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**AMENDED AND RESTATED PETITION PRESENTED TO:**

**THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL  
DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE**

**AND**

**THE WORKING GROUP OF EXPERTS ON PEOPLE OF AFRICAN DESCENT**

**ON BEHALF OF**

**THE PARLIAMENT AND CITIZENS OF SINT MAARTEN**

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## 1.0 Introduction

Petitioners, the Parliament and citizens of Sint Maarten (“Petitioners”) respectfully bring to the attention of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (“Special Rapporteur”) and of the Working Group of Experts on People of African Descent (“Working Group”) the persistent, systemic, and ongoing acts of racial discrimination and violations of international human rights law by the Government of the Netherlands (“Netherlands” or “Dutch government”) against Petitioners and others similarly situated in the islands of Aruba and Curaçao as well as in the special municipalities of Bonaire, Sint Eustatius, and Saba—together, the six islands of the former Netherlands Antilles.

For decades, the Netherlands has failed to meet its international legal obligations to promote self-government in, as well as the political, economic, social, and educational advancement of, the islands of the former Netherlands Antilles and to ensure their just treatment and protection against abuses. More recently, the Netherlands has attempted to deny Petitioners and others similarly situated their right to a democratically elected representative government, their right to complete decolonization, and their right to freedom from racial discrimination and economic and social injustice. Far from providing humanitarian assistance—let alone financial assistance that is commensurate with the funding provided by the Dutch government to its predominantly white, European citizens—the Netherlands is using a global pandemic, economic devastation from two hurricanes, and a global recession to force Petitioners and others similarly situated to surrender their sovereignty and human rights by trying to impose neo-colonial financial, economic, and budgetary authority in place of the democratically elected governments of Sint Maarten, Aruba, and Curaçao. In exchange, the Dutch government is offering yet more debt to these islands conditioned upon Petitioners and others meeting fiscal benchmarks that very few countries in the world are currently satisfying. And if Petitioners refuse, the Dutch government has repeatedly threatened to cut off economic assistance and declare a default on past debt, which would decimate the credit rating of Sint Maarten and wreak further economic damage on its already precarious economy. This discriminatory treatment toward the islands of the former Netherlands Antilles not only threatens the health and safety of people of color, who compose the overwhelming majority of these islanders, during a global pandemic and recession, but it also reinforces centuries of systemic racism and colonialism, depriving them of their fundamental human rights.

Petitioners respectfully request that the Special Rapporteur and the Working Group, with the support and cooperation of the Office of the United Nations High Commissioner for Human Rights (“OHCHR”), adopt one or more of the following measures and otherwise use its good offices to address and remediate the persistent and systemic racial discrimination and human rights violations by the Netherlands against Petitioners:

- (1) support a decolonization process;
- (2) endorse monetary and other forms of reparations;
- (3) endorse debt forgiveness and conversion of future debt to grants;
- (4) call for the immediate restoration of democracy in Sint Eustatius;
- (5) call for a formal apology from the Netherlands for the suffering and damage caused by the transatlantic slave trade and the colonization of the islands of the former Netherlands Antilles;
- (6) endorse the establishment of cultural and educational institutions to document the history of Dutch slavery and colonialism; and
- (7)

support addressing the public health crisis caused by systemic discrimination and racism—all as set forth in greater detail in Section 7.

IN SUPPORT OF THIS SUBMISSION, Petitioners state the following:

## **2.0 Jurisdiction of the Special Rapporteur and the Working Group**

Pursuant to Human Rights Council Resolutions 7/34 (2008) and 34/35 (24 March 2017) as well as the former Commission on Human Rights Resolutions 1993/20 and 1994/64, the Special Rapporteur has jurisdiction to consider this Petition and the claims of extensive systematic racial discrimination and concomitant violations of international human rights laws committed by the Netherlands.

Pursuant to Human Rights Council Resolutions 9/14 (2008) and 45/24 (1 October 2020) as well as the former Commission on Human Rights Resolution 2002/68, the Working Group has jurisdiction to gather all relevant information relating to the well-being of people of African descent living in Sint Maarten and the other islands of the former Netherlands Antilles and to address the claims of extensive systemic racial discrimination committed by the Netherlands there.

Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) defines racial discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.<sup>1</sup>

This definition encompasses the Dutch government's violations of international law, attempts to displace a democratically elected government with a neo-colonial fiscal authority appointed by the Dutch government, and grossly unequal economic assistance, especially during a global pandemic following two natural disasters—all based on race, colour, descent, and/or ethnic origin.

## **3.0 Recent Political and Economic Background**

As explained below, the islands of Aruba, Sint Maarten, and Curaçao along with the Netherlands are the constituent countries of the Kingdom of the Netherlands. The three island countries enjoy multi-racial, multi-ethnic populations that contribute to the islands' rich culture and heritage. Although precise statistics on race are not readily available for the islands and the Netherlands, it is clear that on the aggregate level, the Kingdom's treatment of the overwhelmingly white population of the Netherlands is far superior to its treatment of the people of African descent and other racial and ethnic minorities that comprise the considerable majority of the three Caribbean islands.

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<sup>1</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195, available at <https://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf> (last visited Feb. 3, 2022).

Because of a precipitous drop in revenue caused by the COVID-19 pandemic, and two ruinous hurricanes in Sint Maarten in 2017, these three islands are suffering from profound economic devastation. As a result, Sint Maarten, whose population was approximately 85% people of African descent in 2005,<sup>2</sup> is extremely vulnerable financially. This vulnerability is manifested in high poverty rates, low health insurance coverage rates, and other social welfare barometers that are far below those in the Netherlands, whose population is approximately 80–85% white.<sup>3</sup> This disparity in economic and social wellbeing has not only existed, but in fact has increased, during the past decade—a period when Aruba, Sint Maarten, and Curaçao nominally became “autonomous partners within the Kingdom, alongside the country of the Netherlands” with equal rights and sovereignty.<sup>4</sup>

Most disturbing, the financial vulnerability of the three island countries is being compounded by the Faustian bargain that they were forced into by the Dutch government as a condition for their nominal equality in the Kingdom Charter, the agreement or constitution that reconstituted the Kingdom of the Netherlands. By means of Boards of Financial Supervision (or in Dutch, Colleges Financieel Toezicht or “CFTs”), financial decision-making in Sint Maarten—as well as in Aruba and Curaçao—is controlled by fiscal overseers who continue to impose recessionary budgetary policies during a recession caused by a global pandemic. Not content with beggaring the islands even while the Dutch government props up its own predominantly white citizens’ businesses and social safety net (as well as those of other white European nations) with massive government spending, the Dutch government is imposing a new entity with governmental authorities that are independent of the island country governments’ oversight and that would further deprive the nominally “equal” island governments of their constitutional authority to formulate budgets, borrow money, and determine local government spending for their own citizens.

Even after the Dutch Council of State issued an opinion that the proposed law establishing the CFTs violated Dutch law, the Dutch government pressed forward, continuing to demand that

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<sup>2</sup> CIA, *Netherlands Antilles*, THE WORLD FACTBOOK (Feb. 10, 2005), <https://user.iiasa.ac.at/~marek/fbook/04/geos/nt.html>.

<sup>3</sup> See *Bevolking; Geslacht, Leeftijd, Generatie en Migratieachtergrond, 1 Januari*, STATLINE (June 10, 2020), <https://opendata.cbs.nl/statline/#/CBS/nl/dataset/37325/table?fromstatweb>.

<sup>4</sup> Ministry of Foreign Affairs, *Kingdom of the Netherlands: One Kingdom – Four Countries; European and Caribbean*, GOVERNMENT OF THE NETHERLANDS, <https://www.government.nl/binaries/government/documents/leaflets/2015/06/05/kingdom-of-the-netherlands-one-kingdom-four-countries-european-and-caribbean/the-kingdom-of-the-netherlands-4-pager-eng.pdf> (last visited July 15, 2021) (“The Kingdom of the Netherlands consists of four autonomous countries: the Netherlands, Aruba, Curaçao and St Maarten. The latter three are located in the Caribbean. The country of the Netherlands consists of a territory in Europe and the islands of Bonaire, Saba and St Eustatius in the Caribbean. The Kingdom of the Netherlands therefore has a European part and a Caribbean part. . . . Aruba, Curaçao and St Maarten are not overseas dependencies of the Netherlands, but instead autonomous partners within the Kingdom, alongside the country of the Netherlands. . . . Only the Kingdom of the Netherlands can be considered a State. Only the Kingdom – not the individual autonomous countries or the public bodies – has international legal personality.”).

the islands accept Dutch dictates—including Sint Maarten slashing its healthcare budget *during a pandemic*. And if the island countries refuse, the Dutch will withhold additional debt (“tranches of liquidity”) so that the islands will not be able to provide basic government services. These recent Dutch actions are in violation not only of the Kingdom Charter—the constitutional organ of the Kingdom of the Netherlands—but also of the international human rights of the citizens of Sint Maarten, including their right to a democratically elected, representative government and to a full measure of self-government.

The Dutch government’s blatant attempts to use a global pandemic and economic collapse to reimpose colonial authority over its own, non-European citizens of color by forcing them to surrender their international human rights—while at the same time approving massive, unconditional government subsidies and financial support for its largely white, European citizens and even non-citizen, overwhelmingly white people in the European Union—constitutes racial discrimination, reinforces systemically racist political and economic structures, and deprives the islanders of political, economic, and social development. Subsections 3.1–3.3 provide background about the political and economic structure of the Kingdom of the Netherlands and how the islands of the former Netherlands Antilles fit within this structure. Subsection 3.4 describes the dire economic condition of Sint Maarten due to two hurricanes, a global pandemic, and global recession. Subsections 3.5–3.8 document how the Dutch government has used this economic vulnerability to impose neo-colonialism over Aruba, Curaçao, and Sint Maarten and deny their citizens, who are overwhelmingly people of color, their basic human rights, including the right to democracy and self-determination.

### **3.1 Constitutional Overview of the Kingdom of the Netherlands**

Sint Maarten is a constituent country of the Kingdom of the Netherlands. After years of wrangling over the post-colonial future of the six Caribbean islands that composed the Netherlands Antilles—namely Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, and Sint Maarten—the Dutch government approved a series of roundtable conferences beginning in November 2005.<sup>5</sup> Over the course of these roundtable conferences, the Netherlands, the Netherlands Antillean government, and representatives of the island nations agreed that Sint Maarten and Curaçao would join Aruba and the Netherlands as constitutionally equal “autonomous countries” within the Kingdom of the Netherlands and that Bonaire, Saba, and Sint Eustatius (BES) would become special municipalities of the Netherlands.<sup>6</sup> The Netherlands, further, would assume most of the public debt of the Netherlands Antilles on the condition that the islands accepted outside budgetary oversight and

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<sup>5</sup> See Johannes van Aggelen, *Decolonization: Dutch Territories*, MAX PLANCK ENCYCLOPEDIAS INT’L L. ¶ 21 (Sept. 2017); *Closing Statement of the First Round Table Conference*, MINISTRY OF INTERIOR & KINGDOM RELS., (Nov. 26, 2005).

<sup>6</sup> *Supra* note 4; see Van Aggelen, *supra* note 5, ¶ 21. The constitutional change was supported by popular referenda in all countries except Sint Eustatius, which voted overwhelmingly (76.6%) in favor of retaining the Netherlands Antilles. See Econ. & Soc. Council, *Implementation of the International Covenant on Economic, Social, and Cultural Rights: Fourth Periodic Reports Submitted by States Parties Under Article 16 and 17 of the Covenant: Addendum: The Netherlands Antilles*, at 15–16 tbls. 6, 7, 8, 9 & 10, U.N. Doc. E/C.12/NLD/4/Add.1 (Dec. 16, 2008) [hereinafter ESC 2008 Report].

committed to the prevention of future debt buildup through balanced budgets.<sup>7</sup> The closing agreements, known collectively as the “10/10/10” Agreement, were ratified through an Act of Parliament amending the Charter of the Kingdom of the Netherlands (“the Kingdom Charter”) that the parties signed on September 9, 2010, with an effective date of October 10, 2010.<sup>8</sup>

### **3.2 Political Control of Aruba, Curaçao, and Sint Maarten**

The Kingdom Charter governs the political relationship among the four countries that constitute the Kingdom of the Netherlands.<sup>9</sup> As co-equal “autonomous countries,” Aruba, Curaçao, and Sint Maarten are supposed to enjoy full autonomy and to cooperate with the Netherlands on affairs that concern the whole Kingdom.<sup>10</sup> Each constituent country has its own government and parliament that are empowered to govern their own affairs.<sup>11</sup> All four countries, however, are obliged to “accord one another aid and assistance.”<sup>12</sup> The government of each of the Caribbean countries is headed by a governor that represents and is appointed by King Willem-Alexander as the Kingdom head of state.<sup>13</sup> The Council of Ministers of the Kingdom, comprised of the twelve to sixteen ministers of the Council of Ministers of the Netherlands and three ministers plenipotentiary of Aruba, Curaçao, and Sint Maarten, governs all Kingdom affairs.<sup>14</sup> Kingdom affairs include competence areas that depend on the Kingdom’s singular international legal personality, such as defensive matters, foreign relations, and issues involving Dutch citizenship and nationality.<sup>15</sup>

### **3.3 Financial Control of Aruba, Curaçao, and Sint Maarten**

As noted, the internal fiscal decision-making of Sint Maarten—as well as that of Aruba and Curaçao—is controlled by Boards of Financial Supervision, or Colleges Financieel Toezicht (“CFTs”) in Dutch. “CFT Curaçao and Sint Maarten” and “CFT Aruba” are independent Dutch administrative bodies that supervise the public finances of the islands pursuant to the 10/10/10 Agreement and the September 2015 National Ordinance on Aruba Temporary Financial

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<sup>7</sup> See *History*, COLLEGES FINANCIËEL TOEZICHT, <https://www.cft.cw/en/about-the-cft/history> (last visited Mar. 2021).

<sup>8</sup> See *Constitutional Reform of Netherlands Antilles Completed*, MINISTRY OF INTERIOR & KINGDOM RELS. (Sept. 10, 2010), [https://web.archive.org/web/20101016123851/http://www.government.nl/News/Press\\_releases\\_and\\_news\\_items/2010/September/\\_Constitutional\\_reform\\_of\\_Netherlands\\_Antilles\\_completed](https://web.archive.org/web/20101016123851/http://www.government.nl/News/Press_releases_and_news_items/2010/September/_Constitutional_reform_of_Netherlands_Antilles_completed).

<sup>9</sup> STATUUT VOOR HET KONINKRIJK DER NEDERLANDEN [KINGDOM CHARTER] Nov. 17, 2017, art. 1 (Neth.).

<sup>10</sup> See *supra* note 4; KINGDOM CHARTER at Preamble.

<sup>11</sup> See KINGDOM CHARTER at arts. 41–42, 46.

<sup>12</sup> *Id.* at art. 36.

<sup>13</sup> See *id.* at art. 2(2).

<sup>14</sup> See *id.* at art. 7.

<sup>15</sup> See *id.* at art. 3.

Supervision (LAFT), respectively.<sup>16</sup> The primary *de jure* function of the CFTs is to scrutinize the adopted budgets against the agreed standards, namely the financial balancing norm.<sup>17</sup>

CFT Curaçao and Sint Maarten consists of four members, including a chairman and three members appointed one each by the Council of Ministers of Curaçao, Sint Maarten, and the Netherlands;<sup>18</sup> while CFT Aruba is comprised of three members, including a chairman and two members appointed one each by the Council of Ministers of Aruba and the Netherlands.<sup>19</sup> Both CFTs are headed by a single chairman that is appointed by the Prime Minister of the Netherlands and the Council of Ministers of the Kingdom.<sup>20</sup> And while the island countries have representatives to the CFTs, in practice, the Chair, who is appointed by the Dutch government, often ignores the input of these island members.<sup>21</sup> So, for example, it was recently leaked that, whereas the Dutch-appointed Chair “Gradus advise[d] that Dutch aid to the Caribbean countries should only take place in the form of loans [], the members on behalf of Curaçao, Aruba, and Sint Maarten believe that these loans ‘only push the countries further into the abyss.’”<sup>22</sup>

The international financial status of Aruba, Curaçao, and Sint Maarten, meanwhile, is governed by several provisions of the Kingdom Charter. Pursuant to Article 25 thereof, the King may not bind the Caribbean island countries to international economic and financial agreements and may not terminate such agreements except with the acquiescence of the island governments.<sup>23</sup> The Dutch government, moreover, is duty bound to assist in the conclusion of an international economic or financial agreement that is desired by the governments of Aruba, Curaçao, or Sint

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<sup>16</sup> See *History*, *supra* note 7.

<sup>17</sup> See KINGDOM ACT OF 7 JULY 2010 at art. 15 (Sint Maarten); L.A.F.T. OF 31 AUG. 2015 at art. 14 (Aruba).

<sup>18</sup> RIJKSWET FINANCIËEL TOEZICHT CURAÇAO EN SINT MAARTEN [KINGDOM ACT OF 7 JULY 2010] arts. 2(2)–(3) (Neth.), <https://www.cft.cw/wetgeving/curacao-en-sint-maarten/finish/57-general/907-kingdom-act-financial-supervision-curacao-and-sint-maarten>.

<sup>19</sup> LANDSVERORDENING ARUBA FINANCIËEL TOEZICHT [L.A.F.T. OF 31 AUG. 2015] arts. 3(1)–(2) (Neth.), <https://rekenkamer.aw/pages/wp-content/uploads/pdf/Wetten/Landsverordening-Aruba-Financieel-Toezicht-AB-2015-no.-39.pdf>.

