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# End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the Kingdom of the Netherlands, The Hague (7

# October 2019)

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## I. Introduction

## II. The Law and Policy Directly Governing Racial Equality in the Kingdom of the Netherlands

## III. EQUALITY, RACIAL DISCRIMINATION, RACISM AND INTOLERANCE: LIVED EXPERIENCES

## DUTCH PARADOX

### Civil and Political Rights

*Political Representation*

*Hate Crimes and Hate Speech*

*Law Enforcement and Ethnic Profiling*

*Counterterrorism Policy*

*Freedom of Expression and Assembly, and Protection of Human Rights Defenders*

*Carceral Facilities*

### Economic, Social and Cultural Rights

*Black Piet*

### Other Populations of Concern

*Migrants, Refugees and Asylum Seekers*

*Stateless Persons*

### Intersectionality

### Preliminary General Recommendations

1. The Special Rapporteur would like to thank the Kingdom of the Netherlands for its invitation and assistance during her visit to the Kingdom from 30 September to 7 October 2019.
2. The terms of reference of her visit were to assess the Kingdom's efforts in eliminating racism, racial discrimination, xenophobia, and related intolerance in its territories. As Special Rapporteur, she is independent from any government or organization, and serves in my individual capacity as an expert on the issues relating to her mandate.

3. On this mission, the Special Rapporteur remained within the European territories of the Netherlands, and did not visit the Special Municipalities of Bonaire, Sint Eustatius and Saba. Similarly, she did not visit the countries of Aruba, Curacao and Sint Maarten. As a result, any analysis of the territories she did not visit is based on desk research, information received from Kingdom authorities, and written and in-person submissions from organizations and individuals familiar with the human rights situations in these territories. She met with national government and parliamentary representatives in The Hague, and with municipal authorities in Rotterdam and Amsterdam. She also met with the National Ombudsman, representatives of the Netherlands Institute for Human Rights, civil society, academics, people of African descent, religious communities, LGBTI communities, migrants, refugees and asylum seekers, Roma, Sinti and Traveller communities, and individual victims of racism, discrimination and related intolerance. She sincerely thanks everyone who took the time to meet with her in The Hague, Amsterdam, Rotterdam and Leiden. The Special Rapporteur also visited a prison facility and immigration detention center. Unfortunately, despite her best efforts to do so, she was not able to access the Central Reception Centre in Ter Apel.
4. The following analysis comprises the Special Rapporteur's preliminary findings, which she makes in a spirit of open and constructive dialogue with the Government and other stakeholders. She will present a full report with more detailed findings to the Human Rights Council at its 44th session in July 2020. She urges those civil society and other organizations working on issues related to racial equality who were unable to meet with her during her visit to send written submissions to [racism@ohchr.org](mailto:racism@ohchr.org) by 15 February 2020. She especially welcomes written submissions from groups working on racial discrimination, racism and related intolerance in Bonaire, Sint Eustatius, Saba, Aruba, Curaçao and Sint Maarten.
5. By ratifying the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Kingdom of the Netherlands has committed itself to respect and ensure racial equality, and the right of all persons to be free from racial discrimination. ICERD stipulates that "any distinction, exclusion, restriction or preference" on the basis of "race, colour, descent, or national or ethnic origin" must be prohibited as unlawful racial discrimination when it has "the purpose or effect" of impairing the equal enjoyment of human rights by all.<sup>1</sup>

Under international law, the prohibition of racial discrimination is absolute and cannot be interpreted restrictively. This means, among other things, that: racial discrimination is prohibited in the enjoyment of all civil, political, economic, social, and cultural rights; equality must be guaranteed for everyone regardless of ancestry or descent, including persons belonging to racial and ethnic groups, and non-citizens. Achieving substantive racial equality also requires an intersectional analysis of the problem of racial discrimination and intolerance. An intersectional approach takes seriously the different experiences of racial discrimination that individuals endure because of their race, ethnicity, national origin, or culture, in combination with their gender, sex, sexual orientation, disability states, age and any other social category.

6. Article 2 of ICERD requires the Kingdom “to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms”<sup>2</sup> and anticipates the necessity of special measures or affirmative action “taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms[.]”<sup>3</sup> Article 2 of this treaty further requires the Kingdom to ensure that all public authorities and national and local public institutions engage in no acts of racial discrimination. It also obligates the Kingdom to “take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”
7. By ratifying ICERD, the Kingdom agreed to adopt measures to prohibit all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and acts of violence and incitement of such acts, and any form of assistance to such activities.<sup>4</sup> Ratification of ICERD further obligates the Kingdom “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups[.]”
8. The Kingdom’s commitment to human rights, equality and non-discrimination is enshrined in the very first article of its Constitution.

