

STILL NO SAFETY

VENEZUELANAS DENIED PROTECTION IN CURAÇAO

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Cover photo: Shoes and life belt of Venezuelans that have washed ashore at Curaçao's North Coast © Berber van Beek / Studiorootz

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1. GLOSSARY

AIV	The Advisory Council on International Affairs
ALTERNATIVES TO DETENTION	Non-custodial measures restricting the rights of migrants and asylum seekers (often the rights to freedom of movement or the right to privacy). They vary in levels of intrusiveness and can range from registration requirements to bond/bail, designated residence, community release/supervision, reporting conditions, electronic tagging, or home curfew.
ASYLUM SEEKERS	Asylum seekers are people who have left their country and seek international protection, but have yet to be recognized as refugees.
CARTAGENA DECLARATION	The Cartagena Declaration on Refugees is a declaration adopted by a colloquium of experts from the Americas. The Declaration expands the definition of refugee to include people who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances that have seriously disturbed public order.
CAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CHARTER	The Charter of the Kingdom of the Netherlands is a legal instrument that lays down the political relationship between the four constituent countries of the Kingdom of the Netherlands: Aruba, Curaçao and Sint Maarten in the Caribbean, and the Netherlands in Europe.
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
(ARTICLE 3 OF THE) ECHR	Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." From this follows the prohibition to deport a person to a foreign state if they are likely to be subjected to torture after arrival.
DEPORTATION	The return to a person's country of origin or habitual residence, following an official order to leave. Deportations vary in the way they take place, but usually involve being detained and during deportation escorted by a security officer from the national police or immigration authority of the sending country.
FOREIGNERS BARRACKS	Part of the SDKK prison reserved for immigration detention.
HRDC	Human Rights Defense Curaçao

INTERNATIONAL PROTECTION	International protection is an obligation under international refugee law and arises when a person is outside their own country and unable to return home because of the risks they would face. It refers to all activities aimed at obtaining the full respect for the rights of the individual in accordance with international human rights, humanitarian and refugee law. It encompasses the protection given to people who fall under the classical refugee definition in the Refugee Convention and under the expanded refugee definition under the Cartagena Declaration and includes complementary forms of protection.
IOM	International Organization for Migration
LAW ENFORCEMENT COUNCIL	A legal entity that is charged with the general inspection of the organizations of the judicial chain in Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba.
LTU	The National Ordinance Admission and Deportation, the Curaçao immigration law.
THE MEIJERS COMMITTEE	The Meijers Committee, a standing committee of experts on international immigration, refugee and criminal law in the Netherlands.
MIGRATION-RELATED DETENTION, OR IMMIGRATION DETENTION	Migration-related detention refers to “the deprivation of an individual’s liberty, usually of an administrative character, for an alleged breach of the conditions of entry, stay, or residence in the receiving country.” Detention for migration-related purposes can take many forms, including detaining people in penal institutions, specialized detention centres, restricted movement arrangements, as well as in closed camp settings.
(NON) REFOULEMENT	The principle of non-refoulement is binding on all states, and prohibits them from sending anyone in any manner whatsoever to a place where they would be at real risk of serious human rights violations.
REFUGEE	A person outside his or her country of origin, who has a well-founded fear of persecution for reasons of their race, religion, nationality, membership of a particular social group or political opinion, as defined under the 1951 Convention Relating to the Status of Refugees (‘Refugee Convention’).

2. EXECUTIVE SUMMARY

“I screamed ‘Rafael, Rafael!’ hoping that he would hear me through the high prison walls.”

David, the father of Rafael (17 years), January 2021

In 2018 Amnesty International published the report *Detained and Deported: Venezuelans Denied Protection in Curaçao*. The Report highlighted that the government of Curaçao denied Venezuelans the right to international protection. Venezuelans who lived on the island without residence status were automatically detained under inhumane conditions in the detention centre and police cells prior to deportation¹. Amnesty International’s new investigation shows that the situation of Venezuelans who have fled to Curaçao, including children, has not improved: they continue to be subjected to human rights violations such as automatic detention under inhumane conditions, ill-treatment, denial of their right to seek protection and “refoulement”.

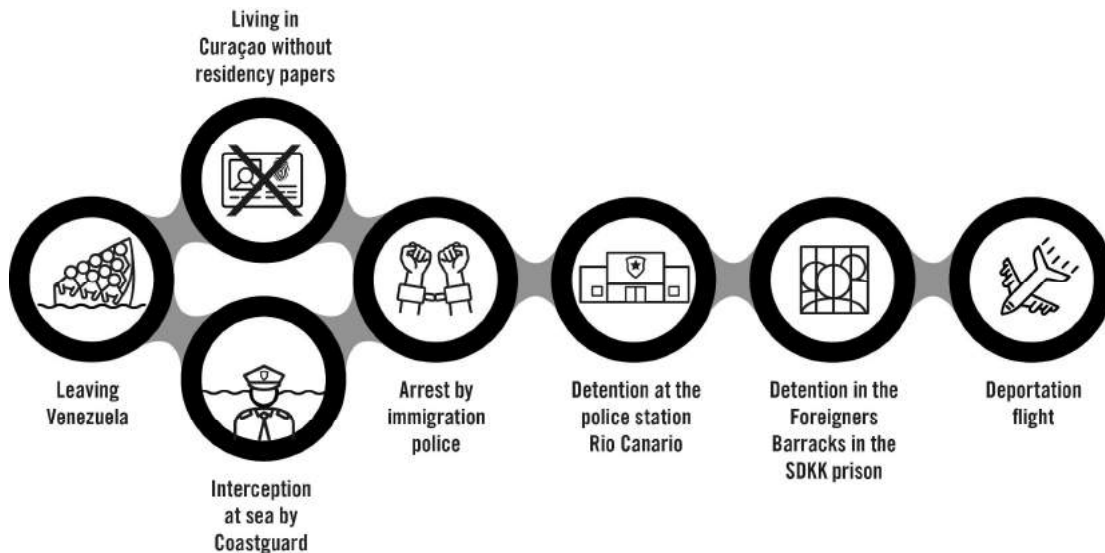
The humanitarian and human rights crisis in Venezuela has deepened in the last years. The country faces high levels of extreme poverty and the health sector has collapsed. In 2020 the UN Independent International Fact-Finding Mission on Venezuela concluded that the Venezuelan authorities have committed grave human rights violations, including extrajudicial executions, torture, arbitrary detentions and excessive use of force, amounting to crimes against humanity. This has caused millions of Venezuelans to flee their country, making it one of the largest forced displacement crises in the world. Curaçao has remained a destination country, even though it has become nearly impossible for Venezuelans to arrive in Curaçao in a regular way. That is why many Venezuelans see no other option than to depart to Curaçao by boat irregularly, putting their own lives at risk during a hazardous journey. In the last three years at least 60 people have drowned or gone missing when they tried to reach Curaçao by crossing the sea. In addition, it has become harder to obtain residency papers in Curaçao. Most of the Venezuelans cannot meet the criteria that the government has set to gain legal residence. They are therefore compelled to live irregularly on the island. It is estimated that 17,000 Venezuelans live undocumented in Curaçao in 2021. They are not allowed to work or access national health systems, making them extremely vulnerable to exploitation and abuse.

In 2019, after national and international pressure, Curaçao introduced a renewed international protection procedure under Article 3 of the ECHR, with the help of the Netherlands. However, Amnesty International has found that the procedure is not in line with international standards. The Curaçaoan authorities have violated the rights of Venezuelans in need of protection in different parts of the immigration chain (which is illustrated on the next page). In most cases this chain starts when Venezuelans are intercepted by the Dutch Caribbean Coastguard when they try to reach Curaçao by boat; in fewer cases they are arrested on land. After the Coastguard has handed them over to the Curaçaoan immigration police, they are taken to the police station in Rio Canario. They have to overcome many obstacles to request international protection; during the detention in the police station, immigration officers pressure them to sign a deportation order in

¹ According to Curaçao immigration law, the “National Ordinance Admission and Deportation” (LTU), deportation (verdwijdering) takes place in the case of irregular migrants. Expulsion (uitzetting) takes place when foreigners are stripped of their residence permit and removed from the country (such as when they have committed a crime). *Herziene Instructie aan de Gezaghebbers (HIG) Inzake de toepassing van de LTU*, (P.B. 1966, no. 17), zoals gewijzigd en het Toelatingsbesluit (P.B. 1985, no. 57), zoals gewijzigd, Gegeven door het Minister van Justitie, June 2006.

Dutch, irrespective of whether they need international protection. They do not explain them their rights or offer a translator. Subsequently, they are automatically detained under inhumane conditions in the Foreigners Barracks in the SDKK prison, again regardless of their need for protection. In the barracks prison guards use verbal and physical intimidation to discourage them from seeking legal assistance and to request protection. Lawyers and NGOs do not get standard access to the detention centre to provide legal assistance. Moreover, the prospect of being in detention for an undetermined period of time and under inhumane conditions deters people from starting a protection procedure.

THE IMMIGRATION CHAIN: FROM LEAVING VENEZUELA TO BEING DEPORTED BACK



Bryan², who phoned Amnesty International from the detention centre in February 2021, explained how guards dissuaded him from seeking protection: *“They told us that we would never get a lawyer. They said: ‘We’re going to deport you because we don’t believe your lies. You’re illegal and you’re just here to steal our money. If you’re going to ask for protection you will have to stay here for a very long time.’”*

If people persist in starting the Article 3 ECHR protection procedure, they are confronted with other flaws in the procedure. They find the setting and type of questioning in the protection assessment interviews intimidating, because the immigration police officers who do the protection assessment interviews have also been in charge of arresting and detaining them. Furthermore, the procedure is not set in law, but in policy rules, which makes it unclear to what extent people looking for protection can derive rights from these rules. The decision-making process is not transparent: The Curaçaoan authorities do not provide adequate information about their procedure or the decision-making, leaving them in great uncertainty. Until now the procedure has only led to rejection.

The immigration detention still does not meet international law standards. Venezuelans are still automatically detained in the Foreigners Barracks. The period of detention is undetermined, because there is no automatic review of the detention decision by a court. People can only be released by a decision by the minister of justice and if they have a guarantor, leading to great arbitrariness. The conditions in the Foreigners Barracks have remained inhumane since the initial report in 2018, and basic needs such as sufficient food and hygiene are not met. People interviewed by Amnesty International spoke about how the guards mistreated them psychologically and physically, including treating them like criminals or forcing them to leap like a frog naked. This contributes to an atmosphere of impunity for the guards and police. In 2019 a group of Venezuelans who were in immigration detention were shot with rubber bullets by the police. The intentional and disproportionate force the police used against them, and the severity of the injuries appears to amount to ill-treatment or torture.

Miguel³, who was also shot with rubber bullets, recalls how the guards punished him and his group for seeking protection: *“Then the craziness started: the guards didn’t let us sleep. They made noise at every*

² Interview with “Bryan”, Willemstad, 8 February 2021 (name has been changed to respect the interviewee’s anonymity).

³ Interview with “Miguel”, Willemstad, 21 February 2021 (name has been changed to respect the interviewee’s anonymity).

moment with hammers. I was sleeping on the ground and poorly fed. I lost 35kg in five months. They damaged us psychologically to make sure we left the island."

For detained foreigners the complaints procedure has been almost inaccessible, because prison personnel do not inform them about it and it is very difficult to arrange a lawyer to file a complaint. Even an official complaint from lawyers of serious physical violence after the shooting incident described earlier did not result in an independent investigation report.

The new renovation plans of the Foreigners Barracks, principally funded by the Netherlands, do not seem to offer any substantial improvements: they are still on the prison premises, they do not include any non-custodial alternatives to detention and children will still be detained based on their migration status.

People who are seeking international protection are still not automatically exempted from deportation. They depend very much on lawyers or the NGO Human Rights Defense Curaçao who have to convince the government not to deport them. Sometimes this even happens at the airport when they are about to be deported. This happened to Ana⁴ too. Her deportation in 2019 was halted only at the last moment when she was already at the airport. Despite the fact that she had requested protection, guards misled her by saying that she would have an appointment at the migration office and took her to the airport. She could not collect her belongings and she was wearing a prison uniform. Ana told Amnesty International: *"I thought I would go to the migration office where I could explain that I needed protection. I tried to explain that I couldn't go back to Venezuela, certainly not in a prison uniform."*

Lawyers or HRDC cannot always stop a deportation, as it is difficult for them to contact Venezuelans who are in immigration detention. At the end of 2019, the Coastguard intercepted three boats with a total of 97 Venezuelans trying to reach Curaçao. Some were put into the barracks; another group was put into the sports hall of the police station in Rio Canario. At Curaçao's request, Dutch military personnel helped guard the sports hall. The Curaçaoan authorities did not allow lawyers to make contact with the Venezuelans. Within three weeks they were deported back to Venezuela. Lawyers have described it as collective deportation, in breach of international law. Amnesty International considers it highly improbable that the Curaçaoan authorities have been able to do a thorough individual assessment of 95 people in three weeks and with the Venezuelans having had access to legal assistance. By failing to do an individual and thorough assessment of the need for protection, the Curaçaoan authorities have put deported Venezuelans at great risk of serious human rights violations. On the basis of available evidence, deportations to Venezuela thus appear to have been realized in breach of international law, and in particular of the principle of non-refoulement.

Curaçao has violated the rights of Venezuelan children by detaining them and separating them from their parent(s). Children are not reunited with their parent(s) if they live on the island, neither are the parent(s) allowed to visit them. Instead, the Curaçaoan authorities deport them without the authorization of their parents or having concluded a protection procedure. The Curaçaoan authorities do not research who will look after the child or what the living conditions of the child will be after deportation. Amnesty International has documented eight children who were or had been detained amongst adults in the Foreigners Barracks or in juvenile institutions.

In one of the cases documented, Rafael, a 17-year-old boy, was detained in the Foreigners Barracks, where the authorities did not allow him to see his father or a lawyer. The Curaçaoan authorities succeeded in pressuring him to sign for his deportation. When he arrived at the airport in Caracas, the Venezuelan authorities held him for eight hours, because they were suspicious of the fact that a minor had travelled without the authorization of his parent(s).

In the case of Yusmari, her two sons aged 15 and 16 at the time were automatically detained in the Foreigners Barracks after the Coastguard had intercepted them and handed them over to the Curaçaoan immigration police. Yusmari, who already lived in Curaçao, could not visit them. She recalls when they were put in the Foreigners Barracks: *"Every time we called, we would cry." Her youngest son who is now back in Venezuela told Amnesty International: "I felt bad. I was not used to being locked up."* After two days Yusmari's sons were detained in a youth institution where Yusmari was not allowed to contact or visit them. When she finally got permission and arrived at the youth institution she learnt that Curaçao had already deported her children. Amnesty International considers the intentional and severe mental suffering government officials have caused when they deported children and separated them from their parent(s) may in some cases amount to torture.

⁴ Interview with "Ana", Willemstad, 29 March 2021 (name has been changed to respect the interviewee's anonymity).

Despite various alarming signs of serious refugee and migrant rights violations taking place, the Dutch authorities have intensified their active cooperation with and support to Curaçao, principally in the field of detection, detention and deportation of migrants and people seeking protection. They have continued to consider the implementation of immigration policy and related irregularities as “a country affair” or in other words, an internal matter. However, the Dutch military assisted in the guarding of a group of unlawfully detained Venezuelans, who were then most likely to be collectively deported, thus without having had an individual procedure. The Netherlands has also substantially invested in the Coastguard, which regards itself as is “one link in immigration chain”. The Dutch authorities have provided the Coastguard with material and personnel to intercept people arriving by boat in an irregular manner. The Coastguard hands those intercepted over to the Curaçaoan immigration police, regardless of whether they run a high risk of being exposed to human rights violations. The Dutch authorities have neglected to create any binding human rights safeguards, or independently monitor or evaluate the support given; nor have they effectively assessed human rights risks or investigated alleged violations, thereby maintaining a system of abuses. Therefore, the Dutch government has failed to comply with international standards to respect and protect human rights.

For this report Amnesty International interviewed 22 Venezuelans who lived or had stayed undocumented in Curaçao. The majority were seeking protection and were or had been detained. Some of them were deported during the research period or had already been deported to Venezuela. Amnesty International also spoke with the Curaçaoan and Dutch authorities, international and local NGOs, international organizations, academics and advisory bodies. On 15 September 2021, Amnesty International wrote to the Curaçaoan and Dutch authorities requesting clarification on the findings in this report. On 29 and 30 September 2021 the Curaçaoan and Dutch authorities replied, their reactions are included in the report where relevant.

KEY RECOMMENDATIONS

The government of Curaçao should:

- Ensure that all foreigners in need of protection can access the protection procedure that is in line with international standards, including that no persons are deported to a place where they would be at real risk of serious human rights violations, in violation of the principle of non-refoulement.
- Ensure that in all decisions relating to children, the best interests of the child shall be a primary consideration. Regardless of the immigration status of their parent(s) and/or legal guardian(s), children must not be detained and/or separated from them. When the government proves that migration enforcement measures that restrict human rights are necessary and proportionate, alternatives to detention must be applied to the entire family.
- Ensure that the detention of migrants and people seeking international protection is exceptional and only used as a last resort, for the shortest possible amount of time, and only where necessary in the specific circumstances and proportionate to a legitimate purpose pursuant to international human rights law.

The Kingdom of the Netherlands should:

- Ensure any joint operations or activities are not involved in human rights abuses such as refoulement.

The government of the Netherlands should:

- Assess human rights risks and create binding human rights safeguards in the support given.
- Establish an independent commission of inquiry to investigate the responsibilities of the Netherlands in the Curaçaoan immigration chain against human rights standards, in particular the guarding of the Venezuelans in the sports hall in 2019 and the activities of the Coastguard.

3. METHODOLOGY

This report is based on desk and field research Amnesty International carried out in Curaçao from January to July 2021. Even though the need for protection may apply to other nationalities living undocumented on the island, Amnesty International decided to focus on Venezuelans, since they represent the largest group within the undocumented population.⁵ The organization conducted in-depth interviews with 22 Venezuelans: 15 men, four women and three children between the ages of 16 and 17. Nineteen Venezuelans were interviewed while they were in Curaçao, the three children were interviewed while they were in Venezuela. Nine people were in a protection procedure. Amnesty International visited the Foreigners Barracks at the SDKK prison in June 2021. Amnesty International conducted interviews with seven people in detention and 13 people who had been detained between 2019 and 2021. Two people were deported to Venezuela during the research period. Three other interviewees had already been deported; Amnesty International interviewed them via voice messages.

Throughout the report, several cases are discussed extensively as emblematic cases that illustrate Curaçao's policies towards people seeking protection and foreigners with an irregular immigration status. Amnesty International corroborated the testimonies of those interviewed by communicating with their lawyers, HRDC⁶ and relatives; and by obtaining supporting evidence such as court documents and other legal documents, as well as written and recorded statements, photographs and videos. In order not to expose people who spoke to Amnesty International to further risk, nearly all of their names have been changed and – when necessary – some identifying information has been withheld. The only exceptions are the cases of Edixon and Yusmari, both of whom gave explicit consent to Amnesty International to discuss their cases in public.

Amnesty International spoke with five lawyers or jurists in Curaçao who were or had been engaged in cases with Venezuelans seeking protection. Furthermore, the organization conducted 15 interviews with local and international civil society organizations, including Caritas Curaçao; the Curaçao National Ombudsman; the Red Cross Curaçao and Red Cross International; the UN Refugee Agency (UNHCR); the Law Enforcement Council; the UN Children's Fund (UNICEF) Netherlands; the Advisory Council on International Affairs; Maarten den Heijer (Meijers Committee); Chrisje Sandelowsky (Leiden University); IOM; HRDC; and Venex.⁷ The organization also interviewed the Curaçao Ministries of General Affairs and Justice, and the Dutch Ministries of the Interior and Kingdom Affairs, Justice and Security, Defense, as well as the Dutch Caribbean Coastguard. In addition, Amnesty International filed a Freedom of Information request with the above-mentioned Curaçaoan and Dutch authorities in May 2021; however, neither government has provided the requested information within the research period. On 15 September 2021, Amnesty International wrote to the Curaçaoan and Dutch authorities requesting clarification on the findings in this report. On 29 and 30 September 2021 the Curaçaoan and Dutch authorities replied, their reactions are included in the report where relevant.

Amnesty International would like to thank everyone who contributed to this research, particularly the Dutch Refugee Council which co-funded this research, the Venezuelans interviewed and their friends and advocates in Curaçao.

⁵ Exact numbers of how many people live irregularly in Curaçao are unavailable. Estimates are around 25,000, of which approximately 17,000 are Venezuelan. Other nationalities include people from Colombia, Jamaica, Haiti and the Dominican Republic. *Caribisch Netwerk*, Elisa Koek, *Curaçao start met registratie migranten via voedselpakketten*, 23 April 2020, bit.ly/2VzPEh4; email correspondence with Curaçao Police Corps Immigration Unit, *Removals Overview 2020*, 21 January 2021.