<sup>20</sup> See *id.* at art. 3(2)(a); KINGDOM ACT OF 7 JULY 2010 at art. 2(3)(a).

<sup>21</sup> See *Scheuring Binnen CFT*, ANTILLIAANS DAGBLAD (Apr. 7, 2020), <https://antilliaansdagblad.com/nieuws-menu/21289-scheuring-binnen-cft>.

<sup>22</sup> See *id.* (“This is because the debt and debt ratio will continue to rise sharply, well above the 40 percent debt/GDP ratio set by the International Monetary Fund (IMF) for Small Island Developing States (Sids). ‘It is for the above reason that when deciding on the aid requested by the countries, the State Council of Ministers should also consider making part of it in the form of a donation,’” argued the island CFT members. “Damoen, Voges and Van der Wal,” the island CFT members, “themselves come up with a proposal: ‘It can be considered that all loans that exceed the debt/GDP ratio of 40 percent used by the IMF and the Cft can be considered as a donation, in order to be able to explicitly realize the pursuit of sustainab[ility] and sustainable public finances.’”).

<sup>23</sup> See KINGDOM CHARTER at art. 25; *but see id.* at art. 25(2) (“An agreement may nevertheless be denounced if exclusion of the Country concerned from the denunciation is incompatible with the provisions of the agreement.”).



Maarten, if not inconsistent with their Kingdom ties.<sup>24</sup> And the Netherlands is obliged to lend money to Sint Maarten to cover its expenditures under the same terms that the Netherlands itself borrows.<sup>25</sup> Nevertheless, pursuant to the 10/10/10 Agreement, Sint Maarten must obtain the consent of the CFT before seeking access to the financial markets.<sup>26</sup>

### 3.4 Hurricanes Irma and Maria, the COVID-19 Pandemic, and the Dutch Government's Response

The economy of Sint Maarten, as a small Caribbean island state, was particularly vulnerable to the impact of the COVID-19 pandemic. At the start of the pandemic, the interim president of Central Bank of Curaçao and Sint Maarten estimated that Sint Maarten would need \$48 to \$58.1 million *per month* to stay afloat.<sup>27</sup> Sint Maarten's economy is heavily dependent on tourism revenue, with related sectors accounting for up to 45% of Sint Maarten's GDP.<sup>28</sup> Amid the global pandemic, however, international tourism has nearly come to a halt and periodic lockdowns and other preventive measures have impacted even local consumption. According to the International Monetary Fund ("IMF"), real GDP is estimated to have fallen 20% in Curaçao and 24% in Sint Maarten in 2020, and the combination of depressed fiscal revenue and higher spending needs due to COVID-19 response measures widened fiscal deficits in 2020, increasing government debt stocks to about 89 and 65% of GDP in Curaçao and Sint Maarten, respectively.<sup>29</sup> With a slight increase in tourism in 2021 real GDP grew nominally by 2% in Curaçao and 4% in Sint Maarten.<sup>30</sup> While GDP growth could accelerate in 2022 if tourism continues to increase, growth outlook is still subject to uncertainty and risk as a new COVID-19 outbreak or another devastating hurricane could cripple the islands' economies.<sup>31</sup>

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<sup>24</sup> See *id.* at art. 26.

<sup>25</sup> See Emsley D. Tromp, *CHE Versus COHO: A Figment of Our Imagination?*, ST. MAARTEN NEWS (Oct. 9, 2020), <https://stmaartennews.com/columns/che-versus-oho-a-figment-of-our-imagination/>.

<sup>26</sup> See *id.*

<sup>27</sup> See *St. Maarten needs massive financial support*, STMAARTENNEWS.COM (Mar. 24, 2020), <https://stmaartennews.com/finance/st-maarten-needs-massive-financial-support/>.

<sup>28</sup> See *Aruba – Economic Indicators*, MOODY'S ANALYTICS, <https://www.economy.com/aruba/indicators> (last visited Mar. 2021); *Sint Maarten: Overview*, WORLD BANK (Oct. 20, 2020) <https://www.worldbank.org/en/country/sintmaarten/overview>.

<sup>29</sup> See *Press Release No. 21/240, IMF Executive Board Concludes 2021 Article IV Consultation with the Kingdom of the Netherlands—Curaçao and Sint Maarten*, INTERNATIONAL MONETARY FUND (Aug. 2, 2021), <https://www.imf.org/en/News/Articles/2021/07/30/pr21240-curacao-and-sint-maarten-imf-executive-board-concludes-2021-article-iv-consultation>.

<sup>30</sup> See *Curaçao and Sint Maarten: Staff Concluding Statement of an IMF Staff Visit*, INTERNATIONAL MONETARY FUND (Nov. 30, 2021), <https://www.imf.org/en/News/Articles/2021/11/30/mcs113021-curacao-and-sint-maarten-staff-concluding-statement-of-an-imf-staff-visit>.

<sup>31</sup> See *id.*

To make matters worse, the economy of Sint Maarten was still struggling to recover from the disastrous 2017 hurricane season.<sup>32</sup> Hurricanes Irma and Maria destroyed or seriously damaged 90% of the structures on Sint Maarten and caused almost \$3 billion in damages and losses.<sup>33</sup> In the words of the World Bank:

Following the devastation caused by hurricanes Irma and Maria in 2017, Sint Maarten suffered damages and losses of around 260% of its GDP, destroying homes, schools, and restaurants, damaging critical infrastructure including the hospital and the airport terminal, and disrupting the tourism-based economy, dramatically reducing arrivals. Sint Maarten's economy contracted by a cumulative 12% in 2017-18 and public finances faced a sharp decline in tax revenue.

Through rebuilding and recovery efforts, in 2019 Sint Maarten's growth was just rebounding to 5% when the COVID-19 pandemic hit, causing heavy income and job losses. In particular, micro, small, and medium enterprises (MSMEs) endured significant capital losses due to the impacts of the hurricane that were compounded by the pandemic.

The global border closures and travel restrictions due to COVID-19 further exacerbated losses in tourism. The economy contracted by an estimated 24% in 2020, with major impacts on fiscal revenue (IMF, February 2021). Unemployment is projected to have increased to 19%, according to the Government of Sint Maarten.<sup>34</sup>

In response to the two hurricanes, the Netherlands promised \$654.5 million (€550 million) in aid to help with the post-hurricane reconstruction of Sint Maarten, with the majority of these funds—up to \$559.3 million (€470 million)—to be held in a public trust and administered by the World Bank.<sup>35</sup> But as of the end of 2020, almost four years since the hurricanes devastated Sint Maarten, only \$109.9 million had actually been disbursed from the fund.<sup>36</sup> This amounts to less than 5% of the World Bank's own estimate of the cost of Sint Maarten's recovery of \$2.3 billion.<sup>37</sup>

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<sup>32</sup> See *Press Release No. 21/240, IMF Executive Board Concludes 2021 Article IV Consultation with the Kingdom of the Netherlands—Curaçao and Sint Maarten*, *supra* note 29.

<sup>33</sup> See SINT MAARTEN NATIONAL RECOVERY AND RESILIENCE PLAN, WORLD BANK GROUP 17 (2017) <http://www.sintmaartengov.org/government/AZ/NRPB/Presentations/NRRP%20final.pdf>; REGIONAL OVERVIEW: IMPACT OF HURRICANES IRMA AND MARIA, U.N. DEVELOPMENT Programme 29 (2017).

<sup>34</sup> See *Sint Maarten: Overview*, WORLD BANK (Oct. 20, 2020) <https://www.worldbank.org/en/country/sintmaarten/overview>.

<sup>35</sup> See *Reconstruction of St Maarten*, GOV'T OF THE NETH., <https://www.government.nl/topics/caribbean-parts-of-the-kingdom/reconstruction-of-st-maarten> (last visited Nov. 2020) (calculated using a 2021 exchange rate of: 1 EUR = 1.19 USD).

<sup>36</sup> See *Sint Maarten Recovery and Resilience Trust Fund Update*, WORLD BANK 50 (April 26, 2019), <https://www.worldbank.org/en/news/feature/2019/04/26/sint-maarten-recovery-and-resilience-trust-fund-update>.

<sup>37</sup> See SINT MAARTEN NATIONAL RECOVERY AND RESILIENCE PLAN, *supra* note 33, at 17.

Disbursements to and from the trust fund had to be approved by Raymond Knops (“Knops”) who, up until January 2022, was the Dutch State Secretary for the Interior and Kingdom Relations under the prior caretaker government. To date, the disbursements have focused on infrastructure reconstruction, housing repair, and capacity building.<sup>38</sup> Even when the Dutch Parliament and former Secretary came to an agreement with local officials on a particular project, such as airport reconstruction, long negotiations and approval delays often hindered progress.<sup>39</sup> But according to a 2018 report by the Dutch Court of Audit, the parties often differed over the scope of the recovery plan, with the Dutch former Secretary often rejecting a number of technical assistance requests from Sint Maarten because he did not believe they were “directly related to the reconstruction work.”<sup>40</sup> With such a slow disbursement rate, the Sint Maarten agency that oversees the implementation of recovery activities, the National Recovery Program Bureau, is already negotiating an extension of the December 2025 deadline for fear that the full trust fund will not be utilized for its promised purpose.<sup>41</sup>

But whatever the reasons for the Dutch government’s rejection of specific funding needs, one thing is beyond dispute: The onerous funding process that the Netherlands has erected—including its veto authority over every penny requested—has resulted in the ongoing deprivation of a vast amount of relief assistance that was promised to the citizens of Sint Maarten. And as explained below, instead of disbursing this promised relief aid quickly now that Sint Maarten has been battered by a second natural disaster (the COVID-19 pandemic) and resulting economic distress, the Dutch government continues to withhold it. Instead, the Netherlands has required its citizens in Sint Maarten to assume ever greater amounts of debt. Other than with its own Caribbean islands, we are not aware of anywhere else in the Kingdom, in Europe, or in other countries where the Dutch government has withheld emergency relief aid and imposed unsustainable debt instead. Worse still, we are unaware of anywhere else where the Dutch government required the surrender of democratic rights in order to receive such debt or aid of any kind.

### **3.5 The Caribbean Entity for Reform and Development (COHO)**

In response to requests by Curaçao, Aruba, and Sint Maarten for additional pandemic relief, the Dutch government instead proposed the creation of an independent Dutch administrative body, the Caribbean “reform” entity known as the Entity for Reform and Development (“COHO” in Dutch).<sup>42</sup> While the statute has not yet been finalized, a “Temporary Working Organization

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<sup>38</sup> See *Projects*, SINT MAARTEN TRUST FUND, <https://www.sintmaartenrecovery.org/projects> (last visited Feb. 3, 2022).

<sup>39</sup> See *Government Signs Long-Overdue Funding Agreements for Airport Reconstruction*, STMAARTENNEWS.COM (Dec. 11, 2019), <https://stmaartennews.com/aviation-news/government-signs-long-overdue-funding-agreements-airport-reconstruction/>.

<sup>40</sup> ALGEMENE REKENKAMER, FOCUS ON THE DUTCH CONTRIBUTION TO THE RECONSTRUCTION OF SINT MAARTEN 21 (2018).

<sup>41</sup> See *NRPB Negotiates Extension of Trust Fund Deadline*, STMAARTENNEWS.COM (May 21, 2020), <https://stmaartennews.com/business/nrpb-negotiates-extension-trust-fund-deadline/>.

<sup>42</sup> The entity was originally named the Caribbean Reform Entity in the Dutch proposal and is referred to as such under the agreement signed by Aruba but is known as the Caribbean Entity for

(“TWO”) has already been established. The COHO law provides for the Dutch Minister of the Interior and Kingdom Relations to appoint the three members of the COHO, based thousands of miles away “in The Hague.” The COHO will oversee sweeping economic reforms and will enjoy legislative input in the three island countries.<sup>43</sup> Predicated on a purported need for budgetary and governance reforms, the COHO will control a wide range of government functions, including “(a) the public authorities; (b) finances; (c) economic reforms; (d) healthcare; (e) education; (f) strengthening the rule of law; and (g) infrastructure” on each of the three islands for a minimum of six years.<sup>44</sup> Nor is the COHO’s governmental authority limited to administrative functions. Rather, COHO “experts” will draft implementing legislation for passage by the island legislatures:

If one of the countries needs support in drafting legislation, the [COHO] can, if it has legislative lawyers, make this capacity available. If the entity does not have legal counsel, it may, depending on the necessary expertise, request the Dutch Minister to appoint experts (Article 18). These experts shall be responsible, insofar as they assist the [COHO] in carrying out its duties. Furthermore, it is conceivable that the [COHO] will hire the necessary expertise externally.<sup>45</sup>

If the COHO decides that the island governments are not fulfilling their reform obligations (*i.e.*, do not “comply” with the COHO’s demands, in the words of the legislation’s Explanatory Memorandum), it may institute enhanced “financial supervision” under standards established by the relevant CFT.<sup>46</sup> Worse, the unelected COHO may suspend aid to the island in whole or in part.<sup>47</sup> As Section 3.7.1 of the Explanatory Memorandum makes clear:

The provision of these funds is not without obligation. It is done under the general condition that Aruba, Curaçao and Sint Maarten make efforts to comply with their various specifications under the state law and the [respective] country’s packages [which will set forth greater details regarding reform obligations]. If a[n island] country fails to make this effort and obligations are structurally not fulfilled, the Netherlands must have an emergency brake to suspend or even stop the provision of financial resources.<sup>48</sup>

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Reform and Development (COHO in Dutch) under the agreement signed by Curaçao. *See* Tromp, *supra* note 25.

<sup>43</sup> *See* RIJKSWET VAN [DATUM], HOUDENDE REGELS OMTRENT DE INSTELLING VAN DE CARIBISCHE HERVORMINGSENTITEIT IN ARUBA, CURAÇAO EN SINT MAARTEN (RIJKSWET CARIBISCHE HERVORMINGSENTITEIT ARUBA, CURAÇAO, EN SINT MAARTEN) arts. 7, 2, 3 (Neth.) [hereinafter PROPOSED CARIBBEAN REFORM ENTITY LEGISLATION]; *No Parliamentary Supervision of Caribbean Reform Entity*, DAILY HERALD (Aug. 28, 2020), <https://www.thedailyherald.sx/islands/no-parliamentary-supervision-of-caribbean-reform-entity>.

<sup>44</sup> *See* PROPOSED CARIBBEAN REFORM ENTITY LEGISLATION, *id.* at art. 4(2).

<sup>45</sup> *Id.* at Explanatory Memorandum, § 3.4.1.

<sup>46</sup> *Id.* at arts. 4(1)(d), 33, 35.

<sup>47</sup> *See id.* at arts. 17, 23, 24, 38.

<sup>48</sup> *Id.* at Explanatory Memo., § 3.7.1 (underline added).

So, in the future, despite paying national taxes and despite being forced to surrender substantial parts of their administrative and legislative sovereignty to the COHO, the island citizens may still be deprived of future funding if the COHO sees fit. As explained below, this proposed thralldom is not new.

After proposing the COHO, the Netherlands moved to force the islands into accepting it. The governments of Aruba<sup>49</sup> and Curaçao<sup>50</sup> assented to the COHO in exchange for €105 million and €50 million respectively in interest-free loans. Sint Maarten tried to retain its sovereignty and entered into extensive negotiations with the Dutch.<sup>51</sup> But when Sint Maarten secured outside financing so that it would not remain dependent exclusively on the Netherlands for refinancing and liquidity, the Netherlands forbid Sint Maarten from proceeding with the loan. On October 20, 2020, former Secretary Knops sent a letter to the Sint Maarten Minister of Finance, Ardwell Irion, threatening to declare a decade-old loan in default unless Sint Maarten abandoned the new source of financing.<sup>52</sup> Specifically, Knops wrote:

As you know, a bullet loan of ANG 50 million [US \$28,000,000] from the Netherlands to Sint Maarten will expire on 21 October 2020. For ten years it has been known to Sint Maarten that this loan has to be repaid. Although I of course have understanding for the fact that the effects of Hurricane Irma have required a great deal of your attention and energy in recent years, this does not diminish this payment commitment, to which the CFT has also repeatedly drawn your attention.<sup>53</sup>

Former Secretary Knops made no mention of the COVID-19 pandemic, the threat to the public health of the people of Sint Maarten who are his fellow Dutch citizens, or the economic devastation resulting from the near-total loss of tourism revenue. Nor did he mention the hundreds of millions of untapped hurricane relief funds still available in the World Bank trust fund. Instead, he affirmed that the unelected CFT, over which the Sint Maarten government had no authority, could block Sint Maarten from obtaining funding to refinance the loan on its own: “On September 17th, last, you submitted a loan request to the CFT for refinancing of this loan [from the capital markets]. The CFT was not in agreement with this proposed loan request and has indicated that decision-making on this request should take place in the Kingdom Council of Ministers (CFT 202000132).” The CFT blocked Sint Maarten from obtaining the loan despite Sint Maarten’s clear right to such financing under Article 26 of the Kingdom Charter: “If the Government of Aruba,

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<sup>49</sup> See *Accord Between Aruba, the Netherlands Signed*, CURAÇAO CHRONICLE (Nov. 16, 2020), <https://www.curacaochronicle.com/post/main/accord-between-aruba-the-netherlands-signed/>.

<sup>50</sup> See *Curaçao and the Netherlands Sign Historic Political Accord*, DAILY HERALD (Nov. 3, 2020), <https://www.thedailyherald.sx/islands/curacao-and-the-netherlands-sign-historic-political-accord>.

