

Annex

Extra information

In the UPR-report, there were questions formulated which were not addressed in the recommendations. The Kingdom of the Netherlands would also like to address these questions.

21. Information on the promotion of tolerance and non-discrimination

The Dutch government regards social exclusion and discrimination as a threat to mutual trust and involvement in society. Democratic rule of law protects human dignity regardless of someone's origin, ideology, nationality or religion. Therefore, Dutch government will continuously strive to protect human dignity and the principle of equality in Dutch constitution and launches an extended program to counter discrimination. Since 2008, the Dutch government has supported and initiated various projects that aim to disseminate knowledge, increase openness, and offer scope for breaking taboos and openly discussing conflicting social values and lifestyles (including apostasy and homosexuality).

23. Information on mechanisms envisaged to incorporate NHRI and children's ombudsman in the Antilles

There are no mechanisms envisaged in view of the fact, that as an autonomous country of the Kingdom of the Netherlands Curaçao in its own right can establish a human rights institute.

Aruba seeks to create a similar type of Human Rights Institution, to guarantee information, education, and protection of human rights in the Aruban community in cooperation with Curaçao and the Netherlands.

Sint Maarten seeks to create a similar type of institutions in the near future. Being a new autonomous country in the Kingdom of the Netherlands, Sint Maarten is building up all the institutions needed to guarantee the human rights of its citizens.

25. Information on the functioning of detention centers

According to Dutch policies, rejected asylum seekers and illegal aliens can be detained on grounds of public order or national security with a view to arranging their repatriation. This type of detention can only be used as a measure of last resort and cannot last longer than is strictly necessary to arrange the return of the person concerned. Moreover, detention can be used if people are refused entry at the border. The maximum limit on the detention of illegal aliens is six months in the Netherlands. In special circumstances detention can be extended up to 18 months. This is in line with the EU return Directive.

26. Information on the implementation, functioning and development of Municipal anti-discrimination services

In 2009 the Municipal Antidiscrimination Service Act entered into force. Under this Act everyone in the Netherlands has ready access to an antidiscrimination service. Victims and witnesses of discrimination can lodge their complaint at a local antidiscrimination service. Antidiscrimination services offer advice and support in case of discrimination on the basis of skin colour/ethnicity, religion/belief, gender, sexual orientation, age and disability.

36. Information on the Netherlands' view on formalisation of human rights education

See the response to recommendations 98.33 and 98.98. The human rights council will be informed in the interim-report.

50. Information on effects and benefits of the Municipal anti-discrimination act

The Municipal Antidiscrimination Service Act is currently being evaluated.

58. Is there a plan to set up appropriate institutions to protect human rights in overseas territories

Because of Curaçao's constitutional autonomy within the Kingdom of the Netherlands the setting up of institutions for the protection of the human rights of its citizens is an internal affair for which it bears sole responsibility. For alleged cases of human rights violations the citizens of the island can always seek redress through the existing court system.

Aruba seeks to create a similar type of Human Rights Institution, to guarantee information, education, and protection of human rights in the Aruban community in cooperation with Curacao and the Netherlands. The court system provides the necessary redress for the citizens in cases of alleged human rights violations.

As mentioned Sint Maarten seeks to create the human rights institutions. It should be mentioned that Sint Maarten, being part of the Kingdom of the Netherlands, is bound by International human rights treaties. The Constitution of Sint Maarten also guarantees the protection of human rights to its citizens, where as the citizens can address the court for alleged human rights violations

61. Asked if we would take further action to ensure timely hearing for all asylum seekers and access to legal system and equal treatment

The Dutch asylum procedure already allows for timely hearing and free legal aid. Since the procedure is already very fast (55% of the asylum requests are dealt with within 8 days), we see no need to take further action.

If an alien requests asylum in the Netherlands, he/she is first permitted a period of rest and preparation. The rest and preparation period is a period of a minimum of 6 days, during which the asylum seeker can rest and be prepared for the asylum procedure. Investigation of travel and identity documents can already be started during this period, but there will be no contact between the Immigration and Naturalization Service (INS) and the asylum seeker. This period is intended to give a strong quality impulse to the asylum procedure.

