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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Visit to the Netherlands

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, **

Summary

At the invitation of the Government, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, visited the Netherlands from 30 September to 7 October 2019. The present report contains her findings, which identify significant strengths in the State's racial equality frameworks. Nonetheless, the Special Rapporteur calls for swift action to address persisting structures of racial discrimination.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in English only.

** The present report was submitted after the deadline as a result of consultations with the Member State.

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Annex

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on her visit to the Netherlands

I. Introduction

1. The Special Rapporteur extends her gratitude to the Government of the Netherlands for its invitation to conduct an official country visit from 30 September to 7 October 2019. She also thanks the Government for its assistance before, during and after her visit.

2. During her eight-day visit, the Special Rapporteur travelled to The Hague, Amsterdam, Rotterdam and Leiden. She met with numerous national government and parliamentary representatives in The Hague, as well as with the National Ombudsman and representatives of the Netherlands Institute for Human Rights. In addition, the Special Rapporteur met with municipal authorities in Rotterdam and Amsterdam.

3. During her mission, the Special Rapporteur was able to visit a prison facility and the Rotterdam immigration detention centre. Regretfully, and despite her best efforts, she was not able to access the central reception centre for asylum seekers in Ter Apel.

4. In addition to engaging with government representatives, the Special Rapporteur conducted several consultations with stakeholders, including members of civil society; academics; people of African descent; members of religious communities; lesbian, gay, bisexual, transgender and intersex persons; migrants, refugees and asylum seekers; members of the Roma, Sinti and Traveller communities; representatives of student groups; and individuals who had been victims of racism, discrimination and related intolerance. She sincerely thanks everyone who took the time to meet with her and who shared their perspectives on the state of racial equality in the Netherlands.

5. Although the Special Rapporteur aimed, through her visit, to gain a broad view of the state of racial equality in the Netherlands, she was, regrettably, unable to visit areas beyond the State's European territories. Accordingly, she was not able to be physically present in the non-European constituent countries of the Netherlands (Aruba, Curaçao and Sint Maarten) nor in the special municipalities of Bonaire, Sint Eustatius and Saba. The Special Rapporteur notes that her analysis of the issues facing these territories and municipalities relies on desk research, information received from the authorities, information previously published by the United Nations and the Council of Europe, and submissions and information received by the Special Rapporteur from organizations and individuals familiar with the human rights situations in those places.

II. Overview: the "Dutch paradox"

6. The Netherlands has a population of over 17.5 million people. This population is ethnically and racially diverse, a result of the State's colonial past, periods of labour and other migration, and the arrival of different groups involuntarily displaced by conflict and natural disasters. A number of its cities sit firmly at the centre of international commerce and international law. Almost a quarter of the population comprises people who were born abroad or who were born in the Netherlands and have at least one parent who was born abroad. This diversity means that equality, non-discrimination, tolerance and inclusion are issues of the utmost importance to the well-being of the Netherlands.

7. The State's formal commitments to equality, non-discrimination and tolerance are impressive. Many government officials who met with the Special Rapporteur affirmed their commitment to these principles, often citing article 1 of the Constitution as a fundamental guiding principle for their work. Authorities described the national identity as multicultural, multiracial and proudly committed to tolerance and inclusion, not only in the contemporary period, but throughout the country's long history.

8. At the same time, the Special Rapporteur encountered equally powerful evidence of views of national identity and national belonging as racialized and as implicitly (and, in some cases, explicitly) restricted or qualified on the basis of ethnicity and religion. The reality therefore seems to be one in which race, ethnicity, national origin, religion and other factors determine who is treated fully as a citizen. To be more specific, in many areas of life – including in social and political discourse, and even in some laws and policies – different factors reinforce the view that to truly or genuinely belong is to be white and of Western origin. Individuals belonging to other racial and ethnic groups, such as people of African and Asian descent (who have been a part of the State for centuries), people of North African and Middle Eastern descent and people belonging to the Roma, Sinti and Traveller communities are confronted with characterizations that they are neither truly nor wholly Netherlanders. Such characterizations hold even when those individuals and their families hold full citizenship and have done so for multiple generations. Religion is also salient, with society, the media and members of parliament repeatedly denigrating Islam as inherently opposed to the national identity – and even to liberal democracy more generally.

9. The fractured nature of national identity and belonging is vividly reflected in public political and social discourse on the ethnic and racial groups present in the country. Regardless of citizenship status, this discourse reinforces a distinction between Netherlanders perceived to have a non-Western migrant background and Netherlanders considered to be without a migrant background. Notably, in public discourse, individuals with a Western migrant background are viewed largely as natives of the Netherlands and their sense of national belonging is rarely contested. Of course, there is nothing inherently offensive or discriminatory about being designated as a person of a non-Western migrant background. The problem is that this focus translates in citizens belonging to racial and ethnic minorities being treated as perpetual foreigners.

10. During the Special Rapporteur's visit, several interlocutors characterized the Netherlands political landscape as highly polarized. Many considered the high-profile political assassinations that occurred in 2002 and 2004, along with political leaders' subsequent responses, to be inflection points in the country's race and religious relations. The decades since have seen a rise in right-wing nationalist populist rhetoric that poses a complex threat to racial equality.[1] Some interlocutors highlighted the mainstreaming of xenophobic and racist discourse, including at the highest levels of politics.

11. Furthermore, some interlocutors expressed concern about the consolidation of Islamophobia. Distressingly, some interlocutors noted considerable tolerance for Islamophobic sentiment, even among those who purported to defend universal human rights. Parliamentary, media and public discourse concerning the Partial Prohibition of Face-covering Clothing Act of 2018, dubbed "the burka ban", which bans face coverings in a number of public places, illustrates this troubling trend.[2] Although the text of the law may be read as neutral, the accompanying political discourse surrounding it has made it clear that the law adversely affects Muslim women. Interlocutors have highlighted the perverse irony of the measure, which disregards the fact that Muslim women are among the most vulnerable to physical harassment and attacks in public, as well as to workplace discrimination, especially if they wear a headscarf. The Special Rapporteur emphasizes that such a law has no place in a society that prides itself in promoting gender equality, as it makes women more vulnerable. In a positive development, some municipalities and the police have announced that they do not intend to prioritize the enforcement of the law. However, even without official enforcement, the media's emphasis on "citizen arrests" as an enforcement method has emboldened private citizens harbouring anti-Muslim sentiment to take matters into their own hands.[3]

12. Although government authorities cannot exercise absolute control over public discourse, they can – and, indeed, frequently do – shape and influence it. From the Prime

[1] A/73/305 and Corr.1.

[2] See www.eerstekamer.nl/behandeling/20190426/publicatie_inwerkingtreding/document3/f=/vkxy2zjaccyi.pdf (in Dutch).

[3] See, for example, https://nltimes.nl/2019/08/05/confusion-burka-ban-woman-refused-nijmegen-playground.

Minister to department heads, government authorities make public statements relating to national culture and society. In the process, they lend credibility to certain perspectives while discrediting others. Interlocutors have raised concerns about the fact that, in their view, the Government has not done enough to stand against explicit and subtle forms of intolerance and discrimination against racial, ethnic and religious minorities, perhaps most saliently in the context of the mainstreaming of Islamophobic sentiments.

13. Education on the history and legacy of slavery and colonialism – which have, through the exploitation of colonized peoples and territories, enforced and normalized white supremacy, normalized racial and cultural hierarchies and systemically accrued wealth to colonial powers – is urgent in the Netherlands. In particular, people who see themselves as native Netherlanders need to be more deeply engaged in their country's history and in the ways in which race privileges some while subordinating others if they are to fully understand their relationship to ethnic and racial minorities. The Special Rapporteur commends the Government's increasing awareness of this need and the steps that have been taken, especially at the municipal level, to invest in more accurate and representative accounts of history in the Netherlands. She stresses, however, the need to strengthen these efforts and for the national Government to show even greater leadership on these matters.

