APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in the Netherlands

ECRI wishes to point out that the analysis contained in its third report on the Netherlands, is dated 29 June 2007, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on the Netherlands was subject to a confidential dialogue with the Dutch authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Dutch authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

"Response of the government of the Netherlands to ECRI's draft third report, 2003-2007.

Article 1 of the Dutch Constitution reads: "All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted". This text is carved on a monument situated in front of the Dutch parliament, reflecting the Netherlands' commitment to fighting discrimination.

The Netherlands therefore welcomes ECRI's third report on racism and intolerance in the Netherlands in the period 2003-2007. It provides an extensive overview of the situation. The Netherlands is taking the recommendations seriously.

The Minister for Housing, Communities and Integration plans to organise a national conference on combating racism in spring 2008, where ECRI's recommendations will be addressed. Both government representatives and NGOs will be involved. The results will contribute to the development of an integrated policy plan for fighting racism.

The Dutch government is especially pleased that ECRI acknowledges that a number of positive developments have recently taken place in the Netherlands. These include introducing tougher anti-racism legislation, setting up a national network of anti-discrimination bureaus, intensifying the Public Prosecution Service and police's focus on, and expertise in, discrimination issues, and introducing measures to combat discrimination in the employment market, at night-life venues and in banking. The Netherlands sees ECRI's encouragements as an incentive to continue in the same way, for example with the Public Prosecution Service's anti-racism campaign, and by monitoring racism and race discrimination and developing general policy on the issue.

Dutch anti-discrimination policy

Fighting all forms of discrimination, including racism, is indeed an important priority for the Dutch government. Government policy will encompass a great many measures aimed at:

- completing a national network of anti-discrimination bureaus, providing an accessible, independent service in every municipality;

- ensuring active investigation of discrimination on the part of the Public Prosecution Service and police;

- improving the registration and monitoring of complaints;

- conducting qualitative and scientific research on the scope and character of discrimination;

- increasing victims' willingness to report incidents;

- raising public awareness of discrimination and equal rights;

- combating discrimination in the employment market and hospitality business;

- achieving a coordinated approach to the Roma/Sinti issue;

- targeting discrimination practised by and among young people (empowerment).

The Minister for Housing, Communities and Integration, who was appointed in February 2007 when the new Dutch government took office, is responsible for coordinating anti-racism policies. They focus on social cohesion and on promoting the economic, social and cultural participation of ethnic minority groups in society. The aim is to stimulate an

active, shared sense of citizenship and a feeling of belonging in all people residing in the Netherlands, irrespective of their colour or culture.

The Dutch government has developed a new approach towards integration, building on the experiences of the past. The underlying concept is that the increasing diversity of Dutch society is a positive development, but one that comes with strings attached. People are expected to participate in society and respect the values that are fundamental to Dutch society. This means respect for the freedom of religion, the freedom of expression and the equality of men and women. Criminal behaviour and discrimination against those of different beliefs, gender or sexual orientation, or against people who have a different lifestyle, will not be tolerated.

The government sees integration as a two-way process, in which all citizens are expected to participate. Dutch integration policy will therefore be based on two pillars: a comprehensive plan to address housing problems in the most disadvantaged neighbourhoods; and a comprehensive strategy to improve the quality of the compulsory civic integration exam system. The latter aims to improve the Dutch language skills of new and settled migrants. *Language programmes will be combined with programmes geared to stimulate* access to the labour market and to child support, and participation in volunteer work, vocational training and education. *Civic integration course fees for individuals will be substantially reduced.*

Enhancing integration and improving the quality of civic integration courses are challenges for Dutch society as a whole. The government also wants to build bridges between citizens. Mutual acceptance of cultural and religious differences is only possible if people get to know each other. Dialogue between individuals, cultures and religions will help to overcome polarisation of society. The Dutch government strongly believes that fostering real interaction will help to combat discrimination and Islamophobia. The Netherlands will therefore be participating in the European Year of Intercultural Dialogue 2008. Combating prejudice and respecting the freedom of Muslims to practise their religion will be key themes.