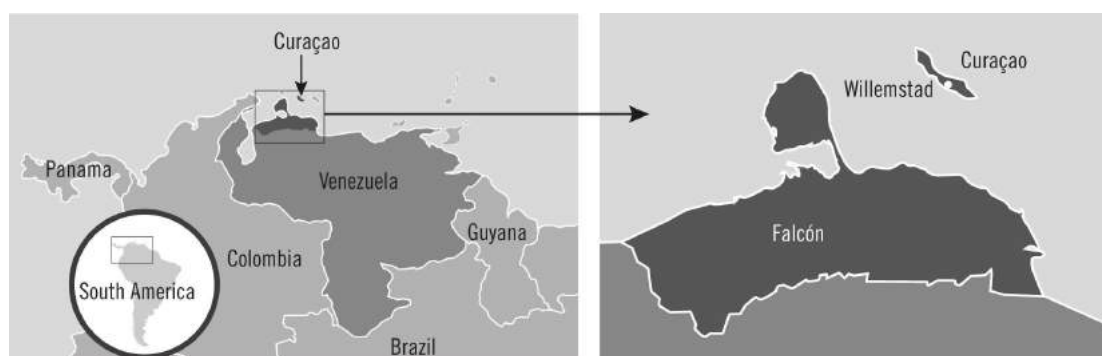
⁶ This human rights organization is focused on, among other things, informing refugees and crisis migrants about their rights, as well as providing legal counsel to refugees and others whose human rights are being violated, humanrightsdefense.org

⁷ VENEX is a Venezuelan diaspora organization, bit.ly/3xf61wV

4. BACKGROUND

4.1 HUMAN RIGHTS ISSUES STILL URGENT

Curaçao, an island located some 70km from the coast of Venezuela, has been a key destination country for Venezuelans fleeing their homes.



In 2018 Amnesty International published the report *Detained and Deported: Venezuelans Denied Protection in Curaçao*. The main conclusions were that the government of Curaçao denied Venezuelans the right to international protection. Venezuelans who lived on the island without residence status were automatically detained under inhumane conditions in the detention centre and police cells prior to deportation. As Curaçao is, along with Aruba, Sint Maarten and the Netherlands, a constituent country of the Kingdom of the Netherlands,⁸ Amnesty International called on Curaçao, The Netherlands and the Kingdom of the Netherlands to address these human rights violations.⁹

Since this initial report, lawyers, (local) NGOs and international organizations have indicated that the situation for Venezuelan refugees in Curaçao has yet to see any substantial improvements. Amongst other issues, the international protection procedure has been criticized. The Meijers Committee, a standing committee of experts on international immigration, and refugee and criminal law, concluded that “the [international protection] procedure has to a great extent the character of a fig leaf instead of really helping undocumented people”.¹⁰ Different national and international organizations and Dutch members of parliament have raised their concerns about the detention conditions not being in line with international standards.¹¹ In addition, local lawyers have stated that Curaçao has collectively deported people;¹² and together with activists they have sounded the alarm about minors being detained and deported by the government.¹³ In the same period the Netherlands has responded to Curaçao’s request for

⁸ Charter for the Kingdom of the Netherlands, Decree of 1 November 2010, Bulletin of Acts and Decrees of the Kingdom of the Netherlands (Staatsblad), Volume 2010, 775.

⁹ Amnesty International, *Netherlands: Detained and Deported: Venezuelans Denied Protection in Curaçao* (Index: EUR 35/8937/2018).

¹⁰ Commissie Meijers, *Notitie aangaande de asielpprocedure op Curaçao*, 22 June 2020, p. 4.

¹¹ Dick Drayer, NOS, *Kamerleden: langdurig opsluiten Venezolanen in Curaçao mensenwaardig*, 13 January 2020, bit.ly/3AaLEcX

¹² Dick Drayer, NOS, *Vreemdelingenadvocaten: ‘Curaçao zet Venezolanen collectief uit’*, 27 November 2019, bit.ly/3zHw0xH

¹³ Kim Hendrikse, Curaçao.nu, *Zorgen om minderjarige vluchtelingen op Curaçao*, 28 October 2019, bit.ly/2XMUYyu and Nu.cw, *HRDC: Staatssecretaris Knops geeft vertekend beeld van vluchtelingenproblematiek*, 15 January 2021, bit.ly/3BY7N7Y

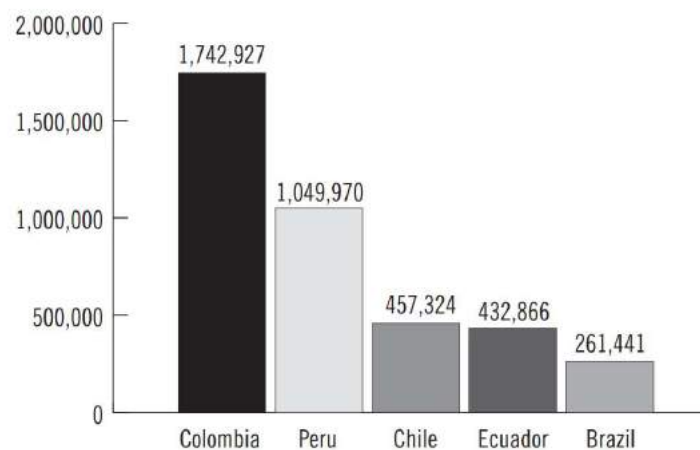
assistance by providing technical support and over 23 million euros of financial support in the field of border control, detention and the protection procedure.

4.2 PEOPLE CONTINUE TO FLEE HUMAN RIGHTS VIOLATIONS IN VENEZUELA

The humanitarian and human rights crisis in Venezuela has deepened in the last years. The country faces high levels of extreme poverty, and the collapse of the health system, which were worsened by the Covid-19 pandemic.¹⁴ Shortages of basic medicines, which were unaffordable for most people, intensified.¹⁵ One in three Venezuelans (more than 9 million people) do not have enough to eat.¹⁶ Various human rights organizations, including Amnesty International,¹⁷ have stated that the systematic and widespread policy of repression since at least 2017 in Venezuela may constitute crimes against humanity. In 2020 the UN Independent International Fact-Finding Mission on Venezuela concluded that the Venezuelan authorities have committed grave human rights violations, including extrajudicial executions, torture, arbitrary detentions and excessive use of force, amounting to crimes against humanity.¹⁸

Over 5.7 million Venezuelans have left the country,¹⁹ making it one of the largest forced displacement crises in the world.²⁰ Since 2014 the number of Venezuelans seeking protection worldwide has increased dramatically by 8,000%. Most of the Venezuelans are hosted in the region, as is illustrated here below.

Countries in the region hosting the most Venezuelans by July 2021



Source: R4V²¹

Leaving Venezuela can be a very dangerous undertaking. Growing concerns about the arrival of Venezuelans have led regional governments to tighten border controls and introduce visa requirements for Venezuelans. Venezuelans therefore often have no other choice than to take irregular routes to reach safety. They may fall prey to smugglers, traffickers and irregular armed groups.²² An increasing number of people are taking perilous sea routes towards Caribbean islands like Aruba, Curaçao and Trinidad and Tobago.²³ In December 2020 a group of up to 25 Venezuelans drowned after their boat had capsized on its way to Trinidad and

¹⁴ Amnesty International, *Amnesty International Report 2020/21*, (Index: POL 10/3202/2021), p 394.

¹⁵ Amnesty International, *Amnesty International Report 2020/21* (previously cited).

¹⁶ World Food Programme, *Venezuela Food Security Assessment*, 23 February 2020, p. 1, bit.ly/3v96Shh

¹⁷ Amnesty International, "Venezuela: Crimes against humanity require a vigorous response from the international justice system", 14 May 2019, [amnesty.org/en/latest/press-release/2019/05/venezuela-crimes-against-humanity-require-response-from-international-justice-system/](https://www.amnesty.org/en/latest/press-release/2019/05/venezuela-crimes-against-humanity-require-response-from-international-justice-system/)

¹⁸ *Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela*, UN Doc. A/HRC/45/33, 14 September-2 October 2020, para. 4.

¹⁹ R4V, *Refugiados y migrantes de Venezuela*, r4v.info, accessed on 17 August 2021.

²⁰ UN High Commissioner for Refugees (UNHCR), *Venezuela Situation*, [unhcr.org/venezuela-emergency.html](https://www.unhcr.org/venezuela-emergency.html)

²¹ R4V, *Evolución de las cifras en los 17 países R4V*, r4v.info/es/refugiadosymigrantes, accessed on 17 August 2021.

²² UNHCR, *Venezuela Situation*, [unhcr.org/venezuela-emergency.html](https://www.unhcr.org/venezuela-emergency.html)

²³ International Organization for Migration (IOM), *Venezuelan Refugee and Migrant Crisis*, iom.int/venezuela-refugee-and-migrant-crisis

Tobago, making it the second recorded shipwreck in 2020 in the Caribbean. In 2019, at least 80 people lost their lives while crossing from Venezuela to Trinidad and Tobago and Curaçao.²⁴

Worldwide over 140,000 Venezuelans have been recognized as refugees. Latin American countries have issued a total of 2.7 million residence or regular stay permits.²⁵ For instance, in February 2021 President Duque of Colombia announced the granting of 10-year protection status to up to 1 million undocumented Venezuelans living in the country. However, not all countries adopt the same measures, and there has been an alarming trend in recent years of an increasing number of countries imposing entry restrictions on Venezuelans.²⁶

In the European Union the protection rate of Venezuelans in the first instance was 83% at the end of 2020. They are mostly issued with humanitarian protection. In only 10% of the decisions do Venezuelans receive a refugee or subsidiary protection status.²⁷ In 2020, the Netherlands granted 15% of Venezuelan asylum seekers refugee protection. Some countries in Europe have also moved to granting protection to Venezuelans based on humanitarian grounds. Principally Spain, where, although only a limited number of Venezuelans receives refugee status, nearly all Venezuelans who arrive in Spain are granted a humanitarian permit.²⁸

²⁴ IOM and UNHCR, *IOM and UNHCR Saddened at Deaths of Refugees and Migrants in Shipwreck off Venezuela Coast*, 15 December 2020, bit.ly/3wuGiQT

²⁵ These permits include temporary residence permits, labour migration visas, humanitarian visas, and regional visa agreements, including MERCOSUR and UNASUR. UNHCR, *Venezuela Situation*, data2.unhcr.org/en/situations/vensit, accessed on 17 August 2021.

²⁶ Amnesty International, *Trinidad and Tobago: Deportation of 82 Venezuelans violates human rights obligations*, 24 April 2018, bit.ly/3nvFtpo and Amnesty International, *In Search of Safety: Peru Turns its Back on People Fleeing Venezuela* (Index: AMR 46/1675/2020), bit.ly/3xrxwDg

²⁷ Eurostat, *First instance decisions by outcome and recognition rates, 30 main citizenships of asylum applicants granted decisions in the EU, Q4 2020*, Table 7, bit.ly/3iC87CG, accessed on 17 August 2021.

²⁸ Eurostat database, bit.ly/3zvlElx, accessed on 15 June 2021.

5. LEGAL FRAMEWORK

5.1 HUMAN RIGHTS IN THE KINGDOM OF THE NETHERLANDS

The Kingdom of the Netherlands dissolved the Netherlands Antilles on 10 October 2010, reconstituting Curaçao and Sint Maarten as new constituent countries within the Kingdom. Aruba, Curaçao, Sint Maarten and the Netherlands are now the four countries making up the Kingdom of the Netherlands.²⁹ The *Charter for the Kingdom of the Netherlands* (hereinafter: “The Charter”) regulates the constitutional relationship between the four countries, which all have their own government and parliament.³⁰ These institutions are empowered to enact legislation related to the countries’ own affairs. “Kingdom affairs” are addressed in the Council of Ministers of the Kingdom, which consists of the ministers of the Netherlands and three ministers plenipotentiary appointed by Aruba, Curaçao and Sint Maarten.³¹

The Charter provides that each of the countries has the responsibility to protect human rights. However, accession to international human rights treaties is a “Kingdom affair”, for which the countries are jointly responsible.³² Only the Kingdom of the Netherlands (not the individual countries) can ratify treaties and subsequently indicates for which countries a treaty will apply.³³ Many of the treaties are only signed for the Netherlands. Citizens in the Caribbean part of the Kingdom therefore may have fewer possibilities to claim their rights than their fellow citizens in the Netherlands.³⁴

Whereas migration policy is considered as a “country affair” or in other words, an autonomous power of the Kingdom’s countries, the admission and deportation of foreigners and the safeguarding of human rights are Kingdom affairs. These articles in the Charter stipulate the responsibilities within the Kingdom of the Netherlands with regard to the protection of migrant and refugee rights:

- **Article 3** specifies which are *Kingdom affairs*: foreign relations, defence, Dutch nationality and general conditions for the admission and deportation of foreigners.³⁵
- **Article 36** determines that countries shall accord each other aid and assistance. For this article to come into play, it is important that the country is clear in asking for assistance from the Kingdom of the Netherlands.
- **Article 43** says in the first paragraph that each of the autonomous countries has the obligation to promote *the realization* of fundamental human rights and freedoms, legal certainty and good governance; and in the second paragraph that the *safeguarding* of this is deemed a

²⁹ The first three countries are located in the Caribbean. The Kingdom therefore has a European part and a Caribbean part. Bonaire, St. Eustatius and Saba became special municipalities within the Netherlands.

³⁰ *Statuut voor het Koninkrijk der Nederlanden*, Decree of 1 November 2010, Bulletin of Acts and Decrees of the Kingdom of the Netherlands (Staatsblad), Volume 2010, 775, Text of the Charter for The Kingdom of the Netherlands as last amended by Kingdom act in connection with the dismantling of the present Constitutional Order of the Netherlands Antilles.

³¹ Article 7 of the Charter.

³² Dutch government, *Rijkswet goedkeuring en bekendmaking verdragen*, (BWBR0006799)

³³ The government of each constituent country decides if they want to accede to the treaty. Advisory Council on International Affairs (AIV), *Fundamental rights in the Kingdom: Unity in protection*, June 2018, pp. 8-9.

³⁴ AIV, *Fundamental rights in the Kingdom: Unity in protection* (previously cited), pp. 6-7.

³⁵ *Statuut voor het Koninkrijk der Nederlanden* (previously cited).

“Kingdom affair”. The Kingdom is obliged to respond if a constituent country fails to fulfil its duty adequately and structurally in this field and if internally no redress is offered.³⁶

5.2 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

5.2.1 RIGHT TO PROTECTION

Although the Kingdom of the Netherlands ratified the 1951 Refugee Convention, it declared that this convention did not apply to its overseas territories.³⁷ As a result, Curaçao states that it is not required to offer international protection under this convention. However, the Kingdom of the Netherlands has ratified without reservations for the constituent countries the following treaties: ECHR,³⁸ the International Covenant on Civil and Political Rights (ICCPR), and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).³⁹ All obligations stemming from these treaties also apply to Curaçao, including the standard against refoulement, meaning that removal of a person to a place where they would be at real risk of persecution or other serious human rights violations is not allowed.⁴⁰ For the principle of non-refoulement to be breached, it is therefore not necessary for serious harm to ensue: the human rights violation takes place when someone is returned to a real *risk* of such harm. Article 3 of the ECHR states that: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”⁴¹ From this follows the prohibition to deport a person to a foreign state if they are likely to be subjected there to torture. This principle of non-refoulement is a rule of customary international law and therefore applies to all states, regardless of whether they are parties to the relevant treaties.⁴²

The rights of migrants and asylum seekers are protected by international law, regardless of how and why they arrive in a country.

- The right to seek asylum is enshrined in Article 14 of the Universal Declaration of Human Rights: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”⁴³
- Article 33 of the Refugee Convention protects refugees and asylum seekers from being returned to countries where they would be at real risk of being persecuted.⁴⁴

³⁶ Council of State (Raad van State), *Voorlichting inzake een te ontwikkelen visie op het Koninkrijk*, Kamerstukken II 2010/2011, 32 500-IV, nr. 50, 5 September 2011.

³⁷ According to Article 40 of the Refugee Convention, “Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of its territories for the international relations of which it is responsible.” UN General Assembly, UN Refugee Convention, 1951, p. 137.

³⁸ The Curaçao Supreme Administrative Court ruled in 2011 that requests for protection must be assessed under Article 3 of the ECHR, ECLI:NL:OGHACMB:2011:BV2081; see also ECLI:NL OGEAM:2016:8; Curaçao's Ombudsman, *Ambtshalve onderzoek naar de rol van de Minister van Justitie in het kader van het Curaçaose vreemdelingen - c.q. vluchtelingenbeleid*, 27 June 2018.

³⁹ Committee on Economic, Social and Cultural Rights, Sixth periodic reports of States parties due in 2015: The Netherlands, UN Doc. E/C.12/NLD/6, 20 May 2016, para. 3.

⁴⁰ Article 3 and Article 13 of the ECHR, Article 3 of the CAT and Article 2(3)(a) (right to an effective remedy) and Article 7 of the ICCPR (prohibition against torture and inhuman or degrading treatment). The European Court of Human Rights (ECtHR) has held in its jurisprudence that non-refoulement is an inherent obligation under Article 3 of the ECHR in cases where there is a real risk of exposure to torture, inhuman or degrading treatment or punishment, see in particular the Court's decisions in *Soering v. United Kingdom*, Application No. 14038/88, 7 July 1989; The Human Rights Committee interpreted the ICCPR to encompass the obligation to not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement, see Human Rights Committee in its General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992, U.N. Doc. HRI/ GEN/1/Rev.7, para. 9; Article 3 of the CAT contains an explicit non-refoulement provision which prohibits the removal of a person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. UNCAT, 1984.

⁴¹ Council of Europe, *Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950.

⁴² UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994.

⁴³ UN General Assembly, *Article 14 of the Universal Declaration of Human Rights*, 10 December 1948.

⁴⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137 (UN Refugee Convention, 1951).

- Article 3 of UNCAT states that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.⁴⁵
- Article 4 of Protocol No. 4 of the ECHR prohibits the collective expulsion of aliens.⁴⁶
- Article 7 of the ICCPR states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁴⁷

The majority of Venezuelans fleeing the country would qualify as refugees and be entitled to international protection, based on either the 1951 Refugee Convention or the regional 1984 Cartagena Declaration,⁴⁸ as they fear for their lives, security or freedom as a result of the events that are currently seriously disturbing public order.⁴⁹ UNHCR therefore calls on countries to not deport or in any other way forcibly return Venezuelans in accordance with international refugee and human rights law.⁵⁰ Although the Cartagena Declaration is a non-binding document, Curaçao demonstrated its commitment to uphold these standards when Curaçao, among 27 other countries, adopted the Brazil Declaration and Plan of Action in 2014. The countries agreed to work together to uphold the highest international and regional protection standards, implement innovative solutions for refugees and displaced people and end the plight of stateless people in the region.⁵¹

To sum up, Curaçao is obliged to protect people from being sent back to a place where they could face torture.⁵² And on the basis of Article 13 in combination with Article 3 of the ECHR, people in Curaçao who risk refoulement have the right to an effective remedy against deportation before a national authority.⁵³

The European Court of Human Rights also established other important procedural guarantees related to the asylum system:

- The asylum procedure must be accessible;
- A claim must be thoroughly examined;⁵⁴
- The legal remedy brought by the asylum seeker must automatically suspend the execution of the forcible return measure;⁵⁵
- The asylum seeker should receive information about the procedures to be followed;⁵⁶
- The asylum seeker has a right of access to interpretation and translation;⁵⁷
- The asylum seeker could eventually – on the basis of Article 34 – lodge an application with the European Court of Human Rights.

⁴⁵ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

⁴⁶ Council of Europe, Prohibition of collective expulsion of aliens, Article 4 of Protocol No. 4 to the ECHR, *European Treaty Series – No. 46*, 16.IX.1963 (Article 4 of Protocol No. 4 to the ECHR).

⁴⁷ UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (ICCPR, 1966).

⁴⁸ The Cartagena Declaration on Refugees is a declaration adopted by a colloquium of experts from the Americas. The Declaration expands the definition of refugee to include people who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order, bit.ly/3k47jXG

⁴⁹ The Declaration is not legally enforceable. However, the extended refugee definition in the Cartagena Declaration has been adopted by the legislatures of 14 Latin American nations. Amnesty International, *Urgent measures: Venezuelans need international protection*, 3 September 2018 (Index: AMR 01/9019/2018), p. 5.

⁵⁰ UNHCR, Guidance Note on International Protection Considerations for Venezuelans – Update I, p. 3.

⁵¹ UNHCR, *30th Commemorative Anniversary of the Cartagena Declaration on Refugees*, 2014, bit.ly/3DkHyd9

⁵² Article 3 of the ECHR: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The European Court of Human Rights has held that this provision prohibits the extradition of a person to a foreign state if they are likely to be subjected there to torture. Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950, (Council of Europe, ECHR).

⁵³ Article 13 of the ECHR: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” Council of Europe, ECHR.

⁵⁴ European Court of Human Rights: *Jabari v. Turkey* (40035/98) (11 July 2000) para. 50: “[...] given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialized and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and the possibility of suspending the implementation of the measure impugned.”

