

FOLLOW-UP CAT 2019

12. The Committee recommends that the State party adopt all the necessary legislative, administrative and other measures to ensure compliance with the principle of non-refoulement set out in article 3 of the Convention. In particular, the State party should:

(a) Allow sufficient time for asylum seekers, especially those in the fast-track procedure, to fully indicate the reasons for their application, obtain and present crucial evidence in order to guarantee fair and efficient asylum procedures and ensure the right to appeal, with a suspensive effect, in order to ensure that the legitimacy of applications for protection by refugees and other persons in need of international protection is duly recognized, and refoulement and collective return are prevented;

The Netherlands

The Netherlands endorses the importance of a thorough and painstaking asylum procedure which gives applicants the opportunity to put forward all their reasons for seeking asylum and to substantiate those reasons. The Dutch procedure enables applicants to do so in an extensive interview in which they are given the opportunity to speak freely and without interruption about their motives for seeking asylum. Applicants can always submit documents in support of their account. If the Immigration and Naturalisation Service (IND) intends to deny the application, the applicant will be given the chance to respond to the notification of intent. The IND takes account of that response in reaching a definitive decision.

IND decisions can be challenged by lodging an appeal with an independent court. As required by Directive 2013/32/EU (the Asylum Procedures Directive), the appeal procedure in the Netherlands provides for a full and ex nunc examination of both facts and points of law. In principle, an appeal has suspensive effect. In the interests of an efficient and practicable asylum procedure, the Directive specifies the cases in which an appeal has no automatic suspensive effect. These are usually cases in which the application is manifestly unfounded or inadmissible, or in the case of a repeat application. In these circumstances, the court decides whether the applicant may await the outcome of proceedings in the Netherlands.

The Netherlands has a fast-track procedure for applications from asylum seekers from a safe country of origin or asylum seekers who already receive international protection in another member state.

Under the Asylum Procedures Directive the assessment of whether a country can be deemed a safe country of origin must be based on a number of reliable sources, more specifically

information from other member states, the European Asylum Support Office (EASO), UNHCR, the Council of Europe and other relevant international organisations. Furthermore, the member states must conduct regular reviews of the situation in countries designated as safe.

Designating a country as a safe country of origin means there is an assumption that applicants have no well-founded fear of persecution in their country of origin nor do they face a real risk of suffering 'serious harm' within the meaning of article 15 of Directive 2011/95/EU (the Qualification Directive). In other words, it is assumed that their application will not be granted. Applicants can put forward substantial reasons why the country in question is unsafe in their specific case. A heavier burden of proof thus rests on such applicants to make a convincing case that they are eligible for international protection.

In the Netherlands applications of asylum seekers from safe countries of origin have been dealt with under a special fast-track procedure, known as Track 2, since 1 March 2016. The aim is to prevent asylum seekers whose applications have little chance of success from congesting the asylum process and occupying places in reception centres. In a few cases asylum seekers from safe countries may nevertheless need protection. If they can substantiate this in the asylum procedure they may be granted a residence permit.

If an asylum application is denied, the applicant can lodge an appeal with the district court. However, in principle, applicants from safe countries of origin may not await the outcome of proceedings in the Netherlands. As stated above, it is up to the court to decide, at the applicant's request, whether they may remain in the Netherlands until a decision has been given on the appeal.

Curaçao

As Curaçao is not a party to the Convention relating to the Status of Refugees (1951), the legal status of 'refugee' or 'asylum seeker' cannot be applied for there. Curaçao is, however, bound by the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) and therefore abides by the principle of non-refoulement.

This means that Curaçao cannot send third-country nationals back to a country where they will be subjected to treatment prohibited by article 3 of the ECHR. Policy has been developed (the revised version was published in June 2017) to enable reliance on the protection offered by article 3. As a result, it is always possible to invoke article 3.

