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Committee on the Elimination of Racial Discrimination**Concluding observations on the nineteenth to twenty-first periodic reports of the Netherlands***

1. The Committee considered the nineteenth to twenty-first periodic reports of the Netherlands (CERD/C/NLD/19-21) submitted in one document at its 2375th and 2376th meetings (CERD/C/SR.2375 and 2376), held on 18 and 19 August 2015. At its 2386th, 2387th and 2388th meetings held on 26 and 27 August 2015, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission by the State party of its nineteenth to twenty-first reports drafted in accordance with the Committee's guidelines for the preparation of reports. The Committee regrets the limited information provided on Aruba, Curaçao and St Maarten, and the lack of information on the overseas municipalities Bonaire, Saba and St. Eustatius regarding compliance with the Convention.

3. The Committee welcomes the open dialogue with the delegation of the State party as well as its efforts to provide responses and supplementary replies to issues raised by Committee members during the dialogue.

B. Positive measures

4. The Committee welcomes the ratification by the State party of the International Convention for the Protection of All Persons from Enforced Disappearance in 2011, and the ratification of the Optional Protocol to the Convention against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment in 2010.

5. The Committee welcomes the following legislative measures:

(a) The Municipal Antidiscrimination Services Act (2012);

(b) The Compulsory Education Act in Aruba, which provides the right to education to undocumented migrant children (2012);

6. The Committee also welcomes:

* Adopted by the Committee at its eighty-seventh session (3-28 August 2015).

- (a) The National Action Plan Against Labour Market Discrimination (2014);
- (b) The National Action Plan on Human Rights (2013);
- (c) The National Action Plan for Human Rights and Business (2013);
- (d) The National Roma Integration Strategy (2011);
- (e) The National Action Plan “Towards a safer sporting environment” (2011).

C. Concerns and recommendations

Responsibility for the implementation of the Convention

7. The Committee notes that the State party has transferred significant competencies regarding the implementation of the Convention to the municipalities. The Committee however notes with concern that many municipalities lack adequate resources and expertise on preventing and adequately combating racial discrimination. Furthermore, the Committee notes with concern that despite the introduction of the Municipal Anti-Discrimination Services Act, not all municipalities have an anti-discrimination policy in accordance with the State party’s anti-discrimination policy. (arts. 2 and 3)

8. **The Committee reminds the State party of the responsibility of the central government for the implementation of the Convention and for the application of the State party’s anti-discrimination policy. The Committee recommends that the State party take the necessary measures to ensure that all municipalities are adequately resourced and have the necessary expertise to effectively implement the Convention at the local level. Furthermore, the Committee recommends that the State party ensure that all municipalities establish an anti-discrimination policy to complement the national anti-discrimination policy.**

Legislation

9. While noting the decision by the Dutch Supreme Court and an interpretation made by the government, according to which the term “race” in the State party’s anti-discrimination legislation should be understood in accordance with article 1 of the Convention, and noting that the legislation of the State party contains a general prohibition of discrimination on the grounds of race, the Committee is concerned that some elements of the definition of racial discrimination are provided in the Criminal Code only. The Committee notes with concern that a racial motive does not constitute an aggravating factor for criminal offences under the law and that a more severe sentence may only be requested according to “instructions” issued by the prosecutor (arts. 2 and 5).

10. **The Committee recommends that the definition of racial discrimination should be included in the legislation and be in full conformity with article 1 of the Convention, including also colour, descent and ethnic origin, and should cover all relevant fields of law. Furthermore, the Committee recommends that the State party introduce into its criminal legislation racial motivation as an aggravating circumstance in the determination of sanctions for criminal offences.**

Racist hate speech in political discourse and the media and discrimination against members of Jewish and Muslim communities

11. The Committee is concerned about incidences of racist and xenophobic hate speech emanating from a number of extremist political parties and politicians. The Committee is also concerned about the prevalence of racist discourse in the media, as well as the increase in racist statements and threats on the Internet. In this regard, the Committee is particularly

concerned about the sharp increase in discrimination against members of Jewish and Muslim communities, including the reported increase in verbal abuse, harassment, and physical violence against Jewish and Muslim persons. The Committee also notes with concern that anti-Semitic and racist chants are commonplace in football stadiums. Furthermore, while noting the explanation given by the delegation, the Committee retains a concern that the approach of the courts to determining whether an insulting statement amounts to hate speech under the Convention may make adequate prosecution of this kind of hate speech unnecessarily difficult. (arts. 2, 4 and 5).

