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Civil and Political Rights**

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Human Rights Committee

**Information received from the Netherlands on follow-up to
the concluding observations on its fifth periodic report***

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* The present document is being issued without formal editing.



1. During the meeting held on 18 July 2019, the Human Rights Committee submitted to the Kingdom of the Netherlands a number of recommendations, and requested that the Kingdom provide information on the implementation of the recommendations made by the Committee in paragraphs 16 (racial discrimination, hate speech and hate crimes), 19 (refugees and asylum seekers) and 35 (gas extraction operations in Groningen). The Committee's recommendations are reproduced below, followed by the Kingdom's reply.

Recommendations in paragraph 16: Racial discrimination, hate speech and hate crimes

The State party should strengthen its efforts, through both law enforcement and awareness-raising activities, to combat racial discrimination, hate speech and incitement to discrimination or violence on racial, ethnic or religious grounds, in accordance with articles 19 and 20 of the Covenant and the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. In particular, it should:

(a) Intensify its efforts to prevent hate speech, particularly by politicians and high-level public officials

2. The Public Prosecution Service is tasked with enforcing criminal law. In regard to discrimination, the Public Prosecution Service's task is primarily framed by criminal-law provisions on discrimination and the legislature's intention in enacting those provisions, namely the protection of public order, of the unimpeded functioning of groups in society and of individuals. The Public Prosecution Service consults with partner organisations with some regularity. For example, under the Action Plan on LGBTI Safety, the Public Prosecution Service consults with interest groups and media experts on how to highlight the criminal-law approach to tackling discrimination, with due regard for its position and task in the judicial system. In an open dialogue the parties involved exchange ideas on the impact of anti-LGBTI violence on the community, the scope and limitations of criminal law and the dilemmas surrounding communication regarding criminal cases. The lessons learned from these exchanges can be applied to other forms of discrimination and are therefore used as widely as possible.

3. In order to increase willingness among victims of discriminatory violence to report incidents or lodge a criminal complaint, the police are focusing on measures to support victims who report an incident or lodge a criminal complaint, and on increasing knowledge and expertise by making use of internal police networks. The police work on the principle that their services are available to all and anyone should be able to approach any police officer and receive the help they need.

4. The government does not intend to draw up codes of conduct for the political discourse of members of government. Responsibility for the political discourse of elected representatives lies with the individuals themselves and with the body to which they were elected.

(b) Develop an effective strategy, in cooperation with digital technology companies, to reduce online hate speech, and develop effective programmes for addressing manifestations of racial discrimination and hate speech at public events, including football matches

5. During the Netherlands' Presidency of the Council of the European Union in 2016, the European Commission, together with Facebook, Microsoft, Twitter and Google/YouTube, presented a Code of Conduct on Countering Illegal Hate Speech Online. The most important commitment concerns dealing with notifications of illegal hate speech and if necessary removing content in less than 24 hours.

6. In addition, Twitter, Facebook and YouTube support civil society organisations engaged in preventing discrimination by giving voice to alternative viewpoints and encouraging people not to post discriminatory utterances. However, social media companies

have difficulty finding the right organisations to provide alternative viewpoints. The Dutch government seeks to work with them in this regard.

7. Hate speech and discriminatory utterances during football matches are unacceptable. Combating this problem is the shared responsibility of the Royal Netherlands Football Association (KNVB), the clubs, supporters' associations, police and criminal justice authorities. A plan called *'Football is for everyone. Together we're tackling racism and discrimination'* was presented in 2020. Drafted by various ministries and the KNVB, the plan contains 20 measures that can be implemented to prevent, identify and penalise racism and discrimination in football. For example, an app for reporting discrimination ('DiscriminatieMelder') was recently launched so that anyone can report incidents of racism and discrimination in football on and around sports fields and in stadiums. A digital tool is being developed to administer obligations to report to the police (usually imposed for disorderly conduct) digitally, thus making it easier for mayors, public prosecutors and criminal courts to impose such reporting obligations. And in connection with the KNVB's Guidance on Combating Verbal Violence (*Richtlijn bestrijding verbaal geweld*), the Anne Frank House has developed approaches aimed at combating anti-Semitic and racist chants. These approaches were tested at three football clubs in 2021. The other measures set out in the plan are at various stages of development or have already been implemented.

