

**Position paper: Initiating an approach to amending the Charter**

By: Dr. R.J.A. (Nilda) Arduin, April 2022

**Introduction**

Decolonization is defined as the act of getting rid of colonization, or freeing a country from being dependent on another country. With the enactment of the Charter in 1954, the Netherlands Antilles, Suriname, and the Netherlands acceded as so called equal partners to an overarching Kingdom of the Netherlands; at this point the United Nations deemed decolonization of the territory complete. The undersigned is of the opinion, that whatever the terms applied to establish alleged formal decolonization of the Netherlands Antilles, Sint Maarten is far from being de facto decolonized<sup>1</sup>. Creating a new instrument to organize contemporary Kingdom relations as part of the decolonization process should not be dismissed.

Considering the connectedness of the themes presented by the Committee for Constitutional Affairs and Decolonization for discussion, the author refrains from making a choice of one of the themes, and addresses the decolonization process from the viewpoint of “transform and inform”. Collective consciousness of the state of Sint Maarten anno 2022 is pivotal to successfully initiate an approach to amending the Charter. This paper will draw attention to the need for clarity in the process of de facto decolonization in order to move forward. Based on global, regional and intra-regional historic political evolution, an integrated view on the Charter and Kingdom relations is required. The matter of the democratic deficit within the Kingdom is widely researched and reported on<sup>2</sup>, and will not be separately addressed in this paper. The topics to be explored are:

- I. The creation of the Charter for the Kingdom of the Netherlands and Charter anno 2022
- II. Decolonization processes; the Charter of the Kingdom of the Netherlands, as it relates to the United Nations in terms of decolonization
- III. Initiating a comprehensive approach to contemporary Kingdom relations.
- IV. Conclusion

**I. The creation of the Charter for the Kingdom of the Netherlands and Charter anno 2022**

**Decolonization in historic perspective.** Though the European powers were determined to preserve colonial rule after World War II, they lacked the wealth and political support necessary to suppress far-away revolts. The years following WW II many countries gained their independence, bringing an end to an age of colonialism in which mostly European empires ruled nearly a third of the world's population. This period of decolonization fundamentally reshaped the world. Failure to decolonize (fully) was considered lack of commitment to building Europe as one community. Dutch politicians saw reestablishing and maintaining their control of Indonesia as vital to their country's postwar revival. The emergence of the Cold War led the U.S. to focus on strengthening their European Allies against the perils of Soviet invasion and domestic communism. Indonesian nationalists' role in crushing communist activities encouraged United States efforts to pressure the Dutch to leave the territory. This environment which lead to global decolonization, and lies at the cradle of the Charter is in my opinion relevant to understand Sint Maarten's position within the Dutch Kingdom today. The motives behind the Charter may not be overlooked in consideration to amend the Charter anno 2022.

**Decolonization in the Dutch Caribbean.** Taking a step back is required to understand the Charter and decolonization in the Caribbean part of the Kingdom of the Netherlands, in particular Curaçao and its dependencies. Article 5 (Charter) provides that the organs of the Kingdom referred to in the Charter, and

<sup>1</sup> This also applies to the other Dutch Caribbean partners of the Kingdom.

<sup>2</sup> Reference is made to the many existing reports on the topic of democratic deficit within the Kingdom and therefore will not be elaborated on in this essay.

the exercise of royal and legislative power in Kingdom affairs shall be governed, if not provided for by the Charter, by the Constitution of the Kingdom (read: The Netherlands).

The first Constitution for the Kingdom of the Netherlands dates from 1814 when the Netherlands regained its independence and became a monarchy. According to the Constitution, the Dutch Kingdom encompassed the Netherlands and a few colonies and assets of the State (*'volksplantingen en bezittingen van het rijk'*). Only in 1922 the Constitution included not only the European territory, but also Indonesia, Suriname and Curaçao (and its dependencies). The pertinent institutions in these territories obtained limited powers to regulate their internal affairs. Holland, the motherland<sup>3</sup>, had an obligation towards her people (the colonists) stationed in the overseas territories.

