



Permanent Representation of the
Kingdom of the Netherlands to the
United Nations Office and other
International Organisations in Geneva

NV: GEV-PA 52/2022

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the Communication of March 2, 2022 (**ref. AL NLD 2/2022**) of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, has the honour to inform the Office as follows.

The Kingdom of the Netherlands first wishes to reiterate its full support and appreciation for the mandates of the Special Rapporteurs and Working Groups. It gives serious consideration to their views. The Kingdom will always seek to respond and actively engage with UN mandate holders and has extended a standing invitation to all UN special procedures. The Kingdom is open to dialogue with its international partners on the protection of human rights in the Netherlands, in a spirit of self-reflection and with a view to improving the implementation of human rights.

In this context, the Kingdom appreciates the opportunity provided by the Special Rapporteurs to respond to their concerns and questions regarding the alleged use of automatic immigration detention of Venezuelan migrants including children, arriving to or irregularly staying in Curaçao.

The Permanent Mission of the Kingdom of the Netherlands to the United Nations and other international organisations in Geneva avails itself of the opportunity to renew to the Office of the High Commissioner of Human Rights the assurances of its highest consideration.

Geneva, 29 April 2022

*Office of the High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10*



Response to communication AL NLD 2/2022 of 2 March 2022

The Special Rapporteurs and Working Groups brought to the attention of the Kingdom of the Netherlands the alleged use of automatic immigration detention of Venezuelan migrants including children, arriving to or irregularly staying in Curacao. In order to answer these questions, the competent authorities from Curacao have been consulted in order to provide you with the requested information.

1. *Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.*

Respect, protect and fulfillment of human rights remains a priority of the Kingdom of the Netherlands. Issues as raised in your letter are taken seriously as is explained in this letter.

The Kingdom of the Netherlands consists of four autonomous countries: the Netherlands – (including the Caribbean islands Bonaire, St. Eustatius and Saba) and Aruba, Curaçao and St. Maarten. All policy areas are considered to be internal competences of each of the autonomous countries, except for foreign relations and defense, which are Kingdom Affairs (article 43, paragraph 1, Statute).

The protection of the human rights is therefore primarily the responsibility of the autonomous countries within the Kingdom of the Netherlands. The Kingdom has a role when it comes to the so called guarantee function. The guarantee role of the Kingdom (article 43, paragraph 2, Statute) constitutes a competence that only may arise if such a violation is evident in nature and in the country itself cannot be redressed. This competence is, however, an *ultimum remedium* measure which will not be used lightly.

Notwithstanding, the influx of migrants from Venezuela to the Caribbean parts of the Kingdom has presented Curacao, being a small country, with enormous challenges with regards to migration.

The Government of the country of the Netherlands recognizes the constraints the countries Aruba and Curaçao are faced with and provides technical and financial support when requested. Such support is given on the basis of solidarity and mutual cooperation as laid down in article 36 of the Statute of Kingdom of The Netherlands. In 2019, the Government of the Netherlands approved a total package of 23.8 million EUR, in response to a request for assistance submitted by Curaçao and Aruba. Through this budget, the Ministry of Justice and Security, Ministry of Defense and the Ministry of Interior Affairs and Kingdom Relations of the Netherlands have provided expertise in the field of asylum and protection procedures, as well as financial resources to improve the conditions of immigration detention.

In 2019, the ministry of Justice and Security of the Netherlands committed 7.2 million euros to strengthen migration governance in Aruba and Curaçao. As part of the joint spending plan, the Netherlands shared knowledge and expertise and provided training (e.g. hearing and decision techniques, assessing (travel) documents, in-depth theoretical and practical training on article 3 of the ECHR). In addition, Curaçao used the funds to carry out projects, for example in the field of legislation, digital infrastructure/information technology and capacity building for processing applications under article 3 of the ECHR. The last few projects are being finished at this moment.

In 2021, in Curaçao a new policy was introduced named “Integrashon Responsabel” (translated: Responsible Integration), where migrants with an irregular status were given an opportunity to receive a temporary legal status. Around 2500 migrants applied. This policy did not include those who entered Curaçao illegally.

Also in 2021, five charter flights were organized by the Government of Curaçao to give Venezuelans the opportunity to return to their country. 60-70% of the passengers on these chartered flights were irregular migrants who were not detained.