12. In light of its general recommendation nos. 15 (1993) on article 4 of the Convention and 35 (2013) on Combating Racist Hate Speech, the Committee recommends that the State party adopt a firm stand against the use of hate speech for political purposes, increase efforts to combat racially motivated hate speech and ensure that criminal acts perpetrated on grounds of intersectionality between ethnic origin and religion are duly investigated and prosecuted. The Committee also recommends that the State party:

- (a) Conduct research concerning the root causes, and monitor all trends which may give rise to racist and xenophobic behaviour, and assess and combat its consequences;**
- (b) Ensure that victims of racist crimes are afforded wider access to free legal assistance;**
- (c) Vigorously combat racist behaviour in sports, particularly in football;**
- (d) Consider revising rules applicable with a view to simplifying the legal requirements to punish hate crime; and**
- (e) Actively promote among the media and Internet service providers awareness of the importance of avoiding stereotypes and discriminatory attitudes and of the intrinsic value of diversity.**

Racial profiling and prevention of racial discrimination and combating stereotyping and stigmatization

13. While noting the measures the State party has put in place to report and tackle discrimination which has already occurred, the Committee is concerned that stereotypes and discriminatory attitudes remain prevalent in society. The Committee is particularly concerned that:

- (a) Insufficient measures are taken to effectively tackle the root causes of racial discrimination and measures to raise awareness about stereotypes and prevent discrimination are inadequately implemented;
- (b) Racial profiling by the police and forensic psychiatrists is continuing;
- (c) Racial profiling by the police has reportedly produced feelings of mistrust among minority groups and discourages them from accessing help when they are victims of crime or rights abuses;
- (d) Stop and search powers are exercised by the police disproportionately on members of minority groups, who are furthermore subjected to higher fines, incidents of harassment, and reported racially biased police brutality; and
- (e) Racist bullying at school has been increasing (arts. 2, 4, 5, 6 and 7).

14. The Committee recommends that the State party take specific measures to combat stereotyping and stigmatization of members of ethnic groups, and pay

particular attention to addressing indirect discrimination. The Committee furthermore recommends that the State party:

- (a) Develop and adopt a national plan of action against racial discrimination, as has also been recommended by other international fora;
- (b) Adopt the necessary measures to ensure that stop and search powers are not exercised in a discriminatory manner, and monitor compliance with such measures;
- (c) Strengthen measures to eliminate racist bullying at school, including by promoting, at all levels of education, general sensitivity to diversity and multiculturalism;
- (d) Increase the number of persons of minority groups engaged in law enforcement and across the justice system;
- (e) Develop public awareness raising campaigns on stereotyping and discrimination, and provide mandatory training on human rights and the Convention to teachers, law enforcement officials and the judiciary;
- (f) Consider developing strategies to avoid the use of negative stereotypes and stigmatization of ethnic groups by political parties as a basis of their political activities; and
- (g) Collect data and information about stop and search practices by the police and include these findings in its next periodic report.

Discrimination against people of African descent

15. The Committee is concerned about the increase in discrimination, including racial profiling and stigmatisation, faced by people of African descent. The Committee is also concerned about the structural invisibility of this discrimination, as reflected in the fact that people of African descent are not identified by the State party as a group facing discrimination. In this regard the Committee is concerned in particular about:

- (a) The disproportionate rates of poverty and unemployment faced by people of African descent;
- (b) The limited number of people of African descent in public office; and
- (c) The insufficient awareness within the Dutch society about slavery and the colonial past (arts. 2, 4, 5, and 7).

16. Bearing in mind its general recommendation no. 32 (2009) on the meaning and scope of special measures, and in light of its general recommendation no. 34 (2011) on Racial Discrimination against People of African Descent, the Committee recommends that the State party explicitly recognize that people of African descent form a part of Dutch society, and:

- (a) Develop and implement specific measures and affirmative action policies to eliminate racial profiling and discrimination faced by persons of African descent and to increase the participation of persons of African descent in public office and higher positions of political responsibility;
- (b) Provide disaggregated data in its next periodic report on the social and economic situation of people of African descent, including from a gender perspective;
- (c) Undertake public education campaigns to ensure that the society at large is informed about the complex history of people of African descent in the Netherlands,

including the periods of slavery and colonisation as well as racial discrimination faced by people of African descent; and

(d) Increase in its school curriculum information on the slave trade, enslavement and colonisation.