In 1942 Queen Wilhelmina announced a Kingdom conference to discuss new relationships between the Kingdom partners in line with the sentiments of the colonial empires during WWII. The Netherlands was seeking to further strengthen ties with their largest colony, Indonesia, noting the importance of economic, political and interpersonal contacts. However, the Netherlands could no longer play its former role. In 1947 (August 17) the Republik Indonesia declared itself independent from the Netherlands (after the Japanese occupation of 1942-1945). The Netherlands recognized Indonesian sovereignty in December 1949.

Left with the Caribbean colonies to deal with, in 1948 the State regulation (*'Staatsregeling'*) was enacted. I point out that the State regulation introduced general suffrage to include the descendants of the former enslaved Africans, and therefore observe that this group of the population was not (duly and directly) represented during deliberations leading up to the enactment of the Charter. The Colonial Councils consisted of European Dutch and the elites. The term Netherlands Antilles (replacing Curaçao and its dependencies) was introduced. 1950 birthed the Interim Regulation Netherlands Antilles, a prelude to the Charter, including the right of self-determination for the islands, further outlined in the Island Regulation (*'ERNA'*). The *ERNA* organized the relationship Netherlands Antilles vs. the island territories. The Island Regulation introduced the formula of 'general interest of the kingdom', followed and further outlined in article 50 of the Charter (hierarchy of laws). This includes supervision (see art 41, 43 and 51 of the Charter). In 1954 the Kingdom Charter (*'Statuut'*) was enacted, originally meant to be an arrangement to keep Indonesia connected to the Dutch Kingdom. With the enactment of the Charter, the Kingdom of the Netherlands now referred to both the State the Netherlands and the Realm of the Kingdom.

***The socio-economic and political history mid twentieth Century and beyond.*** I consider reviewing the socio-economic and political history of the relationships within the Kingdom in the period 1951- 2020 required to comprehend Sint Maarten's position in the realm today and determine an approach towards amending the Charter.

The so-called democratization, decolonization and Antillianization (*'Antillianisering'*) started around the 1950's. Notable 'Charter' events and challenges in mentioned period are among others:

1969: Massive social uprising on Curaçao; 1974 uprising on Sint Maarten.

1970: The first Afro-Dutch governor (His Excellency B.M. Leito) appointed for the Netherlands Antilles.

1975: Suriname left the realm of the Dutch Kingdom and became independent.

1973-1977: Various attempts by the Netherlands to force the Netherlands Antilles to accept constitutional independence.

1986: Aruba left the Netherlands Antilles to obtain a separate status.<sup>4</sup>

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<sup>3</sup> 'Motherland' as being the place of origin of the colonists, to be distinguished from the term 'imperial home country'.

<sup>4</sup> The history of Aruba in its efforts to obtain autonomy and subsequent decision not to become an independent state is in itself important to study.

1983: The Windward Islands became three separate territories (Sint Maarten, Saba, Statia)<sup>5</sup>.  
1993-1996: Sint Maarten placed under preventative Higher Supervision<sup>6</sup>.  
1994-2000: Attempts to reconstruct and keep the Netherlands Antilles together.  
1997: Dutch representation within the Netherlands Antilles fortified<sup>7</sup>.  
1998-2005: Renewal collaboration within the Kingdom (*Nota: 'Toekomst in samenwerking'*)<sup>8</sup>.  
2010: The Netherlands Antilles dismantled - Sint Maarten obtaining autonomy pursuant to the Island Regulation of 1950 (*ERNA*). Up to 2010 Sint Maarten only had formal representation within the Dutch Kingdom via the Netherlands Antilles.  
2010-2020: A period of instability and lack of continuity of government on Sint Maarten.  
2018-2022: Restrained relations between Sint Maarten and the Netherlands.

Dismantling the Netherlands Antilles has been one of the most radical changes of the Charter for the islands since its enactment in 1954. The adage "Standing on our own with the will to support each other" became a reality for Sint Maarten, making the use of its autonomy a direct responsibility as country within the Kingdom<sup>9</sup>. The internal challenges faced since the newly acquired status, compounded by negotiations in the aftermath of unfortunate external events like the hurricanes of 2017 and the global pandemic, negatively impacted the relationship between Sint Maarten and the Netherlands.

