

## Papiamentu, a minority language on the threshold of recognition<sup>1</sup>

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*Papia ta un kos y basi ta otro*

(Talking is one thing, taking action the other)

Let me take you to a small island, 60 kilometres off the coast of Venezuela, in the Caribbean Sea. Bonaire, with the size of 294 km<sup>2</sup>, is the most eastern island of the ABC-islands: Aruba, Curacao, and Bonaire. All three are part of the Kingdom of the Netherlands. The inhabitants speak the local pidgin or creole: Papiamentu. When drafting the European Charter for Regional or Minority Languages (ECRML), probably few people might have thought about the consequences of the application of the Charter in a Caribbean post-colonial society where a strong colonial and official language, Dutch, spoken by only a few inhabitants, has been unable to set aside the local creole, Papiamentu, for centuries.

Papiamentu, which is spoken on Bonaire, is a regional language according to the definition of art. 1 of the European Charter for Regional or Minority Languages, because the 8,000 inhabitants of Bonaire and approximately 250.000 Papiamentu speakers in Europe, form a numerical minority compared to the rest of the population of the Netherlands (almost 17 million people, with Dutch as the official language). Papiamentu as a Creole language is different from the official languages of the Netherlands, which are Dutch and, in some areas, Frisian, and Papiamentu is not a dialect of Dutch.

According to the 2001 census of the Netherlands Antilles, Papiamentu was the home language of 74.7% of the inhabitants of Bonaire. Papiamentu has been traditionally used on the islands of Bonaire, Curacao, and Aruba since the second half of the 17th century. It is also spoken in some provinces of Venezuela, although on the South American mainland, the language is nearly extinct. When the Dutch took over the islands of Bonaire and Curacao in 1634, all Spanish inhabitants and most of the Amerindians were extradited and transported to Venezuela. However, Spanish continued to be an important language on the islands because most trade was conducted with Spanish-speaking countries in the region.<sup>2</sup> Papiamentu has deep roots in the trade of enslaved people from Africa, as Curacao was an important trade hub and the language functioned here as a *lingua franca*.<sup>3</sup> Academic scholars debate the origins of Papiamentu. The majority shares the opinion that Papiamentu originates from a single Afro-Portuguese proto-Creole, similar to other Creole languages of the Caribbean. This proto-Creole functioned as a *lingua franca* in Western Africa during the times of the transatlantic slave trade. When visiting Cabo Verde today, one will hear a language close to Papiamentu in the streets.<sup>4</sup> On the other hand, academics supporting the so-called polygenetic theory maintain that Papiamentu emerged on Curaçao, drawing on the

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<sup>2</sup> On the origin of Papiamentu: Frank Martinus, *The Kiss of a Slave: Papiamentu's West-African Connections*, Curacao: De Curaçaosche Courant, 2004 (Phd thesis Amsterdam 1996); Florimon Camillus Maria van Putte, *Dede pikiña ku su bisia: Papiamentu - Nederlands en de onverwerkt verleden tijd*, Zutphen: Walburg pers 1999; and Gary C. Fouse, *The Story of Papiamentu: A Study in Slavery and Language*, University Press of America 2002.

<sup>3</sup> Kevin S. Carroll & Joyce L. Pereira, 'Threat. Inversion. and. Language. Maintenance', in Puerto Rico. and. Aruba. In: Nancy H. Hornberger ed., *Honoring Richard Ruiz and his Work on Language Planning and Bilingual Education*, Clevedon: Multilingual Matters 2016.

<sup>4</sup> Bart Jacobs, *Origins of a Creole: The History of Papiamentu and Its African Ties*, Berlin/Boston: Walter de Gruyter 2012.

Spanish language. Throughout the ages, new languages have influenced Papiamentu. Most words related to cleaning are Dutch, while all car-related terminology seems to originate from Anglo-American words.

Until 10-10-2010, the federative state Kingdom of the Netherlands consisted of three autonomous countries: the Netherlands in Europe, Aruba, and the Netherlands Antilles (comprising the Caribbean islands of Bonaire, Curacao, St. Maarten, St. Eustatius, and Saba). To fulfill a longstanding wish for independence—despite a lack of clarity regarding its implications for the tiny communities of Bonaire, Saba, and St. Eustatius—the Netherlands Antilles was dissolved in 2010.<sup>5</sup> After 10-10-2010, this federative Kingdom consists of four independent countries: Aruba, Curacao, St. Maarten, and finally the Netherlands in Europe. The Netherlands in Europe includes three Caribbean islands: Bonaire, St. Eustatius, and Saba. This project of state reform resulted in a load of red tape paper, including regulations concerning the Papiamentu language of Bonaire. The status of Bonaire, Saba, and St. Eustatius can be compared to the DOM in France: the Dutch parliament is the highest legislator, but a unity of legislation lacks in The Netherlands. Also the provincial level of government does not exist on these islands; they function more like municipality or *gemeente* with some provincial executive powers.

In the past thirty years, the administrative unit where Papiamentu is spoken, has become highly fragmented.<sup>6</sup> Until 1985, the year Aruba obtained a "status aparte," Papiamentu was used in one country, the Netherlands Antilles, until 1976-77 in a non-standardized form. After 10-10-10, three countries in the Kingdom are responsible for the language: Aruba, Curacao, and the Netherlands, as the BES-municipality of Bonaire is part of it. Additionally, Papiamentu is the home language of a significant number of people who have been living in the Netherlands. In addition, a large group of Papiamentu speakers of Caribbean origin live in the United States, and Papiamentu is spoken in some coastal regions of Venezuela. The introduction of two different spellings during this time poses a threat to the fragile little language. While newspapers may use these spellings interchangeably and adult readers can easily understand the two ways of writing words, and oral communication poses little difficulty in understanding, this inconsistency creates challenges for developing educational resources for schools. The term "Papiamentu" refers to the phonetic orthography that was implemented in 1976 on Curaçao and Bonaire.<sup>7</sup> "Papiamento" is the name of the etymological orthography used in Aruba.<sup>8</sup> "Papiaments" is a generic term, commonly used in Dutch language documents, but this neutral term has no translation into English. Is such a fragmentation a threat? The last speaker of another language that emerged from the Dutch slavery past on the ABC islands died almost a century ago. With her death, the sound of Gueni, which was considered a secret language among the Afro-Curaçaoans, has been silenced and the songs, the knowledge about rituals, history, flora and fauna can only be consulted in books.<sup>9</sup>

In the new constitutional structure of the Netherlands, which entered into force on 10-10-10, dissolving the Netherlands Antilles and adding Bonaire, Saba, and St. Eustatius to the territory

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<sup>5</sup> Robert F. Aldrich & John Connell, *The Last Colonies*, Cambridge: Cambridge University Press 1998.

<sup>6</sup> Maxy Bak-Piard, 'Will Papiamentu survive on Bonaire?' in: Nicholas Faraclas, Ronald Severing, Christa Weijer & Elisabeth Ehteld (eds.), *Crossing shifting boundaries: language and changing political status in Aruba, Bonaire and Curaçao*, Curaçao: FPI/UNA 2010, p. 41–47.

<sup>7</sup> Island of Bonaire ordinance of February 14, 2013, no. 1 establishing the spelling of Papiamentu in the public body of Bonaire (Papiamentu spelling ordinance).

<sup>8</sup> In 1977, Aruba introduced a etymology-based spelling. Papiamento has been an official language of Aruba since May 2003. Marta Dijkhoff & Joyce Pereira, 'Language and education in Aruba, Bonaire and Curaçao', in: Bettina Migge, e.o. ed., *Creoles in education : an appraisal of current programs and projects*, Amsterdam: John Benjamins Pub., 2010, p. 244.

<sup>9</sup> Frank Efraim Martinus, *The Kiss of a Slave. Papiamentu's West-African Connections* (Amsterdam, 1996).

of the Netherlands in Europe, the Netherlands became responsible for two new regional languages on its territories. Next to Friesian, two languages spoken on the BES-islands in the Caribbean are regional languages spoken in the Netherlands that require special attention: English and Papiamentu. Where the European Charter for Regional or Minority Languages protects since 1998 Friesian in the Netherlands under Part III, similar protection should be established after 10-10-10 for the languages spoken in the Caribbean.

In May 2024, the popular journal on the Dutch language, *Onze Taal*, published an article on the recognition of Papiamentu, and posed the question ‘why did recognition take so long?’<sup>10</sup> The author does not provide a real explanation for this long path to recognition; he only states that it was complicated for Bonaire to get recognition since it was an integrated part of The Netherlands ‘Voor Bonaire lag het wat ingewikkelder’, and connects the recognition to the fact that in the 2023 elections in the Netherlands, several political parties gave some attention to Papiamentu in their election programme. Additionally, recently exams in Papiamentu made available in Vocational Education on Bonaire. The timespan of this process was not addressed in *Onze taal*. From which moment did Bonaire start striving for recognition of the language under the Council of Europe’s European Charter for Regional or Minority Languages, and what obstacles in this 15-year process were posed for the NGOs and local politicians?

### **Bonaire insists on the application of the Charter**

In anticipation of the constitutional reform on 10-10-10, the population of Bonaire urged the Dutch Government to make the Council of Europe's European Charter for Regional or Minority Languages applicable to Papiamentu. In September 2007, two island deputies from Bonaire visited the office of a staff member at the University of the Netherlands Antilles, posing questions about the protection of the language of their island: Papiamentu. During that academic year, a course in Law and Language was introduced at this university.<sup>11</sup> In 2004, this staff member published a doctoral thesis on official languages in The Netherlands and the Charter.<sup>12</sup> The Bonairians were in the right place to find a preliminary answer. An animated discussion developed regarding the European Charter for Regional or Minority Languages, the role this treaty plays in the Netherlands, and an explanation about the new state structure being prepared in Parliament. This state reform will integrate Bonaire into the Netherlands in Europe, along with the human rights treaties signed by the country.<sup>13</sup> After the hour-long conversation, the somewhat dejected Bonaireans mentioned that the Dutch civil servants from the Ministry of Education and Culture had never informed them about the obligations that the Netherlands had committed to regarding minority languages.<sup>14</sup> In the imminent constitutional reform of the Kingdom, human rights are a stepchild, not only on the side of the Dutch government, but also by the Council of State responsible for monitoring new legislation, ignored their role in safeguarding citizens to ensure that new laws align with the guarantees provided by international treaties, the Dutch Constitution, and the Statuut of the

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<sup>10</sup> M. van Oostendorp, ‘De erkenning van het Papiaments’, *Onze taal*, no. 3, mei/juni 2024.

<sup>11</sup> Instruction was provided by Martha Dijkhoff, Ronald Severing, Rene de Groot, Bastiaan van der Velden and Viola Heutger.

<sup>12</sup> Bastiaan D. van der Velden, *Waar gaan wij heen met het Fries? Het gebruik van de Friese taal in het juridische en in het bestuurlijke verkeer in de laatste twee eeuwen* (Nijmegen: Wolf Legal Publishers 2004).

<sup>13</sup> In 2004 a referendum was held on the island of Bonaire. A majority of 59 % voted for a direct link with the Netherlands. 16 % voted for staying within the Netherlands Antilles. 24 % voted for the status of an autonomous country within the Kingdom. Only 0.5 % choose a complete independence of the Kingdom.

<sup>14</sup> Email by Bastiaan van der Velden to Laurens van Krevelen, 3 November 2007.

Kingdom.<sup>15</sup> Even essential matters, such as the at that date still existing of the death penalty on Bonaire, are not discussed, nor the reintroduction on 10-10-10 of an inheritance law subordinating natural children. Legislation that contradicts international legal human rights obligations remained undiscussed in the years 2007-2008.<sup>16</sup>

On February 21, 2008, on the International Day of the Mother Language, Bonairean deputy Silberie sent a letter to the State Secretary of Interior and Kingdom Relations, Bijleveld-Schouten, on behalf of the Executive Council of Bonaire. The letter expressed concern about the status of Papiamentu in the new state structure (which was initially scheduled for later that year but was eventually postponed to 10-10-10). The Executive Council of Bonaire highlights the potential role of the existing legal framework concerning regional languages in safeguarding Papiamentu. The aim was to create BES legislation that does justice to the role and status of Papiamentu in society. Specifically, the members of the Executive Council are requested to protect Papiamentu under the Charter.