<sup>51</sup> See Press Release, *St. Maarten Negotiations on the 3rd Tranche of Liquidity Support Starts Today*, GOV’T OF SINT MAARTEN (Nov. 13, 2020), <http://www.sintmaartengov.org/PressReleases/Pages/St.-Maarten-negotiations-on-the-3rd-tranche-of-liquidity-support-starts-today.aspx>; *Accord Between Aruba, the Netherlands Signed*, *supra* note 49.

<sup>52</sup> See Oct. 16, 2020 Letter from Secretary Knops to Sint Maarten’s Minister of Finance (on file with undersigned counsel).

<sup>53</sup> *Id.*

Curaçao or St Maarten communicates its wish for the conclusion of an international economic or financial agreement that applies solely to the Country concerned, the Government of the Kingdom shall assist in the conclusion of such an agreement, unless this would be inconsistent with the Country's ties with the Kingdom.”<sup>54</sup>

Far from opposing the CFT and protecting Sint Maarten's rights under Article 26, former Secretary Knops proceeded to threaten Sint Maarten if it tried to proceed with funding independent of the Dutch government's COHO scheme. First, Knops offered a mere “four-week extension” of the loan “in order to prevent a technical default on the part of Sint Maarten, with all its consequences.”<sup>55</sup> By that, he meant that a Dutch declaration of default on the ten-year-old bond would trigger cross-default provisions on all of Sint Maarten's debt (such provisions are common in loan agreements). This cascade of loan defaults would crater Sint Maarten's credit rating and eliminate the possibility of debt financing when needed most to protect the people of Sint Maarten from the COVID-19 threat and economic turmoil—a prospect Knops taciturnly termed, “all its consequences.”<sup>56</sup> During that four-week period, Knops continued, Sint Maarten must “meet the conditions attached to the second tranche of liquidity support” under the COHO scheme.<sup>57</sup> And if Sint Maarten is obedient—“if you comply” in Knops's words—“our countries can discuss the third tranche of liquidity support . . . [and] a longer-term solution to the expiring [ten-year old] loan.”<sup>58</sup>

The Dutch government's strategy could not be clearer: continue to keep Sint Maarten (as well as Aruba and Curaçao) indebted through a never-ending cycle of debt owed to the Dutch government, and only to the Dutch government, by barring Sint Maarten and its sister islands from accessing other sources of funding, and then continue to demand that the island countries abdicate ever greater parts of their sovereignty, even those expressly guaranteed in the Kingdom Charter, as the price of that debt—in short, a kind of 21<sup>st</sup> century peonage for the descendants of Africans and African slaves on Sint Maarten as well as Aruba and Curaçao. Unable to risk the destruction of its credit—especially amid a global pandemic and recession—Sint Maarten capitulated and withdrew its bond offering.<sup>59</sup>

On November 5, 2020, Petitioner the Parliament of Sint Maarten passed a motion that *inter alia* authorized “the Parliament and Government of Sint Maarten [to pursue] ending the violations of Sint Maarten's UN-mandated right to a full measure of self-government; completing the decolonization of Sint Maarten and the other islands of the former Netherlands Antilles with the assistance of the United Nations in accordance with the past, present, and future obligations of the Netherlands under international law; and obtaining reparations from the Netherlands for violations

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<sup>54</sup> KINGDOM CHARTER, art. 26.

<sup>55</sup> See Oct. 16, 2020 Letter from Secretary Knops to Sint Maarten's Minister of Finance (on file with undersigned counsel).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> See *Minister of Finance Suspends Bond, Blackmailed by State Secretary Knops (UPDATED)*, ST. MAARTEN NEWS (Oct. 19, 2020), <https://smn-news.com/st-maarten-st-martin-news/35954-minister-of-finance-suspends-bond-blackmailed-by-state-secretary-knops-updated.html>.

of international law and norms as well as its treaty obligations.”<sup>60</sup> That motion authorized among other things the preparation and filing of the March 9, 2021 Petition by undersigned counsel on behalf of the Parliament and Citizens of Sint Maarten presented to the UN Special Rapporteur on Contemporary Forms of Racism and the Working Group of Experts on People of African Descent (the “Petition”).

In response, on December 10, 2020, Former Secretary Knops wrote to the Prime Minister of Sint Maarten, Silveria Jacobs, demanding an explanation of how the Sint Maarten government would implement recessionary slashing of government expenditures “in the shortest possible time.” He then demanded a

declaration or motion [to] show that there are [sic] no more incongruousness with the motion of the United People’s Party and the National Alliance on (completion of complete [sic]) decolonization, which was adopted in the States of 5 November last. I stress once again that a motion or other kind of declaration of support by the States is a firm demand for me to reach an agreement.<sup>61</sup>

This demand—that Sint Maarten abandon its right to seek redress from the UN Special Rapporteur and Working Group for the Dutch government’s deprivations of its island citizens’ human rights as the price of additional loans—itself violates international law and constitutes a modern-day form of debt slavery. But Knops made clear the price of defiance: “Finally, I do not need to remind you that on December 18th, the extended deadline for repayment of the last bullet [ten-year old] loan will also expire again. As has already been indicated, I do not see any scope for further extension without an agreement. The potential consequences of a technical default for Sint Maarten are obviously known to you.”<sup>62</sup>

On December 14, 2020, Prime Minister Jacobs announced that her government had agreed to “structural reforms” and other measures as required by the COHO scheme in exchange for a third tranche of liquidity funding. The Prime Minister’s explanation for why she had acceded to the terms of the COHO proposal were clear: “As a country, we are between a rock and a hard place . . . weighing our strive [sic] for autonomy against the immediate needs of the people of St. Maarten. Large countries around the world are faced with financial challenges, but our situation is one that is exacerbated by the challenges [two hurricanes] we recently faced in 2017 and the

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<sup>60</sup> Similarly, the Parliament of Curaçao a month earlier filed a petition with the UN Special Committee on Decolonization seeking “re-inclusion of Curaçao on the list of Article 73(e) of the Charter of the United Nations.” See Petition for the Confirmation and Protection of the Right of Self-Determination and the Re-Inclusion of Curaçao on the List of Article 73(e) of the Charter of the United Nations, *in* Motion of Endorsement by the Parliament of Curaçao (Oct. 9, 2020), [https://ris.parlamento.cw/risopenbaardocs/DownloadDoc.aspx?doc\\_id=23888](https://ris.parlamento.cw/risopenbaardocs/DownloadDoc.aspx?doc_id=23888).

<sup>61</sup> See December 2020 Letter from Secretary Knops to Prime Minister Jacobs (on file with undersigned counsel).

<sup>62</sup> *Id.*

subsequent slow recovery and improvement in our effectiveness and efficiency as a government. My personal feelings aside, I must put the needs of the country as my highest priority.”<sup>63</sup>

### 3.6 Ongoing Deprivation of Rights in Exchange for COHO Loans

Sint Maarten’s objections to the COHO’s legality, set forth in its original Petition as violative of both international human rights law and Dutch law, were later validated by a March 3, 2021 ruling by the Dutch Council of State. The Council of State held that the proposed COHO bill raised serious questions about its “compatibility with the constitutional structure of the Kingdom, as laid down in the Charter, in which the autonomy and the own responsibility of the countries are important points of departure.”<sup>64</sup> Undeterred, on March 16, 2021, Former Secretary Knops again threatened to withhold the next tranche of liquidity, forcing Prime Minister Jacobs once again to affirm Sint Maarten’s commitment to carrying out the provisions of the COHO.<sup>65</sup> The President of the Sint Maarten Parliament, Rolando Bryson, also sent Former Secretary Knops a letter confirming support for the trajectory of reforms and for working groups to address long-term structural issues between the islands and the Netherlands.<sup>66</sup>

Then, on May 12, 2021, Former Secretary Knops once more threatened to withhold a fifth tranche of liquidity support unless a dispute over the management of the Princess Juliana International Airport was resolved to his satisfaction.<sup>67</sup> He also threatened the new government in Curaçao that it too would lose all financial support if it did not participate in the COHO process and that it would demand repayment of more than “333.5 million euros” of COVID loans and

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<sup>63</sup> Press Release, *Prime Minister Silveria Jacobs Updates Parliament on 3<sup>rd</sup> Tranche of Liquidity Support Agreements with BZK*, GOV’T OF SINT MAARTEN (Dec. 14, 2020), <http://www.sintmaartengov.org/PressReleases/Pages/Prime-Minister-Silveria-Jacobs-updates-Parliament-on-3rd-tranche-of-liquidity-support-agreements-with-BZK.aspx>.

<sup>64</sup> *Council of State Says COHO Law Is Unfitting and Requires Changes*, DAILY HERALD (Mar. 24, 2021), <https://www.thedailyherald.sx/islands/council-of-state-says-coho-law-is-unfitting-and-requires-changes>.

<sup>65</sup> *See St Maarten committed to carrying out agreements, COHO not disputed*, Boardwalk SXM News (March 23, 2021) <https://www.boardwalksxmnews.com/st-maarten-committed-to-carrying-out-agreements-coho-not-disputed/>.

<sup>66</sup> *See* April 15, 2021 Letter from President of [Sint Maarten’s] Parliament Rolando Bryson to Secretary Knops.

<sup>67</sup> *See Knops: No fifth tranche until situation at airport is restored*, THE DAILY HERALD, (May 12, 2021) <https://www.thedailyherald.sx/islands/knops-no-fifth-tranche-until-situation-at-airport-is-restored> (quoting Knops as informing the Sint Maarten Prime Minister: “Under this circumstance it cannot be demanded of the Netherlands that we keep investing tens of millions of euros in this economic recovery. That is why I will again present the fifth tranche liquidity support to the Kingdom Council of Ministers on May 21. My request will be to defer payment of the NAf. 39 million liquidity support to St. Maarten until your government has acted sufficiently forceful to structurally restore the problems at the airport and to safeguard the successful progress of the airport terminal reconstruction project.”).



additional “pre-Covid outstanding bullet loans.”<sup>68</sup> A few weeks after these threats, on May 28, 2021, the Kingdom Council of Ministers of the Kingdom of the Netherlands reversed its decision, approved on April 23, 2021, to grant Sint Maarten the much-needed ANG 39 million due since April 1, 2021. Former Secretary Knops had opposed the decision based on allegations of corporate governance issues, even though this was not among the original conditions to receive this tranche.

Still not done, on June 22, 2021, Former Secretary Knops informed the Dutch House of Representatives that, as one of the preconditions to be eligible for another (the seventh) tranche of liquidity support, the governments of Curaçao and Sint Maarten must cooperate with the Netherlands in a joint response to the Council of State’s criticism of the COHO legislation. On top of that, Knops confirmed that because Curaçao and Sint Maarten had not yet met the conditions of the sixth tranche, payment of third-quarter liquidity support was withdrawn. Sint Maarten urgently needed that ANG 48 million as recognized by Former Secretary Knops himself. As he wrote in his letter to the House: “Without these loans, countries are likely to be unable to meet their obligations, such as salary payments, social security expenses and interest obligations on outstanding loans, in the course of next month.”

Through the end of his term as Secretary in December 2021, Knops continued to insist on political support of COHO from the islands in exchange for additional financial support. According to Prime Minister Jacobs, Knops threatened that “the liquidity support loans would become due in April 2022 if St. Maarten does not agree to” his demands.<sup>69</sup> Knops also continued to impose more conditions on liquidity support and require that Sint Maarten support COHO in exchange for allowing a deviation from budgetary (debt ratio) norms to combat the negative consequences of the COVID-19 pandemic. As Prime Minister Jacobs observed: “This demonstrates the continued unconstitutional handling of St. Maarten within the Kingdom by [former] Secretary Knops, on the eve of the long-awaited new government being sworn in.”<sup>70</sup>

Former Secretary Knops is not a lone actor in this abuse. The constant threat of withholding liquidity support, which has plunged Sint Maarten and the other island countries into economic and social uncertainty, and the constant demand for the “co-equal” island countries to surrender their sovereign rights, has received support from the Dutch government at the highest level, including the current Prime Minister who was also the Prime Minister in the preceding government.<sup>71</sup> Moreover, all of these steps to deny the island countries income support for

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<sup>68</sup> [KNOPS IS OPEN TO IMF, but coho’s non-participation leads to discontinuation of support, ANTILLIAANS DAGBLAD, \(May 14, 2021\)](https://antilliaansdagblad.com/curacao/23620-knops-staat-open-voor-imf). <https://antilliaansdagblad.com/curacao/23620-knops-staat-open-voor-imf>.

<sup>69</sup> *Jacobs: ‘Undue political pressure’ being placed on smaller countries*, THE DAILY HERALD (Dec. 20, 2021) (on file with undersigned counsel).

<sup>70</sup> *Id.*

<sup>71</sup> *Rutte vindt dat Knops goed reden had om RMR-besluit over liquiditeitssteun Sint Maarten niet uit te voeren*, DOSSIER KONINKRIJKSRELATIES (July 2, 2021) <https://dossierkoninkrijksrelaties.nl/2021/07/02/rutte-vindt-dat-knops-goede-reden-had-om-rmr-besluit-over-liquiditeitssteun-sint-maarten-niet-uit-te-voeren/>.

essential government services were taken by a caretaker government that had resigned months earlier because of its admitted discrimination and racial profiling.<sup>72</sup>

### 3.7 U.N. Committee on the Elimination of Racial Discrimination

Petitioner's CERD Submission. In their 2021 submission to the U.N. Committee on the Elimination of Racial Discrimination, Petitioner Sint Maarten sought not only condemnation of the most recent Dutch efforts to discriminate against its own Caribbean citizens and deprive them of their human rights, but also asked the U.N. to call for systemic changes in the political, economic, and social relationship between the islands and the Kingdom. Specifically, Petitioner documented the recent efforts by the Dutch government to deprive the islands of their right to self-governance as preconditions for receiving economic assistance in the form of additional debt. The submission also detailed the Dutch government's response to the COVID-19 pandemic that was comprised of loans to the islands that further increased their debt burden compared to the grants that the predominantly white European Dutch citizens received, adding to an ever-growing debt burden that was unsustainable. The submission further explained how these efforts to deprive the islanders of their human rights and subject them to debt peonage was a recent manifestation of centuries of colonialism and slavery.

CERD Report. On August 25, 2021, the U.N. Committee on the Elimination of Racial Discrimination ("CERD") issued its most recent periodic report on the Kingdom of the Netherlands ("CERD Report").<sup>73</sup> The CERD Report highlighted the Dutch government's failure to uphold the ICERD toward its own citizens in the Caribbean and those of African descent in the Netherlands. The CERD Report recommended that the Netherlands "develop and implement specific measures and policies to eliminate the historically rooted racial discrimination against people of African descent in the political, social and economic spheres, including by increasing their participation in public affairs."<sup>74</sup> Among the CERD Reports recommendations were:

- (a) Consider apologizing for the country's role in the slave trade, as recommended in the report of the advisory committee on the history of slavery set up by the Government;
- (b) Continue to raise public awareness about the issues of colonialism and the slave trade, including about their lasting impact on people of African descent living in the Kingdom of the Netherlands today; [and]
- (c) Enhance dialogue with representatives of people of African descent on matters related to racial discrimination. (underline added, bold omitted).<sup>75</sup>

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<sup>72</sup> See *infra* Section 5.1.

<sup>73</sup> Comm. on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-second to twenty-fourth reports of the Kingdom of the Netherlands*, ¶ 27, U.N. Doc. CERD/C/NLD/CO/22-24 (Aug. 25, 2021).

<sup>74</sup> *Id.* at ¶ 28.

<sup>75</sup> *Id.*

Further addressing potential ICERD violations specific to Dutch Caribbean island citizens, the CERD Report expressed several serious concerns, including

a report that economic support provided to Aruba, Curaçao and Sint Maarten in the context of the COVID-19 pandemic was linked to conditionalities and was thus less favourable than that provided to the Netherlands, providing less assistance to alleviate the negative economic impact of the pandemic on ethnic minorities in the non-European parts of the Kingdom. The Committee also notes with concern reports about the obstacles faced by the peoples of the Caribbean part of the Kingdom of the Netherlands in fully realizing their right to self-determination.<sup>76</sup>

The CERD Report called on the Netherlands to “evaluate the impact of the economic support provided during the COVID-19 pandemic on the population of Aruba, Curaçao and Sint Maarten, as compared with the impact on the population of the Netherlands, and ensure that no discrimination has occurred.” (bold omitted).<sup>77</sup> It further called upon the Netherlands to “ensure autonomy of the peoples of the Caribbean part of the Kingdom and ensure their participation in decision-making processes in the State party that are of particular concern to them” and recommended that the Netherlands “engage in a dialogue with representatives of the populations of the Caribbean part of the Kingdom who have been discriminated against. . .” (bold omitted).<sup>78</sup>

In addition, the CERD Report was “concerned about reports that the effects of climate change, which are already palpable in some of the islands in the Caribbean part of the Kingdom of the Netherlands, will threaten a plethora of human rights, such as the rights to work, health and housing, and will disproportionately impact vulnerable groups.”<sup>79</sup> The CERD also expressed its concern “that these islands are not receiving support to address these issues.”<sup>80</sup> The CERD Report recommended that the Netherlands “initiate studies to understand the negative impact that climate change may have on people living in islands in the Caribbean part of the Kingdom of the Netherlands” and that it “take measures to mitigate and to protect vulnerable groups from the negative effects of climate change, and that it consider avenues to provide full support to the communities affected,” meaning greater financial assistance.<sup>81</sup>

Finally, we observe that the CERD Report highlighted three paragraphs that set forth recommendations “of particular importance” and requested the Netherlands “to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations,” all of which concerned the Dutch government’s racial discrimination and human rights deprivations in the Caribbean: Paragraph 30 regarding “discrimination” against

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<sup>76</sup> *Id.* at ¶ 29.