Article 1 of the Constitution prohibits discrimination on the basis of race, political opinion, sex, religion or any other grounds.<sup>5</sup> The General Equal Treatment Act (“AWGB”), which was adopted in 2004, implements Article 1 by prohibiting direct and indirect racial discrimination on the basis of religion, belief, political opinion, nationality, race, sex, sexual orientation or civil status.<sup>6</sup> Article 137 of the Kingdom of the Netherlands Criminal Code, criminalizes racist insults; incitement to racial hatred or discrimination against persons or their property; the dissemination of racist materials; the participation in or provision of financial assistance to activities that aim to discriminate on the basis of race; and racial discrimination committed in the exercise of one’s public office, profession or trade. The Netherlands Institute for Human Rights and National Ombudsman also promote human rights policy and legislation by providing legal advice and monitoring compliance national and local authorities’ compliance with human rights obligations. At the municipal level, the 2009 Municipal Discrimination Services Act establishes local anti-discrimination offices to combat racial discrimination.<sup>7</sup> The anti-discrimination offices are intended provide free advice to victims of racial discrimination, report racist incidents and support the Public Prosecutor Service’s investigation of racist offenses.<sup>8</sup> In 2013, the Kingdom launched a National Human Rights Action Plan that defines the government’s responsibilities and monitors the implementation of human rights, including measures to combat racial discrimination and ethnic profiling. However, the Action plan applies only to the Netherlands, including the special municipalities of Bonaire, St Eustatius and Saba; it does not include Aruba, Curaçao and St. Maarten.<sup>9</sup>

9. The Kingdom has had the benefit of a thorough and very recent review of its equality and non-discrimination legal and policy frameworks, including by the European Commission against Racism and Intolerance (“ECRI”) in a report adopted in April 2019. The Special Rapporteur endorses ECRI’s analysis and in this preliminary statement reiterates the following concerns, some of which were raised by the Committee on the Elimination of Racial Discrimination in its Concluding Observations: The AWGB, while comprehensive in many ways, does not encompass the full definition of racial discrimination under article 1 of ICERD;<sup>10</sup> and although, there are anti-discrimination bureaus in the European territories of the Netherlands, these bureaus do not exist in the Special Municipalities and the other countries in the

Kingdom.<sup>11</sup>

10. The Kingdom of the Netherlands must adopt a comprehensive definition of racial discrimination in its national legislation, in accordance with article 1 of ICERD. It is important that the Kingdom ensure the adoption of a Human Rights Action Plan and Institute for Human Rights in Aruba, Curaçao and St. Maarten, including by providing the requisite technical and other support.<sup>12</sup> The Kingdom should ensure the application of its equality frameworks across the entire Kingdom, and ensure the existence of anti-discrimination bureaus or their equivalents in all its territories. Within the Netherlands, some interlocutors during the mission raised concerns about some anti-discrimination bureau's lack of independence and sufficient resources necessary to effectively combat discrimination. More robust oversight is required to ensure that policy reforms that have been taken to enhance independence actually have a positive effect on the ground.<sup>13</sup>
11. Equality, Racial Discrimination, Racism and Intolerance: Lived Experiences
12. The Kingdom of the Netherlands has a population of just over 17.28 million people. This population is ethnically and racially diverse, a result of the Kingdom's colonial past, periods of labor and other migration, and the arrival of different groups involuntarily displaced by conflict and natural disasters. A number of its cities also sit firmly at the center of international commerce and international law. Almost a quarter of the Dutch population is comprised of people who were born abroad or people who were born in the Kingdom and have at least one parent who was born abroad.<sup>14</sup> This diversity means equality, non-discrimination, tolerance and inclusion are issues of the utmost importance to the well-being of the Kingdom.
13. The Kingdom's formal commitments to equality, non-discrimination and tolerance are impressive, and during the Special Rapporteur's meetings with government officials, many affirmed a commitment to these principles, citing Article 1 of the Constitution as a fundamental guiding principle for all of their work. Dutch national identity was articulated by authorities as multicultural, multiracial and proudly committed to tolerance and inclusion, not only in the contemporary period, but also in the Kingdom's long history.

14. At the same time, the Special Rapporteur encountered equally powerful evidence of Dutch national identity and national belonging as racialized and as implicitly (and in some cases explicitly) restricted or qualified on ethnic and religious bases. In other words, the reality of the Kingdom seems to be that race, ethnicity, national origin, religion and other categories determine who is considered and treated as fully Dutch. To be more specific, in many areas of life—including social and political discourse, and even through some law and policy—the message is reinforced that to be truly or genuinely Dutch is to be white and of western origin, whereas other racial and ethnic groups such as people of African and Asian descent (who have been a part of the Dutch Kingdom for centuries), people of North African and Middle Eastern descent, Roma, Sinti and Travellers—even when they hold full citizenship and have done so for multiple generations—are characterized as not really or not fully Dutch. Religion is also salient, and in the present political climate in particular, Islam is repeatedly represented—including in the national parliament—as inherently opposed to Dutch national identity, and even to liberal democracy more generally.
15. The fractured nature of Dutch national identity and belonging is especially vivid in the terminology used in public political and social discourse to refer to the different ethnic and racial groups present in the country, including those who are full citizens as a matter of law. This discourse highlights the distinction between Dutch people “with a non-western migrant background” and those who are considered to be without a migrant background. Notably, people with a western migrant background seem largely to be treated as native in public discourse, and their national belonging seems rarely contested. Of course, there is nothing inherently offensive or discriminatory about the designation of being of a non-western migrant background. Rather, the problem is that racial and ethnic minority Dutch citizens in the Netherlands, through this continuing emphasis in public and political discourse on the non-western origin of their descendants and ancestors, become branded as perpetual foreigners. On the other hand, for Dutch citizens from the non-European territories of the Kingdom, the label of being of a migrant background, which seems to be used frequently in public discourse, is patently wrong given their centuries-long membership in the Kingdom.
16. During the mission, interlocutors across the spectrum described the