⁵⁵ ECtHR: *Gebremedhin v. France* (no. 25389/05) (26 April 2007) para. 66: “[...] Article 13 requires that the person concerned should have access to a remedy with automatic suspensive effect.”

⁵⁶ ECtHR: *M.S.S. v. Belgium and Greece* (30696/09) (21 January 2011) para. 304.

⁵⁷ ECtHR: *Hirsi Jamaa and others v. Italy* (27765/09) (22 February 2021) para. 202.

5.2.2 DETENTION PRINCIPLES

The right to liberty can only be restricted in specific and exceptional circumstances. Migrants and asylum seekers, like anyone else, must remain free unless there are compelling reasons to deny them freedom. Any restrictions of their liberty shall be clearly prescribed by laws which themselves comply with international human rights law and standards, are strictly justified, and are as minimally intrusive as possible. Arbitrary detention can never be justified.

The following are illustrative iterations of these principles:

- ICCPR, Article 9(1): “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”
- ECHR, Article 5(1)(f): “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...] the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): “Immigration detention should only be a measure of last resort, after a careful and individual examination of each case. In addition, the continued need for it should be the subject of periodic review. Alternative (non-custodial) measures should be developed and used wherever possible.”⁵⁸

Amnesty International therefore opposes the automatic use of migration-related detention and requires that states conduct individualized assessments for each migrant or asylum seeker, taking into account their histories and specific needs. A person should only be detained for such time as strictly necessary and proportionate and provided by law. Migration-related detention for the sole purpose of determining the elements on which an individual’s claim to asylum is based should not be allowed. Detention may be unlawful where it is indefinite, prolonged or mandatory and the need for detention should be regularly reviewed.

5.2.3 CHILDREN’S RIGHTS

Different rights and treaties apply to the position of Venezuelan children who live undocumented in Curaçao. The most important is the Convention on the Rights of the Child (CRC), which was ratified by Curaçao (at that time still part of the Dutch Antilles) in 1998. After Curaçao’s independence in 2010, it was determined that the treaty would also apply to Curaçao as an autonomous country within the Kingdom of the Netherlands.

The CRC determines that in all actions undertaken by the authorities, the best interests of the child should be a primary consideration.⁵⁹ International law prohibits the detention of children or the separation from their parents based on their migration status, as it can never be in the best interest of the child.⁶⁰ According to the Working Group on Arbitrary Detention: “Children must not be separated from their parents and/or legal guardians. The detention of children whose parents are detained should not be justified on the basis of maintaining the family unit, and alternatives to detention must be applied to the entire family instead.”⁶¹ Other rights are also relevant with regard to detention of children and/or their parents, including the right to family unity,⁶² the right to liberty, and the right to freedom from torture and other ill-treatment.

⁵⁸ CPT, *CPT Factsheet Immigration Detention*, March 2017.

⁵⁹ Article 3 of the Convention on the Rights of the Child states that: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

⁶⁰ UNHCR: UNHCR’s position regarding the detention of refugee and migrant children in the migration context, January 2017, p. 1.

⁶¹ Working Group on Arbitrary Detention, Revised Deliberation No. 5 on Deprivation of Liberty of Migrants, 7 February 2018, para. 40.

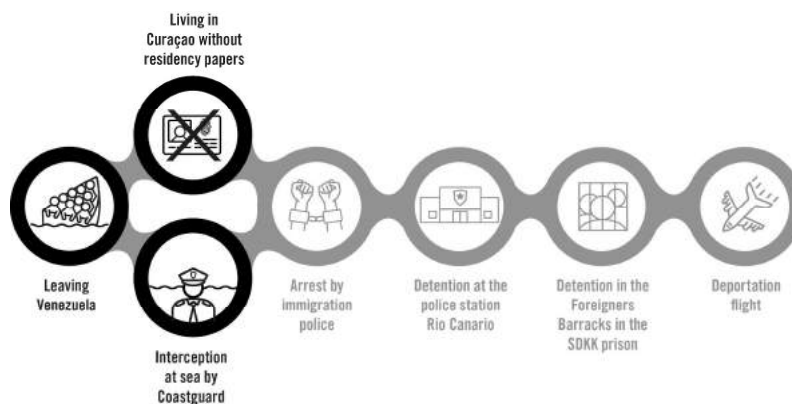
⁶² An interference with the right to family life and family unity (Article 8 of the ECHR) is arbitrary and a violation of that right if it is not both necessary and proportionate to a legitimate aim and conducted in accordance with the law. See UN Human Rights Committee (HRC): *Winata v. Australia*, Communication (930/2000) (26 July 2001), para. 7.3, UN Doc. CCPR/C/72/D/930/2000 (2001). See also, HRC, General Comment No. 16, para. 4, UN Doc. HRI/GEN/1/Rev.1 at 21 (1994); and HRC, General Comment No. 31, UN Doc. CCPR/C/74/CRP.4/Rev.6 (2004), para. 6; and HRC, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 35.

6. ARRIVING IN CURAÇAO

“It’s not easy to leave your life behind and take all these risks. I had no experience of fleeing, with so many obstacles and dangers. And it all began before I even left. I had to wait for days for a boat, eating poorly and not sleeping.”

Ana, March 2021

This chapter focuses on what happens to a person who flees Venezuela, is intercepted at sea, or arrives in Curaçao and has to live without residency papers.



6.1 NO PROTECTION IN VENEZUELA

The Venezuelans Amnesty International spoke to had left their homeland due to the humanitarian crisis and human rights violations: they did not want their children or family to be hungry, sick or to die from the abject lack of healthcare. The ones who were seeking protection in Curaçao did that because the Venezuelan government or government-allied armed groups threatened them because they had dissented or refused to cooperate. In some cases, like in Ernesto’s case described below, it is not easy to differentiate between leaving for humanitarian reasons (or a more generalized threat), and leaving because one is personally at risk of torture or persecution.

THE CASE OF ERNESTO: OPPOSING THE *CARNET DE LA PATRIA*



Ernesto, a Venezuelan man who lives irregularly in Curaçao: "They mistreated me physically and psychologically" © Berber van Beek / Studiorootz

Ernesto⁶³ had openly criticized the *carnet de la patria*, an identity card created by the Venezuelan government to give citizens access to food packages and other essential services. Through the holding of this card, the government could also establish whether citizens are registered in government programmes.⁶⁴ In some instances, if people do not present or provide this "card of the fatherland", they cannot access certain government services, including medical care and food aid.⁶⁵

Ernesto explained to Amnesty International: "I did not want the *carnet de la patria*, because I wanted to maintain my freedom and not to be forced by the dictatorship. But the authorities said I had to have one since otherwise I wouldn't have access to medicine and the like." He felt forced to get the card anyway. When government officials gave him the card, he asked some critical questions. From that moment he said he was followed and threatened by *colectivos*.⁶⁶

With Venezuela's rule of law not functioning, citizens cannot find protection in their own land.⁶⁷ The interviewees told Amnesty International that they did not dare to seek protection in Venezuela. They said they were being intimidated by people with ties to the government, and they therefore did not trust the police, as in Miguel's case described below. According to The Venezuelan Observatory of Violence (OVV), criminal gangs and the police or security services are often intimately entwined in Venezuela, and (armed) groups are often deployed to socially control the population. There are criminal "circles" made up of police officers, and in some cases military troops, with an adequate level of organization to commit criminal acts.⁶⁸

⁶³ Interview with "Ernesto", Willemstad, 29 January 2021 (name has been changed to respect the interviewee's anonymity).

⁶⁴ Ministry of Foreign Affairs, *Algemeen Ambtsbericht Venezuela*, June 2020, pp. 30-32, bit.ly/3hrBAxS

⁶⁵ Reuters, *Special Report: How ZTE helps Venezuela create China-style social control*, 14 November 2018, reut.rs/35i0Hv7

⁶⁶ *Colectivos* are groups of armed pro-government supporters who are tolerated or supported by the authorities. In Venezuela these groups are known as "*colectivos armados*" (armed collectives).

⁶⁷ Ministry of Foreign Affairs, *Algemeen Ambtsbericht Venezuela*, June 2020 (previously cited).

⁶⁸ OVV cited in: European Asylum Support Office, *Venezuela Country Focus: Country of Origin Information Report*, August 2020, p. 72.

THE CASE OF MIGUEL: WAITING FOR PROTECTION IN CURAÇAO



Miguel, a Venezuelan man who was detained in the Foreigners Barracks: "They didn't let me sleep in the barrack" @ Berber van Beek / Studiorootz

Miguel fled Venezuela after receiving death threats from what he claims to be government-allied criminal groups. He had refused to break the law for them: "My choice was to cooperate with criminal groups or be murdered. My wife suggested that I go to the police, but I could only answer: 'You do know that those are the same authorities that are involved with all this? If I go to the police, they'll get us.' That's why I decided to flee."

First, he went to Colombia, but he had to quickly leave again due to receiving threats there as well. In early 2019, a family member helped him to flee by boat to Curaçao. But the Coastguard intercepted his boat, and after they handed him over to the Curaçaoan immigration police he was detained and deported. Fearing for his life, he immediately arranged a new boat journey from Venezuela. A couple of weeks later, he returned to Curaçao. And again, the Coastguard captured him and handed him over to the immigration police.

"They didn't tell us about our rights – nothing. They forced us to sign a letter [a deportation order]. We had no idea what would happen to us. We sat for six hours in a freezing police cell," says Miguel. Neither in the police cell nor in the barracks was he told about his rights or the possibility of asking for international protection. Finally, he was able to get the number of HRDC. HRDC helped him get a lawyer who started his protection procedure. Miguel recalls being punished for that: "Then the craziness started: they didn't let us sleep.⁶⁹ They made noise at every moment with hammers. I was sleeping on the ground and the food was really bad. I lost 35kg in five months. They damaged us psychologically to make sure we left the island."

Following a decision by the minister of justice, Miguel was released after five months. At the time of the writing of this report, his protection case remains undecided.

6.2 LEGAL ROUTES BECOMING MORE DIFFICULT

6.2.1 THE DANGEROUS JOURNEY TO CURAÇAO

Arriving in Curaçao has become harder in the last few years. Venezuela has closed the sea and air borders between the province of Falcón and Aruba, Bonaire and Curaçao on different occasions in 2018⁷⁰ and 2019.⁷¹ Moreover, in 2020 due to Covid-19 measures, the borders remained closed for almost the entire

⁶⁹ On 30 September 2021 the Curaçaoan authorities replied to Amnesty International: "The guards that guard the Foreigners Barracks are from a private company, and they have never prevented people from sleeping." However, the Curaçaoan government has not provided any supporting evidence for this.

⁷⁰ NOS, *Venezuela heropent grens met ABC-eilanden*, 8 April 2018, bit.ly/3gzt0ku

⁷¹ Reuters, *Venezuela closes maritime border with Dutch islands to stop aid*, 20 February 2019, reut.rs/3nGqV6H

year. In addition, Curaçao introduced temporary visa requirements for Venezuelan nationals, which came into force in January 2021.⁷²

In the last three years it has become almost impossible for Venezuelans to enter and stay in Curaçao in a regular manner. New visa requirements entail having a valid passport and being in possession of a daily average of \$100 (if staying with a family member) to \$200 (if staying at a hotel).⁷³ It is already very difficult for a Venezuelan to get a valid passport.⁷⁴ But for most, it is not possible to come up with the financial requirements, given that the average salary in Venezuela is around \$2 per month. Therefore many Venezuelans see no other option than to go irregularly by boat to Curaçao – a perilous undertaking in many ways. Ana⁷⁵ described her flight as traumatic. She had to wait for days in an unknown place for a boat to take her to Curaçao: “It’s not easy to leave your life behind and take all these risks. I had no experience of fleeing, with so many obstacles and dangers. And it all began before I even left. I had to wait for days for a boat, eating poorly and not sleeping.”



Shoes and other belongings of Venezuelans that have washed ashore at Curaçao's North Coast © Berber van Beek / Studiorootz

The UN has stated that people who are trying to leave Venezuela are often victims of exploitation. Travel restrictions such as closed borders or extra travel requirements force them to cross the border at unofficial locations, where they are more vulnerable to abuse, extortion and/or other violations.⁷⁶ With the closed sea border, no regular boat services exist between Venezuela and Curaçao. Therefore, all crossings involve people smugglers. The boats involved are often also smuggling weapons, drugs and animals. The price for a single crossing can quickly run to over \$1,000.⁷⁷ Interviewees spoke about having to sell personal valuables or borrow money to pay for the trip. They also explained how these fishing boats were built for a maximum of 10 people, but often carried 30 for these irregular crossings. Since these boats are then floating lower in the water, they are less visible to Coastguard radar – but also more vulnerable to capsizing. The sea between Venezuela and Curaçao can be very turbulent. In 2018, a boat with 30 people on board sank near the north coast of Curaçao. At least four people died, and the others went missing.⁷⁸ In June 2019, a boat went missing with between 32 and 45 Venezuelans on board, including Anderson and William.

⁷² Curaçao.nu, Dick Drayer, *Venezolanen hebben binnenkort visum nodig*, 24 December 2020, bit.ly/3C9b5Fp

⁷³ Reino de los Países Bajos, *Solicitar un visado para el Caribe Holandés para estancias de corta duración en Venezuela*, bit.ly/3nqqM6W

⁷⁴ BBC, *Latin American states to accept Venezuela expired papers*, 5 September 2018, bbc.com/news/world-latin-america-45419665

⁷⁵ Interview with “Ana”, Willemstad, 29 March 2021 (previously cited).

⁷⁶ UNHCR, *Urgent support needed for Venezuelan refugees and migrants facing trauma and hardship*, 11 December 2020, unhcr.org/news/briefing/2020/12/5fd32fe54/urgent-support-needed-venezuelan-refugees-migrants-facing-trauma-hardship.html

⁷⁷ Caraota Digital, *Venezolanos sortean su suerte y pagan hasta mil dólares para lanzarse al mar en búsqueda de otro destino*, 14 March 2021, caraotadigital.org/internacionales/venezolanos-pagan-hasta-mil-dolares-para-lanzarse-al-mar-en-busca-de-otro-destino

⁷⁸ Independent: *Venezuela shipwreck: Four people dead and 28 missing after boat sinks on way to Curaçao*, 11 January 2018, bit.ly/3iJJEf2

ANDERSON AND WILLIAM GO MISSING



Luis, a Venezuelan man whose son went missing when he tried to reach Curaçao by boat: "My son went missing on a boat to Curaçao" © Berber van Beek / Studiorootz

Anderson (17) and William (16) went missing in 2019 when they tried to reach Curaçao by boat.

Anderson's father, Luis,⁷⁹ had already arrived by boat in Curaçao in 2017. He worked six days a week in construction to send money back home to his three children in Venezuela. He did not want his children to make the same trip, because he knew how dangerous it was from his own experience. However, Anderson secretly left with his brother-in-law William. Anderson's wife was pregnant at the time. He had sold his motorbike to pay for the trip. He wanted to earn money so he could provide for his family.

In June 2019, Luis got a phone call at 5am from Anderson's mother who was in a great panic. She had heard that Anderson had left by boat and she had not yet heard anything from him. Luis felt desperate: not only was his son missing, but he also didn't dare to report his son as missing to the Curaçaoan police. In the end, he asked someone else to do it.

Anderson, William and almost all their fellow travellers were never found. It remains unclear what happened to the boat and its passengers. Only a single body from those on board washed ashore in Curaçao.

6.2.2 (UN)LAWFUL RESIDENCE

The majority of Venezuelans who have already arrived in Curaçao cannot get a residency permit, because they cannot meet the criteria the government has set. The Covid-19 pandemic and the ensuing unemployment have made this even harder. According to Curaçao immigration law, the "National Ordinance Admission and Deportation" (LTU), they must show a sufficient means of support (a guarantor) and that they do not pose a threat to public order and safety.⁸⁰ David⁸¹ (whose case is covered in Chapter 9 "Detention and deportation of children") told Amnesty International how he suddenly lost his job and became undocumented: "The company I was at for four years fired me without warning. They had no work because of the Covid-19 pandemic. So, I lost my income and also my guarantor, and thereby my residency permit. It was a disaster, and it was very stressful for our family."

At the time of the research, justice minister Girigorie introduced a new policy, "responsible integration".⁸² Just as with regular visas, few Venezuelans will likely be able to fulfil the requirements. Under the policy, undocumented migrants will be able to obtain a temporary work and residency permit if they meet all requirements. For example, they must have arrived in Curaçao in a regular manner before 13 March 2020, have valid identity papers, a private health insurance and the guarantee they have sufficient resources. In April 2021, only a month after the introduction of the policy, the Curaçaoan government announced a moratorium on the issuing of new work permits for foreign workers in "unskilled or low-skilled labour and

⁷⁹ Interview with "Luis", Willemstad, 4 February 2021 (name has been changed to respect the interviewee's anonymity).

⁸⁰ See para. 3.7 of the Herzienne Instructie aan de Gezaghebbers (HIG) Inzake de toepassing van de Landsverordening Toelating en Uitzetting (LTU), June 2006 (previously cited).

⁸¹ Interview with "David", Willemstad, 18 February 2021 (name has been changed to respect the interviewee's anonymity).

⁸² Government of Curaçao, Toelatingsorganisatie lanceert traject van Verantwoorde Integratie, 16 March 2021, bit.ly/2RYwQGF

other professions where there is a surplus in the labour market”.⁸³ This made the chance of getting a work and residence permit for people who live undocumented on the island almost non-existent.

6.3 NO PAPERS, NO RIGHTS

The current estimated number of Venezuelans living with irregular status on the island has risen to 17,000, in comparison to 5,000-15,000 in 2018. This number is expected to grow to 22,000 by the end of 2021.⁸⁴ This number is substantial for a country with a population of approximately 156,000 people and that is in an economic crisis. The economic crisis has been exacerbated by the Covid-19 pandemic,⁸⁵ it is estimated that almost half of the population (more than 60,000 inhabitants, including migrants) depend on food packages.⁸⁶

There is little insight into this group’s composition, vulnerabilities and protection needs. Over the last few years, the Curaçaoan government has tried to get a better picture of this group through the Response for Venezuelans platform (R4V), a coordination platform initiated by UNHCR and the IOM, which includes international and local NGOs and representatives from the Venezuelan community.⁸⁷ The IOM has provided an indication of the composition of the population of undocumented Venezuelans in Curaçao. From its so-called Displacement Tracking Matrix from 2019⁸⁸ it appears that around 64% of the subjects in their study were female, and 35% were male. Most of the surveyed population were aged between 31 and 45 (46%), and between 18 and 30 (43%). Minors were not surveyed. Around 67% of the interviewees had been on the island for more than a year. The top three greatest needs were: legal assistance (including migration status and refugee status determination), followed by income generation and medical care.⁸⁹

The R4V’s annual report states that Venezuelans’ lack of legal residence status is the root cause of numerous problems in their daily lives, such as lack of access to national health systems or justice. Specifically, the respondents from Curaçao expressed concern about inadequate housing, social isolation and family separation.⁹⁰



House of Venezuelans who live undocumented in Willemstad, Curaçao © Berber van Beek / Studiorootz

⁸³ Antilliaans Dagblad, ‘Verbod op buitenlandse arbeiders’, 27 April 2021, bit.ly/3htLHCp

⁸⁴ reliefweb.int/sites/reliefweb.int/files/resources/73808.pdf

⁸⁵ Antilliaans Dagblad, *Ook in 2020 krimp*, 29 August 2019.

⁸⁶ Interview with the Curaçao Red Cross, Willemstad, 10 March 2021.

⁸⁷ All the participating organizations can be found here: R4V Caribbean, *26 appealing partners across the region*, March 2012, p.1. r4v.info/en/document/caribbean-r4v-partners

⁸⁸ The numbers are not significant as the study group was too small.

⁸⁹ IOM, *Displacement Tracking Matrix Curaçao*, June-October 2019, p. 6.

⁹⁰ Response for Venezuelans (R4V), *2020 End of Year Report Caribbean Sub-regional Platform*, April 2021, p. 3.

6.3.1 NO RIGHT TO WORK AND SCHOOL DIPLOMA

Undocumented people are not allowed to work in a regular manner. In order to maintain a living, they depend on others or have to work irregularly. The Displacement Tracking Matrix estimates that 49% of migrants have difficulty getting enough food. And since this number was calculated before the Covid-19 pandemic, this percentage has likely increased. According to the Red Cross, about one-third of the food packages go to migrants (Venezuelans as well as other nationalities).⁹¹ A partnership of different NGOs provided food packages and vouchers to 9,000 Venezuelans on the island.⁹² The Covid-19 pandemic and the related government measures have had serious consequences for this group. Half of the respondents, Venezuelans who live undocumented in the Caribbean, saw their income change mainly because of losing their jobs or having their income lowered. Since most work in the informal labour market, they cannot claim social benefits. This makes them extra vulnerable to exploitation and (sexual) abuse. They do not dare to file a complaint with the government out of fear of arrest and deportation.

