



SURVEY TO STATES ON ANTISEMITISM

United Nations Special Procedures

UN Special Rapporteur on freedom of religion or belief

The United Nations Special Rapporteur on Freedom of Religion or Belief, Dr. Ahmed Shaheed, is preparing a report on antisemitism in accordance with his mandate to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief. He will present his research and recommendations on ways and means to overcome such obstacles to the UN General Assembly in September 2019.

The work of the UN Special Rapporteur on Freedom of Religion or Belief resolves to protect and promote the human right to freedom of religion or belief to advance security, tolerance and inclusion for both the individual and for our societies. Freedom of religion or belief, for anyone who professes either, is one of the fundamental elements in their conception of life and should be fully respected and guaranteed. It is also fundamental to the attainment of the goals of peace, stability, and social justice.

The mandate draws upon the frameworks developed by the international community, under the aegis of the United Nations, to promote mutual understanding and respect for diversity by advancing freedom of religion or belief, tolerance and non-discrimination. This includes the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Resolution A/HRC/16/18 on Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, the Rabat Plan for Action for the prohibition of incitement to national, racial or religious hatred (which explores the relationship between freedom of expression and hate speech, especially in relation to religious issues) as well as international commitments that recognize the role of civil society and religious communities in advancing tolerance and inclusion. The Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes, known as the “Fez Process”, sets out a broad range of ways in which religious leaders can prevent incitement to violence and contribute to peace and stability. The 2017 Beirut Declaration and its accompanying 18 commitments on “Faith for Rights” provides an additional platform for faith-based and civil society actors to enhance cohesive, peaceful and respectful societies.

In preparing his report, the Special Rapporteur is engaging with States to learn about experiences of antisemitism within the State and the measures undertaken by the State to respect, protect and fulfil the right to freedom of religion or belief Jewish individuals. We would be obliged if you could answer the questions set out below.

Responses and any clarifying queries can be sent to freedomofreligion@ohchr.org and

srforb@gmail.com until **14 June 2019**.

All input will be treated confidentially by the Special Rapporteur and his team and for the sole purpose of preparing for this report.

1. Judaism Within the State: The Right to Freedom of Religion or Belief

1. Is Judaism recognized as a religion in law? If so, what is the definition of Judaism in law? What is its status compared with other religions?

Freedom of religion is recognized and anchored in the Dutch Constitution. The Minister of Justice and Security has a special responsibility as the Minister of Religious communities and belief. The Minister maintains contact with denominations of all religious movements and beliefs because we don't make any distinction based on the content of belief, philosophy or religion. The Minister of Justice and Security has a special responsibility to make sure that the Dutch government not only respects freedom of religion but he also makes sure that there is equal treatment. The law may only impose restrictions on the practice of religion if this is necessary on grounds of public order, for the protection of health or to combat or prevent disorder. We don't give priority to one or the other religion, but treat all organizations based on religious and non-religious beliefs equal.

2. Are there Jewish cemeteries? Is there law on their protection?

Yes, there are Jewish cemeteries in the Netherlands. Their protection is the same as with other cemeteries. On the basis of article 149 of the Dutch Criminal Code the desecration of a grave and the destroying or damaging of a memorial erected in a cemetery is punishable as a criminal offence. The Wet op de lijkbezorging (Law on the disposal of the dead) contains rules on the management of cemeteries.

3. Are Jewish marriages recognized in state law?

Only civil marriages have a legal status in the Netherlands. A religious marriage can only take place after the civil marriage has been concluded.

A marriage that has been concluded abroad in accordance with the law of the state where the marriage took place, will be recognized in the Netherlands. This implies that a Jewish marriage concluded in Israel will also be recognized, if it fulfils the procedural requirements.

2. Antisemitism in Law and Policy

1. Is there a State definition of antisemitism? What is it?

Because all religions are treated equally, Dutch law does not have a specific definition of antisemitism. Antisemitism is forbidden however on the basis of anti-discrimination laws.

Discrimination on the basis of (amongst others) religion, beliefs or race is forbidden in the Netherlands on the basis of article 1 of the Constitution. This includes the discrimination of Jews.

The incitement of hatred of or discrimination against persons or violence against their person or property because of (amongst others) their race (referring to skin color, origin and national or ethnic background), and religion or beliefs is punishable in the Netherlands on the basis of the articles 137c and 137d of the Dutch Criminal Code (hereafter referred to as: CC). This includes the incitement of hatred of, violence or discrimination against Jews or their property.

2. Does the State gather statistics on the number and nature of anti-Semitic hate crimes, penalties imposed on perpetrators and on remedies awarded to victims? Can the State provide these statistics to the Special Rapporteur?

Yes. Please find as an attachment to this questionnaire two reports containing statistics on all discrimination ground, including antisemitism and the latest report drawn up by the Verwey-Jonker Institute (Seventh report on racism, anti-Semitism and extreme right-wing violence in the Netherlands).