14. During her visit, the Special Rapporteur engaged with many government and civil society actors committed to equality and non-discrimination. Nonetheless, 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. The Special Rapporteur thus reaffirms her serious concerns about the role that explicit and implicit bias and prejudice play in the administration of justice in the Netherlands.

15. The Special Rapporteur believes that the Government remains committed to equality and non-discrimination and to an inclusive vision for national identity and for the country more broadly. Yet, the insistence that the Netherlands has already achieved its ambitious vision for equality and inclusiveness poses a very real danger, one that undermines the very difficult work required to transform commitments into reality. The paradox in the Netherlands is that, where it exists, the insistence on already having achieved equality and tolerance operates as a barrier to achieving equality and tolerance in fact: such insistence severely hampers efforts to mobilize resources and the action necessary to ensure equality, non-discrimination and inclusion for all.

III. Laws and policies governing racial equality in the Netherlands

A. Governmental structure

16. As already mentioned, the State of the Netherlands comprises four constituent countries – the Netherlands, Aruba, Curaçao and Sint Maarten – and three special municipalities – Bonaire, Sint Eustatius and Saba. Aruba, Curaçao and Sint Maarten are autonomous countries with their own parliament and government. The national Government considers each of its four countries to have an autonomous obligation to promote the realization of fundamental human rights and freedoms, legal certainty and good governance and to ensure the implementation of and compliance with international human rights law and other legal agreements.

17. Despite the autonomy granted to its non-European countries, the Government of the Netherlands, as the subject of international law, is accountable for the enjoyment of human rights throughout its European and non-European territories. Furthermore, safeguarding fundamental human rights and freedoms, legal certainty and good governance is deemed a "State affair".

B. International human rights law commitments

18. The Netherlands is a State party to many international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. The Netherlands is also a State party to most European human rights instruments of the Council of Europe. Through its ratification of the International Convention on the Elimination of All Forms of Racial Discrimination and other international instruments, the Government of the Netherlands has committed itself to respecting, protecting and ensuring the enjoyment of racial equality and the right of all persons to be free from racial discrimination.

19. The most comprehensive prohibition of racial discrimination can be found in the International Convention on the Elimination of All Forms of Racial Discrimination, article 1 of which defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

20. Although specific protected bases are listed in that definition, the Government cannot narrowly construe its obligations under the Convention, nor can it specify to whom those obligations are owed; rather, the Government must guarantee equality to all individuals within its territories, regardless of ancestry or descent, including non-citizens, dual nationals and persons belonging to racial, ethnic and religious minority groups. In addition, the definition's inclusion of the words "purpose or effect" helps to affirm that the Government's obligations under the Convention include both combating discrimination and ensuring racial equality in the enjoyment of all civil, political, economic, social and cultural rights.

21. The Special Rapporteur emphasizes that it is impossible for the Government of the Netherlands to fulfil its obligations under the Convention to ensure substantive racial equality and eradicate racial discrimination if it does not adopt a comprehensive and intersectional approach. States parties to the Convention commit themselves not only to ensuring formal equality but also to eliminating purposive or intentional discrimination, discrimination in effect[4] and structural forms of discrimination.[5] 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 status, age and any other social category. A comprehensive and intersectional approach is often critical to revealing how neutrally worded laws nevertheless result in racial and other forms of discrimination.

22. In accordance with article 2 of the Convention, the Government must pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms. In article 1 (4), it anticipates the necessity of special measures or affirmative actions to ensure equality in the enjoyment of human rights. Also in accordance with article 2, the Government is required to ensure that all public authorities and national and local public institutions do not engage in acts of racial discrimination. Having ratified the Convention, the Government is further obligated 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 (art. 2 (c)).

23. By ratifying the Convention, the Government has agreed to adopt measures to prohibit the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and acts of violence and incitement of such acts, and assistance to such

[4] Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, paras. 6–7.

[5] Ibid., general recommendation No. 34 (2011) on racial discrimination against people of African descent, paras. 5–7.

activities (art. 4). The Government has also committed itself to combating racial and ethnic profiling, racialized stereotyping and any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent and national or ethnic origin, members of "non-citizen" population groups, especially by politicians, officials, educators and the media, on the Internet and other electronic communications networks and in society at large.[6]

24. Moreover, the Government must adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups (art. 7).

C. Domestic laws and policies

25. The Government of the Netherlands has enshrined its commitment to human rights, equality and non-discrimination in the Constitutions of each of its four constituent countries. Article 1 of the Constitution of the Netherlands prohibits discrimination on the basis of race, political opinion, sex, religion or any other grounds. Article 1 of the Constitution of Aruba, article 3 of the Constitution of Curaçao and article 16 of the Constitution of Sint Maarten similarly prohibit discrimination on numerous grounds and enshrine the principle of equality.

26. The Netherlands has adopted multiple laws and action plans intended to implement its human rights law obligations and bolster its efforts to combat racial discrimination. The Equal Treatment Act, which was adopted in 1994 and amended in 2004, implements article 1 of the Netherlands Constitution by prohibiting both direct and indirect forms of racial discrimination on the basis of religion, belief, political opinion, nationality, race, sex, sexual orientation or civil status. In its submissions to the Committee on the Elimination of Racial Discrimination, the Netherlands has explained that references to race in its Constitution, Criminal Code and equal treatment legislation should be understood in accordance with the essence of the enumeration in article 1 of the Convention, which refers to colour, descent and national or ethnic origin, as well as "race".[7]

27. Article 137 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.

28. The Netherlands also has adopted laws that require equal treatment irrespective of disability, chronic illness, age, sex and gender identity.

29. The Municipal Anti-Discrimination Services Act establishes local anti-discrimination offices to combat racial discrimination.[8] These offices provide free advice to victims of racial discrimination, report racist incidents and support the Public Prosecutor Service in investigations of racist offences.[9]

30. The national action plan against discrimination is the cornerstone of the Government's efforts to ensure rights to equality and non-discrimination. It works in conjunction with the labour market anti-discrimination action plan and the pregnancy anti-discrimination action plan. The Special Rapporteur was pleased to see that the Netherlands had produced progress reports on both generic and specific measures taken to combat discrimination.

31. Interconnected with its racial equality and non-discrimination efforts is the National Action Plan on Human Rights, which is currently undergoing a process of governmental review and updating, defines the Government's responsibilities regarding the protection of

[6] Ibid., general recommendation No. 30 (2004) on discrimination against non-citizens, paras. 9–10 and 12.

[7] CERD/C/NLD/22-24, para. 14.

[8] See www.coe.int/t/commissioner/Activities/GoodPractices/Netherlands_antidiscriminationservices.pdf.

[9] See www.coe.int/t/commissioner/Activities/GoodPractices/Netherlands_antidiscriminationservices.pdf.

human rights, including measures taken to combat racial discrimination and ethnic profiling. The Netherlands has also adopted a specific action plan on business and human rights.

32. The Netherlands Institute for Human Rights and the National Ombudsman strengthen the Netherlands' efforts to ensure enjoyment of human rights at the national and local levels. These bodies promote human rights policy and legislation, including by receiving complaints, providing legal advice and monitoring national and local authorities' compliance with the Government's human rights law obligations.