Cultural traditions and racial discrimination

17. While the Committee understands that the tradition of Sinterklaas and Black Pete is enjoyed by many persons in Dutch society, the Committee notes with concern that the character of Black Pete is sometimes portrayed in a manner that reflects negative stereotypes of people of African descent and is experienced by many people of African descent as a vestige of slavery, which is injurious to the dignity and self-esteem of children and adults of African descent. The Committee is concerned about the discriminatory effect of such portrayals, which may convey a conception at odds with the Convention. The Committee is furthermore concerned at reports that citizens seeking to peacefully protest against such portrayals have been denied authorization to conduct such protests at a meaningful time and place and have been subjected to violent attacks and other forms of intimidation, which have not been adequately investigated. (arts. 2, 5 and 7).

18. **Considering that even a deeply-rooted cultural tradition does not justify discriminatory practices and stereotypes, the Committee recommends that the State party actively promote the elimination of those features of the character of Black Pete which reflect negative stereotypes and are experienced by many people of African descent as a vestige of slavery. The Committee recommends that the State party find a reasonable balance, such as a different portrayal of Black Pete and ensure respect of human dignity and human rights of all inhabitants of the State party. The Committee further recommends that the State party ensure non-discrimination in the enjoyment of freedom of expression and association, and that attacks on protesters be effectively investigated and duly prosecuted.**

Discrimination against Roma, Sinti and Travellers

19. The Committee is concerned about reports that Roma, Sinti and Travellers are subjected to significant discrimination regarding access to employment, housing and healthcare, about reported cases of disproportionate numbers of Roma, Sinti and Traveller children being separated from their families, as well as about the refusal of some municipalities to take into account the needs of Travellers for sufficient campsites in order to exercise their traditions. (arts. 2 and 5)

20. **In light of its general recommendations nos. 27 (2000) on Discrimination against Roma and 32 (2009) on the Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee recommends that the State party take specific measures in favour of Roma, Sinti and Travellers including by creating better opportunities in the labour market, combating discrimination in education and housing, and tackling the problems faced by Roma, regarding registration status and statelessness. The Committee recommends that the State party base these measures on prior consultation with representatives of Roma, Sinti and Travellers to ensure that they are tailored to their particular problems and needs. The Committee also recommends that the State party take resolute measures to ensure that Travellers are provided with sufficient campsites, so as to be able to practice their traditions and preserve their cultural identity.**

Migration and integration policy

21. While noting that in its Annual report on human rights of 2015, the State party refers to some measures to support integration into the Dutch society in the field of employment, the Committee remains concerned that migrants face continuing discrimination, particularly in the fields of employment, health care, and housing. In particular the Committee is concerned that:

(a) The current policy on integration has shifted the primary responsibility for integration from the State to migrant communities. This approach puts migrants in particularly vulnerable situations at risk of receiving insufficient attention and support, leaves them vulnerable to social exclusion, and hampers their integration and the full enjoyment of rights;

(b) The application of a generic approach to integration and discrimination, has had the effect that many policies and measures aimed at benefiting specific disadvantaged groups have been discontinued;

(c) Undocumented migrants receive assistance only if they cooperate with their own departure; and

(d) Undocumented migrants have limited access to basic health care in Curaçao and Aruba (arts. 2 and 5).

22. **The Committee reiterates its previous recommendations, and urges the State party to ensure that its integration policies reflect the responsibilities of the State under the Convention (CERD/C/NLD/CO/17-18, para. 4). Recalling its general recommendation No. 30 (2005), on Discrimination against non-citizens and general recommendation No. 32 (2009) -on the Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms Racial Discrimination, the Committee recommends that the State party:**

(a) Adopt a specific integration policy which effectively promotes the full participation and integration of migrants into Dutch society, applying a policy which is adequately resourced and includes measures to provide migrants with access to free language classes as well as assistance in finding an internship post or a job;

(b) Pay particular attention to migrants in especially vulnerable situations; and

(c) Ensure that undocumented migrants are provided with food and shelter, as appropriate, in all circumstances prior to deportation, and that they are granted the right to obtain healthcare in all constituent parts of the State party.

Discrimination in employment

23. The Committee takes note of the 2015 Annual report on discrimination, which refers to several specific measures for preventing discrimination and improving the conditions of access to employment of persons from minority groups. The Committee is however concerned about the relatively high unemployment rate amongst ethnic minorities, particularly among young and female members of minority groups. In this regard the Committee also notes with concern that highly educated young migrants have difficulties finding employment. Furthermore the Committee is concerned about the frequent discrimination on the grounds of race, nationality and religion in recruitment and selection practices by employers and employment agencies (arts. 2 and 5).