<sup>77</sup> *Id.* at ¶ 30.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at ¶ 37.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at ¶ 38.

Dutch citizens “born in the Caribbean;” Paragraph 38 regarding “climate change;” and Paragraph 6 regarding data collection, which we address *infra* Section 6. (bold omitted; underline added).<sup>82</sup>

Kingdom of the Netherlands Response. The Dutch government’s response to the CERD Report ranged from perfunctory to dismissive. Although the former Secretary for Social Affairs and Employment called the CERD Report “a welcome addition” to the government’s work on strengthening the approach to racism and discrimination, there was no reference to the CERD Report’s recommendations regarding the Dutch citizens of the Caribbean.<sup>83</sup> In an official government statement in response to specific questions posed by the Dutch Parliament about the CERD Report’s findings and recommendations, former Secretary Knops was outright dismissive about the Report’s observations and recommendations.<sup>84</sup> In response to the CERD Report’s criticism of the Dutch government’s treatment of the Caribbean islands, Knops insisted that the islands were “autonomous countries, with governments that themselves bear responsibility for the well-being of their inhabitants,” despite the repeated demands and threats to which the islands were forced to acquiesce to receive liquidity support.<sup>85</sup> In response to the CERD Report’s criticisms of the conditions imposed on the economic support provided to the islands, former Secretary Knops said he did “not share the view that the conditions attached to liquidity support would lead to greater social and economic inequality in the Kingdom” between Dutch European citizens and Caribbean citizens.<sup>86</sup>

Former Secretary Knops also essentially ignored the Report’s findings that the Dutch government was discriminating between European citizens and Caribbean citizens. He asserted that all “those who are in the Netherlands—including the Caribbean Netherlands—are treated equally in equal cases and discrimination is not permitted” and that he “[made] no distinction between the European Netherlands and the Caribbean Netherlands.”<sup>87</sup> This contradicts the CERD Report as well as Knops own actions in imposing stringent conditions on loans given to the islands but not on aid given to European Dutch citizens. Knops also side-stepped the issue of the Dutch government’s discrimination against its Caribbean citizens, instead changing the subject to “tackling discrimination within [the islands] is therefore their own constitutional task.”<sup>88</sup>

Similarly, Knops side-stepped the Dutch government’s failure to include the Caribbean citizens in decision-making processes that directly impacted them by again pretending the issue was an internal matter within each island. The “Kingdom of the Netherlands consists of four countries that are autonomous,” and “it is up to the [islands] themselves, if they deem it necessary,

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<sup>82</sup> *Id.* at ¶ 48.

<sup>83</sup> See November 11, 2021 Letter from The State Secretary For Social Affairs And Employment to the President of the House of Representatives of the States General (on file with undersigned counsel).

<sup>84</sup> See October 12, 2021 Letter from Secretary Knops to the President of the House of Representatives of the States General (on file with undersigned counsel).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

to involve [their citizens] in” discussions of measures that directly impact them.<sup>89</sup> He did the same with climate change, claiming that the islands “bear responsibility themselves” for finding the resources to combat climate change. Finally, and perhaps most egregiously, Knops claimed decolonization was complete and the islands had “achieved full self-government.”<sup>90</sup> This directly contradicts the CERD Report and minimizes the degree to which the COHO and repeated conditions on liquidity support demanded by Knops had deeply undermined the islands’ sovereignty and right to self-government.

Beyond words, neither Knops nor the rest of the Dutch government has stopped their discriminatory treatment of the islands. They have not pursued policy changes regarding the COHO or otherwise. Nor have they begun to implement the recommendations of the CERD Report. Instead, the Dutch government continued to demand that the islands support COHO in exchange for liquidity support and an allowance to deviate from the balanced budget requirement.<sup>91</sup> Knops said, “We can’t allow the countries to build new large debts as long as they don’t comply with [COHO].” Additionally, according to Sint Maarten Prime Minister Jacobs, Knops specifically threatened “that the liquidity support loans would become due in April 2022 if St. Maarten does not agree to [his] demands.”<sup>92</sup> He continued to try to force the “country” islands’ support for COHO by threatening devastating economic consequences if they did not comply. Incredibly, he claimed that his conditions on liquidity support and concomitant threats were “making things better, moving things forward together. We want to invest in education in Curaçao, in the justice sector in St. Maarten, secure lower interest rates for Aruba’s loans. We should always think about the people who have it hard because they benefit when we do the right things.”<sup>93</sup> And yet the Dutch government does not consider the citizens of the islands when it continues to unilaterally impose conditions that Knops admitted were “painful.”<sup>94</sup> And while Knops is no longer Secretary for Kingdom Relations, his replacement, Alexandra van Huffelen, and the new government show no sign of easing the financial or legal “pain[]” imposed on the islands.

### 3.8 Dutch Deprivation of Rights and Discrimination in Context

Curaçao’s acquiescence to Dutch COHO-related demands has been crucial to cover its operating budget.<sup>95</sup> The same is true of Sint Maarten. In a June 2021 interview with undersigned counsel, a senior official of the Sint Maarten Ministry of Finance, who requested anonymity to speak freely, described the consequence of Sint Maarten not receiving liquidity as “Armageddon.” “Would prison guards report to work if they are not paid,” he asked, “and would prisoners have to

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See *No liquidity support, no deficit without political commitment*, THE DAILY HERALD (Dec. 20, 2021) (on file with undersigned counsel).

<sup>92</sup> See *Jacobs: ‘Undue political pressure’ being placed on smaller countries*, THE DAILY HERALD (Dec. 20, 2021) (on file with undersigned counsel).

<sup>93</sup> *No liquidity support, no deficit without political commitment*, *supra* note 89.

<sup>94</sup> *Id.*

<sup>95</sup> See *Knops: Curaçao voldoet aan voorwaarden voor uitbetaling liquiditeitssteun*, DOSSIER KONINKRIJKSRELATIES (July 15, 2021), <https://dossierkoninkrijksrelaties.nl/2021/07/15/knops-curacao-voldoet-aan-voorwaarden-voor-uitbetaling-liquiditeitssteun/>.

be released if there is no food for them? Who would control immigration at the airport and the seaport facilities? What about healthcare, elderly care, and other essential social services? What about police? And once government workers stopped getting paid, how could they buy food and pay their other bills? Then how long could the private sector survive?”

And, of course, the credit rating of Sint Maarten would plummet further without liquidity, after already having been battered by the COHO saga. Early in 2021, Moody’s downgraded Sint Maarten’s issuer rating by two grades from Baa3 to Ba2 and changed the outlook to negative because of its differences with the Netherlands over the COHO.<sup>96</sup> Ratings downgrades increase financing costs associated with sovereign bond issuances significantly.<sup>97</sup> Downgrades from investment grade to non-investment grade, such as what happened to Sint Maarten, have been associated with a 1.38% increase in sovereign yield spreads.<sup>98</sup> Central banks facing higher borrowing costs are less likely to provide stimulus packages or other growth incentives, with government funding being redirected to cover those costs. Thus, even if the Sint Maarten government wanted to pursue alternative financing at this point, actions by the Netherlands have foreclosed many borrowing options or made them less economical.

The Kingdom Charter obliges the Netherlands to either afford Sint Maarten “aid and assistance”<sup>99</sup> or assist in the conclusion of economic or financial agreements from alternative international sources.<sup>100</sup> Far from assisting Sint Maarten in concluding international economic or financial agreements, the Dutch government has actively prevented Sint Maarten from pursuing alternative sources of aid. Not only that, but the Dutch government has withheld hundreds of millions of dollars of unspent hurricane relief funds for Sint Maarten which are left languishing in a World Bank trust fund as the Netherlands micromanages its dispersal.<sup>101</sup> Although the Dutch government is free to impose conditions that are lawful on the provision of its aid, it is not free to bind the hands of the Sint Maarten government so that it has no alternative but to accept those conditions. And that is what the Dutch government has done—it has held a financial gun to the

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<sup>96</sup> See Gabriel Torres & Alejandro Olivo, *Rating Action: Moody’s Downgrades Sint Maarten to Ba2, Changes Outlook to Negative, Concluding Review for Downgrade*, MOODY’S INVESTORS SERVS. (Mar. 19, 2021), [https://www.moody.com/research/Moodys-downgrades-Sint-Maarten-to-Ba2-changes-outlook-to-negative--PR\\_441277](https://www.moody.com/research/Moodys-downgrades-Sint-Maarten-to-Ba2-changes-outlook-to-negative--PR_441277).

<sup>97</sup> See, e.g., Richard Cantor & Frank Packer, *Determinants and Impacts of Sovereign Credit Ratings*, 2 ECON. POL’Y REV. 37, 44 (1996).

<sup>98</sup> See Marek Hanusch *et al.*, *The Ghost of a Rating Downgrade: What Happens to Borrowing Costs When a Government Loses its Investment Grade Credit Rating?* 16 (MFM Global Practice, Discussion Paper No. 13, 2016), <http://documents1.worldbank.org/curated/en/241491467703596379/pdf/106667-NWP-MFM-Discussion-Paper-13-SARB-CreditRating-28-Jun-2016-PUBLIC.pdf>.

<sup>99</sup> KINGDOM CHARTER, *supra* note 9, at art. 36.

<sup>100</sup> *Id.* at art. 26.

<sup>101</sup> See SINT MAARTEN NATIONAL RECOVERY AND RESILIENCE PLAN, *supra* note 33, at 17; ALGEMENE REKENKAMER, FOCUS ON THE DUTCH CONTRIBUTION TO THE RECONSTRUCTION OF SINT MAARTEN 21 (2018).

head of Sint Maarten to force it to surrender ever increasing degrees of its national sovereignty in exchange for essential funding.

The Netherlands' pretext that such extreme measures are necessary because of financial mismanagement by Sint Maarten's government is belied by the fact that the economic situation on the island remains under the absolute supervision of the CFT.<sup>102</sup> Further undermining the COHO draft legislation, the supporting Explanatory Memorandum cited a *single* report<sup>103</sup> about the reasons underlying the islands' economic circumstances to justify the COHO's displacement of the elected island governments.<sup>104</sup> But of course, no evidence or circumstance can justify the Netherlands' denying its island citizens their basic human rights, including the right to a full measure of self-governance.

The discrimination by the Dutch government against its own island citizens becomes undeniable when the COHO's scheme of recessionary, balanced-budget policies that ensure the islands' ongoing indebtedness to the Netherlands, coupled with the Dutch government's imposition of neo-colonial authority over the islands, are contrasted with the Dutch government's actions towards its European citizens and those of other EU nations.

The Netherlands only enjoyed a budget surplus between 2017 and 2019 and had a 4.3% budget deficit in 2020.<sup>105</sup> It has also posted an average debt-to-GDP ratio of over 60% in the last

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<sup>102</sup> See Tromp, *supra* note 25 ("The subsequent staggering increase in the debt-to-GDP ratio of both Curaçao and Sint Maarten was possible only with the explicit authorization of the Dutch government after due regard of the consent of the CFT. Therefore, the argument advanced not that the islands could not handle their financial autonomy is more a verdict on the failure of the Dutch-engineered governance structure and the laxity of those entrusted with the compliance thereof than on the policymakers on the islands.").

<sup>103</sup> PROPOSED CARIBBEAN REFORM ENTITY LEGISLATION, *supra* note 43, at Explanatory Memo., § 1.3 n.1 (citing "Small islands, big challenges; The Caribbean part of the Kingdom in regional perspective: performance, opportunities and solutions – Economic Bureau Amsterdam, May 2020" as the sole authority for the COHO).

<sup>104</sup> The Explanatory Memorandum explains the economic problems confronting the island countries and their causes in the following manner:

[T]he countries lagged behind the development of the world economy, Latin America and the Caribbean region. Meanwhile, the debt ratios of all three countries rose sharply. The lagging economic performance has a structural character in addition to incidental and external causes (Venezuela, ISLA refinery, hurricanes). The International Monetary Fund (IMF) has observed for years that the rigid labour market and the unfavourable business environment in the countries are a barrier to economic growth and that the high costs of the public sector are too heavy a financial burden. There is also insufficient connection between education and the labour market, high and rising costs, and increasing risks in the financial sector.

*Id.* at Explanatory Memo., § 1.3.

<sup>105</sup> See *Netherlands Government Budget*, TRADING ECONOMICS, <https://tradingeconomics.com/netherlands/government-budget> (last visited Feb. 2, 2022).

ten years, having been above EU targets for six of the last ten years.<sup>106</sup> Meanwhile, in late 2020, the Government announced €11 billion in additional support for businesses and employees in the Netherlands,<sup>107</sup> in addition to two previous stimulus packages totaling €20 billion<sup>108</sup> and €13 billion.<sup>109</sup> In July 2020, the Dutch Government also agreed to €750 billion in EU pandemic-related relief, split nearly evenly between grants and loans, for southern EU member states without forcing recipient states to meet artificial fiscal or budgetary benchmarks.<sup>110</sup> Following the port explosion in Beirut, Lebanon on August 4, 2020, the Netherlands committed €1 million to the Lebanese Red Cross and made another €3 million available to various Dutch aid organizations responding to the disaster—without any demands for budgetary or other governmental reforms by the Lebanese government.<sup>111</sup> And the European Commission—with the support of the Dutch Government—pledged over €60 million in unconditional humanitarian assistance to Lebanon—again without any Dutch demands for budgetary or other reforms by the Lebanese government.<sup>112</sup>

The Dutch government insists that the conditions it places on the loans for the islands and the acceptance of COHO are necessary to combat corruption and incompetence in the island governments. But the government has not placed similar conditions on aid given to its European citizens and it continues to ignore the corruption and incompetence in the Netherlands. The Dutch

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<sup>106</sup> See *Netherlands Government Debt to GDP*, TRADING ECONOMICS, <https://tradingeconomics.com/netherlands/government-debt-to-gdp> (last visited July 16, 2021).

<sup>107</sup> See Press Release, *Government Extends Coronavirus Support for Jobs and the Economy into 2021*, GOV'T OF THE NETH. (Aug. 28, 2020), <https://www.government.nl/latest/news/2020/08/28/government-extends-coronavirus-support-for-jobs-and-the-economy-into-2021>.

<sup>108</sup> See *Netherlands to Give up to \$22 Billion in Emergency Coronavirus Aid to Business*, REUTERS (Mar. 17, 2020), <https://www.reuters.com/article/us-health-coronavirus-netherlands-busine/netherlands-to-give-up-to-22-billion-in-emergency-coronavirus-aid-to-business-idUSKBN2143FU>.

<sup>109</sup> See Press Release, *Coronavirus: Verlenging en Uitbreiding Noodpakket Banen en Economie*, GOV'T OF THE NETH. (May 20, 2020), <https://www.rijksoverheid.nl/actueel/nieuws/2020/05/20/coronavirus-verlenging-en-uitbreiding-noodpakket-banen-en-economie>.

<sup>110</sup> See Arthur Sullivan, *Unmasking the EU's Coronavirus Recovery Fund—The Fine Print*, DEUTSCHE WELLE (July 21, 2020), <https://www.dw.com/en/unmasking-the-eus-coronavirus-recovery-fund-the-fine-print/a-54255523>.

<sup>111</sup> See Press Release, *Dutch Search and Rescue Team En Route to Lebanon*, GOV'T OF THE NETH. (Aug. 5, 2020), <https://www.government.nl/latest/news/2020/08/06/dutch-search-and-rescue-team-en-route-to-lebanon>; *Rotterdam Helpt bij Herstel Verwoeste Haven Beiroet*, ALGEMEEN DAGBLAD (Aug. 9, 2020), <https://www.ad.nl/buitenland/rotterdam-helpt-bij-herstel-verwoeste-haven-beiroet~ade953b7/?referrer=https%3A%2F%2Fwww.google.com%2F&referrer=https%3A%2F%2Fmail.google.com%2F>.

<sup>112</sup> See *Lebanon: European Commission Pledges Additional €30 Million in Immediate Support*, EUROPA (Aug. 9, 2020), [https://ec.europa.eu/echo/news/lebanon-european-commission-pledges-additional-30-million-immediate-support\\_en](https://ec.europa.eu/echo/news/lebanon-european-commission-pledges-additional-30-million-immediate-support_en).



government faces several scandals and charges that the Netherlands is becoming a Narco state. For example, in 2020, the European Commission brought a case against the Netherlands in the European Court of Justice because the Dutch government had failed to implement an anti-money laundering law that should have been implemented in 2017.<sup>113</sup> There has also been a steady increase in drug-related crime, and the drug trade in the Netherlands continues to grow.<sup>114</sup> Even the Dutch people are critical of the government on this issue, with 59% of citizens believing that the Netherlands is a “narco-state.”<sup>115</sup> In fact, the chairman of the biggest Dutch police union admitted, “Yes, we have a narco-state.”<sup>116</sup> As for competence, the Netherlands struggled for 10 months to form a new government following the March 2021 elections, the longest it has ever taken.<sup>117</sup> None of the three island “countries” took anywhere near that length of time after their most recent elections.<sup>118</sup>

The reality of the conditions in the Netherlands makes clear that the Dutch government’s imposition of stringent conditions on the islands to receive COVID-19 aid is pretextual. The only explanation for the Dutch government’s deprivation of the islands’ autonomy and democratic rights is the systemic racial discrimination that has been present for hundreds of years.