The conclusion in the Executive Council's letter was clear: the BES Public Entities Act (Wol-BES) still contains indications that English and Papiamentu may only be used if there is a legal basis for its use. Such a legal basis has only been established for the purpose of the oath. There is no legal basis for the use of English and Papiamentu other areas of communication in administration, so only Dutch may be used on Bonaire, Sint Eustatius, and Saba. Therefore, according to the Executive Council, legislation should be created, comparable to the language paragraphs in the Dutch General Administrative Law Act.<sup>17</sup> The letter from the Executive Council to the State Secretary had some positive results. A language regulation for administrative communication was included in the BES legislation.<sup>18</sup>

It didn't stay quiet on Bonaire. In a Motion of December 22, 2009, the Island Council of Bonaire called on the Dutch government to declare the Charter applicable on Papiamentu in Bonaire. In addition, the island government asked to strengthen ties with the other countries where Papiamentu is spoken.

Why wasn't the Charter applicable on Papiamentu since 1998, or immediately after 10-10-10? The Kingdom of the Netherlands signs international treaties, and the instrument of acceptance indicates the parts of this federative state an international treaty will be applicable. With regard to the international treaty obligations on the BES islands, a law was enacted to ensure that treaties with a territorial application restricted to the Netherlands in Europe in the pre-10-10-10 situation – when there were three independent countries within the Kingdom of the Netherlands - will only

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<sup>15</sup> For example, in the 'Voorlichting overeenkomstig artikel 18, tweede lid, van de Wet op de Raad van State inzake de hervorming van de staatkundige verhoudingen van de Antilliaanse eilanden binnen het Koninkrijk' of the Council of State, it can be read: 'Special attention should be paid to [...] treaties which a guarantee Human rights for the citizens, [...]. This should ensure that at the time of the succession of the country of the Netherlands Antilles by two new countries and - as far as the three other islands are concerned - by the Netherlands, international legal obligations [internationaalrechtelijke relaties] are in good order.' Bijlage bij de brief van de Vice-President van de Raad van State van het Koninkrijk van 18 september 2006, identifier "kst-30800-IV-3-b1".

<sup>16</sup> B.D. van der Velden, 'Herinvoering van de doodstraf', *Antilliaans Dagblad*, 31 March 2008. According to the BES Civil Code, natural children only receive 1/3rd of what legal children receive. By Decision of 27 September 2010, the third section of the eleventh title of Book 4 of the BES Civil Code, dealing with succession when there are natural children involved, and a reference to legitimate children in Articles 4:879a and 4:940 were introduced, in violation with the ECHR Marckx judgment, without any objection by the Council of State to this newly introduced rules. (Tweede Kamer der Staten-Generaal, 2013-2014, 33771 nr. 3).

<sup>17</sup> The Algemene wet bestuursrecht contained until January 1, 2014 Art. 7.1: 'Anybody can use the Frisian language in communication with administrative bodies, insofar as they are located in the province of Fryslân.' This article was inserted on 1 July 1995 by the Act of 4 May 1995 Stb. 302 (23 543) and is a good example of the codifying approach of the Dutch government when the Charter was made applicable on Frisian (Tweede Kamer der Staten-Generaal, 1995-1996, nr. 15, p. 1017-1029).

<sup>18</sup> In the Second Amendment Act on the public bodies of Bonaire, Sint Eustatius and Saba (32368); these articles have subsequently been integrated into the IBES, see below. B.D. van der Velden, 'Kansen voor het Papiaments', *Antilliaans Dagblad*, 17 May 2010.

be in force in the European part of the Netherlands after this date.<sup>19</sup> In the pre 10-10-2010 situation of a federal state formed by three independent countries, such a territorial reservation might have been legitimate for the Charter. However, in the post-10-10-10 situation, with Bonaire, Saba, and St. Eustatius being, from a constitutional perspective, an integral part of The Netherlands in Europe, such a territorial reservation appears to contradict the aims and goals of the European Charter for Regional or Minority Languages and basic principles of state succession.

Woehrling discusses the territorial reservations made by several states at the moment of accession to the Charter. He writes with regard to The Netherlands in 1998: "It may be thought that, in the absence of objections from other states, the restriction to European territories of application of the charter is accepted as being in conformity with its purpose." However, it is clear that the definition of the languages mentioned in Article 1 does not specify an application limited to historic languages of Europe only.<sup>20</sup>

After 10-10-10 the territorial scope of the treaties in force for the Netherlands, including the ECRML and Framework Convention for the Protection of National Minorities (FCNM) is limited to the geographical European part of the Netherlands, unless the treaty is included on a positive list accompanying this Act (no. 32 047). Members of Parliament have inquired about the reasons for not including the ECRML, the FCNM and the European Charter of local Self-Government on this list to make them applicable to the BES islands. However, the Dutch government has persisted in its decision to introduce these new territorial reservations, even years after ratifying the treaties.<sup>21</sup> The Dutch government announced that following a five-year transition period, the BES legislation could be further aligned with Dutch law; however, this has never occurred.<sup>22</sup>

## Parliamentary discussions

The Dutch government's attitude towards the status of Papiamentu remains consistently striking: the language's name is used arbitrarily in red tape paper and legislation in three variants: Papiamento, Papiamentu, and Papiaments.<sup>23</sup> The definition of Papiamentu is also a problem: "The members of the CDA indicate that the Minister, in the explanatory memorandum, refers to these languages, English and Papiamentu, as minority languages. These languages should probably be defined as regional languages." Reply from the Government: "Yes, the term minority language is ill chosen, especially considering the possible negative connotations associated with the term 'minority'. Previously, the term "vernacular [volkstalen]" was used in the explanatory memorandum to the WolBES (see Kamerstuk 31 954, nr. 3, p. 23), but that term also creates confusion.

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<sup>19</sup> Wet ter 'Goedkeuring van verdragen met het oog op het voornemen deze toe te passen op Bonaire, Sint Eustatius en Saba, en van het voornemen tot opzegging van verdragen voor Bonaire, Sint Eustatius en Saba' (2nd Chamber, 2008–2009, law number 32 047).

<sup>20</sup> Jean-Marie Woehrling, *European Charter For Regional Or Minority Languages : A Critical Commentary*, Strasbourg: Council of Europe, 2006, p. 267.

<sup>21</sup> Tweede Kamer, vergaderjaar 2009–2010, 32 047, nr. 7, p. 2.

<sup>22</sup> H. Winter a.o., *Vijf jaar Caribisch Nederland: De werking van wetgeving*. Pro Facto 2015.

<sup>23</sup> See for example the declaration from the Minister of Foreign Affairs of the Netherlands, dated 16 January 2024, registered at the Secretariat General on 22 January 2024, "The Kingdom of the Netherlands declares, in accordance with Article 2, paragraph 2, and Article 3, paragraph 1, of the European Charter for Regional or Minority Languages, that it will apply to the Papiamento (Papiamentu) language on the Island of Bonaire the following provisions of Part III of the Charter". The official language on Bonaire is Papiamentu.

Henceforth, the government proposed to use more neutral terms such as "local colloquialisms" or "local official languages" in reference to Papiamentu and English on the BES islands."<sup>24</sup>

On 18 January 2010, Parliament discussed the state reform with the Secretary of State of the Interior and Kingdom Relations, Bijleveld-Schouten. One question is whether the local governments in the BES islands requested legal regulations regarding the use of Papiamentu and English. In the written report [Memorie van Antwoord], this question was not answered by the Secretary of State. MP Van Bochove (CDA) posed the question again: "the Secretary of State has not addressed my question. She has answered a different question, not the one I posed. However, my question was very serious because I know that these issues are prevalent in some places. I have not received a response to my question regarding the Charter of regional languages and minority languages. This is not an answer to the question I raised. My question was: Have any of the BES Island Councils advocated for the implementation of the European Charter for Regional or Minority Languages of 1992 to ensure the protection of Papiamentu and English? The Secretary tells a story about various languages, but we have already had that discussion. My question was very simple: Were there any requirements regarding this subject?" The answer provided by the Secretary of State was somewhat disillusioning: "Firstly, apologies for the fact that we did not understand the question from MP Van Bochove. His question was whether there was such a demand. The European Charter for Regional or Minority Languages is only applicable to the European part of the Kingdom. I do not know whether this has been request. A long time ago, Bonaire sent a letter regarding this issue. One would thus be able to consider this as a request."<sup>25</sup>

At this moment, January 2010, the language policy for the BES contained many restrictions on the use of Papiamentu. In WolBES, sent to the Parliament on May 26, 2009, only an oath in Papiamentu and English was included.<sup>26</sup> According to the Explanatory Report on art. 16 Wol BES, this law contains explicit language rules regarding the oath: 'Unlike the use of Frisian in the province of Friesland, in the General Administrative Law Act (AWB), there is no right to use English or Papiamentu in administrative matters. For this reason, the second paragraph [of Art. 16] states that the oath or affirmation can be taken in Dutch, Papiamentu, or English.'<sup>27</sup> There was no legal basis for the right to use English or Papiamentu in administrative matters foreseen by January 2010; therefore, the use of Papiamentu would be not allowed in public bodies and by the administration. The Explanatory Report clearly indicates that without a legal basis, there can be no question of the use of these languages. A legal basis was established only for the oath. It took until April 2010, a few months before the state reform, for a language regime in administrative matters to be sent to Parliament, allowing the use of Papiamentu and English.<sup>28</sup> Also in a later stage in the state reform process, the use of Papiamentu or English was made possible on ballot papers on Bonaire, Sint Eustatius and Saba: 'in the case of the election of the members of the island Councils, indications

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<sup>24</sup> Hand. 2e Kamer, 32 368, A, nr. 7, Tweede Aanpassingswet openbare lichamen Bonaire, Sint Eustatius en Saba, Nota naar aanleiding van het Verslag, 14 Sept. 2010.

<sup>25</sup> Hand. 2e Kamer, 31 954, nr. 14, Regels met betrekking tot de openbare lichamen Bonaire, Sint Eustatius en Saba, Verslag van een Wetgevingsoverleg, 21 Jan. 2010.

<sup>26</sup> Art. 15, 47, 77, 100 and 111 WolBES.

<sup>27</sup> 'Anders dan bij het gebruik van het Fries in de provincie Friesland het geval is vloeit het recht op het gebruik van het Engels of het Papiaments in het bestuurlijk verkeer niet voort uit de Algemene wet bestuursrecht. Om deze reden is in het tweede lid [van art. 16] bepaald dat de eed of verklaring en belofte in plaats van in het Nederlands in het Papiaments of het Engels kan worden afgelegd.'

<sup>28</sup> Tweede Aanpassingswet openbare lichamen Bonaire, Sint Eustatius en Saba – A

on the candidate list may be indicated in English or in Papiamentu'.<sup>29</sup> After the constitutional reform of 10-10-10, the BES Public Entities Act (Wol-BES) gives public entities Bonaire, Sint Eustatius and Saba the discretion to develop language regulations. Bonaire's officials are working energetically. On the International Day of the Mother Language at the end of February 2013, two draft ordinances are ready to be discussed in the Island Council, one on the spelling of Papiamentu, the second on the languages use in administrative communication.