I advocate and advice to install a team of persons to mediate a better relationship between the two parties, in anticipation of negotiations to amend the Charter. We should be mindful that initiating deliberations in an atmosphere of contention is a recipe for failure.

## **II. Decolonization processes: The Charter of the Kingdom of the Netherlands, as it relates to the United Nations in terms of decolonization**

It should be noted that decolonization is now widely used to talk about restorative justice through cultural, psychological and economic freedom. This is however not a topic handled in this essay.

European countries actively sought to erase as many signs as possible of their imperial past and exclude empire from their present<sup>10</sup>. Anno 2022 some continue to grapple with the often uncomfortable truth of the hierarchies and privileges - racial and other - on which colonialism depended, as well as the sharp distinctions between colonized and colonizer on which anticolonial struggles and decolonization relied. These have given way to more complicated relations of power between the people and the past states.

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<sup>5</sup> Saint Martin was split between the Netherlands and France in 1648. The Dutch part became a single Dutch colony in 1818 as *Sint Eustatius and Dependencies* when France returned its possessions after the Napoleonic Wars. This colony was merged in 1828 with the colonies Curaçao and Dependencies (the ABC islands) and Suriname with a capital in Paramaribo. When this merge was partly reversed in 1845, the Dutch part of the SSS islands became part of Curaçao and Dependencies with Willemstad as capital. This colony became the Netherlands Antilles in 1952. The Dutch part of the SSS islands initially formed the single "island area" (*'eilandgebied'*, the main administrative division of the Netherlands Antilles, governed by an island council) the Leeward islands (*'Bovenwindse eilanden'*) until 1983.

<sup>6</sup> Dennis Richardson appointed Lt. Governor (*Gezaghebber*) to implement reconstruction measures.

<sup>7</sup> See: Lammert de Jong, *'De Werkvloer van het Koninkrijk VI – De vertegenwoordiging van Nederland'*. <https://rozenbergquarterly.com/de-werkvloer-van-het-koninkrijk-vi-de-vertegenwoordiging-van-nederland/>

<sup>8</sup> See: *'Memorie van Toelichting'* / Elucidation on the Budget 2000 of the Netherlands; <https://www.rijksfinancien.nl/memorie-van-toelichting/2000/OWB/IV/onderdeel/IDACII5>.

<sup>9</sup> Reference is made to the work of constitutional experts such as Dr. Moises F. da Costa Gomez, Carlos E. Dip, Dr. A.G. (Mito) Croes and others as past guardians of "autonomy" within the Kingdom.

<sup>10</sup> Public outcry in the 1980's forced Louis de Jong, one of the Netherlands most prominent historians, to change the Dutch title of a chapter of his study of Dutch efforts to prevent Indonesian independence, from *'Misdaden'* (war crimes) to the officially approved *'Excessen'* (excesses).

This reality also applies to the Dutch Kingdom. European states rewrote 1940s laws that had extended membership in the national community to colonial subjects<sup>11</sup>.

The changed international climate was reflected in the Atlantic Charter<sup>12</sup> issued by the Allies during WWII, which called for the independence of colonial peoples. Though European colonial powers feared weak quasi-states political liabilities to international systems, the United Nations General Assembly went a step further in its Declaration on the granting of independence to colonial countries and peoples (1960). The Declaration characterized foreign rule as a violation of human rights, affirmed the right to self-determination, and called for an end to colonial rule. There are broadly four types of decolonization: 1) self-government for white settler colonies; 2) formal end to empire, followed by independent rule; 3) formal empire replaced by informal empire or neo-colonialism; 4) mere change of imperial masters. With the enactment of the Charter in 1954 the United Nations deemed decolonization of the territory completed. Inasmuch as it is questionable whether removal of the Netherlands Antilles from the United Nations list of Non-Self-Governing Territories is justified, the democratic deficit within the Kingdom is undeniable, and needs to be comprehensively addressed. In March 2021 Sint Maarten filed a petition with the United Nations to among others support a process by which Sint Maarten and the other islands of the former Netherlands Antilles may finalize decolonization<sup>13</sup>. I consider it doubtful however, if Sint Maarten can de facto be fully decolonized considering the post-colonial socio-economic instability still experienced on all the Dutch Caribbean islands as a result of past colonization.