If an application is denied, the person in question can lodge an objection or an application for review, provided this is done within the term (six weeks) and in the manner provided for in the

National Ordinance on Administrative Procedure (*Landsverordening administratieve rechtspraak*, LAR) They may await the outcome of proceedings in Curaçao.

Since any removal can only take place on the basis of an individual decision based on a consideration of the individual interests at stake, collective return is impossible. This does not mean that people may not be removed in groups, especially if an aircraft has to be chartered for this purpose.

Aruba

Aruba has ratified the Protocol of New York pertaining to the Convention on the protection of refugees and has a legal framework set forth in the national ordinance on the admission and expulsion of foreigners (AB 1993, GT 33) as well as the national decree on admission (AB 2009, no.59). This last one was last amended on the 3rd of July 2019. These ordinances are complemented by policy guidelines and have as a basis the principle of non-refoulement which is also observed in practice.

During the asylum procedures, including the fast track procedures, ample time is given to the asylumseeker to indicate the reasons for his protection request as well as the opportunity to present all necessary evidence during the application. The time is also given to acquire and present crucial evidence. Even though the appeals process does not have an immediate suspensive effect. A petition for suspensive effect is can be submitted to a court of first instance. This procedure is embedded with a secondary independent evaluation by the court of First Instance to determine if the procedural guidelines were observed and if refoulement should be applied in the particular situation, even in the event that a protection request is denied.

(b) Promptly establish a national asylum determination procedure in Aruba, Curaçao and Sint Maarten that permits a thorough assessment of whether there is a substantial risk that the applicant would be subjected to torture in the country of destination, and ensure that the European Netherlands provides the necessary assistance in establishing such procedures, fully in accordance with article 43 of the Charter for the Kingdom of the Netherlands providing that promotion and protection of human rights is a Kingdom affair;

Curaçao

In June 2017 the government of Curaçao established its own protection procedure for third-country nationals. Before then, a UNCHR procedure mediated by the Red Cross was in place. The current protection procedure is based on article 3 of the ECHR and focuses on

establishing whether there is a risk of torture, inhuman or degrading treatment or punishment on return. The IND and the Dutch Ministry of Justice were involved in the development and implementation of the procedure.

Aruba

Aruba has a Refugee Status Determination procedure in place. The procedure permits a thorough assessment of whether there is a substantial risk that the applicant would be subjected to torture. The Aruban procedures were established and reviewed in conjunction with the Netherlands and the UNHCR. These processes were reviewed and technical support was given to strengthen and align the local processes with the treaty requirements.

14. Recalling the Committee's previous recommendations (CAT/C/NDL/CO/5-6, para. 12), the State party should take measures to:

(a) Identify asylum seekers with specific needs, especially victims of torture and ill-treatment, as early as possible by ensuring that in all the constituent countries of the State party, during the medical examination as part of the asylum procedure applicants are assessed not only for their capacity to be interviewed but also their health condition and need of treatment and support as a result of torture, ill-treatment or other trauma suffered;

(b) Ensure the application of the Istanbul Protocol in the asylum procedure and provide training to all relevant professionals on monitoring, documenting, reporting and investigating torture and ill-treatment, with a view to providing redress to the victims.

The Netherlands

Asylum seekers who do not come from a safe country of origin and are not Dublin claimants are offered a medical intake assessment. The primary aim of this assessment is to establish whether a person's state of health could impede an interview or a decision. Depending on the conclusions of the care professional, a more extensive medical assessment can be performed at a later stage, or the asylum seeker may be immediately referred to medical professionals at the location. A general practitioner at the reception location can then refer asylum seekers to secondary health care services. The medical team at the location includes a primary mental healthcare professional.

During the asylum procedure, the IND can decide to arrange for a medical examination under article 18 of the Asylum Procedures Directive if there are signs that might indicate past

persecution or serious harm. The IND will consider on a case-by-case basis whether a medical investigation of signs of torture is relevant to the assessment of the claim for international protection. Costs arising from a medical examination will in such cases be borne by the State. The examination follows the guidelines laid down in the Istanbul Protocol.