Characteristic of the somewhat chaotic situation that had arisen after mixing existing Dutch Antillean legislation with Dutch legislation and ad hoc created BES legislation is the incomplete information provided by the Dutch Ministry of Interior in a paper titled 'Language Arrangements for the BES islands in Dutch legislation'.<sup>30</sup> The document contains only a part of the language legislation in force. Missing in this document are the 'Wet materieel ambtenarenrecht BES', the 'Rechtspositiebesluit ambtenaren BES' and the 'Regeling modelformulieren levensbeëindiging op verzoek en hulp bij zelfdoding BES'. The omission of essential laws regulating the use of languages by the government seems typical of a government that has created a maze where they cannot find their way out themselves. While the civil servants act BES (Wet materieel ambtenarenrecht BES) points in one direction—stating that all civil servants must learn Papiamentu within a year—the public bodies act (Invoeringswet openbare lichamen Bonaire, Sint Eustatius en Saba) makes it possible for civil servants to switch to Dutch when a dialogue with citizens in Papiamentu becomes difficult. Furthermore, no financial provisions have been made to provide additional (compulsory) language training for civil servants to fulfill the obligations of the Civil Servants Act BES.

### **Language legislation in the Netherlands Antilles (until 10-10-10)**

The opportunities for speakers to use a minority language should not be restricted after the redefinition or creation of new administrative boundaries according to art. 7.1.b ECRML. Therefore, in the case of Bonaire, it is essential to focus on language regulations and the actual language usage in the Netherlands Antilles on 10-10-10. Following the state reform, certain parts of the legislation of the Netherlands Antilles remained applicable to the BES-islands, while new laws were introduced in other areas. A comprehensive overview of the language legislation in the Netherlands Antilles leading up to 10-10-10 is required to fulfill the obligations of the Netherlands as outlined in art. 7.1.b of the Charter. A law on the official languages was applicable in the Netherlands Antilles since 2007, which at that time consisted of Curaçao and Bonaire (mainly

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<sup>29</sup> 'Indien het betreft de verkiezing van de leden van de eilandsraden, mogen aanduidingen op de kandidatenlijst in het Engels of in het Papiaments worden vermeld.' The Elections Decree, containing provisions for the implementation of the Electoral Act (Kiesbesluit, houdende voorschriften ter uitvoering van de Kieswet (Stb. 1989, 471) contains rules on the use of Frisian. Candidates for election of the Provincial Council of Fryslân and municipal councils in this province may use indications in Frisian. There were no rules envisaged regarding English and Papiamentu or an amendment of the Electoral Act in connection with the new constitutional status of Bonaire, Sint Eustatius and Saba as a public body within the Netherlands (Vergaderjaar 2008-2009, Kamerstuk 31 956). In the end the Elections Decree (Section IVa, art. Ya 2) was changed.

<sup>30</sup> Ministerie van BZK, dated April 2012, *Taalregelingen voor de BES-eilanden in de Nederlandse wet- en regelgeving*. This document is not a law (not even a Statutory instrument / AMVB) but only a listing of applicable laws on languages in the BES, though Kester and Buijink give such an impression by writing: 'after 6 years of European Dutch rule [...] Papiamentu is no longer recognized as an official language on Bonaire, as the language law and legislation agreement for the BES-islands (Taalregelingen voor de BES-eilanden, 2012) states that it is only "...to be used- to some extent- in education, government and the courts [...]" (Bak-Piard 2016: 99). EllenPetra Kester & Samantha Buijink. 'Language use, language attitudes and identity on Bonaire', *Journal of Postcolonial Linguistics* 6 (2022) p. 38-68.

Papiamentu-speaking), St. Maarten, Saba, and St. Eustatius (all three English-speaking).<sup>31</sup> Three languages were designated as official languages: Dutch, English, and Papiamentu. However, the law on the official languages only regulated that the government would follow the language choice of its citizens ('taalvolgend beleid'). The use of Papiamentu or English was allowed in the Island Council and Staten. Some legal documents could be drafted in Papiamentu or English (art. 2:4 lid 1 BWNA / Civil Code of the Netherlands Antilles), and there were some rights in criminal matters. Although some rights for the use of Papiamentu existed in the Netherlands Antilles, in many domains, the official status was either non-existent or fragile. For example, the language of the courts and legislation was (and still is) Dutch only. To fully assess the use of Papiamentu, there should be an overview of where within the government Papiamentu could actually be used. All communication of citizens with the ministries and tax authorities took place in Papiamentu, all election information was available in Papiamentu, and during disasters, information was accessible in Papiamentu.

As mentioned above, Bonaire, Saba, and St. Eustatius became public law entities within the European part of the Kingdom of the Netherlands on 10-10-10. On these islands, Dutch legislation replaced large parts of the existing legislation.<sup>32</sup>

### **Recodification of the *Wet gebruik Friese taal* (2012)**

In 2012, a bill on the Use of the Frisian Language (*Wet gebruik Friese taal*, 33 335) recodified the provisions for the use of Frisian in legal communication and administration. The objective of the bill was to ensure the right of all individuals in the province of Friesland to use their preferred language, whether Dutch or Frisian, in court and in interaction with the administration. In its assessment of the *Wet gebruik Friese taal* (33 335, no. 4), the Council of State determined that this bill does not address Papiamentu and English as official languages in the Netherlands. The Council of State pointed out that these provisions give Frisian a special position compared to other minority languages in the Netherlands. The government's explanation did not provide any justification for this. The government stated in the Additional Report (33 335, no. 4) that language in the jurisdiction on the BES islands is fully regulated in the Kingdom Act of the Joint Court of Justice. The report provided no justification for a different regulation regarding Papiamentu and English as official languages in the Netherlands. Articles 12 to 15 of the bill on the Use of Frisian Language Act (33 335, no. 2) contain a balanced regulation on the use of Frisian and Dutch in the courtroom. Such legislation – adapted to local needs – is still necessary for Papiamentu and English in 2024.

In Parliament, a motion was proposed to address the language issue on the BES islands. Papiamentu or English are the main languages spoken on BES and it is crucial for citizens to have access to documentation, both for administrative transparency and involvement of citizens in government. Currently, many Dutch government documents are not translated into Papiamentu despite their relevance on Bonaire. Therefore, the government was asked to translate relevant government documents into Papiamentu and English.<sup>33</sup>

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<sup>31</sup> B.D. van der Velden, 'Landsverordening officiële talen', *Tar-Justicia*, 2007 no. 3, p. 172-175; B.D. van der Velden, 'Over de ontwikkeling van het gebruik van het Papiamentu als rechts- en bestuurstaal', in: *Una bundel 2007* (Curaçao: UNA 2008) p. 163-198.

<sup>32</sup> Maxy Bak-Piard, 2016. 'Has Papiamentu survived on Bonaire?', in Nicholas Faraclas, Ronald Severing, Christa Weijer, Elisabeth Echteld, Wim Rutgers & Robert Dupuy (eds.), *Embracing multiple identities*, Curaçao/Puerto Rico: UoC/UPR 2016, p. 99–111.

<sup>33</sup> Tweede Kamer der Staten-Generaal, 2013-2014, 33 750 IV, Vaststelling van de begrotingsstaat van Koninkrijksrelaties (IV) voor het jaar 2014, Nr. 14, Motie van de leden Hachchi en Van Toorenburg. See also: 33 750 IV, Nr. 36, Brief van de Minister van



## Akademia Papiamentu & SPLIKA

As a scientist, it is possible to provide insight into existing regulations, a desired situation, and necessary legislation in the future. Additionally, it is possible to offer best practices and tools needed to establish a language policy and legislation that aligns with the social circumstances of a small island. However, to advocate for the residents of Bonaire, there needed to be an NGO focusing on the language interests of the islanders. The collaboration with SPLIKA served as a support base in Europe but also required a presence on Bonaire, where such an NGO had to be established first.

In 1990, SPLIKA was founded by people from the ABC Islands residing in the Netherlands with the goal of preserving their culture and identity, advocating for the recognition of Papiamentu, and upholding language rights in Aruba, Bonaire, Curaçao, and the Netherlands. SPLIKA's mission is to promote awareness of Papiamentu within the Antillean community and the broader society in the Netherlands. The organization regularly hosts language courses and events. SPLIKA took the initiative to safeguard the Kaha di Orgel and Tambu music as intangible cultural heritage. In September 2009, SPLIKA devised a plan to implement the Charter in Bonaire and potentially in the Netherlands. Despite having several statements from the Island Council and Aldermen of Bonaire, the primary concern was the necessity of a local NGO, a foundation with objectives akin to SPLIKA. Additionally, establishing a network with other NGOs focusing on regional languages was deemed essential. In 2010, SPLIKA reached out to the Frisian movement and government officials involved in protecting the Frisian language.<sup>34</sup> Noteworthy is SPLIKA's membership in the Europeesk Buro foar Lytse Talen (EBLT) and the creation of a Papiamentu division in the Living Languages association (Levende talen), a coalition of educators of living languages. Since its inception in 1984, the EBLT has been actively involved in promoting and safeguarding Frisian and Low Saxon in the Netherlands, the European Union, and the Council of Europe. Initially concentrating on Frisian, the EBLT has recently broadened its focus to include other languages such as Bildts and Papiamentu. The Fundashon Akademia Papiamentu from Bonaire, a local NGO dedicated to language matters, was established in 2010 with the objective, among others, of granting Papiamentu the same status as Frisian. Akademia Papiamentu collaborated with SPLIKA. Another NGO advocating for language also operates in Bonaire but is less active in the political arena.

To prevent the further dispersion and division of a small language with two spellings used in three countries under four divergent legal systems, an umbrella organization had to be established. In a motion of the Bonaire Island Council on December 22, 2009, the Executive Council (Bestuurscollege) was asked to contact the authorities in Curaçao and Aruba to establish a Papiamentu Language Union (Papiamentu Taalunie).<sup>35</sup> The 'Plataforma Union di Papiamentu/u' (United Platform for Papiamentu/u Language) was created as a partnership of organizations that promote the language and culture of Papiamentu speakers in the Kingdom. This platform has been active since February 2012 and includes representation from the following organizations: Fundacion Lanta Papiamentu (Aruba), Fundashon Akademia Papiamentu (Bonaire), Instituto Alsa Papiamentu (Curaçao), SPLIKA, and Levende Talen Papiamentu (Netherlands).

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Binnenlandse Zaken en Koninkrijksrelaties. Comparable issue, Diertens (D66) in: Tweede Kamer der Staten-Generaal, 2017-2018, nr. 18, item 9, Begroting Koninkrijksrelaties 2018,

<sup>34</sup> 'Splika zoekt Friese samenwerking', *Antilliaans Dagblad*, 29 Dec. 2010.

<sup>35</sup> Eilandsraad Bonaire, 22 Dec. 2009.

In November 2012, a public lecture was organized on Bonaire by the Akademia Papiamentu. I was invited to share my knowledge of law, language, and the State reform in the Kingdom. Additionally, meetings with the governor, members of the island council, and civil servants were organized to raise awareness about language issues. The main objective was to implement the necessary island regulations. The legislation introduced on 10/10/10 for the BES islands included some provisions on language. Several of the paragraphs regarding the use of Papiamentu were only applicable when a local bylaw was enacted. Similar to the Dutch General Administrative Law Act (AWB) which mandates the enactment of rules for the use of Frisian by local authorities, bylaws had to be drafted for the use of Papiamentu on Bonaire. A language ordinance needed to be enacted to formalize regulations on the use of Papiamentu in government documents.

In preparing my lecture, it became clear that after the State reform on 10/10/10, the Netherlands Antilles law on spelling and grammar of Papiamentu was abrogated by the Dutch government. Consequently, the official spelling and grammar of Papiamentu on Bonaire had to be formalized once again.