24. **The Committee recommends that the State party strengthen its measures to vigorously tackle discrimination in employment, and for that purpose:**

(a) Increase measures to effectively prevent discrimination in employment, including the implementation of policies relying on anonymized CVs;

(b) Review all current obstacles experienced by young members of minority groups and adopt specific measures, long-term policies and strategies with an effective monitoring and evaluation mechanism to address the root causes of unemployment among young members of minority groups, as well as specific measures to provide them with training and vocational skills training in order to improve their opportunities to access the labour market; and

(c) Ensure that employers and employment agencies that discriminate are adequately and effectively sanctioned.

Reporting and prosecution of cases of racial discrimination

25. The Committee notes with concern that acts of racial discrimination are underreported and under prosecuted. In particular the Committee is concerned about the limited number of complaints registered by the police, the limited number of complaints investigated by prosecutors and submitted to the courts, as well as the reported reluctance of victims to lodge complaints out of fear of social censure, lack of trust in the authorities and/or lack of awareness of available remedies. The Committee furthermore notes with concern that this phenomenon seems to be connected inter alia to frequent downplaying and insufficient understanding of the existence and the manifestations of racism and racist practices within society (arts. 2, 6 and 7).

26. **Recalling its general recommendation No. 31 (2005) on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, the Committee recommends that the State party remind members of the police, public prosecutors and members of the prosecution service of the general importance of prosecuting acts of racial discrimination, in particular offences committed with racial motives. Furthermore, the Committee recommends that the State party:**

(a) Ensure that available remedies and services to access them and to seek support are sufficiently known to the public, in particular to minority groups, asylum-seekers and refugees residing in reception facilities, and inform them in an understandable way about such remedies and services;

(b) Undertake increased efforts to raise public awareness and knowledge about racial discrimination faced by ethnic minority groups, as well as about the double or multiple discrimination faced by persons professing a particular religion, women, and LGBTI persons and on how to recognize and react to discriminatory practices; and

(c) Promote critical thinking among school children and young people and equip them with the necessary skills to become aware of and respond to stereotypes and discriminatory and intolerant behaviour.

Cooperation with civil society

27. The Committee notes with concern that anti-discrimination organizations and state-funded minority representative bodies have faced severe subsidy cuts, leading some of them to discontinue their work. The Committee is furthermore concerned about the repeal of the Minorities Consultation Act (*Wet Overleg Minderheden*), under which the National Consultation of Minorities (*Landelijk Overleg Minderheden*, LOM), used to be a statutory dialogue partner of the government, and was consulted on all policies that affected minority communities. While noting the indication by the delegation that a dialogue was taking place regularly between the Minister of Social Affairs and various minority groups, the

Committee is concerned that this form of dialogue may be less effective to convey the situation and concerns of minorities than regular consultation with representatives properly designated by the respective groups. (art. 2 and 7).

28. The Committee recommends that the State party establish an effective arrangement for a dialogue with representatives of minority groups in order to be properly informed about their problems and needs, and to develop and implement, with their participation, policies and programmes to improve their situation and prevent and eliminate racial discrimination against them. The Committee recommends that the State Party make such a dialogue mandatory both at the central level and at the level of provinces and municipalities.

Civic Integration Examination Abroad

29. The Committee notes that citizens of certain countries are exempt from the Civic Integration Examination Abroad, while this procedure is compulsory for citizens of other countries. Furthermore, the Committee is concerned that the requirement of the Civic Integration Examination Abroad poses a particular obstacle for persons in vulnerable situations, such as women who have been deprived of accessing education, persons who are illiterate or persons using a different alphabet, which is not in conformity with the Convention (CERD/C/NLD/CO/17-18, para. 5). Finally, the Committee is concerned that the costs of the examination preparation pack and the course fees are particularly high and may severely hamper family reunification (arts. 2 and 5).

30. The Committee recommends that the State party ensure that policies aimed at integration of migrants are not discriminatory in effect. The Committee furthermore encourages the State party to discontinue the Civic Integration Examination Abroad and allow migrants to take the Civic Integration Examination in the State party without discrimination. Furthermore, the Committee recommends that the State party ensure that the family reunification policy meets the international standards on the right to the protection of family life.

Education

31. The Committee is concerned about continuing disparities in educational achievement and school dropout rates between ethnic minority and majority youth. Furthermore, the Committee notes with concern that children in Aruba and Curaçao are educated in Papiamentu and Papiamentu respectively only until the end of primary school (arts. 5).

32. The Committee recommends that the State party strengthen and implement special measures to increase the level of educational achievement of children of ethnic minority groups and reduce school dropout rates among them. Furthermore, the Committee recommends that the State party give adequate recognition to mother tongues and introduce bilingual education in Aruba and Curaçao.