#### 4.0 Deprivation of Human Rights

There are numerous sources of international law applicable to the Netherlands that set forth protections for populations which have not achieved full self-determination, the right to equality under the law and non-discrimination, and the right to meaningful political participation and self-governance. While there may be debate about some of them regarding their binding nature and means of enforceability, there can be no debate that, at a minimum, they set forth broad principles of international law to which the Netherlands continues to claim adherence, and which arguably codify customary international law.

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<sup>113</sup> See *Brussel sleept Nederland voor EU-hof om niet-naleven witwaswet*, EUROPA NU (July 2, 2020), [https://www.europa-nu.nl/id/vla0grbhfl1y9/nieuws/brussel\\_sleept\\_nederland\\_voor\\_eu\\_hof\\_om?ctx=vim2bzqlxcy&s0e=vifdkm1d06kk&fbclid=IwAR11brpCWeE13\\_ZperoxZ\\_4On\\_x\\_aPbKodZywmQQpsOEi1HB Y06g\\_l8sDEU](https://www.europa-nu.nl/id/vla0grbhfl1y9/nieuws/brussel_sleept_nederland_voor_eu_hof_om?ctx=vim2bzqlxcy&s0e=vifdkm1d06kk&fbclid=IwAR11brpCWeE13_ZperoxZ_4On_x_aPbKodZywmQQpsOEi1HB Y06g_l8sDEU).

<sup>114</sup> See Ginni Correa, *Why the Netherlands Is Becoming A Narco State*, ADDICTION CENTER (Jan. 8, 2020), <https://www.addictioncenter.com/news/2020/01/netherlands-narco-state/>.

<sup>115</sup> See *id.*

<sup>116</sup> *Id.*

<sup>117</sup> See *De lange weg naar Rutte IV: Hoe VVD, D66, CDA en CU toch bij elkaar kwamen*, NU.NL (Dec. 13, 2021), <https://www.nu.nl/formatie-2021/6172968/de-lange-weg-naar-rutte-iv-hoe-vvd-d66-cda-en-cu-toch-bij-elkaar-kwamen.html>.

<sup>118</sup> See *NA-UP sign coalition agreement to form the next government of St. Maarten*, ST. MAARTEN NEWS (Jan. 12, 2020), <https://stmaartennews.com/news/na-sign-coalition-agreement-form-next-government-st-maarten/> (last visited Feb. 4, 2022); *MEP and RAIZ sign coalition agreement*, THE DAILY HERALD (Aug. 23, 2021), <https://www.thedailyherald.sx/islands/mep-and-raiz-sign-coalition-agreement> (last visited Feb. 4, 2022).

#### 4.1 International Treaties and Instruments

The ICERD obligates State Parties such as the Netherlands among other things to undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: []

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;<sup>119</sup>

In addition, the ICERD obligates State Parties to

undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation [and]

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;<sup>120</sup>

Under the United Nations Charter, Ch. XI, Article 73,<sup>121</sup> member states “recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a

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<sup>119</sup> See *supra* note 1, art. 5 (underline added).

<sup>120</sup> *Id.*, art. 2 (a) and (c).

<sup>121</sup> U.N. Charter, Article 73 reads in full:

“Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political

sacred trust the obligation to promote to the utmost . . . the well-being of the inhabitants of these territories.” Similarly, the Universal Declaration of Human Rights (1948) provides that “All are equal before the law and are entitled without any discrimination to equal protection of the law” (Art. 7) and that the “will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections” (Art. 21).<sup>122</sup> Art. 2 specifically provides that “no distinction . . . shall . . . be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”<sup>123</sup> The International Covenant on Civil and Political Rights (ICCPR), Article 1, provides that “States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”<sup>124</sup> Article 25 guarantees the right to meaningful political participation, and Articles 2, 3, and 26 prohibit discrimination and guarantee equal protection of law.<sup>125</sup> This list of international legal instruments is not exhaustive.

Similarly, European treaties may also provide a basis for Sint Maarten’s legal claims.<sup>126</sup> These include the Convention for the Protection of Human Rights and Fundamental Freedoms,

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institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.” (emphasis added).

<sup>122</sup> *Universal Declaration of Human Rights*, UNITED NATIONS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited July 15, 2021).

<sup>123</sup> *Id.*

<sup>124</sup> *International Covenant on Civil and Political Rights*, UNITED NATIONS, <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> (last visited July 15, 2021).

<sup>125</sup> *See id.*

<sup>126</sup> The Communication contained in a note verbale from the Permanent Representation of the Netherlands, dated 27 September 2010, registered at the Secretariat General on 28 September 2010, provides among other things that:

The Kingdom of the Netherlands will accordingly remain the subject of international law with which agreements are concluded. . . . The agreements that now apply to the Netherlands Antilles will also continue to apply to these islands

better known as the European Convention on Human Rights, which contains a prohibition against discrimination in Article 14 and the right to free elections in Protocol 1, Art. 3.<sup>127</sup> Moreover, while application of the Treaty on the Functioning of the European Union (TFEU)<sup>128</sup> to Sint Maarten as one of the overseas countries and territories (“OCTs”) would seem to be restricted to Part 4,<sup>129</sup> the Overseas Association Decision Council also opined that “the special relationship between the Union and the OCTs should move away from a classic development cooperation approach to a reciprocal partnership;”<sup>130</sup> “the solidarity between the Union and the OCTs should be based on their unique relationship and their belonging to the same ‘European family;”<sup>131</sup> and the “Union recognizes the importance of developing a more active partnership with the OCTs as regards good governance . . . .”<sup>132</sup>

## 4.2 United Nations General Assembly Resolutions

Although international law generally does not accord UN General Assembly (“UNGA”) Resolutions the same status as other authorities, there are several UNGA resolutions that are

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[Bonaire, Sint Eustatius and Saba]; however, the Government of the Netherlands will now be responsible for implementing these agreements.

Council of Europe, *Communication contained in a note verbal from the Permanent Representation of the Netherlands, dated 27 September 2010, registered at the Secretariat General on 28 September 2010 – Or. Engl.*, Letter JJ7130C (2010), <https://rm.coe.int/090000168064e695>.

<sup>127</sup> *European Convention on Human Rights*, European Court of Human Rights, [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf) (last visited July 15, 2021).

<sup>128</sup> The TFEU provides in Part IV (Art. 198):

The Member States agree to associate with the Union the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom. These countries and territories (hereinafter called the ‘countries and territories’) are listed in Annex II.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Union as a whole.

In accordance with the principles set out in the preamble to this Treaty, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

Treaty on the Functioning of the European Union, Dec. 13, 2007, 2012/C 326/01, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>.

<sup>129</sup> *See* Council Decision 2013/755/EU, ¶ 4 (25 Nov. 2013) (“Overseas Association Decision”) (holding that the “TFEU and its secondary legislation do not automatically apply to the OCTs” and that the OCTs “must comply with the obligations imposed on third countries in respect of trade”).

<sup>130</sup> *Id.* at ¶ 5.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at ¶ 20.

relevant, including Resolution 742 (1953) (factors regarding attainment of self-governance) and Resolution 945(X) (1955) (opinion that it is appropriate for the Netherlands to cease providing information about the former Netherland Antilles under UN Charter Art. 73(e)). We emphasize that Resolution 945(X) was on its face limited to relieving the Dutch government from only the reporting requirement under Article 73(e). It did not even address, let alone affirmatively relieve, the Dutch government of the rest of its obligations under UN Charter Art. 73(a)–(d). In fact, it is arguable that the Dutch government is in violation of a subsequent resolution that imposed reporting requirements under some circumstances.<sup>133</sup> Finally, although the island countries of the Kingdom of the Netherlands may not have the international legal status of “state parties” under the UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, many of the Declaration’s principles are instructive<sup>134</sup> and may be found in the Kingdom Charter, which governs the relations among the four “countries” of the Kingdom of the Netherlands.

### 4.3 Customary International Law

The International Court of Justice in the February 2019 *Chagos Island* case affirmed that, under international law, “the peoples of non-self-governing territories are entitled to exercise their right to self-determination.”<sup>135</sup> In doing so, the ICJ relied heavily on UNGA Res. 1514 (XV) (1960), which the ICJ called a “defining moment” in decolonization.<sup>136</sup> That Resolution calls for immediate steps toward self-determination and affirms that “[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.”<sup>137</sup>

International legal scholars<sup>138</sup> have been at the forefront of arguing that customary international law affords OCTs additional rights of self-governance, equal treatment, and non-

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<sup>133</sup> See G.A. Res. 1541(XV) (1960) (principles for determining obligation to provide information called for by Art. 73e of the UN Charter); see also G.A. Res. 60/119 (18 Jan. 2006) (“Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples”); Declaration on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514 (XV) of 14 December 1960 (¶ 3) (“Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.”).

<sup>134</sup> See G.A. Res. 2625 (XXV) (1970). These principles include (a) “that States shall refrain in their international relations from the threat . . . against the . . . political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;” (c) the “duty not to intervene in matters within the domestic jurisdiction of any State;” (d) the “duty of States to cooperate with one another;” (e) the principle of equal rights and self-determination of peoples;” (f) the “principle of sovereign equality of States;” and (g) the “principle that States shall fulfil in good faith the obligations assumed by them in accordance with the [UN] Charter.”

<sup>135</sup> Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, ¶¶ 160, 180 (Feb. 25).

<sup>136</sup> *Id.*

<sup>137</sup> G.A. Res. 1514 (XV) ¶ 3 (Dec. 14, 1960).

<sup>138</sup> Article 38(d) of the Statute of the International Court of Justice identifies “the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law” considered by the Court.

discrimination from which the former colonial powers may not derogate. For example, with respect to Sint Maarten and similarly situated OCTs, some scholars argue that “the EU law of the EU’s” OCTs extends rights established in other parts of the TFEU to OCTs as well.<sup>139</sup> Based on this premise, many of the TFEU’s provisions and protections should apply to Sint Maarten and other similarly situated OCTs irrespective of the Overseas Association Decision. These would include Art. 18 (barring discrimination based on nationality); Art. 20 (rights of EU citizenship); Art. 22 (right to vote and stand as a candidate in municipal elections); and perhaps Art. 24 (citizens’ initiatives).<sup>140</sup>

More generally, over the last quarter century, there has been an explosion of legal scholarship seeking to establish an international legal right to exercise democratic governance, beginning with the seminal work of Thomas Franck.<sup>141</sup> This body of scholarship posits not only that democratic governance is becoming the exclusive source of legitimacy for governments under international law, but also that there is an emerging international human right to be governed by state authorities that have been formed through democratic processes.

Finally, there is substantial legal authority for the proposition that the EU itself, as well as its Member States, are subject to customary international law that would include anti-discrimination protections, among others.

## 5.0 History of Dutch Discrimination Against Caribbean Islands

There is a long history of discrimination, particularly evident in the award of social benefits, against the Black Dutch citizens in the Caribbean “countries” of the Kingdom as compared to the Dutch in the Netherlands.<sup>142</sup> As a collection of Dutch NGOs observed in their submission to the CERD in 2019:

[T]he Dutch legislature has a discretion to differentiate between the BES islands and the European Netherlands when the size of the islands, geographical

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<sup>139</sup> See Dimitry Kochenov, *The Application of EU Laws in the EU’s Overseas Regions, Countries, and Territories after the Entry into Force of the Treaty of Lisbon*, 20:3 MICH. ST. INT’L LAW REV. 669–743 (2012).

<sup>140</sup> Treaty on the Functioning of the European Union, 2012/C 326/01, Dec. 13, 2007, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>.

<sup>141</sup> See Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT’L LAW, 46, 46 (1992) (“Democracy, thus, is on the way to becoming a global entitlement, one that increasingly will be promoted and protected by collective international processes.”).

<sup>142</sup> See generally DUTCH SECTION OF THE INT’L COMM’N OF JURISTS ET AL., DUTCH NGOS CONTRIBUTION PERTAINING THE TWENTY-SECOND TO TWENTY-FOURTH PERIODIC REPORT ON THE KINGDOM OF THE NETHERLANDS TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, 7–9, U.N. Doc. INT/CERD/NLD/41923/E (Mar. 2020) [hereinafter DUTCH NGO CERD REPORT] available at [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/INT\\_CERD\\_NGO\\_NL\\_D\\_41923\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/INT_CERD_NGO_NL_D_41923_E.pdf) (describing Dutch discrimination against the Caribbean citizens of the Netherlands); Teresa E. Leslie, EIGHT YEARS ON STATIA: RACE, COLONIALITY AND DEVELOPMENT, \*31 (Uitgeverij Boekscout Soest 2020) (“(1) contributing to the literature

circumstances, climate or other factors permit. The legislature uses this discretion to justify unequal rights to social welfare, which has led to (social) disparities between the BES islands and the European Netherlands. Such disparities have especially affected residents of these islands who, because of enduring racism, are often thought to be essentially distinct peoples from Dutch Europeans.<sup>143</sup>

## 5.1 Ongoing Racial Discrimination

Not only are the actions of the Dutch government consistent with their colonial past and recent history in the former Dutch Antilles, but they align with the pervasive racism and xenophobia that have permeated Dutch politics in recent years.<sup>144</sup> For example, the Special Rapporteur on Contemporary Forms of Racism also found in 2019 that:

The reality [in the Netherlands] therefore seems to be one in which race, ethnicity, national origin, religion and other factors determine who is treated fully as a citizen. To be more specific, in many areas of life – including in social and political discourse, and even in some laws and policies – different factors reinforce the view that to truly or genuinely belong is to be white and of Western origin.<sup>145</sup>

Similarly, the Human Rights Committee also recommended in 2019 that the Netherlands

should intensify its efforts to put in place a legislative, policy and institutional framework to ensure the protection of and to promote human rights in the Caribbean constituent countries and harmonize human rights protection standards across all its constituent countries and municipalities, including through funding programmes and institutions, with a view to addressing existing protection gaps.<sup>146</sup>

But as the COHO saga in Section 3 illustrates, not only has the Netherlands ignored this recommendation, but the Dutch government has also increased its violations of the islanders' human rights and imposed more racist policies and neo-colonialism on the islanders during the last three years. In fact, the Dutch government recently *collapsed* over a racial profiling scandal in the Netherlands involving false allegations of fraud made by the Dutch Tax and Customs Administration, which had “withdrawn or tried to claw back child care subsidies from around 26,000 parents [with foreign- or ethnic-sounding names] without any evidence of fraud” between

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examining the global problem of race and its relationship to inequity, injustice and white supremacy; and (2) providing a global approach when studying the impact of racial ideology by identifying how racism and white supremacy obstruct real development”).

<sup>143</sup> See DUTCH NGO CERD REPORT, *supra* note 140, at 8 (emphasis added) available at [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/INT\\_CERD\\_NGO\\_NL\\_D\\_41923\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/INT_CERD_NGO_NL_D_41923_E.pdf).

<sup>144</sup> See Thijs Kleinpaste, *The New Dutch Disease Is White Nationalism*, FOREIGN POLICY (Mar. 20, 2018), <https://foreignpolicy.com/2018/03/20/the-new-dutch-disease-is-white-nationalism/>.

<sup>145</sup> E. Tendayi Achiume (Special Rapporteur on Contemp. Forms of Racism, Racial Discrimination, Xenophobia, & Related Intolerance), *Report on Visit to the Netherlands*, ¶¶ 8–9, U.N. Doc. A/HRC/44/57/Add.2 (July 2, 2020).

<sup>146</sup> Concluding observations on the fifth periodic report of the Netherlands, Human Rights Committee, at 2, U.N. Doc. CCPR/C/NLD/CO/5 (2019).

2013 and 2019.<sup>147</sup> The allegations first emerged in September 2018 when journalists accused the government of racial profiling.<sup>148</sup> The tax authority subsequently admitted that many families were subjected to special scrutiny because of their ethnic origin or dual nationalities.<sup>149</sup> The Dutch government was forced to resign, however, after a December 2020 report from a parliamentary committee of inquiry found “unprecedented injustice” and violations of “fundamental principles of the rule of law.”<sup>150</sup> “With some parents racially profiled during the investigation, the affair underscored criticisms of the Dutch state under Rutte, including an addiction to frugality and a failure to tackle systemic racism.”<sup>151</sup> Yet in the islands of the former Netherland Antilles, similar discrimination, rampant for decades, seems to escape Dutch media attention and parliamentary scrutiny.

## 5.2 The Case of Sint Eustatius: The Dutch Government’s Admitted Ongoing Denial of Democratic Rights and Self-Governance

The Netherlands has a history of undermining the public participation rights of Dutch citizens on the BES islands.<sup>152</sup> Not only did the 10/10/10 Agreement’s constitutional reform proceed against the overwhelming disapproval of Sint Eustatius,<sup>153</sup> but the Netherlands has

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<sup>147</sup> Eline Schaart, *Mark Rutte Pulls Plug on Dutch Government, Plans Immediate Return*, POLITICO (Jan. 15, 2021), <https://www.politico.eu/article/dutch-government-resigns-over-childcare-benefit-scandal/>.

<sup>148</sup> See, e.g., Jan Kleinnijenhuis, *Belastingdienst Werkte Ouders die Recht Hadden op Kinderopvangtoeslag Bewust Tegen*, TROUW (Sept. 4, 2018), <https://www.trouw.nl/nieuws/belastingdienst-werkte-ouders-die-recht-hadden-op-kinderopvangtoeslag-bewust-tegen~bf13daf9/>.

