and over 350,000 – 20 polling stations.

<sup>28</sup> For example, the Nijmegen municipality opened 30 PSs for early voting instead of the required 10. The Hague municipality opened 48 PSs instead of the required 20.

assessed the early voting method. Certain adjustments to the procedures were suggested, primarily with the aim of optimizing polling station resources.<sup>29</sup>

#### **D. PARTICIPATION OF PERSONS WITH DISABILITIES**

The authorities at all levels attached importance to improving access to elections for people with disabilities. In January 2019, the Elections Act was amended to require that all polling stations should be accessible for voters with physical disabilities, enabling them to vote independently as far as possible. Compliance with the accessibility of polling stations is monitored by municipal councils in consultation with organizations for people with disabilities. A ten-point action plan to improve accessibility for people with disabilities was jointly initiated ahead of these elections by the MoIKR, the EC, and the Association of the Netherlands Municipalities, among other partners. It included adapting designated polling stations to the needs of people with specific types of disabilities, making voter information accessible, and encouraging political parties to make their programmes accessible.

Most ODIHR EET interlocutors noted considerable progress in making voting accessible for voters with physical disabilities. All polling stations visited by the ODIHR EET during early voting and on election day were wheelchair-accessible.<sup>30</sup> Several interlocutors indicated that better accessibility should also be achieved for voters with sensory impairments. Polling stations equipped with aids for independent voting by such voters are sometimes too few and information about them is not always communicated in accessible formats. Some voters with disabilities expressed disappointment that they were unable to vote by post.

The Elections Act allows voters with physical disabilities to be assisted in the polling station. People with intellectual disabilities may be assisted in the polling station but the law and instructions to polling staff prevent anyone from assisting such voters in the polling booth. ODIHR has previously questioned the consistency of this limitation with the CRPD. The MoIKR and other interlocutors reiterated that they are exploring how to balance the appropriate assistance with the need to safeguard the independent choice of such voters against interference.<sup>31</sup>

*Authorities at all levels should continue their efforts to make the electoral process more accessible to voters with disabilities, including voters with sensory impairments and voters with intellectual disabilities. To this end, alternative voting methods for voters with disabilities should be explored.*

### **VI. CAMPAIGN FINANCE**

Campaign finance remained largely unregulated until 2013, when the Political Finance Act (PFA) was adopted. The PFA set out disclosure requirements for electoral contestants, which contributed to the transparency of financing of political parties and campaigns. There were no substantial

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<sup>29</sup> For example, ballots from the early voting polling stations could be counted from 7:30 on 17 March but officially announced only after 21:00, technically requiring the corresponding PSC to re-convene in the evening.

<sup>30</sup> The ODIHR EET did note that voting booths were not large enough to accommodate mobility scooters, and voters using such vehicles had to mark their ballots outside the voting booth.

<sup>31</sup> At the time of the CRPD ratification, the government made a [declaration](#) that in order “[t]o safeguard voting by secret ballot without intimidation, as provided for in article 29(a)(ii), and to ensure the principle of one vote per person, the Kingdom of the Netherlands declares that it will interpret the term ‘assistance’ in article 29(a)(iii) as assistance only to be effected outside the voting booth, except with regard to assistance required due to a physical disability, in which case assistance may also be permitted inside the voting booth”.

amendments to the PFA after the previous parliamentary elections and many prior recommendations made by the Council of Europe's Group of States Against Corruption (GRECO) and ODIHR remain unaddressed.<sup>32</sup> The review of the PFA in 2018 by an *ad hoc* Evaluation and Advisory Committee established by the MoIKR recommended to limit foreign donations, to reduce the threshold for the disclosure of donations, and to strengthen the impartiality of the oversight authority.

Draft amendments to the PFA registered in parliament in December 2020 include an increase in public funding for political parties, the prohibition of donations from outside the European Union and the European Economic Area (EU/EEA), and the abolition of the threshold on disclosure of donations received from within the EU/EEA countries, thereby requiring all donations to be disclosed. These amendments were not adopted for these elections.