(c) Investigate hate crimes thoroughly, prosecute suspected perpetrators where appropriate and, if they are convicted, punish them and provide victims with adequate remedies

Investigate hate crimes thoroughly

8. When a criminal complaint or report of an offence under Book 2 or 3 of the Criminal Code (i.e. a general criminal offence) is made, the police must be on the alert for any discriminatory elements, even if the complainant does not immediately specify that discrimination was involved. Any circumstances of the incident that could point to a discriminatory element must be included in explicit terms in the official report or record.

9. The 'individual victim assessment' is used for this purpose. When taking a criminal complaint, the police always make an individual assessment of the victim's situation in a structured manner in order to determine whether the victim is especially vulnerable. The individual assessment can aid in recognising a discriminatory element, thereby facilitating a tailored approach to implementing protective measures. The aim of the individual assessment is to prevent secondary victimisation and help ensure that the person is not targeted repeatedly.

Prosecute suspected perpetrators where appropriate and, if they are convicted, punish them

10. The Public Prosecution Service (Openbaar Ministerie) has issued Instructions on Discrimination setting out policy on the prosecution of cases involving discrimination. These Instructions specify how the Public Prosecution Service deals with specific discrimination offences as well as general criminal offences (such as common insult, making threats or assault) involving a discriminatory element ('*codis-feiten*'). The Instructions on Discrimination state that when prosecuting a general criminal offence involving a discriminatory element the public prosecutor is required to emphasise that element in the closing speech and include it as an aggravating factor in the sentencing recommendation, with due regard for the prescribed maximum sentence. According to the Instructions, in the case of general criminal offences, and violent offences in particular, the possible presence of a discriminatory element is a compelling ground for investigation and prosecution.

11. In regard to hate speech, it is also important to note that as part of a broader approach to preventing discrimination the maximum sentence for the offence of public incitement to violence, hate or discrimination (article 137d, Criminal Code) has been doubled as of 1 January 2020. The courts may now sentence offenders to a term of imprisonment of up to two years or impose a fourth-category fine. The maximum sentence for offences involving aggravating factors is four years' imprisonment. Finally, a private member's bill has been submitted to designate a discriminatory motive as a general aggravating factor by law. Under this bill, if a criminal offence is committed with a discriminatory motive, the custodial sentence for that offence will be increased by one-third.

Provide victims with adequate remedies

12. A study by the Research and Documentation Centre (WODC) in 2020 into the specific needs of victims of hate crimes in the context of criminal proceedings and victim support¹ shows that the current body of rights in the Netherlands – when applied correctly in practice – largely meets the special needs of victims of general criminal offences with a discriminatory element. These rights include general victims’ rights, special provisions for victims of offences with a discriminatory element and the individual assessment.

13. Training programmes and workplaces must pay constant attention to the appropriate treatment of hate-crime victims. This is a priority in police training and professional development.

14. Finding ways to improve victim treatment and assistance is an aim that is pursued vigilantly. For example, on the basis of the above-mentioned study the Ministry of Justice and Security initiated consultations with the police, Victim Support Netherlands and the antidiscrimination services to discuss the procedure the police follow when referring people who report or file criminal complaints of hate crimes.

15. The aim of these consultations is to identify any problems and, if necessary, implement targeted improvements. Victim Support Netherlands provides information and services for victims of hate crimes on its website.