Although there are no concrete figures, interviewed aid workers emphasized that domestic and sexual violence are major problems. Most of the victims are women. They do not dare to go to the police for fear of repercussions from their partner, and of being detained and deported. However, shelters do exist for undocumented women who are forced to flee from their partners.⁹³

Undocumented children can go to school. Schools are required to take them. However, it is not possible to obtain a diploma, because you need a *sedula*, Curaçao's official identity document.

6.3.2 NO ACCESS TO PUBLIC HEALTH SYSTEM

Another major problem is the lack of access to healthcare. People who live without residency papers in Curaçao cannot hold health insurance, which means they have to pay all healthcare costs themselves. For primary care, there is the NGO Salú Pa Tur, which was founded in 2019. Undocumented people can receive a consultation safely and free of charge, and in some cases, they can get reimbursements on medication for chronic conditions such as cardiovascular diseases or diabetes. However, additional diagnostics and secondary care in the hospital are at one's own expense – and unaffordable for most. In order to receive hospital care, a payment agreement must be signed beforehand, and it must include a guarantor. Many people therefore have debts of (tens of) thousands of Antillean guilders.⁹⁴ The whole situation is a major source of stress for people who need emergency care or who depend on expensive medicines or regular specialist check-ups due to a chronic condition. In addition, their medical condition increases their fear of being deported: in Venezuela, essential medicines such as insulin are very scarce, which can lead to rapid deterioration in health and even death. Daniel⁹⁵, for instance, told Amnesty International that he feared for his life if he were sent back to Venezuela. He has a chronic condition which caused a lung embolism in 2016, when he still lived in Venezuela. The medicine he needed was no longer available in Venezuela, and importing the medicine was too expensive: “If I didn't take medicine I would die. I *had* to leave Venezuela for medical treatment. It was never my desire to live somewhere illegally.”

⁹¹ Interview with the Curaçao Red Cross, 10 March 2021 (previously cited).

⁹² Interview with Caritas Curaçao, Willemstad, 8 March 2021.

⁹³ Interviews with Caritas and the Red Cross (previously cited).

⁹⁴ An Antillean guilder is approximately €0.46.

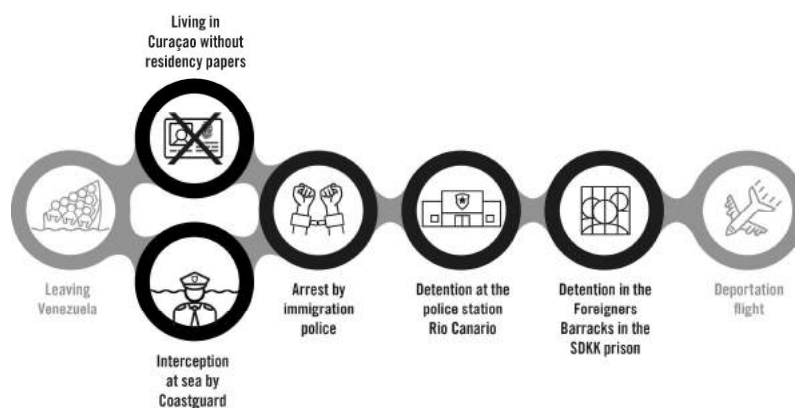
⁹⁵ Interview with “Daniel”, Willemstad, 24 January 2021 (name has been changed to respect the interviewee's anonymity).

7. SEEKING INTERNATIONAL PROTECTION IN CURAÇAO

“They told us that we would never get a lawyer. They said: ‘We’re going to deport you because we don’t believe your lies. You’re illegal and you’re just here to steal our money. If you’re going to ask for protection you will have to stay here for a very long time.’”

Bryan, who phoned Amnesty International from the detention centre, February 2021

This chapter focuses on what happens to a person who has been arrested for not having residency papers, either after being intercepted by the Coastguard or when already living without residency papers in Curaçao: detention at the police station and then in the Foreigners Barracks.



7.1 THE NEW PROTECTION PROCEDURE

From October 2010 to June 2017 the UNHCR in Curaçao granted international protection to people who had fled Venezuela. In 2017, the government of Curaçao decided to take on these responsibilities and instituted a protection procedure, based on Article 3 of the ECHR. This article stipulates that no one should be subjected to torture or to inhuman or degrading treatment or punishment. It follows that no one should be sent back to the country where they would be at risk of this. Amnesty International's 2018 report *Detained and Deported: Venezuelans Denied Protection in Curaçao* found that in practice it was very difficult for people looking for safety to apply for international protection because the procedure had not been made public.

In 2019, after much national and international pressure and on the advice of various parties, Curaçao decided to adjust the Article 3 ECHR protection procedure. Curaçao asked the Netherlands for support in optimizing the procedure. The Netherlands, particularly the Dutch Immigration and Naturalization Service, provided technical support "to make the existing procedures and structures of accelerated procedures in Curaçao in line with international standards."⁹⁶ This led to the renewed protection procedure in June 2019, which is described below.⁹⁷

The Article 3 ECHR protection procedure

1. Foreigners who want to apply for protection have to do this immediately at an official border post. The border authorities will do an arrival evaluation and make a report, before handing this information and the foreigner concerned, to the staff of the immigration desk unit "Foreigner Supervision and Border Control" (UVTG) of the Curaçao Police Force.
2. If foreigners do not immediately ask for protection, then they must still do this at the UVTG office at the police station in Rio Canario. However, such later requests may influence the credibility of their story.
3. The foreigner must fill out an application and the UVTG will interview them within 14 days. For every (additional) interview, a report must be made and signed. If necessary, a translator is provided.
4. The UVTG sends the protection application within seven days to the Admissions Organization, which in turn presents all documents to the Advisory Group for evaluation.
5. The Advisory Group drafts a final advice for decision within 90 days to the minister of justice. This term can be extended twice for 90 days. The minister of justice must then make their decision within 60 days, with the possibility of one 60-day extension.
6. In case of rejection, the foreigner can appeal. The possible legal remedies are listed in the order.
7. If the request for protection is accepted, it becomes valid for two years.

The Curaçaoan authorities indicated that they have not granted any international protection under the Article 3 protection procedure.⁹⁸ Despite repeated requests from Amnesty International, the Curaçaoan authorities have not shared any information relating to the ongoing protection procedures, their outcome or running appeal cases. Answers to parliamentary questioning revealed that 26 applications were being processed in the second half of 2019.⁹⁹ But their status is unknown. The lawyers that Amnesty International spoke with¹⁰⁰ had at that moment dozens of protection cases running. They had only received rejections and had several cases on appeal.

The Meijers Committee also found that the most likely outcome of the procedure will be rejection and that it violates essential parts of the ECHR.¹⁰¹ This will be expanded on in the following paragraphs.

⁹⁶ State Secretary of the Interior and Kingdom Relations Knops (hereinafter: State Secretary Knops), *Brief inzake toezeggingen n.a.v. plenair debat Venezuela*, Nr. 242199, 21 May 2019, p. 3.

⁹⁷ Government of Curaçao, *Beleid inhoudende het te volgen procedure bij een verzoek om bescherming ex artikel 3 EVRM*, June 2019.

⁹⁸ Interview with government officials of the Curaçao Ministry of Justice, 11 February 2021.

⁹⁹ State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 15 January 2020, answers 9 and 10.

¹⁰⁰ Interviews with lawyers from Scheperboer & Parris Lawyers, 4 February 2021 and 29 May 2021; Interview with lawyer Adir Ayubi, 18 February 2021.

¹⁰¹ Commissie Meijers, *Notitie aangaande de asielpcedure op Curaçao*, 22 June 2020, p. 4.

7.2 FLAWS OF THE PROTECTION PROCEDURE

7.2.1 INTIMIDATION UPON ARRIVAL

Only one of the nine Venezuelans interviewed who were in the protection procedure applied for protection upon arrival. The others did not, because they were afraid and did not trust the Curaçaoan authorities. They described how the perilous sea crossing and intimidating reception by the the Dutch Caribbean Coastguard (hereinafter: “the Coastguard”, see frame below) had left them anxious. Five interviewees told Amnesty International that the Coastguard pointed weapons at them or fired warning shots. Miguel recalls: “They pointed their weapons at us and said if we moved, they would shoot us and throw us into the sea.”¹⁰² They all wore masks, and never identified themselves.”¹⁰³

Maritime border control, a Kingdom affair

Whereas migration policy is considered as part of the autonomous powers of the Kingdom’s Caribbean countries, maritime border control is a Kingdom affair.¹⁰⁴ The Dutch government has invested in personnel and material to support the Coastguard over the last few years (more about this in Chapter 10 “Roles and responsibilities in the Kingdom of the Netherlands”).¹⁰⁵ The Coastguard is responsible for enforcement duties, such as intercepting boats with people trying to reach Curaçao in an irregular manner. The Coastguard hands those intercepted at sea over to the Curaçaoan immigration authorities who transfer them to the detention centre. The Coastguard that is active in the Curaçaoan territorial waters falls under Curaçaoan jurisdiction.



Venezuelans who have been intercepted by the Coastguard are handed over to the immigration police © Extra.cw

¹⁰² On 30 September 2021 the Dutch Caribbean Coastguard responded to Amnesty International: “When the Dutch Caribbean Coastguard is intercepting vessels at sea, they do not know what kind of situation they might encounter. Around the Dutch Caribbean islands maritime smuggling activities are common and regularly drug traffickers are involved which might be armed and dangerous. Therefore, especially during night hours, units of the Dutch Caribbean Coastguard will always intercept suspicious boats coming to the islands ensuring the highest level of safety for themselves. This means that they are in full protective gear with full armament executing strict procedures. This might appear intimidating to undocumented people involved, but is necessary from security perspective. When the security situation is under control, the first priority of Dutch Caribbean Coastguard personnel is the safety of everybody involved. During an interception, the Dutch Caribbean Coastguard’s 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 some 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 matter. A gradient and proportionate scale is normally used to enforce security. Threats to shoot someone and throw them into the sea are not part of normal procedures and the Dutch Caribbean Coastguard does not recognize itself in this kind of behavior.”

¹⁰³ In the same response of 30 September 2021, the Coastguard’s stated: “All units of the Dutch Caribbean Coastguard are clearly marked with the ensign of the Dutch Caribbean Coastguard and the name “Coastguard” is visible on the side of the boat. When intercepting, they will normally use flashing blue lights as well as a siren to identify themselves. Personnel have “Coastguard” printed on their uniform for identification.”

¹⁰⁴ All rules and procedures are documented in the Kingdom’s statute laws, the “Rijkswet”. Rijkswet Kustwacht voor Aruba, Curaçao en Sint Maarten alsmede voor de openbare lichamen Bonaire, Sint Eustatius en Saba (previously cited).

¹⁰⁵ The Dutch Caribbean Coastguard is a civil (Kingdom) Maritime Law Enforcement organization for the Dutch Caribbean with its own budget contributed by the four countries of the Kingdom. These four countries have invested in personnel and material to support the Coastguard over the last few years. The Dutch Ministry of Defence is the administrative department and carries the budget responsibilities for the Dutch Caribbean Coastguard.

When the Venezuelans are handed over to the local authorities, they are handcuffed and first taken to the immigration services at the police station in Rio Canario. The Venezuelans that Amnesty International interviewed said they were then pressured to sign a deportation order written in Dutch. They also said they were treated roughly by the immigration police, which made them afraid to ask for protection.

In Angel's case, it appears that he was even punished for requesting protection:

THE CASE OF ÁNGEL



Ángel, a Venezuelan man who seeks protection in Curaçao: "I want to be a citizen" © Berber van Beek / Studiorootz

Ángel¹⁰⁶ refused to sign the deportation order because he wanted to seek protection. He told Amnesty International that he had escaped Venezuela because he had received death threats. He claims that these were related to his brother's work for the secret police. In that capacity, the brother had angered people with ties to the government.

Ángel said: "I don't want to imagine what would happen if I returned to Venezuela. I fear for my life. If you return, word gets out quickly. People are being monitored. It's not easy to leave your country behind, but the whole system is corrupt. Even in my own immediate surroundings it's dangerous."

This is why he refused to sign a deportation order at the police station in Rio Canario. "They were yelling at me 'SIGN! SIGN!', but I refused. They locked me up in the regular prison to punish me for that. I was held for 33 days with rapists and murderers."

7.2.2 NO ACCESS TO LEGAL ASSISTANCE

According to the ECHR there should be safeguards in an asylum procedure such as the right to access information about how to start a procedure to effectuate rights¹⁰⁷ and the right to interpreters and translations.¹⁰⁸ These do not exist in the procedure, nor in practice. In the Curaçaoan law system people seeking protection could start the procedure without a lawyer. But in practice this does not happen, because they do not know the Curaçaoan laws and regulations, which are written in Dutch. According to the Curaçaoan and Dutch authorities, "It is up to the foreigners themselves to call on legal assistance."¹⁰⁹ However, Venezuelans and lawyers relayed that no one at the police station explained either their right to legal assistance or their right to seek protection. In fact, they were not allowed to contact a lawyer or get an interpreter. When they were subsequently put in the Foreigners Barracks, there were other obstacles to seeking legal assistance.

Firstly, they were not informed of their right to a lawyer – or they were told that they had no such right. All of the interviewees said that guards and migration officials told them they were "illegal" and therefore had no

¹⁰⁶ Interview with "Ángel", Willemstad, 29 January 2021 (name has been changed to respect the interviewee's anonymity).

¹⁰⁷ *Hirsi Jamaa and others v. Italy* (27765/09) (22 February 2021) para. 204; *M.S.S. vs. Belgium* (30696/09) (2 January 2011) para. 304.

¹⁰⁸ ECtHR: *Illias and Ahmed vs. Hungary* (47287/15) (21 November 2019) para. 124; *Hirsi Jamaa and others v. Italy* (27765/09) (22 February 2021) para. 202.

¹⁰⁹ State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 5 March 2020, answer 2.

such rights. It also often happened that guards pressured them to forego the procedure – and this often came with abuse and threats.

Secondly, there is no system whereby people in immigration detention are automatically assigned a free lawyer. A lawyer told Amnesty International: “A person must be lucky enough to know their rights, then find a lawyer, and then be able to pay this lawyer to challenge this detention.”¹¹⁰ Fearing the prospect of staying imprisoned for an uncertain length of time with no access to legal assistance, people simply give up. Alejandra¹¹¹ called from the barracks and told Amnesty International: “I would like to apply for protection, but with my diabetes I don’t want to be detained for any longer. I don’t know what steps to take. And I can’t pay for a lawyer, because I have nothing.”

Thirdly, lawyers are not necessarily guaranteed access to their client, even though officially this should happen. Amnesty International spoke with several lawyers who said they do not have structural or automatic access to the barracks. In fact, they hear all sorts of arbitrary reasons why they are not allowed to visit their clients, such as that their trousers or sleeves are too short.¹¹² Sometimes they have to wait so long that their time runs out. They are also not informed when new people arrive at the barracks who could claim protection. The six interviewees who did succeed in asking for protection while being detained did so with the help of HRDC, the only NGO providing legal assistance to migrants and refugees. Since the NGO has been denied access to the detention centre (during the research period), it could only provide legal assistance or find a lawyer via the phone. As with lawyers, HRDC has had difficulty finding out who was in fact being detained, why they left Venezuela, and the kind of help they need. As a result, between their founding in 2019 and May 2021 they were not able to offer a formalized form of first-line support. In March 2021, HRDC began summary proceedings to gain access to the barracks.¹¹³ In June 2021 the NGO reached a settlement with the Curaçaoan government to get full access to the detention centre. However, in practice they are only allowed to visit people in the detention centre if they know their names.¹¹⁴

7.2.3 PEOPLE SEEKING PROTECTION ARE DETAINED

People who seek protection and violate the LTU, Curaçao’s migration law, are still automatically detained. The authorities do not regard a request for protection as an element to be considered when evaluating necessity and proportionality of the detention. The LTU focuses on the irregular stay of people and has therefore no regulations for the detention of people seeking protection. Under international refugee law, states are prohibited from expelling asylum seekers before the final decision on their asylum application has been made. It is impossible for a realistic prospect of deportation to exist when someone is seeking protection and his application is pending. The detention of people seeking protection therefore appears to be unlawful.¹¹⁵ Lawyers and Venezuelans indicate that detention is imposed and maintained even when it is already clear that no deportation will take place.¹¹⁶

During their detention they run the risk of being discouraged from applying for the procedure and eventually being deported. The length of the procedure is also discouraging.¹¹⁷ Officially, the total length of the procedure can add up to 411 days.¹¹⁸ However, Amnesty International is aware of dozens of people who have passed the two-year mark, with no ruling still in sight. Most of their time is spent in detention, where they are pressured to refrain from requesting protection.

¹¹⁰ Interview with lawyer Adir Ayubi, Willemstad, 18 February 2021.

¹¹¹ Interview with “Alejandra”, Willemstad, 4 February 2021 (name has been changed to respect the interviewee’s anonymity).

¹¹² Interviews and email correspondence with lawyers from Schepers & Parris lawyers and legal advisers, Willemstad, 4 February 2021 and 29 March 2021.

¹¹³ Antilliaans Dagblad, “Kort geding bezoek barakken”, 19 March 2021.

¹¹⁴ Email correspondence with HRDC, 17 August 2021.

¹¹⁵ Commissie Meijers, *Notitie aangaande de asielprocedure op Curaçao* (previously cited), p. 2.

¹¹⁶ De Raad voor de Rechtshandhaving, *Vreemdelingenbewaring in Curaçao*, para. 2.2.2; Article 5 of 1(f) ECHR allows detention, but only for as long it takes to organize a deportation: *A. and Others v. The United Kingdom* (Application no. 3455/05), 19 Feb 2009, see para. 164: “Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1(f); For the detention to be compliant with the second limb of Article 5 § 1(f), there must be a realistic prospect that the deportation or extradition will be carried out, see *Mikolenko v. Estonia* (Application no. 10664/05), 8 October 2009, para. 68: “[...] the applicant’s detention – action taken with a view to his deportation – did not remain valid for the whole period of his detention due to the lack of a realistic prospect of his expulsion and the domestic authorities’ failure to conduct the proceedings with due diligence.”

The Meijers Committee also established that detaining people looking for protection is unlawful, as there is no question of an immediate deportation if someone applies for protection, Commissie Meijers, *Notitie aangaande de asielprocedure op Curaçao*, p. 2 (previously cited).

¹¹⁷ Commissie Meijers, *Notitie aangaande de asielprocedure op Curaçao*, p. 2

¹¹⁸ All possible extensions: 14+7+90+90+90 (+60+60) = 411 days. Government of Curaçao, *Beleid inhoudende het te volgen procedure bij een verzoek om bescherming ex artikel 3 EVRM*, June 2019.

Around 15 people have been released since 2019 during the time of their protection proceedings.¹¹⁹ However, these are exceptional cases: namely, people who were usually detained for between six months and one and a half years. At the insistence of their lawyer and HRDC, the minister of justice decided to release them. But for this to happen, they had to have a guarantor and were obliged to regularly report to the authorities. According to the Curaçaoan authorities, Caritas offers reception locations for people who have started the procedure.¹²⁰ Caritas says that in recent years they have helped to arrange a guarantor for Venezuelans to get them released, but that they do not offer any formal form of non-custodial reception facilities.¹²¹ The absence of the right to reception facilities is in breach of Article 3 of the ECHR, because this causes serious material deprivation,¹²² which will be elaborated on in the next chapter “Detention and Deportation”.

According to the Curaçaoan government, people who are already on the island and apply for protection are not put in detention.¹²³ However, this is not yet official policy, increasing the possibility that officials interpret the law arbitrarily. In addition, although the procedure allows foreigners to report “later” to the immigration services (instead of immediately upon arrival), this may affect the credibility of their account of their escape from Venezuela. It is unclear to what extent this affects how the story is considered credible, and may make the evaluation process more arbitrary.¹²⁴ A few Venezuelans who were not detained explained to Amnesty International why they did not ask for protection: they could not afford a lawyer, and were afraid that if they started the protection procedure they would be put in the the Foreigners Barracks and sent back.

7.2.4 PROCEDURE TO DECLINE

Since the entry into force of the protection procedure in 2019, the government of Curaçao has not granted any protection requests. The Meijers Committee concluded that Curaçao has established a protection procedure whereby the most likely outcome is dismissal. Lawyers whose cases have been rejected raise doubts about the quality of the decision making and questioned the logic. As one lawyer notes: “The dismissal leaves much to be desired, with the jurisprudence explained wrongly and it [the dismissal] being based on faulty irrelevant reasoning.”¹²⁵ Another lawyer observes: “If you see the dismissal, you see that when a question remains unanswered by someone seeking protection it is not followed up on. And this is used against this person.” According to this lawyer, the decision around protection is arbitrary: “If they *don’t* want a person, then they use the procedure to argue why not.”¹²⁶

One of the main weaknesses in the protection procedure is the interview to determine whether somebody is in need of international protection. The civil servants who do the assessment are part of the immigration police and therefore also responsible for tracking down irregular migrants. As one lawyer noted: “They don’t really know their role: they cannot take off their migrant-hunting hat and suddenly put on their protector hat.”¹²⁷ Miguel’s experience confirms this: “The interviewers harass you with their questions. But I did not answer because I was afraid to tell them about what happened in Venezuela. I didn’t want to get threatened here too.”