### **A spelling bylaw (2013)**

During the parliamentary debate on the BES legislation, the question arose as to which spelling of Papiamentu should be used on Bonaire after 10/10/10: the etymological spelling of Papiamentu as used on Aruba or the phonetic spelling of Papiamentu as used in the Netherlands Antilles.<sup>36</sup> Because the Dutch Antillean National Decree of 8 December 2008 on the spelling of Papiamentu and Dutch was not included by the Dutch government in the appendix to the Implementation Act on Public Bodies of Bonaire, Sint Eustatius, and Saba (hereinafter: IBES), it no longer applied to Bonaire after the transition from 10/10/10. From that moment on, there was no legally prescribed spelling for Papiamentu.<sup>37</sup> However, the island council of Bonaire was free to determine ‘which spelling for Papiamentu will be considered the official spelling to be used.’<sup>38</sup> In 2013, the new Papiamentu Island Ordinance stipulates that the phonetic spelling of the ‘Lista di palabra papiamentu’ and the associated ‘Ortografía di papiamentu’ published in 2007 by the Fundashon pa Planifikashon di Idioma (FPI) will be used as a guideline.<sup>39</sup>

### **A Regulation on Languages in Administrative Communication for Bonaire (2013)**

After 10-10-10, there was for a few months a language law for the BES, identical to the Dutch Antillean law.<sup>40</sup> After January 1, 2011, there was no legal framework for the use of official languages

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<sup>36</sup> Up to 10-10-10, Bonaire used the phonetic spelling in official documents and in schools, similar to Curacao. The *Extra* daily newspaper uses both versions side by side.

<sup>37</sup> The appendix as mentioned in art. 2 of the Introduction of the regulations relating to the public bodies of Bonaire, Sint Eustatius and Saba (Implementation Act on Public Bodies of Bonaire, Sint Eustatius and Saba, 31 957)

<sup>38</sup> 32 368, Second Amendment Act for Public Bodies of Bonaire, Sint Eustatius and Saba – A, no. 7, Note in response to the Report, September 14, 2010.

<sup>39</sup> Island ordinance of February 14, 2013, no. 1 establishing the spelling of Papiamentu in the public body of Bonaire (Papiamentu spelling ordinance).

<sup>40</sup> In accordance with the original Dutch Antillean ‘Landsverordening officiële talen’, English, Dutch, and Papiamentu were mentioned as the official languages for Bonaire, Sint Eustatius, and Saba. However, with effect from January 1, 2011, the BES

in the public bodies. The Implementation Act on Public Bodies of Bonaire, Sint Eustatius, and Saba contains - analogous to the AWB (General Administrative Law Act) in the Netherlands at that time - paragraphs on the use of languages in official communication of the public bodies. The Implementation Act on Public Bodies of Bonaire, Sint Eustatius, and Saba (IBES) takes as its starting point that the government, in principle, uses Dutch in written documents (art. 4d IBES). Residents of Bonaire can communicate with the government both in writing and orally in Dutch and Papiamentu (art. 4e IBES). Papiamentu can be used in written documents in the public body of Bonaire, provided that an island ordinance provides rules on language use. It was, therefore, important that the Island Council acted on this legislative assignment from the IBES. The language use of Dutch and Papiamentu in administrative communication was introduced with an Regulation on Languages in Administrative Communication. Bonaire opted for a 'volgend' / following language policy.

The Regulation on Languages in Administrative Communication stipulates that the special municipality of Bonaire (officially referred to as a "public body") can use Dutch or Papiamentu in written documents and oral communication with residents. Individuals are free to use Dutch or Papiamentu in written correspondence with the government. If a resident expresses a preference for communicating in Papiamentu, the special municipality of Bonaire will make an effort to honor this language choice. Dutch will only be used if a written document from the special municipality of Bonaire involves a decision or has significant legal implications. This can be seen as a 'following' language policy that is adhered to. Everyone is allowed to use Papiamentu during meetings of the Island Council of Bonaire. Any discussions in Dutch or Papiamentu will be recorded in the respective language.<sup>41</sup>

The Bonairean Regulation on Languages in Administrative Communication established a framework for language use, which could then be detailed in an island language policy plan, similar to how municipal language regulations in Friesland are supported by such a policy plan.<sup>42</sup> In Friesland, these municipal language policy plans outline language training for civil servants, budgets for the purchase of books in the regional language at public libraries, and the use of languages during crises. However, such a policy plan is currently lacking for Dutch government, The Dutch Caribbean National Service, institutions such as the Ombudsman, and the Human Rights Institute should also develop a policy plan for the use of Papiamentu. These policy plans could offer a guideline in evaluating the Netherlands' fulfillment of obligations outlined in III of the Charter.

The fact that there is a need for action is evident from the low participation of Bonaireans in the national elections. It appears to be a significant challenge in integrating the Bonaire into the Dutch democracy. In the 2012 parliamentary elections, with some television spots and radio commercials in Papiamentu, the turnout on Bonaire was 24.8%.<sup>43</sup> In the 2019 Senate elections were at the same day as the Island council elections, with an 'excessive use of campaign statements in

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Temporary Official Languages Act lapsed. B.D. van der Velden, 'Landsverordening officiële talen', *Tar-Justitia*, 2007 no. 3, p. 172-175.

<sup>41</sup> In addition, the Regulation contains paragraphs on translations, for which the OLB must bear the costs and on documents in two languages.

<sup>42</sup> A study was presented in the spring of 2022 that should form the basis for future language policy on Bonaire, <https://bonaire.nu/2022/03/08/studie-moet-basis-vorm-voor-toekomstig-taalbeleid-bonaire/>

<sup>43</sup> Kwalitatief Onderzoek naar effect Informatiecampagne Tweede Kamerverkiezingen 2012, Rijksdienst Caribisch Nederland, December 2012. Identifier "blg-203467".

Papiamentu' by political parties in Bonaire, with a turnout of 77.85% at the Island council elections, and 53,70% for the Senate.<sup>44</sup>

## Nederlandse Taalunie

The lack of a clear constitutional framework, which includes human rights and language rights, is evident in government contracts aimed at developing language policy for education in Bonaire. The BES Education Agenda 2011-2016 articulated the ambition to elevate the basic quality of education in the Caribbean Netherlands to an acceptable level by Dutch and Caribbean standards by 2016. One of the focal points is to respect the Caribbean language and culture. For instance, teaching materials in Papiamentu had to be developed for Bonaire, and efforts were proposed to tailor Dutch-language teaching materials to the Caribbean context.<sup>45</sup>

In the past decade, various organizations and individuals in the Netherlands and Bonaire have been advocating for an extensive assimilation policy for the Papiamentu-speaking residents of Bonaire. Students had to obtain a high level of proficiency in Dutch to be able to enter university level education in Holland, in order to guarantee a successful professional career. These efforts are likely well-intentioned, but are clearly conflicting with the principles outlined in the Framework Convention for National Minorities signed by the Netherlands and other international human rights documents. The Dutch Ministry of Education, Culture and Science asked in March 2014 the Nederlandse Taalunie / Dutch Language Union to conduct a research on the implementation of the Dutch reference framework for Language (& Arithmetic) and to develop a strategy for an adequate educational program in and of Dutch in the Caribbean Netherlands.<sup>46</sup> The Dutch Language Union recommends focusing on using high-quality and appropriate Dutch language in all educational activities starting from group 1 (4 years old pupils) onwards, preferably even earlier. This approach ensures that Dutch language's role in education and the pupils' development is properly acknowledged. Recognizing Dutch as a key to knowledge acquisition and diploma attainment, the Dutch Language Union believes that pupils benefit from reaching the highest possible level of proficiency in Dutch. To achieve this goal, schools should prioritize extensive Dutch language exposure and full integration of Papiamentu speakers. The report is used by the government as a policy paper.<sup>47</sup>

This approach of full immersion of children who predominantly speak Papiamentu at home in Dutch, the (former)colonial language, is at odds with Article 29c of the Convention on the Rights

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<sup>44</sup> On March 20, 2019, electoral college elections were held on Bonaire. The electoral college of Bonaire consists of 9 representatives who – in a similar way to the members of the provincial councils in the provinces in The Netherlands – elect the members of the Senate. *Onderzoek naar de effecten van de voorlichtingscampagnes voor de kiescolleges en eilandsraadsverkiezingen BES 2019*. Identifier "blg-897095".

<sup>45</sup> 'Onderwijsagenda voor Caribisch Nederland: samen werken aan kwaliteit', Hand. II Kamer, 2012–2013, 31 839, Nr. 294, Brief van de Minister van Binnenlandse Zaken en Koninkrijksrelaties aan de Voorzitter van de Tweede Kamer der Staten-Generaal, 19 juni 2013.

<sup>46</sup> *Nederlands op z'n BES*, Advies over het 'Nederlands in Caribisch Nederland' naar aanleiding van de adviesvraag d.d. 11 maart 2014 van OCW aan de Taalunie ten aanzien van het onderwijs Nederlands in Caribisch Nederland.

<sup>47</sup> The Language Union's report contained the idea to have the report discussed by two expert groups. The Language Union's report has been the subject of lengthy and sometimes emotional discussions in the meetings of these expert groups. Agreement could not always be reached. Each expert group documented findings and recommendations independently, leading to the creation of two reports: *Papiamentu in het onderwijs op Bonaire; een 'quick scan'* (Expert Group Papiamentu, July 2015) and *Inventarisatie inzake optimaliseren taalonderwijs Bonaire* (Expert Group Dutch, July 2015). On the policy making on the language use in school: Elaine Marchena & Maritsa Silberie, 'Status quo taal in het Caribisch Nederlandse onderwijs', CARAN-conferentiebundel 3. Taalbeleid in het Caribisch Gebied; heden en in de nabije toekomst. University of Curaçao, Willemstad 2017

of the Child (1989), which states that the education of the child shall be directed to the pupil's own cultural identity, language, and values. Article 30 of the same instrument instructs states where ethnic, religious, or linguistic minorities live or persons of indigenous origin exist, that children belonging to such a minority shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language. A key concept in the Convention on the Rights of the Child is that in all actions concerning children, the best interests of the child shall be a primary consideration. Based on an expert report UNESCO has encouraged mother tongue education in the early years of primary education since the 1950s.<sup>48</sup> UNESCO indicates that schools, preschools, kindergartens, and even parenting and educational programs often prove to be the first context for children from minority groups who become vulnerable due to language education policies that disdain their home languages and associated cultures.<sup>49</sup>

## Constitution and Charter

The two Bonairean language ordinances and the regulation in the IBES laid a foundation for legal protection of the language. At what levels could and should Papiamentu be safeguarded? Several parties have urged the inclusion of Papiamentu in the Dutch Constitution, others opted for the ECRML.<sup>50</sup>

In September 2010, the outgoing Balkenende IV cabinet submitted a proposal to include the language in the Constitution. The Council of State pointed out in the advice that not only Dutch and Frisian, but also Papiamentu and English should be regulated. On February 19, 2018, the Rutte III cabinet withdrew the bill. Minister Ollongren informed the House of Representatives that, in addition to Dutch and Frisian, other official languages should also be taken into account: English and Papiamentu. But is the inclusion of the statement that Dutch is the language of the Netherlands, and the government has the task to set rules with regard to Frisian, English, and Papiamentu, in any way helpful in protecting a regional language? Christian Union faction member Swannet Westland put it as follows: 'The proposed article in the constitution mainly has a symbolic value. The concrete protection must be arranged through the various legislation and bylaws.'<sup>51</sup> An instrument that provides insight into the variety of legislation and regulations that are important in assessing whether a good level of protection is given to regional languages is the European Charter for Regional or Minority Languages of the Council of Europe.

Part I of the ECRML defines what a regional or minority language is. This concerns a language that has been used 'traditionally' in a certain area of a state by a group of inhabitants who are smaller in number than the population of the rest of the state (Article 1). It is not important how large the group of inhabitants is that speaks a particular language; the Charter does not specify minimum numbers. In the opinion of the drafters of the Charter, the options menu is flexible enough to create an acceptable (minimum) framework to protect these languages. Dialects of

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<sup>48</sup> 'The Use Of Vernacular Languages In Education: The Report Of The Unesco Meeting Of Specialists, 1951', reprinted in: Joshua A. Fishman ed., *Readings in the Sociology of Language*, Berlin, Boston: De Gruyter Mouton, 1968, p. 688-716.

<sup>49</sup> EllenPetra Kester & Samantha Buijink. 'Language use, language attitudes and identity on Bonaire', *Journal of Postcolonial Linguistics* 6 (2022) p. 38-68.