Netherlands' political landscape as highly polarized. Many pointed to the high profile political assassinations that occurred in 2002 and 2004, as well as the response of political leaders to these assassinations, as a turning point in race and religious relations in the country. The decades since have seen the rise of right-wing, nationalist populist rhetoric, which poses a complex threat to racial equality.<sup>15</sup> Interlocutors also highlighted the mainstreaming of xenophobic and racist discourse, including at the highest levels of political discourse, as well as a consolidation of Islamophobia, which they see as widely tolerated even in circles typically relied upon to defend human rights. The parliamentary and public discourse—including in the media—concerning what many refer to as the Nikab Ban offers a case in point. The law at issue bans face coverings in a number of public places, and while its text may be read as facially neutral, the political discourse surrounding it has made clear that Muslim women are its intended targets. Interlocutors also highlighted the perverse irony of this measure given that Muslim women are among the most vulnerable to physical harassment and attacks in public, and even to workplace discrimination, especially if they wear a headscarf. This law has no place in a society that prides itself in promoting gender equality. In a positive development, some municipalities and police have made known that they do not intend to prioritize the enforcement of this law. However, even without official enforcement, the emphasis on the use of citizen arrests to enforce the law has been highlighted in the media, has resulted in private citizens motivated by anti-Muslim sentiment taking matters into their own hands.<sup>16</sup>

17. Although Government authorities cannot control public discourse, they can fundamentally shape it and influence it, and indeed they do all the time. Government authorities all the way from the Prime Minister to heads of department and others makes statements in the press and public relating to Dutch culture and society, and in the process lend credibility to certain perspectives while discrediting others. Interlocutors raised concerns that the Government has not done enough to stand against explicit and subtle forms of intolerance and discrimination against racial, ethnic and religious minorities, most saliently, perhaps, in the context of the mainstreaming of Islamophobic sentiments.
18. Antisemitism, Islamophobia, Afrophobia, Antigypsism and other

forms of intolerance all typically share an explicit or implicit ideological commitment to white racial and cultural supremacy, including false and dangerous views rooted in discredited biological accounts of racial difference, sometimes manifesting as the belief that certain cultures—viewed in static and stereotypical terms—are inherently inferior. Less ideologically pure manifestations of these forms of intolerance include casual but harmful stereotypes about certain cultural and ethnic groups as inherently criminal, dangerous or incompetent. Where supremacist ideology is explicit, international human rights law requires governments to impose sanctions. But where intolerance is couched in subtler terms, even unconsciously, including through jokes, teasing or thoughtless remarks, international human rights principles emphasize the essential need for education. Education on the history and legacy of slavery and colonialism—projects that enforced and normalized white supremacy, normalized racial and cultural hierarchies, and that resulted in systemic accrual of wealth to colonial powers, through exploitation of colonized peoples and territories—is urgent in the Kingdom of the Netherlands. Especially for people who understand themselves as native Dutch, their ability to fully understand their relationship to ethnic and racial Dutch minorities and the ways in which race privileges some while subordinating others is contingent on greater engagement with this history. The Special Rapporteur commends steps that have been made, especially at the municipal level in cities such as Amsterdam and Rotterdam, to invest in more accurate and representative accounts of history in the Netherlands. **These efforts should be strengthened and the national government should show even greater leadership where these efforts are concerned.**

19. During the mission, the Special Rapporteur engaged with many government and civil society actors committed to equality and non-discrimination. However, she also encountered at least one senior official who openly articulated racist stereotypes about how certain ethnic and cultural groups were inherently predisposed towards criminality, raising serious concerns about the role that explicit and implicit bias and prejudice are playing in the administration of justice in some sectors of the Netherlands.
20. It is absolutely vital that the Government remain committed to equality, non-discrimination and an inclusive vision of Dutch national identity and of the Kingdom more broadly. At the same time, there is a very

real danger that insisting that this vision of equality and inclusiveness is already *a fact* when it is not can stand in the way of doing the very difficult work that is required to transform commitments into reality. The paradox in the Netherlands is that insistence that equality and tolerance already exist operates as a barrier to achieving this equality and tolerance in fact, because the insistence makes it difficult to mobilize the resources and action necessary to ensure equality, non-discrimination and inclusion for all.