(d) Provide adequate training to law enforcement officials, judges and prosecutors on the promotion of racial, ethnic and religious diversity

The judiciary and public prosecution service

16. In the Netherlands, the Training and Study Centre for the Judiciary (SSR) is responsible for adequately training employees of the judiciary, including court staff such as court clerks, and the Public Prosecution Service. In partnership with the Dutch courts of law and public prosecutor’s offices, SSR trains law graduates as judges and public prosecutors. These initial training programmes have undergone major changes and SSR has redesigned the training programme for judges. The Public Prosecution Service has taken the initiative to modify the public prosecutor programme, with SSR acting as a consultant. The SSR operates independently from the Ministry of Justice and Security.

17. Within the judicial training programme and the training programme for public prosecutors, acting with integrity and professionalism are key competences. Specific attention in the judicial training programme is given to ethnicity and religion in the mandatory course entitled ‘Judgments without Prejudices’. The course focuses on (institutional) racism, discrimination and inequality in the national and international context. Training on discrimination and inequality is also available to public prosecutors.

The Public Prosecution Service

18. The Public Prosecution Service (OM) has a National Discrimination Expertise Centre (LECD). Every public prosecutor’s office at a district court is staffed with experts on discrimination and prosecutors who handle discrimination cases. The LECD works with these prosecutors and experts to ensure that discrimination cases are dealt with in the best possible way. The LECD and the discrimination prosecutors at the district courts advise and inform public prosecutors and other OM staff when discrimination cases are being prosecuted. In addition, the LECD is engaged in building up, maintaining and organising expertise on this theme and sharing it within the Public Prosecution Service.

The police

19. The Police Academy programme for police officers includes training on the antidiscrimination provisions in the Constitution and Dutch Criminal Law. The periodic

¹ S. van der AA, J. Claessen & R. Hofmann, ‘Speciale behoeften van slachtoffers van hate crime ten aanzien van het strafproces en de slachtofferhulp’ [Special needs of hate-crime victims in regard to criminal proceedings and victim support], WODC 2020.

training sessions and tests, e.g. in the ‘Profcheck’ training game and the comprehensive professional skills training, cover how to approach discrimination and prejudice awareness-raising. The police organisation maintains a Diversity Skills Network to ensure access to knowledge about lifestyles, cultures and issues of special attention in Dutch society. The network supports, informs and advises police officers on discrimination and the approach to it.

(e) Intensify its efforts to effectively implement the action plan against labour market discrimination (2018) and the national action programme to combat discrimination (2016), with a view to increasing the actual participation of target groups in the labour market

20. The 2018–2021 Labour Market Discrimination Action Plan has three pillars: (i) supervision and enforcement, (ii) research and instruments and (iii) knowledge and awareness. An important development in this respect is a bill on the supervision of equal opportunities in recruitment and selection, which will empower the Social Affairs and Employment Inspectorate (SZW Inspectorate) to supervise the recruitment and selection procedures of employers and intermediaries in the labour market. Employers with 25 or more employees must lay down their procedures in writing in order to give structure to their recruitment and selection process. Their procedures must contain sufficient safeguards to prevent discrimination and guarantee equal treatment of applicants. The bill was presented to the House of Representatives at the end of 2020. It is currently on hold due to the fall of the government, but will probably be taken up again when a new government has been formed.

21. In order for the law to be implemented properly, it is important that sufficient knowledge about good recruitment and selection methods is available. To this end, the Netherlands Organisation for Applied Scientific Research (TNO) is conducting research in partnership with the programme ‘Further Integration on the Labour Market’ (*‘Verdere Integratie op de Arbeidsmarkt’*). The knowledge acquired by means of this research is used to formulate guidelines and create tools for employers. One example is the labour market discrimination checklist developed by TNO on behalf of the SZW Inspectorate. TNO will also conduct scientific research into the effectiveness of anonymous job applications, to investigate whether this instrument can help ensure equal opportunities for applicants. An information campaign will be launched to make employers aware of the consequences of discrimination and the tools they can use to combat it.