ECRI's report: general observations

ECRI's report contains a number of observations with which the Dutch government could not identify or which, in the Netherlands' opinion, have been put in the wrong context. These are discussed below.

A holistic approach

The Dutch government advocates a holistic approach to racism and related forms of discrimination, and therefore sees things in a wider context than ECRI. After all, racism comes in many shapes and forms. Ethnic minority groups, or people belonging to them, can also discriminate, against individuals or against other ethnic groups. In the Netherlands measures to tackle discrimination against women or homosexuals, which is sometimes committed by persons from ethnic minorities, are taken in tandem with anti-racism policy. ECRI's report did not consider this.

The tone of political and public debate

Although it acknowledges positive developments, ECRI also expresses concern about the tone of Dutch political and public debate on integration and other issues relating to ethnic minorities. The Dutch government is aware of the changes in Dutch society, and has explained to ECRI the wide range of measures it has taken to counter social division and the hardening of social attitudes. However, we believe that these social trends need to be seen in a wider, international context. Following the attacks in New York, Madrid and London, the tone of the global debate, in politics, the media and society as a whole, has become more bitter and more intense. The cartoon controversy and the worldwide commotion it gave rise to is one example of this.

Issues relating to ethnic minorities and integration crop up at all levels of society, in residential areas and places of employment, as ECRI saw during the visits to Amsterdam and Rotterdam. It is a positive thing that this has been a subject for debate in recent years, in parliament and elsewhere. The Dutch government is aware of the risk that this could foster differences between populations, and believes that it is important that this debate is held in the right way, based on freedom of expression (as long as it does not violate the constitutional right to protection from discrimination). The Dutch government regrets that ECRI has the impression that this debate is conducted exclusively by the Partij voor de Vrijheid (the rightwing Freedom Party) and that "exponents of mainstream political parties rarely take a stand" against the party's *"racist or xenophobic discourse"*. In actual fact, these viewpoints are strongly, and repeatedly, condemned by the majority of other political parties and by members of the government.

A targeted approach

Dutch integration policy aims to be as generic as possible. However, if generic measures fail to improve the situation of disadvantaged individuals and ethnic minorities, we adopt a more specific, tailor-made approach, allowing solutions to be found for specific issues.

Roma and Sinti

ECRI recommends that the Dutch government *"take responsibility also at central government level for issues relating to the situation of the Roma, Sinti and Traveller communities"*. In the case of Roma and Sinti, central government has, indeed, transferred a number of tasks and competences to the local authorities, partly because the Roma and Sinti communities in the Netherlands are very few and fragmented. The FORUM Institute for Multicultural Development is subsidised by the Dutch government and provides support and expertise to municipalities on its behalf. However, the Minister for Housing, Communities and Integration is responsible for initiating consultations between municipalities and facilitating the exchange of best practices so as to achieve a more targeted approach towards this group.

It is, however, confusing that ECRI calls for specific policy aimed at Roma, Sinti and Travellers while generally opposing policy aimed at individual target groups (such as young Antilleans).

Drawing a distinction

In contrast to ECRI, the Dutch government believes that this target-group policy is the result not of a worsening climate of opinion, but of the fact that Dutch society is increasingly faced with problematic issues related to certain minority groups. For example, statistics show an increase in criminal activity by Antilleans and, as a group, their level of education has fallen. This calls for a targeted approach specifically aimed at improving their situation.

On the general subject of 'racial profiling', we would make the following observation: if a distinction is drawn it must be both legitimate and proportional. In the case of the Antillean community, there are two sides to the coin. It is a question not simply of the enforcement and control measures criticised by the Commission; but also of providing vital support and special care facilities in parenting, education, employment, housing and income.

The Antillean Reference Index *(Verwijsindex Antillianen,* or VIA) was set up for this reason. The VIA is a digital reference system that allows educational, care and support service professionals to provide linked support to young Antilleans experiencing difficulties in two or more areas, e.g. those who have left school without qualifications and are involved in criminal activity. The reference index is necessary because young Antilleans frequently change their place of residence and are difficult for the care and support

services to trace. The VIA enables professionals to reach at-risk young Antilleans in an effective way. The index operates under numerous safeguards and is a temporary measure. The VIA has not yet been implemented as the government is awaiting a Council of State (Raad van State) decision on the VIA's compatibility with privacy legislation.

