

## **Interim report on the implementation of the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) by the Kingdom of the Netherlands, to be submitted by August 2022**

This report provides, as requested, information from the Kingdom of the Netherlands on its implementation of the recommendations contained in paragraphs 12 (b) (c) (d), 18, and 20 (a) (b) (c). The Netherlands' contribution is divided into three parts:

I: The implementation of the recommendations on hate speech and the Dutch complaints office for online discrimination (MiND)

II: Discriminatory motive as an aggravating circumstance in criminal legislation

III: Equal opportunities in education

## **The Netherlands**

### **I. The implementation of the recommendations on hate speech and the Dutch complaints office for online discrimination (MiND)**

*12. The Committee recommends that the State party take measures to increase awareness of the prohibition of hate speech, including on the internet, among the population, in particular potential victims of hate speech, as well as of remedies available to them including through the Dutch complaints office for online discrimination (MiND). It also recommends that the State party:*

- (b) Ensure the availability of MIND in other languages in addition to Dutch;*
- (c) Ensure effective implementation of agreements concluded between social media companies and MiND, and evaluate their impact on the propagation of racist stereotypes and discriminatory attitudes;*
- (d) Distance itself from political discourse on immigration that leads to racial discrimination and ensure hate speech expressions by politicians are thoroughly investigated and sanctioned properly.*

### **12. The Committee recommends that the State party take measures to increase awareness of the prohibition of hate speech, including on the internet, among the population, in particular potential victims of hate speech, as well as of remedies available to them including through the Dutch complaints office for online discrimination (MiND).**

The Netherlands is currently in the process of intensifying its interministerial approach to tackling online hate speech. This is being done in response to a motion by MP Jasper van Dijk to intensify the approach to tackling online racism and antisemitism. The Netherlands appointed a National Antidiscrimination and Antiracism Coordinator on 15 May 2021. The Coordinator has indicated that tackling online discrimination is a priority area for him and will be included in his National Program.

#### **12 (b) Ensure the availability of MIND in other languages in addition to Dutch;**

A new development is that the tasks of the Dutch Discrimination on Internet Hotline (MiND) have been expanded. In 2022 MiND will augment its website [www.mindnederland.nl](http://www.mindnederland.nl) with information in other languages and contact details for hotlines in other countries. A page referring victims to appropriate assistance or support will also be added to the website..

#### **12 (c) Ensure effective implementation of agreements concluded between social media companies and MiND, and evaluate their impact on the propagation of racist stereotypes and discriminatory attitudes;**

MiND gathers and assesses reports of online discrimination. If MiND makes a determination that the reported online content is illegal under criminal law, it forwards the report to the hosting companies and IT platforms in question, with a request to remove this content. MiND

also considers whether content that is reported that is not illegal but rather unlawful, can be brought to the attention of platforms that have signed on to the EU Code of Conduct on Countering Illegal Hate Speech Online (Facebook, Instagram, YouTube, Twitter and others) so that they can determine whether the content infringes their terms of service. This is a new task for MiND, which will be explored further in 2022. This year MiND will also actively seek cooperation with interest groups, the IT sector, municipal anti-discrimination services, the police and the Public Prosecution Service to share signals of discriminatory behaviour and trends and bring them to the attention of other stakeholders. The agreements made with MiND are evaluated annually.

A network of organisations in various EU countries annually monitors how platforms apply the EU Code of Conduct in practice, for example by monitoring after which time they respond to removal requests.

**12 (d) Distance itself from political discourse on immigration that leads to racial discrimination and ensure hate speech expressions by politicians are thoroughly investigated and sanctioned properly.**

Violations of article 1 of the Constitution in the chamber of the House of Representatives or in any other political or public body impact Dutch society at its core. Discrimination and racism are prohibited and unacceptable in the House of Representatives as in the rest of society. At the same time, open debate and freedom of expression are essential in a democratic society. Freedom of expression is interpreted broadly in the Netherlands, particularly where it can contribute to public debate. This does not alter the fact the government sets a clear boundary when it comes to actionable discrimination and utterances. Under Dutch law, actionable discriminatory utterances do not contribute to political or public debate. Politicians can be prosecuted for public comments outside parliamentary walls, which may for instance be deemed to constitute group insult or incitement to hatred or violence under Dutch criminal law.

