Communications under:

Optional Protocol to the International Covenant on Civil and Political Rights

Date: 6 February 2018

I. Information on the complainant:

Name: BIJKERK First name(s): Michiel

Nationality: Dutch national Date and place of birth: 4 August 1953 in ARUBA

Address for correspondence on this complaint: Seru Grandi #80
Bonaire, Caribbean Netherlands

Submitting the communication:

on behalf of another person: YES (see below)

Details of that other person:

Name: HANSEN First name(s): Sherrel Eldgel

Nationality: Dutch national Date and place of birth: 8 July 1984 in the Netherlands (Holland)

Address or current whereabouts: Mahlerstraat 175, 5011 MC Tilburg, the Netherlands

The undersigned (author) is acting with the knowledge and consent of the above-mentioned person, evidence of which is provided in the attached power-of-attorney, signed and dated by Mr. Sherrel Eldgel HANSEN (see also copy of his passport).

SEE ATTACHED POWER-OF-ATTORNEY (ex 1 with copy of passport)

II. State concerned/Articles violated

Name of the State against which the complaint is directed:

Kingdom of the Netherlands **(hereinafter also shortly referred to as '*the Kingdom*', the opposite party of the author of this communication)**

Articles of the Covenant or Convention alleged to have been violated:

Art. 2, section 1 jo. art. 26, as well as art. 12, section 1 and/or section 4 (severally and/or in conjunction) AND art. 7 of the International Covenant on Civil and Political Rights

III A. Exhaustion of domestic remedies

Steps taken by or on behalf of the alleged victim to obtain redress within the State concerned for the alleged violation (the description below of the steps taken is brief as this will be explained in more detail under the next heading: 'Facts of the Complaint').

Mr. Sherrel Eldgel HANSEN, residing at Mahlerstraat 175, 5011 MC Tilburg, the Netherlands, was declared a 'persona non grata' in Bonaire by administrative decree of date 20 November 2015 and subsequently deported to Curaçao, *not* based on a second written decree.

First step:
On 26 November 2015 Mr. HANSEN filed a formal written objection with the Dutch Secretary of State for Security & Justice, requesting to revoke aforesaid decree. On 27 November 2015 Mr. HANSEN filed summary administrative proceedings, requesting the Court to suspend aforesaid decree, pending the decision in regular administrative proceedings to be filed, if the Secretary of State should reject aforesaid written objection of date 26 November 2015.

On 3 February 2016 the Bonaire Court of First Instance suspended aforesaid decree as requested. By decree of date 18 February 2016 the Secretary of State for Security & Justice rejected aforesaid formal written objection.

Second step:
On 23 February 2016 Mr. HANSEN again filed summary administrative proceedings, requesting the same Court to suspend aforesaid decree of date 18 February 2016 pending the decision in regular administrative proceedings which were filed simultaneously. The Court in First Instance decided to treat both petitions simultaneously and passed judgment on 11 March 2016, rejecting both petitions. Subsequently Mr. Hansen was deported to Curaçao.

Third step:
In April 2016 Mr. HANSEN lodged an appeal to the 'Common Court of Justice of Aruba, Curaçao, St. Maarten and of Bonaire, St. Eustatius and Saba' (abbr. the 'Common Court of Justice' or 'CCJ'). In its judgment of date 1 September 2017 the CCJ upheld the decision of the Bonaire Court in First Instance of 11 March 2016, so that the decision to declare Mr. Hansen a 'persona non grata' in Bonaire had become definitive.

The Court Cases in First Instance and in Appeal are administrative cases. In administrative cases there is no recourse to the Supreme Court in The Hague, nor to any other (Administrative) Court in the Netherlands for an appeal in cassation, nor to any other Court on any of the Dutch Caribbean islands within the Kingdom of the Netherlands.

In other words, **ALL DOMESTIC REMEDIES HAVE BEEN EXHAUSTED**.

III B. Application to other international procedures

Mr. HANSEN has NOT submitted the same matter for examination under another procedure of international investigation or settlement.

IV. Facts of the complaint

Introduction:

1. To explain the complaint clearly, it is necessary to first outline the history of the Dutch Caribbean archipelago formerly known as the '*Netherlands Antilles*' or '*N.A.*'.

2. Since 1634 this archipelago was a Dutch colony. In 1954 the islands (6 in all) were granted a generous measure of autonomy within the framework of the post-war decolonization process. The U.N. General Assembly gave its fiat to the constitutional arrangement set up at the time for the 'Netherlands Antilles', but it should be noted that this semi-autonomous entity or territory was never granted full *independence*.

   Instead of granting independence to its Caribbean colonies, the Netherlands transformed itself in 1954 into the 'Kingdom of the Netherlands', in which its former two colonies (Surinam and the Netherlands Antilles) were included. Although both these ex-colonies had been granted a generous measure of autonomy, the expanded 'Kingdom of the Netherlands' remained the *sole international sovereign state*.

   This transformation was set out in a new Kingdom Act, entitled the 'Statute for the Kingdom of the Netherlands', in Dutch shortly referred to as the 'Statuut', in English usually referred to as the 'Kingdom Charter' (hereinafter the '**Kingdom Charter**').

   In 1975 Surinam obtained full independence. The Kingdom Charter was amended to exclude Surinam, because it no longer formed part of the Kingdom of the Netherlands. Ever since, Surinam has been an international sovereign state of its own.

   After Surinam's exit, the Kingdom of the Netherlands consisted of the following 2 territories: 1) the Netherlands (also known as 'Holland') and 2) the Netherlands Antilles. Now, although the Kingdom Charter refers to the Netherlands Antilles as a 'country' (the actual word used in Dutch is 'land'), it should be emphasized that it never was an international sovereign state. It has always formed an integral part of the Netherlands (before 1954) and thereafter of the Kingdom of the Netherlands.

   It was therefore above referred to as a 'semi-autonomous entity'. We hold that the relationship between the Kingdom and the Netherlands Antilles has always been a FEDERAL one. This is a disputed point, but no matter how this is argued, in 1954 no new international sovereign states (no real 'countries') were created, so that the Kingdom can NEVER have been a confederation of closely cooperating sovereign states. It must have been something else. As said, we hold that it was a FEDERATION.