<sup>149</sup> See Stephanie van den Berg, *Dutch Government Quits Over ‘Colossal Stain’ of Tax Subsidy Scandal*, REUTERS (Jan. 15, 2021), <https://www.reuters.com/article/us-netherlands-politics-resignation/dutch-government-quits-over-colossal-stain-of-tax-subsidy-scandal-idUSKBN29K11O>.

<sup>150</sup> TWEEDE KAMER DER STATEN-GENERAAL, ONGEKEND ONRECHT 7 (2020), [https://www.tweedekamer.nl/sites/default/files/atoms/files/20201217\\_eindverslag\\_parlementaire\\_ondervragingscommissie\\_kinderopvangtoeslag.pdf](https://www.tweedekamer.nl/sites/default/files/atoms/files/20201217_eindverslag_parlementaire_ondervragingscommissie_kinderopvangtoeslag.pdf).

<sup>151</sup> *Dutch PM Rutte and his government quit over child welfare scandal. Some 10,000 families, some of whom were racially profiled, were forced to repay tens of thousands of euros of subsidies*, AL JAZEERA (Jan. 15, 2021), <https://www.aljazeera.com/news/2021/1/15/dutch-pm-rutte-and-his-government-quit-over-child-welfare-scandal>.

<sup>152</sup> See DUTCH NGO CERD REPORT, *supra* note 140, at 8 available at [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/INT\\_CERD\\_NGO\\_NL\\_D\\_41923\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/INT_CERD_NGO_NL_D_41923_E.pdf); see also CHARLOTTE DJUIF & FRED SOONS, ZELFBESCHIKKINGSRECHT: BONAIRIANEN, STATIANEN EN SABANEN (2011) available at <https://www.studeersnel.nl/nl/document/vrije-universiteit-amsterdam/volkenrecht/overige/duijf-en-soons-zelfbeschikkingsrecht-bonairianen-statianen-en-sabanen-2011/15735947/view> (research paper opining that the new constitutional status of Sint Eustatius “did (and still does) not meet the requirements of international laws on decolonization”).

<sup>153</sup> See ESC 2008 Report, *supra* note 6, at 16, tbl.10.



continued to discriminate against the special municipality of “Statia” by intervening in its local politics and governance in a way that it has never done with the European municipalities of the Netherlands.<sup>154</sup> On February 7, 2018, the Dutch Government dissolved Statia’s Island Council for alleged “Neglect of Duties,” decapitated the island’s executive branch, and then installed a Government Commissioner and Deputy Commissioner, bypassing the island’s political process.<sup>155</sup> Full democracy will not be restored until at least late 2023.<sup>156</sup> This move by the Dutch came after the elected leaders on the island had pushed for greater autonomy and independence.<sup>157</sup>

The Dutch Former Secretary accused the Sint Eustatius administration of “lawlessness, financial mismanagement, discrimination and intimidation” on the basis of a report issued by a committee of wisemen who were unilaterally appointed by the Dutch government in the aftermath of the 2017 hurricanes.<sup>158</sup> The accusations ignored the limited authorities of the elected Statian government whose public expenditures were all subject to the scrutiny of an independent auditor, namely the BES Board of Supervision or (“CFT BES” in Dutch).<sup>159</sup> Again, as set forth below, the predictable result of the Dutch government’s ongoing denial of Statia’s right to self-government has been deplorable living conditions, such as tap water that is not potable for the vast majority of islanders despite the Dutch government overseer running the island for four years.<sup>160</sup>

While the Dutch parliament acknowledges that the “end goal” is to let the islands have “full democracy,” it has knowingly deprived, and intends to continue to deprive, the islanders of that right for the foreseeable future. Former Secretary Knops made this clear when discussing (1) the denial of democratic rights in the special municipality of Sint Eustatius—a denial of fundamental human rights that was supported by the entire then-Parliament and (2) that it is up to him and others in the Dutch government to determine if and when Stadians’ democratic rights

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<sup>154</sup> See *Municipalities’ Tasks*, GOV’T OF THE NETH., <https://www.government.nl/topics/municipalities/municipalities-tasks> (last visited Mar. 2021).

<sup>155</sup> *Governance*, STATIA GOV’T, <https://www.statiagovernment.com/governance> (last visited Mar. 2021); Communiqué of the Fourth Symposium, Kralendijk, Bonaire, December 7, 2019, *The Political Future, the Right to Self-Determination and Reparations in the Caribbean*, LATIN AMERICA IN MOVEMENT (Oct. 1, 2020), <https://www.alainet.org/en/articulo/204137>.

<sup>156</sup> See Sharina Henriquez, *Regeringscommissaris: ‘moet mogelijk zijn dat Statia sneller democratie terug krijgt,’* CARIBISCH NETWERK (Oct. 21, 2020), <https://caribischnetwerk.ntr.nl/2020/10/21/regeringscommissaris-moet-mogelijk-zijn-dat-statia-sneller-democratie-terug-krijgt/>.

<sup>157</sup> See Bryan Miranda, *Caribbean Island Seeks Freedom After Dutch ‘Colonial Coup’*, WAGING NONVIOLENCE (Feb. 28, 2018), <https://wagingnonviolence.org/2018/02/caribbean-island-freedom-dutch-colonial-coup/>.

<sup>158</sup> See *id.*

<sup>159</sup> See *Organization*, COLLEGES FINANCIËEL TOEZICHT, <https://www.cft.cw/en/about-the-cft/organization> (last visited July 16, 2021).

<sup>160</sup> See John Samson, *GroenLinks-Kamerlid Nevin Özütok: ‘Caribische problemen eindigen onderaan het lijstje,’* CARIBISCH NETWERK (Nov. 27, 2020) <https://caribischnetwerk.ntr.nl/2020/11/27/groenlinks-kamerlid-nevin-ozutok-caribische-problemen-eindigen-onderaan-het-lijstje/>; and Henriquez, *supra* note 154.

will be restored:

We agreed by that St Eustatius Restoration Act, which was passed in July [2020] . . . that, according to a certain phasing, work will be done again towards that full democracy, if you could put it that way. The election of the Island Council was the first step and per phase is defined what the public body and also politics must meet in order to move to the next phase. We have deliberately done this step by step. It describes exactly what needs to be met. That's very transparent at the front. The moment you comply, you can move on to the next phase.

In the debate at the time, the question was: how long will that take? I can't answer that. I hope as soon as possible, but I will, also on the basis of that law, go with what is actually achieved. So if you get into the next phase faster, you'll also be faster with full democracy.

The tendency in The Hague is often very strong to add certain time provisions, but then the risk is also that something will happen on the basis of that planning when you are not really ready for it. The parallel with the discussion about the autonomous countries . . . . (underline added).

Here, former Secretary Knops plainly acknowledged that both the Parliament and policy makers in the Hague are denying the island citizens full democracy, because they were “not really ready for it.” But if they “comply,” then they get more democracy. The islands’ so-called lack of preparedness for democracy—arbitrarily and unilaterally determined by Dutch officials without due process—has always been used by the Dutch as a pretext to deny islanders their democratic rights and full self-governance. This is expressly contrary to the UNGA Res. 1514 (XV) (1960), which calls for immediate steps toward self-determination and affirms that “[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.”<sup>161</sup>

## **6.0 The Effects of Racial Discrimination on the People of the Former Netherland Antilles**

As the U.N. High Commissioner for Human Rights emphasized in a June 1, 2021 Report, people of African descent face “compounding inequalities” in “all areas of life,” as a result of their marginalization and lack of equal access to opportunities, resources, and power stemming from systemic racism.<sup>162</sup> Systemic racism against people of African descent is rooted in “histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism,”<sup>163</sup> as in the case of the former Netherland Antilles.

Below are examples of harm suffered by the people of the former Netherland Antilles resulting from Dutch racist policies and systemically racist structures. These harms result from “interconnected, intersectional and compounded forms of racial discrimination, marginalization and exclusion” in the Kingdom of the Netherlands. They can only be alleviated by the Dutch

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<sup>161</sup> G.A. Res. 1514 (XV) ¶ 3 (Dec. 14, 1960).

<sup>162</sup> Report of the United Nations High Commissioner for Human Rights, at ¶ 3, U.N. Doc. A/HRC/47/53 (2021).

<sup>163</sup> *Id.* at ¶ 9.

government's reversing the culture of denial, dismantling systemic racism, and accelerating the pace of action.<sup>164</sup>

Accordingly, the challenge for the Special Rapporteur and the Working Group is not simply to identify problems that may be rooted in racism or Dutch policies that have a racially disparate impact. The challenge is to recognize that the examples below of harms suffered by the islanders of the former Netherland Antilles are systemic in nature and reflect deeply rooted institutional frameworks—public policy formation, government structures, power dynamics—that derive from centuries of slavery and colonialism. And while any list of harms will of course be limited, we have been constrained by the fact that there is a shocking lack of reliable data on the socio-economic well-being of the islanders of the former Netherlands Antilles.

This lack of information about basic socioeconomic indicators is itself a reflection of decades of neglect and discrimination by the Dutch government. In fact, the CERD Report highlighted this lack of basic “data on the social and economic situation of people of African descent in the” Netherlands and expressed concern that its lack of data “prevents [the Netherlands] from developing targeted and effective measures to address the discrimination against them.”<sup>165</sup> For the purposes of distributing government resources, if a problem is unrecorded, it does not exist and will never be remedied. And the injuries will continue.

## **6.1 Overview: The Human Toll from Years of Human Rights Violations**

The long history of Dutch human rights violations in the former Netherland Antilles has resulted in stark differences between the health and welfare of white, European Dutch citizens and the majority non-white Dutch citizens (or Dutch people of colour) of the Caribbean islands, including Sint Maarten. The average life expectancy at birth on Sint Maarten in 2012 was 77.1 years for women and 69.2 years for men, whereas the average life expectancy at birth in the Netherlands in 2012 was 83 years for women and 79.3 years for men—a difference of over 7% for women and nearly 15% for men.<sup>166</sup> As a further example, according to the Sint Maarten Anti-

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<sup>164</sup> *Id.* at ¶ 6; *see also id.* at ¶ 10 (“[P]eople of African descent face interconnected, intersectional and compounded forms of racial discrimination, marginalization and exclusion that are shaped by historical legacies and mutually reinforced through cycles of structural inequalities that have lasted for generations, affecting the enjoyment of human rights in every part of life. Systemic racism persists, in large part, due to misconceptions that the abolition of slavery, the end of the transatlantic trade in enslaved Africans and colonialism, and measures taken by States to date, have removed the racially discriminatory structures built by those practices and created equal societies.”).

<sup>165</sup> Comm. on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-second to twenty-fourth reports of the Kingdom of the Netherlands*, ¶ 27, U.N. Doc. CERD/C/NLD/CO/22-24 (Nov. 16, 2021); *see also id.* ¶¶ 5 & 6.

<sup>166</sup> *See Life Expectancy at Birth, Female (Years)—Netherlands*, WORLD BANK, <https://data.worldbank.org/indicator/SP.DYN.LE00.FE.IN?locations=NL> (last visited Mar. 2021); *Life Expectancy at Birth, Male (Years)—Netherlands*, WORLD BANK, <https://data.worldbank.org/indicator/SP.DYN.LE00.MA.IN?locations=NL> (last visited Mar. 2021).

Poverty Platform, at least 94% of households on the island live in poverty with a household income of less than \$2,222 per month as of 2015.<sup>167</sup> This was an increase of 19% in the first five years after the 10/10/10 Agreement.<sup>168</sup>

To be sure, the 2017 hurricanes and the financial impact of the COVID-19 pandemic have devastated Sint Maarten's economy. But while the hurricanes and pandemic may have caused the economic devastation facing the islands, as documented in Section 3 *supra*, the Dutch government's response has exacerbated the damage. Not only has the money disbursed from the World Bank trust fund amounted to a fraction of what the Netherlands promised and a tiny fraction of what was needed for hurricane recovery, but the recessionary policies and overwhelming debt inflicted on the three island countries by the Dutch government during the pandemic have compounded the economic misery. Again, this is in stark contrast to the Dutch government's treatment of its own, predominantly white citizens, municipalities, and businesses and of those in the overwhelmingly white EU generally—all of whom have cumulatively received hundreds of billions of euros in grants. The root cause of this disparate treatment is not some policy by a government official; the real cause is centuries of racism and racist structures that embolden and enable Dutch officials to treat their citizens of color on the Caribbean islands so poorly.

There is no serious dispute that these social and economic disparities are the result of “enduring racism” in the words of the 2019 Dutch NGO report to the CERD.<sup>169</sup> During a November 2020 interview, a former Dutch Member of Parliament who was on the Kingdom Relations portfolio was similarly frank about the poverty stemming from a denial of the islanders' human rights. Referring to Bonaire, which has recently enjoyed substantial largesse from the Dutch government compared to what the other islands have received, she reported that, “Poverty is shocking. But the islands are seen as a small part. And how do you tackle poverty? As an MP, you have to look for a hook in the beginning and for me that is: poverty from human rights.”<sup>170</sup> She was also candid about the longstanding history of racial discrimination against the islanders reaching back to slavery: “I have always dealt with issues of discrimination and equality. And the history of slavery also needs to be put on the map.”<sup>171</sup> Finally, the MP admitted that the Dutch government's ostensible adherence to human rights does not extend to its island citizens. “Well, what really stays with me is that in the beginning I was more or less scorned in the Chamber. ‘Because in the Netherlands human rights are well regulated!’ That is not the case. Only when you start listing all the things you see or read there on the island, will something change.”<sup>172</sup>

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<sup>167</sup> See *Anti-Poverty Platform Says 94% Households in Poverty*, SXM TALKS (Feb. 26, 2018), <https://www.sxm-talks.com/the-daily-herald/anti-poverty-platform-says-94-households-inpoverty/>.

<sup>168</sup> See *id.*

<sup>169</sup> DUTCH NGO CERD REPORT, *supra* note 140, at 8 available at [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/INT\\_CERD\\_NGO\\_NLD\\_41923\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NLD/INT_CERD_NGO_NLD_41923_E.pdf).

<sup>170</sup> Samson, *supra* note 158.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

## 6.2 Child Support and Education

All citizens of the constituent country of the Netherlands—regardless of income levels—are entitled to receive a quarterly child allowance, but the benefit was only extended on a monthly basis to citizens living in the Caribbean municipalities in 2016.<sup>173</sup> Even still, Dutch citizens living in Bonaire receive \$1,224 per child per year and Dutch citizens living in Saba and Sint Eustatius received \$1,248 per child per year,<sup>174</sup> while Dutch citizens living in European municipalities receive up to \$1,500 per child per year depending on the child’s age.<sup>175</sup>

The blatant disparity in child allowance amounts is directly contrary to Article 2 of the United Nations Convention on the Rights of the Child, which provides that States should “respect and ensure the rights” of each child “without discrimination of any kind” and to “take all appropriate measures to ensure that the child is protected against all forms of discrimination,” including on the bases of race, colour, ethnic or social origin.<sup>176</sup>

As another example, while budgets for public education are not reported the same in Sint Maarten and the Netherlands—making direct comparisons difficult—roughly speaking the national budget allocation in Sint Maarten’s Ministry for Education, Culture, Youth and Sports in 2019 equaled \$70 million (ANG 123,677,186),<sup>177</sup> while Dutch expenditures in 2019 totaled \$43.2 billion (€79.7 billion) for education, culture and science.<sup>178</sup> This works out to roughly \$9,508 per student in Sint Maarten<sup>179</sup> compared to roughly \$15,341 per student in the Netherlands.<sup>180</sup>

## 6.3 Healthcare

Public disclosures for the healthcare and other social welfare budgets of Sint Maarten and the Netherlands are also not reported in the same manner. However, it appears that the *entire* 2019 budget for the Sint Maarten Ministry of Health, Social Development and Labor Affairs was \$36.7

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<sup>173</sup> See UNICEF, SITUATION ANALYSIS: CHILDREN AND ADOLESCENTS IN THE CARIBBEAN NETHERLANDS 54 (2019).

<sup>174</sup> See *id.*

<sup>175</sup> See *Child Benefit Amounts*, SOCIALE VERZEKERINGSBANK, <https://www.svb.nl/en/child-benefit/amounts-and-payment-dates/child-benefit-amounts> (last visited Mar. 2021) (The Social Insurance Bank (SVB) is the Dutch public institution that implements the various Dutch social security programs).

<sup>176</sup> United Nations Convention on the Rights of the Child art. 2, Sept. 2, 1990, E/CN.4/RES/1990/74.

<sup>177</sup> See LAND SINT MAARTEN: ONTWEPBEGROTING DIENSTJAAR 2020 [SINT MAARTEN: DRAFT 2020 BUDGET] at 40 (on file with undersigned counsel) (calculated using a 2019 exchange rate of: 1 ANG = 0.56646 USD).

<sup>178</sup> See SUMMARY OF THE 2019 BUDGET MEMORANDUM, GOV’T OF THE NETH. 6 (2020) (calculated using a 2019 exchange rate of: 1 EUR = 1.1220 USD).

<sup>179</sup> See *Sint Maarten (Dutch Part): Education System*, UNESCO, <http://uis.unesco.org/country/SX> (last visited Mar. 2021) (calculated by the pre-primary, primary, and secondary student populations).