Urban Areas (Special Measures) Act

In 2005 the Urban Areas (Special Measures) Act was drawn up on the initiative of the municipality of Rotterdam to allow problematic situations to be addressed at local level. The Act allows the municipality to indicate a limited number of neighbourhoods in which, for a limited period, homes can be allocated only to people in paid employment or those receiving a pension or student grant.

The Minister of Housing, Communities and Integration is responsible for granting permission to municipalities for the Act to be applied. The guiding principle is that permission can only be granted if the municipality can demonstrate that the designation is essential and an appropriate way to alleviate problems that cannot be resolved by other means (the subsidiarity requirement); and if the gravity of the problem justifies the measures to be applied (the proportionality requirement).

ECRI refers to "*the decision of the Municipality of Rotterdam to ban persons who do not meet certain income requirements from residing in certain neighbourhoods […] was found by the CBG [Equal Treatment Commission] to discriminate indirectly on the basis of race and ethnic origin*". The requirements of the Urban Areas (Special Measures) Act could, in certain circumstances, result in indirect discrimination. The real question is, however, whether such indirect discrimination can be justified, and whether it is possible to make a general judgement about that. The aim of the Act is to revitalise problem neighbourhoods. Applying the Act, and temporarily excluding those without an income from certain designated areas, is a last resort. It is important that those affected are able to get another home in the same municipality, or elsewhere in the area. This condition, taken together with the temporary nature of the measure, means that the Urban Areas (Special Measures) Act is proportional.

ECRI's sources

In the report on the Netherlands ECRI makes a number of comments that are not based on a clear source. For example ECRI refers to "*reports indicating that […] anti-Semitic insults and expressions have tended to become a feature of everyday life, reflecting in part a similar trend in Holocaust denial […].*"

The Dutch government is not aware of any such reports. We are, however, aware of the CIDI (Centre for Information and Documentation on Israel) 2005-2006 report on anti-Semitism in the Netherlands, which records two denials made in schools. Each was an incidental comment made by one pupil. In the opinion of the Dutch government, this does not constitute a trend.

ECRI also states that "*civil society groups have reported that Antilleans, and especially the young, are particularly targeted by racial profiling practices, in that they are often stopped and searched by law enforcement officials without an apparent reason.*" At the Commission's meeting in Rotterdam the municipality established that, contrary to the expectations of critics of the measure, search on suspicion as implemented in Rotterdam had <u>not</u> resulted in complaints of unequal treatment. This viewpoint was supported by the RADAR anti-discrimination bureau, also present at the meeting with ECRI.

Civil and administrative law provisions

In recommendation 22 – echoing comments made in a previous report – ECRI advises the Dutch authorities to "extend the material scope of the Algemene Wet Gelijke Behandeling (AWGB) to important public authority activities that are currently not covered, such as the

activities of the police". The Netherlands would once again like to point out to ECRI that, even though the activities referred to are not covered by the AWGB, the government is nonetheless bound by article 1 of the Constitution and by the general principles of good governance. The fact that these activities are not explicitly described in the AWGB (Equal Treatment Act) on no account means that the police and other public authorities are not subject to a ban on discrimination. Citizens can file complaints regarding discriminatory action on the part of public authorities with the National Ombudsman.

Education and awareness raising

In line with the statutory attainment targets and exit qualifications, schools are required to look at racism and intolerance and the importance of fighting them as part of the curriculum. The Netherlands therefore largely supports recommendation 39, "*that the Dutch authorities equip all teachers with the skills to teach in a multicultural society and to react to any manifestations of racism and discriminatory attitudes in schools, in accordance with [ECRI's] General Policy Recommendation No. 10*". Most of what is specified in recommendation 10 is already incorporated in the Dutch educational system: several of the targets set for primary education and the lower grades of secondary education explicitly mention the schools' obligation to promote citizenship and cohesion. Amendments to the Primary and Secondary Education Acts, which entered into force on 1 February 2006, stipulate that schools should prepare pupils to participate in our multidimensional society and teach them about the backgrounds and cultures of their contemporaries. The Education Inspectorate began monitoring whether schools are meeting this target in October 2006.