According to the authorities of Curacao, all migrants are treated equally, regardless their nationality. Venezuelan nationals are not treated any different than other migrants, legal or illegal. When dealing with migrants without a legal status, there are standard procedures for local authorities to follow. Each migrant without a legal status (also: irregular migrants) on Curaçao is

interviewed to assess their situation. An irregular migrant is not automatically detained, but is given the option to report to the authorities of the country of origin and to return to the country of origin. Only in very exceptional circumstances, these irregular migrants are detained, for example when there are serious doubts about the identity of the migrant; there is the suspicion of a criminal background or for reasons of expulsion.

Curaçao is not a party to the Refugee Convention, but respects the principle of non-refoulement based on article 3 of the European Convention on Human Rights. The established procedure provides a guarantee against refoulement. According to the authorities of Curacao, 95% of the protection application process is done when the detainee is in detention to prevent repatriation.

Any individual decision with respect to a migrant, either with respect to the status or – if applicable – the detention or expulsion, is open for appeal. The appeal can be made at the Minister of Justice of Curacao or at an administrative judge in Curacao.

2. *Please provide information on the factual and legal grounds for the deprivation of liberty of migrants and asylum seekers, and how this is compatible with the international human rights obligations of the Netherlands.*

The factual grounds for detention of irregular migrants in Curaçao are specified hereunder:

A first reason for detention is to establish the identity of the individual and ensure the person is not listed by Interpol or the EU with regard to sanctions. In the past, it has happened that some individuals were placed in prison after detention when it became clear they were members of a transnational criminal organization, or part of drug, weapon or human trafficking gang.

A second reason for detainment of an irregular migrant is to assure the return to the country of origin. This is based on Article 19 (2) of the Ordinance of admission and expulsion, which states that *"If, in the opinion of the Minister of Justice [of Curacao], the person concerned poses a threat to public order, public peace or safety or morality, or if, in his opinion, there is a well-founded fear that the person concerned will try to avoid his removal, he may be placed in custody by order of the Minister of Justice to ensure his removal."* This is in line with Article 5 (f) of the European Convention for the human rights that states: *"No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition."*

3. *Please provide information regarding alternative and less restrictive measures to deprivation of liberty that can be applied to migrants and asylum seekers, including persons who entered the territory of Curaçao irregularly, in order to ensure that administrative detention for immigration reasons is used only as a measure of last resort and for the shortest possible time. Also, please provide detailed information on the existing legal procedures in the Netherlands, ensuring the possibility for foreign nationals, including Venezuelan migrants and asylum seekers in detention, to challenge their detention and the safeguards applied in that regard.*

To secure the identification, the repatriation process and for sake of the national security, Curaçao does not have any alternative or less restrictive measures to deprivation of liberty that can be applied to irregular migrants. However, every individual has the right to appeal against the decision to be detained as is elaborated on in the answer of question 2 of this letter.

4. *Please provide information on the measures taken by your Government to protect the human rights of migrant children, and with respect to families that have been separated, particularly in terms of prevention and protection measures to avoid family separation and effective access to mechanisms of family reunification. Please also indicate measures taken or to be taken by your Government towards ending immigration detention of children and their families, as well as efforts made to provide effective protection, adequate care and non-custodial reception for migrant children.*

According to the authorities of Curacao, the rights of migrant children are taken very seriously. Curaçao has specific policies on how to deal with migrant children. In general, children up to 18

years are not detained, but mostly put in boarding schools when there is no competent parent or family known.

In case of migrant children from Venezuela, the Consulate of the Bolivarian Republic of Venezuela in Curaçao is requested to approach the family of the migrant children that are under the care of the authorities. As soon as the contact is established, arrangements are made to return the children to their families in Venezuela. In case of any uncertainty, the guardianship council of the authorities of Curaçao (Voogdijraad) is called to intervene.

A few incidental detentions have taken place, because the authorities of Curacao were not aware that they were dealing with a minor. However, minors are immediately released from detention when it is confirmed that the person is under 18. Minors are not officially repatriated, therefore it is possible for them to return to Curaçao in the future.

5. *Please provide information on the steps taken by local authorities and the Government of the Netherlands to search for disappeared migrants and asylum seekers along the maritime route between Venezuela and Curaçao, and to inform their relatives, counsels or any other person with legitimate interest about their fate and whereabouts.*

The Dutch Caribbean Coastguard (DCCG) is a partnership between the four countries of the Kingdom of the Netherlands: Aruba, Curaçao, Sint Maarten and the Netherlands. The partnership serves both the interests of the autonomous countries as well as the interests of the Kingdom as a whole.