21. At a fundamental level, the highest levels of political office in the Netherlands do not reflect the racial and ethnic diversity of the Kingdom. There are few parliamentarians belonging to racial and ethnic and minority groups, and the national government itself—especially at the highest levels of policy-making, including as it relates to equality and non-discrimination—does not reflect the racial and ethnic diversity of the Kingdom. In consultations, even Dutch people of African descent whose ancestors were historically part of consolidating the prosperity of the Kingdom reported the persisting difficulties they face in entering political office and in rising through the ranks of the civil service to the positions where policy is determined. There is not a single member of the Netherlands parliament who is a person of African descent. According to one report, “no members of ethnic minorities were appointed Ministers in the period 1982-2008.”<sup>17</sup> Roma, Sinti and Traveller direct participation in government and in policy-making seems almost inexistent. Where there are racial and ethnic minority members of national and local legislative bodies, some reported facing grave difficulties and opposition to fighting for racial equality and non-discrimination, and also recounted personal indignities they have had to endure as a result of pervasive racist and xenophobic political discourse. Some even reported threats and intimidation from the public, including death threats.
22. Racist and xenophobic political discourse seems connected to trends in hate speech and hate crimes targeting racial, ethnic and religious minority groups, including hate incidents targeting minority women, and LGBTI persons. Interlocutors appropriately stressed that the racist and xenophobic language used by some national and municipal politicians, and the lack of a consistent, public and strong rejection of this discourse by government officials emboldens private actors to harass and attack racial, ethnic and religious minorities. Muslim

women consulted during the visit expressed grave concern about violence and harassment in public against women visibly displaying symbols of their Muslim religion, especially with the introduction of the Nikab ban, which media sources have highlighted can be enforced through citizen arrests.

23. Ethnic origin (41%) is the most frequent ground identified in discrimination cases registered with the police. Antisemitic incidents, mostly commonly take the form of vandalism, verbal abuse and hate emails, and recent trends show an alarming increase in holocaust denial online. Antisemitic and Afrophobic chants also remain an issue in the football context.
24. The Special Rapporteur learned of some important initiatives to strengthen the monitoring and combatting of discriminatory incidents, including by improving data collection and analysis of crimes involving discrimination. The Netherlands has commendably taken action to prosecute discriminatory crimes and speech, and although much work need to be done to ensure greater accountability, it is important to highlight that there have also been prosecutions of high level political actors. As ECRI has noted, however, sanctions for those who are convicted remain low relative to the severity of their crimes, which undercuts the deterrent effect of these criminal punishments. Actors prosecuted for racist violence and disorderly conduct during their attacks of peaceful anti-Black Piet protests last year, for example, received fines and community service sentences that do not send a message sufficiently strong to dissuade the offending behavior. The government must be commended for its positive engagement with Jewish communities to develop appropriate measures for combatting antisemitism. **The Special Rapporteur recommends similar engagement with other communities facing threats, including Muslim groups, and human rights defenders, such as anti-Black Piet activists.**
25. Hate incidents online are also a grave challenge currently faced by the Netherlands, as is algorithmic discrimination and exclusion. These are issues that will be canvassed in the final report of the Special Rapporteur.
26. According to minority communities and reports by experts, racial and ethnic profiling by the Dutch police and the Royal Netherlands Marechaussee is a common practice.<sup>18</sup> There is substantial evidence

of profiling during traffic control, identity checks, preventive searches and border stops. Minority communities expressed fear, mistrust and frustration at being over-policed but under-served. A 2017 survey by the EU Fundamental Rights Agency (FRA) revealed that Dutch Muslims have, compared to Muslims in other European countries, the lowest level of trust in the police.<sup>19</sup> In a 2014 study by the Netherlands Institute of Social Research, 33% of Turkish and Moroccan Dutch, 25% of Surinamese Dutch and 20% of people with roots in the Dutch Caribbean who had made contact with the police in the previous year reported feeling discriminated against.<sup>20</sup> The police use their stop and search powers disproportionately on members of minority groups,<sup>21</sup> and police officers are emboldened to misuse their powers due to weak accountability mechanisms for stop and search operations. A 2016 study commissioned by the government revealed that the police used proactive investigatory stops to disproportionately target ethnic minorities. The study also indicated that the police did not have an objective and reasonable basis to conduct 40% of the proactive investigatory stops.<sup>22</sup>

27. The Special Rapporteur commends the police for its recent reforms, especially the introduction of a professional code (Handelingskader) and training module to help create fair and effective policing practices. The Dutch National Police has also adopted a strategic plan to promote diversity in the police force.<sup>23</sup> In January 2016, the police drafted several regional-level policy documents to promote better registration of discriminatory incidents; improve cooperation between societal actors, the police and the Public Prosecution Service in tackling discrimination; and prevent ethnic profiling by the police. However, the government does not monitor or collect data to assess the impact of these new reforms.<sup>24</sup> Without such data, it is hard to monitor progress and improve policing practices.
28. Furthermore, there seems not to be a requirement for police to record the bases of proactive stops, and no formal mechanism for monitoring the ethnic breakdown of the population of people subject to these stops and searches. Disaggregated data on ethnicity in police stops is vital for determining the scale of the problem and for developing measures to combat ethnic profiling. In addition, requiring police to articulate the bases for their stops can assist in determining the extent of discriminatory stops and can also be helpful for training police officers to avoid discrimination, as well as for holding

accountable those who may be engaging in discriminatory conduct.