**Criteria for decolonization** established by the United Nations are: a permanent population, a defined territory, a government, the ability to conduct relations with other states. The Kingdom of the Netherlands fostered a system of free association with its former colonies through the Charter, marked by as indicated before by a democratic deficit in decision making within the realm. In November 2018 the Kingdom government submitted a draft Kingdom Law Dispute regulation for handling disputes between the Kingdom and one or more countries within the Dutch Kingdom pursuant to article 12 a. of the Charter. Mentioned article was introduced in 2010 during the handling of the draft Kingdom Law to amend the Charter in light of the dissolution of the Netherlands Antilles. The draft law however relates to strictly legal disputes regarding interpretation of provisions in the Charter; it does not regulate disputes between Kingdom partners.

Although the colonial era as a whole was authoritarian, colonizers promoted elections and democratic rule in their colonies. One of the effects of decolonization is the instability of the post-colonial political systems, with far-reaching consequences such as deep economic problems, inhibiting growth and widening disparities between the northern and southern part of the globe. I therefore deem it important not to dismiss or detach the economic problems faced by Sint Maarten today from the decolonization process. In finding an appropriate direction for the country, it behooves Sint Maarten to come out of its isolation and learn from struggles and successes of young nations around the world, in particular our

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<sup>11</sup> The United Kingdom quickly sought to end the immigration of nonwhites from the Commonwealth, while the Dutch attempted the introduction of various ethnic minority policies such as *'integratiebeleid Antilliaanse jongeren'* and *'inburgeringsbeleid'* to limit integration of Caribbean Dutch subjects in the European part of the Kingdom.

<sup>12</sup> The Atlantic Charter outlined the aims of the United States and the United Kingdom for the postwar world as follows: no territorial aggrandizement, no territorial changes made against the wishes of the people (self-determination), restoration of self-government to those deprived of it, reduction of trade restrictions, global co-operation to secure better economic and social conditions for all, freedom from fear and want, freedom of the seas, abandonment of the use of force, and disarmament of aggressor nations. Followers of the Charter signed the Declaration by United Nations on 1 January 1942, which was the basis for the modern United Nations.

<sup>13</sup> Petition Presented to The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance and The Working Group of Experts on People of African Descent on behalf of the Parliament and Citizens of Sint Maarten, 9 March 2021.

Caribbean neighbors<sup>14</sup>. The efforts to unify the Caribbean region in an environment of fragmented imperial and political history should be examined as Sint Maarten seeks to amend the relationship with the Netherlands and the Kingdom.

I conclude that initiating an approach to amend the Charter is an integral part of the decolonization process of Sint Maarten as a new autonomous partner in the Kingdom. This requires an all-inclusive plan of approach. There are different approaches of decolonization. The scholar Poka Laenui, including thoughts of Virgilio Enriques, distinguishes the following stages: 1) Rediscovery and Recovery, 2) Mourning, 3) Dreaming, 4) Commitment, and 5) Action. Each phase can be experienced at the same time or in various combinations and do not have clear demarcations between each other<sup>15</sup>.

### **III. Initiating an approach to contemporary Kingdom relations**

Meaningful autonomy requires a voluntary and conciliatory approach, constructive dialogue, as well as monitoring of agreements between the partners involved. Nationalist politicians used political alliances, astute bargaining, and convincing claims of popular support to transform their countries in past processes of decolonization. An example of the continued process of decolonization is Barbados; acquiring internal autonomy in 1961, full independence in 1966 while remaining part of the Commonwealth until November 2021, when it became a Republic.<sup>16</sup>