3. Who are the main perpetrators of antisemitism?

Supporters of extreme right-wing ideologies, to a more limited extent persons with extreme leftist ideas (in particular with regard to the Israeli-Palestinian conflict), and, in some cases, persons with an Islamic background and football supporters.

4. Are there laws about discrimination against Jews? What are those laws? Who is bound by those laws? Who is protected by those laws?

See also the answer to question 1 of this paragraph.

5. How is the prohibition of national, racial or religious hatred as reflected in international human rights law incorporated in national legislation? Does the State take other measures to prevent anti-Semitic hate speech?

See also the answer to question 1 of this paragraph. Next to the incitement of hatred, discrimination and violence, also punishable are making an insulting statement about a group of persons because of (amongst others) their race, religion or beliefs (article 137c CC). The public dissemination or distribution of a statement which is insulting to a group of persons or which incites hatred, discrimination or violence (article 137e CC). This is a separate offence. This means that the person who disseminates or distributes the statement does not necessarily have to be the person who made the statement. Also the taking part in of financially or otherwise materially supporting activities aimed at discrimination is punishable (article 137f CC).

6. Are there specific offences in law regarding anti-Semitic crimes? Do the laws provide for the imposition of enhanced penalties for crimes committed with anti-Semitic motivation?

Because all religions are treated equally, Dutch law does not make distinctions between different religions. This means that anti-Semitic crimes are punishable the same as other discriminatory acts on the basis of race, religion or beliefs. See also the answer to question 5 of this paragraph.

7. Can the State provide information on cases of anti-Semitic violence, harassment, or desecration targeting individuals or their property, educational facilities or Jewish cultural or religious sites?

Yes. For this I refer to the Seventh report on racism, anti-Semitism and extreme right-wing violence in the Netherlands of the Verwey-Jonker Institute, annexed to this questionnaire.

8. Are the police trained about antisemitism? What form does that training take? Are the judiciary provided with training about antisemitism?

Yes. In order to strengthen knowledge and expertise about the various lifestyles and groups, including Jewish culture, police is trained through various courses. The programme at the national police academy is currently being reviewed, considering both new developments in the criminal phenomenon as new views on the perspective of the victim. Together with the Anne Frank Foundation the police organises anti-Semitism theme days for police officers three times a year.

9. Are there laws about the publication of anti-Semitic materials? What are those laws?

Yes, this is punishable under the articles 137c-137f CC. See also the answer to question 5 of this paragraph.

10. Is it lawful to sell Nazi memorabilia or anti-Semitic merchandise?

The selling of Nazi memorabilia or anti-Semitic merchandise falls within the scope of the articles 137c-137e CC.

11. Are Jews allowed to own property?

Yes.

Are they allowed to own businesses?

Yes.

Are there any public or private sector jobs that the Jews are legally excluded from?

No.

12. Are there any political parties that do not allow Jewish members?

No, this would constitute a criminal offence.

Are there Jewish people in government?

Yes.

Are there Jewish people in the judiciary?

Yes.

13. Does the State have a parliamentary or legislative code of conduct to deter politicians from making anti-Semitic, xenophobic, racist, homophobic, or other hateful remarks from the floor or in public appearances? Is there qualified or parliamentary immunity for hate speech?

On the basis of article 71 of the Dutch Constitution representatives, ministers and other people taking part in the discussions in parliament are

not punishable for statements made in parliament. The background of this provision is the guaranteeing free political discussion. On the basis of the Reglement van Orde (Rules of Order) of parliament it is not allowed to make statements which are insulting or incite others to commit a criminal offence.

Politicians are criminally liable for discriminatory statements that are made outside of parliament, on the basis of the articles 137c-137f CC. In accordance with the case law of the European Court of Human Rights the context of the statement – for instance the public debate – should be taken into account.

14. Does the State monitor and investigate antisemitism online? Yes.
What data does the State have on the ways in which online propaganda and harassment and political manipulation are affecting Jewish People?

Online hate speech can be reported to the police or to an anti-discrimination service, or to the complaints office for online discrimination (MiND). MiND is the national body for reporting online discriminatory utterances that constitute criminal offences. Members of the public can report discriminatory content. When it receives a report, MiND starts by looking to see if the content is still online. It then determines whether the content constitutes a criminal offence under articles 137c to 137e of the Criminal Code and the relevant case law. If so, MiND asks the administrator or moderator of the website concerned to take the content down. If a repeated request to this effect is ignored, MiND draws up a report file for the Public Prosecution Service. The Public Prosecution Service can launch criminal proceedings in response to such a report.

For examples I refer to the reports annexed to this questionnaire.

15. Does the State monitor and investigate the manipulative use of bots on social media, and tactics including doxing, disinformation, that target Jewish people?

