



# Uniya Jesuit Social Justice Centre

24 Roslyn St, Elizabeth Bay, (PO Box 522, Kings Cross, NSW 1340) Australia  
Phone +61 (0)2 9356 3888 ; Fax +61 (0)2 9356 3021  
Web-site <http://www.uniya.org>

## Overview of The Netherlands' Asylum System<sup>1</sup>

*1. What arrangements does The Netherlands have with its neighbours to stop asylum seekers reaching the border? Do they engage in upstream disruption?*

The Netherlands is signatory of the Schengen Cooperation. The purpose of Schengen is to make travel possible between the Schengen area as well as encouraging cooperation to combat trans-national crime and illegal immigration. This is carried out mainly through the Schengen Information System (SIS). The SIS is a joint computerised information system for ensuring rapid and safe exchange of information between member countries. The authorities can retrieve data from the SIS in connection with police tasks and for the administration of immigration legislation. The current Schengen Cooperation member states are: Iceland, Norway, Sweden, Finland, Denmark, Germany, Austria, Italy, Greece, Denmark, Belgium, Luxemborg, France, Spain and Portugal.

*2. What proactive steps outside its territory does The Netherlands take to stop undocumented, unauthorised persons reaching the border?*

The Netherlands imposes carrier sanctions on airlines and other companies transporting undocumented foreigners into its territory. Dutch immigration officials are placed at the departure points of refugee producing countries and transit countries. Dutch land borders (particularly with Germany) are under constant surveillance, and a special task force to combat people smuggling has been established.

*3. What arrangements are there at the border to return immediately those who present with manifestly unfounded claims?*

In order to request asylum, an asylum seeker must submit an official application at one of the four registration areas (AC's) in Rijsbergen, Zevenaar, Ter Apel or Schiphol Amsterdam Airport. Asylum seekers stay at the AC's while they undergo the **accelerated procedure**, whereby a decision must be made by the Immigration and Naturalization Service (IND) within 48 working hours (approximately 2 – 3 days). This decision clarifies whether the asylum seeker has either an inadmissible or manifestly unfounded case, or if they have a probable case and can therefore progress to the **normal procedure** (for more details on the normal procedure, please see answer to question 8). Approximately 20% of cases are deemed inadmissible or manifestly unfounded.<sup>2</sup>

Under Section 15b of the Aliens Act, an asylum application may be considered inadmissible on the following grounds:

- the application falls under the terms of the Dublin Convention;
- the asylum seeker has submitted a previous asylum application under another name;

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<sup>1</sup> By Anna-Louise van Gelder, February 2003

<sup>2</sup> European Commission, *Country Profile: The Netherlands*, 2001, p.12, available at: <http://europa.eu.int/>

- the asylum seeker has, without good reason, failed to comply with the obligation to make him/herself available for the examination of his/her claim;
- an earlier request for admission on the same grounds has been definitively rejected;
- the asylum seeker already holds a residence permit;
- the asylum seeker does not have travel documents, unless s/he immediately registers as an asylum seeker upon arrival in The Netherlands.

Under 15c of the amended Aliens Act, an asylum application may be rejected as manifestly unfounded if:

- it is not founded on any of the grounds which reasonably give rise to a legal ground for admission into The Netherlands;
- the asylum seeker has the nationality of a third country where it appears that s/he will receive adequate protection (safe third country<sup>3</sup>);
- a third country will remit the asylum seeker until s/he has found lasting protection elsewhere;
- the asylum seeker produces travel documents that do not apply to him/her;
- the applicant comes from a safe country of origin (designated safe countries are EU countries, Switzerland, Liechtenstein, Iceland, Norway, Ghana, Bulgaria, Hungary, Czech, Poland, Rumania and Slovakia);
- the asylum seeker does not provide any documents concerning his/her identity, travel route or asylum motives.

#### *4. Is there any appeal or review of this summary procedure?*

An asylum seeker whose case is classified as manifestly unfounded or inadmissible can lodge an objection to this decision with the Ministry of Justice. If their objection is overruled they can appeal to the District Court. During the objection and appeal period the individual is not entitled to reception and must officially leave the country, unless they have applied for and received permission to stay in The Netherlands. In practice, this is normally granted. If both the objection and the appeal are rejected, the asylum seeker must leave the country.