Until 2010 Sint Maarten had no direct representation and deliberations with the imperial home country regarding the trans-Atlantic relationship, other than utilizing its right of self-determination to acquire an autonomous status within the Kingdom of the Netherlands. As such Sint Maarten became responsible and accountable for making decisions, as well as executing and living up to them, constrained by the legal design of the Charter<sup>17</sup>. It is my conviction that a reality check of the socio-political evolution within the territory since the enactment of the Charter is necessary to initiate an effective approach to renegotiate and adjust the current Kingdom relations and collaboration. Lessons learned from global history and decolonization processes within the Kingdom should be consulted, not being ignorant about the gradual shift of the World Order. Approximately 70 percent of the population on Sint Maarten constitutes new comers<sup>18</sup>, economic citizens and other immigrants, with no or little affiliation with the colonial past of the country. This reality may influence commitment of the people to amendments to the Charter. The variables within the Kingdom have evolved. Following the stages of decolonization mentioned above (see Laenui)<sup>19</sup> combined with preliminary steps outlined by Parliament in close sessions<sup>20</sup>, can provide direction in developing a mindful strategy to renegotiate the Charter.

**Rediscovery and recovery** set the foundation for decolonization of the society. People who have undergone colonization inevitably live in a society which is a constant and overwhelming reminder of the

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<sup>14</sup> The work of Caribbean scholars and groups such as “1804CaribVoices”, noting the continuing legacy of colonialism and economic dependency, provide insights on the decolonization process in the region. See also the “New World Group” with an aim to transform the mode of living and thinking in the region:

<https://zeroanthropology.net/2014/04/13/decolonizing-thought-in-the-new-world/>;  
[https://www.fabula.org/actualites/the-thought-of-new-world-the-quest-for-decolonization\\_10305.php](https://www.fabula.org/actualites/the-thought-of-new-world-the-quest-for-decolonization_10305.php):

<sup>15</sup> Poka Laenui; Processes of Decolonization, <https://www.sjsu.edu> › courses › maestros › Laenui.

<sup>16</sup> See also: Sir Hilary Beckles; <https://www.facebook.com/BarbadosEmbassy/videos/693788164935763/>

<sup>17</sup> Hierarchy of laws, supervision and democratic deficit.

<sup>18</sup> Yvon van der Pijl/Francio Guadeloupe, *Imagining the Nation in the Classroom: Belonging and Nationness in the Dutch Caribbean*; *European Review of Latin American and Caribbean Studies*, No. 98 (2015) April, pp. 87-98, [www.erlacs.org](http://www.erlacs.org).

<sup>19</sup> Poka Laenui; Processes of Decolonization, <https://www.sjsu.edu> › courses › maestros › Laenui.

<sup>20</sup> Framework for a strategy and roadmap for Parliament regarding autonomy and decolonization.; Parliament Refresher Training, October 2021.

superiority of the colonial society. This is true even after many years since the decolonization started. A barrier typified by the Prime Minister of Barbados, the Honorable Mia Mottley, as the barrier of self-contempt. Many different causes may bring a society to enter the stage of rediscovery and recovery from its history. For Sint Maarten it may be safe to state that among others recent conflicts with the Netherlands, accelerated by negotiations regarding financial relief following Hurricanes Irma and Maria, may have triggered the quest to rediscover and recover from its past. The panel organized by the Committee for Constitutional Affairs and Decolonization of Parliament (the “Committee”) is testimony to this phase. Sint Maarten should be alert not to elevate form over substance in the process; hollow symbolic rebranding should be avoided.

The next stage is **mourning** (anger, lament, hate and frustration); an essential phase of healing. One cannot stay here, hence the importance to seek alternatives to the present condition. How much responsibility the community is willing to assume and commit to is not clear and needs to be assessed. An internal preliminary Framework for a strategy and roadmap for Parliament regarding autonomy and decolonization has been drafted; inventorying processes already undertaken, pending assessment of government and more<sup>21</sup>. This framework has to be expanded to include the input of the community. A collective consciousness about the needs of the country is required to sustainably move forward.