See answer to question 17.

16. What measures have been taken by the State to increase the reporting of anti-Semitic hate crimes? E.g. Has the State made efforts to ensure that the reporting mechanism is transparent and accessible?

Yes. The police reporting form contains a check mark for anti-Semitism. The Minister of Justice and Security is in close contact with representatives of the Jewish community in order to improve reporting of anti-Semitic crimes.

17. Does national law allow private members clubs to exclude Jews? Are hotels allowed to exclude Jews? If so, under what laws?

No.

III. Anti-Semitic Incidents

The Dutch Public Prosecutor's Office does not flag cases specifically for antisemitism related to the media. However, hate speech - both offline and online - is punishable. In the Netherlands there are several ways to counter hate speech and hate crimes. People who experience hate speech can report to the National Human Rights Institute, local anti-discrimination services (ADVs) and/or the police. In cases of online hate speech, people can also report to the Internet hate speech hotline (MiND).

18. Have neo-Nazi or anti-Semitic groups carried out anti-Semitic filtering campaigns, flash demonstrations (unannounced, quickly disbanded gatherings) or rallies?

These gathering rarely take place in the Netherlands and if they do, they may be punishable by law.

Nevertheless, the right to demonstrate also includes publicly expressing opinions or statements that are shocking, false or controversial. In principle, punishable statements are not a reason for ending a demonstration: the Public Events Act (Wom) only leaves room for the termination of a demonstration to prevent or combat disorder, due to road safety or public health. The Wom is an elaboration of the Constitutional right to demonstrate. That right may not be curtailed lightly. The calling of slogans that may be qualified as a criminal offense cannot in itself constitute a reason for ending the demonstration, unless the situation thereby becomes untenable and public order or road safety problems arise such that termination is the only possible option.

This does not alter the fact that the police can intervene if it is established that criminal offenses are being committed. For example, the right to demonstrate does not prevent rioters or people who destroy the property of others from being arrested. But here too it applies that unless such riots or destruction cause problems for public order or road safety that termination is the only possible option, the demonstration - if there are still peaceful participants in the demonstration - must in principle proceed. If there were grounds for arresting

participants or bystanders because of potentially punishable statements, the same principle applies: those against whom the suspicion is directed can be arrested, but the demonstration can in principle continue.

19. Is there a specific mechanism for reporting anti-Semitic incidents? If so what is the mechanism?

Yes. Victims of discrimination can apply to several places for advice and support. First, members of the public can apply to municipal anti-discrimination services (ADVs), which provide assistance free of charge. In addition, anyone who experiences discrimination can submit a complaint to the Netherlands Institute for Human Rights, free of charge, or report the matter to the police. If necessary, a municipal anti-discrimination service can provide support. A victim also has the option of instituting proceedings under civil law, or, in the event of prosecution, of joining the criminal proceedings with a claim for damages. The Legal Aid and Advice Centre can give advice, free of charge, to people who are eligible for it on the basis of their income. In addition, subject to certain conditions, victims with a low income may be able to obtain additional legal assistance. Victims of a racist crime of violence can obtain legal assistance free of charge, regardless of income. they can be reported at the local anti-discrimination office or at the police.

20. Does the state record anti-Semitic incidents? If so where are they recorded? See answer to question 2.2. I also refer to the reports annexed to this questionnaire for examples. Are the statistics rising or falling? They fell over the last year. But generally they fluctuate. Do the statistics include the penalties imposed on perpetrators and remedies awarded to victims?

Yes.

21. Does the government collect information concerning the motivation of the perpetrators of anti-Semitic acts? Can the State provide this information to the Special Rapporteur?

No, not other than through criminal proceedings. But the reports annexed to this questionnaire may give an additional insight and examples.

22. Does the state provide security for Jewish schools or cultural sites? If so, in what form? Does the state allow Jews to form community security groups? Is there a formal or informal relationship between them and the police?

In practice, the State has formally advised a select number of municipalities to take additional security measures for certain Jewish sites. In several municipalities with specific Jewish sites, special security measures are in place, for example near Jewish schools or synagogues. These measures include having an active police presence. This police presence is being carried out as a joint effort between the Dutch National Police and the Royal Constabulary. It is also possible for the Jewish community to form unarmed security groups, which in fact exist. There are good contacts between the local police units and these security groups whenever they're involved during an event.

Guaranteeing freedom of religion is of utmost importance in the Netherlands. High risk sites are determined by the State in close cooperation with the municipalities. On a national level the NCTV, in cooperation with the Dutch intelligence services and the police, monitors threat levels (and possible escalations) in the country. Based on information about threat and risks with regards to Jewish interests the State also advises the local authorities to take additional security measures when the State regards it as necessary. There are currently no concrete indications that an attack is being prepared for Islamic, Jewish, Christian or other religious institutions.