<sup>50</sup> The initial aim was to include Dutch, and possibly Frisian, in the Constitution. Future research must determine whether the request to also include English and Papiamentu was intended to distract, or torpedo the revision of the Constitution in this subject.

<sup>51</sup> Berthold van Maris, 'An object of concern, Dutch anchored in the constitution', *Onze Taal*. Volume 76 (2007) no. 9, p. 221.

official languages fall outside the scope of the Charter; they are not considered languages under the Charter. Immigrant languages are also not protected by the Charter.

Part II of the ECRML sets out some general principles and requirements that the relevant (ratifying) State must apply to all regional and minority languages spoken in the State concerned that meet the above definition of Article 1 (Article 2, paragraph 1). Practice shows that the parties that have ratified the Charter themselves indicate which languages they consider eligible for protection under Part II. Part II of the Charter contains an obligation to respect the administrative unity of language areas, a principle of non-discrimination, the possibility of education in regional languages, and the promotion of contact between users of different languages. States should also strive to establish institutions that can represent the interests of users of regional and minority languages. In addition, the state should encourage and facilitate the use of minority languages.

Part III of the Charter then lists a number of policy areas. Obligations are formulated for each policy area that states could or should take in those areas. For example, the Charter contains 11 provisions or options regarding the use of minority languages in court. These provisions deal with the language used in criminal law, civil law, and administrative law. In the area of criminal law, the state can, for example, choose to guarantee the right that an accused can use the minority language or opt for the 'heavier' protection that the judge must conduct the proceedings in the minority language. Some of the paragraphs end with the words 'and/or', so that the provisions can be accepted cumulatively and are not alternatives. The Charter also provides different degrees of protection for the other areas, and the intention is that the state then chooses one of the given options. De Varennes calls this option a 'sliding-scale formula': at the bottom of this sliding scale, there is a minimum protection that a state could declare applicable to a language minority of smaller size, and at the top of the scale, there are 'much more generous rights' in case large groups of minority language speakers live in a country. A total of at least thirty-five provisions must be declared applicable, and within the various sub-areas, a minimum number of provisions that must be declared applicable is also indicated (Article 2, paragraph 2). According to the explanatory report of the Charter, the State must choose for each regional or minority language those provisions that are most appropriate and correspond to the situation of the language. It is not required that languages protected in Part II also be protected under Part III.

Part IV of the ECRML provides the Council of Europe with two instruments to monitor the situation of regional and minority languages in the States that have ratified the Charter. First, these countries must periodically report to the Secretary General of the Council of Europe on the measures taken in favor of languages. Secondly, a committee of experts will be established which, based on the material collected by them, will assess whether the measures taken by the state are in line with the articles endorsed by the state.

Declaring the ECRML applicable to Papiamentu on Bonaire is important for several reasons. Firstly, the application on Bonaire is important for the status of the language. The Dutch government becomes responsible for the measures taken for the language through the obligation to report the Committee of Experts. Non-governmental organizations, local authorities, and stakeholders (and it can be assumed that this group will expand in the future beyond just representatives of the Akademia Papiamentu and SPLIKA) can advocate to the Committee of Experts every five years where the language needs on Bonaire differ from the efforts made by the Public Entity and the national government. In future parliamentary discussions on legislation that impacts language policy, the selected paragraphs from Part III of the Charter's options menu will be pivotal.

How to draw the roadmap for an NGO for a policy for the application of the Charter on Papiamentu? In 2010, Dutch politicians in parliament were so preoccupied with state reform that it was difficult to gain attention for the ECRML. Over the following years, contacts were established with MPs, but reaching a majority in Parliament supporting the application of the ECRML on Bonaire did not seem to be a viable solution. However, several MPs did ask questions to the Minister of the Interior at crucial moments. The answers were mostly negative; the Charter could not be implemented, Bonaire was outside Europe, and protective measures were already in place. Pursuing legal action through the European Court of Human Rights also appeared unfeasible; all potential legal proceedings must be exhausted at the national level first, and a legal basis for initiating a court case was difficult to identify. The NGOs opted to use the framework and mechanisms of the ECRML to advocate for the situation in Bonaire.

The constitutional reform of 10-10-10 is, in fact, a state succession, through which the Netherlands in Europe also assumes responsibility for Bonaire, St. Eustatius, and Saba. The rules governing international treaties in state succession form a complex system, particularly when the state in question asserts its sovereignty to establish the rules as it sees fit.

According to the Dutch Council of State (Raad van State) the signing of treaties applicable for the whole territory of the Kingdom ought to be the standard: ‘Hierbij geldt echter het uitgangspunt van artikel 29 van het Weens verdragenverdrag, namelijk dat een verdrag in beginsel heeft te gelden voor het gehele grondgebied van de verdragsstaat, tenzij anders bepaald.’<sup>52</sup>

The fact that the territorial reservation is made by excluding the treaty from an annex to a Dutch Act in the process of the 10-10-10 state reform are not in line with the procedures laid down in the 2011 UN Guide to Practice on Reservations to Treaties (par. 5.1.2 and 5.1.3). Par. 5.1.2.(2) states: a successor State which is a party to a treaty as the result of a uniting or separation of States may neither formulate a new reservation nor widen the scope of a reservation that is maintained. Guideline 3.3.3 provides that compliance with the permissibility criteria of a reservation does not depend on the will expressed by other states parties *ex post facto* by raising no objections, but rather on their initial will as expressed in the treaty itself.<sup>53</sup>

Since the territorial reservation is only made by excluding the ECRML and FCNM from a list as an annex to a Dutch Act, it is more important to know that no reservations have been deposited between 2010 and 2024 at the Secretary General of the COE. This kind of ‘reservations’ in an annex to a national law, excluding after 10-10-10 a vulnerable part of the national territory from the protection under the ECRML and FCNM, international instruments guaranteeing human rights, are not permitted since they are incompatible with the object and purpose of the treaties (as stated in Art. 19 (c) of the Vienna Convention on the Law of the Treaties).

Such a territorial reservation (making it applicable in the Netherlands, but not on the Caribbean BES islands) of an international treaty that guarantees human rights cannot be made, because it is also contrary to national law, par. 43 of the Statuut of the Kingdom, guaranteeing an equal standard of human rights in the whole of the Kingdom. The Dutch Advisory Council on International Affairs (Adviesraad Internationale Vraagstukken) stated with regard to different

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<sup>52</sup> Raad van State, Ongevraagd advies over het Koninkrijk, verdragen en het Unierecht. Kenmerk W04.20.0361/I. Datum advies 14 juni 2021.

<sup>53</sup> See also guideline 3.1.5.1 according to which in determining the object and purpose of the treaty its terms in their context, in particular, the title and the preamble, and the preparatory work and the circumstances of its conclusion, should be taken into account and, where possible, also the subsequent practice of the parties.

regimes for Human Rights protection in The Netherlands and the BES: ‘These differences are hard to reconcile with the universality of human rights or with the fact that safeguarding fundamental human rights and freedoms is designated as a ‘Kingdom affair’ (article 43, paragraph 2 of the Charter for the Kingdom of the Netherlands).’ There is a possibility for specific and deviant rules in legislation for the BES, as codified in the Grondwet, but this article does not offer a possibility to differentiate in legislation within the goals of the ECRML and FCNM (Art. 132a lid 4 Grondwet).

Speaking on behalf of the European Union and associated countries, thus including The Netherlands, the representative of Ireland stated in 1996 in the Third Committee (Social, Humanitarian and Cultural) of the UN that States should avoid making wide reservations when ratifying or acceding to international human rights treaties, reservations aimed at excluding the applicability of core provisions of an instrument, and reservations that were contrary to the instrument's object and purpose. Such reservations were according to The Netherlands unacceptable under treaty law and called into question a State's commitment to the human rights instrument.<sup>54</sup>

The Kingdom of the Netherlands underwent in May 2017 a Universal Periodic Review (UPR) by the Human Rights Council of the United Nations for the third time. Four UN member states (Australia, Peru, Romania and the Russian Federation) explicitly requested during third UPR action to eliminate differences in human rights between the European and Caribbean parts of the Netherlands. For example, Peru requested the Kingdom: ‘[to] seek to harmonise the human rights norms in the four countries of the Kingdom according to the international standards.’<sup>55</sup> Four other member states (Liechtenstein, the United Kingdom, Ireland and the Republic of Korea) requested improved compliance with human rights in relation to the Caribbean countries and the Caribbean part of the Netherlands, including children’s rights, equal access to justice, training for prison staff and the mandate of the national human rights institute.<sup>56</sup>

In the recent report by the Dutch Human Rights Council for the 2022 Universal Periodic Review (UPR), the lack of human rights equality was addressed: ‘Concerns about equal rights for the Caribbean Netherlands. There is still a big difference between the protection of human rights on Bonaire, Sint Eustatius and Saba (BES islands) and in the European Netherlands. [...]. The Council wants the inhabitants of the islands to have the same set of human rights as all other Dutch citizens.’ In a response to this report, State Secretary of Kingdom Relations and Digitisation Alexandra van Huffelen shared the view of the Netherlands Human Rights Council that the differences in the protection of human rights between the Netherlands and the Caribbean Netherlands must be eliminated as much as possible. The state secretary stated this in a reply to a March 14, 2022 letter of the Human Rights Council.

As a final point, the exclusion of human rights as guaranteed in the Framework Convention for the Protection of National Minorities is a violation of the rules and guidelines laid down by the UN Special Committee on Decolonization.<sup>57</sup> The Dutch government is arbitrarily excluding the

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<sup>54</sup> Third Committee - 1a - Press Release GA/SHC/3388 36th Meeting (PM) 13 November 1996. <https://www.un.org/press/en/1996/19961113.gash3388.html>

<sup>55</sup> United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review – Netherlands, 18 May 2017, A/HRC/36/15, recommendations 131.105, 131.199, 131.202, 131.203.

<sup>56</sup> Ibid., recommendations 131.117, 131.119, 131.154, 131.198, 131.201.

<sup>57</sup> Factsheet Artikel 73 VN Handvest Niet zelfbesturende Gebieden, 1 juni 2022 Auteurs: G. Hoogers, G. Oostindie, W. Veenendaal; <https://www.tweedekamer.nl/downloads/document?id=4f84cf7c-2c15-4f8c-95f2-9f2070774b68&title=Artikel%2073%20VN%20handvest%20niet%20zelfbesturende%20gebieden.pdf>



Dutch citizens living on Bonaire and the other so called BES islands from their fundamental rights, including those guaranteed by the ECRML and FCNM.

But in the end, the complexity of state succession and human rights is relative. I want to recall a statement that was made during the period when the Batavian Republic was overrun by France in the years 1794-95. In the conversation that Father Schinck had on August 19, 1795, with the leader of the liberation movement of enslaved people on Curacao, Tula explains the consequences he attaches to the fact that the Netherlands was merely a vassal state of France: “we only seek our freedom. The French negroes have obtained their freedom. Holland has been taken by the French. Thus, we must be free here too.”<sup>58</sup>

### **The Committee of Experts of the Charter**

A unique aspect of the Charter is the five-yearly reporting by the Member States on the implementation of the Charter and the subsequent visit of a Committee of Experts. These experts not only engage with provincial and national officials but also initiate dialogues with language speakers. This Committee provided an ideal platform for the two NGOs engaging in the protection in Bonaire to discuss the status of Papiamentu. This open dialogue is crucial because there is no formal *judicial* recourse for NGOs seeking to enforce the rights outlined in the Charter or to make the Charter applicable.