<sup>180</sup> See *Netherlands: Education System*, UNESCO, <http://uis.unesco.org/en/country/nl> (last visited Mar. 2021) (calculated by the pre-primary, primary, and secondary student populations).

million (ANG 64,782,192), which equals approximately \$901 per person.<sup>181</sup> Meanwhile, Dutch government expenditures in 2019 totaled \$89.4 billion for healthcare *alone*, which amounts to about \$5,159 per person.<sup>182</sup> The healthcare systems in Sint Maarten<sup>183</sup> and the Netherlands<sup>184</sup> are both privately managed, with government oversight; but while Sint Maarten has primary and secondary health services, patients requiring complex care services generally must seek treatment outside of Sint Maarten.<sup>185</sup> With an estimated 30% of the population uninsured<sup>186</sup> and high general poverty rates, these services may be unattainable for many on Sint Maarten. Dutch citizens, meanwhile, enjoy universal health insurance and one of best health care systems in the world.<sup>187</sup>

Far from trying to remedy these disparities and the acute shortage of affordable healthcare on the island countries, the Netherlands is actually trying to force these countries to slash their healthcare budgets by fifteen percent (15%) as another condition of receiving the seventh tranche of liquidity in order to pay for essential services on the island.<sup>188</sup>

#### 6.4 The Extensive Neglect of the Elderly on Statia

There is a similar difference of over \$500 per year in the retirement benefits afforded to the elderly on the BES islands and on Sint Maarten compared to what is afforded to the elderly in the Netherlands, equivalent to a disparity of 41–42% and 51%, respectively.<sup>189</sup> These disparities

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<sup>181</sup> SINT MAARTEN: DRAFT 2020 BUDGET, *supra* note 175, at 42 (calculated using a 2019 exchange rate of: 1 ANG = 0.56646 USD).

<sup>182</sup> See SUMMARY OF THE 2019 BUDGET MEMORANDUM, *supra* note 176, at 6 (calculated using a 2019 exchange rate of: 1 EUR = 1.1220 USD).

<sup>183</sup> SINT MAARTEN COUNTRY COOPERATION STRATEGY 2015 – 2019, PAN AM. HEALTH ORG., 18–19 (2015), <https://www.paho.org/en/file/50168/download?token=uupJEK0G>.

<sup>184</sup> See Dylan Scott, *The Netherlands Has Universal Health Insurance—And It’s All Private*, VOX (Jan. 17, 2020 8:00AM), <https://www.vox.com/policy-and-politics/2020/1/17/21046874/netherlands-universal-health-insurance-private>.

<sup>185</sup> See *id.*

<sup>186</sup> See *id.*

<sup>187</sup> See *id.*

<sup>188</sup> See *Medical care cutbacks condition for liquidity support 7<sup>th</sup> tranche*, THE DAILY HERALD (July 12, 2021) (“A drastic reduction in the cost of medical care in St. Maarten is a precondition for the seventh tranche of liquidity support from the Dutch government. Healthcare reform on the island must follow the advice of the Committee for Financial Supervision CFT, said [former Secretary] Knops.”) (on file with undersigned counsel).

<sup>189</sup> See *St. Maarten: Anti-Poverty Platform Insists on a Pension Equal to the Netherlands’*, CURAÇAO CHRONICLE (July 21, 2020), <https://www.curaocaohronicle.com/post/local/st-maarten-anti-poverty-platform-insists-on-a-pension-equal-to-the-netherlands/>; see also *Hundreds of Elderly Starving in Caribbean Netherlands: Ombudsman*, NL TIMES (Sept. 11, 2019), <https://nltimes.nl/2019/09/11/hundreds-elderly-starving-caribbean-netherlands-ombudsman>.

are especially egregious considering that the cost of living is substantially higher on the islands<sup>190</sup> and the tax rates are comparable or higher.<sup>191</sup> (The cost of living monthly in Sint Maarten is roughly \$1,500 whereas the cost of living monthly in the Netherlands is roughly \$1,011, excluding rent).<sup>192</sup>

For example, a September 10, 2019, National Ombudsman report, “Focus on the elderly in the Caribbean islands,”<sup>193</sup> summarized its findings about the extreme poverty faced by the elderly on the islands versus those in the Netherlands:

The fact that nobody seems to care for the elderly on these islands, that after all form part of our Dutch Kingdom, is all the more painful because these people, these elderly, are Dutch citizens. It seems as if hardly anyone is paying attention to this issue. It may be that there are elderly on these islands whose situation is perfectly fine, but that does not make these people's stories any less painful. It is a fundamental social right to be able to cover one's basic needs, and apparently there are citizens in the Caribbean Netherlands that do not have this guarantee. This is an issue the Netherlands Institute for Human Rights and I myself have emphasized before. Fortunately, the current Cabinet acknowledges that something must be done. The problem of poverty on the islands has – at last – landed a spot on the political agenda. Even so, I am still worried.

Among the heartbreaking stories documented by the National Ombudsman were from a social worker in Statia:

Not too long ago, the public health service asked us to please check on an elderly gentleman. He was visually impaired and hearing impaired, yet still cooked his own meals – that could possibly lead to hazardous situations. We went to check on him, and we were shocked by what we found. The house was practically inhabitable, and the stench was tremendous. The restroom was outside, and as the gentleman not only had a poor eyesight but also reduced mobility, he relieved himself on his

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<sup>190</sup> See *St. Maarten: Anti-Poverty Platform*, *id.*; Esther Henry, *High Cost of Living Remains an Issue for Young Families on Saba*, CARIBBEAN NETWORK (Dec. 11, 2017), <https://caribbeannetwork.ntr.nl/2017/12/11/high-cost-of-living-remains-an-issue-for-young-families-on-saba/>.

<sup>191</sup> *Compare Caribbean Netherlands – Other Taxes and Levies*, KPMG (Jan. 1, 2017), <https://home.kpmg/xx/en/home/insights/2017/05/caribbean-netherlands-other-taxes-levies.html>, with INTERNATIONAL TAX: NETHERLANDS HIGHLIGHTS 2020, DELOITTE (2020).

<sup>192</sup> See *Cost of Living in Sint Maarten*, ROCAPPLY, <https://www.rocapply.com/study-in-sint-maarten/about-sint-maarten/cost-of-living.html> (last visited Jul. 15, 2021); *Cost of Living in Netherlands*, NUMBEO, [https://www.numbeo.com/cost-of-living/country\\_result.jsp?country=Netherlands](https://www.numbeo.com/cost-of-living/country_result.jsp?country=Netherlands) (last visited Jul. 15, 2021).

<sup>193</sup> See *Focus on the elderly in the Caribbean Netherlands: A study of poverty-related problems of those entitled to AOV who live on or below the poverty threshold in the Caribbean Netherlands*, NATIONALE OMBUDSMAN 4 (Sep. 10, 2019), [https://www.nationaleombudsman.nl/system/files/rapport/Report%20Focus%20on%20the%20elderly%20in%20the%20Caribbean%20Netherlands\\_0.pdf](https://www.nationaleombudsman.nl/system/files/rapport/Report%20Focus%20on%20the%20elderly%20in%20the%20Caribbean%20Netherlands_0.pdf).

mattress – which was also the place where he ate his meals. There were buckets full of filth everywhere in the house. It was so sad to find this gentleman in these inhumane conditions. What made the situation worse, was that a couple of years ago, this gentleman was robbed and beaten up in his own home. He had become so anxious, that only one person was allowed to visit him in his home. This lady did what she could, and visited him every once in a while, with a hot meal, but she wasn't able to do so at all times. The gentleman also suffered from diabetes, which is concerning because the medication may not be taken on an empty stomach. Sometimes he made himself a sandwich, but there were also days that he didn't. It was obvious that his gentleman had been living in these very bad circumstances for many years. We had him admitted immediately. It's something of a miracle that we managed to do so, as all the nursing homes are full.<sup>194</sup>

## 6.5 Prison Conditions

The prison conditions in Aruba, Curaçao, and Sint Maarten are the subject of scrutiny by several international organizations. Amnesty International has reported generally appalling conditions in asylum detention centers in particular, including “overcrowding, a lack of privacy, poor hygiene in shower and bathroom areas, and a lack of suitable bedding.”<sup>195</sup> The Council of Europe's Committee for the Prevention of Torture has put in place enhanced supervision procedures in the islands since 2015 because the prison conditions do not meet the standards of the European Court of Human Rights.<sup>196</sup> The island governments have also permitted independent monitoring by the International Committee of the Red Cross, the UN Subcommittee on Prevention of Torture, and the UN Working Group of Experts on People of African Descent.<sup>197</sup> In addition to the pre-existing challenges with the prison conditions, nearly half of Sint Maarten's prison cells have been deemed unsuitable since they were damaged by Hurricane Irma, so the government has taken to transferring dozens of prisoners to the Netherlands.<sup>198</sup> This practice not only draws on Sint Maarten's already limited resources for post-hurricane reconstruction and pandemic relief, but it also deprives prisoners of access to their families as required under international standards.<sup>199</sup> Again, the Dutch government has sought \$15 million to enhance the Public Prosecutor's Office,

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<sup>194</sup> *Id.* at p. 4 (underline added).

<sup>195</sup> AMNESTY INT'L, THE NETHERLANDS: SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE 14 (2019).

<sup>196</sup> See Leoni Schenk, *Prison System on Sint Maarten: 'Human Rights Are Violated on a Daily Basis'*, CARIBBEAN NETWORK (July 13, 2019), <https://caribbeannetwork.ntr.nl/2019/07/13/prison-system-on-sint-maarten-human-rights-are-violated-on-a-daily-basis/>.

<sup>197</sup> See *The Netherlands*, in 2019 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, U.S. DEP'T OF STATE 3 (2019).

<sup>198</sup> See Schenk, *supra* note 194.

<sup>199</sup> See OFF. OF U.N. HIGH COMM'R FOR HUMAN RIGHTS & INT'L BAR ASS., HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS AND LAWYERS 356–59 (2003).



who is appointed by the Netherlands government,<sup>200</sup> but no funds have been designated to improve the dilapidated prisons that enhanced prosecutions would presumably further overcrowd.

Unfortunately, despite the international attention, the prison conditions have not seen much improvement. In 2018, the European Court of Human Rights unanimously held in the case of *Corallo v. the Netherlands* that the conditions at a detention facility in Sint Maarten were so seriously substandard as to constitute a violation of Article 3 of the European Convention on Human Rights.<sup>201</sup> In the instant case, Mr. Corallo was detained in Sint Maarten's Philipsburg Police Station, where the conditions of detention were deemed "extremely poor" by a report by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).<sup>202</sup> These conditions include, among others, "inadequate ventilation and many of the sanitary annexes in the cells emitted a foul smell," and "leakage from the sanitary annexes, which were not fully partitioned from the rest of the cell."<sup>203</sup> Moreover, the cells were often overcrowded, and many of the mattresses "consisted of broken pieces of foam held together by a sheet."<sup>204</sup> Furthermore, staff confirmed that "detained persons were not provided with sheets, a pillow or a towel," for the first ten days of detention, and several people were held in these conditions for several months.<sup>205</sup>

Thirty-seven inmates in the Point Blanche prison in Sint Maarten were subjected to similar inhumane conditions, according to a March 20, 2020 lawsuit that they brought against the Sint Maarten government, claiming that the "conditions under which they have to live are inhuman."<sup>206</sup> This lawsuit should come as no surprise. Three years ago, the Human Rights Committee expressed its concern about

the poor conditions of some detention facilities in the Caribbean constituent countries, including the Point Blanche and the Philipsburg police stations in Sint Maarten, the correctional institution in Aruba and Block 1 of the Centre for

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<sup>200</sup> See RIJKS WET OPENBARE MINISTERIES VAN CURAÇAO, VAN SINT MAARTEN EN VAN BONAIRE, SINT EUSTATIUS EN SABA [KINGDOM ACT ON PUBLIC MINISTRIES OF CURAÇAO, SINT MAARTEN, AND BONAIRE, SINT EUSTATIUS AND SABA] art. 5(3) (Neth.); Press Release, *Judiciary Appointments Aruba, Sint Maarten and the BES-Islands*, GOV'T OF THE NETH. (Oct. 8, 2010), <https://www.government.nl/latest/news/2010/10/08/judiciary-appointments-aruba-sint-maarten-and-the-bes-islands>.

<sup>201</sup> Eur. Court. H.R., *Case of Corallo v. the Netherlands*, 29593/17, Judgment of 9 October 2018, ¶56(2); see generally *Communication with Regard to the Execution of the Judgment of the European Court of Human Rights in the Case of Corallo v. the Netherlands (29593/17)*, NETHERLANDS INSTITUTE FOR HUMAN RIGHTS (Feb. 14, 2019), <https://mensenrechten.nl/en/publicatie/5c751b88e19c2154958b1048>.

<sup>202</sup> Eur. Court. H.R., *Case of Corallo v. the Netherlands* at ¶ 29.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Pointe Blanche Prison Remains a Major Headache*, ST. MAARTEN NEWS (Mar. 15, 2020), available at: <https://stmaartennews.com/justice/pointe-blanche-prison-remains-major-headache/> (last visited Jul. 15, 2021).

Correction and Detention in Curaçao. It is also concerned by reportedly frequent incidents of inter-prisoner violence. It is further concerned about the insufficient health-care services, including psychiatric services, provided in detention facilities as well as inadequate health care provided to drug-dependent inmates.<sup>207</sup>

The unsanitary and unsafe conditions that the Point Blanche inmates describe are far different than what prisoners are accustomed to in the Netherlands' prisons like the Penitentiary Institution Haaglanden or the De Kijvelanden Forensic Care Institution. In these institutions, prisoners are given a "fair amount of control over their daily lives, including the opportunity to wear their own clothes and prepare their own meals."<sup>208</sup> Further, the facilities have "moderate temperatures, lots of windows and light, and wide hallways."<sup>209</sup> Clearly, while the Netherlands' prisons flourish, the prisoners in Sint Maarten suffer in hazardous conditions.

## 6.6 Damage to the Environment and the Health Consequences

As noted by the High Commissioner of Human Rights, in countries where there are sizeable communities of people of colour, people of African descent are "more likely to lack access to adequate housing and to live in segregated, disadvantaged and hazardous neighborhoods."<sup>210</sup> Moreover, "in several countries they also suffer disproportionately from environmental pollution and lack of access to clean water."<sup>211</sup> The residents living in and by the dumps and landfills in Philipsburg, Sint Maarten are a vivid example of such structural and institutional racism against people of African descent.

"The dump and surrounding land overlooking Philipsburg in St Maarten is home to about two hundred people living in shacks and shipping containers."<sup>212</sup> "[A]n increase in the amount of garbage . . . coupled with worrisome management practices, have led to an alarming 32 (and counting) fires on the landfill [in 2018] alone."<sup>213</sup> As described by the National Institute for Public Health and the Environment (RIVM), the conditions of various locations around the dump are

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<sup>207</sup> Concluding observations on the fifth periodic report of the Netherlands, Human Rights Committee, at 8, U.N. Doc. CCPR/C/NLD/CO/5 (2019).

<sup>208</sup> Ram Subramanian & Alison Shames, *Sentencing and Prison Practices in Germany and the Netherlands Implications for the United States*, Federal Sentencing Reporter, Vol. 27, No. 1, Ideas from Abroad and Their Implementation at Home (Oct. 2014), pp. 33-45, 37, available at <https://www.jstor.org/stable/10.1525/fsr.2014.27.1.33>.

<sup>209</sup> *Id.* at 38.

<sup>210</sup> Report of the U.N. High Comm'r. for Human Rights, *supra* note 160, at ¶ 11.

<sup>211</sup> *Id.*

<sup>212</sup> *Residents Living Near Sint Maarten's Dump Have to Move*, CARIBBEAN NETWORK (Sep. 16, 2020), <https://caribbeannetwork.ntr.nl/2020/09/16/people-of-pond-island-have-to-move-but-nobody-knows-where-and-how/>.

<sup>213</sup> *Dump has Minister Giterson's Full Attention*, GOV'T OF SINT MAARTEN (Sep. 20, 2018), <http://www.sintmaartengov.org/PressReleases/Pages/DUMP-HAS-MINISTER-GITERSONS-FULL-ATTENTION.aspx>.

deplorable and pose potential risks to the health of the people living in the vicinity.<sup>214</sup> According to the RIVM, “[f]ires are a regular occurrence at the landfill,” and “dense clouds of smoke generated by smoldering fires and occasional outbreaks of fire at the landfill affect many people in the vicinity.”<sup>215</sup> The large volume of smoke drifting into neighboring districts carried an “undesirable odor,” and “called for persons with respiratory illness to close doors and windows.”<sup>216</sup>

Conditions have only worsened in the recent years. Sint Maarten

has major waste problems due to the poor state of the landfill, frequent toxic landfill fires, low waste separation, insufficient recycling and inadequate waste management practices and policies. The landfill was close to its maximum capacity already in 2008, but is still continued to be used. The ineffective disposal of waste causes grave concerns on the island such as health hazards, air pollution, and water and soil contamination. After Hurricane Irma in September 2017, the landfill input increased exponentially, and a second dump was created in order to dispose the large amounts of hurricane debris.<sup>217</sup>

Some residents have “lived by the landfill for over twenty years,” and the “community continues to live in limbo” because “a completion date for the proposed Resettlement Action Plan has not been confirmed” as of September 2020.<sup>218</sup> One resident who has lived by the dump for over fifteen years explained that “[t]he people who live here are Dutch people. They were born in this country. I’m Dutch, I have a Dutch passport.”<sup>219</sup> Similarly, research by the Law Enforcement Council (De Raad voor de Rechtshandhaving) shows that there is little monitoring in the enforcement of nature and environmental legislation in Bonaire, Sint Eustatius, and Saba. In Bonaire, for example, “more and more waste has been dumped and the ban on it is barely enforced in practice.”<sup>220</sup>

The environmental damage and resulting risks to human health in Sint Maarten interfere with a wide range of human rights, including the rights to health, food, water, and sanitation.<sup>221</sup>

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<sup>214</sup> See *Assistance RIVM Sint Maarten Landfill*, NATIONAL INSTITUTE FOR PUBLIC HEALTH AND THE ENVIRONMENT MINISTRY OF HEALTH, WELFARE AND SPORT, <https://www.rivm.nl/en/sxm> (last visited Jul. 14, 2021).