Although politicians cannot be held liable in law for comments made during sittings of the House of Representatives, it is not the case the freedom of expression is unlimited in parliament. The House of Representatives, and more specifically the President of the House of Representatives, determines where the limits are set. According to the Rules of Procedure of the House of Representatives the President can call to order any member who makes racist insults or incites hate, and can take various measures, such as issuing a warning barring them from speaking or ordering them to leave the sitting. The current President of the House of Representatives engages in active consultations with the parliamentary party leaders about the language used in the House.

## **II: Discriminatory motivate as an aggravating circumstance in criminal legislation**

*18. The Committee recommends that the State party ensures through its criminal legislation that racial motivation is taken into account as an aggravating circumstance CERD/C/NLD/CO/22-24 4 for criminal offences and take measures to ensure that the police and the Public Prosecution Service investigate and register discriminatory motives or the discriminatory context of an offence, including through updated guidelines, facilitated means to register such motives as well as training measures for law enforcement staff.*

**18. The Committee recommends that the State party ensures through its criminal legislation that racial motivation is taken into account as an aggravating circumstance CERD/C/NLD/CO/22-24 4 for criminal offences and take measures to ensure that the police and the Public Prosecution Service investigate and register discriminatory motives or the discriminatory context of an offence, including through updated guidelines, facilitated means to register such motives as well as training measures for law enforcement staff.**

The Dutch parliament has presented a private member's bill for consultation to raise the maximum statutory sentence for any criminal offence committed with a discriminatory aspect. This bill aligns with the Rainbow Agreement between LGBTI organisation COC and several political parties, which calls for the introduction of higher maximum sentences for hate crimes. The implementation of this agreement is part of the 2021-2025 Coalition Agreement.

It is also important that reports and criminal complaints of discrimination submitted to partners in the criminal justice system are recognised as such at an early stage and dealt with accordingly by the Public Prosecution Service. When dealing with criminal offences, the police and Public Prosecution Service take measures to ensure that the investigation and prosecution focus not only on the offence itself, but also specifically on any discriminatory motive. For example, the police are taking steps to further professionalise their Diverse Skills Network to ensure that the specialist knowledge that units need is available.

There is also a pilot project deploying specialist police officers in the approach to combating discrimination. An one-off budget of €7 million has been allocated for the multiyear project. For the purposes of the pilot, these specialised police officers are part of the Expertise Centre for Tackling Discrimination (ECAD-P), which is intended to train police officers to better recognise and deal with issues relating to discrimination. It also serves as a national information and knowledge hub for the entire police organisation, monitoring external developments and expanding, using and maintaining expertise on discrimination. One of its tasks is to compile an annual report on discrimination figures. The ECAD-P also ensures that knowledge of the approach to tackling discrimination is embedded in police training.

The Public Prosecution Service also has a National Discrimination Expertise Centre (LECD). One of its tasks is to ensure discrimination cases are processed with the greatest possible care by the Public Prosecution Service, from the investigation stage right through to the handing down of a judgment by the highest court. The public prosecutor's office at each district court

has a public prosecutor responsible for discrimination cases. The LECD provides public prosecutors and other staff with advice and information regarding discrimination cases.

### **III. Equal opportunities in education**

*20. The Committee recommends that the State party take measures to increase equal opportunities for all children in education, regardless of their background, and monitor the effectiveness thereof. The Committee also recommends that the State party:*

*(a) Ensure that all children receive an adequate assessment from their teachers for secondary schools, without discrimination including implicit bias, based on race, colour, descent, national or ethnic origin;*

*(b) Take measures to combat and prevent discrimination in accessing internships, develop protocols or guidelines that teachers can follow when students report such discrimination, and ensure that teachers are aware of these protocols;*

*(c) Take measures to ensure that multilingual students from ethnic minority groups are not restricted from or punished for speaking their home languages at school and expand teacher training on multilingual education;*

**20. The Committee recommends that the State party take measures to increase equal opportunities for all children in education, regardless of their background, and monitor the effectiveness thereof. The Committee also recommends that the State party:**