   The Neth. Antilles was granted a generous measure of 'self-governance' in 1954, but no more than what is possible within the framework of a federal system. The Kingdom Charter, therefore, is the constitution of the federation called the 'Kingdom

of the Netherlands'. After Surinam's exit, it consisted of 2 federal states, i.e. the Netherlands and the Neth. Antilles, each based on its own federal state constitution, whereas the Kingdom Charter constituted the federal superstructure.

3. To further substantiate our view that the Kingdom of the Netherlands is and since 1954 always has been a Federation, consider the following facts:
   A. the nationality of all citizens of the Kingdom of the Netherlands, i.e. the citizens of the Netherlands (or 'Holland') itself, Surinam (until 1975) and the Netherlands Antilles, have since 1954 always been one and the same undivided Dutch nationality;
   B. the Neth. Antilles and Surinam (until 1975) as semi-autonomous entities within the Kingdom of the Netherlands have never conducted their own foreign affairs; the Kingdom government in the Hague has always conducted all foreign affairs for the whole Kingdom (i.e. for the Netherlands itself, as well as for Surinam – until 1975 – and for the Neth. Antilles, Curaçao, Aruba & St. Maarten up to this date);
   C. the Netherlands Antilles and Surinam (until 1975) have never had their own armed forces, nor were they responsible for the Defense of their respective territories; the Kingdom government in the Hague has always been responsible for the Defense of whole Kingdom (including the Netherlands itself, as well as Surinam – until 1975 – and the Neth. Antilles and now Curaçao, Aruba & St. Maarten).

   A lot more may be said with respect to this issue, but we suffice here with just these three undisputable facts, which constitute at the same time the three basic prerequisites for any territory to be considered an independent sovereign state or 'country'. The Neth. Antilles and Surinam (until 1975) have never been independent and sovereign states or countries. They have always formed an integral part of the Kingdom of the Netherlands, which has always been the Federal Superstructure.

4. The federal view with respect to the NATURE of the Kingdom of the Netherlands is not, however, the view held by the majority. The *general* view is that there was an *associative* relationship between the Netherlands and the Neth. Antilles. This is understood to be *more* than 'just' federal. This view is derived from the fact that the Kingdom was created within the framework of the post-war decolonization process.

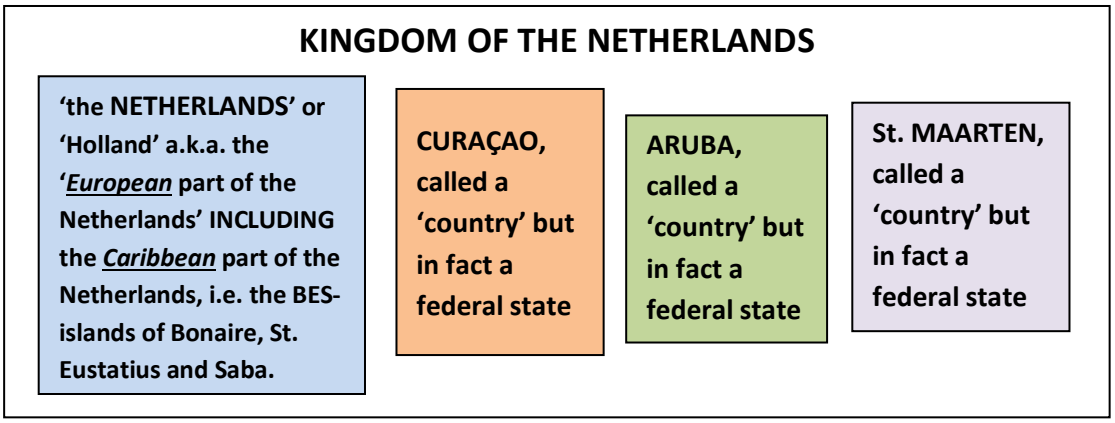
5. Although this discussion about the Nature of the Kingdom has relevance for the complaint at issue (as will be seen later), we must first return to the history of the Netherlands Antilles. In 1954 this semi-autonomous entity consisted of the following 6 Caribbean islands: Curaçao, Aruba, Bonaire, St. Maarten, St. Eustatius and Saba.

   In 1986, however, the island of Aruba chose to exit from the Neth. Antilles, while remaining within the Kingdom as a separate 'country' (i.e. a separate *federal state*, as we see it). Following Aruba's exit, the Netherlands Antilles continued to function, but consisted thereafter of just 5 islands (also known as the 'Antilles of 5'). This lasted until 10 October 2010. On this fateful day (also referred to as: **'10-10-10'**) the 'Antilles of 5' was dismantled, after which the Netherlands Antilles ceased to exist.

Following the dissolution of the 'Antilles of 5', Curaçao and St. Maarten chose to follow Aruba's example and are now separate 'countries' (i.e. federal states) within the Kingdom, whereas the islands of Bonaire, St. Eustatius and Saba (also referred to as '**BES**') were constituted as an ***integral part*** of the Netherlands (or Holland). These 3 '**BES**-islands' are now formally known as the 'Caribbean Netherlands' ('CN').

To distinguish between Holland and the BES-islands, Holland is often referred to as the 'European part of the Netherlands' and the BES-islands as the 'Caribbean part of the Netherlands'. This choice of words is aimed to make it clear that the BES-islands have legally become an integral part of Holland comparable to the Dutch islands of Texel *et al*. situated in the Wadden Sea just north of Holland.