<sup>215</sup> *Id.*

<sup>216</sup> *Dump has Minister Giterson’s Full Attention*, *supra* note 211.

<sup>217</sup> *Drowning in Waste – Case Saint Martin*, WOIMA, <https://woimacorporation.com/drowning-in-waste-case-saint-martin/> (last visited July 17, 2021); see also <https://nos.nl/artikel/2215822-brand-op-vuilstortplaatsen-sint-maarten>.

<sup>218</sup> *Residents Living Near Sint Maarten’s Dump Have to Move*, *supra* note 210.

<sup>219</sup> *Id.*

<sup>220</sup> *Handhaving Natuur- En Milieuwetgeving in Caribisch Nederland*, RAAD VOOR DE RECHTSHANDHAVING, p. 14 (Oct. 2019), <https://www.raadrechtshandhaving.com/wp-content/uploads/2020/01/Eind-rapport-Handhaving-natuur-en-milieu-wetgeving-2.pdf>.

<sup>221</sup> See *Enhancing the Role of National Human Rights Institutions to Advance Environmental Rights in Asia and the Pacific*, LEARNING NEEDS ASSESSMENT OF NHRI ON ENVIRONMENTAL RIGHTS, 4 (2021).

“[W]ithout a healthy environment, enjoying the minimum standards of human dignity and fundamental rights could not be possible.”<sup>222</sup>

Moreover, because Sint Maarten, along with Saba and St. Eustatius, are located within the Caribbean hurricane belt, these islands tend to experience an increase in rainfall during the wet season (November to July) as well as frequent and violent tropical hurricanes.<sup>223</sup> Such climate change poses threats to a variety of human rights, such as work, health, and housing, and would often disproportionately impact the daily lives of the most vulnerable, such as the poor, the indigenous, women, and children.<sup>224</sup>

## 6.7 Denial of Democracy and Development

The examples above of social and economic deprivations are not simply a result of the global recession or a historic lack of capital or infrastructure or some other economic circumstance. Rather, they are a direct result of ongoing deprivation of political, social, and economic liberty. This denial of freedom, in turn, is a direct result of racially discriminatory policies, laws, and public and private institutions that have existed in the Netherlands for years and that did not change after the new Kingdom Charter was adopted in 2010.

In his classic, “Development as Freedom,” Nobel Laureate Amartya Sen argued that development is best understood “as a process of expanding the real freedom that people enjoy. Focusing on human freedoms contrasts with narrower views of development, such as identifying development with the growth of gross national product, or with the rise in personal incomes, or with industrialization. . . .”<sup>225</sup> Sen wrote:

Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states. Despite unprecedented increases in overall opulence, the contemporary world denies elementary freedoms to vast numbers—perhaps even the majority—of people. Sometimes the lack of substantive freedoms relates directly to economic poverty . . . . In other cases, the unfreedom links closely to the lack of public facilities and social care, such as the absence of epidemiological programs, or of organized arrangements for health care or educational facilities . . . . In still other cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community.<sup>226</sup>

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<sup>222</sup> *Id.* at 3.

<sup>223</sup> See *Climate Change Impacts Within the Dutch Caribbean*, DUTCH CARIBBEAN NATURE ALLIANCE (Nov. 8, 2016), <https://dcanature.org/climate-change-impacts-within-the-dutch-caribbean/>.

<sup>224</sup> See Hari B. Dulal, Kalim U. Shah & Nilufar Ahmad, *Social Equity Considerations in the Implementation of Caribbean Climate Change Adaptation Policies*, SUSTAINABILITY 2009, 1, 363-383; doi:10.3390/su1030363.

<sup>225</sup> Amartya Sen, *DEVELOPMENT AS FREEDOM 1* (Anchor Books, First Ed. 2000).

<sup>226</sup> *Id.* at 1–2.

Clearly the Dutch government is not a totalitarian state that deprives all its citizens of fundamental freedoms. But as the detailed discussion of the COHO in Section 3 *supra* established, far from living up to its international legal obligations—or complying with the legal determination of its own Council of State that substantial portions of the COHO legislation are unlawful—the Dutch government continues to impose debt instead of development aid, to demand the surrender of executive and legislative authorities from democratically-elected governments in exchange for this debt, and to undermine the credit and stability of the island countries by holding their budgets and finances—in short, their ability to govern—hostage. And it continues to rule Statia like a vassal state, depriving the Dutch citizens of Statia of their rights to self-determination and freedom. In doing so, the current caretaker government of the Netherlands has deprived these overwhelmingly Dutch citizens of color of their ability not only to govern themselves, but to secure their own economic and physical well-being. In short, instead of promoting development and freedom, the Dutch government is methodically depriving the islanders of both—just as they had for centuries, especially prior to 2010.

## **7.0 Request for Remedies**

First, it is of no matter that Alexandra van Huffelen has replaced Knops as the new Dutch Secretary for Kingdom Relations. Neither she nor other parts of the “new” government (headed by the same ruling party and Prime Minister) have announced any new policies regarding the islands of the former Netherlands Antilles—not concerning the COHO, the islands’ unsustainable debt, nor even the threat of calling a default on island loans.

Moreover, just as we noted in Section 6 *supra* regarding harms, and most respectfully, the challenge for the Special Rapporteur and the Working Group is not to identify specific problems and endorse discrete solutions. The challenge is to endorse remedies that structurally address the systemic nature of the racial discrimination suffered by the islanders of the former Netherlands Antilles, remedies that target the deeply rooted institutional frameworks derived from centuries of slavery, colonialism, and discrimination. The remedies that we request, therefore, are not narrow in scope. Rather, the remedies we propose seek fundamental reforms of government structures and power dynamics in the Netherlands that will benefit all of the Kingdom’s people. As the U.N. High Commissioner recently advised (when citing the CERD):

Systemic racism needs a systemic response. States should adopt a systemic approach to combating racial discrimination through the adoption and monitoring of whole-of-government and whole-of-society responses that are contained in comprehensive and adequately resourced national and regional action plans and that include, where necessary, special measures to secure for disadvantaged groups, notably Africans and people of African descent, the full and equal enjoyment of human rights.<sup>227</sup>

### **7.1 Decolonization Process to End a Government Structure That Enables and Perpetuates Systemic Racial Discrimination Against the Netherlands Antilles**

Petitioners request that the Special Rapporteur and the Working Group support a formal decolonization process and reform the Kingdom’s constitutional framework that enables and

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<sup>227</sup> Report of the U. N. High Comm’r. for Human Rights, *supra* note 160, at ¶ 19.

perpetuates systemic racial discrimination against the countries and other islands of the former Netherland Antilles. Similar to the 10/10/10 Agreement roundtable process described in Section 3.1 above, these reforms should begin with working groups and then “roundtable” discussions among the Netherlands and the islands of the former Netherland Antilles with the goal of restructuring the Kingdom Charter to finalize decolonization and eliminate systemic racial discrimination.

## 7.2 Monetary Reparations

Petitioners request that the Special Rapporteur and the Working Group endorse monetary and other forms of reparations for the islands of the former Netherlands Antilles from the Dutch government for its (1) gross violations of human rights committed during the transatlantic slave period; (2) harms and exploitation committed during the colonial period; and (3) for the post-WWII period, failure to fulfill its legal and financial obligations under Article 73 of the UN Charter.<sup>228</sup>

Reparations for Dutch slavery, colonialism, systemic racism, discrimination, and ongoing hindrance of self-governance and local development would benefit the Kingdom of the Netherlands as a whole, not just those of African descent. As the High Commissioner for Human Rights recently explained,

[r]eparations are essential for transforming relationships of discrimination and inequity and for mutually committing to and investing in a stronger, more resilient future of dignity, equality and non-discrimination for all. Reparatory justice requires a multipronged approach that is grounded in international human rights law. Reparations are one element of accountability and redress. For every violation, there should be repair of the harms caused through adequate, effective and prompt reparation. Reparations help to promote trust in institutions and the social reintegration of people whose rights may have been discounted, providing recognition to victims and survivors as rights holders.<sup>229</sup>

Recent examples of reparations include Germany’s announcement that it “will support Namibia and the descendants of the victims with €1.1 billion (\$1.3 billion) for reconstruction and development and ask for forgiveness for the ‘crimes of German colonial rule,’ German Foreign Minister Heiko Maas said,” although “victims groups have rejected the deal.”<sup>230</sup> And in 2020, King Willem-Alexander of the Netherlands apologized for the “excessive violence” inflicted upon Indonesia during Dutch colonial rule.<sup>231</sup>

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<sup>228</sup> See Art. 73, *supra* note 119.

<sup>229</sup> Report of the U.N. High Comm’r. for Human Rights, *supra* note 160, at ¶ 63.

<sup>230</sup> Nadine Schmidt, et al., *Germany will pay Namibia \$1.3bn as it formally recognizes colonial-era genocide*, CNN (May 28, 2021), <https://www.cnn.com/2021/05/28/africa/germany-recognizes-colonial-genocide-namibia-intl/index.html>.

<sup>231</sup> *Dutch king apologizes for 'excessive violence' in colonial Indonesia*, REUTERS (Mar. 10, 2020), <https://www.reuters.com/article/us-indonesia-netherlands/dutch-king-apologizes-for-excessive-violence-in-colonial-indonesia-idUSKBN20X15L>.

### 7.3 Debt Forgiveness and Conversion of Debt to Grants

Petitioners also request the Special Rapporteur and the Working Group to endorse the immediate cancellation of all debt owed by the former Netherland Antilles islands to the Dutch Government and, in place of debt, endorse monetary and in-kind grants to these islands during the COVID-19 pandemic recovery period. Common to other Caribbean island countries, the “pressure development has driven governments to carry the burden of public employment and social policies designed to confront colonial legacies. This process has resulted in states accumulating unsustainable levels of public debt that now constitute their fiscal entrapment.”<sup>232</sup> According to the IMF’s Executive Board, Sint Maarten would “benefit from a Fiscal Responsibility Framework including government debt as a long-term anchor,” and the “debt anchor of 40 percent of GDP” recommended by the IMF would be “unfeasible *unless* a part of liquidity support is converted into grants.”<sup>233</sup> Moreover, in addition to the public debt that Curacao, Aruba, and Sint Maarten incurred confronting their colonial legacies, they have been forced by the Dutch government to take on COHO loans of more than €1 billion.<sup>234</sup> Petitioners believe that all COHO loans should be forgiven and that forthcoming loans be provided as grants instead. But *at a minimum*, “all loans that exceed the debt/GDP ratio of 40 percent used by the IMF and the CFT” should be “considered as a gift,” in order to be able to explicitly realize the pursuit of “sustainab[ility] and sustainable public finances.”<sup>235</sup>

### 7.4 Immediate Restoration of Democracy in Statia

Petitioners also request that the Special Rapporteur and the Working Group call for the immediate restoration of democracy in Statia; specifically, the reinstatement of government authorities to the Island Council. As explained above, in February 2018, the Dutch government unilaterally dissolved Statia’s Island Council and Executive Council,<sup>236</sup> in violation of the ICERD<sup>237</sup> and other international legal authorities that guarantee the Statian people’s right to self-determination and democracy.<sup>238</sup> The Dutch Parliament passed a law on June 10, 2021 that would “gradually” phase out “Dutch supervision” and restore democracy in Statia, but not until

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<sup>232</sup> *CARICOM Ten Point Plan for Reparatory Justice*, CARICOM, <https://caricom.org/caricom-ten-point-plan-for-reparatory-justice/> (last visited July 17, 2021).

<sup>233</sup> *Press Release No. 21/240, IMF Executive Board Concludes 2021 Article IV Consultation with the Kingdom of the Netherlands—Curaçao and Sint Maarten*, *supra* note 29.

<sup>234</sup> *See In oktober besluit over aflopende coronaleningen Caribische landen*, DOSSIER KONINKRIJKSRELATIES (July 1, 2021) <https://dossierkoninkrijksrelaties.nl/2021/07/01/in-oktober-besluit-over-aflopende-coronaleningen-caribische-landen/>.

<sup>235</sup> *Scheuring Binnen CFT*, *supra* note 21.

<sup>236</sup> *Miranda*, *supra* note 155; *Henriquez*, *supra* note 154.

<sup>237</sup> The dissolution of the Island Council was a violation of Stadians’ “[p]olitical rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.” International Convention on the Elimination of All Forms of Racial Discrimination art. 5(c), December 21, 1965, *available at* <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> (last visited July 13, 2021).

<sup>238</sup> *See supra* Section 4.2.

September 2023, if not later.<sup>239</sup> There is no legal justification for this ongoing deprivation of the Stavian people’s right to self-governance and certainly none that would justify violating their human rights for nearly five years.

### **7.5 Formal apology from the Netherlands**

Petitioners request that the Special Rapporteur and the Working Group support their call for a formal apology from the Netherlands. The Netherlands should formally apologize for the suffering and damage caused by the transatlantic slave trade and the colonization of the islands of the former Netherland Antilles. “The healing process for victims and the descendants of the enslaved and enslavers requires as a precondition the offer of a sincere formal apology” by the Netherlands.<sup>240</sup> A public apology is one element of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.<sup>241</sup> Properly conveyed, a public apology is not some token gesture without consequences. To the contrary, a proper, comprehensive apology can play an important role in combatting racism: “Behind today’s systemic racism, racial violence, dehumanization and exclusion, however, lies the lack of a formal acknowledgement of the responsibilities of States, institutions, religious groups, universities, business enterprises and individuals that engaged in or profited from, and that continue to profit from, the legacy of enslavement, the transatlantic trade in enslaved Africans and colonialism.”<sup>242</sup>

### **7.6 Educational and Cultural Institutions Documenting Dutch Slavery and Colonialism**

Petitioners request that the Special Rapporteur and the Working Group endorse the establishment by the Dutch government of cultural and educational institutions in the Netherlands and on each island of the former Netherlands Antilles to document the history of Dutch slavery and colonialism. Currently, Dutch people of African descent on the former Netherland Antilles “lack relevant institutional systems through which their experience can be scientifically told.”<sup>243</sup> A reparatory justice approach to truth and education would also begin the process of societal psychological rehabilitation.<sup>244</sup>

### **7.7 Public Health Crisis Stemming from Systemic Discrimination and Slavery**

Petitioners request that the Special Rapporteur and the Working Group support directed public health funding from the Dutch government to address the impaired health conditions of people of African descent exacerbated by the stressors caused by systemic discrimination and

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<sup>239</sup> *Unanimous support for law to restore Statia democracy*, THE DAILY HERALD (June 10, 2021), <https://www.thedailyherald.sx/islands/unanimous-support-for-law-to-restore-statia-democracy>; Henriquez, *supra* note 154.

<sup>240</sup> *Id.*

<sup>241</sup> G.A. Res. A/RES/60/147 \*22e (March 21, 2006).

<sup>242</sup> *See CARICOM Ten Point Plan*, *supra* note 230.

<sup>243</sup> *Id.*

<sup>244</sup> *See id.*



racism. “The African-descended population in the Caribbean has the highest incidence in the world of chronic diseases in the forms of hypertension and type two diabetes.”<sup>245</sup> This is a direct result of the “nutritional experience, physical and emotional brutality, and overall stress profiles associated with slavery, genocide, and apartheid.”<sup>246</sup> Instead of demanding that Sint Maarten implement a 15% reduction in public health spending in order to qualify for a seventh tranche of debt, the Netherlands should substantially increase funding to remedy the public health vestiges of slavery and colonialism—especially now, during the COVID-19 pandemic.

## 8.0 Conclusion

For centuries, slave owners and traders convinced themselves of the moral acceptability (or even necessity) of slavery—and all its concomitant torture, rape, exploitation, and other horrors—with the belief that those being bought and sold were morally and intellectually inferior, not human beings but human chattel. At best, they thought of slaves as children, in need of white supervision; at worst, they considered slaves as amoral or dangerous, requiring white control and domination. Fortunately, few people today hold such blatantly racist beliefs, but vestiges of those racial constructs survive in the twenty-first century. In the words of the High Commissioner for Human Rights, “[s]ystemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.”<sup>247</sup> So today, instead of intellectually inferior, the islanders of the former Netherland Antilles are told that they lack the capacity to govern themselves. And instead of being perfidious and threatening, they are corrupt and thus undeserving of self-governance. If the island countries do not comply with the ever-evolving demands of the Dutch government to surrender more and more of their right to self-governance, then the Dutch will withhold another tranche of liquidity—or worse, call for immediate payment on existing debt—no matter the human suffering or economic toll. And if the former Netherlands Antilles islands do submit to the Dutch caretaker government’s demands, then their debt bondage will only grow.

For the reasons set forth above, Petitioners respectfully request that the Special Rapporteur and the Working Group adopt the relief requested in Section 7 of this Submission and adopt such other measures as the Special Rapporteur, the Working Group, and the OHCHR deem necessary and appropriate.

Respectfully submitted,

/s \_\_\_\_\_  
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<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> Report of the U.N. High Comm’r. for Human Rights, *supra* note 160, at ¶¶ 9, 15.