**20 (a) Ensure that all children receive an adequate assessment from their teachers for secondary schools, without discrimination including implicit bias, based on race, colour, descent, national or ethnic origin;**

The Ministry of Education, Culture and Science aims to ensure that all children receive unbiased assessment and advice from their teacher, without any form of discrimination, on the type of secondary education most suited to them. This concerns not only bias based on race, colour, descent, national or ethnic origin, but also bias based on gender and sexual diversity. This matter has the attention of the entire education sector. Each year the Ministry of Education, Culture and Science monitors discrepancies between teachers' advice and pupils' scores on the primary school leavers attainment test. The Ministry will conduct further research to ascertain which personal characteristics of pupils play a role in teachers' assessment and recommendation. Making an adequate assessment is part of the teacher training curriculum for secondary school teachers. The phenomenon of teachers' secondary school recommendations sometimes being significantly below pupils' attainment test scores will be considered in the next review of the primary school teacher training curriculum.

The Ministry of Education, Culture and Science wishes to increase the objectivity of assessments and recommendations. From the 2023/2024 school year, schools will be obliged to inform parents of the assessment and recommendation procedure. The teacher's advice will be changed if the pupil's attainment test score suggests they would be more suited to a more academically challenging type of secondary education, unless the school can substantiate why

this is not in the pupil's best interests. The recommendation can never be changed to a less academically challenging type of education if a pupil scores lower than expected on the attainment test. This year the 'Guidelines for advising on secondary school type' will be supplemented with an assessment framework that provides guidance for teachers on adjusting their recommendation following the attainment test.

#### Programmes to improve the transition from primary to secondary school for pupils with less-educated parents.

Generally speaking, pupils whose parents are less educated are more likely to be advised to enrol in a less academically challenging type of secondary education than their peers who achieve the same score on the primary school leavers attainment test but have more highly educated parents. The children of less-educated parents appear to perform less well on average in secondary education.

Grants are available for schools to introduce programmes to improve the transition from primary to secondary school for the children of less educated parents. The grant is intended to support pupils who are capable of performing at a higher level, but have less access to support and resources than their peers.

By participating in these programmes pupils can expand their knowledge and skills (such as metacognitive skills and social and emotional skills), so that they can progress at the right level.

#### Mixed classes and objective testing in the first year(s) of secondary school

Inequality of opportunity in education has increased due to the COVID-19 pandemic. The grant for mixed classes falls under the National Programme for Education, which is designed to boost the recovery and development of education during and after the pandemic. This grant is intended to help schools arrange the first few years of secondary education in such a way that pupils advised to pursue different types of secondary education are in the same class and therefore have more time to explore which type is most suited to them.

In addition, there is an ability test grant enabling schools to purchase and administer ability tests for pupils in the first two years of secondary school. These tests can help schools gain insight into pupils' educational needs and potential, and make the most adequate assessment regarding their further secondary education.

#### **20 (b) Take measures to combat and prevent discrimination in accessing internships, develop protocols or guidelines that teachers can follow when students report such discrimination, and ensure that teachers are aware of these protocols;**

In line with measures to tackle work placement discrimination in secondary vocational education (MBO), measures are also being taken in higher education, including awareness and

bias training for teachers, students and employers. Educational institutions are alert to signs of discrimination against students during their search for a placement, during the interview and during the work placement itself.

In regard to secondary vocational education, the Ministry of Education, Culture and Science is working with the Ministry of Social Affairs and Employment (SZW) and several other bodies including the Secondary Vocational Education Council and the Centre for Cooperation between Vocational Education and Training and the Labour Market (SBB) on projects and initiatives aimed at raising awareness of discrimination and racism among students and at schools and companies that provide work placements, in order to combat discrimination against MBO students looking for work placements. The current approach is being revised with input from schools, students and companies. This process will be completed in summer 2022.

Over the coming years, the Ministry of Education, Culture and Science, together with its partners, aims to strengthen citizenship education in secondary vocational education. This will be done by reviewing and clarifying the qualification requirements, promoting and facilitating teachers' professional development, and improving the monitoring and evaluation of the quality of citizenship education. Learning about discrimination and racism and about respect and understanding for differences are essential elements of the qualification requirements. In this way the Ministry aims to improve awareness and combat discrimination and racism in education.