22. In addition to the activities carried out under the Action Plan on Labour Market Discrimination, the programme Further Integration on the Labour Market (2018-2021) is broadening efforts to improve the position of people with a non-Western migration background on the labour market and expand their opportunities. The government is working with employers, municipalities and educational institutions on pilot projects to determine which approaches are effective. As the results come in around mid-2021, the approaches that proved effective will be scaled up in partnership with the stakeholders.

(f) Continue its efforts to bring about the end or transform the nature of parades involving the character of ‘Black Pete’

23. The St Nicholas (*‘Sinterklaas’*) celebration is a tradition in Dutch culture and – like society itself – evolves with the times. Likewise, the manifestation of the ‘Pete’ character is changing too, as a result of dialogue and developments in society. This remains an issue for society that cannot be regulated by the government. Developments and the debate surrounding this issue will continue, and that is a good thing. But it is important that the debate is conducted calmly and with respect for each other. The government’s role is to facilitate respectful dialogue and the depolarisation of the debate on the Sinterklaas celebration and the Pete character.

(g) Collect disaggregated data relating to the investigation and prosecution of hate crimes**Number of hate crimes²**

<i>Year</i>	<i>Hate crimes recorded by police</i>	<i>Prosecuted</i>	<i>Sentenced</i>	<i>About these data</i>
2019	2 016	343	Not available	³
2018	3 299	312	91	
2017	3 499	331	79	
2016	4 376	Not available	Not available	
2015	5 288	Not available	Not available	
2014	5 721	133	87	

Recommendations in paragraph 19: Refugees and asylum seekers**The State party should:****(a) Continue its efforts relating to the family reunification policy and the provision of free legal aid**

24. The Netherlands has continued its efforts to scrutinise and improve its policy on family reunification for refugees. Several internal working processes have been improved to ensure an accessible and comprehensible procedure. The effects of the COVID-19 pandemic posed challenges for family members seeking reunification in the Netherlands, as well as for the general processing of those applications.⁴ In order to prevent major hurdles and growing backlogs, several measures have been taken to safeguard a flexible approach for cases affected by circumstances related to COVID-19.

25. The Netherlands currently provides free legal aid for family reunification cases if applicants do not have sufficient financial resources. Free legal aid is available after an initial denial of an application, as well as in appeal procedures in court.

(b) Introduce legislation governing asylum in line with international human rights and refugee laws, establish or strengthen asylum procedures in the Caribbean constituent countries and consider the ratification of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees by all constituent countries that have not done so already

[See report of Curaçao and St Maarten below]

(c) Ensure that the principle of non-refoulement is secured in law and strictly adhered to in practice in all circumstances by all constituent countries

26. The Netherlands (including the three public bodies in the Caribbean region, Bonaire, St Eustatius and Saba) has a careful and extensive procedure to assess asylum applications and prevent refoulement, in conformity with international refugee law and human rights law. In the context of this procedure, which includes free legal aid, an individual determination is made as to the risk of persecution or inhumane treatment, as required by international human

² Source: [Netherlands | OSCE - ODIHR](#)

³ Figures reported to ODIHR and presented here include hate speech and discrimination offences (or 'basic forms of discrimination'), as well as hate crimes ('common offences with a discriminatory motive'). Where multiple biases are registered in an offence, each of them is reported individually in the breakdown. Data from prosecutors and courts refer to the 'discriminatory facts' found in incidents, rather than the number of incidents.

⁴ As a result of the pandemic, the embassies' scope of action has been limited, for example because interviews could not be held, because travel restrictions prevented family members from picking up authorisations for temporary stay or because it was not possible for family members to enter the Netherlands.

rights and refugee law. If their application is denied, asylum seekers have the right to appeal in court. Only after a decision in the final instance upholding the denial of the asylum application, is the State allowed to enforce the individual's return to the country of origin. If, having exhausted all legal remedies, an asylum seeker experiences problems upon return to their country of origin, this does not necessarily reflect negatively on the quality of the asylum procedure. After all, the problems they encounter may pertain to unrelated developments.