Graphically, the situation as of 10 October 2010 ('10-10-10') is as follows:



The Kingdom of the Netherlands
consisting of 4 territorial entities Holland, Curaçao, Aruba and St. Maarten

6. This introduction now makes it possible for the lay person to understand art. 1 of the Kingdom Charter (ex. 2). See below a translation into English of the text as of 10 October 2010 up to and including October 2017 (section 2 was rescinded in 2017):

Article 1 Kingdom Charter
1.*The Kingdom consists of the [following] countries: the Netherlands, Aruba, Curaçao and Sint Maarten.*
2.*Bonaire, Sint Eustatius and Saba each form an integral part of the Netherlands. For these islands regulations may be stipulated and other specific measures may be taken with a view to their economic and social circumstances, their great distance from the European part of the Netherlands, their insular nature, small surface-area and population, geographic circumstances, climate and other factors which render these islands fundamentally distinct from the European part of the Netherlands.*

Note: The Dutch word 'land' has been translated as 'country' (*cfm*. the majority view). However, as explained above, a better translation would be 'federal state'.

7. The factors mentioned in art. 1, section 2 of the Kingdom Charter have been derived from those mentioned in art. 349 of the Treaty on the Functioning of the European Union ('TFEU'; ex. 3), laying down some principles for the EU's 'outermost regions'.

   In the TFEU-article, however, these factors are mentioned to justify granting these regions extra aid and assistance, because it is recognized that '*the permanence and combination*' of these factors '*severely restrain their development*'. This provision makes it possible, for instance, to grant these regions a preferential tax regime.

   So this TFEU-article lays down the ground for *positive* discrimination in favor of the Caribbean islands of Bonaire, St. Eustatius and Saba (the BES-islands), although formally they do not yet form part of the EU as an 'outermost region'. But the *ground for positive discrimination* laid down in the TFEU is equally valid for the BES-islands.

   On the face of it, then, art. 1, section 2 of the Kingdom Charter is a *differentiation clause*, the factors mentioned in this section making it possible for the authorities in Holland to enact special (and *favorable*) laws, regulations and measures for the so-called 'BES-islands' which differentiate favorably from laws, regulations and measures in force in the European part of the Netherlands (i.e. Holland). However, in practice, this section has proved more often than not to be a *discrimination clause*, used by the authorities in Holland to justify the enactment of laws, regulations and measures which deny equal rights to the population of the BES-islands and *discriminate negatively* against the ethnic Dutch Caribbean people residing in these BES-islands (a.k.a. the Caribbean part of the Netherlands), as compared to the people residing in the European part of the Netherlands (i.e. Holland). Note that the citizenry in Holland and the citizenry in the BES-islands share the same Dutch nationality, as do the citizens of Curaçao, Aruba and St. Maarten as well.

8. Recently (November 2017) the process of integration of the BES-islands into the European part of the Netherlands (i.e. Holland) has been consolidated by removing art. 1 section 2 from the Kingdom Charter and including a new article 132a in the Constitution ('*Grondwet*') of the Netherlands (Holland). This Grondwet ('basic law') will hereinafter be referred to as the 'Constitution of the European and Caribbean Netherlands' or 'CECN', for as of 2010 it is also the 'basic law' for the BES-islands.

   The factors referred to in the former art. 1 section 2 of the Kingdom Charter have been transferred to art. 132a, section 4 CECN. Their wording has changed, but it remains to be seen whether the discriminatory practice will change for the better. After 7 years of experience under direct rule of the BES-islands by Holland, there is reason to be skeptical. In fact, in various previous court proceedings Holland has defended its discriminatory practice, as it has been doing in this case as well.

   Below a translation into English of the text of art. 132a of the Constitution of the European and Caribbean Netherlands or CECN (ex. 4):

Article 132a Constitution of the Dutch and Caribbean Netherlands
1. By law other territorial public entities than provinces and municipalities may be instituted and abolished in the Caribbean part of the Netherlands.
2. Articles 124, 125 and 127 up to and including 132 shall apply accordingly to these [other] public entities.
3. In these public entities elections for an electoral college shall be held to elect the First Chamber. Article 129 applies accordingly.
4. For these islands regulations may be stipulated and other specific measures may be taken with a view to the special circumstances which render these islands fundamentally distinct from the European part of the Netherlands.

Clarification:

9. Note! Nothing in this communication should be seen as a hateful indictment of 'neo-colonialism' against the Netherlands. It is recognized with appreciation that the Dutch government in The Hague (Holland) has NOT turned its back on the BES-islands. On the contrary, it has adopted the islands and has made them an integral part of Holland itself. And in its way it does take good care of them. However, this does not mean that we should remain silent where our government in Holland is violating human rights in the BES-islands (or in any of the other Caribbean islands).

   In this case the violation of human rights concerns forbidden (or negative) discrimination against Mr. HANSEN and by extension against the people of the BES-islands and even further against the people of the islands of Curaçao, Aruba and St. Maarten as well. The grounds of discrimination in this case are place of birth (as in Mr. HANSEN's case) and to a certain degree also descent (as in Mr. HANSEN's case), as well as residency on any of the islands on specific calendar dates (see below).

Admission rules for Dutch nationals within the Kingdom of the Netherlands

10. The dismantling of the former Netherlands Antilles has resulted in a complicated system of differing admission rights conferred to Dutch nationals in the various parts of the Kingdom of the Netherlands. Thus there are Dutch nationals who enjoy the rights of free movement and residency (art. 12, section 1 CCPR) and the right of free entry into one's own country (art. 12, section 4 CCPR) in Holland only. Other Dutch nationals enjoy these rights in Holland as well as in one of the Caribbean islands. Yet other Dutch nationals enjoy these rights in Holland as well as in two, three or more of the Caribbean islands. There are, therefore, several categories of Dutch nationals.

    1) Dutch nationals born in Holland enjoy the aforementioned rights in Holland only.
    2) Dutch nationals born in Curaçao, Aruba or St. Maarten enjoy these rights in Holland *and* in Curaçao, Aruba or St. Maarten (depending on where one was born).
    3) Dutch nationals born in Curaçao, but who resided on one of the BES-islands on 10 October 2010, enjoy these rights in Holland, the BES-islands and in Curaçao.
    4) Dutch nationals born in Curaçao, but whose parents were born in Aruba and who resided on one of the BES-islands on 10 October 2010, enjoy these rights in Holland, the BES-islands, in Curaçao and in Aruba.