#### *5. What is the difference in treatment for asylum seekers arriving by land, by sea and by air?*

The IND automatically detains asylum seekers arriving at Schiphol Airport (in Amsterdam) who are deemed to have manifestly unfounded or inadmissible claims. Unaccompanied minors are not detained.

#### *6. How many undocumented, unauthorised arrivals are turned around at the border each year?*

Information not available.

#### *7. Once admitted to The Netherlands, what is the procedure for checking health, identity and security? Is there detention? Is it judicially reviewable? How many are admitted each year?*

Identity and security are checked at the Registration Area.

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<sup>3</sup> The 'safe third country' rule is only used in cases where the applicant had already obtained refugee status in another country or when it is certain that s/he will be allowed access to the asylum procedure in the country concerned.

Detained asylum seekers automatically have their detention reviewed by the District Court within 10 days. Detained asylum applicants receive legal aid from either the private bar or from the state-funded Foundation for Legal Aid in Asylum cases.

43,895 asylum applications were received in 2000, 32,579 were received in 2001 and 17,188 were received in 2002. From January – December 2002 The Netherlands recorded a 42% decrease in asylum claims. For the same period, Finland (86%), Luxemborg (50%), Sweden (40%) and Switzerland (26%) recorded increases in asylum applications.<sup>4</sup>

*8. Once health, security and identity are established, what is a) the procedure for processing an asylum claim? b) Detention? c) Residence provided? d) Social security? e) Right to work? f) Legal assistance?*

a) Procedure: the **extensive interview** forms the basis of the normal procedure. During this interview the asylum seeker is asked to explain to an IND Officer why he or she fled their country of origin. Based on this information, the IND will make the asylum decision. The Dutch Refugee Council is actively involved in the preparation and de-briefing of asylum seekers for this interview. Representatives of the Council can also be present throughout the interviewing process.

If the IND intends to reject the asylum application, the individual and their lawyer are informed of the reasons in writing. The asylum seeker is entitled to respond to the rejection with a written '**point of view**' in which they can add extra information or offer further explanation. The IND must consider this information before making a definitive decision.

b) Detention: asylum seekers (besides those arriving and claiming asylum at Schiphol Airport) are rarely detained throughout their determination procedure.

c) Residence: once admitted to the normal procedure, the asylum seeker will be transferred to a reception centre, also known as Relief and Investigation Centres (OC) run by the Central Agency for the Reception of Asylum Seekers (COA). COA is financed by the Ministry of Justice, and provides medical screening, information and a variety of activities. Within 2 – 3 months asylum seekers are moved to one of the Asylum Seekers' Centres (AZC), where they are prepared either for a future in The Netherlands or in their country of origin. Asylum seekers stay at the AZC until the asylum procedure (including appeal) is exhausted. The average number of residents in an AZC is 335, and at most AZCs residents can cook their own meals.

There are other forms of accommodation available in special circumstances, including short term arrangements with hotels or guest houses and arrangements where the asylum seekers are able to stay with family or friends already resident in The Netherlands after an initial period of approximately 6 months. Asylum seekers falling under either of these arrangements must regularly report to their closest AZC.

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<sup>4</sup> UNHCR, *Asylum Applications Lodged in Europe, North America, Australia, New Zealand and Japan: January – December 2002*, p. 2, available at: [www.unhcr.ch](http://www.unhcr.ch)

The OC and AZC are open centres and asylum seekers are able to come and go at will. They are, however, required to report to the centre's administration regularly. If an individual is absent for more than 3 days, his/her place within the centre will be withdrawn and their application for asylum considered void. The person is reported as disappeared to the police and immigration authorities.