Asylum-seekers and refugees

33. The Committee is concerned about the situation of asylum-seekers in the State party, including the increase in hostility towards refugees and asylum-seekers among the population and opposition to the opening of new reception centres. In particular the Committee is concerned about:

(a) Lengthy immigration detention, poor living conditions in immigration detention centres and detainees being subjected to the same security measures and disciplinary punishments as convicted criminals;

- (b) Domestic violence not being recognized as ground for asylum;
- (c) The disappearance of a relatively high number of unaccompanied children from the large scale reception facilities, who might have become victims of human trafficking; and
- (d) Reports of cases of homo-, bi- and transphobic behaviour by employees at asylum facilities, as well as questioning by civil servants about sexual acts, and harassment by fellow detainees;
- (e) Reports of cases of *refoulement* of asylum-seekers fearing persecution because of their sexual orientation. (art. 2, 3, and 5)

34. **The Committee recommends that the State party develop public education programmes and promote positive images of ethnic minorities, asylum-seekers and migrants, and develop awareness-raising campaigns to inform the public on the current and historical reasons for migration, such as armed conflict as well as extreme poverty. Furthermore, the Committee recommends that the State party:**

- (a) **Review its detention regime for asylum-seekers with a view to finding alternatives to detention and ensure that the detention of asylum-seekers is only used as a measure of last resort, is limited by statute to the shortest time reasonably necessary and that arbitrary detention is avoided;**
- (b) **Ensure that these detainees are treated humanely and in conformity with international standards ;**
- (c) **Fully comply with the obligation of non-*refoulement* arising out of the international norms concerning refugees and human rights, including by recognizing domestic violence as a ground for asylum; and**
- (d) **Take measures of protection with regards to women, children and LGBTI asylum seekers, because of their particular vulnerability, and increase protection for unaccompanied children in reception facilities and thoroughly investigate the disappearance of unaccompanied children and search and identify these children.**

Minority women and girls

35. The Committee notes with concern that women and girls from minority groups are subjected to intersectionalities of discrimination on ethnic origin and gender, are especially vulnerable to poverty and have particular difficulties to access employment, education and health care. (arts. 2 and 5).

36. **The Committee recommends that the State party bear in mind the Committee's general recommendation no. 25 (2000) on Gender-related Dimensions of Racial Discrimination, and that it incorporate a gender perspective into all policies and strategies for combating racial discrimination in order to address the multiple forms of discrimination to which women are subject. The Committee also encourages the State party to monitor and, if necessary, take measures with regard to addressing multiple discrimination against women belonging to minorities and other vulnerable groups, and place a particular focus on discrimination that is subtle and may go unnoticed.**

Dutch companies abroad

37. The Committee is concerned about the involvement of Dutch businesses in extractive industries, palm oil and soy production abroad, causing adverse effects on the

enjoyment of human rights, in particular by indigenous peoples, minority groups and local communities, and on the environment (arts. 2 and 5).

38. **The Committee recommends that the State party take the necessary measures to ensure that Dutch companies and transnational corporations registered in the Netherlands involved in economic activities abroad do not endanger the human rights of indigenous peoples, minority groups and local communities and the environment in the host countries, taking into account the Guiding Principles on Business and Human Rights adopted by the Human Rights Council in 2011 on the responsibility for respecting human rights in host countries.**

D. Other recommendations

Ratification of other treaties

39. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying the international human rights treaties which it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.

Follow-up to the Durban Declaration and Programme of Action

40. In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

41. In the light of General Assembly resolution 68/237 proclaiming 2015–2024 the International Decade for People of African Descent and resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in this framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

42. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and follow-up to the present concluding observations.

Dissemination

43. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the concluding

observations of the Committee with respect to those reports be similarly made available to all State bodies which are competent with regard to the implementation of the Convention, including municipalities and be publicized on the website of the Ministry of Foreign Affairs in the official and other commonly used languages, as appropriate.

Common core document

44. The Committee encourages the State party to update its core document, which dates back to 1996 for the Netherlands and the former Antilles, and to 2003 for Aruba, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for the common core document.

Follow-up to concluding observations

45. In accordance with article 9 (1) of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 12, 24 and 28 above.

Paragraphs of particular importance

46. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 14, 16, 22, 26 and 34 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

47. The Committee recommends that the State party submit its twenty-second to twenty-fourth periodic reports covering all components of the State party, in a single document, by 9 January 2019, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.