29. The Kingdom of the Netherlands should collect data on stop and search practices and develop strategies to address the disproportionate and excessive use of stop and search powers as well as excessive force.
30. Interlocutors also raised concerns regarding ethnic profiling in immigration enforcement, which the Special Rapporteur will address in her final report.
31. An additional concern is what seems to be institutional racism within some police departments. Institutional racism in the policing context has been used to refer to the collective failure of a police department to provide equal protection of the law to persons on account of their race or ethnicity, including due to ignorance, neglect, and racial stereotyping. Sometimes those harmed are minorities within the police force itself. The visit of the Special Rapporteur occurred shortly after a reliable whistleblower raised very serious concerns about a culture of racial and ethnic discrimination and intolerance within The Hague police department. This is not the first case of whistleblowing within the police force on issues concerning racism and intolerance. The government must take urgent steps to deal decisively with structures and individuals that promote or tolerate racism and discrimination within police forces, and the government must at the same time provide strong protections for whistleblowers brave enough to come forward with the truth. For now, the whistleblower has been suspended, which raises the very serious concern that the few who are brave enough to speak up are punished rather than protected. As the investigation proceeds and is eventually concluded, she must receive the respect and protection she deserves, just as those found to be responsible for creating a hostile environment for racial and ethnic minorities within the police force must be appropriately disciplined. In consultations, representatives of racial and ethnic minority communities cited the failure of government authorities to take decisive action, including in high profile cases such as these, as among the reasons why these communities have little faith in law enforcement, and why some of them view reporting incidents of discrimination and intolerance to the police as pointless.
32. The Special Rapporteur will address the Dutch counterterrorism and counter-extremism policies in her final report. Here she highlights two

concerns. The first is a 2017 finding of the Government Audit Office that it is not possible to evaluate the effectiveness of counterterrorism policy. Inability to evaluate effectiveness is of grave concern because, among other things, the effect this policy can have on stigmatizing Muslim communities in particular, further entrenching polarization that can undercut national security. The second concern relates to citizenship-stripping legislation, policy and procedure, which, while facially neutral, disproportionately affects Dutch people of Moroccan and Turkish descent and therefore runs afoul of international human rights equality and non-discrimination principles.<sup>25</sup>

33. Also of great concern is the treatment of human rights defenders working to combat racism, discrimination and intolerance. Consultations with anti-racism activists highlighted that they are the regular targets of insults, violence and threats, especially by extreme right-wing actors and sometimes with the support of local politicians. Also of great concern is police brutality against anti-racism activists and the seeming failure of law enforcement and judicial authorities to extend equal protection of the law to anti-racism activists, especially those who have been involved in protesting and organizing regarding the issue of Black Piet, such as Jerry King Luther Afriyie. In some cases, even counterterrorism laws have seemingly been used to criminalize anti-racism activists. Such approaches amount to abuse of power inconsistent with international human rights law.
34. The prison population in the Netherlands has been in decline in recent years, which is laudable. A visit to Vught Prison also revealed significant and impressive investment by the Dutch government in generally promoting humane conditions of confinement. However, the Special Rapporteur notes that there have been serious human rights concerns raised with respect to the Vught terrorist units.<sup>26</sup> She welcomes the opportunity to examine the most recent review of the facility by the prison inspectorate, which she was informed evaluates measures that the prison has taken to address these human rights concerns.
35. Although the numbers of those incarcerated are relatively low in the Netherlands, ethnic and racial minorities are significantly and alarmingly overrepresented. Studies suggest that this overrepresentation cannot be explained by socio-economic status alone, and that ethnicity is playing an independent role in determining imprisonment. The prevalence of ethnic profiling and of

criminalization of ethnic and racial minorities seems likely to be a contributing factor. **Ultimately, the government must invest in research to determine the causes of the overrepresentation of ethnic and racial minorities in its prison population, and take the necessary steps to combat this overrepresentation.**