During the first meeting of Akademia Papiamentu and SPLIKA with the Charter experts on March 3, 2015, the constitutional reform proved challenging for experts from across Europe, but the NGOs passed the first threshold, they were invited to present their views. The outcome of the experts' meeting was a call for the Dutch state to provide clarity about the situation on Bonaire. The Committee of Experts urged the Netherlands to clarify the division of human rights between the Netherlands and the BES Islands in the upcoming reporting round. The report by the Committee of Experts addressed the state reform structure:

‘the Committee of Experts was informed that, when preparing the changes in the status of Bonaire, Sint Eustatius and Saba, the Dutch authorities limited the scope of the treaties in force to the geographical European part of the Netherlands, unless the treaty was placed on a “positive list”; neither the Charter, nor the Framework Convention for the Protection of National Minorities appear on the “positive list”. Pursuant to Article 2.1 of the Charter, Part II of the Charter applies to all languages spoken within the territory of a state which comply with the definition of a regional or minority language in Article 1 of the Charter. It follows from this that Part II would apply to Papiamentu if Bonaire can be considered an integral part of the Netherlands, like any other municipality in the European part of the Netherlands.’<sup>59</sup>

During the second meeting with the Committee of Experts in 2019, SPLIKA and Akademia Papiamentu discussed the new constitutional structure, the impossibility of reservations on international treaties in the event of state succession, and the role of human rights within the

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<sup>58</sup> Verslag van Pater Schinck, 1795. Den Haag, Nationaal Archief, 1.05.12.01, inv.nr. 105.

<sup>59</sup> Report of the Committee of Experts on the Charter, 5<sup>th</sup> monitoring cycle (adopted on 16 June 2016), ECRML(2016)4.

Kingdom. Then, a simple question was asked by the Austrian chairman. In his view, such complicated legal structures cannot be explained to the other members (only a limited delegation from the entire committee participates in such an on-the-spot visit), mostly linguists - the smokescreen about the unique nature of the Kingdom, a the joker commonly used by the Dutch government, worked. But then a simple question was posed: isn't Papiamentu a historically spoken language in the Dutch part of the Kingdom? The response from the delegation from Akademia Papiamentu and SPLIKA was unanimous: yes, of course. Now one may wonder why this argument was not put forward much earlier, but there is a simple answer to that. Spoken language is a volatile medium, so the historical use of language can only be traced back to a moment in the past on the basis of written sources. The oldest information currently known about the use of Papiamentu in correspondence between Curaçao and the Netherlands can be found in a letter from 1783. This letter, which was part of a convolute of letters hijacked in 1783 by an English privateer and from that date stored in British archives, only became known in 2012.<sup>60</sup> The SPLIKA delegation offered on the spot to draft a short report on the historical use of Papiamentu in the Netherlands, and two days later, an overview of 250 years of use of Papiamentu in Europe was sent to the experts, and that same week the Dutch civil servants were informed about its contents.<sup>61</sup> The experts' report from 2019 states:

‘During the on-site visit, however, the expert committee was informed that Papiamentu has traditionally been present in the Netherlands, as it has been spoken in the Continental European part of the Kingdom of the Netherlands since the 18th century. The expert committee therefore encourages the Dutch authorities to clarify the traditional presence of Papiamentu in the European part of the Netherlands in the next monitoring round.’<sup>62</sup>

In the same period, SPLIKA and Academia Papiamentu also approached the Advisory Committee on the Framework Convention For The Protection Of National Minorities. The Advisory Committee urged the Dutch authorities to adopt a more flexible approach towards the scope of application of the Framework Convention and asked the authorities to enter into a formal dialogue with representatives of Papiamentu speakers on Bonaire and in The Netherlands.<sup>63</sup>

There seems to be some movement in the positions that have been taken. In 2020 the Dutch government appears to be leaning towards a more proactive policy. The chosen approach involved a two-stage process. Initially, a policy document (Bestuursafpraak) was drafted, demonstrating the Dutch government's intention to make the Charter applicable. Subsequently, a selection of applicable obligations from Part III of the Charter was made public.

## **Bestuursafpraak (2021)**

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<sup>60</sup> Bart Jacobs & Marijke J. van der Wal, ‘The discovery, nature, and implications of a Papiamentu text fragment from 1783’, *Journal of Pidgin and Creole Languages*, 30:1, 2015. p. 44-62.

<sup>61</sup> B.D. van der Velden, *Papiamentu, a language historically spoken in the European part of the Netherlands*, available via Academia.org

<sup>62</sup> Report submitted by the expert committee to the Committee of Ministers of the Council of Europe in accordance with Article 16 of the Charter, Sixth Report, Netherlands, MIN-LANG (2019) 15final.

<sup>63</sup> Advisory Committee On The Framework Convention For The Protection Of National Minorities, Third Opinion on the Netherlands, Adopted on 6 March 2019, Handelingen Tweede Kamer der Staten-Generaal, 2018-2019, 35000-VII nr. 103. Identifier "blg-893814".

During the annual budget debate in October 2020, the Minister of the Interior made the commitment to develop a policy for the protection of Papiamentu. After a year of online meetings between NGOs and civil servants from ministries and the Bonaire island administration, an 'Administrative Agreement for Papiamentu on Bonaire' was signed in March 2021. The two NGOs, Akademia Papiamentu and SPLIKA, played a crucial role in the meetings and the drafting of the Administrative Agreement.

On March 11, 2021, an administrative agreement was signed between the Minister of the Interior and Kingdom Relations, the Minister of Education, Culture, and Science, the Minister for Primary and Secondary Education, and the special municipality Bonaire to safeguard Papiamentu as the original language on Bonaire for current and future generations. The 'bestuursafpraak Papiaments op Bonaire' recognizes Papiamentu as a full-fledged and independent language on Bonaire, alongside Dutch, Spanish, and English. The goal of the administrative agreement is to protect and promote Papiamentu and to enhance the language's position within existing legislation and regulations. The aim is that by 2030, all children leaving school will not only speak Papiamentu but also be able to read and write it. An organization dedicated to maintaining the quality of the language and culture associated with Papiamentu will be founded. Furthermore, through the Bestuursafpraak, funds to enhance the proficiency of Papiamentu among civil servants working on Bonaire must be created. Additionally, the ministries signing the Bestuursafpraak opened the road for the recognition of Papiamentu on Bonaire under the European Charter for Regional or Minority Languages. Papiamentu should be protected in Bonaire under Part III of the Charter. Finally, the status of Papiamentu in the Netherlands will also be assessed, when possible under Part II of the Charter.

### **Vocational Education for the hospitality branch (2021)**

Despite the clear principles of the Bestuursafpraak, language policy for Papiamentu remains a complex challenge. An Amendment to the BES Education and Vocational Education Act, which proposed providing education and examinations in vocational education for chief cooks on Bonaire in Papiamentu instead of Dutch, was discussed in the Dutch Parliament in 2021.<sup>64</sup>

On Bonaire, exams in Papiamentu were only offered at the first two levels of secondary vocational education.<sup>65</sup> At the higher levels, only Dutch is used. The Amendment to the BES Education and Vocational Education Act makes it possible to offer vocational education and the exams at levels 3 and 4 on Bonaire in Papiamentu. Vocational education in Papiamentu on Bonaire, according to the government, caters to the specific needs of the local labor market and enables employees in the hospitality sector without sufficient command of the Dutch language to take the next step in their career development.

The bill was drafted after a request from Bonaire, supported by a coalition of Vocational Education teachers, students, the Bonairean business community and subsequently backed by the Island Commissioner for Education, the Bonaire Executive Council, and the Bonaire Island

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<sup>64</sup> Wijziging van de Wet educatie en Beroepsonderwijs BES, in verband met uitbreiding van de uitzonderingsmogelijkheid om het onderwijs en de examens van mbo-opleidingen op Bonaire in het Papiaments aan te bieden (35893), *Staatsblad*. 2023, 8.

<sup>65</sup> Vocational Education (MBO) offers education at four levels, from 1 to 4. At level 1 assistant training is offered, at level 2 provides a basic vocational training. One level 3 is a professional training and level 4 education is training for middle management training or specialist training. Source: <https://www.nuffic.nl/>

Council.<sup>66</sup> This amendment to the legislation will enable workers of Bonairean descent to pursue a career in their professional field. This modification will help prevent an increase in unemployment on Bonaire. Furthermore, this amendment means that employers are no longer obligated to seek employees elsewhere but can recruit them on Bonaire itself for higher-level positions.

The debate in parliament was an accumulation of gut feelings and assumptions that were not scientifically based. El Yassini (VVD) insisted on solving ‘the real problem’, the language deficits in Dutch. Students on Bonaire studying at Vocational Education level 3 or 4 need a good command of Dutch because they will have ‘to maintain contacts with suppliers and the government’ - a strange idea since the local government on Bonaire primarily use Papiamentu, and business partners generally use Papiamentu or English. The main argument used to open the possibility for students to continue their studies in The Netherlands is that exams should be in Dutch. A peculiar notion unsupported by facts. Many students on Bonaire opt to pursue their studies in an English-speaking country. While the Netherlands was previously a favored destination, in recent years, countries like Canada have become more appealing for higher education. Approximately 20 students from Bonaire travel to the Netherlands annually for higher education (most of them after high school). However, even for these students, Dutch is not always a relevant language of instruction. Many of them choose to pursue an English-language education while studying in the Netherlands. It was a debate full of prejudices that distanced Bonaire even further away from Holland. But in the end, the Amendment to the BES Education and Vocational Education Act was accepted in parliament, and examinations for chief cooks are possible in Papiamentu.

### ***The Declaration of Applicability of the Charter on Bonaire***

There is no clear legal framework in Dutch constitutional law for a parliamentary procedure leading to the application of Part III of the Charter on Bonaire. The Message to the King that the Minister of Foreign Affairs sent on June 17, 2022 states: ‘The treaty requires the approval of the States General before the Kingdom can be bound by it.’ This is strange reasoning for a treaty that was ratified by the Netherlands in 1996 and entered into force in 1998.<sup>67</sup> The message from the Minister of Foreign Affairs shows that the Council of Ministers of the Kingdom intends to ‘submit the treaty to the Advisory Division of the Council of State of the Kingdom for advice’, and then ‘to submit the treaty for tacit approval’ to the Senate and the House of Representatives of the States General. A cumbersome procedure, the Council of State responded that after a choice has been made from the obligations of Part III, ‘on the basis of Article 3, paragraph 2, of the Charter, it is sufficient to notify the Secretary General of the Council of Europe, pursuant to which specified obligations Part III are chosen, then the extension of application the becomes applicable.’ Because there is an extension of the existing scope of the Charter in Papiamentu on Bonaire, the use of the term ‘declaration of applicability’ or ‘notification of territorial application’ seems to be the correct terminology. However, according to the Council of State, it is not possible to obtain only validity for Bonaire. A declaration of the application of the Charter on Bonaire implies that this treaty will also apply on Saba and St. Eustatius. This is important, both English and Papiamentu, languages

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<sup>66</sup> ‘Niveau 3 koksopleiding in Papiamentu op Bonaire’, *Antilliaans dagblad*, 4 Dec. 2022.

<sup>67</sup> The model for the approval of treaties from the *Regulatory Manual* was probably followed, <https://www.kcbr.nl/beleid-en-REGgeving-ontontwikkelingen/Draaiboek-voor-de-regulation/modelbriefs-en-FORMS/voordracht-tacit-approval-treaty>

spoken on the BES islands, can be regarded as regional languages spoken in the Netherlands that require special attention.<sup>68</sup>

As previously indicated, Papiamentu is spoken in two other countries of the Kingdom. For the Dutch government there is no need to act for the other countries, as the Explanatory Note states: 'The Charter will not apply to Aruba and Curaçao because Papiamentu is an official language in those countries and the Charter pursuant to art. 1(a)(ii) can only be applied to regional languages and languages different from official languages.' A missed chance. The Explanatory Report to the Charter shows that the drafters also made room for non-dominant languages that do have an official status: 'If a State wishes such a less widely used official language to benefit from the measures of protection and promotion provided for by the Charter, it is therefore enabled to determine that the charter shall apply to it. Such an extension of the application of the Charter to an official language then holds good for all articles of the charter, including Art. 4, par. 2.'<sup>69</sup> Aruba and Curaçao can also request a notification of territorial application of the Charter, an approach that could limit the fragmentation the language is currently suffering from.