In addition, the proposed bill on the supervision of equal opportunities in recruitment and selection, which is still to be discussed, also aims to combat internship discrimination. The bill confirms a social norm: making prohibited distinctions in recruitment and selection (including interns) is not acceptable and can be fined. Employers and intermediaries are required to have a working method that makes it clear that they offer equal opportunities when looking for new staff and that they exclude risks of prohibited discrimination. The Dutch Labour Inspectorate will be given powers to supervise the working methods of employers and intermediaries in recruitment and selection.

The consideration of this bill has been put on hold until a reporting obligation for temporary employment agencies is added. It is planned that the letter of amendment on the duty to report will be presented to parliament shortly after the summer.

**20 (c) Take measures to ensure that multilingual students from ethnic minority groups are not restricted from or punished for speaking their home languages at school and expand teacher training on multilingual education;**

Frisian language education in schools:

Provisions for teaching the Frisian language are set out in national legislation and in the Covenant on the Frisian Language and Culture. The latter contains agreements on the teaching of Frisian in primary, secondary and higher education.

In 2014 statutory responsibility for policy on teaching of Frisian in primary and secondary education was transferred to Fryslân provincial authority, at the provincial authority's own request.

The province has drawn up a Frisian language plan to increase the level of Frisian offered at primary and secondary schools in the province. The aim of this *Taalplan Frysk* is to firmly embed Frisian at all schools by 2030.

Under the plan schools are visited every four years to determine the current level of Frisian taught and each school is assigned a language profile. An individual plan is then drawn up for each school aimed at increasing the level of Frisian offered.

### Papiamentu on Bonaire

The government of the European Netherlands and Bonaire have signed an official agreement to protect and promote the Papiamentu language on the island and in its educational system.

The parties to the agreement will work together to enable teachers of Papiamentu in primary and secondary education to organise their lessons in the best possible way.

One of the ambitions laid down in the agreement is that by 2030 every school leaver will be able to read and write Papiamentu.

## Aruba

### **Regarding para. 18 Registration of discriminatory motives:**

Articles 2:60 to 2:64 of the Criminal Code of Aruba list every type of discrimination. The text of these articles is based on the wording of articles 143a to 143c of the old Criminal Code of Aruba and articles 137c to 137g of the Criminal Code of the Netherlands. Discrimination on account of physical, psychological or intellectual disability has been added to the forms listed. Groups of people who experience defamation and discrimination on account of their national extraction or social origin include irregular migrants and other non-nationals.

Articles 2:61 and 2:62 of the Criminal Code of Aruba concern discrimination or hatred against persons and violence against persons or their property. Article 2:61 concerns a particular kind of participation, which is broader than soliciting the commission of an offence, because an individual who already planned to discriminate or use violence may be incited to actually commit such an offence. Article 2:62, paragraph 3 does not require the perpetrator to be a repeat offender in order for them to be disqualified from pursuing their occupation.

Articles 2:63 and 2:64 of the Criminal Code of Aruba are based on articles 137f and 137g of the Criminal Code of the Netherlands, which were originally introduced in the Netherlands in line with the International Convention on the Elimination of All Forms of Racial Discrimination. Article 2:63 concerns participating in or supporting discrimination. Article 2:64 is specifically intended to prevent discrimination of individuals. This has been made explicitly clear in the wording of the article.

The aggravating circumstance for racially motivated criminal offences is laid down in **articles 2:61 and 2:64, paragraph 2 of the Criminal Code of Aruba** (the offence is committed by a person who makes an occupation or habit of committing such offences, or by two or more persons acting in concert). Acting in an organised or propagandist manner is also an aggravating circumstance for racially motivated criminal offences (in line with the Public Prosecution Service's guidelines).

The Aruban Public Prosecution Service has recently updated guidelines, which entered in to work on 1 March 2015, relating to various forms of discrimination by natural or legal persons (*see Annexe, Sentencing Guidelines on Discrimination ((2015R001) \*\* Organised or propagandist action. In the case of discrimination, organised and or propagandist action must be considered an aggravating circumstance. Organised and/or propagandist action must be forcefully combated, not only because it heightens the hurtful nature of the offence and the threat to the victim, but also because of its inherent pursuit of expansion.*)

Racial discrimination in Aruba is a very general topic in light of the population being comprised of people of different nationalities, races and colours. The number of criminal complaints is extremely low. In short, Aruba is a tolerant country.