The Dutch Caribbean Coastguard (DCCG) is able to track most of the traffic at sea around the islands by radar and other means, however not every single vessel or smaller boat is visible on radar. When the DCCG receives a notification/report with regard to an emergency situation at sea (within the area of responsibility/operations), they will always respond and conduct a search and rescue (SAR) operation, when necessary. Also, if there are indications of a missing boat with migrants, the DCCG will try to track and trace the boat with all the means at her disposal, in order to 'solve' the case.

When the DCCG intercepts a vessel at sea, they do not know what kind of situation they might encounter. Around the Dutch Caribbean islands, maritime narcotic smuggling activities are common and regularly these narcotic traffickers are armed and dangerous. Therefore DCCG units will always intercept suspicious boats coming to the islands with the highest levels of precaution. This means that they are in full protective gear with full armament, executing strict procedures. This might appear intimidating to the migrants, but is necessary from a security perspective. When the security situation is under control the first priority of DCCG personnel is the safety of everybody involved. Migrants are treated well, Coastguard personnel receive special hostmanship training for this.

All the DCCG units are clearly marked with the DCCG ensign and have "Coastguard" written on the side of the boat. When intercepting, they will normally have blue lights flashing and a siren on as well, to identify themselves. Personnel have "Coastguard" written on their uniform for identification. During an interception, the DCCG members will order the intercepted boat to comply for the security and safety of the people on board as well as for their own safety. If persons aboard are not compliant then proportionate measures might be used to ensure cooperation and secure the situation. All personnel are specifically trained for this. A gradient and proportionate scale is normally used to enforce security.

In rare, extraordinary situations and/or in cases of violent incidents, the proportionate use of firearms might be involved, however of course this should never be directed or pointed at the migrants in the boat, nor has this the purpose of threatening lives or intimidating migrants.

6. *Please provide detailed information on the Foreigners Barracks at the SDKK Prison, in which migrants and asylum seekers are being detained, including information on the conditions of detention and treatment of detainees, and please explain how this is compatible with international human rights obligations. Kindly include information of any plans of your Government to address immediately their dire living conditions at these*

facilities.

Within the Sentro di Detenshon i Korekshon Korsou (SDKK) detainees receive food and drinks, some activities are provided and they receive medical assistance if needed. Also they can spend some time in the open air. They are allowed to use the phone to call at any given time during day. All of the current detainees are waiting in the detention for the decision on their application under article 3 of the ECHR.

The Kingdom of the Netherlands is aware of the fact Curaçao needs to take some extra steps to improve the conditions for inmates at the SDKK. With help of the Netherlands Curaçao is building since 2021 a new centre with modern facilities. To meet international detention standards the Government of the Netherlands provides assistance and advice to Curaçao based on the expertise of the Dutch Custodial Institutions Agency (DJI). However, the detention conditions are a responsibility of the autonomous countries within the Kingdom of the Netherlands, and it is therefore up to Curaçao to take the necessary steps and make sure human rights are respected and fulfilled.

- 7. Please include details, and where available the results, of any investigation carried out in relation the allegations of ill-treatment of Venezuelan migrants and asylum seekers at the prison and police cells. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how it is compatible with the international human rights obligations of the Netherlands.*

According to the authorities of Curacao, the SDKK is continually conducting an extensive investigation on the allegations of ill-treatment of Venezuelan migrants and asylum seekers at the prison and police cells. If the outcomes confirm that the authorities abused their power and committed unlawful acts, the responsible officers will be reprimanded appropriately. In addition, group from the SDKK personnel has been trained on how they should treat, behave towards and communicate with Venezuelan migrants.

- 8. Please indicate what measures have been taken by your Government to protect the human rights of migrants and asylum seekers at international borders, including ensuring their access to legal aid and their effective access to asylum and other international protection procedures, in accordance with the Netherlands' obligations under international human rights. Please indicate measures taken by your government in carrying out individualized risk assessment, prior to deportation of migrants and asylum seekers, to ensure the full respect of the principle of non-refoulement.*

Procedures and policies are continuously revised on Curacao. Changes are made after experience and rulings and recommendations from the judicial branch. Also, Curacao receives additional support from the government of the Netherlands. On a regular basis, courses and trainings are given to officials of Curacao by officials of the government of the Netherlands.

Everyone on the territory of Curaçao has the right to legal representation. There are civil society organisations present that provide legal aid to migrants with an irregular status. It is however not a legal requirement to have a lawyer in order to start and complete the procedure.

In order to further help migrants with these procedures, the Ministry of Justice of Curaçao is in the process of drafting a document where the rights and duties of irregular migrants are listed. This document will be distributed among migrants in detention. In particular the migrants with an irregular status will receive this document when detained.