The decentralized authorities (formed by the mayor and the public prosecutor of the municipality where the site is located) are first and foremost responsible for taking additional security measures. Security measures are always taken based on information about risks and threats. The reason why this responsibility is decentralized, is because the local authorities have the best view on possible tensions and incidents in the local context of the involved site. The financing of the security measures follows the division of responsibilities.

These measures are in effect while the municipality works together with these specific sites to improve the internal security measures of the sites. The State supports this fully where necessary. In fact, the State has given additional financial aid during the past 4 years (2014-2018) to local governments to help the Jewish sites improve their internal security measures. Also, the State developed informational products to support local authorities and communities. Recently, the 'handbook Security Religious Objects' was developed. This handbook covers recommendations that allow religious organizations to increase their own security and resilience.

The National Coordinator for Security and Counter-Terrorism (NCTV), the Ministry of Social Affairs and Employment (SZW) and the National Police have a close relationship with representatives of the religious communities in the Netherlands,

among them Jewish organizations, mosque administrators, and Christian organizations, to discuss security and their experiences regarding threat and security.

23. Can the State provide information on cases of anti-Semitic violence, harassment, or desecration targeting individuals or their property, educational facilities or Jewish cultural or religious sites?

For this I refer to the reports annexed to this questionnaire.

24. How does the State ensure that victims of anti-Semitic hate speech, crimes or discrimination are provided with effective remedies? Does the State fund programs designed to help hate crime victims?

Victims of discrimination can apply to several places for advice and support. First, members of the public can apply to municipal anti-discrimination services (ADVs), which provide assistance free of charge. In addition, anyone who experiences discrimination can submit a complaint to the Netherlands Institute for Human Rights, free of charge, or report the matter to the police. If necessary, a municipal anti-discrimination service can provide support. A victim also has the option of instituting proceedings under civil law, or, in the event of prosecution, of joining the criminal proceedings with a claim for damages. The Legal Aid and Advice Centre can give advice, free of charge, to people who are eligible for it on the basis of their income. In addition, subject to certain conditions, victims with a low income may be able to obtain additional legal assistance. Victims of a racist crime of violence can obtain legal assistance free of charge, regardless of income.

IV. Information on states to promote tolerance and understanding including public-private initiatives?

25. Has the State identified whether sectors of their population are at risk of radicalization by extremist ideologies? What information does the State have on the recruiting techniques and organizational mechanisms of extremist groups for targeting alienated youth?

The National CT Coordinator publishes the Terrorist Threat Assessment Netherlands (DTN) three times a year. The DTN is a general assessment of radicalization, extremism and of the national and international terrorist threat to the Netherlands and Dutch interests abroad. The assessment is a trend report in

which the main threat developments are outlined. The DTN is primarily drawn up for the benefit of the administrative and political leadership and policy makers. The Netherlands integral policy approach contains measures aimed at countering terrorism and (violent) extremism and preventing radicalization. This includes preventing recruitment, for example by countering (online) terrorist propaganda and strengthening resilience of vulnerable youth to extremist narratives.

26. Has the State investigated where extremist groups obtain funding?

Investigation into the funding of extremist groups may be part of a criminal investigation case.

27. How does the State create an environment for open robust debate and dialogue, including through a free and open Internet, in line with the rights to freedom of religion or belief, freedom of opinion and expression, and non-discrimination?

28. How does the State engage with social media companies to address online harassment of Jewish individuals and harassment response efforts?

Engagement with social media companies is part of a larger policy of addressing online harassment in general.

29. Does the State regulate website-hosting companies that host hateful or harassing content? Does the State impose liability for web hosts that host hateful or harassing content?

Response to the additional questions:

1. Judaism within the State: the right to freedom of religion or belief

c. how does the State protect the right to freedom of religion or belief of the Jewish community?

Freedom of religion or belief is granted through the article 6 of the Constitution of the Netherlands.

Can people freely change their religion into Judaism or leave the religion?

Yes.

q. are there any restrictions on the right to maintain free and peaceful contact with members of the Jewish community in other countries?

No, there are no restrictions on the right to maintain free and peaceful contact with members of the Jewish community in other countries.

2. r. Is there anti-discrimination legislation in general? Yes, see answers above. How does the law deal with discrimination based on religion or belief?

The law forbids discrimination on the basis of religion and belief, see also the answer to the questions 1 and 5 in paragraph.

2. t. Are there any laws that address Holocaust denial?

Holocaust denial is not a separate offence, but is punishable on the basis of the articles 137c-137f CC. This is confirmed by case law of the Supreme Court of the Netherlands (see amongst others Hoge Raad, 10 September 1985, NJ 1986/164, Hoge Raad, 25 November 1997, NJ 1998/261 and Hoge Raad, 27 March 2012, NJ 2012/220).