36. The numbers of detainees in immigration detention in the Netherlands is relatively low, and the Special Rapporteur urges the Kingdom to maintain a commitment to immigration detention as a measure of last resort. The Special Rapporteur toured the Rotterdam Immigration Detention Center. In general, the facility management demonstrated a commitment to ensuring non-discrimination, equality and inclusion among staff and also with respect to detainees. This included employment of an ethnically and religiously diverse staff, and concrete measures to create a work environment that accommodates this diversity while at the same time ensuring the safety and security of the facility. This was in stark contrast with Vught, where intercultural sensitivity training and ethnic and religious diversity among staff seemed not to be a priority. Without the appropriate training and diversity among staff, ethnic, religious and cultural stereotypes, as well as implicit biases and prejudice, can result in overly harsh disciplinary measures and unnecessary misunderstanding between staff and detainees. Of concern at the Rotterdam Immigration Detention Center was the continued use of solitary confinement as a disciplinary measure.
37. With respect to detention and carceral facilities, the analysis above refers only to the European territories of the Netherlands and does not encompass the Special Municipalities in the Caribbean, or Aruba, Curacao and St. Maarten. However, the Special Rapporteur reiterates the concerns raised by other human rights bodies regarding the poor conditions of detention and prison facilities in St. Maarten, Aruba, and Curaçao.<sup>27</sup> Of particular concern are the Point Blanche and the Philipsburg police stations in St. Maarten, the correctional institution in Aruba and Block 1 of the Centre for Correction and Detention in Curaçao.<sup>28</sup> The Special Rapporteur recommends that the Kingdom of the Netherlands establish common measures to improve detention and prison conditions and ensure that they are in accordance with international human rights standards.
38. Racial and ethnic minorities experience discrimination and exclusion where their socio-economic rights are concerned in the Netherlands.

This is an issue that will be addressed in more detail in the final report of the Special Rapporteur. In this statement, pressing issues relating to education, employment and housing are highlighted.

39. In 2016, unemployment declined for persons with a non-western migration background, although data showed that unemployment was higher for second-generation migrants than it was for first-generation migrants. Net labor participation for persons with a non-western migration background is also lower than for so-called native Dutch, and of concern is that labor participation is lower for second-generation migrants than for first-generation migrants, even though the former hold superior educational qualifications.<sup>29</sup> A report in 2017 highlighted the prevalence of employment discrimination for persons with Arabic or Muslim-sounding names, finding that a person with a stereotypically Dutch sounding name with a violent criminal record is three times more likely to get a positive response than someone with an Arabic name.<sup>30</sup> Another report highlighted that, between 2016 and 2017, the risk of poverty for refugee households increased more rapidly than for other households.<sup>31</sup> And CPB has noted that people with Turkish, Moroccan, Surinamese or Antillean migration backgrounds have approximately a quarter less to spend than so-called native Dutch because of differences in income from work: people with a migration background have less paid work and also earn less per hour.<sup>32</sup> Dutch-Moroccans, for example, earn 31% less than so-called native Dutch. And for Roma, Sinti and Travellers—an admittedly diverse group with diverse needs—understanding the nature and extent of their labor market exclusion is made difficult by the dearth of data on their circumstances. **The Special Rapporteur learned of measures both at the national and municipal level that are aimed at combatting labor market discrimination and she commends these and calls for their committed enforcement. She also calls attention to the recommendations of the research institute Art.1 that the Action Plan for Labour Market Discrimination 2018-2021 be supplemented to include clear and measurable objectives.**
40. The educational sector reflects the dynamics as the labor market; racial, ethnic and religious minorities experience discrimination, exclusion and marginalization requiring redoubled investment by the government to fulfill its equality and non-discrimination commitments. For Roma children, their presence in special needs schools was three times the rate of the national average. Interlocutors expressed

concerns about mentoring and counselling of ethnic and racial minority students that channels them to lower-ranked educational and vocational institutions, sometimes not on the basis of their individual academic potential but on account of their ethnic origin or the educational or employment level of their parents.

41. In consultations with racial and ethnic minority university students, they lamented that their professors lack the tools and the language effectively to confront racism on their campuses, and their universities are in general ill-equipped even to address the most blatant racist expressions. Instead, campuses default to treating even discriminatory and intolerant speech and conduct targeted at racial and ethnic minorities as protected freedom of expression. Students noted that, even in classes on international human rights, the legal frameworks governing racial equality and non-discrimination are rarely, if ever, discussed, and more generally their university curricula fails to represent the history and present of Dutch racial and ethnic minorities.
42. With respect to housing, a recent study used situation testing and mystery calls to investigate discrimination against ethnic minorities in the Dutch housing sector.<sup>33</sup> The journalists conducting the study received 28% fewer invitations to view rental properties when using Moroccan-Dutch-sounding names, as compared to Dutch-sounding names. They also made calls to real estate agents seeking prospective tenants but expressly requesting that ethnic minorities not be included. More than 90% of real estate agents were willing to accommodate this discriminatory request. **The Special Rapporteur learned from the research institute Art.1 that the government has since taken measure attempting to address housing discrimination, and she urges continued efforts in this regard.**
43. The figure of Black Piet in Dutch cultural life has been the subject of prior human rights analysis,<sup>34</sup> and remains greatly contested in the Netherlands. There are many for whom this remains an innocent cultural performance, but there can be no doubt that the figure of Black Piet embodies degrading and dehumanizing racial stereotypes about black people, reflecting both unfronted colonial legacies and the persisting subordinate status, especially of Dutch people of African descent. A genuine commitment to racial equality, non-discrimination and inclusiveness requires national and municipal authorities to play their part in engaging with racial and ethnic minority communities, especially people of African descent, to ensure that

state-sponsored cultural events and narratives are transformed to fully reflect the Kingdom of the Netherlands and its people. The Special Rapporteur learned that there have been important developments where this issue of Black Piet is concerned, including the decision not to include Black Piet in this year's televised national Sinterklaas parade, as well as the constructive and inclusive processes that the city of Amsterdam and others have pursued to combat racism and embrace cultural expressions that better reflect Dutch diversity. She commends these efforts.