D. Shortcomings in existing domestic laws and their implementation

33. The Government has benefited from recent reviews of its equality and non-discrimination legal and policy frameworks. Of particular relevance are the 2019 report of the European Commission against Racism and Intolerance[10] and the concluding observations of the Human Rights Committee on the fifth periodic report of the Netherlands.[11] Furthermore, the Committee on the Elimination of Racial Discrimination will review the Government's implementation of the International Convention on the Elimination of All Forms of Racial Discrimination at its 101st session.

34. The concerns of the Special Rapporteur regarding domestic laws and their implementation are reflected in the above-mentioned report and concluding observations. Many recommendations from other treaty body reviews (see, e.g., those contained in the concluding observations of the Committee on the Elimination of Racial Discrimination on the combined nineteenth to twenty-first periodic reports of the Netherlands)[12] and from the reports of other United Nations special procedures[13] also remain relevant for addressing the shortcomings of the Netherlands in ensuring human rights to racial equality and non-discrimination.

35. Although reportedly broader in practice, the Equal Treatment Act does not explicitly encompass the full definition of racial discrimination contained in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination[14] nor the expansive non-discrimination grounds contained in the International Covenant on Civil and Political Rights and other human rights treaties. Furthermore, the Act should explicitly reference the Government's commitment to an intersectional approach that accounts for overlapping forms of discrimination, including multiple discrimination on the basis of race, gender, migration status, descent, colour, sexual orientation and/or gender identity.

36. Discussions of discrimination in the action plans and programmes of the Netherlands typically focus on ensuring equal treatment, promoting equal opportunity and protecting vulnerable communities from overt discrimination. Although the Government's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination include ensuring both de jure and de facto racial equality, these documents appear to minimize the latter and insufficiently address the Government's obligation to take positive measures or affirmative actions.[15]

37. Although numerous action plans and programmes show the Government's commitment to improving the realization of human rights in the Netherlands, the Special Rapporteur regrets that they are not applicable in all four of its constituent countries. For instance, the National Action Plan on Human Rights applies only to the Netherlands, including the special municipalities of Bonaire, Sint Eustatius and Saba, but not to Aruba, Curaçao or Sint Maarten.[16] Similarly, only the European Netherlands has a national human

[10] See https://rm.coe.int/fifth-report-on-the-netherlands/168094c577.
[11] CCPR/C/NLD/CO/5.
[12] CERD/C/NLD/CO/19-21.
[13] See, e.g., A/HRC/41/44/Add.2 and A/HRC/30/56/Add.1.
[14] CERD/C/NLD/CO/19-21.
[15] CCPR/C/NLD/CO/5. See also the 2019 report of the European Commission against Racism and Intolerance on the Netherlands, p. 14.
[16] See www.government.nl/documents/policy-notes/2014/03/19/national-action-plan-on-human-rights.

rights institute and anti-discrimination bureaux; individuals in the special municipalities and the other constituent countries are not able to submit complaints to these critical government bodies.[17] During her visit, the Special Rapporteur learned of government measures in place to promote equal access to the two bodies for individuals in the Caribbean Netherlands and urges their effective implementation. Under international law, the Government is responsible for ensuring racial equality and non-discrimination throughout its territories.

38. Some interlocutors raised concerns about the lack of independence and the insufficient resources available to some anti-discrimination bureaux. More robust oversight and improved regional coordination remain necessary to combat discrimination effectively and to ensure that policy reforms yield positive effects on the ground.[18]

IV. Equality, racial discrimination, racism and intolerance: lived experiences

A. Political representation

39 The highest levels of political office in the Netherlands do not reflect the State's racial and ethnic diversity. Few parliamentarians belong to racial, ethnic or other minority groups, and the national Government itself – especially those sectors involved at the highest levels in policymaking to achieve racial equality – does not reflect the racial and ethnic diversity of the population.

40. In consultations, the Special Rapporteur learned that few Roma participated in policymaking bodies. Furthermore, even Netherlanders of African descent whose ancestors helped to consolidate national prosperity reported facing persistent difficulties in entering political office and in rising up to policymaking positions within the civil service. According to one report, "no members of ethnic minorities were appointed Ministers in the period 1982–2008". Historically, only 17 members of parliament with an African or other minority background have ever been members of the House of Representatives (the lower chamber of parliament). Seven of them were members of the *Partij van de Arbeid*.[19] The 2017 general election appears to have been a further setback for racially equitable representation in government: the *Partij van de Arbeid*, *GroenLinks* and *Democraten 66* –parties that regard diversity as an important part of their agenda – failed to secure seats for Afro-Netherlands politicians.[20] Currently, not a single member of the Netherlands parliament is of African descent.

41. Racial and ethnic minority members serving on national and local legislative bodies have reported experiencing different treatment from their colleagues. These individuals face considerable opposition in pursuing reform to secure racial equality and non-discrimination. In addition, they have recounted enduring personal indignities as a result of the pervasive racist political discourse. Some have even reported threats and intimidation from the public, including death threats.

42. Political participation of Surinamese and Netherlands Antilles individuals is significantly lower than that of whites.[21] This lower political participation rate seems interlinked with the comparatively negative view that non-whites have of the political and social climate in society. According to a study on the integration of migrants, migrant groups' views of opportunities and quality of life in the Netherlands gradually declined from 2006 to

[17] Ibid.

[18] Ibid. See also the 2019 report of the European Commission against Racism and Intolerance on the Netherlands, p. 25.

[19] See www.volkskrant.nl/nieuws-achtergrond/nul-zwarte-politici-in-de-nieuwe-tweede-kamer-hoe-pijnlijk-is-dat~bce21247/ (in Dutch).

[20] Ibid.

[21] Ibid.

2015.[22] They also expressed lower levels of trust in the Government, the legal system and other members of society.

B. Hate crimes and hate speech

43. Racist and xenophobic political discourse seems connected to trends in hate speech and hate crimes targeting racial, ethnic and religious minority groups, as well as minority women and lesbian, gay, bisexual, transgender and intersex persons. Some of those who spoke with the Special Rapporteur stressed that the racist and xenophobic language used by some national and municipal politicians, along with the failure of government officials consistently to offer adequate responses to counter such discourse, had emboldened individuals to harass and attack members of racial, ethnic and religious minorities.

44. During her visit, the Special Rapporteur learned of some initiatives to combat and strengthen monitoring of discriminatory incidents, including by improving the collection and analysis of data on crimes involving discrimination. The Netherlands Police, local anti-discrimination agencies, the National Association against Discrimination, the National Hotline for Online Discrimination and the Institute for Human Rights jointly produce an annual report on discriminatory incidents recorded in the Netherlands.[23]

45. In 2017, the Netherlands Police registered 3,449 discrimination incidents, 41 per cent of which involved racial discrimination. The anti-discrimination bureau registered 4,691 discrimination incidents, 38 per cent of which involved racial discrimination.[24] In 2018, the number of registered cases decreased slightly, to 3,299 and 4,320 respectively.[25]

46. Muslim women consulted during the visit expressed grave concern about violence and harassment in public against women displaying symbols of their Muslim religion, especially since the introduction of the Partial Prohibition of Face-covering Clothing Act, which prohibits individuals in public settings such as schools, hospitals and public transport from wearing face-covering clothing. Under the Act, "face-covering clothing" includes burkas and niqabs, as well as ski masks and full-face helmets. A person who refuses to abide by a police officer's instruction to remove a face-covering item of clothing may be subject to a fine of €150 or even arrest. The Special Rapporteur learned from the Government of its efforts to establish a network of Muslim women to ensure dialogue on matters affecting them, including the Act. However, it is of concern that private acts of discriminatory harassment towards individuals wearing burkas and niqabs have continued, abetted in part by media sources promoting citizen arrests.