**Dreaming** is considered the most crucial phase for decolonization. This phase has to be inclusive, involving all who made Sint Maarten their home. Through public consultation and debates a vision for the future has been drafted<sup>22</sup>. How does Sint Maarten envision its future and the relationship with the other parties within the Kingdom? This position should be the basis for further deliberations, and by no means just reflect the short term political aspirations of a few in preparation for the next elections. Without clarity on Sint Maarten’s position regarding the needs, taking a seat at the table to renegotiate the Charter will be futile. This phase cannot be rushed for the risk of replacing what we have with ideological, but unsustainable goals. All areas for a sustainable society have to be considered, comparing success stories and pitfalls encountered by other decolonized nations. Simultaneously with the debate on models of nationhood, using diplomacy and forming alliances where required, I advise to seek broad commitment to a continued process of decolonization.

**Commitment** follows the dreaming phase. This stage of finalizing<sup>23</sup> the decolonization should include not only all sectors of the society, but all Kingdom partners, in particular representatives of the colonizer to emphasize seriousness and trans-Atlantic commitment. A timeline for execution, as well as interim arrangements to address pressing matters to avoid and relieve conflicts is necessary.

**Action** to follow up on, and execute commitments reached. Considering global views and changes since the start of decolonization mid last century, the action phase has to move beyond what has been undertaken thus far. Hence the importance of including the Netherlands and other partners of the Kingdom proactively in the commitment stage.

#### IV. Conclusion

Decolonization is a continuous ongoing process. The colonial era as a whole was authoritarian. Considering that colonizers promoted elections and democratic rule in their colonies in the process of decolonization, question is to review how this has been and is actively handled within the Dutch Kingdom?

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<sup>21</sup> Parliament Refresher Training, October 2021.

<sup>22</sup> See: Sint Maarten’s National Development Vision 2020 – 2030 drafted in collaboration with UNDP to be approved by Parliament; <http://www.sintmaartengov.org/government/AZ/Department%20of%20Interior-and-Kingdom-Relations-BAK/Pages/National-Development-Vision.aspx>.

<sup>23</sup> Decolonization is about cultural, psychological, and economic freedom. The preamble of the Charter includes “the will to support each other”, a role for the Netherlands to play in Sint Maarten to achieve economic freedom.

The Charter was not drafted with the present constellation of the Kingdom of the Netherlands in mind. Even so, the perspective of cooperation within the Dutch Kingdom has to be tangible. I therefore promote that Sint Maarten judiciously review the next steps to be taken from a broad perspective, bearing in mind the international context of decolonization, gradual shifts in the World Order anno 2022, regional and intra-regional developments in summary described above.

Decolonization is not only a political process, but more so a social process for development and sustainability of a people. It is a process to “transform and inform”. Initiatives on the road to further decolonization have to be inclusive and contemporary, not overlooking progressive Kingdom relations, despite in part continued efforts to efface the colonial past. Foremost is defining, describing and committing to a clear and long term position of the country regarding the desired collaboration with the Netherlands and the other partners. Sint Maarten’s vision and policies pertaining to collaboration within the realm is essential in determining an adequate approach to discuss amendments or alternatives to the Charter.

Being that I am of the opinion that whatever the terms applied to establish alleged formal decolonization of the Netherlands Antilles, Sint Maarten is far from being de facto decolonized, I **advise** as follows to sustainably initiate an approach to amending the Charter:

**I)** To utilize the steps described above to progress the decolonization process:

- **Rediscovery and recovery** to establish how the country reached here;
- **Mourning** to create a collective consciousness, depending on no other and utilize the acquired autonomy to design improved relations within the Kingdom or otherwise;
- **Dreaming** to map out a clear sustainable future for the country;
- **Commitment** of all main players, internally and intra-regional;
- **Action**, following up on agreements made. Sint Maarten should take the lead as an autonomous partner to shape its future.

**II)** To install a mediation team for Sint Maarten to pave the way for improved relationships with the Netherlands, and bridge the transition to amending the Charter, or any alternate relationship.

**III)** Be clear and inclusive in stating and promoting the desired position with(in) the realm.

Creating a new instrument to organize contemporary Kingdom relations as part of the decolonization process should not be dismissed.