**The Netherlands**

**Civil & Political Rights**

A close up of a coin

Description generated with very high confidence

Shadow Report on the Netherlands submitted by

**Geneva International Centre** for **Justice (GICJ)**

to the

**Human Rights Committee**

126th Session

1 – 26 July 2019

Geneva, Switzerland

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Geneva International Centre for Justice (GICJ) is an international, independent, non-profit, non-governmental organisation based in Geneva-Switzerland. GICJ maintains partnerships with various NGOs, lawyers and a vast civil society and network. Through these channels, GICJ receives documentation and evidence of human rights violations and abuses as they occur and reports them to the human rights bodies in Geneva.

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1. **Introduction**
2. Geneva International Centre for Justice (GICJ) is pleased to offer its contribution to the Human Rights Committee (the Committee) on the Kingdom of the Netherlands’ compliance with the International Covenant on Civil and Political Rights (ICCPR, the Covenant).
3. Since its establishment, GICJ has been tackling issues of justice and accountability. Hate speech and xenophobia are two issues at the centre of GICJ’s work and its participation at sessions of the Human Rights Council and reports to various human rights treaty bodies. With this report, GICJ wishes to make a meaningful contribution to the work of the Committee by providing information about the state of protection of the rights enshrined in Articles 19 and 20 of the ICCPR in the Netherlands.
4. The ICCPR recognises and embraces the rights enshrined in the Universal Declaration of Human Rights (UDHR). ICCPR Article 19 guarantees the right to freedom of expression by protecting the right to hold opinions without interference. However, the exercise of this right is not absolute and it must be in accordance with the respect of the rights of others. Consequently, ICCPR Article 20 prohibits any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
5. Hate speech and discriminatory language fall within the notion of advocacy of national, racial or religious hatred expressed in Article 20. Specifically, hate speech refers to statements aimed at insulting and/or degrading people – either as individuals or as members of a group – on the basis of their intrinsic attributes. Intrinsic attributes include – but are not limited to – race, religion, ethnicity, sex, sexual orientation or gender. It is indisputable that the issues relevant to hate speech fall within the mandate of the Committee.
6. The Kingdom of the Netherlands ratified the Covenant on 11 December 1978. That same day, the State also ratified the Optional Protocol to the International Covenant on Civil and Political Rights. The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty was ratified in 1991. However, the State has made several reservations to different articles of the Covenant.
7. Some of these reservations have been made in light of the fact that the Kingdom of the Netherlands is composed also of overseas territories. While Bonaire, Sint Eustatius, and Saba (Caribbean Netherlands) have the status of special municipalities of the Netherlands, Aruba, Curaçao, and Sint Maarten are constituent countries within the Kingdom of the Netherlands. Reservations regarding overseas territories are:
   * Article 12, paras. 1, 2 and 4.
   * Article 14, para. 7.
8. General reservations pertaining the whole the Kingdom of the Netherlands are:
   * Article 10.
   * Article 14, paras. 3(d), 5.
   * Article 19, para. 2.
9. Article 20, para. 1.The Kingdom of the Netherlands made the following reservations to the ICCPR:
   * Article 19, para. 2: “The Kingdom of the Netherlands accepts the provision with the proviso that it shall not prevent the Kingdom from requiring the licensing of broadcasting, television or cinema enterprises.”
   * Article 20, para. 1: “The Kingdom of the Netherlands does not accept the obligation set out in this provision in the case of the Netherlands. [The State] clarify that although  the reservations [...] are partly of an interpretational nature, it has preferred reservations to interpretational declarations in all cases, since if the latter form were used doubt might arise concerning whether the text of the Covenant allows for the interpretation put upon it. By using the reservation form the Kingdom of the Netherlands wishes to ensure in all cases that the relevant obligations arising out of the Covenant will not apply to the Kingdom, or will apply only in the way indicated.”
10. Our organization is aware of the importance of balancing Article 19 with Article 20, especially with regard to freedom of speech, freedom of the press, and politicians. However, we want to share with the Committee our concerns with the increase of hate speech in the Netherlands.
11. **Hate speech in the Netherlands**

Problems related to the issue of hate speech go well beyond the tensions that arise between freedom of expression and the principle of non-discrimination. Indeed, hate speech causes harm to everyone subjected to it as it violates their dignity. On top of that, the constant and unopposed use of hate speech and discriminatory language may also bring to serious rifts within societies. Hate speech and other forms of intolerance can lead not only to the denial of the most basic rights but also to hate crimes being committed. Increasingly, many episodes of violence are fuelled by hate speech, fearmongering and xenophobia.