47. The Government must be commended for its positive engagement with Jewish communities to develop appropriate measures for combating antisemitism. One civil society organization registered 135 antisemitic incidents in 2018, the highest number since 2014 and representing an increase of 19 per cent from 2017.[26] The number of antisemitic hate crimes recorded by the Government is even higher. In 2018, the police registered 275 antisemitic hate crimes.[27] Antisemitic incidents most commonly take the form of vandalism, verbal abuse and hate emails. Recent trends, however, show an alarming increase in Holocaust denial online. Antisemitic incidents often occur at school, at work or in neighbourhoods. Furthermore, antisemitic and Afro-phobic chants in sporting events also remain an issue.

48. Although much work remains to be done to ensure accountability, the Government has commendably taken action to prosecute those responsible for discriminatory crimes and

[22] Iris Andriessen and Willem Hijnk, *Integratie in Zicht? De Integratie van Migranten in Nederland op Acht Terreinen nader Bekeken* (The Hague, Social and Cultural Planning Office, 2016), p. 14 (in Dutch).

[23] See https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-hate-crime-recording_en.pdf.

[24] See http://discriminatie.nl/files/2017-05/discriminatiecijfers-2016-landelijk-rapport.pdf (in Dutch).

[25] See www.discriminatie.nl/files/2019-04/landelijke-rapportage-discriminatiecijfers-2018-2-16.4.2019.pdf (in Dutch).

[26] Centrum informatie en documentatie Israel, "Netherlands: monitor anti-semitic incidents 2018, summary report" (March 2019), p. 1.

[27] https://hatecrime.osce.org/netherlands.

speech. The Special Rapporteur was encouraged to learn of prosecutions of high-ranking politicians. As noted by the European Commission against Racism and Intolerance, however, sanctions for those who are convicted of discrimination remain disproportionately low relative to their severity, undercutting the deterrent effect of the punishments. For example, the District Court of The Hague convicted a right-wing politician who had sung an anti-Moroccan chant during a political rally for inciting discrimination and insult. Because the defendant was a democratically elected member of parliament, the Court considered the case exceptional. The Court decided that it need not follow sentencing for other cases inciting discrimination and insult; in the Court's eyes, declaring a politician guilty without imposing a punishment was sufficient.[28]

49. The Special Rapporteur is concerned, moreover, that those prosecuted for racist violence and disorderly conduct for attacking people peacefully protesting against racism have received minimal sanctions. For example, those convicted of attacking peaceful anti-Black Piet protesters in 2018 received fines and community service. Such sentences do not send a message that is sufficiently strong to deter others from engaging in similarly offensive behaviour.

C. Law enforcement and ethnic profiling

50. Racial and ethnic profiling are impermissible under international human rights law. Yet, despite these legal obligations and the Netherlands' claim that it does not engage in profiling, minority communities and several experts continue to document racial and ethnic profiling by the Netherlands Police and the Royal Netherlands Marechaussee. Their evidence suggests that racial and ethnic profiling is a persistent practice.[29] In addition, substantial evidence exists indicating that profiling happens during traffic control stops, identity checks, preventive searches and border stops.[30]

51. Minority communities have expressed fear, mistrust and frustration at being overpoliced and underserved. Members of such communities have reported that police officers use their stop-and-search powers disproportionately on members of minority groups[31] and are emboldened to misuse their powers by weak accountability mechanisms for stop-and-search operations. A 2016 study commissioned by the Government revealed that the police used proactive investigatory stops-and-searches to disproportionately target ethnic minorities. The study also found that in 40 per cent of cases the police did not have an objective and reasonable basis for conducting proactive investigatory stops.[32] A 2019 survey carried out by the European Union Agency for Fundamental Rights revealed that 61 per cent of individuals of North African origin/descent in the Netherlands reported having been stopped by the police in the previous five years and that they perceived those stops to have been the result of ethnic profiling.[33] This rate far exceeds the percentage reported by individuals of European origin/descent.[34] A 2017 survey carried out by the European Union Agency for Fundamental Rights revealed that in the Netherlands Muslims have less trust in the police than Muslims in other European countries.[35] In a 2014 study by the Netherlands Institute of Social Research, 33 per cent of Netherlanders of Turkish and Moroccan origin/descent, 25 per cent of Netherlanders of Surinamese origin/descent and 20 per cent of people with roots in the Netherlands Caribbean who had made contact with the police in the previous year reported feeling discriminated against.[36] Furthermore, respondents of North

[28] https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2016:15014 (in Dutch).
[29] See www.amnesty.org/download/Documents/EUR3504392019ENGLISH.PDF.
[30] See www.amnesty.nl/content/uploads/2017/05/EUR3554622016ENGLISH.pdf?x54649.
[31] CERD/C/NLD/CO/19-21.
[32] See www.amnesty.org/download/Documents/EUR3504392019ENGLISH.PDF.
[33] See https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-main-results_en.pdf.
[34] See https://fra.europa.eu/en/publication/2019/second-european-union-minorities-and-discrimination-survey-migrant-women-selected.
[35] See https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings_en.pdf.
[36] See www.amnesty.org/download/Documents/EUR3504392019ENGLISH.PDF.

African origin/descent reported experiencing very or fairly disrespectful treatment during police stops at a rate twice as high as respondents of European origin/descent.[37]

52. The Special Rapporteur commends the police for its recent reforms, especially the introduction of a professional code and a training module to help create fair and effective policing practices. In January 2016, the police drafted several regional-level policy documents to improve the 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. In May 2017, the Netherlands Police also announced new guidelines for proactive stops-and-searches, the goal of which was to reduce the negative impacts of stops-and-searches and increase trust in the police.[38] In accordance with the guidelines, there must be an objective justification for carrying out a proactive search-and-stop, to avoid action being taken on the basis of skin colour, ethnic origin or religion. No proactive stops-and-searches should be conducted only because a person is presumed to belong to a category that is overrepresented in crime statistics or because a person does not belong to a certain neighbourhood.[39] The Government must do more to ensure that the guidelines are effective in practice.

53. Unfortunately, the Government does not monitor or collect data to assess the impact of these new reforms.[40] The result is that arrests and fines are registered, but police stops-and-searches that do not lead to arrests or fines remain unregistered.[41] The Special Rapporteur reiterates the importance of collecting data on police stops-and-searches disaggregated by ethnicity. Without such data, it is hard to monitor progress and improve policing practices. Moreover, such data is vital for determining the scale of impermissible stops-and-searches and for developing effective measures to combat ethnic profiling. In addition, requiring police officers to articulate the reasons for stopping individuals can help train them to avoid discrimination and provide evidence to hold those engaging in discriminatory conduct accountable. The Special Rapporteur believes that such data and a corresponding analysis should be made public and discussed with local police forces and communities.

54. The Special Rapporteur has also learned that the incomplete communication of the new guidelines to police officers is likely to have hampered reform efforts. According to one submission received by the Special Rapporteur, not all police officers are informed of the new guidelines. Research has shown that only 30 per cent of the Amsterdam police force is aware of the guidelines.[42]

55. The Special Rapporteur commends the Netherlands Police on its adoption of a strategic document entitled “The power of difference”, through which it aims to increase diversity in the police force.[43] She believes that considerable additional action will be necessary, however, to combat the institutional racism that exists in some police departments. Institutional racism in the policing context has referred 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.

56. The Special Rapporteur learned that 20 civil society organizations and groups representing ethnic minorities filed a complaint against the police in October 2019.[44] In the complaint, the organizations and groups pointed to various reports accusing the police of ethnic profiling and decrying the lack of leadership within the police’s management to take

[37] Ibid.