Whenever relevant, the police will register and investigate discrimination as a motive or an aggravating circumstance. Training on discrimination for law enforcement officers is provided for by the Aruba Police Academy as part of basic and continued training.

### **Regarding para. 20 (a) (b) (c) Equal opportunities in education**

**20. The Committee recommends that the State party take measures to increase equal opportunities for all children in education, regardless of their background, and monitor the effectiveness thereof. The Committee also recommends that the State party:**

- (a) Ensure that all children receive an adequate assessment from their teachers for secondary schools, without discrimination including implicit bias, based on race, colour, descent, national or ethnic origin;**

Our national educational policy currently ensures a fair assessment of the student's abilities without discrimination including implicit bias, based on race, colour, descent, national or ethnic origin. All students in the final year of primary school participate in an objective assessment provided by the State.

- (b) Take measures to combat and prevent discrimination in accessing internships, develop protocols or guidelines that teachers can follow when students report such discrimination, and ensure that teachers are aware of these protocols;**

At school board level, protocols and regulations are in place which the parties involved in work placements must adhere to and which teachers can follow if students report such discrimination.

- (c) Take measures to ensure that multilingual students from ethnic minority groups are not restricted from or punished for speaking their home languages at school and expand teacher training on multilingual education;**

Our education policy is founded in our multilingual society and as a result all schools offer a multilingual setting where students are given the opportunity to use their home language. The four main languages (Papiamentu, Dutch, English and Spanish) are integrated in the curriculum. There is also a focus on multilingualism in teacher training programmes.

## **Curaçao**

### **Regarding para. 12 (b) (c) (d) Hate speech**

The law provides for freedom of expression, including for the media. The government of Curaçao respects this right. However, freedom of expression ends where another person's rights begin. Common insult and defamation are punishable under Titel XV art 2:223 ff.

Regarding online hate speech, Curaçao does not yet have a national reporting point for criminal, discriminatory utterances on the internet, comparable to the Dutch complaints office for online discrimination (MiND). However, victims of online hate speech can obtain free legal assistance if they choose to start legal proceedings.

### **Regarding para. 18 Registration of discriminatory motives**

Book II of the Criminal Code of Curaçao states: 'Anyone who orally or by means of written material or images gives intentional public expression to views insulting to a group of persons on account of their race, religion or belief is liable to [punishment]'.

The police have no specific system for registering complaints about offences of this kind, but it is possible to lodge a criminal complaint. Complaints can also be submitted to the Office of the National Ombudsman. The government of Curaçao is working with the National Ombudsman to formalise the human rights institute. A bill proposed by the Ombudsman is in the preparation stages within the Government.

Training for police officers is provided by the Law Enforcement & Security Training Institute (ORV). In 2020 consultations were held with the Special Police Task Force (RST) to explore options for joint training. ORV has started biweekly consultations with the liaison for training at the Curaçao Police Force (KPC).

ORV offers the following vocational programmes:

- Intake & Service Officer – Police (I&S)
- Call Taker – Central Child Abuse Reporting Centre Joint Call Centre
- Call Taker – Call Centre (CTC)
- Criminal Investigation Assistant (Rass)
- Enforcement and Emergency Assistance Officer (BPO) (Focus on target groups, Criminal law, Enforcement in practice, Procedural activities)
- Border Control Officer (OGB)
- Senior Police Officer (VPO)
- Police Studies – Operational (Human rights)
- Bachelor's Degree in Police Studies (Human rights)

### **Regarding para. 20 (a) (b) (c) Equal opportunities in education**

Over the past five years the Ministry of Education, Science, Culture and Sports has worked to obtain exact figures regarding minorities, and irregular migrants in particular, in the education

system. The feedback repeatedly received from school boards and other executive agencies is that due to limited resources and systems to produce data and match this data to the civil registry it has not been possible to identify cases requiring attention. Solutions were found in every individual case presented to principals and school social workers. To be able to create a nationwide custom solution, the government of Curaçao has decided to build an education management information system (EMIS) linked to the civil registry to be able to identify irregular migrant pupils and assign them a unique code to ensure the uninterrupted flow of their education. This Central Nationwide Education Application is expected to be fully up and running by December 2022, with some modules already functional at present.