1. Hate speech is often practiced in the name of freedom of expression. However, hate speech can and has led to some of the worst atrocities and crimes in human history. Regrettably, there has been a rise in hate speech in several forms, which incites violence, endangering all of society. Hate speech must be always condemned, especially when it aims at instilling fear of vulnerable groups and minorities.
   1. **Wider context**
2. Amongst the Dutch society there seems to be discord between, on one hand, the way Dutch people view themselves, and on the other, the way they act. The Dutch generally believe they are very progressive and open, but have trouble letting go of things they see as tradition. An example of this is the discourse on *Zwarte Piet* (Black Peter), which is generally seen (especially by internationals) as widely offensive and racist, and yet seen by many Dutch people as an innocent tradition.
3. A recent example (**2016**) is the debate on *Efteling*, the most famous amusement park in the Netherlands. The *Monsieur Cannibale* and Carnival Festival attractions were seen as racist because they depict African and Asian figures in a very exaggerated way. The discussion in the Netherlands was massive, with people creating Facebook pages in defense of the park. A lot of those pages were later removed by Facebook due to hate speech.
4. Similarly, the biggest supermarket chain in the Netherlands*, Albert Heijn*, used racial stereotypes for training purposes. A single mother from an ethnic minority background was used to depict the customers that typically select cheaper products, which are of lesser quality.
   1. **Previous observations on hate speech by UN Treaty Bodies**
5. It is not the first time that the issue of hate speech in the Netherlands has been brought in front of a UN Treaty Body.In 2009, during its Ninety-sixth Session, the Human Rights Committee made no mention of the issue of hate speech in the Concluding Observations on the Netherlands. Nonetheless,, the issue has been addressed multiple times by the Committee on the Elimination of Racial Discrimination (CERD).
6. In February 2010, during its seventy-sixth session, CERD shared its concerns about the incidence of racist and xenophobic speech emanating from a few extremist political parties in the Netherlands. In the Concluding Observations, CERD put particular emphasis on the incidence of manifestations of racism and intolerance towards ethnic minorities and the general deterioration in the tone of political discourse around discrimination. The State party was recommended to take more effective measures to prevent and suppress manifestations of racism, xenophobia and intolerance and to encourage a positive climate of political dialogue, including at times of local and national election campaigns. It was also recommended that the State party intensify its efforts to combat the dissemination of ideas based on racial superiority through the internet as well as other media, including racist speech by political parties.[[1]](#footnote-1)
7. In August 2015, during its eighty-seventh session, CERD re-iterated its concern about hate speech in the Netherlands by particularly focusing on the approach of the State’s courts to determining whether an insulting statement amounts to hate speech. CERD recommended the State to 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.[[2]](#footnote-2)
8. The Human Rights Committee itself has been called to decide on an issue related to hate speech in the case of Rabbae v. Netherlands (Communication n. 2124/2011). The Committee was asked to verify if the rights of three Dutch citizens guaranteed in the ICCPR have been violated following the acquittal of the Dutch politicians Geert Wilders on charges of insulting the Netherlands’ Muslim immigrants, as well as inciting hatred, discrimination and violence against them.