In cases where the IND does not consider a medical examination to be relevant to the assessment of an asylum seeker's claims, the asylum seeker can arrange for such an examination to be carried out at their own expense.

Curaçao

A medical assessment is not a standard component of the procedure under article 3 ECHR. Where necessary, for example in order to provide evidence, independent medical examinations may be conducted.

Although the Istanbul Protocol is not applicable to Curaçao, its principles are applied in the article 3 procedure.

Stakeholders receive regular training in conducting the procedures, as well as how to approach and relate to asylum seekers as human beings. International experts, most recently from the IND and the Dutch Ministry of Justice and Security, provide the training.

Aruba

(a) See answer above.

(b) In Aruba this is part of the local training processes.

23. The State party should take all necessary measures to withdraw its declaration on the exclusive territorial application of the Optional Protocol to the European Netherlands and ensure the applicability thereof throughout the State party, including in the Caribbean Netherlands. Recalling the Committee's previous recommendations (CAT/C/NLD/CO/5-6, para. 28), it should ensure the complete financial and operational independence of the national preventive mechanism, both factual and perceived, including by ensuring it has a separate specifically earmarked budget, and consider reviewing the current formation of the mechanism with a view to bringing it fully in line with the guidelines on national preventive mechanisms of the Subcommittee on Prevention on Torture and the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). It should also ensure that all aspects of detention facilities leased to foreign countries and military detention facilities, including those managed overseas, are effectively monitored.

The Netherlands

Optional Protocol

The Optional Protocol has been approved for the Kingdom as a whole, with the proviso that it applies exclusively to the Netherlands in Europe. The constitutional arrangements that came into effect on 10 October 2010 were evaluated in 2015. In response to the evaluation, the government indicated that account would have to be taken even after 2015 of the islands' absorption capacity and that legislative restraint remained necessary.

The government has recently announced that it would adopt a recommendation made by the Council of State to set clear, unambiguous criteria for determining when differentiation can or should be applied in legislation; the policy of legislative restraint established in 2010 will no longer be the basic principle. The government will investigate the impact of this decision on the possible entry into force of the Protocol.

Nevertheless, the human rights treaties are self-evidently applicable on Bonaire, St Eustatius and Saba. This includes the prohibition on torture, and other cruel, inhuman or degrading treatment or punishment. It is important to note that supervision of compliance with these provisions on the islands is the responsibility of the Law Enforcement Council (the Council), set up under the Kingdom Act on the Law Enforcement Council of 7 July 2010. In implementing its supervisory tasks, the Council is obliged to make use of the Dutch central government inspectorates. In 2012 the Council and the Inspectorate of Justice and Security reached specific agreements on the deployment of the Inspectorate in Council investigations.

Supervision by the Royal Military and Border Police (KMar)

Supervision of all locations used to detain persons that are managed by the Royal Military and Border Police is regulated in the Supervisory Committee (Royal Military and Border Police Detention Areas) Order. It is the Committee's task to supervise the manner in which people are held in detention in these locations as well as compliance with the relevant regulations. On request or on its own initiative, the Committee can make recommendations to the Ministry of Defence for improvements, or provide the Ministry with information.

National Preventive Mechanism (NPM)

All NPM participants and observers are fully independent both functionally and operationally. On the basis of their work programme and professional expertise, the central government inspectorates, for example, are able to independently collect information which they then evaluate and can use as the basis for reports and recommendations. In addition, the Council

for the Administration of Criminal Justice and Protection of Juveniles is completely independent of other organisations in the criminal justice system. The supervisory committees operate independently from the Ministry of Justice and the Defence organisation, the custodial institutions and the police. The NPM's annual report is sent to Parliament, possibly with a policy response from government, but with no prior review of content.

The Instructions on the State Inspectorates contain rules and restrictions applying to ministers' powers to issue instructions to their inspectorates. The Instructions also specifically refer to the inspectorates' independence as referred to above. Their independence is thus sufficiently safeguarded.