## A. SOURCES OF FUNDING

The law provides for both public and private funding. A political party is eligible for public funding if it is represented in parliament (the House of Representatives or the Senate) and has at least 1,000 members with voting rights, who each pay an annual membership fee of at least EUR 12.<sup>33</sup> Political parties may designate ancillary institutions that are eligible for public funding.<sup>34</sup> Public subsidies are dedicated only for specific activities, including election campaigns. The MoIKR informed the ODIHR EET that state funding for parliamentary parties increased from EUR 16.9 million in 2019 to EUR 24.8 million in 2020.

The legislation does not regulate the sources of private funding, allowing unlimited donations from private individuals and legal entities. Donations from foreign donors are unregulated, at odds with Council of Europe's recommendations.<sup>35</sup> Anonymous donations of up to EUR 1,000 are allowed and do not have to be registered by parties or candidates, contrary to international standards and good practice.<sup>36</sup> Many ODIHR EET interlocutors were concerned that large donations could be used to purchase political influence and spoke in favour of regulating foreign donations.<sup>37</sup>

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<sup>32</sup> In its [Addendum to the Second Compliance Report on the Netherlands](#) of 12 December 2014, GRECO concluded that its recommendations to prohibit donations from donors whose identity is not known to the political party/grouping/candidate; to lower the current disclosure threshold of some EUR 4,500 for donations; and to establish independent monitoring of political funding, including electoral campaigns, were not implemented. ODIHR reiterated these recommendations in 2017.

<sup>33</sup> The grant consists of a basic sum per party (some EUR 186,000), plus an amount per seat in the parliament (some EUR 54,000), plus an amount per member.

<sup>34</sup> The PFA provides that a political party may designate one political science institute, one political youth organization and one institution for foreign activities.

<sup>35</sup> Article 7 of the [2003 Council of Europe Recommendation Rec\(2003\)4 of the Committee of Ministers on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns](#) provides that "states should specifically limit, prohibit or otherwise regulate donations from foreign donors".

<sup>36</sup> Article 8(c)i of the [2001 Council of Europe Recommendation 1516 of the Parliamentary Assembly on Financing of Political Parties](#) provides that "financing of political parties must be fully transparent, which requires political parties, in particular to keep strict accounts of all income and expenditures (...)". Article 3 of the [2003 Council of Europe Recommendation Rec\(2003\)4](#) advises that "measures taken by states governing donations to political parties should provide specific rules to ensure transparency of donations and avoid secret donations". Paragraph 212 of the [2020 ODIHR and Venice Commission Guidelines on Political Party Regulation](#) provides that "anonymous donations should be strictly regulated, including through a limit on the aggregate allowable amount of all anonymous donations".

<sup>37</sup> Paragraph 209 of the [2020 ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that "reasonable limits on the total amount of contributions may be imposed and the receipt of donations should be transparent", while paragraph 213 provides that "reasonable limitations on private donations may include the

*To ensure accountability, all campaign contributions should be registered, including donations in-kind. Consideration should be given to regulating donations from foreign donors and to introducing reasonable limits on donations.*

## **B. REPORTING AND OVERSIGHT**

Parties are required to keep records of all contributions over EUR 1,000, including contributions in-kind. All political parties which registered to participate in these elections had to report to the MoIKR all contributions over EUR 4,500 and debts of over EUR 25,000 incurred during the period between 1 January 2019 and 24 February 2021. In addition, the candidates had to provide information on contributions over EUR 4,500 for the same period. According to the MoIKR, 35 out of 37 parties submitted the reports.<sup>38</sup> As required by law, these reports were made public seven days before the elections by the MoIKR.<sup>39</sup> Such disclosure requirements contributed to the transparency of party funding and provided information to voters ahead of the elections. However, donations and debts below the above-mentioned thresholds, and large donations and debts made during the three weeks before the elections, remained undisclosed. Contrary to good practice, there is no obligation to report on campaign expenditures before or after the election.<sup>40</sup>