Once an asylum seeker states his intent to apply for asylum, he is referred to the central reception location. There, an intake will take place (this is not the formal asylum application) and research will be started into the authenticity of his documentation. At this stage, preparations for a claim on the basis of the Dublin Regulation can already be started. All guarantees and stipulations of the relevant European Union legislation are applicable from this moment on. Soon after the intake the asylum seeker will be brought to the process reception location, which is situated in the proximity of the application centre, and will remain there for the remaining time of the rest- and preparation period and the general asylum procedure. During the remainder of the rest- and preparation period the following activities will take place:

Ø medical check

All asylum seekers will have the possibility to get a medical check so their

general condition can be taken into account during the asylum procedure. For instance, any influence from medical problems on their ability to tell their story in a coherent and consistent manner will be taken into account. This can lead to adjustments in the way an asylum seeker is being interviewed.

Any evidence of medical problems can also be reason for the INS to start a separate procedure, parallel to the asylum procedure, to investigate whether these medical problems themselves are reason to grant leave to remain to the asylum seeker. This way, the situation in which a rejected asylum seeker applies for residence on medical grounds after the asylum procedure is finished, can be prevented.

Ø information by the Dutch Refugee Council

All asylum seekers will be informed by the Dutch Refugee Council about what they can expect in the asylum procedure and about their rights. Aspects such as the possibility to ask for a female interpreter, the importance of telling everything that might be relevant etc. will be part of the information.

Ø Preparation by a legal aid worker

All asylum seekers have a right to free legal assistance. The maximum amount of legal assistance provided for during the rest and preparation period plus the general asylum procedure is 12 hours. On average 8 hours will be granted. In the extended procedure an extra 5 (max. 7) hours of legal assistance are available. The asylum seeker will have the same legal aid worker throughout the procedure as much as possible.

The general asylum procedure

All asylum seekers will in principle begin their asylum procedure in the general asylum procedure. This is an eight-day procedure in which all necessary procedural steps are taken to come to a decision on the asylum application. Because all the procedural steps are taken that require the presence of the asylum seeker in person, and the main body of evidence is gathered, the eventual extended asylum procedure will be shorter than it used to be in the past.

The general procedure will go as follows:

- Day 1: formal lodging of the application for asylum and first interview on identity and travel route.
- Day 2: Asylum seeker discusses the first interview and prepares for the second interview with his/her legal aid worker.
- Day 3: Second interview: in depth on the reasons for applying for asylum.
- Day 4: Asylum seeker discusses the second interview with his/her legal aid worker. Corrections and additions can be made to the report of the second interview with the legal aid worker.
- Day 5: INS will inform the asylum seeker of its intention. If the INS intends to accept the asylum application the procedure stops here. If the intention is to reject the asylum application, the procedure continues with day 6 etc. At this moment, the INS can also decide that further investigation is necessary and redirect the application to the extended asylum procedure.
- Day 6: The asylum seeker and the legal aid worker draw up an opinion in response to the intention of the INS to reject the asylum application.

Day 7/8: The INS will (1) make the decision to reject the asylum claim, (2) make the decision to accept the asylum application, or (3) decide that further investigation is necessary and redirect the application to the extended asylum procedure.

Approximately 55% of the asylum applications are decided on in the general asylum procedure.

The extended asylum procedure

If during the general asylum procedure the INS comes to the conclusion that further investigation is required, the asylum application will be further handled in the extended asylum procedure. Reasons for further investigation can vary: research that needs to be carried out by the Ministry of Foreign Affairs, indications that article 1F of the Refugee Convention may be applicable, language analysis, medical research etc.

Although all the necessary procedural steps have already been taken during the general asylum procedure, an additional interview can take place, if necessary. In principle, a decision on the asylum application has to be made within 6 months from the formal application of the claim (day 1 of the general asylum procedure).

The appeal process

The decision on the asylum application stands open to appeal. The court can take relevant new circumstances and policy changes into account during the appeal phase. This does not apply if it is contrary to due process or if it delays the case to an intolerable extent.