5) More categories undoubtedly exist, but it is not necessary to labor the point any further. The point is that the immigration and/or admission laws in the various parts of the Kingdom of the Netherlands confer chaotically unequal art. 12 CCPR rights to Dutch nationals depending on their place of birth, descent and/or residency at specific calendar dates (10 October 2010 for the BES-islands, Curaçao and St. Maarten and for Aruba this date is 1 January 1986).

11. Noteworthy in this context also is the fact that the immigration laws for the Caribbean islands contain Admission rules for both Dutch *and* Foreign nationals. In many respects these laws treat Dutch nationals as foreigners in their own country (as in Mr. HANSEN's case). He was deported within the Kingdom of the Netherlands from one part of the country (Bonaire) to another part of this same country (Curacao). Both of these islands form an integral part of the Kingdom of the Netherlands, which is the only internationally recognized country (sovereign state) of all Dutch nationals.

    If your honors of the UN Human Rights Committee cannot understand how it is possible that Dutch nationals are treated as foreigners in their own country, then you are quite right. It simply is not understandable. And it cannot be justified.

12. Returning to Mr. HANSEN's case, it should be noted that he is a Dutch national by birth (born from Dutch parents who were born in Curaçao). Mr. HANSEN himself, however, was born in Holland. Therefore, he enjoys art. 12 CCPR rights in Holland. But as a descendant from Dutch parents born in Curaçao, he enjoys these rights in Curaçao as well.

    Based on this last fact the Dutch authorities in Bonaire thought fit to deport him to Curaçao, despite the fact that he has closer ties with Holland where he was born and has lived for many years and where his father, his son and the mother of his son live. And this despite his explicit preference to be deported to Holland, if deportation could not be avoided. He resisted his deportation from Bonaire as much as he could. He explicitly wanted to remain on Bonaire, where he had been living for 6 to 7 years prior to his deportation (albeit without a residence permit).

    In fact, his determination to live on Bonaire was so strong that he illegally (i.e. again without any residence permit) returned to Bonaire not long after his deportation. After he was caught, he was immediately deported to Curaçao for the second time.

The basic complaint is twofold

13. A. The basic complaint in this communication is that Mr. HANSEN's art. 12 CCPR rights were violated by his forced deportation to Curaçao (he was deported twice). It should be noted that he was thus deported from one part of the Kingdom of the Netherlands (his own country) to another part of this same oddly divided country. This is like deporting a French national from Paris to Lyon, for instance. It is absurd.

B. The fact that Mr. HANSEN was deported twice from Bonaire to Curaçao is also discriminatory (violation of article 2, section 1 jo. article 26 CCPR) on the grounds of place of birth and to a certain degree also on the ground of descent. A Dutch national should be free to live within his own country (the Kingdom of the Netherlands) wherever he chooses. He should not be denied entry into any part of the Kingdom (his own country) due to having been born in a specific part of this Kingdom or because of any other arbitrary discriminatory criterion such as descent from parents who were born in a specific part of this Kingdom or due to having residency in a specific part of this country on specific calendar dates (10 October 2010 for the BES-islands, Curaçao and St. Maarten and 1 January 1986 for Aruba).

Art. 12 CCPR affirms the right of free movement and residency within all parts of one's own country, as well as free entry into all parts of one's own country. Articles 2, section 1 and 26 CCPR forbid any discrimination between nationals of a country with respect to art. 12 CCPR rights on any ground in general and thus also on the grounds of place of birth, descent or residency on a specific calendar date.

Is there any justification for these violations?

14. Obviously the Kingdom has asserted that the violation of art. 12 CCPR rights by means of aforementioned discriminatory measures is necessary and justified, claiming that it serves a legitimate aim, that the discriminatory measures are proportionate and that the aim cannot be achieved by any other less prejudicial means than the ones employed.

A. *Legitimate aim*. The Kingdom has claimed that the violation of art. 12 CCPR and arts. 2, section 1 and 26 CCPR serves the legitimate aim of preventing an uncontrollable flood of Dutch European migrants from Holland to the Caribbean islands.

There are about 17 million inhabitants in Holland. The claim is that if art. 12 CCPR would be applied by lifting or annulling aforementioned discriminatory measures, this would unleash a flood of perhaps one million or more Dutch migrants to the islands. Seeing that the combined population of all 6 islands is approx. 350,000, the islands would not be able to cope with such a huge influx. The islands must therefore be protected against such an eventuality. Hence the aforementioned measures.

Comment. During the appeal proceedings this justification was offered by the Kingdom. However, there is no evidence that such a huge flood of migrants would occur. Holland is a very prosperous country with many generous social laws. It is very doubtful that a huge and uncontrollable flood of European Dutch nationals would migrate to the Caribbean Islands. We have pointed out that an estimate of 15,000 European Dutch per year would be a much more realistic number. And even this is questionable, because *voluntary* migrants normally do not move to unfamiliar and poorer countries or regions. And Holland is much more prosperous than the islands.

Moreover, instead of such limited migration to the islands being seen as a problem, it could also be welcomed as a great opportunity. For if so many people from Holland would want to come and live on the islands, there is no doubt that the islands would prosper. Because most of them would not come empty-handed. They would bring investments, academic knowledge, business contacts and highly skilled labor. Dutch universities would be established on the islands. Harbors and airports would be expanded and improved. The population of the islands would grow, making them less dependent on Holland. And seeing that these migrants are Dutch nationals, it is only natural that Holland would help. The islands would not have to cope alone.

In general, discrimination tends to be restrictive in all senses. *Inclusion* usually makes for growth and expansion. This was clearly seen during the 17th thr. 19th centuries when the Americas were populated by foreign migrants. But even in Holland itself the benefits of immigration are well-known. Historically, floods of Jews, Huguenots, Germans, people from the various Dutch (ex-)colonies and many others migrated to Holland. These floods have always been more beneficial than detrimental.