*In order to increase the transparency of campaign funding, the law could be reviewed in order to lower the public disclosure threshold on donations and require the disclosure of donations received up until election day. Consideration should be given to introducing a post-electoral reporting requirement, covering all campaign contributions and expenditures.*

Parliamentary parties are required to submit annual financial reports, with an opinion of an external auditor, by 1 July to the MoIKR. The MoIKR publishes the reports in the Government Gazette and on its website, although there are no legal deadlines for the publication.<sup>41</sup> Furthermore, there is no uniform format of financial reporting, which results in varying categorization of items reported and details provided.

The MoIKR is the oversight body in charge of the supervision of political party and campaign finance, at odds with international standards which call for an independent monitoring body.<sup>42</sup> The Ministry is assisted by the Commission on Political Party Finance, an advisory body. The Commission is composed of three members, appointed by the MoIKR for a four-year term, which can be renewed

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determination of a maximum amount that may be contributed by a single donor. Such limitations have been shown to be effective in reducing the possibility of corruption or the purchase of political influence”.

<sup>38</sup> According to the law, potential administrative sanctions may be up to EUR 25,000. The MoIKR informed the ODIHR EET that it would decide whether to apply sanctions.

<sup>39</sup> All political parties together reported EUR 13.6 million in donations and EUR 24.6 million of debts. The three parties that received the most in donations over EUR 4,500 were SP (*Socialistische Partij*) - EUR 6.7 million, *GroenLinks* - EUR 1.8 million, *D66* - EUR 1.45 million. The three political parties that had the most debts were *GroenLinks* - EUR 8.6 million, *D66* - EUR 3.8 million, SP - EUR 3.6 million. The candidates received some EUR 71,000 in total.

<sup>40</sup> Paragraph 261 of the [2020 ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that “it is good practice to require the following reports: (...) final reports after the election and certification of results, to provide a complete and comprehensive account of all campaign financing”. Also see paragraph 259.

<sup>41</sup> In 2019, 14 parliamentary parties submitted annual financial reports for 2018. The MoIKR published these reports on its [website](#) on 25 October 2019.

<sup>42</sup> Article 12a of [2003 Council of Europe Recommendation Rec\(2003\)4](#) advises that “states should provide for independent monitoring in respect of the funding of political parties and electoral campaigns”. See also para 266 and 267 of the [2020 ODIHR and Venice Commission Guidelines on Political Party Regulation](#).

once. The Commission reviews the parties' annual reports and the electoral contestants' financial reports and advises the MoIKR on their compliance with the law. The Commission informed the ODIHR EET that its review of the contestants' financial reports was hampered by the late arrival of documents from the MoIKR and that these were also in a state of disorder.

Based on the advice from the Commission, the MoIKR may impose administrative sanctions of up to EUR 25,000 for not keeping records on contributions and debts, receiving anonymous donations over EUR 1,000, or not submitting the required reports.<sup>43</sup> A fine imposed on a parliamentary political party may be deducted from its state subsidy. The Public Prosecutor may be notified if a political party committed a criminal offence. In case of criminal convictions, a political party may lose the state subsidy for up to four years.

*The supervision of political finance should be entrusted to an oversight body independent from the government, with powers clearly defined in the law.*

## VII. COMPLAINTS AND APPEALS

The legal framework includes procedures for complaints at specific steps of the electoral process such as voter registration, registration of party names, candidate registration, and election-day proceedings. Voter registration issues are dealt with at the municipal level, while complaints related to the registration of names of electoral contestants and candidate lists can be addressed to the EC. Decisions of the EC can be appealed to the administrative division of the CoS, the highest administrative court in the country. Decisions of the CoS are final and its rulings are published online. Complaints and appeals on other aspects of the electoral process such as campaigning and campaign finance are not specifically dealt with in the electoral legal framework and can be submitted to courts as administrative cases.