(d) Ensure that investigations are carried out into the cases of breach of the principle of non-refoulement

27. The Justice and Security Inspectorate carries out investigations to provide insight into the quality of the performance of tasks and compliance with the rules and norms, including the principle of non-refoulement. In so doing, the Inspectorate aims to identify risks and encourage improvements when breaches occur.

(e) Intensify its efforts to reduce the backlogs in the asylum application process and the family reunification process, including by strengthening the capacity of the immigration and naturalization services in all constituent countries

28. The Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst, IND) has implemented various measures to accelerate the asylum procedure and the family reunion procedure and make them more efficient. Most importantly, a dedicated task force was established in April 2020 to reduce the backlog of approximately 15,000 first asylum applications. Although the IND's capacity with regard to the asylum and family reunification processes has been severely impacted by circumstances related to the COVID-19 pandemic,⁵ the government was able to inform the House of Representatives in January 2021 that decisions had been taken in more than 8,000 cases, thereby significantly reducing the backlog.⁶ The explicit aim of the task force is to make decisions on the remaining cases by mid-2021 at the latest. At the same time, the IND is carrying out its regular activities and will continue to do so. In another important measure, the IND boosted its capacity in order to process more family reunification cases by the end of 2020.

(f) Collect comprehensive data on asylum seekers throughout the State party

29. The Netherlands has a long tradition of collecting comprehensive qualitative and quantitative data on asylum seekers and migration in general. In 1987, the Dutch parliament adopted a motion submitted by MP Jan Kees Wiebenga in which the government was requested to periodically report on developments pertaining to asylum policy. Since 2007, the scope of reporting has been broadened and the Immigration System Report (*Rapportage Vreemdelingenketen*) is presented to parliament every six months. In accordance with a parliamentary motion adopted in 2018, the government also submits a comprehensive report on all aspects of migration policy to parliament every year (Comprehensive Agenda on Migration, *Integrale Migratie Agenda*). In February 2021, the government informed parliament that, on the basis of the recommendations of several independent advisory councils, it is going to combine the reporting in the Immigration System Report and the Comprehensive Agenda on Migration in an annual report called the State of Migration (*Staat van Migratie*), the first of which was published in June 2021.

⁵ As a result of the COVID-19 pandemic, the asylum process was suspended in March and April of 2020. Throughout the pandemic, interviewing capacity and scope for travel have been limited. There have also been limitations due to staff working from home and a lack of resources for facilitating remote interviewing. Capacity for (emergency) reception and quarantine has also been limited.

⁶ <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2021/01/07/tk-voortgang-afdoen-vertraagde-zaken-ind/TK+Voortgang+afdoen+vertraagde+zaken+IND.pdf> (most recently consulted: 26 April 2021).

Recommendation in paragraph 35: Gas extraction operations in Groningen

The State party should:

- (a) **Take necessary measures to ensure the physical safety and mental well-being of people residing in the area of gas extraction in Groningen and the security and safety of their homes**
- (b) **Provide adequate compensation to the victims and prevent future occurrences of damages related to gas extraction**

30. Since 2018 the government has been working to provide compensation for the damage resulting from ground movement caused by gas extraction from the Groningen gas field and gas storage at the Norg site (below: ‘damage’) and to reinforce buildings to enhance safety. These efforts are in addition to a package of measures aimed at offering the region sustainable prospects for the future.

31. The Groningen (Temporary Provisions) Act entered into force on 1 July 2020. Under this act responsibility for the extrajudicial disposal of all forms of damage lies with the government, and the Groningen Mining Damage Institute (Instituut Mijnbouwschade Groningen) was established to process the claims.⁷ Decisions on applications for compensation are eligible for objection and judicial review.