The Caribbean islands would likewise ultimately prosper, if the violation of art. 12 CCPR rights would be ended for the whole Kingdom (i.e. Holland and the 6 islands). However, from the start Mr. HANSEN has maintained that if Holland persists that the islands should be protected against so-called uncontrollable floods of European Dutch migrants, then it should at least be admitted that this argument does not hold any water with respect to inter-island migration. If Holland itself insists that it should prohibit its own population to freely migrate to the Caribbean islands, so be it. Mr. HANSEN believes this argument not only to be flawed, but even unjust versus Holland's own citizens. But if Holland persists, then at least inter-island migration should be free as it always has been ever since 1634! Throughout the history of the islands under Dutch rule, there has NEVER been any uncontrollable flood of migrants between the islands. There is no reason whatsoever to believe that respect for art. 12 CCPR rights would cause any unmanageable inter-island migration. Therefore, the petition to the domestic Courts contained a *primary* and a *subsidiary* element.

Primarily, the domestic Courts were petitioned to rule that art. 12 CCPR rights be respected for *all* Dutch nationals within the whole Kingdom. This obviously is the best option for all Dutch nationals. It is also the only non-discriminatory option.

On behalf of the government of Holland it was argued, however, that Dutch nationals born in Holland should be *denied* art. 12 CCPR rights in the Caribbean islands to avoid mass-migration by its citizens to the islands. This denial of art. 12 CCPR rights was codified by including discriminatory measures in the immigration laws of all of the islands. These discriminatory immigration laws were approved by the Kingdom government (in which Holland plays a 90% decisive role), pursuant to art. 3, section 1, sub letter f of the Kingdom Charter.

Note! These discriminatory measures have NOT been included in the immigration laws effective in Holland against Dutch nationals born in the Caribbean islands. Thus, Dutch nationals from all 6 Caribbean islands enjoy all art. 12 CCPR rights in Holland. So there is no reciprocity here. One could argue that this is a kind of reverse discrimination voluntarily taken upon itself by the government of Holland.

One can admit that there is nobility in Holland's stance with respect to this issue. However, such lack of reciprocity obviously results in feelings of indignation among Dutch nationals born in Holland, who feel that they are being discriminated against. And indeed they are. Therefore, it is not in the interest of the Dutch nationals born in the Caribbean islands to want to maintain the *status quo* with respect to this issue. Because these ill-feelings will one day result in Holland including the same discriminatory measures in its own immigration laws, which indeed Holland has attempted to do many times already. So far, reasonableness has prevailed. Nevertheless, this danger is always present and it is in the interest of the 6 islands to insist that this discrimination against Dutch nationals born in Holland be ended, so as to avoid that Holland will introduce reciprocal discriminatory measures against Dutch nationals born in the islands, which the vast majority of the islanders very much wish to avoid.

Therefore, the ***primary*** petition to your Committee will likewise be to rule that art. 12 CCPR rights must be respected for *all* Dutch nationals within the whole Kingdom, wherefore all discriminatory measures against all Dutch nationals in the immigration laws in all parts of the Kingdom must be declared a violation of art. 12 CCPR.

Subsidiary petition. However, if your Committee should agree with Holland's argument that Dutch nationals born in Holland should be *denied* free art. 12 CCPR rights in the Caribbean islands to avoid mass-migration by European Dutch nationals to the islands and that therefore the discriminatory measures against European Dutch nationals in the immigration laws of all of the 6 islands should be maintained, then the ***subsidiary*** petition will be to rule that the art. 12 CCPR rights should be respected for all Caribbean Dutch nationals in so far as it concerns their free migration between the 6 islands. ***This is fair and just, because the constitutional changes in 1986 (Aruba) and 2010 (the other 5 islands) have taken away all art. 12 CCPR rights from the population of the islands, impeding free migration between the islands for no good reason whatsoever.***

Obviously, both the primary and the subsidiary petition will hereinafter be formulated within the context of the violation of aforementioned art. 12 CCPR rights in Mr. HANSEN's particular case. The effects of an awarding ruling by the UN Human Rights Committee will, however, boil down to what has been argued above.

B. ***Proportionality and absence of less prejudicial means***

To be clear and complete. The violation of art. 12 CCPR and the discriminatory measures to implement such violation are *not* proportional and the Kingdom has not

in any way explained why less prejudicial means are not available. As a matter of fact, the subsidiary petition in this case proves that a less prejudicial measure is in fact available at least for the Caribbean islands, namely a measure which respects the art. 12 CCPR rights for the populations of the 6 islands.

Estoppel

15. Mr. HANSEN explicitly pointed out that this is a *test case*, which provides the opportunity for the domestic Courts to pass judgment to guide the Kingdom towards more unity and mutual understanding. The domestic Courts have declined to do so, which is why Mr. HANSEN hopes to convince the UN HR Committee to do so.

    But cases like these are also an opportunity for the Dutch government itself to do so. It is not necessary to oppose such petitions as outlined hereinabove just for the sake of opposing them. It is customary in litigation that the opposite party will oppose any claims or allegations by the claimant party. But it is not necessary to follow this custom. Court cases can often move things along, where politicians get stuck. Mr. HANSEN believes that this case is a good example of this. For the Kingdom government could in the light of this communication decide to drop its own stance with respect to the denial of art. 12 CCPR rights to Dutch nationals born in Holland or subsidiarily at least to Dutch nationals born on the islands for inter-island migration. It could seize this opportunity to end this silly discrimination once and for all. But, of course, this is up to the Kingdom government. Mr. HANSEN can only suggest.

    And to enforce this suggestion, it is pointed out further to the Kingdom government that art. 50 CCPR stipulates that the provisions of the CCPR extend to all parts of federal States without any limitations or exceptions. The Kingdom of the Netherlands is in fact a federation. Holland, Curaçao, Aruba and St. Maarten are the federal states which make up this federation. This fact supports Mr. HANSEN's call for the end of all discrimination within the whole Kingdom. But it remains only a suggestion.