Timelines for submitting complaints to the CoS regarding voter registration and the registration of contestants' names and lists of candidates, and deadlines for their adjudication are specifically provided for. Other appeals, although not specifically regulated in terms of procedures and timelines, are expected to be dealt within the general administrative procedure of six weeks. While this general timeframe may be too long to ensure a timely remedy, in practice election-related cases are dealt with in an expedited manner.<sup>44</sup>

During voting, any objection submitted orally with a polling station committee (PSC) should be dealt with by the PSC itself and entered into a report, which is forwarded to the EC. PSC records are also reviewed by the Credentials Committee of the outgoing House in the process of validation of results. Prior to the announcement of results, the EC may decide, upon a reasoned request from one or more

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<sup>43</sup> The MoIKR informed the ODIHR EET that no sanctions were applied during the last two years. In December 2020, the Commission recommended to fine the Forum for Democracy up to EUR 25,000 for inaccuracies in its report but no fine was imposed by the MoIKR.

<sup>44</sup> Paragraph 5.10 of the [1990 OSCE Copenhagen Document](#) states that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity". See also paragraph II.3.3.g of the [2018 Venice Commission's Code of Good Practice in Electoral Matters](#), which recommends that "time-limits for lodging and deciding appeals must be short (three to five days for each at first instance)".



voters or at its own initiative, to re-count votes from polling stations if there are reasons to believe that errors had been made, which might have affected the allocation of seats.<sup>45</sup>

According to the Constitution and the Elections Act, the outgoing House of Representatives is in charge of validating election results. All complaints related to the conduct of the elections can be dealt with by the Credentials Committee, which is composed of five members of parliament, representing the five largest parties in the House of Representatives.<sup>46</sup> The Committee reviews voting results and may annul the elections and order a new vote. There is no appeal to court against election results, which is not in line with international standards and good practice.<sup>47</sup>

*Consideration should be given to providing for an appeal to court against election results as the final authority.*

For these elections, the CoS dealt with 14 complaints and rejected them all.<sup>48</sup> Additionally, the CoS heard one case related to voter registration.<sup>49</sup> The electoral dispute resolution system enjoys the confidence of stakeholders and appears to be capable of timely and effective adjudication of the complaints submitted, despite the absence of specific deadlines for some of the potential complaints.

## VIII. ELECTION DAY

In line with the ODIHR's standard methodology, the ODIHR EET did not undertake a comprehensive and systematic observation of election-day procedures. Members of the ODIHR EET visited a limited number of polling stations during the early voting days (15 and 16 March) in the municipalities of Amsterdam and Rotterdam, and on election day (17 March) in the municipalities of Delft, Leiden, The Hague, and Zoetermeer.

All polling stations visited were well equipped with election materials and personal protective equipment against COVID-19. Long queues of voters formed outside of some polling stations, but social distancing was observed. The flow of voters was smooth and generally well-organized. Due to a high turnout, several polling stations informed the ODIHR EET that they had to request additional election materials (blank ballots, red pencils, and ballot boxes) from the municipal headquarters, and these were promptly delivered without any interruption to the voting process.

Polling staff were knowledgeable about voting procedures and followed the COVID-related protocols, including the periodic disinfection of voting booths, change of gloves, and disinfection of pencils after each use.<sup>50</sup> Voters were asked to disinfect hands at the entrance and at the exit, and offered a face mask if they did not have one. With respect to voters who refused to wear a mask inside

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<sup>45</sup> The MoIKR informed the ODIHR EET of a draft law that would provide a possibility to submit in writing (instead of orally, as it now in the Act) a notice of errors in the reports of PSCs and DEC's to the EC.

<sup>46</sup> The ODIHR EET was unable to meet with the Credentials Committee, despite repeated requests.