In view of the current setup, comprising a network of existing bodies that already receive funding to carry out their tasks, the government sees no reason to create a separate budget to cover NPM activities. Activities in the framework of the Optional Protocol are so interconnected with the regular activities of participants and observers that it would be inadvisable to make a distinction between these tasks.

Military detention facilities

As regards military detention facilities, a distinction should be made between detention facilities within the Kingdom of the Netherlands and those temporarily established abroad in the context of a military operation. Within the Kingdom, the Royal Military and Border Police, as part of the armed forces but acting under the authority of the Public Prosecution Service when engaged in its law enforcement capacity, operates detention facilities in the Netherlands, Aruba and Curaçao. All these detention facilities are subject to supervision by the Royal Military and Border Police Detention Facilities Supervisory Committee. The Committee has full access to the facilities and related information. The members of the Committee are not employed by the Ministry of Defence and have no links or relationship with the Ministry, which ensures their independence. They report directly to the Minister of Defence on their findings. An inspection of the facilities in Aruba and Curaçao is scheduled for early 2020.

As regards detention facilities established in the context of military operations abroad, a distinction should be made between operations carried out under the command and control of the UN, and operations carried out under the command and control of NATO, the EU or member states themselves. Operations under UN command and control, such as MINUSMA, UNMISS etc. are wholly subsidiary organs of the UN. That means that responsibility for such operations rests with the UN and that the UN establishes the procedures and rules to be applied.

In operations carried out under the responsibility of individual states, those states are directly and individually responsible for observing their human rights obligations under the various instruments, including the Convention against Torture. As the Dutch Military Criminal Code (*Wetboek van Militair Strafrecht*) establishes universal jurisdiction over all Dutch military personnel, the Netherlands can prosecute crimes committed by its military forces, including torture, no matter where the crime was committed. Additionally, directives issued by the Dutch Chief of Defence, which apply to all military deployments, include an obligation to report all violations of the laws of armed conflict (including the prohibition of torture contained in that body of law). Detainee operations are subject to intense scrutiny by the Ministry of Defence's Directorate of Operations and its Directorate of Legal Affairs. For all operations in which it is likely that it will become necessary to detain people, an operation-specific Standard Operating Procedure (SOP) is issued, ensuring independent review of detention, supervision by authorised and trained personnel etc. in order to ensure compliance with all human rights obligations (including, in addition to the prohibition on torture, the legality of detention, due process etc.). While there is no objection in principle to supervisory organs visiting areas of operations, the overall safety and security situation in these areas would generally preclude such visits. Nevertheless, the Netherlands always strives for close cooperation and consultation with the ICRC in conflict areas. If the overall environment is considered safe and secure, other bodies or organs can and may visit areas where operations are taking place, depending on the authority and remit of the body or organ in question. Such visits have, in fact, occurred in the past.

Curaçao

The scope for extending the application of the Optional Protocol to Curaçao is under review. However, there are several local bodies that regularly examine the treatment of persons deprived of their liberty and make recommendations to the relevant authorities with the aim of improving their treatment. Examples include the independent Commission for the Supervision of Detainee Care, the Council for Law Enforcement, the Public Prosecution Service, public prosecutors, the Health Inspector and the detention centre's internal Quality and Audit Department.

Both national and international inspection bodies, such as the CPT, are granted full access to the relevant institutions for inspection.

St Maarten

Sint Maarten will continue to assess the timeline for accession to the Optional Protocol. Priority now is being given to improving existing detention centers.

Aruba

This protocol has not yet been ratified on behalf of Aruba. Notwithstanding this, CPT and the Inspection of Law Enforcement of the Netherlands visit the correctional facility on a regular basis in order to monitor taken measures, policies and detention conditions. The Public Prosecution Office visits the facility on a periodic basis. Detainees can consult a member of the Prison Supervisory Board during regular consultation hours.