[38] See www.politie.nl/nieuws/2017/december/11/00-handelingskader-helpt-bij-proactieve-controles.html (in Dutch).

[39] Ibid.

[40] See https://www.amnesty.org/download/Documents/EUR3504392019ENGLISH.PDF.

[41] Submission by Controle Alt Delete (October 2019).

[42] Ibid.

[43] See www.politie.nl/binaries/content/assets/politie/algemeen/onderwerpteksten/algemeen/visie-kracht-van-het-verschil-2.pdf (in Dutch).

[44] See https://nltimes.nl/2019/10/23/mayors-deny-culture-discrimination-den-haag-police.

action on complaints and provide protection for whistle-blowers.[45] These complaints mirrored information received by the Special Rapporteur during her visit. In consultations, representatives of racial and ethnic minority communities cited the failure of government authorities to take decisive action, including in high-profile cases, as among the reasons why these communities had little faith in law enforcement and why some thought it was pointless to report incidents of discrimination and intolerance to the police.

57. Shortly after the above-mentioned complaint came to light, mayors of several municipalities released a statement denying a culture of discrimination within police units. The Special Rapporteur is distressed by this response, as well as the suspension of a whistle-blower who credibly alleged institutional racism in September 2019. Urgent action is required to ensure investigation into persisting allegations of institutionalized racism within the police force.

D. Counter-terrorism policy

58. The Special Rapporteur highlights two concerns regarding the Netherlands' counter-terrorism policies. The first is the 2017 finding of the Netherlands Court of Audit that it is not possible to evaluate the effectiveness of counter-terrorism policy. This inability to evaluate effectiveness is of grave concern because, among other things, an all too common effect of this policy is to stigmatize ethnic and religious minorities, especially Muslim communities. In turn, this exacerbates polarization, which can undercut national security.

59. The Temporary Administrative Counter-terrorism Measures Act, enacted on 1 March 2017, provides administrative authorities with far-reaching administrative control measures to reject or revoke subsidies, permits or exemptions to individuals whom the Government suspects of being associated with terrorist activities. The Act does not forest out clear and reasonable grounds for suspicion or require judicial supervision or authorization prior to the application of the administrative control orders. The Special Rapporteur received reports that the Act had only been applied a few times, with the authorities applying administrative measures in just 6 of 40 cases.[46] In the other cases, the administrative authorities concluded that the evidence was insufficient to link the individual to terrorist activities.

60. The second concern relates to citizenship-stripping legislation, policies and procedures. It has been reported to the Special Rapporteur that a handful of cases have resulted in nationality stripping.[47] Although being neutral on the face of it, the Netherlands citizenship-stripping legislation, policies and procedures apply only to citizens with dual nationality and therefore disproportionately affects Netherlanders of Moroccan and Turkish descent. Because of its limited applicability, citizenship-stripping legislation in the Netherlands aggravates stereotypes of terrorism by associating terrorism with people of certain ethnic and national origins.[48] The associated policies and their effects are incompatible with international human rights principles of equality and non-discrimination.[49] Furthermore, the Special Rapporteur is concerned that citizenship-stripping orders are based primarily on information gathered by the security services and that the individuals affected only have recourse through an appeal to administrative courts on procedural grounds.[50] Such a limited review prevents access to an effective remedy. Those facing a citizenship-stripping order should have access to sufficient information and appeals processes to challenge the order.

[45] https://nltimes.nl/2019/10/21/civil-society-orgs-file-complaint-hague-police-ignoring-discrimination-reports.

[46] Submission by the Netherlands Institute for Human Rights.

[47] Ibid.

[48] Ibid.

[49] See www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration_Amicus.pdf.

[50] Netherlands Committee of Jurists for Human Rights and others, "Dutch NGOs contribution pertaining to Fifth Periodic Report by the Kingdom of Netherlands to the UN Human Rights Committee", p. 5.

E. Freedom of expression and assembly and protection of human rights defenders working to combat racism

61. The Special Rapporteur finds the treatment of human rights defenders working to combat racism, discrimination and intolerance of great concern. Consultations with anti-racism activists highlighted that they are frequently targets of insults, violence and threats, especially by extreme right-wing actors. On some occasions, local politicians have supported the targeting of anti-racism activists. Furthermore, police brutality against such activists reportedly occurs in cities where activists organize protests against Black Piet.

62. The seeming failure of law enforcement and judicial authorities to extend equal protection of the law to anti-racism activists is worrying. Individuals who have participated in protests centred on the issue of Black Piet have also reported that government action has contributed to a discourse that presents such protestors as terrorists. They have noted that the mention of an anti-racism organization protesting against Black Piet in the 2017 report of the National Coordinator for Security and Counter-terrorism fuelled the false narrative that those anti-racism protestors were terrorists, notwithstanding a formal statement subsequently issued by the Government clarifying the status of the protestors. The damage had already been done.

F. Carceral facilities

63. The prison population in the Netherlands has been in decline in recent years, which is laudable. A visit to Vught prison revealed significant and impressive investment by the Government in generally promoting humane conditions of confinement. The Special Rapporteur notes, however, that there have been serious human rights concerns raised with respect to the terrorist units in that prison.[51]

64. Although the numbers of those incarcerated are low in the Netherlands, ethnic and racial minorities are alarmingly overrepresented. Studies suggest that socioeconomic status alone cannot explain this overrepresentation and that ethnicity appears to play an independent role in determining imprisonment.[52] The prevalence of ethnic profiling and the widespread criminalization of ethnic and racial minorities are likely to be contributing factors. The Government must invest in research to determine the causes of the overrepresentation of ethnic and racial minorities in the prison population and take the steps necessary to address this situation.

65. The numbers of detainees in immigration detention in the Netherlands is relatively low. The Special Rapporteur urges the Government to maintain its commitment to treating immigration detention as a measure of last resort. The Special Rapporteur toured the Rotterdam immigration detention centre. The facility's management generally demonstrated a commitment to ensuring non-discrimination, equality and inclusion of detainees and staff. The facility employs staff from a variety of ethnic and religious backgrounds and has implemented concrete measures to create a work environment that both accommodates this diversity and ensures the safety and security of those detained in the facility. In this way, the Rotterdam immigration detention centre stands in stark contrast with the prison in Vught, where intercultural sensitivity training and ethnic and religious diversity among staff seem not to be a priority. Without appropriate training and without promoting staff diversity, ethnic, religious and cultural stereotypes, as well as implicit biases and prejudices, can result in unnecessary misunderstandings between staff and detainees and harsh disciplinary measures.

66. Of concern at the Rotterdam immigration detention centre was the continued use of solitary confinement as a frequent disciplinary measure for those in administrative

[51] https://www.amnesty.org/en/latest/news/2017/10/anti-terror-prisons-breach-human-rights-in-netherlands/.

[52] In consultations with the Special Rapporteur, some civil society organizations noted linkages between ethnic profiling and the overrepresentation of ethnic and racial minorities in the administrative justice system.

detention.[53] Although called "isolation" or "separation" by the authorities, isolation in excess of 22 hours without human contact qualifies as solitary confinement.[54] The Special Rapporteur is concerned that the repeated use of solitary confinement harms detainees' physical and mental health. Solitary confinement is also a practice in units holding individuals detained for terrorism-related offences. Prisoners in these units are often confined for 19–22 hours a day without contact with others.[55] They are also subjected to full body searches and extensive audio, video and physical surveillance.[56] Subjecting detainees to such invasive and inhuman treatment is incompatible with detainees' rights to dignity, privacy, life and freedom from cruel, inhuman and degrading treatment. The authorities must discontinue the use of prolonged solitary confinement and ensure that their high-security carceral measures comply with international human rights standards.