Curaçao’s Ombudsman also expressed concerns about the way protection assessment interviews are conducted: “Right now, no consideration is made in the procedure of the psychological pressure that the refugee is experiencing when they enter a strange country. These people have not had time to calm down enough to be able to tell a coherent story. One is arrested and put on a plane as soon as possible.”¹²⁸ In addition, the setting for the interviews is not appropriate: It has happened that several Venezuelans were interrogated within listening distance of each other, or that at least five representatives from the Curaçaoan or Dutch government were present. In addition, all the lawyers and interviewed Venezuelans indicated that there was no translator present.¹²⁹

¹¹⁹ This is based on estimates from lawyers who deal with such cases.

¹²⁰ Interview with government officials of the Curaçao Ministry of Justice, 11 February 2021 (previously cited).

¹²¹ Interview with Caritas Curaçao, 8 March 2021 (previously cited).

¹²² *M.S.S. vs. Belgium* (30696/09) para. 251-264 (previously cited).

¹²³ Interviews with government officials Ministry of Justice Curaçao, lawyers from Schepersboer and Parris and HRDC between January and May 2021 (previously cited).

¹²⁴ Commissie Meijers, *Notitie aangaande de asielpprocedure op Curaçao* (previously cited), p. 1.

¹²⁵ Correspondence with a lawyer who wants to remain anonymous, 26 April 2021.

¹²⁶ Interview with lawyer Adir Ayubi, 18 February 2021.

¹²⁷ Interviews with lawyers from Schepersboer & Parris, February-May 2021.

¹²⁸ Interview with Curaçao’s Ombudsman, 23 February 2021.

¹²⁹ In the context of technical assistance and training, employees of the Dutch immigration and naturalization service were present during conversations.

The Meijers Committee noted that the procedure is not set in law but in policy rules, which makes it unclear to what extent people looking for protection can derive rights from these rules. This particularly applies to the roles and responsibilities of the Advisory Group and the minister of justice when evaluating whether it is an issue related to Article 3 of the ECHR. The Advisory Group advises the minister of justice, but the policy rules are unclear whether the minister of justice must actually follow this advice.¹³⁰ The Ombudsman expressed his concerns over the Advisory Group's composition and its decision making. He argues that the participation of someone from the immigration police – someone who was already involved in the procedure – may create the appearance of a conflict of interest.¹³¹

7.3 STILL NO PROTECTION IN CURAÇÃO

It can be concluded that even though a new protection procedure has come into force, this still has not led to a stronger protection framework that is in line with international standards. Applying for protection is a matter of endurance, because of the many obstacles one faces accessing the procedure, and the opacity of the procedure itself. The main weaknesses of the procedure are that people are being pressured to refrain from seeking protection, they have little or no access to information about their procedure or legal assistance and they are still automatically detained. The protection assessment interviews are inadequate, and the decision-making process appears to only lead to rejection.

In the next chapter, the inhumane conditions under which people are held and deterred from seeking protection will be elaborated on.

¹³⁰ Commissie Meijers, *Notitie aangaande de asielprocedure op Curaçao* (previously cited), p. 1.

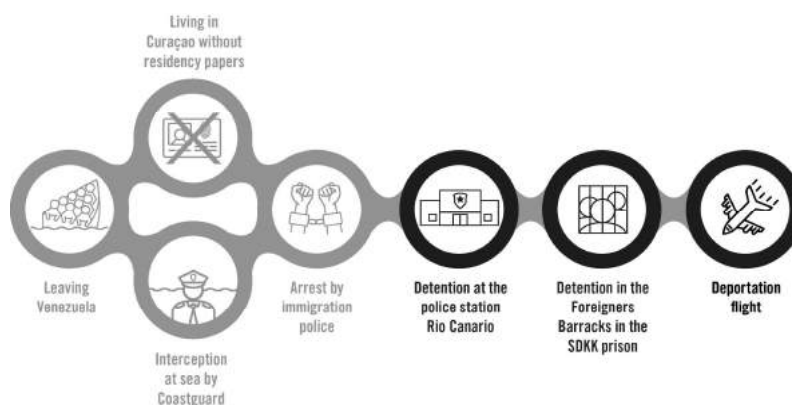
¹³¹ Ombudsman, *Zorgbrief met betrekking tot het vreemdelingenbeleid (2109) ex. artikel 3 EVRM*, 30 September 2020.

8. DETENTION AND DEPORTATION

“Then the craziness started: the guards didn’t let us sleep. They made noise at every moment with hammers. I was sleeping on the ground and poorly fed. I lost 35kg in five months. They damaged us psychologically to make sure we left the island.”

Miguel, February 2021

This chapter focuses on what happens to a person after detention at the police station in Rio Canario: detention in the Foreigners Barracks, deportation and in exceptional cases release.



8.1 AUTOMATICALLY DETAINED

As explained in the previous chapter, Amnesty International is extremely concerned that people, regardless of their need for protection, are still automatically put in immigration detention for an undetermined length of time, just as Amnesty International had concluded in the previous report.¹³² Between the beginning of 2019

¹³² Amnesty International report: *Detained and Deported: Venezuelans Denied Protection in Curaçao* (previously cited), Chapter 6 “Curaçao’s Detention and Removal Procedure”,.

and 17 December 2019, 523 people were placed in immigration detention.¹³³ Despite multiple requests by this organization, the government has not released any numbers for 2020 and 2021.

During the detention, people run the risk of being deported or discouraged from applying for the procedure. This also happened to Ana described in the case below.



THE CASE OF ANA

“Traumatic” is how Ana describes being locked up in the women’s wing of the SDKK prison, where female convicted prisoners were also held. “I’ve never had legal problems. I came to this island without any intention of doing anything bad.”

Ana fled by boat from Venezuela in 2019 after receiving death threats because she witnessed the murder of a government worker. After she gave a witness statement to the police, people from the government started extorting her and threatening her to get her to say who the murderer was. One day armed government officials came to her house with the same demands. But she refused and decided to flee the country.

The Coastguard intercepted her boat, and handed her over to the immigration police. They brought her (after a stop at the police station) to the SDKK prison. She remembers how she suffered from the bad food, the vermin and the inhumane treatment she received from the guards and the migration personnel. “They treated us like criminals. They said we had no rights, and they would happily deport us.”

After being detained for three months, she was helped by HRDC to find a lawyer who started her protection procedure. But despite this, the immigration police tried to deport her. Guards told her she would have an appointment at the migration office, but instead they took her to the airport. She could not collect her belongings and she was wearing a prison uniform. “I thought I would go to the immigration office where I could explain that I needed protection. I tried to explain that I couldn’t go back to Venezuela, certainly not in a prison uniform.” The immigration officers who escorted her did not allow her to phone her lawyer, HRDC or anyone else. Ana said: “They kept pressuring me: ‘You have to leave. You have to leave.’” But Ana did not give in. She managed to borrow a stranger’s telephone and called HRDC, who notified her lawyer. Her lawyer then managed to convince the Ministry of Justice to stop her deportation, and the guards took her back to the barracks.

On the condition that she had a guarantor, the minister of justice decided to release her in 2020. She had been detained for 15 months. Her case is currently still pending under an Article 3 ECHR procedure.

The Coastguard handed Ana over to the immigration police, who brought her to the police station in Rio Canario. This is the usual procedure when the police believe that someone has broken the LTU, the national immigration law. The individual is then put in a cell while the police check their residency status and/or make custody arrangements.¹³⁴ The Venezuelans interviewed said they were there for a few hours or overnight.¹³⁵ None of the Venezuelans were allowed to have any contact with a lawyer or legal adviser during their stay at the police station in Rio Canario. There is no procedural regulation that regulates contact with a lawyer in this phase.¹³⁶ However, all the Venezuelans interviewed received a deportation order, written in Dutch, in the police station. And although they could not understand it, they still had to sign it. As already described,

¹³³ State Secretary Knops, *Answering of questions put forward by members of parliament Groothuizen and Diertens*, 15 January 2020.

¹³⁴ The powers to detain foreigners fall under Article 19 of the LTU (previously cited).

¹³⁵ Section 9.3. of the HIG stipulates that custodial “stopping” can be for a maximum of six hours to establish the identity and residency rights of the foreign national. In calculating this term, the period between the arrest of a foreign national and the arrival at the place of questioning, and the time between 10pm and 7am is not included. Instruction of the LTU, 2006.

¹³⁶ De Raad voor de Rechtshandhaving, *Vreemdelingenbewaring in Curaçao* (previously cited), p. 10; According to CPT standards, “Access to a lawyer for persons in police custody should include the right to contact and to be visited by the lawyer (in both cases under conditions guaranteeing the confidentiality of their discussions) as well as, in principle, the right for the person concerned to have the lawyer present during interrogation.” CPT, CPT/Inf/E (2002) 1 - Rev. 2010, p. 6 under para. 38, refworld.org/pdfid/4d7882092.pdf; And even though police custody is of (relatively) short duration, conditions of detention in police cells must meet certain basic requirements: “All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (that is, sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with clean mattress and blankets. Persons in custody should be allowed to comply with the needs of nature when necessary, in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (namely, something more substantial than a sandwich) every day.” CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2010, para. 42, p. 7.

several Venezuelans indicated that the immigration services pressured them to sign, and this often included intimidating or demeaning comments.

Regardless of whether a foreigner signs, the person is placed in custody at the Foreigners Barracks of the SDKK prison. In practice, an assistant public prosecutor (an inspector of the immigration police) authorized by the minister decides to place someone in custody to ensure their deportation.¹³⁷ The assistant public prosecutor is supposed to interview the foreigner and decide whether he or she should be placed in immigration detention or given a non-custodial alternative, such as a duty to report with the authorities. However, none of the Venezuelans and lawyers interviewed have witnessed such an interview or seen a reasoned written decision. The Law Enforcement Council, which is charged with the general inspection of the organizations of the judicial chain, has also found no evidence of this.

The Curaçaoan authorities have not shared any figures on how often the duty to report is used instead of detention. Amnesty International estimates that it concerns a few dozen.¹³⁸ They all had to declare a private individual or organization as guarantor. This guarantor system is problematic, as it places a heavy burden on individuals. They become responsible for someone in terms of income and housing. But it also makes the person who is “guaranteed for” vulnerable to exploitation or abuse by his or her guarantor.¹³⁹ And even if there is a guarantor who fulfils all the requirements, a decision to release somebody is often made arbitrarily, and sometimes people still have to wait for months before they get released.¹⁴⁰



Foreigners Barracks at the SDKK prison in Willemstad, Curaçao © Berber van Beek / Studiorootz

Moreover, “alternatives to detention” (namely non-custodial measures for migration enforcement) should not become alternatives to release. Since many of these measures may still constitute restrictions on the rights to freedom of movement and/or privacy, they must adhere to the same principles of legality, necessity, proportionality to legitimate aims, and non-discrimination described above, and be subject to regular review to ensure they continue to be the least intrusive and coercive means to achieve the legitimate aim.

¹³⁷ De Raad voor de Rechtshandhaving, *Vreemdelingenbewaring in Curaçao* (previously cited), p. 7.

¹³⁸ Based on estimates by lawyers and HRDC.

¹³⁹ Interview with HRDC, Willemstad, 13 May 2021.

¹⁴⁰ Interviews with lawyers from Scheperboer & Parris, February to May 2021.

8.2 INHUMANE CONDITIONS

8.2.1 INDEFINITE DETENTION



THE CASE OF EDIXON: 14 MONTHS DETAINED

Edixon¹⁴¹ (39 years), a construction worker and father of seven children, was in the Foreigners Barracks for 14 months from 2019 to 2020. The conditions were bad: he got food poisoning and there was a lack of basic things such as soap and toothpaste. “The guards treated us badly, because we were ‘illegal’ immigrants.” He was not allowed to call his family. He was also not allowed outside for fresh air for three months.

Edixon appealed under Article 3 of the ECHR, and was released in 2020 with the help of HRDC and lawyers. He still does not have an official document that says he has been granted protection. And although he is happy that he is not being deported, he is still unable to work, get healthcare insurance or reunite with his family.

The standard migration detention term imposed by an assistant prosecutor is 30 days.¹⁴² The detention may last a maximum of three times 24 hours without judicial review.¹⁴³ But there is no automatic judicial review. This only takes place when somebody has a lawyer to challenge the detention order. In most cases this does not happen because of the obstacles to legal assistance described earlier. The duration of the detention can be extended to a maximum of six months if the foreigner cannot be deported within this period for specific reasons, such as the failure of the actual deportation. An even longer duration is allowed if the foreign national knowingly undermines the investigation into his identity, or if there is a high probability that the foreign national could be removed shortly after the expiry of the six months.

In practice, the period of detention does not appear to be bound by these rules. Detention can be between a few days to, as in Edixon’s case, over a year. Four of the men who were interviewed during the visit to the Foreigners Barracks had been detained for up to nine months. Amnesty International knows of one Venezuelan who applied for protection and was detained for over two years.¹⁴⁴ The Curaçaoan government does not give a plausible explanation for continuing the detention.¹⁴⁵ People interviewed by Amnesty International said it was just not clear when their detention would end. This was either because they were in a protection procedure, or because they had to wait for a new repatriation flight, since regular flights between Curaçao and Venezuela were no longer possible. In most cases it took weeks or months before Venezuelans who were not applying for protection knew the deportation date. Interviewees expressed how this caused much stress and frustration.

Amnesty International knows of eight cases of Venezuelans who were in the protection procedure being freed from the barracks. The minister of justice decided to liberate them after they had been detained for at least five months, and after much insistence by lawyers and HRDC.

8.2.2 BASIC NEEDS IGNORED

In a previous report published in 2018, Amnesty International concluded that the conditions in immigration detention were appalling – including overcrowded cells, a lack of privacy, poor hygiene and insufficient beds. Several Venezuelans reported exploitation and abuse during their arrest and detention. Given their vulnerable position, it was not possible for them to complain to the authorities. During the working visit in

¹⁴¹ Interview with Edixon, Willemstad, 18 February 2021.

¹⁴² Article 10.5 of the Instruction of the LTU, 2006.

¹⁴³ According to Article 10.5 of the Instruction of the LTU, there is no legal maximum term for detaining foreigners. However, the detention should reasonably not last longer than the time required to actually remove the foreign national.

¹⁴⁴ Dick Drayer, *Noodkreet uit de Curaçaose vreemdelingenbarakken*, bit.ly/3iV6Qa6

¹⁴⁵ De Raad voor de Rechtshandhaving, *Vreemdelingenbewaring in Curaçao* (previously cited), p. 22.

2019, Amnesty International still witnessed overcrowded cells, very limited facilities, poor hygiene, women with limited access to fresh air, and men with none.¹⁴⁶

The Foreigners Barracks are part of the SDKK prison. The capacity in the Foreigners Barracks for men is 15, but this number is often surpassed. Women are put into a separate section for foreigners within the women's prison, where there is room for 20.¹⁴⁷ This area is separated from the convicted women prisoners by a gate, and the two groups share the same exercise yard. The women are locked up three to a cell. When the Foreigners Barracks are overcrowded, Venezuelans are often put in the regular part of the prison, where they have to stay amongst convicted prisoners.¹⁴⁸ Venezuelans who are in an Article 3 ECHR procedure often stay in Block 1 of the prison, where those awaiting trial are also held.¹⁴⁹ Two of the men interviewed during the visit told Amnesty International they had been in Block 1 for five months. During Amnesty International's visit in June 2021 there were other convicted prisoners detained in one of the cell blocks in the Foreigners Barracks. All of the men who were interviewed felt threatened by these prisoners.¹⁵⁰

The Arrestant Care Committee of Curaçao gave in its most recent dashboard the Foreigners Barracks the second worst rating, urging that "critical improvement" was required".¹⁵¹ In terms of safety, the barracks received the worst possible score of "situation not acceptable for detention".¹⁵² Statements from Venezuelans confirm this image: There are no proper seating or sleeping facilities. Seats and/or sofas are missing, and everyone sleeps in bunk beds or on mattresses on the floor,¹⁵³ often without sheets, and rainwater enters the cells. The detained have to clean their cells themselves. There are many complaints about poor hygiene, including poor ventilation and the presence of vermin and scabies. There is also no privacy. Men all sleep together in one room in close proximity to the toilet and washrooms. All of the interviewees indicated that food was bad: too little, sometimes spoiled, and often tainted with flea eggs or vermin.



Inside the Foreigners Barracks, on the right side of the picture are the cells © Dick Drayer

¹⁴⁶ According to CPT standards: "Conditions of detention for irregular migrants should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. For example, detained irregular migrants should have every opportunity to remain in meaningful contact with the outside world (including frequent opportunities to make telephone calls and receive visits) and should be restricted in their freedom of movement within the detention facility as little as possible." CPT Standards, CPT/Inf/E (2002) 1 – Rev. 2010, para. 79, p. 60.

¹⁴⁷ De Raad voor de Rechtshandhaving, *Vreemdelingenbewaring in Curaçao* (previously cited), p. 25.

¹⁴⁸ Crónicas del Caribe, Pedro Pablo Peñaloza, *Migrantes venezolanos son encerrados con delincuentes en la cárcel de Curazao*, 8 May 2021, bit.ly/3Ec4M60

¹⁴⁹ The UN Human Rights Committee recently expressed its concern about the poor conditions in Block 1 of the SDKK prison, where Venezuelan prisoners are also being held. Human Rights Committee, Concluding observations on the fifth periodic report of the Netherlands, UN doc. CCPR/C/NLD/6, para. 40.

¹⁵⁰ Interview with detained Venezuelans during visit to the Foreigners Barracks, Willemstad, 25 June 2021.

¹⁵¹ The "Arrestee Care Committee" ensures that judicial institutions such as police cells, immigration detention and addict shelters deal correctly with detainees and residents. If this does not happen, it will report this to the minister of justice so that measures can be taken. De Commissie Arrestantenzorg, toezichtarrestantenzorg.cw/commissie

¹⁵² De Commissie Arrestantenzorg, *Stand van zaken*, 18 December 2019, toezichtarrestantenzorg.cw/rapportages/dashboard

¹⁵³ De Raad voor de Rechtshandhaving, *Vreemdelingenbewaring in Curaçao* (previously cited), p. 26.

People detained in the Foreigners Barracks experience a considerable degree of sensory deprivation, because of the long duration of confinement and lack of stimuli. The men who were interviewed during the visit to the barracks said that they were allowed fresh air only one hour twice a day. This was in a caged section in the courtyard, which the Curaçaoan and Dutch authorities euphemistically call a “recreational space”.¹⁵⁴ The time allowed in the outside area changes regularly, as in the case of Edixon, who was not allowed fresh air for weeks on end. In these outside areas there were two tables and some chairs, but the men said that normally there were few chairs or none at all. The only recreation materials are dominos and draughts. The rest of the day they have to remain inside the poorly ventilated room, with average temperatures of more than 30°C.¹⁵⁵ Three men indicated that they felt disorientated, they did not know what time or date it was or how long the events they described took. José, who had been detained for nine months, said: “Every day I look outside hoping that somebody will come to give me information about my procedure. We have to fight to not get depressed. We have nothing to look forward to, not even on Christmas, New Years’ Eve, Easter, none of the holidays.”¹⁵⁶

Although foreign nationals in detention have the right to medical care, this remains very limited.¹⁵⁷ Interviewees said that a doctor visited only occasionally and did not refer prisoners to specialist care.

- Buenos Tardes, Ministro Presidente Honorable
 Rights Defense Curaçao y demas Autoridades
 Y medios de Comunicacion nos Hacemos presente
 por medio de este escrito Haciendo un
 llamado de atención Mediante esta
 Manera para expresar lo siguiente: SOMOS
 los ciudadanos [redacted]
 para Manifiestar al Señor
 Ministro Presidente con Maximo Respeto
 que somos personas que tenemos 10 meses
 detenidos por pedir protección a su país
 le Ocurramos notificar que ya cumplimos
 con todos los Requisitos que el gobierno
 exige, tenemos nuestras garantías y
 Emigración los an negado en Varias
 Ocaciones por Razones insignificantes o
 por Razones no Contendientes de acuerdo
 a lo establecido con las leyes, con todo
 Respeto le pedimos su ayuda para
 que podamos salir de esta prisión
 de ilegales las cuales no están en
 condiciones para tenernos aqui dete-
 nidos, ya que se efectua una
 Contrucción las cuales diariamente
 Recibimos polvo todos los dias.

- Y nos vive en condiciones inhumanas
 debido a tanto polvo que Recibimos
 día a día, aparte de eso se encuentran
 delincuentes con nosotros que pueden
 agredir con nuestra Integridad física,
 por otra parte se encuentran perso-
 nas infectadas con COVID-19, las
 cuales no se están cumpliendo con
 las medidas de prevención que
 establece la Organización mundial de
 la salud y tenemos temor de ser
 infectados por esta Razón Hacemos
 este llamado a la máxima auto-
 ridad para que seamos escuchados
 y con todo Respeto nos despedimos.
 [redacted]

Letter written by three Venezuelan men in which they ask the Curaçaoan Prime Minister to release them. At the time of writing, July 2021, they have been detained for 10 months in the Foreigners Barracks. © HRDC

¹⁵⁴ State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 5 March 2020, answer 7; State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, answer 14.