32. In the period from 19 March 2018 to 12 May 2021 the Institute and its predecessor processed 65,949 damage claims and awarded €977.3 million in compensation.⁸

33. The government took over responsibility for the reinforcement operation from NAM at the end of 2018.⁹ Responsibility for carrying out the operation was assigned to the National Coordinator for Groningen. The bill setting out the definitive statutory rules pertaining to the reinforcement operation is currently being considered by parliament and is expected to enter into effect on 1 July 2021.

34. There are approximately 150,000 addresses in the earthquake zone. Not every building requires reinforcements. Whether or not a building needs to be reinforced is determined on the basis of a risk estimate, pledges made and administrative agreements. On 31 March 2021, 26,724 addresses had been registered on the worklist. Reinforcement work has been completed at 1,865 addresses. The other addresses are at various stages of the reinforcement procedure.¹⁰ Decisions on reinforcement¹¹ are eligible for objection and judicial review.

35. The National Programme for Groningen, aimed at improving the future prospects for the region, was launched in March 2019. The programme provides for investments until 2030 to improve the living environment, the economy, education, job opportunities, nature and climate adaptation. Central Government has made €1.15 billion available for this purpose.¹²

36. The National Programme for Groningen also supports projects to improve mental health. In 2019 and 2020 the municipalities that experience earthquakes offered emotional and social support to their residents, for example by:

- Appointing an earthquake coach, engaging counsellors and expanding their social support teams; and

⁷ Successor to the Temporary Mining Damage Committee for Groningen (Tijdelijke Commissie Mijnbouwschade Groningen).

⁸ *1156 keer fysieke schade, 539 keer waardedaling* [1,156 physical damage claims and 539 claims for loss of property value] ([schadedoormijnbouw.nl](https://www.schadedoormijnbouw.nl)).

⁹ Section 52g, subsection 3 of the Mining Act (Bulletin of Acts and Decrees, 2018, no. 471) and Reinforcement of Buildings (Groningen) Order (Government Gazette 2019, 30569).

¹⁰ <https://www.nationaalcoordinatorgroningen.nl/versterken/versterking-resultaten>.

¹¹ This includes decisions against reinforcement.

¹² <https://www.nationaalprogrammagroningen.nl/app/uploads/2020/04/jaarsverslag-2019-nationaal-programma-groningen.pdf>.

- Training a range of professionals in the earthquake-affected municipalities to recognise residents' personal problems and ensure that people stand up for themselves and ask for the help they need. Recognising problems earlier and more fully can reduce the overall need for care services.¹³

37. The Groningen municipal health service (GGD Groningen) supports municipalities by sharing knowledge, monitoring developments and conducting evaluations.

38. In addition, Central Government and the region made administrative agreements in November 2020 concerning the Groningen earthquake zone.¹⁴ The government has made €1.42 billion available for the implementation of these agreements. This includes more than €253 million for improving the future prospects of the province. These funds can be used, for example, to:

- Make general improvements to all homes in the earthquake zone;
- Implement comprehensive programmes for special target groups: agriculture, heritage, SMEs and social and emotional support; and
- Boost economic and sustainable development in the region.

39. These additional agreements make it possible to continue providing the residents of Groningen with social and emotional support.

40. A baseline survey has been conducted and the National Programme for Groningen provides for a monitoring and evaluation cycle in order to acquire insight into the programme's effectiveness, efficiency and impact.¹⁵ There is no progress report for the year 2019 because the programme was launched that year. The annual report for 2020 has not yet been adopted.

(c) Ensure the meaningful participation of, and consultation with, inhabitants of Groningen in designing and implementing the phase-out plan

41. On 29 March 2018 the government adopted a decision to terminate gas extraction from the Groningen gas field as soon as possible. To this end, the gas extraction decision-making system was amended by the Groningen Gas Field Extraction Minimisation Act (*Wet minimalisering gaswinning Groningenveld*).¹⁶ How much gas may be extracted every year and by what method is now determined by the Minister of Economic Affairs and Climate Policy and no longer by NAM, the Groningen gas field permit holder. NAM is required to comply fully with this decision. In making this decision, the minister takes account a range of factors, including safety, supply security and social disruption. The point of departure is that no more gas is extracted from the Groningen field than is needed to guarantee security of supply, and all other means of meeting the demand for low calorific gas¹⁷ must be sourced first ('no more than necessary' principle).