67. The analysis above refers only to the European territories of the Netherlands, not to the special municipalities in the Caribbean nor the constituent countries of Aruba, Curaçao and Sint Maarten. The Special Rapporteur reiterates, however, the concerns raised by human rights bodies regarding the poor conditions of detention and prison facilities in Aruba, Curaçao and Sint Maarten.[57] Of particular concern are the police stations at Point Blanche and the Philipsburg in Sint Maarten, the correctional institution in Aruba and block 1 of the Centre for Correction and Detention in Curaçao.[58]

G. Employment

68. As confirmed by several studies and government statistics, racial and ethnic minorities in the Netherlands experience discrimination, inequality and exclusion in the enjoyment of their economic, social and cultural rights.

69. The Government has adopted action plans and programmes that aim to combat discrimination in the labour market. In 2018, the Ministry of Social Affairs and Employment launched a programme to improve the labour market integration of migrants.[59] The programme works in tandem with the labour market discrimination action plan. Nevertheless, the unemployment rate of migrants remains two and half times higher than that of other Netherlanders.[60] Furthermore, individuals considered to be of a second-generation, non-Western migration background generally face an even higher unemployment rate, despite superior educational qualifications compared with individuals of a first-generation, non-Western migration background.[61]

70. Further inequality in labour can be seen in earnings and in the distribution of "marginal" jobs (defined as jobs requiring a commitment of fewer than 20 hours/week). From 2003 to 2017, a higher percentage of individuals belonging to racial and ethnic minorities held a "marginal" job compared with native Netherlanders.[62] In addition, racial and ethnic minorities typically occupy a less favourable position in the labour market and earn less than native Netherlanders.[63] Government statistics indicate that individuals of Moroccan, Turkish, Surinamese and Netherlands Antillean descent are particularly disadvantaged in terms of

[53] Submission by the Immigration Detention Hotline (*Meldpunt Vreemdelingendetentie*), December 2019.

[54] See www.amnesty.nl/content/uploads/2017/05/EUR3554622016ENGLISH.pdf?x54649.

[55] See www.amnesty.org/en/latest/news/2017/10/anti-terror-prisons-breach-human-rights-in-netherlands/.

[56] Ibid.

[57] CERD/C/NLD/CO/19-21, CAT/C/NLD/CO/7 and CCPR/C/NLD/CO/5.

[58] CAT/C/NLD/CO/7.

[59] See www.rijksoverheid.nl/documenten/brochures/2019/11/12/folder-programma-verdere-integratie-op-de-arbeidsmarkt (in Dutch).

[60] See www.rijksoverheid.nl/documenten/publicaties/2018/11/16/factsheet-de-integratie-van-groepen-met-een-migratieachtergrond-2018 (in Dutch).

[61] See www.cbs.nl/en-gb/news/2017/32/unemployment-down-among-non-western-migrant-group.

[62] See www.cpb.nl/sites/default/files/omnidownload/cpb-achtergronddocument-inkomensongelijkheid-naar-migratieachtergrond-in-kaart.pdf.

[63] Ibid.

earnings. Furthermore, one report highlighted that, from 2016 to 2017, the risk of poverty for refugee households increased more rapidly than for other households.[64]

71. Ethnic minorities face discrimination in both during hiring and afterwards, once they are in the workplace. In Amsterdam, numerous individuals reported experiencing discrimination based on their racial, ethnic or migration background.[65] Applicants with a migration background more frequently believed that a rejection was or could have been related to discrimination.[66] Only a third of individuals with a migration background said that the rejection they received was devoid of racial discrimination. Of workers with a non-Western migration background, 20 per cent reported experiencing racial or ethnic discrimination at work, while only 6 per cent of those without a migration background said the same.[67]

72. A report issued in 2017 highlighted the prevalence of employment discrimination against persons with Arabic or Muslim-sounding names, finding that a person with a stereotypically Netherlands-sounding name with a violent criminal record was three times more likely to get a positive response than someone with a similar record and an Arabic name.

73. The Special Rapporteur regrets that a dearth of data hinders understanding of the nature and extent of labour exclusion experienced by Roma, Sinti and Travellers.

H. Education

74. The education sector reflects the dynamics of the labour market: racial, ethnic and religious minorities experience discrimination, exclusion and marginalization. To fulfil its human rights law commitments, the Government must redouble its efforts and investment in racial equality.

75. Approximately 30 per cent of second-generation Turkish, Moroccan, Surinamese and Netherlands Antillean students dropped out of school in 2016.[68] Members of these groups also enter general or scientific secondary education at a lower rate than other Netherlands students. In addition, they less frequently pass their secondary graduation exam than their peers without a migration background.[69]

76. In consultations with the Special Rapporteur, racial and ethnic minority university students lamented their professors' inability to effectively confront racism on campus. They also expressed the belief that their universities were, in general, ill-equipped to address overt and covert forms and expressions of racism. Instead, by default, the universities treated discriminatory and intolerant speech and conduct targeted at members of racial and ethnic minorities as behaviour protected by the right to freedom of expression. Interlocutors expressed concern about mentoring and counselling approaches that channelled ethnic and racial minority students into lower-ranked educational and vocational institutions. The Special Rapporteur was distressed to learn that such practices sometimes did not account for individual academic potential but instead simply stereotyped students on the basis of ethnic origin or the educational or employment level of their parents.

77. Roma children are participating in secondary education at an increasing rate. Nonetheless, the Government must do more to foster Roma inclusion in education. Efforts to reduce educational absenteeism that stigmatize Roma children adversely affect prospects for remedying long-standing discrimination and segregation in the national education system. Tensions between municipalities, schools and/or Roma communities have reportedly led to

[64] See www.cbs.nl/en-gb/news/2018/46/half-of-refugee-households-at-risk-of-poverty.
[65] City of Amsterdam, "Discrimination in the labour market in Amsterdam: factsheet" (October 2019), p. 5.
[66] Ibid.
[67] Ibid. p. 4.
[68] See https://longreads.cbs.nl/integratie-2018/onderwijs/ (in Dutch).
[69] Ibid.

the implementation of repressive measures against Roma children.[70] Some interlocutors have expressed concern about the exclusion of Roma communities from the design of education and integration policies that have a direct impact on them. The Special Rapporteur stresses the importance of safeguarding the right to being consulted and of obtaining the free, prior and informed consent of Roma families and urges the Government to implement inclusive education policies that guarantee the participation of the Roma community.

I. Housing

78. A recent study used situation-testing and telephone calls to investigate discrimination against ethnic minorities in the housing sector.[71] The journalists conducting the study sought to view rental properties and provided either a Moroccan-Netherlands-sounding name or a stereotypically Netherlands-sounding name. The journalists received 28 per cent fewer invitations to view rental properties when they gave a Moroccan-Netherlands-sounding name. The journalists also found that more than 90 per cent of real estate agents were willing to accommodate discriminatory requests to exclude ethnic minorities from consideration as prospective tenants.

79. It was reported to the Special Rapporteur that the Government had adopted a policy to protect Travellers in the Netherlands from housing discrimination.[72] Instead of dismantling traveller camps and caravan sites, the new policy aims to prevent discrimination and safeguard traveller rights to housing. The Special Rapporteur welcomes this policy and its affirmation of Travellers' rights. However, as municipalities and housing corporations are mainly responsible for housing policies in the Netherlands, the remaining challenge for the Government is to ensure implementation and enforcement of the policy at the local level. It must take measures to strengthen monitoring and evaluation mechanisms and provide adequate support to assess the development of caravan sites throughout the Netherlands.