### **What to choose from the Selection Menu?**

To declare the Charter applicable to Papiamentu on Bonaire, a list of applicable obligations from part III, with an explanatory report, was drafted by the Ministry of interior. At the beginning of September 2022, the Council of State advised the government to provide a more thorough explanation of the obligations it wishes to undertake when declaring the Charter applicable to Bonaire.<sup>70</sup>

There are several policies available to select obligations from the menu. A first option would be to select obligations that align with the legislation and practice in the Netherlands Antilles. Art. 7(1)(b) of the Charter states: "the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question". In other words, a change in administrative borders may not impede the use of minority languages. To meet the criteria of Art. 7(1)(b) of the Charter, it is essential to explore the existing legal and factual opportunities for the use of Papiamentu before 10-10-10.

A second option is to take the socio-linguistic reality and needs into account, to establish a connection with the relevant obligations in the Charter. According to the explanatory report of the Charter, the state must select, for each regional or minority language, the obligations that are most suitable and align with the language's status. A socio-linguistic research study should be conducted in this case. Whether this necessitates a national legislative change can be taken into account, but this cannot be a decisive reason.

The third option would be to opt for the obligations that apply to Frisian. This approach would ensure that the obligations are in line with the Dutch legal system.

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<sup>68</sup> B.D. van der Velden, 'Nos ta papia Papiamentu', *NJB*, 2021, no 21.

<sup>69</sup> Explanatory Report Charter, par. 51. In: *The European Charter for Regional or Minority Languages : collected texts*, Strasbourg: Council of Europe 2010. (<https://rm.coe.int/16800cb5e5>)

<sup>70</sup> The Advisory Division of the Council of State offers the government impartial guidance on legislation proposed in Parliament by the government; all drafts orders in council prior to their issuance by the Crown; all bills to approve a treaty that the government presents to Parliament for ratification (Council of State Act, art. 17).

Finally, the policy chosen by the Dutch government, which prohibits changing any laws and only allows obligations that align with existing national laws to be pursued in order to achieve a minimum level of protection, seems to be the worst option.

However, when it comes to the choice of obligations, there appears to be no room for a second chance. Over the past 25 years, the Frisian movement has been advocating for a reassessment of the obligations. They have been advocating for a change for a quarter of a century, but they have observed that once the 35 obligations are chosen, the government does not want to revise or alter them.<sup>71</sup>

### **The Advisory Division of the Council of State of the Kingdom**

On September 7, 2022, the Council of State of the Kingdom published an advisory opinion on the application of the Charter on Bonaire. The Charter comprises two protection regimes. Part II encompasses all languages that are not official in a country and meet the definition in art. 1; Part III focuses on languages specifically designated by the government, where at least 35 obligations must be declared applicable from a menu of options in various policy areas (art. 2, 2nd paragraph of the Charter). Until 2024, only Frisian was protected in the Netherlands under Part III. The Charter includes in Part III obligations on various themes: education, justice, public administration, media, cultural activities, economic and social life, and the promotion of international cultural exchange. Each theme often involves multiple levels of protection, ranging from limited to more comprehensive. This framework allows for the protection of very small languages with limited use as well as more widely spoken languages that require a higher level of protection.

During the process, it becomes evident that writing a policy or legislation is difficult due to the lack of necessary socio-linguistic data.

A list of obligations from Part III were chosen for Papiamentu. In the opinion of the Council of State, there was a lack of clarity regarding how the Netherlands can guarantee the 35 obligations selected as applicable to Papiamentu in the ‘Explanatory note’ and the ‘Appendix to the explanatory note’. Thus the Council of State came to a negative opinion. This primarily stems from the insufficient substantiation of the measures chosen by the Government from the menu of Part III. There is no legal barrier or constitutional hinder to applying the Charter to Papiamentu; the Council of State suggests that Part II of the Charter can be directly applied. Due to the lack of substantiation, the Council of State advised the Government on September 12, 2022, ‘to temporarily abandon the recognition of Papiamentu on Bonaire under Part III of the Charter and to suffice with declaring Part II of the Charter applicable.’ A finding that does not do justice to the Administrative Agreement for Papiamentu on Bonaire and the persistent demand from Bonaire for the Charter's applicability over the past 15 years.

The government needs to revise its preparations for Part III. However, one may question the role of the Council of State in this matter; it seems that in the Opinion, the Council of State is already looking ahead to the five-yearly evaluation conducted by the Committee of Experts on the ECRML (art. 15). Nevertheless, in this five-yearly evaluation, the input of language speakers is crucial to understand how the Charter is implemented in practice. This essential knowledge is

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<sup>71</sup> Recently there was some development on this issue: Antwoorden op vragen commissie over de bestuursafpraak Friese Taal en Cultuur 2024-2028, Tweede Kamer der Staten-Generaal, 2023-2024, 36410-VII nr. 117.

missing from the Council of State's advice, which then presents an inaccurate picture of the language situation on Bonaire. For instance, the Council of State suggests that it is unclear whether the endorsed measure regarding cultural policy under Article 12 of the Charter can be implemented: 'If it appears that the provisions cannot be applied in practice, it recommends reconsidering the applicability of these measures.' Thus, three out of the 35 obligations were eliminated by the Council of State, because the government has not specified its actions in the cultural sector for Papiamentu. It is evident that the sole policy intention the Government made in the 'Appendix to the explanatory memorandum' stating that 'Dutch cultural policy aims at a diverse cultural policy, from and for everyone,' is insufficient. It is precisely in the cultural domain that the Akademia Papiamentu has been organizing activities related to Papiamentu since 2009, including lectures, an annual dictation contest, and book publications. Moreover, cultural events involving Papiamentu speakers from various countries are held regularly. 'Arte di Palabra' is a recitation competition for students from Bonaire, Aruba, and Curaçao, which has been held annually since 1999.<sup>72</sup> Participants from the different islands have also been engaging in international miniature boat competitions, recognized as intangible cultural heritage by UNESCO, for almost half a century, and Bonaireans often win.<sup>73</sup> There is in the 'Appendix to the explanatory memorandum' no mention of the Bonaire Culture Policy Note (2010) and the activities of the SKAL (Bonaire Museum). And since 2009, board members of NGOs from all three islands and from Netherlands have been participating in joint sessions studying the Charter, and established a Papiamentu Language Union.

## Education

The Council of State has noted serious shortcomings in the 'Explanatory Memorandum' and Appendix regarding the Netherlands' efforts in education. Concerning education, a Member State may commit to selecting, without prejudice to education in the official language, one of the following measures:

Art. 8 Paragraph 1 under b.

- i. to provide primary education in the relevant regional or minority languages; or
- ii. to provide a significant part of primary education in the relevant regional or minority languages; or
- iii. to provide, within primary education, for the teaching of relevant regional or minority languages as an integral part of the curriculum; or
- iv. to apply one of the measures mentioned under i to iii at least to students whose families request this and whose numbers are considered sufficient;

The flexibility of the Charter becomes evident in the variety of measures it offers in primary education, ranging from education entirely in the regional language to including it as a subject in the curriculum or as a choice for parents. In June 2022 the government opted for Art. 8, Paragraph 1 under b, the obligations i and iii.<sup>74</sup> Flexibility. But this article does not provide for a combination of options. It is implied by the use of the word 'or' that a member state can only select one of the

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<sup>72</sup> <http://artedipalabra.com/historia/>

<sup>73</sup> Intangible Heritage, 2nd year, 2013, no. 3.

<sup>74</sup> 22 June 2022, Toelichtende Nota.

Roman numerals; no combination is allowed. Reed Dickerson explains this logic of legal drafting: ‘tells you to “take your pick”. So much is clear. Beyond this point, difficulties arise. One difficulty is that each of these two words is on some occasions ambiguous. Thus, it is not always clear whether the writer intends the inclusive “or” (A or B, or both) or the exclusive “or” (A or B, but not both).’<sup>75</sup> The Explanatory Report of the Charter clarifies that the word ‘or’ in this context refers to an exclusive ‘or’.<sup>76</sup>

The Member State undertakes to declare at least 35 obligations from the menu applicable, with a minimum number prescribed per theme (Article 2(2) of the Charter). From the above quoted art. 8 Paragraph 1 under b the government declared both i and iii applicable. This is not an option, due to the word ‘or’, and the Council of State therefore ruled that the minimum of 35 had not been achieved. In a similar manner, art. 8 paragraph 1 under c and under d, the word ‘or’ was misread by the government, and not six but only three measures were endorsed. It cannot be the case that a human rights treaty remains ineffective because an civil servant cannot use the word ‘or’.

To return to the data that are actually needed to make a balanced and responsible choice for language policy at school, reference can be made to the recently defended and published Phd thesis by Melissa M. J. van der Elst-Koeiman. She substantiates, based on empirical data, the importance of the mother tongue within bilingual reading education on the islands of Aruba, Bonaire, and Curaçao, taking into account the specific post-colonial setting.<sup>77</sup>

## Language choices in the courtroom

In civil proceedings, a Member State can choose the obligation that guarantees that judges, at the request of one of the parties, conduct the proceedings in the regional or minority language (Article 9(1)(b), option i ECRML). A less far-reaching measure is contained in art. 9(1)(b) Option ii ECRML, which allows litigants appearing in person before a judge to use the regional or minority language without incurring additional costs. From art. 9 has been chosen the 1st paragraph, under b, option I, and the comparable broad use is also made possible in criminal and administrative proceedings. For the Council of State, this obligation is not feasible in the judicial system of the Dutch Caribbean. They state that ‘many professionals in Bonaire (including judges and lawyers) [have a diverse background and] a significant proportion come from the European Netherlands’. How far removed is this comment from the daily reality in the Court. During Judge Angeline Martijn’s Installation Speech at the Court of First Instance on September 16, 2022, she spoke the following words in Papiamentu: ‘For example, I was encouraged by the supervising judges to speak the language that the parties spoke during the hearing of cases, and not only the three official languages of the court – Dutch, Papiamentu, and English – but also Spanish. [...] Article 6 of the European Convention on Human Rights (ECHR) guarantees the accessibility of us as judges and a fair trial for everyone.’<sup>78</sup> In addition, the Council of State states that the Supreme Court, as the

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<sup>75</sup> Reed Dickerson, “The Difficult Choice Between “And” and “Or””, 46 *ABAJ* 310, 313 (1960)

<sup>76</sup> Explanatory Report Charter, par. 45. In: *The European Charter for Regional or Minority Languages: collected texts*, Strasbourg: Council of Europe 2010. (<https://rm.coe.int/16800cb5e5>)

<sup>77</sup> Melissa M. J. van der Elst-Koeiman, *Mother Tongue Literacy Matters, The Role of Papiamentu in Advanced Bilingual Reading Education in the Dutch Caribbean*, S.l. : s.n. 2024, ISBN 9789464734966.

<sup>78</sup> Installation speech by Angeline Martijn, September 16. 202, posted on the Facebook pages “GEAAruba”, “hvJCuracao”, “GEABonaire” and “courthouseSXM”.



highest court, is also the appellate court for Bonaire - without drawing any further conclusions from this fact.

A comparison with the options chosen for Frisian from the menu makes it clear that a significantly higher level of protection has been chosen for the use of Papiamentu in the courtroom; too high according to the Council of State.<sup>79</sup> A balanced legal framework has been created for Frisian in the Frisian Language Use Act. At the Common Court, the Kingdom Act only states: ‘The Court and the Courts of First Instance shall give judgment in Dutch. Furthermore, the official languages at the Court of Justice and the Courts of First Instance are English, Dutch, and Papiamentu (art. 9). However, a legal definition of the scope of the concept ‘language of instruction’ is lacking. This is where the government’s principle takes effect, namely ‘that Papiamentu on Bonaire is brought under Part III of the Charter [without] additional legislation, regulations and measures.’<sup>80</sup> When the Charter was ratified in 1996, a legal framework for Frisian was brought up to standard in previous years. In 1995, Frisian was included as an administrative language in the General Administrative Law Act and other parts were included in the Use of Frisian Language Act.<sup>81</sup> Home Affairs officials’ failure to take this necessary approach in 2020 has now set the process two years behind schedule. In order to provide an appropriate legal framework for Papiamentu, the Kingdom Act on the Common Court of Justice can be adapted based on the example of the Act on the Use of Frisian Language in Legal Transactions, possibly with a broad scope of application, but at least with the obligation that what is ‘written in Frisian [ Papiamentu/English] is spoken, if it is included in the official report, it will be stated in that language’ (Article 6(1) of the Use of Frisian Language Act). The most accurate possible representation in the official report is important because in cassation the parties and witnesses involved do not have their say and the case will be settled on written documents.