44. The Netherlands formal law and policy on the rights of refugees and asylum seekers largely sound, although interlocutors raised serious concerns about the implementation of these laws and policies, including due to an emphasis among officials on deterrence of asylum seekers and refugees, rather than on guaranteeing their protection. The Netherlands has commendably maintained family reunifications for persons with subsidiary protection, and extends to such persons similar protections to Convention refugees. However, interlocutors highlighted that waiting times for refugee status determination are high and may be increasing, and that these delays are detrimental to the wellbeing of asylum seekers and refugees.
45. Of concern are reports of violations of international refugee law in the non-European territories and countries of the Kingdom. The Special Rapporteur notes the human rights reporting that has raised serious concerns, especially with the treatment and detention of refugees and asylum seekers in Curaçao. There are about 26,000 Venezuelans residing in Curaçao who are in urgent need of legal assistance, including access to asylum, shelter, education and other basic services.<sup>35</sup> The government of Curaçao has reportedly forced Venezuelans to return to their crisis-stricken country in violation of the Kingdom's non-refoulement obligations.<sup>36</sup> The Kingdom attributes the geographical difference in treaty compliance to the fact that: "Treaty implementation and compliance is an autonomous responsibility of the individual countries, i.e. Aruba, Curaçao, St Maarten and the Netherlands (for the European and Caribbean parts of the Netherlands)."<sup>37</sup> However, the Kingdom of the Netherlands is the Contracting Party of its international obligations and must harmonize human rights compliance within the Kingdom. The Kingdom of the Netherlands should address the existing protection gaps and adopt comprehensive integration policies that protect the civil, political,

social and cultural rights of migrants, asylum seekers and refugees.<sup>38</sup>

46. Commendably, in September 2014, the Netherlands government amended its automatic detention policy to provide for an exception for families with children.<sup>39</sup> The detention center in Zeist opened in October 2014 and houses unaccompanied children and families with children. Although the Zeist detention center does not have cells like the detention centers in Rotterdam and Schiphol Airport, it is nevertheless detention. The Netherlands government has stated that detention is imposed as a last resort,<sup>40</sup> but the Special Rapporteur is concerned that alternatives to detention are rarely offered.<sup>41</sup>
47. About 80,000 persons have unknown nationality in the Netherlands. Due to stringent requirements, only 4,000 persons with unknown national are registered as stateless persons in the Person Records Database.<sup>42</sup> Unfortunately, persons with unknown nationality who do not have the necessary documents to prove their statelessness cannot register.<sup>43</sup> During the official country mission to the Kingdom of the Netherlands, the Working Group of People of African Descent expressed concern about the lack of procedures in the Kingdom of the Netherlands to identify and protect stateless persons.<sup>44</sup> Since then, the Government in the Netherlands has taken steps to establish a statelessness determination procedure. However, the draft legislation in the Netherlands does not comport with international human rights standards. The bill does not grant stateless persons a right to residence following a determination of statelessness.<sup>45</sup> The proposed Bill also limits Dutch citizenship to children who are born in the Netherlands and have at least three years of uninterrupted legal residence. The narrow scope of legal protection for stateless children prevents children who are born in the Netherlands but whose parents do not have legal status from acquiring Dutch nationality.<sup>46</sup>
48. The Kingdom has commendably increased legal and policy protections for LGBTI persons and created institutional mechanisms for ensuring the enforcement of these protections. Representatives from this department expressed a commitment to an intersectional approach to their work, according to which they strive to ensure that the needs and experiences of LGBTI persons belonging to racial, ethnic and religious minority communities are meaningfully accounted for. **To build on the existing work of the Netherlands in this regard, the government must take greater steps to ensure that this intersectional approach is indeed actualized across the public**

**sphere.** Consultations suggested a number of areas requiring urgent improvement, including in the adjudication of asylum claims.

Advocates raised concerns that asylum officers and adjudicators deploy racial and religious stereotypes according to which, for example, Islam is characterized as so fundamentally incompatible with LGBTI status that asylum seekers identifying as LGBTI may be found not to be credible if they also identify as devout Muslims. In other cases, advocates cited examples of asylum officers and adjudicators interrogating the intimate sexual practices of LGBTI persons seeking asylum from Muslim-majority countries and other places and challenging them to prove their sexual orientation, gender identity or gender expression according to western European sensibilities, or according to stereotypes about LGBTI persons in Muslim-majority countries.