J. Black Piet

80. The figure of Black Piet in cultural life has been the subject of prior human rights analysis[73] and remains greatly contested in the Netherlands. There are many for whom this figure remains the innocent expression of national culture. Nevertheless, there can be no doubt that Black Piet embodies degrading and dehumanizing racial stereotypes. Furthermore, as others have explained, Black Piet exemplifies denial of racial discrimination and colonial violence in the Netherlands.[74] Furthermore, Black Piet reflects both the Netherlands' unconfronted colonial legacies and the persisting subordinate status of black people, especially Netherlands people of African descent.

81. A genuine commitment to racial equality, non-discrimination and inclusiveness requires national and municipal authorities to engage 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 Netherlands and its people. The Special Rapporteur has learned that there have been important developments where the issue of Black Piet is concerned, including the decision not to include Black Piet in the 2019 televised national Sinterklaas parade. She has also learned about the constructive and inclusive processes that the city of Amsterdam and others have pursued to combat racism and embrace cultural expressions that better reflect social diversity. She commends these efforts.

[70] See https://op.europa.eu/en/publication-detail/-/publication/cd8dea82-b1a9-11e9-9d01-01aa75ed71a1/language-en/format-PDF.

[71] https://www.groene.nl/artikel/rachid-is-ook-gewoon-een-nette-jongen.

[72] NJCM, Written submission to the country report on the Kingdom of the Netherlands of the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, February 2020.

[73] A/HRC/30/56/Add.1, paras. 104–109.

[74] Gloria Wekker, *White Innocence: Paradoxes of Colonialism and Race* (Durham, North Carolina, Duke University Press, April 2016).

K. Migrants, refugees and asylum seekers

82. Although the Netherlands' laws and policies on the rights of refugees and asylum seekers are largely sound, some interlocutors have expressed serious concern about their effective implementation. Particular concern has been expressed regarding officials' misplaced emphasis on deterring asylum seekers and refugees rather than on better protecting them.

83. The Netherlands allows family reunification for persons with subsidiary protection and extends similar protections to refugees as defined in the Convention relating to the Status of Refugees. Some have highlighted, however, that waiting times for refugee status determination are long and may be increasing and that these delays are detrimental to the well-being of asylum seekers and refugees.

84. An additional issue of concern is the separation of refugee children from their parents, which in some cases appears to be influenced by ethnic and cultural stereotypes that facilitate discriminatory treatment. In one case that has been the focus of the Special Rapporteur and the Working Group of Experts on People of African Descent, seven refugee children of African descent have been separated from their parents for almost two years.[75] This separation resulted from an administrative and judicial process fraught with cultural misunderstandings and from what seems to be a racialized failure to take seriously the efforts and pleas of the parents of these children. The Special Rapporteur urges the Government to take urgent action to prevent racial discrimination in the enforcement of the Child Protection Act, not only in the case of the family mentioned here but for all refugees in the Netherlands.

85. The detention centre in Zeist opened in October 2014 and houses both families with children and unaccompanied children. Even though the Zeist facility lacks cells comparable to those in the Rotterdam and Schiphol Airport detention centres, it is nevertheless a detention centre.[76] The Special Rapporteur is concerned that alternatives to detention are rarely offered.[77]

86. Recent amendments to social security-related laws are also of concern to the Special Rapporteur. These strict criteria set out in these laws renders adequate social welfare inaccessible to numerous individuals in need. In addition, amendments to the Participation Act and the Social Support Act mean that responsibility for a range of social welfare and protection programmes has been devolved from central to municipal authorities. Unfortunately, some municipalities lack sufficient capacity to ensure adequate support for migrants and families adversely affected by these laws.[78] The Government must work with municipalities to ensure that vulnerable populations, including migrants, refugees and asylum seekers, receive adequate social security benefits.

87. During her visit, the Special Rapporteur learned about alleged violations of international refugee law in the Netherlands' non-European territories and countries. Human rights organizations and bodies have expressed serious concern about how refugees and asylum seekers in these locations are treated, levelling especially sharp critiques of the treatment and detention of refugees and asylum seekers in Curaçao. Roughly 26,000 Venezuelans residing in Curaçao are in urgent need of legal assistance, including access to asylum, shelter, education and other basic services.[79] In apparent violation of the Netherlands' non-refoulment obligations, the government of Curaçao has reportedly forced

[75] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24097.

[76] See www.rijksoverheid.nl/documenten/rapporten/2019/11/15/rapportage-vreemdelingenketen-periode-januari---juni-2019 and www.rijksoverheid.nl/onderwerpen/terugkeer-vreemdelingen/vreemdelingenbewaring (in Dutch).

[77] Ibid.

[78] E/C.12/NLD/6.

[79] See www.unhcr.org/en-us/news/press/2019/1/5c40d3ba4/unhcr-renews-offer-to-curacao-on-venezuelan-refugee-response.html.

Venezuelans to return to their crisis-stricken country.[80] The Special Rapporteur recalls that the Netherlands has emphasized that its non-European territories and countries hold an autonomous responsibility to ensure their respective compliance with international human rights law.[81] Nevertheless, the Government of the Netherlands is the party responsible for meeting its international obligations and bears ultimate responsibility for harmonizing human rights compliance in the State.[82]

L. Stateless persons

88. During its visit to the Netherlands, the Working Group of Experts on People of African Descent expressed concern about the lack of procedures in the Netherlands to identify and protect stateless persons.[83] Since then, the Government has taken steps to establish a statelessness determination procedure. Unfortunately, as of the Special Rapporteur's visit, the parliament had yet to adopt such a procedure.[84] In addition, the procedure outlined in draft piece of legislation before parliament does not appear to comply with international human rights standards, especially because it does not grant persons confirmed as stateless a right to lawful residence and associated social benefits.[85] The Special Rapporteur is also concerned that current and proposed laws limit the likelihood that children born in the Netherlands will acquire citizenship and benefit from lawful residence status.[86]

89. About 80,000 persons of unknown nationality currently reside in the Netherlands. Many of these individuals lack the documents necessary to prove or disprove their statelessness.[87] The Special Rapporteur has learned that only 4,000 persons of unknown nationality have received formal statelessness status and are listed in the Netherlands' Personal Records Database.[88]

M. Intersectionality and experiences of multiple discrimination

90. The Government has commendably increased legal and policy protections for lesbian, gay, bisexual, transgender and intersex persons in recent years and created institutional mechanisms to ensure enforcement of these protections. Government representatives focusing on lesbian, gay, bisexual, transgender and intersex issues have expressed their commitment to taking an intersectional approach through which they strive to ensure a meaningful accounting for the needs and experiences of lesbian, gay, bisexual, transgender and intersex persons belonging to racial, ethnic and religious minority communities.

91. In consultations, it has been suggested that a number of areas require urgent improvement, however, including in the adjudication of asylum claims. Advocates spoke with the Special Rapporteur of their concerns that asylum officers and adjudicators reinforce racial and religious stereotypes. Some asylum officers and adjudicators reportedly conceived of Islam as so fundamentally incompatible with lesbian, gay, bisexual, transgender or intersex status that they tended to consider asylum seekers who identified as both devout Muslims and as lesbian, gay, bisexual, transgender or intersex as not credible. Advocates cited

[80] See https://foreignpolicy.com/2019/01/28/for-venezuelan-refugees-theres-no-safe-haven-in-curacao-asylum-maduro-netherlands-kingdom-nederland/ and www.amnestyusa.org/wp-content/uploads/2018/09/AMN_18_45_rapport-Curacao.pdf.