42. As part of the decision-making process, the minister requests advice from the following bodies in the area to which the decision relates: the provincial executive(s), the mayors and municipal executives of the municipalities concerned and the executive committee of the water authority concerned.

43. Subsequently, anyone can state their views on the draft decision (section 52d of the Mining Act requires the use of Part 3.4 of the General Administrative Law Act (*Algemene wet bestuursrecht*)). This procedure allows interested parties to express their opinion about the proposed decision and the considerations it is based on.

¹³ <https://www.nationaalprogrammagoningen.nl/projecten/emotionele-en-sociale-ondersteuning/>.

¹⁴ Parliamentary Papers, House of Representatives 2020/21, 33529, no. 830.

¹⁵ [NPG_Rapportage_Nulmeting.pdf \(sociaalplanbureau Groningen.nl\)](#).

¹⁶ Bulletin of Acts and Decrees 2018, 371.

¹⁷ Unlike high calorific gas, low calorific gas contains, in addition to combustible gas, approximately 14% non-combustible components (primarily nitrogen). Installations that are suitable for low calorific gas must be adapted in order to burn high calorific gas safely.

44. A legislative amendment concerning the final phases of gas extraction is currently being prepared.¹⁸ A draft of the amendment was recently published at www.internetconsultatie.nl, giving anyone who wished to the opportunity to respond to the proposed amendment.

45. For the duration of the future period in which gas from the Groningen field is needed only as a reserve supply, the above-mentioned advice and consultation opportunities will continue to apply to decision-making on gas extraction.

46. This legislative amendment states explicitly that when gas from the Groningen field is no longer needed to meet the demand for low calorific gas, extraction operations must be terminated. This will mark the end of gas extraction from the Groningen gas field.

Curaçao

Recommendations in paragraph 16: Racial discrimination, hate speech and hate crimes

47. Article 3 of the Constitution of Curaçao states that all persons in Curaçao must be treated equally in equal circumstances. Discrimination on any grounds, including race, is not permitted. During the reporting period, no cases of racial discrimination were investigated or prosecuted. In addition, everyone has unobstructed access to the court (of first instance) in Curaçao, and the Ombudsman – who is widely known on the island – ensures redress if needed.

Recommendations in paragraph 19: Refugees and asylum seekers

48. Account is always taken of article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in immigration policy. There is no separate family reunification policy. Unfortunately, not least because of the financial situation of the country, it is not possible to provide free legal aid by law for administrative proceedings, as is provided in the context of criminal proceedings. In order to offset this, the Netherlands provides financial support for translation, so that foreign nationals can read the policy and the various documents in their own language (Spanish/English) and, if necessary, initiate relevant proceedings.

49. Neither the 1951 Refugee Convention nor the 1967 Protocol apply to Curaçao. However, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1950) does.

50. On 5 July 2017, the government of Curaçao adopted a policy based on article 3 of the ECHR. This policy describes the procedure for processing applications for international protection under article 3 of the ECHR. Foreign nationals who believe they cannot return to their country of origin, for fear of being subjected to treatment prohibited by article 3 of the ECHR can apply for protection under article 3, regardless of whether they entered Curaçao in a lawful or unlawful matter. There is an advisory working group that is tasked with reviewing applications made under article 3 and advising the Minister of Justice regarding the applications.

51. Factors that are taken into account when reviewing individual cases include:

- All current relevant facts related to the country of origin;
- Statements and documents related to the question of whether the applicant was subjected or might be subjected to treatment contrary to article 3;
- The applicant's individual situation;

¹⁸ Groningen Gas Field Extraction Termination Act (*Wet beëindiging gaswinning Groningen (Wat na nul)*).