<sup>47</sup> See paragraph II.3.3.a of the [2018 Commission's Code of Good Practice in Electoral Matters](#): "For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible." See also ECtHR, [Mugemangango v. Belgium](#), application no. 310/15.

<sup>48</sup> Specifically, 12 cases were declared unfounded and two were inadmissible. The cases related, inter alia, to the contestants' names and logos, as well as rejections of candidate lists by the EC due to insufficient numbers of declarations of support from voters. In one case the court fee was not paid.

<sup>49</sup> A citizen without a permanent residence was informed by the municipality of Rotterdam that he was not eligible to vote. The Council of State determined his eligibility on the basis of *de facto* residency and stated that none of the exclusion clauses provided in the Constitution applied to this individual.

<sup>50</sup> In many polling stations voters were offered to keep the red pencil.

the polling station, understanding differed between the PSC staff, also in the same municipalities. Some noted that masks were mandatory, and voters who did not wear them would be turned away, unless they had a medical reason for not wearing a mask. Others were of the opinion that the right to vote was paramount, and as long as such voters did not jeopardize the health of others, they should be allowed to vote.

*Where emergency public health measures are applied, further efforts should be made by the authorities to provide for a uniform interpretation and implementation of these measures by the polling staff.*

Counting observed by the ODIHR EET was transparent, well-organized, and counting procedures were followed. In line with the Elections Act, PSCs were instructed to regard a ballot marked with any colour other than red as invalid. This did not appear to present a problem in practice, since red pencils were provided in sufficient quantities in all polling stations. However, this rule could potentially result in invalidity of ballots in which the voter's will is clearly expressed in a different colour. Those voting by post were able to mark their ballots in red, blue, green, or black colours, without jeopardizing the validity of their vote.

*Consideration should be given to changing the law to allow for all ballots where the voter's choice is expressed clearly to be counted as valid.*

Preliminary election results were reported throughout the election night and on the following day, when in some municipalities PSCs continued counting the preference votes cast for each candidate.<sup>51</sup> Some 35 municipalities organized centralized counting of votes, on a trial basis. The final turnout announced by the Electoral Council was 78.7 per cent.

## IX. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to further enhance the conduct of elections in the Netherlands and to support efforts to align them with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with the past ODIHR recommendations that have not yet been addressed.<sup>52</sup> ODIHR stands ready to assist the authorities of the Netherlands to address the recommendations contained in this and previous reports.

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<sup>51</sup> Under the temporary Act, PSCs were authorized to suspend the count after establishing the number of votes obtained by each list.

<sup>52</sup> In paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. The follow-up of prior recommendations is assessed by the ODIHR EET as follows: recommendations 9 and 17 from the [ODIHR final report on the 2017 parliamentary elections](#) (2017 Final Report) are fully implemented. Recommendations 3 and 10 from the 2017 Final Report are partially implemented. See also the ODIHR [electoral recommendations database](#).



## **A. PRIORITY RECOMMENDATIONS**

1. Consideration should be given to exploring alternative voting methods which duly uphold OSCE commitments and other international standards for democratic elections.
2. Additional voting methods should be introduced for voters in places of detention, enabling them to exercise their right to vote personally by a secret ballot.
3. To ensure accountability, all campaign contributions should be registered, including donations in-kind. Consideration should be given to regulating donations from foreign donors and to introducing reasonable limits on donations.
4. The supervision of political finance should be entrusted to an oversight body independent from the government, with powers clearly defined in the law.
5. Consideration should be given to providing for an appeal to court against election results as the final authority.

## **B. OTHER RECOMMENDATIONS**

### **Legal Framework**

6. Consideration should be given to introducing temporary special measures in the legal framework to promote women's participation in elected office. Such measures could include quotas and placement requirements for candidate lists, as well as linking public subsidies for political parties to the representation of women among party members and candidates.