**b. Hate speech in the Dutch legal system**

1. Article 1 of the Constitution of the Kingdom of the Netherlands recognises that discrimination towards any person in the Netherlands on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted. Article 7 of the Dutch Constitution protects freedom of expression. The right to freely express opinion is not an absolute right and, also at the domestic level, it often clashes with the anti-discrimination right enshrined in Article 1.
2. Dutch law defines discrimination as an action taken against someone solely on the basis of one of the following grounds: race, sex, hetero- or homosexual orientation, political opinion, religion, belief, disability or chronic illness, civil status, age, nationality, working hours, type of contract. Within the domestic system of the Netherlands, the Ministers responsible for issues related to discrimination and hate speech are the [Ministry of the Interior and Kingdom Relations](https://www.government.nl/ministries/ministry-of-the-interior-and-kingdom-relations) and [Ministry of Justice and Security](https://www.government.nl/ministries/ministry-of-justice-and-security).
3. The Netherlands has respected its obligation under the ICCPR to criminalize hate speech and racist speech. Article 137c of the Dutch Criminal Code prohibits group defamation, while Article 137d prohibits incitement to hatred or discrimination. Back in 2016, the Hague Court of First Instance pronounced Geert Wilders, a Dutch right-wing politician, guilty of inciting discrimination under these articles.
4. **Factual evidences**
   1. **Hate speech by politicians**
5. GICJ is concerned about racist and xenophobic hate speeches delivered by Dutch politicians. Hate speech by political representatives has an important impact on society as it gives legitimacy to discriminatory behaviours. It also contributes to widespread xenophobia and forms of intolerance that play a crucial role in the increasing commission of hate crimes.
6. Given their ability to exert an influence on the general public, politicians have additional responsibilities. It is precisely because of their fundamental role in maintaining an order that guarantees respect for rights that their freedom of expression must be protected even more carefully. Nevertheless, political speeches, if used in an odious and discriminatory manner, can cause widespread intolerance and even hate crimes. Politicians should therefore use their right to freedom of speech responsibly and promote their electoral programme in a fair and respectful manner.
7. In **January 2017**, before the general elections, Prime Minister Mark Rutte, leader of *Volkspartij voor Vrijheid en Democratie* (People's Party for Freedom and Democracy, VVD) said in an election advert that the people who do not wish to adopt Dutch values should leave the country. He said: “Act normal or go away”.[[3]](#footnote-3) This statement in principle is rather inoffensive, however, it was widely seen as referring to immigrants and refugees (although Rutte later said that it was not aimed at any specific ethnic group[[4]](#footnote-4)) because it was said in a context of elections in which (i) VVD was appearing to lose to a far right party of Geert Wilders according to the election polls, and (ii) in a climate where the Dutch society was very divided over the issues of migration, religion and national identity. Indeed, in June and after the elections, the government was still split over the issue of migration. Although the far-right party did not win, which was seen as a great success, months after the election the coalition negotiations were hampered by the question of immigrants.
8. In **September 2017**, Sybrand Buma, who was then leader of the *Christen-Democratisch Appèl* (Christian-Democratic Appeal, CDA), said: “Immigration and globalization brought the clash of civilizations into 'our house'. The 'normal Dutch' were left behind orphaned. As if the elite ran away with their freedom and equality and gave it to the newcomers.” [[5]](#footnote-5)