    On the other hand, we do remind the Kingdom government that if it does NOT act upon Mr. HANSEN's suggestion, it will be ***estopped*** in the future from holding this discrimination against the Dutch nationals born in the Caribbean islands. Don't ever again accuse the Caribbean governments and population of the islands that they are discriminating against Dutch nationals born in Holland. For indeed they are. But if the Kingdom government (which in decision-making power is 90% dominated by the government of Holland) now continues to refuse to accept this suggestion to get rid of this discrimination, it cannot complain about this discrimination ever again. Nor can this discrimination ever again be used as leverage against the governments of the Caribbean islands to push something through. There is a clear opportunity NOW to end this discriminatory nonsense, but if the Kingdom government persists that this 'reverse discrimination' is justified, then accept it in future with perfect

equanimity and do not ever again try to introduce reciprocal legislation in Holland blocking free art. 12 CCPR rights to Dutch nationals born in the Caribbean islands.

The concrete facts and arguments on both sides in Mr. HANSEN's specific case

16. Mr. HANSEN came to live on Bonaire some time during the year 2010, but was not officially registered there. During his stay on Bonaire he was sentenced to prison 3 to 4 times for various crimes. The prison terms for each of these convictions was short. He was declared a 'persona non grata' at the end of 2015 and following his release of his last prison term in 2016, he was deported to Curaçao. During his stay on Bonaire he never had a residence permit. He is of the opinion that he does not need a residence permit, because art. 12 CCPR guarantees his right to free movement and residency, as well as free entry into Bonaire, because Bonaire forms an integral part of 'his own country', which is the Kingdom of the Netherlands. This is the way he sees it. Moreover, having been born in Holland and seeing that Bonaire has become an integral part of Holland as of 10 Oct. 2010, he holds that art. 12 CCPR guarantees his right to free movement and residency, as well as free entry into Bonaire, if Holland should be considered as 'his own country' instead of the Kingdom.

17. No-one can be declared a 'persona non grata' in his own country. For banishment from one's own country is not allowed. Nor can anyone be deported from one part of his own country to another part of his own country. This would violate his art. 12 CCPR rights. Therefore art. 16d, section 1, opening and sub letter (c) of the Act on Admission & Expulsion for the BES-islands – on the basis of which Mr. HANSEN was declared a 'persona non grata' in Bonaire – violates Mr. HANSEN's art. 12 CCPR rights. So does his deportation (twice) to Curaçao.

    Art. 16d, section 1, opening and sub letter (c) of the Act on Admission & Expulsion for the BES-islands (which hereinafter will be referred to as the '**WTU BES**' following its abbreviation in the Dutch language) reads as follows:

    1. De vreemdeling kan door Onze Minister ongewenst worden verklaard:
    c. *indien hij geen toelating van rechtswege of bij vergunning verleend heeft en een gevaar vormt voor de openbare orde of de nationale veiligheid;*

    Translated into English:
    1. A foreign national may be declared a 'persona non grata' by Our Minister:
    c. if he has not been granted admission by operation of law or pursuant to a permit and poses a threat to public order or national security;

18. ***Comments on above points 16 and 17 as well as aforementioned WTU BES article:***

    A. The fact that Mr. HANSEN had been convicted for various crimes does not justify to deny him the protection of art. 12 CCPR, especially since Mr. HANSEN had duly paid his time and was released from prison before his deportation (but kept

detained in prison in preparation for his deportation), so that at the time of his deportation he was a free man (having served his full prison term);

B. No evidence has been provided that Mr. HANSEN posed a direct and actual threat to public order; this was just a convenient smokescreen to deport him;
C. The opening line of art. 16d WTU BES clearly states that only *foreign* nationals can be declared a 'persona non grata'; however, Mr. HANSEN is NOT a foreign national; he is a Dutch national by birth who at the time of his deportation resided as a free man in his own country (i.e. in Bonaire, which is an integral part of Holland, which in its turn is an integral part of the Kingdom).

With respect to point C, it should be noted that the Kingdom holds that art. 1a, section 1, opening and sub letter (a) WTU BES stipulates that the WTU BES applies to all Dutch nationals not born in the BES-islands, which basically means that Dutch nationals born in Holland (as Mr.HANSEN) are treated as foreign nationals.

Mr. HANSEN acknowledges that aforementioned WTU BES article does indeed stipulate what the Kingdom claims it does, but his point of view is that
a) art. 1a, section 1, opening and sub letter (a) WTU BES in conjunction with art. 16d, section 1, opening and sub letter (c) WTU BES *both* violate art. 12 CCPR and
b) the domestic law does not supersede human rights treaty law (such as the CCPR).

Mr. HANSEN for his part has argued that in accordance with art. 1 sub letter j WTU BES the definition of a 'foreign national' is:
'j.vreemdeling: *ieder die niet de Nederlandse nationaliteit bezit',*
which translates as:
'j. foreign national: *anyone who does not have the Dutch nationality'.*

This means that, apart from the violation of art. 12 CCPR, the WTU BES itself also makes it impossible to treat Dutch nationals as foreign nationals. For art. 16d, section 1, opening and sub letter c WTU BES clearly states that only *foreign* nationals can be declared a 'persona non grata'. Mr. HANSEN is not a foreign national. In other words, the WTU BES is internally contradictory on this point. This should not be surprising, because the WTU BES itself is in essence based on discrimination between Dutch nationals. This will naturally lead to confusion and contradictions.

The Court in First Instance of Bonaire in its verdict of date 3 February 2016 agreed with Mr. HANSEN that he, as a Dutch national, could indeed not be declared a 'persona non grata' (ex.5), because he is not a 'foreign national'. Consequently, he could also not be deported, certainly not to another part of the same country.

19. By now it should be clear that the system within the Kingdom with respect to admission and expulsion of Dutch nationals is weird and dysfunctional. It stipulates
a) that Dutch nationals should be treated as foreigners (only in the Caribbean islands, but not in Holland which treats all Dutch nationals equally), and

b) that art. 12 CCPR rights have 5 or more distinct meanings and applications within the same Kingdom, based on a complicated set of discrimination grounds some of which have been described hereinabove.