### **Alternative Voting Methods**

7. Authorities at all levels should continue their efforts to make the electoral process more accessible to voters with disabilities, including voters with sensory impairments and voters with intellectual disabilities. To this end, alternative voting methods for voters with disabilities should be explored.

### **Campaign Finance**

8. In order to increase the transparency of campaign funding, the law could be reviewed to lower the public disclosure threshold on donations and require the disclosure of donations received up until the election day. Consideration should be given to introducing a post-electoral reporting requirement, covering all campaign contributions and expenditures.

### **Election Day**

9. Where emergency public health measures are applied, further efforts should be made by the authorities to provide for a uniform interpretation and implementation of these measures by the polling staff.
10. Consideration should be given to changing the law to allow for all ballots where the voter's choice is expressed clearly to be counted as valid.

## ANNEX I. FINAL RESULTS<sup>53</sup>

Eligible voters: 13,293,186  
Total votes cast: 10,462,677  
Total valid votes: 10,422,852  
Total blank votes: 17,173  
Total invalid votes: 22,652

| List no. | List name                                      | Votes     | Seats |
|----------|--|-----------|-------|
| 1        | VVD (People's Party for Freedom and Democracy) | 22,79,130 | 34    |
| 2        | PVV (Freedom Party)                            | 1,124,482 | 17    |
| 3        | CDA (Christian Democratic Appeal)              | 990,601   | 15    |
| 4        | D66  | 1,565,861 | 24    |
| 5        | GroenLinks (Green Left)                        | 537,308   | 8     |
| 6        | SP (Socialist Party)                           | 623,371   | 9     |
| 7        | PvdA (Labour Party)                            | 597,192   | 9     |
| 8        | ChristenUnie (Christian Union)                 | 351,275   | 5     |
| 9        | PvdD (Party for the Animals)                   | 399,750   | 6     |
| 10       | 50PLUS   | 106,702   | 1     |
| 11       | SGP (Reformed Political Party)                 | 215,249   | 3     |
| 12       | DENK   | 211,237   | 3     |
| 13       | FvD (Forum for Democracy)                      | 523,083   | 8     |
| 14       | BIJ1   | 87,238    | 1     |
| 15       | JA21   | 246,620   | 3     |
| 16       | Code Orange                                    | 40,731    | 0     |
| 17       | Volt   | 252,480   | 3     |
| 18       | NIDA   | 33,834    | 0     |
| 19       | PP (Pirate Party)                              | 22,816    | 0     |
| 20       | LP (Libertarian Party)                         | 5,546     | 0     |
| 21       | JONG   | 15,297    | 0     |
| 22       | Splinter                                       | 30,328    | 0     |
| 23       | BBB (Farmer-Citizen Movement)                  | 104,319   | 1     |
| 24       | NLBeter  | 8,657     | 0     |
| 25       | Henk Krol List                                 | 9,264     | 0     |
| 26       | OPRECHT  | 5,449     | 0     |
| 27       | Jesus Lives                                    | 5,015     | 0     |
| 28       | TON (Proud of the Netherlands)                 | 13,198    | 0     |
| 29       | UCF (U-Buntu Connected Front)                  | 1,880     | 0     |
| 30       | [List no. 30]                                  | 8,277     | 0     |
| 31       | PvdE (Party of Unity)                          | 804       | 0     |
| 32       | DFP (The Party Party)                          | 3,744     | 0     |
| 33       | VSN (Free and Social Netherlands)              | 942       | 0     |
| 34       | WZNL (We are the Netherlands)                  | 553       | 0     |
| 35       | MN (Modern Netherlands)                        | 245       | 0     |
| 36       | The Greens                                     | 119       | 0     |
| 37       | PvdR (Party for the Republic)                  | 255       | 0     |

<sup>53</sup> [Announced](#) by the Electoral Council on 26 March 2021.

## ABOUT ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations. More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).