- Whether it is reasonable to expect that an applicant can secure protection from another country where they can rely on their nationality.

52. The Minister of Justice can make a positive or negative decision. A positive decision means that the person is granted protection. The decision is valid for two years and allows the person to remain on the island. If the minister issues a negative decision, under the National Ordinance on Administrative Procedure (*Landsverordening administratieve rechtspraak*, LAR), the person in question may lodge an objection (requesting administrative reconsideration) or an application for review. In that event, an independent third party will review the case, in accordance with article 6 of the ECHR. Their decision is final.

53. The person is permitted to await the outcome of proceedings in Curaçao. Once a negative decision becomes final, the person in question is given a period of two weeks to leave the island.

54. In the case of a potential violation of the principle of non-refoulement, an investigation will be conducted.

55. The advisory working group is currently working hard to clear the backlog of article 3 ECHR applications. All of these cases concern individuals who are already present in Curaçao.

St Maarten

Recommendations in paragraph 16: Racial discrimination, hate speech and hate crimes

56. As stated in its report, the Government of St Maarten wishes to reiterate that article 16 of the country's constitution provides that everyone in St Maarten shall be treated equally in equivalent circumstances. Discrimination on the grounds of religion, belief, political persuasion, race, skin colour, sex, language, national or social origins, membership of a national minority, wealth, birth or any other ground whatsoever is prohibited. This applies in any and all circumstances, including in relation to employment and the application of the law. All law enforcement agents receive training that includes the subject 'Societal Skills'. This subject involves instruction on cultural, ethnic and racial sensitivities to ensure that persons are treated with dignity and respect during any intervention or arrest by such agents. The local registration system does not have a separate category for hate crimes and there is no evidence of any need for one. This is not necessarily because people feel unsafe or unable to report but rather because the population of St Maarten is highly heterogeneous and the government fosters an inclusive environment, for example by acknowledging other countries' national days and inviting various cultural and ethnic groups to participate in national celebrations. The police list hate crimes as 'High Impact Crimes', while crimes such as threats, slander or defamation – which can sometimes be an expression of hate or discrimination on racial, ethnic or religious grounds – are registered by the Public Prosecutor. The prevalence of these crimes is quite low. The Government also supports and endorses programmes and workshops in schools and in the community in support of eradicating cyber-bullying and other forms of bullying. These initiatives raise awareness of the value of diversity, uniqueness and difference within our community.

Recommendations in paragraph 19: Refugees and asylum seekers

57. The Government of St Maarten is continuing its assessment of the feasibility of applying the Convention relating to the Status of Refugees and its Protocol, but would like to reiterate that it does uphold the principle of non-refoulement. To that end, the Government has in the past referred persons to the United Nations High Commission for Refugees (UNHCR). Although the Government is currently unable to provide the necessary assistance that would be afforded to an applicant for asylum in the territory of a Contracting State, it does assess applications on a case by case basis and allows persons to remain in St Maarten

if possible. All persons are also entitled to free legal aid. The table below indicates the number of requests for legal aid granted in the period 2015–2020:

2015: 52 cases in total

Male: 25 cases, Non-Dutch nationals: 13, Dutch nationals: 12

Female: 27 cases, Non-Dutch nationals: 8, Dutch nationals: 19

2016: 76 cases in total

Male: 31 cases, female: 45 cases

Non-Dutch: 27 cases, Dutch: 49 cases

2017: 126 cases in total

Male: 51 cases, female: 75 cases

Non-Dutch: 60 cases, Dutch: 66 cases

2018: 171 cases in total

Male: 55 cases, female: 116 cases

Non-Dutch: 69 cases, Dutch: 102 cases

2019: 91 cases in total

Male: 48 cases, female: 43 cases

Non-Dutch: 35 cases, Dutch: 56 cases

2020: 151 cases in total

Male: 67 cases, female: 84 cases

Non-Dutch: 59 cases, Dutch: 92 cases