¹⁵⁵ The outside temperature in Curaçao ranges between 29 and 33°C, *Klimaat Curaçao Island*, bit.ly/3zFSUab

¹⁵⁶ Interview with “José” during visit to the Foreigners Barracks, Willemstad, 25 June 2021 (name has been changed to respect the interviewee’s anonymity).

¹⁵⁷ According to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states have to respect, protect and fulfil “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” General Assembly, ICESCR, UN doc. 2200A (XXI); Rule 24 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) clarifies the “provision of health care for prisoners is a state responsibility” and that prisoners “should enjoy the same standards of health care that are available in the community” and without discrimination. The Mandela Rules also provide that prisoners who require specialist treatment must be transferred to specialized institutions or outside hospitals when such treatment is not available in prison (Rule 27). General Assembly, UN Standard Minimum Rules for the Treatment of Prisoners; According to CPT standards: “All detention facilities for immigration detainees should provide access to medical care. Particular attention should be paid to the physical and psychological state of asylum seekers, some of whom may have been tortured or otherwise ill-treated in the countries from which they have come. The right of access to a doctor should include the right – if a detainee so wishes – to be examined by a doctor of his choice; however, the detainee might be expected to cover the cost of such a second examination.” CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2010, p. 55, para. 31.

Several people have gone on hunger strike at various times to protest against the bad conditions between 2019 and 2021,¹⁵⁸ also coinciding with this research.¹⁵⁹ One of the hunger strikers told Amnesty International that at the beginning it resulted in an improvement, but then after a few days it all returned to how it had been before.

When Amnesty International visited the Foreigners Barracks, construction work had just begun: The SDKK prison authorities explained that a former cell block was being demolished to make space for a bigger one in which women and families – only the mother with child(ren) – would be detained. The expansion is due to be completed in March 2022.¹⁶⁰ Even though this may help to prevent overcrowding, these plans still do not meet human rights standards such as the requirement for states to only use immigration detention as a last resort, and when it is used to restrict it to the shortest amount of time possible, and not to detain children based on their migration status.

8.2.3 PSYCHOLOGICAL AND PHYSICAL ABUSE

The CAT already expressed concerns in 2018 about the appalling living conditions in detention:¹⁶¹ “The CAT is concerned that in Curaçao, persons in need of international protection awaiting deportation, mostly Venezuelans, are detained in closed facilities with appalling living conditions and these persons are subjected to ill-treatment and sexual assaults by police and immigration officials to whom no charges have been brought.” One of the recommendations was to train officials working within the immigration process on how to treat foreign nationals in a manner in line with international standards.¹⁶² Although the Curaçaoan authorities say that these officials have been duly trained with the help of the Netherlands, there is no formalized long-term curriculum of courses and refresher courses.¹⁶³

A recurring frustration of the people who had been or were being detained, was the feeling that they were being unfairly treated as criminals. Also, each day in detention means one less day being able to help support their family. This leads to a tense atmosphere amongst detained foreigners and between them and the guards. The union for prison personnel has defined the situation as “alarming and dangerous”.¹⁶⁴ However, no documentation exists on how often this scenario leads to incidents of violence.

Almost all interviewees complained about ill-treatment by prison personnel. This ranged from daily insults to more serious humiliations. Nine men said that prison guards forced them to leap like frogs while naked. At least three interviewees spoke of having suffered serious physical abuse; six men had witnessed physical abuse at close range.



SHOT WITH RUBBER BULLETS

In April 2019, a group of Venezuelans was detained after the Coastguard had intercepted their boat. From the detention centre, initially 33 of them requested protection. Due to the pressure of being detained, only six men proceeded with the procedure. Three of this group (Ángel, Ernesto and Miguel)¹⁶⁵ told Amnesty International about the bad conditions and the tense atmosphere between guards and prisoners. As Ernesto put it, “We only got bread to eat. We slept on thin mats very close to each other on the floor. Every night when we went to sleep guards banged on the bars, and twice every night they shone lights in our faces. It was real terror.”

In June 2019, the situation escalated. The men were in the confined outside area. A guard raised the alarm that the men were planning to escape, because of the noise they made. The men argued that they did not want to escape because that would decrease their chances of getting protection status. However, the guard still called in the police. Around 30 officers stormed into the room and shot the men at close

¹⁵⁸ Curaçao.nu, *Groep van tien toch in hongerstaking in SDKK*, 11 April 2019, curacao.nu/groep-van-tien-toch-in-hongerstaking-sdtk/

¹⁵⁹ Curaçao.nu, Dick Drayer, *Zes Venezolanen in vreemdelingendetentie op Curaçao in hongerstaking*, 23 January 2021, bit.ly/3tJF7Na

¹⁶⁰ Conversation with Mr Hasselmeijer during Amnesty International's visit to the Foreigners Barracks, 25 June 2021.

¹⁶¹ CAT, Concluding observations on the seventh periodic report of the Netherlands, 2018, Articles 11 and 16.

¹⁶² General Assembly, UN Standard Minimum Rules for the Treatment of Prisoners, UN doc. A/RES/70/175; General Assembly, UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN doc. A/RES/65/229.

¹⁶³ De Raad voor de Rechtshandhaving, *Vreemdelingenbewaring in Curaçao* (previously cited), p. 10.

¹⁶⁴ Caribisch Netwerk, *Opstoot Venezolaanse gevangenen: Situatie in gevangenis is alarmerend*, 20 February 2020, bit.ly/3gtHbUf

¹⁶⁵ Interview with “Ángel” and “Ernesto”; 29 January 2021. Interview with “Miguel”, 21 February 2021.

range with a shotgun with rubber bullets. Ernesto said: “They threatened to shoot us in the head. It was terrible. The bullets to the stomach hurt very badly. But I didn’t dare to say I was injured. I was worried that if I opened my mouth, they would send me to a cell with criminals.” After the incident Miguel had a large bruise on his back in the shape of a footprint. Ángel and another man were hit 15 to 17 times by rubber bullets. Another person suffered a torn ear.



*Left and middle photo: man who was shot with rubber bullets shows the scars from his ruptured ear and on his shoulder.
Photo on right: Man shows the scars on his stomach. © leteke Witteveen*

Wounded, cuffed and naked, the six men were taken to a cell where they had to sleep on the floor and got very little to eat. Only the man with the torn ear was visited by a doctor. They were not allowed contact with the outside world. After three days, they were returned to the barracks where they contacted their lawyers. When the lawyers visited, they were shocked by the men’s injuries and psychological states. A request to bring in an independent doctor was ignored. The lawyers later filed an official complaint on behalf of the men with the Arrestee Care Committee.¹⁶⁶ The committee said they were never able to draw up a report with their findings, because the SDKK did not share any information.¹⁶⁷ They did not interview the six men.

Under international law, the use of less lethal weapons such as rubber bullets must follow three principles: legality, necessity and proportionality.¹⁶⁸ Whether transferring the men to another cell block was justified and legal is hard to judge from afar and from the available information. However, security forces tasked with transferring people within the same building should be able to do so without causing stress or injury. And as far as Amnesty International knows, the men only verbally disagreed with their transfer. Therefore such a serious degree of force seems unnecessary. A weapon that may cause more than a minor injury should only be used to protect from something of equal value, such as physical injury. Therefore, rubber bullets should only be used to stop a person engaged in violence against another person. The men involved did not engage in any violence against others, making the shooting of rubber bullets a disproportionate act.

Furthermore, since rubber bullets are not supposed to penetrate the skin and cause open wounds, they should only be shot from a certain range, otherwise the risk is too high. In this case, the police randomly shot at people and without assessing whether their shots had any effect (as in, stopping the resistance to the transfer).¹⁶⁹ After such an incident, an investigation must take place and any perpetrators brought to justice.¹⁷⁰ Any victims should also receive medical care¹⁷¹ (including treatment of trauma) and compensation. Neither occurred. Overall, the excessive use of force amounts to inhumane and degrading treatment and could even be defined as torture. Therefore, this incident appears to be a violation of Article 3 of the ECHR.

¹⁶⁶ Interviews with lawyers from Scheperboer & Parris, February to May 2021.

¹⁶⁷ Email correspondence with the Commissie Arrestantenzorg, 10 March 2021.

¹⁶⁸ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 1997, [ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx](https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx). The general principles that must govern any use of force have been set out very clearly by the UN Special Rapporteur on extrajudicial executions. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, UN Doc. A/HRC/26/36, paras. 55 to 62.

8.2.4 LIMITED CONTACT WITH THE OUTSIDE WORLD

It is very difficult for detainees to contact the outside world. On the outside, people can make contact with detainees by giving them phone credit. With this credit the detainees can call them back – but telephone access is limited. Personal visits were forbidden during the research period. This changed in June 2021 when the Ministry of Justice announced that the SDKK prison, including the Foreigners Barracks, would be open for visits.¹⁷²

As explained in the previous chapter, during the research period lawyers were not guaranteed access to their clients. Besides that, one of the CAT recommendations to Curaçao was to regularly allow independent national and international regulators and NGOs to visit the Foreigners Barracks to check the state of affairs. However HRDC was denied access to the barracks since it was founded in 2018. As explained before in Chapter 7 “Seeking international protection in Curaçao” the organization reached a settlement with the Curaçao government in June 2021 to get full access to the detention centre. However, in practice they are only allowed to visit people in the detention centre if they know their names.¹⁷³

8.2.5 COMPLAINTS PROCEDURE

A detainee is supposed to have different options to officially submit a complaint of improper treatment or conditions, including submitting a complaint to the Arrestee Care Committee.¹⁷⁴ In practice, this is very difficult. Detainees are not informed about a complaints procedure. And if they do want to file a complaint, it is very hard to arrange a lawyer to do it and for lawyers to do their work, for reasons explained above. Moreover, the question is to what extent this committee can carry out its work effectively. The shooting incident described earlier showed that even an official complaint from lawyers of serious physical violence did not result in an independent investigation report.

The case of Juan¹⁷⁵ shows how difficult it is to file a complaint. Juan tried to escape the Foreigners Barracks in February 2021. But the SDKK prison guards caught him and his fellow Venezuelans. According to Juan he was separated from the rest, taken to the bathroom and beaten by a guard, resulting in a ruptured eardrum. He explained to Amnesty International that he wanted to file a complaint about this, but he was told not to discuss it with anyone. Juan said: “He (the guard of the Foreigners Barracks) said *they* had the right to start a case against them for trying to escape, and that we, ‘illegals’, didn’t have any rights.” Finally, with the help of HRDC he did manage to contact a lawyer to file a complaint. But the lawyer was twice denied access to his client. He has not been able to formalize the complaint, because the SDKK has not presented a complete medical report, despite multiple requests.

¹⁶⁹ According to the Basic Principle 15, law enforcement officials, in their relations with people in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

¹⁷⁰ Basic Principle 22 states that: “Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.” UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

¹⁷¹ Basic Principle 5 states that whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

¹⁷² Ministerio di Hustisia, “SDKK ta bai habri bèk pa bishitá”, 27 May 2021, [facebook.com/Minijustcur](https://www.facebook.com/Minijustcur)

¹⁷³ Email correspondence with HRDC, 17 August 2021.

¹⁷⁴ De Raad voor de Rechtshandhaving, *Vreemdelingenbewaring in Curaçao* (previously cited), p. 27.

¹⁷⁵ Interview with “Juan”, Willemstad, 2 July 2021. Amnesty International corroborated this story with testimonies of other people detained (name has been changed to respect the interviewee’s anonymity).

8.3 DEPORTATIONS: RISK OF REFOULEMENT

In 2020 Curaçao deported 243 Venezuelans.¹⁷⁶ The Curaçaoan authorities have not shared their 2019 deportation figures, even after repeated requests; however, Amnesty International has collated reports related to deportation and found that it involved at least 194 Venezuelans.¹⁷⁷ Figures for 2018 were made available, and these showed that Curaçao deported 1,100 Venezuelans.¹⁷⁸

Submitting a protection application under the Article 3 ECHR protection procedure should suspend the possibility of deportation, this is the so-called “absolute nature” of Article 3 of the ECHR.¹⁷⁹ As long as the protection question has not yet been investigated, returning earlier could mean refoulement.¹⁸⁰ Since 2019, lawyers and HRDC have more frequently succeeded in convincing the government of this.¹⁸¹ However, there remain great concerns.

Firstly, the detention of people seeking protection continues. Someone can object to the detention and deportation order¹⁸² by submitting a preliminary injunction to the court. If a court decides that the deportation is postponed or stopped, the detention should also be lifted. However, the court can only perform marginal (and therefore not substantive) assessments. In most cases, the judge concludes that the deportation will be postponed as long as there is no decision on the protection question. But the court also decides that the detention is legitimate, given that the person has no residency status, which is grounds for detaining someone. As has been explained in the previous chapters, the inhumane detention conditions dissuade people from pursuing their protection procedure – and may result in refoulement if someone is then deported.

In addition, the absolute nature of Article 3 of the ECHR is not laid down in other policy rules. Government compliance is highly dependent on external pressure, such as from lawyers or HRDC. On several occasions, the government tried to deport people seeking protection. This happened because these people did not have any opportunity to initiate proceedings (see also the case “Collective deportation” below), or because the government does not systematically check whether deportees are in protective proceedings (see also the case of “Ana” earlier described in this chapter). Through interventions of HRDC and lawyers, there were a few cases in which a deportation was avoided or postponed – even when the person was already at the airport. In a few cases, lawyers and HRDC have gone to the European Court of Human Rights to stop a deportation.

Interim measures¹⁸³

The European Court of Human Rights may, under Rule 39 of The Rules of the Court, indicate interim measures to any State party based on the European Convention on Human Rights. Interim measures are urgent measures which only apply when there is an imminent risk of irreparable harm. In the majority of cases, the applicant requests the suspension of a deportation or extradition.

Since 2019, such an interim measure has only been called in three times. In April 2019, this resulted in a suspension of the deportation of a group of five detained Venezuelans. At the end of 2019, this group started a procedure on the detention conditions and access to the protection procedure. The European Court proposed that the involved parties should try to reach a friendly settlement. That process is still ongoing at the time of publication of this report.

¹⁷⁶ Email correspondence with Curaçao Police Corps Immigration Unit, *Removals Overview 2020*, 21 January 2021.

¹⁷⁷ At least two charter flights, arranged with the help of the Venezuelan consulate: around 50 Venezuelans deported on 10-11 May; 27 Venezuelans deported in August 2019. In the last three months of 2019, 117 foreign nationals were deported by Curaçao to Venezuela, State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 15 January 2020, answers 9-10.

¹⁷⁸ Interview with Director of Disaster Response, Lesley Fer, Willemstad, interview report Amnesty International, 27 May 2019. 716 people were forcibly returned up to October 2018, Minister-President van Curaçao, Mr. Rhuggenaath, *Vervolg verzoek ondersteuning en samenwerking inzake migratie crisis Venezuela*, 10 January 2019, p. 2, bit.ly/3B51f8r

¹⁷⁹ This “absolute” nature is also mentioned in the current protection procedure. Government of Curaçao, *Procedure of Protection Based on Article 3 of the ECHR* (previously cited), p. 5.

¹⁸⁰ This was confirmed by a Curaçaoan judge with a ruling to a lawsuit brought by a Venezuelan against her deportation. The judge ruled in her favour, because the government should have investigated whether she could be deported in the context of Article 3 of the ECHR, regardless of her behaviour and lack of valid residency documents. Nu.cw, *Ongedocumenteerde Venezolaanse mag nog niet uitgezet worden*, 26 November 2020, bit.ly/35mvVD5

¹⁸¹ Interviews and correspondence with lawyers from Schepers & Parris, February to May 2021; Interview with HRDC, Willemstad, 6 May 2021.

¹⁸² If someone applies for protection and wants to avoid being deported, they must, according to Article 16.1 of the *Landsverordening Administratieve Rechtspraak (LAR)*, object to the deportation decision within six weeks. LAR (P.B. 2001, no. 80), 3 August 2001.

¹⁸³ ECtHR, *Interim Measures*, April 2021, echr.coe.int/documents/fs_interim_measures_eng.pdf

In December 2019, an interim measure was called for a single person from Venezuela. The European Court ruled national legal remedies were not yet exhausted for substantive proceedings. In October 2020, a group of Venezuelans also succeeded in blocking a deportation by means of an interim measure. Currently, the case is in the first phase of the proceedings.

Lawyers are not always in time to prevent deportation by means of a temporary injunction or interim measure, as described in the case below.



COLLECTIVE DEPORTATION

At the end of 2019, the Coastguard intercepted three boats with a total of 97 Venezuelans on board trying to reach Curaçao. Some were put into the Foreigners Barracks; another group was put into the sports hall of the police station in Rio Canario. At Curaçao's request, Dutch military personnel helped guard the sports hall (more on the Dutch support in this case in Chapter 10 "Roles and responsibilities in the Kingdom of the Netherlands"). The Curaçaoan authorities did not permit lawyers to make contact with the Venezuelans. When one of the lawyers heard that the Venezuelans were already on a bus to be deported, he tried to stop it with an emergency injunction.¹⁸⁴ However, this was to no avail, since most (95 people) were finally deported back to Venezuela in the following three weeks.

Lawyers described this as a collective deportation, prohibited under Article 4 of Protocol No. 4 to the ECHR: They could not provide legal assistance, whilst several Venezuelans said in a phone call that they wanted to request international protection.¹⁸⁵ The Venezuelans did not undergo an individual evaluation before they were deported. "The only goal was to deport them as soon as possible," recalls one of the lawyers.¹⁸⁶

According to the authorities of Curaçao and the Netherlands, individual evaluations did in fact take place. State Secretary for the Interior and Kingdom Relations Raymond Knops (hereinafter: State Secretary Knops) also maintains that the enforcement of migration policies is a "country affair" and "any irregularities around deportation must be evaluated by the national judge"¹⁸⁷ Amnesty International considers it highly improbable that the Curaçaoan authorities have been able to do a thorough and individual assessment, given the short time frame in which 95 people had to be assessed, the absence of legal assistance, and the statements the Venezuelans and lawyers have given.

8.3.1 "VOLUNTARY" RETURNS

As discussed earlier, the Curaçaoan authorities do not inform detained foreigners about their rights or provide lawyers with automatic access to their clients. However, the Venezuelan consulate is informed so they can organize any required travel papers. According to interviewees and news reports, consulate staff members visit the jails and barracks to convince or intimidate Venezuelans to submit to a "voluntary" return. From conversations that Amnesty International had with lawyers and Venezuelans, no return seemed voluntary. In fact, the detainees were intimidated and put under pressure. Particularly interviewees who had applied for protection were very unsettled by this. The Curaçaoan authorities had passed on their identity details to the Venezuelan consulate, which would likely pass these on to the government they very much feared.

There have been several "repatriation flights" in recent years, even though the airspace was closed. According to the Curaçaoan and Dutch authorities, detained Venezuelans also "voluntarily" sign for their

¹⁸⁴ Interview with lawyer Adir Ayubi, 18 February 2021.

¹⁸⁵ NOS, Curaçao zet tientallen Venezolanen uit, advocaten boos, 30 November 2019, bit.ly/3grcgbi

¹⁸⁶ Interview with lawyer Adir Ayubi (previously cited).

¹⁸⁷ State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 15 January 2020.

return, thereby not applying for a protection procedure.¹⁸⁸ The question is very much to what extent people return of their own free will. As described above, people are not aware of their rights, and from the moment they are arrested they are pressured to sign a deportation order. As Ana recalls (see also her case at the beginning of this chapter), “We had to sign a document without knowing what we were signing. All they said was that they were going to deport us.” When Ana indicated that she was seeking protection, they did not let her contact a lawyer or other help. “They said I had to pay for a lawyer myself and these lawyers would only mislead me because they were only in it for the money.”¹⁸⁹

Current detention conditions are used to coerce people to return “voluntarily” without undergoing the protection procedure. The level of this voluntariness cannot be properly assessed as long as people are not given the opportunity to be supported by a lawyer or other legal counsel. A lawyer described how many of her clients refused to go through a protection procedure: “Suddenly they had decided to return to Venezuela. And then they left. I do not know to what extent this was voluntary; the sense of hopelessness in detention was considerable. People were humiliated, with no privacy, no human dignity. I don’t have any contact details so I cannot check. I feel that I could not practice my profession as lawyer.”¹⁹⁰

HRDC’s director, Ietke Witteveen, also questioned the voluntary nature of the deportations: “Our legal assistants are not allowed access. Then there is the psychological pressure of being constantly told that legal proceedings are pointless and that they will stay in the barracks for a long time. This is an important part of their reality. Against this background, with people in desperate and unsanitary conditions and with no perspective to do anything to help their relatives in Venezuela, one cannot say someone “chose voluntarily” to be deported. It came out of desperation.”¹⁹¹

It is difficult to determine how people fare after they are deported, since there was already no data about them, and/or they dropped from the radar after returning to Venezuela. Interviewed Venezuelans said they send money to relatives who have been deported back to Venezuela. They saw this as the only way their relatives could survive. Amnesty International received a voice message from a Venezuelan who said he and his group were arrested by police in early 2021 after they been deported to Venezuela. For one day they were held at the police station, where they were blackmailed. They were only released after they had paid.¹⁹²

Furthermore, several interviewees talked about a 15-year-old boy with whom they were detained in the Foreigners Barracks in 2019. He was deported after a week in detention. Not long after his deportation, he tried again to reach Curaçao by boat in 2019. With at least 30 others, including children, on board, the boat went missing and no bodies were ever found (see also Luis’s case in Chapter 6 “Arriving in Curaçao”). Some deportees did in fact return to Curaçao, such as Miguel. He fled back to the island only a few weeks after being forcibly returned to Venezuela, because he feared for his life there.