49. The arena of gender equality is another where advocates highlighted the need for a more rigorous intersectional analysis and policy-approach from the government. The Netherlands has made great strides to promote gender equality, and consultations with national and local authorities highlighted continuing efforts to push harder to ensure that women in particular, do not experience discrimination on account of their gender. However, there are spheres where racial and ethnic minority women are prevented from enjoying gender equality protections because these protections are designed and/or implemented in ways that exclude these women on account of their ethnicity, national origin, or religion. Consultations highlighted concerns that migrant women are unable fully to benefit from domestic violence protections due to government failure to account for their specific circumstances. This is an issue that will be addressed in more detail in the final report.
50. The Special Rapporteur did not receive any submissions specifically addressing the circumstances of racial and ethnic minorities with disabilities. However, submissions highlighted that disability status was the most frequent basis for antidiscrimination complaints received by the Dutch Institute for Human Rights in 2018. **As a result, the government should ensure that antidiscrimination measures for peoples with disabilities also address the racial and ethnic stereotypes to which minority persons with disability are subject.**
51. Stronger Government Leadership on Racial Equality and Non-Discrimination: In the areas of gender equality and the rights of LGBTI

persons, the government of the Netherlands has taken admirable and forceful steps to develop the necessary legal and policy frameworks and institutions, and to retrain personnel where necessary, to maximize the effectiveness of these innovations. The government must similarly make racial and ethnic equality and non-discrimination a policy priority, and invest resources at all levels to protect the rights of racial and ethnic minorities to full membership on equal terms with their white counterparts. This requires, among other things, investing more resources in ethical research to understand and remedy socio-economic and political exclusion of racial and ethnic minorities; publicly defending the rights of racial and ethnic minorities as full members of Dutch society in political discourse and in the allocation of government resources; and investing in the necessary structural reform necessary to ensure the participation of racial and ethnic minorities in policy-making, including at the highest levels of government.

52. Educational Measures: Education is absolutely central to combatting discrimination and countering intolerance, and a broad range of educational measures is required in the Netherlands. At a fundamental level, far more needs to be done to educate all Dutch people both about the histories of slavery and colonialism as histories of systematic racial subordination, including and especially of the peoples of former Dutch colonies, and those peoples enslaved and traded by the Dutch. This education must also encompass a fuller accounting of the fundamental contributions that racial and ethnic minorities made, both during and after the colonial period, to consolidating Dutch national prosperity. The history of Roma, Sinti and Travellers is equally important. Similar education is required to highlight the contributions that nationalities, such as Turkish and Moroccan populations, who emigrated originally under labor migration regimes and who contributed and continue to contribute to the prosperity of the Kingdom. Educational initiatives in schools and also in public media, museums and in other cultural fora are essential to counter the images and narratives of racial and ethnic minorities as criminals, as strangers, as burdens and so on.
53. More systematic anti-discrimination and intercultural sensitivity training is also necessary across all sectors of national authorities to ensure that frontline staff and even civil service leadership are required to understand and confront ethnic, racial and religious

prejudice, as well as implicit biases that affect their treatment of racial, ethnic and religious minorities. The Special Rapporteur was reassured to learn of the work that government is doing to increase awareness of LGBTI issues and to promote equality for women. Unfortunately, a similar emphasis on ethnic and religious intercultural sensitivity was mostly absent, with many officials insisting that equality, non-discrimination and tolerance are so engrained and widespread that no additional training is necessary. Yet the experiences of racial and ethnic minorities who reported the prevalence of racial, ethnic and religious stereotypes in interactions with government authorities clearly prove otherwise. Education to dispel these stereotypes is urgent, and insistence that equality, non-discrimination and ethnic and religious inclusiveness are inherently Dutch and have already been achieved seems to be one of the barriers to the investment in this education.

54. Special Measures: The Kingdom must take the necessary special measures in the political, economic, social, and cultural spheres to ensure the equality of racial and ethnic minorities. It should also take steps to ensure the full implementation of the Durban Declaration and Programme of Action, and to honor commitments in the frame of the Decade of People of African Descent.

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**1/** International Convention on the Elimination of All Forms of Racial Discrimination art. 1(1), Jan. 4, 1969, 660 U.N.T.S. 195 (hereinafter “ICERD”).

**2/** ICERD, art. 2.

**3/** ICERD, art 1.4. CERD has further explained the scope of these obligations in its General Recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination, CERD/C/GC/32.

**4/** ICERD, art. 4.

**5/** Kingdom of the Netherlands Constitution, Article 1, available at <https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008>

**6/** General Equal Treatment Act, available at <https://www.legislationline.org/topics/country/12/topic/84>. Please note this translation is unofficial as there is no official legal translation in English.

**7/** Council of Europe “*Example from the Netherlands Municipal Antidiscrimination Services*,” available at [https://www.coe.int/t/commissioner/Activities/GoodPractices/Netherlands\\_antidiscriminationsservices.pdf](https://www.coe.int/t/commissioner/Activities/GoodPractices/Netherlands_antidiscriminationsservices.pdf)

**8/** Code of Criminal Procedure, available at [https://libguides.bodleian.ox.ac.uk/ld.php?content\\_id=32171438](https://libguides.bodleian.ox.ac.uk/ld.php?content_id=32171438)

**9/** National Human Rights Action Plan, 2014, <https://www.government.nl/documents/policy-notes/2014/03/19/national-action-plan-on-human-rights>

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