9. In **February 2018**, Theo Hiddema, a member of *Forum voor Democratie* (Forum for Democracy, FvD) and MP, stated that it has long been proven that there is a relationship between race and IQ.[[6]](#footnote-6) He made that statement referring to remarks made by another member of the party, Yernaz Ramautarsing, a couple of years ago. Ramautarsing said: “[I] would rather have seen that black people are hyper intelligent and that Surinamese people have the highest average IQ in the world. But that is not the case. You can take someone from Syria where the average IQ is 84 and put them in the Netherlands where the average IQ is 101. He is going to earn less than a lot of native Dutch. But is that racism? No. There is a link between IQ and income”. This is particularly concerning because FvD won the recent municipal elections in the Netherlands. The party and its leader, Thierry Baudet, are seen as far-right and racist. While Baudet himself did not make racist or xenophobic statements, when approached for comments on the abovementioned instances, he said he does not see any problem with them.
10. In **July 2018**, Stef Blok (Dutch Foreign Minister) said: "If you live in Benoordenhout [a neighbourhood in The Hague], it’s really great to be able to nip to the Turkish baker on a Sunday. You don’t suffer from any of the side effects [then]. But if you're surrounded by them, you suffer greatly.”[[7]](#footnote-7) He then added: “Give me an example, of a multiethnic or multicultural society, where the original population are still living as well. [...] And where there are peaceful community relations. I'm not aware of any".
11. After an audience member mentioned Suriname, a former Dutch colony, Blok further expanded: "Suriname peaceful? A functioning rule of law and democracy? Courageous, this remark. So the parties in Suriname are not divided by their ethnicity. I admire your optimism. Suriname is a failed state, and that is mostly due to ethnic division." To a suggestion that Singapore is a good example, Blok said “Singapore is indeed a small mini-country, extremely selective in its migration. Extremely selective. It is very difficult to 'get in'. They don't allow any poor migrants in. Well, maybe for cleaning."
12. While Blok apologised for his comments and many other politicians condemned those remarks, Geert Wilders wholeheartedly agreed and called Blok a ‘weakling’ for backtracking.
13. Geert Wilders, MP and leader of the *Partij voor de Vrijheid* (Party for Freedom, PVV), has been using hate speech in its political campaigns for more than a decade. In 2009, he was formally accused of insulting religious and ethnic groups and inciting hatred and discrimination. However, he was acquitted in June 2011 on the grounds that that kind of statement is acceptable within the context of public debate.
14. Due to his acquittal, the Human Rights Committee was asked to verify if the rights of three Dutch citizens guaranteed in the ICCPR had been violated by the Netherlands.[[8]](#footnote-8) The complainants claimed violations of the following rights: right to privacy (Article 17), right of minority (Article 27), right to an effective remedy (Article 2(3)) in conjunction withArticle 20. The Committee found the claims under Articles 17 and 27 inadmissible.  Finally, the Committee found also no violation of Article 2(3) as the Netherlands had taken “necessary and proportionate” measures in order to prohibit hate speech by prosecuting Wilders under criminal law.
15. Subsequently, in another domestic hate speech trial that ended in 2016, Wilders was pronounced guilty of insulting and discriminating against a group of people, contributing to a more polarised society. Until now Wilders has faced no punishment of any kind – no fine, public service or prison time. Compared to the 2011 trial, this result shows a change in the attitude of Dutch courts, which not only interpret the ‘hate crime’ provisions very narrowly, but also are lenient in relation to someone with a history of hate speech.
    1. **Online hate speech**
16. In **2014**, a photograph of black Dutch football players was posted online and received a lot of racial abuse.[[9]](#footnote-9) The players were compared to monkeys and *Zwarte Piet*.
17. The Annual Report for **2015** prepared by Magenta (an organisation dealing with discrimination on the Internet) states that in 2015, the most popular ground on which individuals were discriminated against was Islam. The organisation received 330 reports of onlinediscrimination against Muslims in 2015 (219 in 2014). Out of those 330, 176 were so serious they were punishable by law (p. 19).[[10]](#footnote-10) Some examples included in the Report refer to comments calling Muslims “dirty” and “pigdogs”.