If an asylum application is rejected in the general asylum procedure, the appeal does not have suspensive effect. However, the rejected asylum seeker is given a period of four weeks to work on his return. During this period he can stay in a reception centre. Because reception facilities in principle end after these four weeks, courts will consider these cases urgently, and therefore in most cases will rule on the appeal within four weeks. If the court does not rule within four weeks, the court may give a suspensive ruling so that reception facilities are not withdrawn until the court has reached a decision. In this way, the benefits of a fast procedure are upheld also in appeal, while no irreversible steps will be taken without a court having had the chance to review the case.

If an asylum application is rejected in the extended asylum procedure, appeal does have suspensive effect. The asylum seeker will remain in the reception centre.

Repeat applications

Second or repeated applications will be handled in a less elaborate procedure. There will be no rest and preparation period. If the application is rejected the rejected asylum seeker will not get a maximum of four more weeks in a reception facility, but has to leave the Netherlands instantly.

Because of the improvements made to the asylum procedure, and especially the fact that there is more attention to medical problems at an early stage and the courts can take relevant new circumstances and policy changes into account, the expectation is that the number of repeated applications will decrease.

66. Measures to step up efforts to combat diffusion of racist ideas over internet and other media

See recommendation 98.45.

81. When has the criminal code been applied to restrict freedom of expression.

As a matter of fact, it is not a purpose of Dutch criminal law to unduly restrict the freedom of expression, which is a fundamental right. However, where it concerns forms of hate speech, perpetrators will be prosecuted, which could formally imply a restriction of their freedom of speech. Over the year 2010, some 140 cases have been prosecuted on the grounds of insult, incitement of hatred or discrimination on the grounds of race, religion or belief, sexual orientation, gender or handicap (Articles 137c -137g and 429quater Criminal Code).

83. How does the Dutch government intend to address that the administrative apparatus of Curacao has not yet been established

There is no role here for the Dutch Government in view of Curaçao's constitutional autonomy. Of course if and when necessary and upon request the Dutch Government can always provide (technical) assistance.

84. Statistics on the number of asylum seekers not been granted refugee status in the last 5 years

Asylum grants and total amount of decisions

	2008	2009	2010	2011
Total grants	6.140	8.510	8.700	8.380
Grant. 29,1,,a Refugee under convention	600	740	900	830
Grant. 29,1,,b Art. 3 EVRM	1.790	3.400	4.420	5.210
Grant 29,1,,c Humanitarian	230	360	310	360
Grant 29,1,,d Exceptional hardschip	2.630	2.090	180	160
Grant 29,1,,e Derived nuclear family	800	1.780	2.660	1.650
Grant 29,1,,f Derived widend	80	120	220	160
Grants not specified	10	10	10	10
Totale beslissingen	12.890	19.270	19.820	19.070

Source: IND (rounded to 10s). Because each cell is rounded, it is possible that the total does not match the cells.

90. Measures taken to reduce the number of migrants under detention

Alternatives to detaining aliens are part of policy. A differentiated system is in place for rejected asylum seekers, including alternatives to detention, like the requirement to report to the authorities and restriction of liberty. Special policies are implemented to avoid as much as possible that families with minors are detained. If it is necessary to have a family under the supervision of the authorities for a longer period during the preparations of return, the family can be replaced in a centre where their freedom of movement is restricted, which means, for example, that they have to report to the authorities on a daily basis.

53. There is concern that the human rights institute of the Netherlands is not accessible to inhabitants of the overseas territories where many suffer from low standards of living and ill-developed health system (Russian Federation)

Curaçao

This concern is not justified. To begin with although a human rights institute is still to be established in the near future on the island universal rights and fundamental freedoms are duly guaranteed by the Curaçaoan Constitution and its legal system.

Aruba:

Aruba's Standard of livingⁱ, normally measured by calculating the Human Development Index, the Gini-Coefficient, GDP per capita, level of inflation, life-expectancy, incidence of disease, political stability, political and religious freedom, environmental quality and safety, is reasonably high, and certainly higher than most of the neighboring countries.

Aruba has a well-developed health care system, where all of the legal citizens are insured against the cost of medical health care. The quality of the care is also very high, which has resulted in low mortality rates (for infants, children, mothers and the total population) and a high life-expectancy (79.75 yrs. for females and 73.88 yrs. for males).

ⁱ The Standard of living refers to the level of wealth, happiness, comfort, material goods and necessities available to a certain socioeconomic class in a certain geographic area.