[81] See www.government.nl/documents/leaflets/2015/06/05/kingdom-of-the-netherlands-one-kingdom-four-countries-european-and-caribbean.

[82] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublic CommunicationFile?gId=24097.

[83] A/HRC/30/56/Add.1.

[84] https://www.rijksoverheid.nl/onderwerpen/nederlandse-nationaliteit/documenten/kamerstukken/2019/07/19/antwoorden-kamervragen-over-het-wetsvoorstel-staatloosheid.

[85] CCPR/C/NLD/CO/5. See also www.rijksoverheid.nl/onderwerpen/nederlandse-nationaliteit/documenten/kamerstukken/2018/02/05/antwoorden-kamervragen-over-het-bericht-wel-hier-geboren-maar-geen-nationaliteit-112-amsterdamse-kinderen-zijn-staatloos (in Dutch).

[86] Ibid.

[87] See www.government.nl/topics/dutch-nationality/statelessness.

[88] Ibid. See also www.refworld.org/docid/4eef65da2.html.

additional examples of asylum officers and adjudicators interrogating asylum-seeking lesbian, gay, bisexual, transgender and intersex persons from Muslim-majority countries on their intimate sexual practices. Asylum officers and adjudicators have reportedly challenged such individuals to prove their sexual orientation, gender identity or gender expression according to Western European sensibilities or according to stereotypes about lesbian, gay, bisexual, transgender and intersex persons in Muslim-majority countries.

92. In a positive development, the Immigration and Naturalization Service has introduced instructions for determining and hearing asylum cases involving lesbian, gay, bisexual, transgender and intersex persons. The Special Rapporteur has learned that the instructions outline special trainings for Immigration and Naturalization Service staff interviewing lesbian, gay, bisexual, transgender and intersex asylum seekers and strengthen the Service's capacity to investigate discrimination against such persons. The Special Rapporteur urges the Government to build on these efforts and to bridge the gaps remaining between the instructions and existing safeguards for lesbian, gay, bisexual, transgender and intersex asylum seekers.

93. The Netherlands has made great strides to promote gender equality. Consultations held by the Special Rapporteur with national and local authorities highlighted initiatives to take into account intersectionality where women with a migration background faced complex forms of discrimination. Advocates, however, highlighted the need for the Government to deploy a more rigorous intersectional approach to gender equality. Racial and ethnic minority women reported being unable to avail themselves of some gender equality protections, noting that those protections were designed and/or implemented in ways that excluded women on account of their ethnicity, national origin or religion.

94. The Special Rapporteur did not receive submissions addressing the circumstances of racial and ethnic minorities with disabilities. She notes, however, that disability status was the most frequent basis for anti-discrimination complaints received by the Netherlands Institute for Human Rights in 2018. As a result, the Government should ensure that anti-discrimination measures for peoples with disabilities also address the racial and ethnic stereotypes to which minority persons with disabilities are subject.

V. Recommendations

95. **The Special Rapporteur lists below several categories of recommendations for the Government of the Netherlands. Adopting these recommendations should better position the Government to realize its human rights obligations to achieve racial equality and eradicate discrimination.**

96. **In respect of political will, and as an overarching matter, the Special Rapporteur calls on the Government to demonstrate further leadership in the pursuit of racial equality and non-discrimination. The Government must consider racial and ethnic equality and non-discrimination a policy priority. To protect the rights of racial and ethnic minorities and to ensure their equality with their white counterparts, the Government must invest sufficient resources and provide technical guidance at all levels.**

97. **In respect of the legal framework and the scope of efforts to achieve racial equality, the Government must:**

(a) **Adopt a definition of racial discrimination that encompasses its human rights law obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other treaties;**

(b) **Harmonize its commitments to racial equality throughout its four constituent countries and three special municipalities. As part of this effort, the Government should work to create responsive human rights institutions at the local level. In addition, it should mainstream its obligations on racial equality throughout each constituent country's action programmes;**

(c) **Continue moving from a de jure, non-discrimination and equal treatment approach to an approach that will ensure substantive, de facto equality. In addition to paying increased attention to racial inequality, the Government must take the necessary special measures in the political, economic, social and cultural spheres to ensure the equality of racial and ethnic minorities. Furthermore, the Government should take steps to ensure the full implementation of the Durban Declaration and Programme of Action and to honour the commitments made in the framework of the International Decade for People of African Descent;**

(d) **Pursue racial equality and non-discrimination in a way that recognizes the intersectional character of inequality and discrimination. It should pay attention to forms of multiple discrimination. An intersectional lens should also help reveal racial discrimination overlapping with, inter alia, lesbian, gay, bisexual, transgender and intersex identity, citizenship status, migration status and religion;**

(e) **Adopt participative approaches to policymaking. In other words, it must ensure the participation of affected and vulnerable groups and adopt policymaking approaches that centre on the needs and voices of these groups. Moreover, the Government must consult vulnerable communities on the issues they confront. The Special Rapporteur recommends similarly engaging with other communities facing threats, including Muslims and human rights defenders such as anti-Black Piet activists;**

(f) **Foster tolerance among and ensure appropriate training for government staff. 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 leaders 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 the Government is doing to increase awareness of lesbian, gay, bisexual, transgender and intersex issues and to promote equality for women. Unfortunately, a similar emphasis on ethnic and religious intercultural sensitivity has seemingly not been nurtured across all sectors. Despite many officials insisting that equality, non-discrimination and tolerance are engrained and widespread within public institutions, the experiences of racial and ethnic minorities who reported experiencing racial, ethnic and religious stereotypes in interactions with government authorities clearly prove otherwise.**

98. **In respect of equality, racial discrimination, racism and intolerance, the Government must:**

(a) **Combat forms of racial profiling and eradicate racial discrimination in policing. It must collect data on stop-and-search practices and develop strategies to address the disproportionate and excessive use of stop-and-search powers and excessive force. Furthermore, the Government must deal decisively with structures and individuals that promote or tolerate racism and discrimination within the police forces;**

(b) **Ensure that racial and ethnic minorities enjoy effective protection from and access to remedies for racial discrimination. The Special Rapporteur especially emphasizes the need to ensure effective protection for anti-racism protesters and organizers;**

(c) **Ensure that its carceral, counter-terrorism and asylum practices are non-discriminatory and in compliance with international human rights law obligations;**

(d) **Remediate socioeconomic gaps between racial and ethnic minorities and ethnic Netherlanders. Government statistics confirm that racial and ethnic minorities lag behind ethnic Netherlanders in, among others, housing equality, educational equality and employment equality. The Government should adopt all appropriate measures to eliminate these differences;**

(e) **Implement educational initiatives that provide a fuller account of the Netherlands' history, including its participation in endeavours characterized by racial discrimination and subordination. At a fundamental level, far more needs to be done to educate all Netherlanders both about slavery and colonialism as manifestations of**

systematic racial subordination, including and especially the subordination of peoples of former colonies, and about those enslaved and traded by their ancestors. This education must encompass a fuller account of the fundamental contributions that racial and ethnic minorities have made, both during and since the colonial period, to consolidating national prosperity. The history of Roma, Sinti and Travellers is equally important. Similarly, education is required to highlight the contributions that others, such as people of Turkish and Moroccan background, who emigrated originally under labour migration regimes and who contributed and continue to contribute to the prosperity of the Netherlands. Educational initiatives in schools and in public media, museums and in other cultural forums are essential to counter the images and narratives of racial and ethnic minorities as criminals, strangers, burdens and so forth.