## **Language use by administrative authorities and public services**

Art. 10 of the Charter provides a menu of options regarding the use of language by administrative authorities and public services. It is peculiar that the ‘Appendix to the explanatory note’ containing an inventory of legislation and regulations crucial for the recognition of Papiamentu on Bonaire under Part III of the Charter does not include a reference to the Bonaire Island Regulation on Languages in Administrative Communication.

Paragraph 2 of art. 10 addresses the use of a regional or minority language by regional or local authorities. Nevertheless, on the BES, there is no provincial intermediate layer and provincial tasks are divided between the Public Entity and the State. The Council of State has indicated that, in the absence of a regional authority, the provisions of Paragraph 2 of art. 10 can therefore be declared applicable to local authorities:

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<sup>79</sup> Papiamentu: art. 9, 1<sup>st</sup> paragraph, part a, under i, ii, iv; part b, under i; part c, under i, ii, iii; Frisian: art. 9, 1<sup>st</sup> paragraph, part a under ii; iii; part b, under iii; part c, under ii, iii. 2<sup>nd</sup> paragraph, part b.

<sup>80</sup> Administrative agreement for Papiamentu on Bonaire, p. 7.

<sup>81</sup> Act of 14 September 1995 amending the Act of 11 May 1956 (Stb. 242), containing certain regulations regarding the use of the Frisian language, in particular in legal transactions.

‘The Department notes that the article includes several provisions that apply to ‘regional authorities’ or ‘local authorities’. The government declares these provisions applicable, specifically referring to the Island Council. [...] The Department raises concerns about the application of provisions on both regional and local authorities, since there is only one level of government. The Department advises the government to explain this in more detail and, if necessary, to declare only the provisions regarding local authorities or regional authorities applicable. This means that additional provisions from the Charter must be declared applicable to meet the minimum obligation of 35 applicable provisions.’

The Council of State ‘questions whether provisions on both regional and local authorities should be declared applicable, where ultimately it concerns one level of government.’ The number of obligations that can be chosen will therefore shrink further. Is there a way out of this? It should be clear that the ‘or’ in art. 10 paragraph 2, as Reed Dickerson writes, is intended to be an ‘inclusive "or" (A or B, or both)’.<sup>82</sup>

### **The Charter applicable on Papiamentu on Bonaire (part III)**

The initial attempt to implement the Charter failed at the Council of State, the Ministry of the Interior had to start over. However, in this process, the Ministry did not adhere to the recommendation made by the Committee of Experts, which was to ‘continue involving Papiamentu/u speakers in the current process to determine which provisions could be accepted under the Charter.’<sup>83</sup> The procedure to make the Charter applicable can be compared to a black box, with language speakers and NGO’s observing it from a distance, waiting to see the outcome; there was no interaction between the government and NGO’s as advised by the Committee of Experts in this process.

The Kingdom Council of Ministers decided on September 29, 2023 to use the fast lane, and choose for the applicability of the Charter on Bonaire (part III) and in the Netherlands (part II) for Papiamentu to the Council of Europe, a preliminary scrutiny procedure in Parliament.<sup>84</sup> The announcement of the applicability of the Charter was be sent to parliament on 22 November 2023. There were no objections raised in the month after.

From Art. 8, Paragraph 1 under b, the obligations i was chosen, on Bonaire primary education will be provided in Papiamentu.

On 22 January 2024, the Secretariat General registered a declaration from the Minister of Foreign Affairs of the Netherlands, stating that the Kingdom of the Netherlands accepts the application of the European Charter for Regional or Minority Languages for the Caribbean Part of the Netherlands (the islands of Bonaire, Sint Eustatius, and Saba).

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<sup>82</sup> Reed Dickerson, ‘The Difficult Choice Between “And” and “Or”’, 46 *ABAJ* 310, 313 (1960).

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<sup>84</sup> Ministerraad van het Koninkrijk, Besluitenlijst van de vergadering gehouden op 29 september 2023. In the Netherlands, the Government, treaties that are not at odds with the constitution, can be presented to Parliament in a shortened procedure. It is sent ‘to both chambers of Parliament before ratification. If Parliament does not react within a period of 30 days, the treaty is agreed to by silent consent. If 15 members or more of the First Chamber or 30 members or more of the Lower House declare that the treaty needs explicit consent, then the treaty has to pass both the Houses like a bill of law. This procedure is called the “voorhang” procedure.’ Seppe Tiiinen, ‘Role of Parliament in the conduct of foreign relations’, Report prepared by Mr. Seppe TIITINEN (Finland), adopted at the Beijing Session (September 1996), Retrieved from <http://www.asgp.co/node/29429>.

On 1 July 2024, a letter from the Minister of Foreign Affairs of the Netherlands was registered at the Secretariat General in the presence of representatives of SPLIKA, Academia Papiamentu, and the Island government of Bonaire. The Kingdom of the Netherlands declared that the principles outlined in Part II of the Charter will be applied to the Papiamentu (Papiamentu) language used in the Netherlands (in Europe).

## Final remarks

The Charter aims to protect and promote the use of vulnerable languages, and the progress in Papiamentu development is remarkable. Up to now, certain languages such as Tamazight spoken in Melilla and Dariya of Ceuta have been safeguarded by Spain under Part II of the Charter, as per the insistence of the Committee of Experts on the European Charter.<sup>85</sup> The efforts made by the residents of Bonaire to secure protection under Part III of the Charter through motions in the Island Council, letters of the Executive Council, multiple visits to the Committee of Experts (COMEX), and the Administrative Agreement represent an unprecedented approach. This also underscores the significance of maintaining a dialogue with the people for whom human rights treaties are designed, as demonstrated through the Committee of Experts.

The COMEX is the real gateway to the Charter, where a path to courts to realize these linguistic rights does not seem an option, the dialogue the COMEX engages is a procedure with guarantees.<sup>86</sup>

There is a need for reliable sociolinguistic data, and a provision on this subject should to be added to the Charter, as to a Framework convention.

There are still governmental agencies that remain out of sight of the Charter. To what extent are the publications of planning agencies, and high councils of state, such as the national Ombudsman, sufficiently accessible to residents of Bonaire?<sup>87</sup> By these agencies, as well as the Rijksdienst Caribisch Nederland, language policy plans should be drafted, that outline at least language training for civil servants, language choices vis-a-vis citizens, and the use of languages during crises.

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<sup>85</sup> Recommendations of the Committee of Experts, 2nd monitoring cycle, ECRML (2008) 5: ‘The Committee of Experts would welcome information from the Spanish authorities on the situation of the Tamazight language, including whether there has been a traditional and continuous presence of the language in the Autonomous City of Melilla.’ See also: A. Nogueira Lopez et al. ed., *Shaping Language Rights - Commentary on the European Charter for Regional or Minority Languages in Light of the Committee of Experts’ Evaluation* (Strasbourg : Council of Europe, 2012) p. 57, 63, 128.

<sup>86</sup> The right to education in one’s own language is for example defined in a series of international treaties, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Many of these instruments were used as legal grounds by Turkish-origin migrant workers in the Netherlands. While there was once an opportunity for Turkish-speaking children to receive education in their native language in the Netherlands, it was eliminated in 2004. Subsequently, three Turkish-Dutch associations took legal action in The Hague to restore their educational rights. The initial court ruling in The Hague on November 13, 2013 (ECLI:NL:RBDHA:2013:15232) stated that although the international treaties acknowledged language rights in education, this was considered a social right rather than a fundamental human right. The court emphasized that the government has the authority to establish policies in this area and possesses a certain degree of discretion (*‘beleidsvrijheid’*). The court acknowledged the benefits for parents and children in having education in their mother tongue, as argued by the Turkish-Dutch advocates from various sources. However, the court concluded that these arguments do not impose a legal obligation on the state (par. 4.26 of the judgment).

<sup>87</sup> Tweede Kamer der Staten-Generaal, 2012-2013, 2013Z11114, Vragen van het lid Hachchi (D66) aan de minister van Binnenlandse Zaken en Koninkrijksrelaties over Nederlandstalige beleidsplannen die niet vertaald worden voor Bonaire, St. Eustatius en Saba (ingezonden 4 juni 2013).

It took 15 years from the first confrontation with the legal implications of the state reform and its consequences for international human rights treaties to the application of the Charter on this regional language in the Caribbean.<sup>88</sup> In certain months, significant progress was made, while in other periods, years, the NGOs kept looking at the horizon, awaiting a signal from The Hague or Staatsburg. In my PhD thesis, I researched the historical development of the use of Frisian in court and administration. I describe important milestones of this emancipation: 1933, 1954-56, 1971, 1993-1995. Between these episodes, there are long periods of silence.<sup>89</sup> A comparable process, the national recognition of sign languages span a period from 1979 until 2021.<sup>90</sup> Behind the scenes, people may be drafting plans, but even in the archival records, it is hard to find traces. Although I emphasize the difficulty for NGOs to have their voices heard in parliament or the challenge of using a minority language in court, one must first stand trial. For the members of Academia Papiamentu and SPLIKA, the meetings and dialogues with the members of the expert committee were important milestones. The 2021 administrative agreement was likely the first significant achievement for the organizations externally.

An important next step is the notification of territorial application of Framework Convention for the Protection of National Minorities (FCNM) on Bonaire. The FCNM is still limited to the geographical European part of the Netherlands. A first step has been made. On October 31, 2023, the Committee of Ministers of the Council of Europe issued recommendations for immediate action concerning the FCNM. The Netherlands must adopt a more flexible and inclusive approach towards the scope of application of the FCNM. They should initiate formal and constructive dialogues with the authorities of Bonaire and representatives of the Papiamentu-speaking community on the application of the Framework Convention to individuals from the Papiamentu-speaking community living in Bonaire. Until then, the authorities must adopt an inclusive and pragmatic, article-by-article approach to implementing the provisions of the FCNM for individuals from these communities living in the European part of the Netherlands, in close consultation with their representatives.<sup>91</sup> Concerning the Papiamentu-speaking residents of Bonaire, the Minister of the Interior and Kingdom Relations announced in February 2024 that the Government is open to exploring the possibility of recognizing this group as a minority under the FCNM.<sup>92</sup>

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<sup>88</sup> The CoE has published publications on the role of NGOs in shaping the Charter (EJR Vieyetz, Working together: NGOs and regional or minority languages, 2004), but the criteria for a feasible dossier remain unclear.

<sup>89</sup> Bastiaan D. van der Velden, *Waar gaan wij heen met het Fries? Het gebruik van de Friese taal in het juridische en in het bestuurlijke verkeer in de laatste twee eeuwen* (Nijmegen: Wolf Legal Publishers 2004)

<sup>90</sup> Wet erkenning Nederlandse Gebarentaal. R. Cokart & T. Schermer, 'De weg naar de erkenning van de Nederlandse Gebarentaal (NGT)', *Handicap & Recht*, Aflevering 1, 2020.

<sup>91</sup> Reactie Nederland op het vierde advies over Nederland van het Adviescomité voor het Kaderverdrag inzake de Bescherming van Nationale Minderheden, 21 Feb. 2024, identifier "blg-1128311".

<sup>92</sup> Reactie Nederland op het vierde advies over Nederland van het Adviescomité voor het Kaderverdrag inzake de Bescherming van Nationale Minderheden, 21 Feb. 2024, Hand. Tweede Kamer der Staten-Generaal, 2023-2024, 36410-VII, nr. 89.