8.4 UNLAWFUL DETENTION AND RISK OF REFOULEMENT

To sum up, immigration detention in Curaçao still does not meet international standards. The automatic detention of Venezuelans, regardless of their need for protection, has continued. The conditions have remained inhumane: the period of detention is indefinite, as it is not bound by any judicial review; basic needs such as sufficient food and hygiene are not met; and people are psychologically and physically mistreated, and have very limited access to legal assistance or a complaints procedure.

People who are seeking international protection are still not automatically exempted from deportation. They depend very much on lawyers or HRDC, who have to convince the government not to deport them. But it has been almost impossible to access this kind of legal assistance. In the current system of detention and deportation, the Curaçaoan government still does not guarantee the rights of the people seeking protection, and in particular it does not meet its international obligations of non-refoulement.

¹⁸⁸ As an example, see State Secretary Knops’s answers to parliamentary questions posed by MP Diertens: “the Curaçaoan authorities informed me that 28 of the detained foreigners had approached their lawyer on their own initiative and stated in writing in their own language that they wanted to take the 1 December flight to return to Venezuela. According to the Curaçaoan authorities, they had refrained from continuing the application procedure for protection under Article 3 of the ECHR.” State Secretary Knops, *Antwoorden op vragen van het Kamerlid Diertens*, Nr. 2020Z24044, 8 January 2021, answers 4-7.

¹⁸⁹ Interview with “Ana”, 29 March 2021 (previously cited).

¹⁹⁰ Interview with a jurist, Willemstad, 28 January 2021 (interviewee wants to remain anonymous).

¹⁹¹ Nu.cw, *HRDC: Staatssecretaris Knops geeft vertekend beeld van vluchtelingenproblematiek*, 15 January 2021, bit.ly/3BY7N7Y

¹⁹² Voice message from a Venezuelan who was deported, 4 March 2021.

9. DETENTION AND DEPORTATION OF CHILDREN

“I screamed ‘Rafael, Rafael!’ hoping that he would hear me through the high prison walls.”

David, the father of Rafael (17 years) January 2021

9.1 SEPARATED FAMILIES

Whereas the Curaçaoan government has not shared any information about the number of detained and deported children, Amnesty International has documented eight cases in the period from 2019 to early 2021, based on interviews with deported children and/or their parents and lawyers. These were children who were held without their parents in the Foreigners Barracks or a youth prison. At least four of them had one or more parents in Curaçao at the time. These children ended up being separated from their parent(s) and deported to Venezuela, like those described in the case below.

In the cases Amnesty International has documented, children had been intercepted by the Coastguard or arrested by the police in Curaçao. The immigration police then follow the same steps as with adults: detention at the police station in Rio Canario where they are pressured to sign the Dutch-language deportation order without being allowed to contact a parent or lawyer; detention in the Foreigners Barracks or a youth prison where they can also not see a lawyer, their parent(s) or other family members. In some cases, such as Yusmari's, even phone contact was not permitted.

THE CASE OF YUSMARI AND HER TWO SONS



Yusmari, a Venezuelan woman living in Curaçao. Her children were deported to Venezuela: "They took my children without warning" © Berber van Beek / Studiorootz

Yusmari (36 years), mother of two boys, told Amnesty International how her two sons (aged 15 and 16 at the time) came without her knowledge by boat to Curaçao. They were immediately detained and handcuffed after coming ashore, and after a brief stop in Rio Canario were taken to the Foreigners Barracks. From there they managed to call their mother. As Yusmari recalls, "Every time we called, we had to cry." According to her youngest son who is now back in Venezuela: "I felt bad. I was not used to being locked up."

After two days in the barracks, they were taken to the juvenile detention centre. They were not allowed to have contact with their mother. Yusmari told Amnesty International: "They said I was no longer allowed to talk to them because they were being deported." With the help of a go-between, Yusmari was able to arrange a visit. When she arrived at the juvenile detention centre, she was told her sons had already been deported a few days earlier – a fact that was not communicated to her earlier by the Curaçaoan authorities.

Yusmari cried as she talked about how much she misses her sons. She dreams that they and her other two children will come and live with her in Curaçao, and that she can work legally. Both sons wish that the situation in their country would change quickly. They hope one day to either become a professional athlete or to study.

The Curaçaoan and Dutch authorities claim that there is a regulation for the detention of underage foreigners.¹⁹³ This regulation stipulates that no minors are placed in immigration detention, and minors without a (known) parent on the island are placed under state guardianship. Very young children are placed in a boarding school, whereas older children are put in closed youth facilities such as the Judicial Youth Institution Curaçao. Children, usually 17-year-olds, are sometimes mistaken for adults and placed in immigration detention. As soon as their age is verified, they are transferred to a juvenile detention centre.¹⁹⁴ Amnesty International has not been able to see the regulation, as the government has not made it public or shared it despite numerous requests. However, the organization has documented the story of Rafael, which contradicts the government's claims, as can be read on the next page.

¹⁹³ State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 15 January 2020.

¹⁹⁴ Interview with government officials of the Curaçaoan Ministry of Justice, 11 February 2021.

THE CASE OF DAVID AND RAFAEL



David, a Venezuelan man whose son Rafael was deported: "Curaçao detained and deported my son" © Berber van Beek / Studiorootz

At the end of 2020 the police arrested 17-year-old Rafael,¹⁹⁵ because he broke the evening curfew. Officers took him to the police station in Rio Canario. Even though he stated his age, this did not have any bearing on how the officers treated him: he was not allowed to call anyone, including his father who lives on the island. He had to spend the night in the police cell. It was not until the following morning that migrant officers called his father, David.¹⁹⁶ They ordered him to bring Rafael's passport and threatened that they would deport Rafael regardless. So, he brought the passport, hoping it would help his son's case. However, Rafael had already been taken to the Foreigners Barracks. Although the passport showed that Rafael was a minor, he remained detained in the barracks. His father did not know what would happen to Rafael and sought legal help from HRDC.¹⁹⁷ The assigned jurist did not receive any appropriate response or information from migration officials.¹⁹⁸ David went to the barracks to see his son and bring him some clothes. His request was denied at the gate. "I screamed 'Rafael, Rafael!', hoping that he would hear me through the high prison walls."

Rafael managed to call his father and begged him to get him released. He felt bad and could not bear being detained any more. He was only given bread to eat and did not receive any clean clothes. Finally, he signed a deportation order and was deported from the country after a week in detention. His father did not sign anything. When Rafael arrived in Caracas the Venezuelan authorities held him for eight hours; they were suspicious because of the fact that Curaçao had deported an unaccompanied minor despite having a father on the island. They let him go after they clarified it with the Venezuelan consul in Curaçao.

From Venezuela, Rafael explains why he signed for deportation: his greatest concern at that moment was to get away from the barracks at any cost. The prospect of starting a protection procedure and having to stay longer inside was unbearable. Meanwhile, the Curaçaoan authorities did not make any effort to ensure that the child would receive, for example, immediate access to appropriate accommodation, or support for basic needs and healthcare, including psycho-social care, upon arrival in Venezuela.

Rafael dreams of working in the music industry one day. Even though the situation in Venezuela continues to worsen, Rafael tries to stay optimistic: "Hope is all I have left."

Children are not reunited with (one of) their parents who reside on the island – as reflected in the cases of Yusmari and Rafael. From a conversation with the Curaçaoan authorities, Amnesty International learned that parents must report to the authorities if their child is arrested. If not, Curaçao will take custody. When parents do report an arrest, they must "voluntarily" leave with the child back to Venezuela. Otherwise, they risk being detained separately and deported anyway. A child is never placed with an irregularly residing parent, but instead always deported.¹⁹⁹

¹⁹⁵ WhatsApp interview with "Rafael", Willemstad, 19 January 2021 (name has been changed to respect the interviewee's anonymity). Interview with "David", Willemstad, 18 January 2021. Amnesty International also saw photos and (official) letters that corroborated their story.

¹⁹⁶ Interview with "David", Willemstad, 18 January 2021 (name has been changed to respect the interviewee's anonymity).

¹⁹⁷ See also footnote 5.

¹⁹⁸ Interview with a jurist, Willemstad, 28 January 2021 (interviewee wants to remain anonymous).

¹⁹⁹ Interview with government officials of the Curaçaoan Ministry of Justice, 11 February 2021.

The Curaçaoan government has not shared any data on how many children have, or have not, been deported with their parents. No monitoring mechanism exists to ascertain the state of a child once they are deported without a parent. From the interviews with children and their parents it appeared that the government did not look into whether anyone in Venezuela could actually take care of a particular child, putting them in a very vulnerable position upon arrival. Rafael's experience of being held for eight hours by the Venezuelan authorities when he arrived, sadly shows this. David said: "They only knew Rafael had a grandmother in Venezuela because I told them. But the immigration police didn't call her or find out who could take care of my son. They did not call anyone."²⁰⁰ This violates Article 22 of the CRC, which states that countries must make an effort to protect children by tracing their parents or other members of the family to ensure they are reunified with their family.²⁰¹

9.2 CHILDREN'S RIGHTS VIOLATED

The rights of children are violated on many fronts,²⁰² and not only by imprisoning them in the Foreigners Barracks,²⁰³ but also in youth facilities.²⁰⁴ A lawyer who assists several foreign minors also said a child's rights are not protected in practice. She mentioned a client who was a minor and detained for six months (at the time this research took place), with her rights to education and adequate recreation "grossly violated".²⁰⁵

The migration-related detention of children is strictly prohibited in international law as it can never be in their best interests.²⁰⁶ The Committee on the Rights of the Child and the Committee on Migrant Workers have underlined that "the detention of any child because of their or their parents' migration status constitutes a violation of children's rights and contravenes the principle of the best interests of the child."²⁰⁷ Amnesty International opposes the migration-related detention of all children – whether accompanied or unaccompanied, whether migrants or asylum seekers. Amnesty International also takes the position that a presumption against detaining family units of parents and children for immigration-related reasons should be enshrined in law. Detaining children because of their parents' migration status will never be in their best interests, nor will separating them from their parents. Separating children from their families may amount to torture or other forms of ill-treatment in some cases.²⁰⁸

To meet the definition of torture, an act must: (1) be intentional, (2) be carried out or condoned by a government official, (3) inflict severe pain or suffering, either physical or mental, and (4) be carried out for a specific purpose such as punishment, coercion, intimidation, or for some discriminatory reason.²⁰⁹ All these requirements seem to a certain extent to be present in the cases of Yusmari's sons and Rafael. 1) The Curaçaoan authorities have been aware that they were separating children from their parents. In fact, it is standard practice to detain minors without their parents. They also have not attempted to reunite them, or even allow the parents to visit their children. Instead, they have focused on deportation and not the

²⁰⁰ Interview with "David", 18 February 2021.

²⁰¹ Article 22(1) of the CRC states that: "States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention."

²⁰² According to CPT Standards: "The CPT considers that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor. Following the principle of the 'best interests of the child', as formulated in Article 3 of the United Nations Convention on the Rights of the Child, detention of children, including unaccompanied and separated children, is rarely justified and, in the Committee's view, can certainly not be motivated solely by the absence of residence status." CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2010, p. 64 under para. 97.

²⁰³ State Secretary Knops states that he does not consider the Foreigners Barracks suitable for minors if they reside there without parents. State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, Nr. 875, 23 November 2020, answer 5.

²⁰⁴ Caribisch Netwerk, *Zorgen om minderjarige vluchtelingen op Curaçao*, bit.ly/2TDzCkU

²⁰⁵ Email correspondence with lawyer from Schepers & Parris, 23 February 2021.

²⁰⁶ *Concluding observations on the initial report of Nicaragua* (11 October 2016) CMW/C/NIC/CO/1 at paras 39-40; *Concluding observations on the initial report of Turkey* (31 May 2016) CMW/C/TUR/CO/1 at paras 47-48; *Concluding observations on the initial report of the Niger* (11 October 2016) CMW/C/NER/CO/1 at para. 33; Inter-American Court of Human Rights, *Advisory Opinion OC-21-14: Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* (19 August 2014) at para. 154; UNHCR, "UNHCR's position regarding the detention of refugee and migrant children in the migration context" (January 2017).

²⁰⁷ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23 at para. 5.

²⁰⁸ Amnesty International, Chapter 3 "Policy and Practice of Family Separations Constitute Torture", 'You Don't Have any Rights Here': *Illegal Pushbacks, Arbitrary Detention & Ill-treatment of Asylum-seekers in the United States* (Index: AMR 51/9101/2018).

²⁰⁹ Article 1, UNCAT (previously cited).

children's best interest. 2) The arrest, detention and deportation were all carried out by government officials. 3) It caused great emotional suffering for Rafael and his father, and Yusmari and her sons. In addition, the government of Curaçao deliberately did not make the effort to trace their family or other carers in Venezuela, putting them in a very vulnerable position where they could have suffered extreme mental or physical pain. 4) The detention and separation of their parents was used to coerce the children to not fight their deportation.

10. ROLES AND RESPONSIBILITIES IN THE KINGDOM OF THE NETHERLANDS

10.1 HUMAN RIGHTS VIOLATIONS REGARDED AS A “COUNTRY AFFAIR”

In recent years reports by international organizations, governmental bodies, UN expert bodies and individuals, NGOs and numerous media outlets have exposed how the Curaçaoan authorities have violated the rights of people seeking protection in Curaçao. In the same period, the Dutch authorities provided support for the surveillance of the maritime border, the protection procedure and the detention of foreigners. Various Dutch members of parliament have asked parliamentary questions about this, for example about the government’s view on the international reports about human rights violations,²¹⁰ the role of the Netherlands in the guarding of the Venezuelans in the sports hall in 2019,²¹¹ and the role of the Coastguard.²¹² An emblematic response by State Secretary Knops is: “Both the Curaçaoan and the Dutch authorities attach great value in cooperating to comply with international human rights treaties. All parties are doing their best to implement this as well as possible.” However, he emphasizes that “The Netherlands does not take over Aruba and Curaçao’s responsibilities. Migration policy is and remains a country affair.”²¹³

The government has not invoked the role of “safeguarding” human rights foreseen under Article 43 of the Charter (see also Chapter 5 “Legal Framework”), and State Secretary Knops has described the relationship as being one of maintaining the “current path of mutual cooperation between the countries” under Article 36.²¹⁴ This article allows Curaçao to call upon other Kingdom countries for assistance to uphold international standards, the assistance is compulsory when requested. Since 2018, Curaçao has requested on three occasions that the Netherlands help to handle the reception and detention of Venezuelans. In response to these requests, the Netherlands has provided different forms of technical and financial support.

²¹⁰ State Secretary Knops, *Brief inzake toezeggingen n.a.v. plenair debat Venezuela*, Nr. 242199, 21 May 2019, p. 6.

²¹¹ State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens* (previously cited), 15 January 2020, answers 11 and 12.

²¹² Minister of defence, *Antwoorden op de vragen over het Jaarplan 2020 Kustwacht voor het Koninkrijk der Nederlanden in het Caribisch Gebied* (Nr. BS2020003040), answers 1-3.

²¹³ State Secretary Knops, *Brief inzake toezeggingen n.a.v. plenair debat Venezuela*, 21 May 2019, p.2. See also: State Secretary Knops, *Antwoorden op vragen van het Kamerlid Diertens*, 8 January 2021, answers 4-7; State Secretary Knops, *Antwoorden op nadere vragen in antwoord op mondeling overleg d.d. 16 April 2019*, Nr. 162796.02u, 2 July 2019, p. 1. State Secretary, Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, Nr. 1954, 5 March 2020, answer 5; Minister Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 15 January 2020, answer 8.

²¹⁴ State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 5 March 2020, (previously cited), answer 10.

Amnesty International considers that states that receive and provide assistance must ensure that human rights are respected in the use of such assistance in accordance with their obligations under international human rights law. States that receive and provide assistance must ensure that human rights are protected and therefore must exercise due diligence to ensure that no assistance that they provide results in human rights abuses.

Specific details and analysis of the Dutch assistance provided, and cooperation with the Curaçaoan authorities, will be elaborated on in the following paragraphs.

10.2 FUNDING DETECTION, DETENTION AND DEPORTATION

At the beginning of 2018, at Curaçao's request, the Netherlands pledged €132,000 to Curaçao for the improvement and expansion of the men's block of the SDKK prison's Foreigners Barracks. In the same period Curaçao asked the Netherlands for support in optimizing the Article 3 ECHR protection procedure. The Netherlands offered technical support whereby the Dutch Ministry of Justice and Security recommended to bring them in line with international standards.²¹⁵ This led to a renewed protection procedure in June 2019. In Chapter 7 "Seeking international protection in Curaçao", it is noted that this procedure does not conform to international standards, and shortcomings include limited access to legal assistance, the automatic detention of people seeking protection and the inhumane detention conditions that deter people from seeking protection. The Curaçaoan government thus formulated policies with the help of the Netherlands in which basic rights, such as the right to a lawyer and transparent proceedings, were not guaranteed. And, because of this flawed procedure, Venezuelans in need of protection may still be sent back to Venezuela where they risk serious human rights violations.

At the beginning of 2019, Curaçao asked the Netherlands for assistance in relation to the crisis in Venezuela.²¹⁶ As can be read in the request, the main goal of the request was to achieve a "more active detection and removal policy". For example, Curaçao aimed to remove at least 2,600 people over the next two years to lower the population of undocumented migrant by 60-75%. On a practical level, this would amount to removing 50 people per week. As Chrisje Sandelowsky-Bosman of the Leiden University puts it: "The Curaçaoan and Dutch authorities appear to have found each other in the prevention of creating a 'pull factor for migrants.'" ²¹⁷ This was clearly reflected in the type of assistance the Dutch government gave in response, which was focused on detection, detention and deportation.

The Dutch government made €23.8 million available for Aruba and Curaçao, which was divided across different areas:²¹⁸

- €10.7 million went to "crisis management" to prepare the Kingdom for possible disasters, such as the recent hurricanes Irma and Maria.
- €7.2 million went to "optimizing the immigration chain".
- €2.2 million was reserved for the protection of maritime borders.
- €2 million was made available to expand the Foreigners Barracks at the SDKK prison and to bring it in line with the CPT prerequisites.

Almost half of the money, €10.7 million, went to "crisis management" to prepare the Kingdom for possible disasters, such as the recent hurricanes Irma and Maria. However, Curaçao is geographically located outside the Hurricane Belt and strong winds rarely pose a threat.²¹⁹ Neither the minister nor his civil servants have specified what this money is spent on.²²⁰

Regarding "optimizing the immigration chain", the Netherlands did not focus on enhancing the protection of the rights of migrants and people seeking protection in Curaçao. The €7.2 million that was allocated came

²¹⁵ State Secretary Knops, Brief inzake toezeggingen n.a.v. plenair debat Venezuela, Nr. 242199, 21 May 2019, p. 3.

²¹⁶ Minister-President van Curaçao, Mr. Rhuggenaath, *Vervolg verzoek ondersteuning en 1 van 6 2 samenwerking inzake migratie crisis Venezuela*, 10 January 2019, p. 4.

²¹⁷ Chrisje Sandelowsky-Bosman, e.a. *Samenvatting van: De rechten van ongedocumenteerde kinderen in Curaçao – een gezamenlijke verantwoordelijkheid* (previously cited), p. 14.

²¹⁸ Letter from State Secretary Knops to the parliament, *Respons op ondersteuningsverzoeken Aruba en Curaçao*, 6 september 2019, p. 2.

²¹⁹ Curaçao.com, *When is hurricane season in Curaçao?* bit.ly/3tC3NXA

²²⁰ State Secretary Knops, *Respons op ondersteuningsverzoeken Aruba en Curaçao*, 6 September 2019, (previously cited), p. 3; Online conversation with official of the Ministry of the Interior and Kingdom Relations, 15 April 2021.

down to enforcing the detection, detention and deportation capacities of the Curaçaoan authorities. For instance, the Netherlands invested in materials such as transport vehicles and communication equipment for the Coastguard and immigration police. Also, different Dutch migration officials²²¹ advised and trained the staff of the SDKK prison, the Admissions Organization, the immigration police and the Coastguard. Venezuelans, local NGOs and lawyers told Amnesty International that they were neither involved nor participated in the training sessions or the working visits that took place.