18. MiND, a reporting point for discrimination on the Internet, noted that **both in 2015 and 2016** discrimination against Islam constituted 98% of all discrimination on the grounds of religion. In 2015, 142 cases of online hate speech were recorded; in 2016 – 185. (p.12)[[11]](#footnote-11)
19. In **January 2017,** [a student was a victim of racial abuse at school](https://www.bbc.com/news/world-europe-38600971) and on social media and he took his own life. Similar harassment cases are said to have been previously reported to the school.
20. In the case of Sylvana Simons, a black activist who received online abuse in **2017** after announcing she was running for the pro-immigrant party *Denk* and protesting against *Zwarte Piet* (a Dutch tradition in which St. Nicolas is helped by a black servant – this usually involves wearing blackface). Some people went as far as photoshopping Simons’ head onto the hanged bodies of the victims of Ku Klux Klan. Twenty people were charged and convicted of sexist and racist speech online and Simons had to get security.
21. In **November 2017**, 8 people were charged after posting offensive comments on social media. One of them stated that black people and opponents of the *Zwarte Piet* tradition should be turned into slaves.
22. A video of a man verbally abusing another person with racist remarks was recorded and uploaded on a local news outlet’s website.[[12]](#footnote-12) The perpetrator shouted at the other person and her niece that they should go back to their country.
23. In **November 2018**, Seada Nourhussen, a Dutch journalist, decided to step down from writing her column in Trouw (a popular newspaper) due to negative and racist comments on **social media** about her pieces.
    1. **Islamophobia**
24. SPIOR’s report on Monitoring Islamophobia in the Netherlands, provides a lot of aggregate data and results of polls.[[13]](#footnote-13) It references data on attacks on mosques, for instance: “**between 2005 and 2010**, 117 cases of vandalism against mosques have been recorded. In 43 cases, offensive symbols or slogans were painted on a mosque. In 37 instances, the mosques sustained material damage (for example because of arson). One highly provocative method was leaving body parts and/or insides of dead sheep and pigs (5 instances known).”
25. The European Islamophobia Report (pp. 401ff) lists 10 court cases related to incitement to violence and abuse on **social media**, physical violence and discrimination.[[14]](#footnote-14)
26. In **December 2015,** demonstrators from *Identitair Resistance* climbed the roof of a mosque in Dordrecht with banners saying “Stop Islam”. The six members of the group were arrested.
27. In **February 2016**, 5 men carried out an arson attack with a terrorist intent at a mosque in Enschede.
28. Still in **February 2016**, a number of Moroccan mosques in the Netherlands were sent leaflets with a picture of an eagle on a swastika and text which said: “To all Islamic houses of prayer, expect an important visitor!! Pigs” and that Islam was a devilish religion.
29. In **December 2016**, an Islamic centre in Culemborg burnt down after a *suspected* arson attack.
30. In **January 2019,** an article calling for more security measures to be applied to mosques in the Netherlands was posted online.[[15]](#footnote-15) The article notes that there have been 364 crimes (verbal and physical attacks, murder threats etc.) which targeted Muslims in the Netherlands in 2017.
31. In **March 2019**, amosque in the Hague was vandalised with racists banners. The attackers were suspected to be linked to the Islamophobic group *“Pegida”.*
    * + - **Islamophobia in Dutch politics**
32. The *Partij voor de Vrijheid* *Vrijheid* (Party for Freedom, PVV) has often resorted to the use of a language of hatred, particularly against Islam and Muslims. In its political manifesto, the PVV has openly declared itself “to have [had] enough of the Islamization of the Netherlands”.[[16]](#footnote-16) Thus, if the PVV was elected to govern the Netherlands, its declared aim would be to de-Islamise the Netherlands.
33. In order to achieve this goal, the PVV proposes the following policies:

* Close all mosques and Islamic schools, ban the Koran
* No Islamic headscarves in public functions
* Prohibition of other Islamic expressions which violate public order
* Zero asylum seekers and no immigrants anymore from Islamic countries
* Preventive detention of radical Muslims
* Denaturalization and expulsion of criminals with a dual nationality.

1. In **December 2015**, a family with foreign background had their house damaged by fireworks. An investigation showed that leaflets with pictures of Geert Wilders (PVV leader) and signs saying that immigrants must leave the Netherlands.
   1. **Other relevant episodes linked with hate speech**
2. In **December 2014**, Dutch government subsidises ‘The Sinterklaasjournaal’ -- a TV show for kids, which showcases the Black Pete, a racist Dutch tradition. A petition was made to EU institutions and it was discussed during one of the sessions; the success was limited.
3. In **October 2015**, 20 people with ski masks entered a sports centre in Woerden, which provided a temporary housing facility for 148 refugees (51 children). They set off firework bombs and threw eggs at the refugees.
4. In **December 2019**, children with disabilities were assigned volunteer-guardians to watch over them when they cycle past the refugee asylum in Kaatscheuvel. The reasoning is that it will help combat the feeling of insecurity amongst the parents. This supports the idea that the refugees are dangerous and that the fears of locals are valid and should be addressed.
5. In **July 2016**, a Turkish man immigrant was killed in an attack. The attack was motivated by a racial conflict, though the killing itself was an involuntary manslaughter rather than a premeditated murder.
6. In **November 2018**, 34 individuals were convicted and ordered to do unpaid community work (the leader received a one-month suspended prison sentence) after they blocked a highway to stop an anti-racism demonstration.
7. **Recommendations**
8. Hate speech as an indirect form of racial discrimination has to be condemned in all circumstances. Back in 2013, the Office of the High Commissioner for Human Rights launched the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. We call for the Netherlands to follow the guidelines set out in the Rabat Plan of Action and to enact and enforce laws punishing hate speech.
9. GICJ requests the Committee to prompts the Netherlands to:

* Enhance its effort to stop hate speech and the scapegoating of vulnerable groups; and to combat the rising tide of anti-Islam, anti-migrant, anti-other sentiment.
* Create a law against hate speech by public officials; follow the guidelines set out in the Rabat Plan of Action when creating law punishing hate speech.
* Seek justice and remedies for victims of discrimination derived from hate speech.
* Respect the right not to be discriminated against; to focus on principles such as equality and prohibition of discrimination when tackling hate speech.



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1. CERD/C/NLD/CO/17-18 [↑](#footnote-ref-1)
2. CERD/C/NLD/CO/19-21 [↑](#footnote-ref-2)
3. <https://www.bbc.com/news/world-europe-38718286> [↑](#footnote-ref-3)
4. <https://www.politico.eu/article/mark-rutte-act-normal-or-leave-ad-not-aimed-at-ethnic-groups/> [↑](#footnote-ref-4)
5. The original text was: “Immigratie en globalisering brachten de clash of civilizations in ‘ons huis’. De ‘gewone Nederlanders’ bleven verweesd achter. Alsof de elite er met hún vrijheid en gelijkheid vandoor ging en ze aan de nieuwkomers gaf.”

   <https://www.nrc.nl/nieuws/2017/09/04/gewone-nederlander-blijft-verweesd-achter-12835205-a1572235> [↑](#footnote-ref-5)
6. <https://www.dutchnews.nl/news/2018/02/forum-for-democracy-under-fire-over-raceiq-debate-and-democracy-itself/> [↑](#footnote-ref-6)
7. <https://www.aljazeera.com/news/2018/07/dutch-fm-fire-making-discriminatory-remarks-180718174215063.html> [↑](#footnote-ref-7)
8. Communication N. 2124/2011, Rabbae v. Netherlands, CCPR/C/117/D/2124/2011. [↑](#footnote-ref-8)
9. <https://twitter.com/LeroyFer8/status/533315099302567936> [↑](#footnote-ref-9)
10. <http://www.meldpunt.nl/Jaarverslag-2015.pdf> [↑](#footnote-ref-10)
11. <https://www.mindnederland.nl/wp-content/uploads/2017/04/170404-Jaarverslag-2016-MiND.pdf> [↑](#footnote-ref-11)
12. <https://www.rijnmond.nl/nieuws/171239/Video-racistische-fietser-Vreewijk-gaat-viraal-op-Facebook> [↑](#footnote-ref-12)
13. <http://www.spior.nl/wp-content/uploads/2013/07/MonitoronIslamophobia_finalversionmaart2014.pdf> [↑](#footnote-ref-13)
14. <http://www.islamophobiaeurope.com/wp-content/uploads/2017/03/NETHERLANDS.pdf> [↑](#footnote-ref-14)
15. <https://www.setav.org/en/muslims-in-netherlands-call-for-security-in-mosques/> [↑](#footnote-ref-15)
16. <https://www.geertwilders.nl/94-english/2007-preliminary-election-program-pvv-2017-2021> [↑](#footnote-ref-16)