However, prescribing the way in which 'human rights' are taught in Dutch schools is at odds with freedom of education, as laid down in the Constitution. Moreover, the Netherlands prefers human rights to be taught in a wider context, as part of all relevant subjects, not as a separate subject.

In the Netherlands parents are free to choose any school they wish. Most parents opt to send their children to a local school. This is in line with the recommendation, made by ECRI in paragraph 71, that "*the Dutch authorities [should carry out initiatives] aimed at providing incentives for parents to send their children to schools in their own neighbourhoods*". Some neighbourhoods have a high percentage of residents born outside the Netherlands, or whose parent or parents were born outside the Netherlands; this is reflected in pupil demographics. For this reason – and despite the fact that parents are free to opt for the school of their choice – the Dutch government is keen to see more mixed schools. Agreements to this effect are now being reached at local level between schools and municipalities. Since 1 August 2006 all schools have been obliged to show how they have contributed to combating segregation. The agreements that are made are dictated by the local situation. The Education Inspectorate ensures that school are making an appropriate contribution. An expertise centre will offer support in dealing with diversity issues and combating segregation in schools.

The Dutch government agrees with recommendation 98, which states that ECRI "encourages the Dutch authorities to promote media awareness among the general population, with a particular emphasis on promoting critical thinking among young people". In line with this recommendation, the Dutch government is developing an initiative to teach young people to take a critical approach to media and information. It will shortly be discussed with the House of Representatives.

Discrimination on the internet

The Netherlands has positive feedback on recommendation 99, regarding continued support for the Complaints Bureau for Discrimination on the Internet (MDI). We are aware of the increasing use of the internet, in general, and the importance of preventing discrimination through this medium. The Dutch government believes that the MDI is key in

fighting discrimination on the internet and intends to continue providing support (which has continued to increase in recent years).

Asylum seekers and refugees

In response to recommendation 45, the Dutch government would like to emphasise that, in the Netherlands, the decision to channel applications to the accelerated asylum procedure is based on individual merits and not on statistics or completion rates.

Monitoring the situation

The Dutch government would point out that in recent years major progress has been made both in registering incidents and in monitoring the registration process. Work is in progress to set up a national network of anti-discrimination bureaus, and the Public Prosecution Service and the police are recording incidents in increasing detail. We are therefore surprised that recommendations 112 and 113 are based on ECRI's belief that *"the only data available relates to the Public Prosecution Service and the courts, whereas data from the police is not readily available"*.

The police do have data on racism and racial discrimination. Several police teams in the Netherlands are trained in Multi-Ethnic Policing methods. This entails cultivating specific, up-to-date knowledge about, and networks in, ethnic communities. These methods are proving to be effective in improving data collection and ensuring that adequate action is taken.

Furthermore, ECRI is perhaps overlooking the fact that the Netherlands funds a great deal of in-depth research into the nature and scale of discrimination, both in terms of registered complaints and feelings of discrimination. One example of this is the racism monitor issued every two years by the Dutch government. Since 2007 the Minister for Housing, Communities and Integration has been responsible for the monitor, which is conducted by the national organisation against discrimination Art.1 and the Anne Frank Stichting (and is next due in 2009 and 2011). The Anne Frank Stichting was also responsible for the monitor on the Roma and Sinti conducted in 2004. This monitor has been recommissioned by the Dutch government for 2008.

Debriefing

In conclusion, although there are many positive observations, there are also a number of findings in the ECRI report with which the Netherlands cannot identify. Given that some of these criticisms were not expressed by members of the ECRI delegation during their visit, the Dutch government believes that further explanation is required. We therefore recommend that, at the end of each country visit, ECRI arranges a final meeting to present the main conclusions. This will allow governments to take note of ECRI's findings, and to exchange views.

Finally, the Dutch government would like to express its appreciation of ECRI's work, and of the part it plays in national and international debate. In the current climate, bodies like ECRI are vital."