And this affects foreign nationals as well. For foreign nationals who have been legally admitted to one part of the Caribbean Kingdom, cannot freely take up residence in another part of this same Kingdom. But we will leave this as it is, because this concerns foreign nationals. They also should be treated fairly (and they are not), but this case concerns a Dutch national (Mr. HANSEN) who on the one hand is treated preferentially (being from Curaçaoan descent he enjoys art. 12 CCPR rights in both Holland and Curaçao), but on the other hand is treated discriminatorily (his art. 12 CCPR rights are denied him in Bonaire, which is part of his own country - both if one considers the Kingdom as his own country *or* if one considers Holland as his own country. He lacks art. 12 CCPR rights in Bonaire, because he was not born there, something he cannot do anything about. But he was deported to Curaçao instead of to his country of birth which is Holland. The discrimination grounds that make this madness possible are place of birth, descent and residency on specific dates (for the BES-islands, Curaçao and St. Maarten 10 October 2010 and for Aruba 1 January 1986). If Mr. HANSEN had legally registered in Bonaire before 10 October 2010, his art. 12 CCPR rights would have been respected in Bonaire, Holland and Curaçao.

What this all boils down to is that the admission and expulsion rules in the Kingdom are to a large extent *arbitrary*. Or, more simply put, a matter of luck or bad luck.

These rules must, therefore, be replaced by new and sane rules which are non-discriminatory and which generally apply in all democratic countries, such as:
a) Dutch nationals are always welcome in their 'own country' and cannot be declared a 'persona non grata' in their 'own country', nor can they be deported from their 'own country' nor be deported *within* their 'own country';
b) all Dutch nationals of the Kingdom should enjoy art. 12 CCPR rights, without any discrimination; both these rules sub a) and b) follow logically from art. 12 CCPR;
c) at the very least (*subsidiarily*), all Dutch nationals born in the Caribbean islands should enjoy art. 12 CCPR rights within all 6 Caribbean islands, the only discrimination then remaining being against Dutch nationals born in Holland, which discrimination is perpetuated at the explicit request of the Kingdom government itself as appears from its stance in this court case.

Politicians in Holland have been trying for years to introduce a complete new set of admission rules for the whole Kingdom, but they are bogged down in the morass of political infighting, procedural difficulties and conflicting interests. Also some of the proposed new rules were discriminatory against Dutch nationals from the Caribbean islands, meaning we would all have ended up falling from the frying-pan into the fire.

It is a well-known fact that the political process is not always capable of introducing required changes. Sometimes the Courts must help. In its verdict of date 3 February 2016 (ex.5) the Bonairean Court in First Instance did try to help, simply pointing out that the rules in effect for foreign nationals cannot be applied to Dutch nationals. But his decision in the summary proceedings was not followed by the 2 Courts who later ruled thereafter (exhibits 6 and 7).

Both these Courts followed the reasoning put forward by the Kingdom, namely that pursuant to art. 1a, section 1, opening and sub letter (a) WTU BES in conjunction with art. 16d, section 1, opening and sub letter (c) WTU BES, Mr. HANSEN could be treated as a foreign national and could therefore be declared a 'persona non grata' in Bonaire and could on that basis thereafter be deported to Curaçao. Both Courts ruled that these articles of the domestic law do not violate Mr. HANSEN's art. 12 CCPR rights, whereas the distinctions made in art. 1a WTU BES between Dutch nationals born outside of the BES-islands vs. Dutch nationals born in one of the BES-islands are not discriminatory within the meaning of arts. 2, section 1 and 26 CCPR.

Reservation to art. 12 CCPR by the Kingdom of the Netherlands

20. Upon ratification (apparently in 1978) of the CCPR, the Kingdom made the following reservation to art. 12 CCPR:
"Article 12, paragraph 1
"The Kingdom of the Netherlands regards the Netherlands and the Netherlands Antilles as separate territories of a State for the purpose of this provision.
"Article 12, paragraphs 2 and 4
"The Kingdom of the Netherlands regards the Netherlands and the Netherlands Antilles as separate countries for the purpose of these provisions".

On 11 October 2010 the Kingdom added the following declaration:

"...The Kingdom of the Netherlands, consisting, as per 10 October 2010, of the European part of the Netherlands, the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba), Aruba, Curaçao and Sint Maarten, regards these parts as separate territories for the purpose of Article 12, paragraph 1, and as separate countries for the purpose of Article 12, paragraphs 2 and 4, of the Covenant".

21. The Bonaire Court in First Instance sitting on the merits case passed judgment on 11 March 2016 and essentially ruled that the above-mentioned reservation and subsequent declaration are valid, so that Mr. HANSEN does not enjoy the protection of art. 12 CCPR. The Court also rejected Mr. HANSEN's argument that his being declared a 'persona non grata' in Bonaire and his subsequent deportation to Curaçao were forbidden discriminatory acts against him (violation of arts. 2 section 1 jo. 26 CCPR) on the grounds of his place of birth and his descent. The Court ruled that the distinction in art. 1a WTU BES between Dutch nationals born within the BES-islands vs. those born without the BES-islands does not violate arts. 2 section 1 jo. 26 CCPR.

The Court in First Instance also confirmed that pursuant to art. 1a, section 1, opening and sub letter (a) WTU BES, Mr. HANSEN could be treated as a foreign national. Nothing discriminatory about that either, even despite the fact that the WTU BES clearly states in its definitions article that Mr. HANSEN is not a foreign national.

The Court also unjustly rejected the applicant's claim that depriving a person of his full nationality rights constitutes degrading treatment (art. 7 CCPR). But it is clear that Mr. HANSEN was treated degradingly by treating him as a foreign national and deporting him twice to Curaçao, which is NOT his island of birth.

In its judgment of date 1 September 2017 the 'Common Court of Justice' (CCJ) upheld the decision of the Bonaire Court in First Instance of 11 March 2016. The CCJ ruled more specifically that Mr. HANSEN's having been declared a persona non grata in Bonaire is not discriminatory against him because Bonaire is not 'his own country'. According to the CCJ, ***Holland*** is his own country, seeing that he was born there.

This poses two questions.
1) If Holland is Mr. HANSEN's own country (as the CCJ says), then why was he deported to Curaçao and not to his own country Holland? The CCJ did not clarify this.
2) Pursuant to art. 132a of the Constitution of the European and Caribbean Netherlands or 'CECN' (quoted *supra* sub point 8), Bonaire is an integral part of Holland. But when it comes to Mr. HANSEN's art. 12 CCPR rights, the CCJ essentially rules that Bonaire is ***not*** part of Holland and approved his being declared a 'persona non grata' in Bonaire. How is this possible?