Like all other students, those with an ethnic minority or immigrant background are required to complete a work placement as part of the curriculum. The law lays down that all students must get at least a pass mark for their work placement in order to receive their diploma. Students with an ethnic minority or immigrant background are permitted to speak their native language without being punished.

The Ministry of Justice works with the Ministry of Education, Science, Culture and Sports, the Public Prosecution Office, the KPC, the Young Offenders Outreach Service Curaçao (AJJC) and the school boards of Curaçao to guarantee safety in and around schools. This ‘Safe Schools’ project will involve implementing an extensive school safety plan intended for public and publicly funded primary education, secondary education and secondary vocational education. The aim of the school safety plan is to ensure the physical and social safety of all pupils, staff and parents, so that education can be provided in a safe environment. A Safe Schools Protocol was signed in 2019. The necessary actions are already being taken to adapt and extend the protocol.

The police deploy neighbourhood police officers/coordinators (*buurtregisseurs*) in central parts of Curaçao. These officers/coordinators serve as a point of contact for the public on social and educational matters.

## Annexe Aruba - Basic cases/offence

DISCRIMINATION, COMMITTED ALONE BY A FIRST OFFENDER.				
	First offender		First repeat offence* (serve process!)	Multiple repeat offences*
Group insult (art. 137c of the Criminal Code) OR  Inciting hate, discrimination or violence (art. 137d of the Criminal Code)	€350 fine	within 5 years  within 2 years	€500 fine  Ditto or alternative sanction of 40 hours	Public prosecutor's recommendation: alternative sanction of 50 hours OR  3-week custodial sentence (non-suspended)
Committed by legal person	€1,000 fine	within 5 years  within 2 years	Public prosecutor's recommendation: €1,500 fine  Public prosecutor's recommendation: €1,500 fine	Public prosecutor's recommendation: €2,000 fine
Making public or distributing an utterance (art. 137e of the Criminal Code) OR discrimination in the exercise of a profession or business (art. 137g of the Criminal Code).	€250 fine	within 5 years  within 2 years	Public prosecutor's recommendation: €375 fine  Ditto or alternative sanction of 28 hours	Public prosecutor's recommendation: alternative sanction of 40 hours OR  20-day custodial sentence (non-suspended)
Committed by legal person	€750 fine	within 5 years  within 2 years	Public prosecutor's recommendation: €1,100 fine  Public prosecutor's recommendation: €1,100 fine	Public prosecutor's recommendation: €1,500 fine
Participation in or support of discriminatory activities (art. 137f of the Criminal Code) OR discrimination in the exercise of a profession or business (art. 429quater of the Criminal Code)	€ 175 fine	within 5 years  within 2 years	Public prosecutor's demand: €250 fine  Ditto or alternative sanction of 20 hours	Public prosecutor's demand: alternative sanction of 28 hours OR

DISCRIMINATION, COMMITTED ALONE BY A FIRST OFFENDER.

	First offender		First repeat offence* (serve process!)	Multiple repeat offences*
				14-day custodial sentence (non-suspended)
Committed by legal person	€500 fine	within 5 years within 2 years	Public prosecutor's recommendation: €750 fine Public prosecutor's recommendation: €750 fine	Public prosecutor's recommendation: €1,000 fine

**Remarks**

If one or more aggravating circumstances apply or in the case of repeat offending, process must be served on the suspect.

Aggravating circumstances include:

Offence committed in concert or professionally or habitually(see paragraph 2 of the aforementioned Criminal Code articles)

Seriousness and/or scope of the discriminatory utterances

Directed at a public servant or other official (+200%)

Organised or propagandist action

Event (+75%) or football-related (+50%)

Alcohol/drugs and violence (including in the night-time economy)

\* Note that alternative sanctions may be prohibited under art. 22b of the Criminal Code. Consider whether perpetrator is a habitual offender or persistent offender.