10.2.1 MILITARY ASSISTANCE AND MARITIME BORDER CONTROL: “NO INFLUENCE ON WHAT HAPPENS ON LAND”

As explained in Chapter 8 “Detention and deportation”, at the end of 2019 the Dutch Ministry of Defence provided military assistance to “maintain public order”: At Curaçao’s request, the Dutch military assisted in the guarding of a group of Venezuelans who were detained in the sports hall awaiting their deportation to Venezuela. State Secretary Knops claimed that both before and during the assistance attention was paid to the detention conditions. The local authorities assured him that there would be amongst other things food, beds, medical assistance and legal help. “The well-being of the foreigners was always the priority in our talks”, he informed the Dutch parliament. He did not question the appropriateness of the place where these people were detained. He continued to refer to the sports hall as “a temporary reception facility”, while in reality the people were automatically detained and could not make contact with people from the outside, in particular lawyers. In Chapter 8, Amnesty International took the position that it was highly unlikely that everyone was given the chance to start a protection procedure, let alone to have completed an individual protection assessment within a three week period. By agreeing to send military personnel to help with the unlawful detention of this group of Venezuelans, the Dutch authorities failed in their duty to protect and respect human rights.



The Coastguard takes people they have intercepted to Curaçao © Coastguard

The Netherlands has also given personnel and material to support the Coastguard over the last few years. The Dutch government gave €2.2 million extra assistance to the Coastguard through, for example, deploying Curaçaoan and Aruban militia to supplement the Coastguard boat crews. Investments were also made in improving the detection system, including the purchase of drones and mobile shore-based radars.²²² In the previous chapters, Amnesty International has found a chain of intimidation and abuses that often occur from the moment the Coastguard intercepts a boat with irregular migrants and hands them over to the Curaçaoan immigration authorities, including the detention of children, ill-treatment and refoulement.

The role and responsibilities of the Coastguard in this are ambiguous. When Amnesty International asked the Dutch Ministry of Defence and the Coastguard about their responsibility to prevent or stop human rights violations in the immigration chain, they claimed that it is Curaçao’s responsibility how these people are

²²¹ The Dutch Immigration and Naturalization Service, the Royal Netherlands Marechaussee and the Dutch Repatriation and Departure Service.

²²² Letter from the minister of the Interior and Kingdom Relations to the parliament, *Respons op ondersteuningsverzoeken Aruba en Curaçao* (previously cited), p. 2.

processed from then onwards.²²³ They claimed that they “have no insight or influence in the following processes on land”.²²⁴ But at the same time, the Dutch government emphasizes that the Coastguard is “one link in the (immigration) chain” and that “it is very important that the Coastguard cooperates ably with other immigration services.”²²⁵

10.2.2 MAINTAINING AN INHUMANE SYSTEM OF DETENTION

Since 2018, the Netherlands has given Curaçao over €2 million to improve the Foreigners Barracks. In response to Curaçao’s request for help in 2018, the Netherlands made €132,000 available in early 2020 to improve the men’s block of the immigration detention centre and to build a “covered recreation space” (in reality a caged airing space, see Chapter 8 “Detention and Deportation”).²²⁶ The second support package of €2 million was intended to expand the Foreigners Barracks at the SDKK prison and bring it in line with CPT regulations.²²⁷ For example, people are supposed to no longer be locked up in a common room, but in smaller groups in different cells. According to the plans there will be sufficient secured areas for recreation and fresh air. A working group with Curaçaoan and Dutch civil servants consults every two weeks to monitor the progress.

The current renovated areas and the expansion which has not yet been constructed are evidently not in line with international standards. Amnesty International found during its visit described in Chapter 8 that the conditions remain inhumane. Also, the plans for the expansion funded by the Netherlands, including the detention of mothers and child(ren), violate different human rights standards, such as the principles that immigration detention can only be applied as a last resort and that no child should be detained based on its migration status.

In addition, the Curaçaoan and Dutch officials revealed that the aid money for detention is also used for organizing courses on the treatment of migrants. One of the trainings, “Hostmanship”,²²⁸ is described by the course leader as “the art of making people feel they are welcome”.²²⁹ Ironically, participants in such training courses were precisely the people in charge of detecting, detaining and deporting foreigners – and as such may have been involved in violations.²³⁰ People representing the interests of detained foreigners were not involved. Moreover, the Law Enforcement Council noted that there have not been any structural (further training) courses in this area.²³¹ As can be read in the previous chapter, interviewed Venezuelans who were detained between 2019 and 2021 have made it clear that they were still roughly treated and, in some cases, even mistreated, and that they did not have access to a complaints procedure. The courses and trainings have therefore not been effective in improving the treatment of foreigners and bringing it in line with international standards.

10.2.3 SUPERVISION AND MONITORING UNSUFFICIENT

Dutch officials from the Interior and Justice departments indicated that they do not have any independent monitoring or evaluation mechanisms for the support given to Curaçao. Officials of the Justice Department do not see the monitoring or supervision of assistance as their responsibility; this falls under Curaçaoan supervisory or advisory bodies such as the Ombudsman or the Law Enforcement Council.²³² However, none of them have evaluated the effectiveness of the Dutch support.²³³

²²³ Minister of defence, Bijleveld-Schouten, *Antwoorden op vragen van Kamerleden over Jaarplan 2020 Kustwacht voor het Koninkrijk der Nederlanden in het Caribisch Gebied*, 9 March 2020.

²²⁴ Online interview with Dutch Ministry of Defence and the Dutch Caribbean Coastguard, 21 January 2021.

²²⁵ Letter from the ministers of foreign affairs and interior and Kingdom relations to the parliament, *Het Nederlands buitenlands beleid ten aanzien van Latijns-Amerika en de Cariben*, toezegging 5, zoek.officielebekendmakingen.nl/kst-29653-33.html

²²⁶ State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 15 January 2020, answer 14.

²²⁷ State Secretary Knops, *Respons op ondersteuningsverzoeken Aruba en Curaçao* (previously cited) p. 4; State Secretary Knops, *Het Nederlands buitenlands beleid ten aanzien van Latijns-Amerika en de Cariben* (previously cited); State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 5 March 2020, answer 8.

²²⁸ State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, Nr. 875, 23 November 2020, answer 2.

²²⁹ Hostmanship: The Human Mindset, *Historie*, hostmanship.nl/historie

²³⁰ Participating authorities were from: the SDKK, the Admissions Organization, the immigrations police and the Coastguard. The authorities of Curaçao and the Netherlands have not shared information about the dates of the trainings. Email correspondence with official from the Ministry of Justice and Security, 23 April 2021.

²³¹ De Raad voor de Rechtshandhaving, *Vreemdelingenbewaring in Curaçao* (previously cited), p. 10.

²³² Online interview with government officials from the Dutch Ministry of Justice and Security, 12 February 2021.

²³³ They did publish related documents. In 2018, the Ombudsman wrote a report on the Curaçao immigration policy, and in 2020 wrote a letter of concern about the composition of the Advisory Committee for the asylum procedure. However, neither documents received a formal

In 2018, the CAT already noted that trainings were being provided to civil servants, including on the treatment of detainees, the use of violence, and how to identify vulnerable asylum seekers. However, the committee was disappointed by the lack of information available to law enforcement officers, the size of the training groups, the proportion of those who are actually trained, and how seldom these trainings actually take place.²³⁴ According to the CAT, methodologies should also be developed to evaluate the effectiveness and impact of the training courses – to see if they indeed reduce the number of abuse and torture cases.²³⁵ There is still little transparency about the training courses, and Amnesty International has not received answers to the freedom of information request that was filed in May 2021.

Every time Dutch members of parliament ask the Dutch government critical questions about Dutch support in alleged human rights violations, State Secretary Knops passes on the information the government of Curaçao gives him. He does not have the allegations independently investigated. Even this approach has been the subject of parliamentary questioning. State Secretary Knops responded by saying that: “I have the impression that the Curaçaoan authorities are being as transparent as possible with the sharing of information.”²³⁶

Amnesty International is extremely concerned that the Dutch government, by continuing its support without independently monitoring or investigating human rights violations, helps to maintain a system of abuses.

10.3 CONTRIBUTING TO HUMAN RIGHTS VIOLATIONS

It has become clear that since the last report, serious violations of refugee and migrant rights have continued to take place in Curaçao. The Dutch authorities have chosen “the path of mutual cooperation” by intensifying their support to Curaçao. Despite the alarming signals about human rights violations, they have provided funds, training, equipment and other forms of assistance to enhance the capacity of the Coastguard, the immigration police and the detention centre. They did not create any binding human rights safeguards, nor independently investigate alleged abuses. Amnesty International sounds the alarm that the Netherlands’ support, rather than focusing on stopping human rights violations, has led to increasing numbers of people, including children, being stopped or intercepted, and brought to the detention centre or places of captivity where they risk inhumane treatment and refoulement to Venezuela. The Dutch authorities therefore violate their obligations under international law to respect and protect human rights.

response from the minister of justice. The Law Enforcement Council also published a research report on immigration detention in 2020, but they still need to begin the monitoring process.

²³⁴ CAT, Observation 20 of the Observations of the Seventh Periodic Report of the Netherlands.

²³⁵ CAT, Observation 21(d) of the Observations of the Seventh Periodic Report of the Netherlands.

²³⁶ State Secretary Knops, *Antwoorden op vragen van de Kamerleden Groothuizen en Diertens*, 5 March 2020 (previously cited), answer 11.

11. CONCLUSIONS AND RECOMMENDATIONS

12.1 CONCLUSIONS

Since Amnesty International's initial report *Detained and Deported: Venezuelans Denied Protection in Curaçao* of 2018, the situation of Venezuelans who have fled to Curaçao has not improved: Venezuelans in need of international protection, including children, are being subjected to human rights violations such as automatic detention under inhumane conditions, ill-treatment and denial of their right to seek protection.

The crisis in Venezuela has deepened in recent years, causing millions of Venezuelans to flee their country. Curaçao remains a destination country, even though it has become nearly impossible to arrive in a regular way. Many Venezuelans see no other options than to depart for Curaçao by boat irregularly, putting their own lives at risk. In the last three years at least 60 people have drowned or gone missing when they tried to reach Curaçao by boat. Most of the Venezuelans cannot meet the criteria that the government has set to gain legal residence. They are therefore compelled to live irregularly on the island. It is estimated that 17,000 Venezuelans live undocumented in Curaçao. This means that they are not allowed to work or access national health systems, making them extremely vulnerable to exploitation and abuse.

In 2019, after national and international pressure, Curaçao introduced a renewed international protection procedure under Article 3 of the ECHR, with the help of the Netherlands. However, Amnesty International has found that the procedure is not in line with international standards. The Curaçaoan authorities have violated the rights of Venezuelans in need of protection in different parts of the immigration chain. In most cases this chain starts when Venezuelans are intercepted by the Dutch Caribbean Coastguard when they try to reach Curaçao by boat; in fewer cases they are arrested on land. After the Coastguard has handed them over to the Curaçaoan immigration police, they are taken to the police station in Rio Canario. They have to overcome many obstacles to request international protection: During the detention in the police station, immigration officers pressure them to sign a deportation order in Dutch, irrespective of whether they need international protection. They do not explain them their rights or offer a translator. Subsequently, they are automatically detained in the Foreigners Barracks in the SDKK prison, again regardless of their need for protection. In the barracks prison guards use verbal and physical intimidation to discourage them from seeking legal assistance and requesting protection. Lawyers and NGOs do not get standard access to the detention centre to provide legal assistance. Moreover, the prospect of being in detention for an undetermined period of time and under inhumane conditions deters people from starting a protection procedure.

If people persist in starting the Article 3 ECHR protection procedure, they are confronted with other flaws in the procedure. They find the setting and type of questioning in the protection assessment interviews intimidating, because the immigration police officers who do the protection assessment interviews have also been in charge of arresting and detaining them. Furthermore, the procedure is not set out in law, but in policy rules, which makes it unclear to what extent people looking for protection can derive rights from these rules. The decision-making process is not transparent: The Curaçaoan authorities do not provide adequate information about their procedure or the decision making, leaving them in great uncertainty. Up to now the procedure has only led to rejection.

The immigration detention still does not meet standards for international law. Venezuelans are still automatically detained in the Foreigners Barracks. The period of detention is undetermined, because there is no automatic review of the detention decision by a court. People can only be released by a decision by the minister of justice and if they have a guarantor, leading to great arbitrariness. The conditions in the Foreigners Barracks have remained inhumane since the initial report in 2018: Basic needs such as sufficient food and hygiene are not met. People interviewed by Amnesty International spoke about how the guards mistreated them psychologically and physically, including treating them like criminals or forcing them to leap like a frog naked. The complaints procedure for detained foreigners has been inaccessible and therefore ineffective, which contributes to an atmosphere of impunity for the guards and police. In 2019 a group of Venezuelans who were in immigration detention were shot with rubber bullets by the police. The intentional and disproportionate force the police used against them, and the severity of the injuries, appears to amount to torture or other ill-treatment.

The new renovation plans of the Foreigners Barracks, principally funded by the Netherlands, do not seem to offer any substantial improvements: They are still on the prison premises, they do not include any non-custodial alternatives to detention, and children will be still detained based on their migration status.

People who are seeking international protection are still not automatically exempted from deportation. They depend very much on lawyers or HRDC, who have to convince the government not to deport them. Sometimes this even happens at the airport when they are about to be deported. Lawyers or HRDC cannot always stop a deportation, as it is difficult for them to contact Venezuelans who are in immigration detention. In 2019, at Curaçao's request, Dutch military personnel helped guard a sports hall at the Rio Canario police station where Venezuelans were detained awaiting deportation. The Curaçaoan authorities did not allow lawyers to make contact with the Venezuelans. Within three weeks they were deported back to Venezuela. Lawyers have described it as collective deportation, in breach of international law. Amnesty International considers it highly improbable that the Curaçaoan authorities have been able to do a thorough individual assessment of 95 people, all of whom supposed to have had access to legal assistance in the space of three weeks. By failing to carry out an individual and thorough assessment of the need for protection, the Curaçaoan authorities have put deported Venezuelans at great risk of serious human rights violations. On the basis of available evidence, deportations to Venezuela thus appear to have been carried out in breach of international law, and in particular of the principle of non-refoulement.

Curaçao has violated the rights of Venezuelan children by detaining them and separating them from their parent(s). Amnesty International has documented eight children who were or had been detained amongst adults in the Foreigners Barracks or in juvenile institutions. They were not reunited with their parent(s), neither were the parent(s) allowed to visit them. Instead, the Curaçaoan authorities deported them or were planning to deport them without the authorization of their parents or having concluded a protection procedure. The Curaçaoan authorities do not research who will look after the child or what the living conditions of the child will be after deportation. Amnesty International considers the intentional and severe mental suffering government officials have caused by deporting children and separating them from their parent(s) may in some cases amount to torture.

Despite various alarming signs of serious violations of refugee and migrant rights taking place, the Dutch authorities have intensified their active cooperation with and support to Curaçao, principally in the field of detection, detention and deportation of migrants and people seeking protection. They have continued to consider the implementation of immigration policy and related irregularities as a country affair. However, the Dutch military assisted in the guarding of a group of unlawfully detained Venezuelans, who were then most likely collectively deported, and consequently without having had an individual procedure. The Netherlands has also substantially invested in the Coastguard, which regards itself as is "one link in immigration chain". The Dutch authorities have provided the Coastguard with material and personnel to intercept people arriving by boat in an irregular manner. The Coastguard hands those intercepted over to the Curaçaoan immigration police, regardless of whether they run a high risk of being exposed to human rights violations. The Dutch authorities have neglected to create any binding human rights safeguards, or independently monitor or evaluate the support given; nor have they effectively assessed human rights risks or investigated alleged violations, thereby maintaining a system of abuses. Therefore, the Dutch government has failed to comply with international standards to respect and protect human rights.

12.2 RECOMMENDATIONS

12.2.1 TO THE GOVERNMENT OF CURAÇAO

Guarantee the rights of people in need of international protection:

- Ensure that there is a transparent migration policy, including the protection procedure, that is legally binding and in line with international standards.
- Ensure that all foreigners in need of protection can access the protection procedure – regardless of how and when they entered the island – and that no person is deported to a place where they are at real risk of serious human rights violations, in violation of the principle of non-refoulement.
- Examine protection claims on their merits in a full and fair protection process with all procedural and substantial safeguards, such as provision of information, good quality interpretation, access to legal aid and access to an effective remedy against a negative decision. The effective remedy should include a suspensive effect on the decision.
- Refrain from detaining and deporting anyone until their claim for protection has been promptly, individually, fairly and effectively assessed, and include this in legislation.
- Implement protection measures that follow a humanitarian approach and expedite access for Venezuelans to legal residency, while strengthening the protection procedure. And in the meantime, ensure that people who are in the protection procedure and irregular migrants in need can meet basic needs such as shelter, food and adequate healthcare.
- Cooperate and request assistance from the Dutch government to strengthen the international protection framework, in particular in the field of free legal assistance for people in immigration detention.

Ensure that in all decisions relating to children, the best interests of the child shall be a primary consideration:

- Stop the detention of children and separation from their parent(s) and/or legal guardian(s), regardless of their immigration status.
- When the government proves that migration enforcement measures that restrict human rights are necessary and proportionate, apply alternatives to detention of the entire family.
- Include the rights of undocumented children in legislation and develop policy to better protect their rights.

Ensure that the detention of people seeking international protection and migrants is exceptional and only used as a last resort, where necessary in the specific circumstances, and proportionate to a legitimate purpose pursuant to international human rights law.

- Ensure that all detained migrants are informed in their own language about their rights when they are arrested, in the police station and in the detention centre. Refrain from making them sign a deportation order in Dutch before they have been enabled to apply for protection.
- Provide non-custodial, more humane alternatives to detention by law. In the meantime, improve the conditions in the Foreigners Barracks and safeguard a humane approach to detained foreigners. Refrain from detaining migrants and people seeking protection with convicted prisoners.
- Ensure that allegations of ill-treatment, excessive use of force, or any other abuses during arrests or in immigration detention are investigated promptly, effectively, independently and impartially by an independent body. Perpetrators should be prosecuted, and reparations provided to victims.
- Conduct an independent, impartial, prompt and thorough investigation into the shooting with rubber bullets in the Foreigners Barracks in April 2019. Ensure the participation of the Venezuelans who were present at the incident in any inquiry and ensure that the findings are made public.
- Ensure that detained migrants and people seeking protection have unfettered access to legal assistance whilst in detention; and that free legal aid is provided to any people in detention who cannot afford their own lawyer.
- Ensure that any detention decision and detention conditions are automatically and regularly reviewed by a court or similar competent, independent and impartial body.

Engage in a constructive dialogue and cooperation with stakeholders such as the Ombudsman, advisory bodies and human rights organizations.

- Ensure that data, regulations, and other relevant documents are communicated transparently; and make this information publicly accessible.

12.2.2 TO THE KINGDOM OF THE NETHERLANDS

Ensure that human rights are respected and protected in all the forms of cooperation of the Kingdom; and that human rights violations are prevented and stopped.

- Ensure any joint operations or activities are conducted in compliance with international human rights law, and ensure action is taken to prevent any involvement in human rights abuses such as refoulement.
- Enhance the cooperation in the Kingdom in the field of human rights, including with civil society across the Kingdom.

12.2.3 TO THE DUTCH GOVERNMENT

Ensure that human rights are respected and protected in the support and other forms of cooperation with Curaçao.

- Assess human rights risks and create binding human rights safeguards in the support given.
- Conduct an independent, impartial, prompt and thorough investigation into the assistance and other forms of cooperation between the Netherlands and Curaçao in the field of migration, in particular the activities of the Coastguard and the guarding of the Venezuelans in the sports hall in 2019, with a view to urgently reforming any procedures or actions that are found to be putting the human rights of people seeking protection at risk.
- Ensure the participation and voices of people seeking international protection in Curaçao in any inquiry and ensure that the findings are made public.
- Create, in conjunction with Curaçao, effective and independent mechanisms to monitor and evaluate the support against the background of international human rights standards; including methodologies to evaluate the effectiveness and impact of the training courses.
- Support Curaçao in creating a system of free legal assistance for detained migrants.
- Intensify the support for relevant local civil society, particularly human rights organizations such as HRDC.
- Ensure that the support given, and specifically the actions taken to respect and protect human rights, are communicated transparently.

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STILL NO SAFETY

VENEZUELAN DENIED PROTECTION IN CURAÇAO

Since Amnesty International's initial report in 2018, the rights of Venezuelans who have fled to Curaçao are still violated. They are automatically detained under inhumane conditions and deterred from seeking protection. Children are detained and separated from their parents. The government of the Netherlands, with its support for the detection, detention and deportation of Venezuelans, has contributed to a system of abuses in Curaçao. It has therefore failed to comply with international standards to respect and protect human rights.

Amnesty International is calling on the government of Curaçao to ensure that all foreigners in need of protection can access the protection procedure and that no person is deported to a place where they are at real risk of serious human rights violations, in violation of the principle of non-refoulement. The organisation calls on the government of the Netherlands to ensure that human rights are respected and protected in the support and other forms of cooperation with Curaçao.