To put it simply and bluntly, the CCJ judgment is based on doublespeak.

22. The allegation against Mr. HANSEN that he posed a threat to public order in Bonaire has never been proved by the Kingdom. This allegation was solely based on the fact of his recidivism, ***not*** on the basis of any evidence that he did in fact or could reasonably be presumed to pose any real threat to public order. As a matter of fact, after his first deportation Mr. HANSEN managed to return to Bonaire where he remained approx. two weeks (maybe a bit less) before he was caught and again deported to Curaçao. During this time he committed no crime, which proves that in fact he did not pose any actual and real threat to public order in Bonaire.

    But, however all this may be, the point is that international and national law forbid to deport convicted felons after their release from prison from one part of their own country to another part thereof. For once released, the ex-convict is again a free man in his own country. Art. 9 CCPR (right to liberty and security applies here).

    So the question as to whether Mr. HANSEN posed any actual threat to public order is really irrelevant within the context of this communication. It could only be relevant, if Mr. HANSEN were a foreign national. But he is not. He is a Dutch national and a citizen of Holland by birth and by operation of art. 132a CECN (cf. *supra* sub point 8).

23. ***Comments on the above point 20 and 21 (the reservation and 2010 declaration)***

Mr. HANSEN maintains that the above-quoted reservation and declaration to art. 12 CCPR are *not* valid. For three reasons:

1. The reservation and declaration can only be implemented in domestic law by violating art. 2 section 1 jo. 26 CCPR, as has been explained. Such a reservation and/or declaration is incompatible with the object and purpose test as referred to in art. 19 of the Vienna Convention on the Law of Treaties. In this context, reference is made to CCPR General Comment 24, particularly point 9 of this General Comment.

2. The reservation and declaration are contrary to art. 5, section 1 CCPR.

3. The declaration and reservation offend peremptory norms (art. 12 CCPR in conjunction with art. 2, section 1 and 26 CCPR) and is therefore incompatible with the object and purpose of the CCPR (art. 19 Vienna Conv. on the Law of Treaties).

4. The declaration and reservation violate art. 29 of the Vienna Conv. on the Law of Treaties, because they result in unequal treatment of the citizens of all the Kingdom-parts they create, so that the CCPR cannot be said to be binding in respect of the Kingdom's entire territory. It is binding with an opening to ample discrimination between Holland and the various Caribbean islands, even the ones who opted in 2010 to become an integral part of Holland (i.e. the BES-islands). The present art. 12 CCPR case illustrates this, but inequality of treatment in the various parts of the Kingdom is a constant fact with respect to all or most other CCPR -rights as well.

24. The mere fact that the reservation and declaration have up to now never been challenged before the UN HR Committee, does not give them validity.

Formulation of the petition to the UN Committee

25. A. In view of all of the above considerations Mr. HANSEN petitions the UN Human Rights Committee ***primarily*** to find that his being declared a 'persona non grata' in Bonaire and/or his subsequent deportation to Curaçao, constitute(s) a violation of art. 12 CCPR severally or in conjunction with arts. 2, section 1 and 26 CCPR, *alternatively* constitute(s) a violation of arts. 2, section 1 and 26 CCPR only.

B. ***Subsidiarily***, Mr. HANSEN petitions the UN Human Rights Committee to find that his being declared a 'persona non grata' in Bonaire and/or his subsequent deportation to Curaçao, constitute(s) a violation of art. 12 CCPR severally or in conjunction with arts. 2, section 1 and 26 CCPR, *alternatively* constitute(s) a violation of arts. 2, section 1 and 26 CCPR only, based on the consideration that his art. 12 CCPR rights were arbitrarily taken away from him by the reservation and declaration to art. 12 CCPR made by the Kingdom in 1978 resp. 2010, i.e. these rights were taken away from him in so far as this reservation and declaration denies his art. 12 CCPR rights in all of the 6 Dutch Caribbean islands.

In other words, Mr. HANSEN petitions your Committee *subsidiarily* to find that the reservation and declaration to art. 12 CCPR made by the Kingdom in 1978 resp. 2010 are incompatible with the object and purpose of the CCPR in so far as it denies art. 12 CCPR rights to Dutch Caribbean nationals in all of the Dutch Caribbean islands.

C. Further, Mr. HANSEN petitions the UN Human Rights Committee to award him fair compensation. After his second deportation to Curaçao, he returned to Holland where he had requested to be deported to, if his deportation could not be avoided. Due to the arbitrary deportation to Curaçao instead of to Holland, Mr. HANSEN incurred unnecessary expenses *inter alia* to travel to Holland.

Bonaire, 6 February 2018
On behalf of Mr. Sherrel Eldgel HANSEN
Michiel Bijkerk, attorney-at-law

Author's signature:

V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

- Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization): Exhibit 1

- Copies with translation into English of the most important articles of the relevant national legislation, as well as decisions of domestic courts and authorities on your claim:

Exhibit 2: Copy of Dutch text of introductory articles of the Kingdom Charter with translation into English;
Exhibit 3: Copy of art. 349 of Treaty on the Functioning of the European Union ('TFEU') in English;
Exhibit 4: Copy of art. 132a of the Constitution of the European and Caribbean Netherlands, abbr. 'CECN', known in Dutch as the '*Grondwet*' (Basic Law) with translation into English;
Exhibit 5: Decision of the Court in First Instance of Bonaire (summary proceedings) of date 3 February 2016 with translation into English;
Exhibit 6: Decision of the Court in First Instance of Bonaire (proceedings on the merits) of date 11 March 2016 with translation into English;
Exhibit 7: Decision of the 'Common Court of Justice of Aruba, Curaçao, St. Maarten and of Bonaire, St. Eustatius and Saba' (abbr. the 'Common Court of Justice' or 'CCJ') of date 1 September 2017 with translation into English;

- The UN language chosen for this communication is English.