- d) Social security: the amount of allowance given differs with the type of accommodation as some centres provide meals, while others have self-catering facilities. At centres with self-catering facilities<sup>5</sup>, the assistance given is as follows:

Financial assistance for self-catering asylum seekers in Dutch centres<sup>6</sup>

Classification	Cash in Euros (per week)	Kind (in Euros)
Unaccompanied child	31.76	One off clothing contribution of 36.30
Child aged 0-10 accompanied by family member	7.26	One off clothing contribution of 36.30
Child aged 11-18 accompanied by family member	11.34	One off clothing contribution of 36.30
Adult 18+	39.02	One off clothing contribution of 36.30
Supplement for single parent family	26.32	N/A

In addition to the above financial assistance, asylum seekers receive: accommodation, recreational and educational facilities, medical insurance, third-party insurance and payments for exceptional expenses.

- e) Right to work: asylum seekers aged 18 – 65 who have been within the asylum system for 6 months are able to work for 12 weeks annually. A certificate from COA must be applied for. All asylum seekers are able to do volunteer work.
- f) Education: all children, regardless of immigration status, are required to go to school until the age of 16 (including asylum seekers whose appeal rights have been exhausted).

Educational activities available to adult asylum seekers focus on integration into Dutch society, including vocational, language and cultural tuition. Those who have received a negative decision are able to take courses that would be relevant to life in their country of origin.

- g) Legal assistance: all asylum applicants are entitled to receive free legal aid during all stages of their determination process. An appointed lawyer has the right to reject a case on the basis that it lacks any chance of success, however, other lawyers will be appointed to the case until it is accepted.

### 9. Is there a distinction drawn between those arriving with a visa and those without?

<sup>5</sup> For financial assistance for asylum seekers at other centres, see: European Commission, *Country Profile: The Netherlands*, 2001, available at [www.europa.eu.int](http://www.europa.eu.int)

<sup>6</sup> European Commission, *Country Profile: The Netherlands*, 2001, p.18, available at [www.europa.eu.int](http://www.europa.eu.int)

No.

*10. Is there a distinction drawn between those arriving directly from a country of persecution and those engaged in secondary movement? If so, how is the distinction drawn? Who draws the distinction? Is the decision reviewable?*

A distinction is drawn between those arriving directly from a country of persecution and those engaged in secondary movement if the country of origin or travel route incorporates any countries designated safe third countries or safe countries of origin. For details on how these distinctions are drawn, and who draws these distinctions please see answer to question 3. For information on appeal rights please see answer to question 4.

*11. Does one have to be strictly a refugee to remain, or are there other humanitarian classifications available? If so, who decides, what are the criteria and is the decision reviewable?*

No, an asylum seeker does not have to be strictly a refugee to remain in The Netherlands. A residence permit for a fixed period can be issued to an asylum seeker<sup>7</sup>:

- a) who is a refugee under the terms of the Geneva Convention;
- b) who makes a plausible case that s/he has good grounds for believing that if expelled s/he will run a real risk of being subjected to torture or inhumane or degrading treatment or punishment;
- c) who cannot, for pressing reasons of a humanitarian nature, be reasonably expected, in the opinion of the Minister, to return to his/her country of origin;
- d) for whom return to the country of origin would, in the opinion of the Minister, constitute an exceptional hardship in connection with the overall situation there;
- e) who belongs, as husband, wife or minor child, to the family of an asylum seeker who falls within the categories (a) to (d), has the same nationality as the said asylum seeker or has entered within 3 months of the date at which the said asylum seeker was granted a residence permit.

These decisions are made by IND Officers through the normal procedure as detailed in section 1 of the answer to question 8. Review of the decision will be detailed in the answer to question 15.

In addition, the State Secretary for Justice can extend the asylum decision time for collective groups of asylum seekers from a specified country or region. This is known as a **decision moratorium**, and effectively means that the relevant asylum applications are put on hold for one year. The decision is not reviewable. The State Secretary can order a decision moratorium when:

- it is expected that the period or situation of uncertainty in a country or region will be short-lived;
- there is such a high number of application for asylum from a certain country or region that the IND could not be reasonably expected to come to a conclusion within a year.

*12. How many asylum and humanitarian claims are decided each year?*

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<sup>7</sup> Section 27, 1(a) – (e) of the Aliens Act 2000.

In 2000 76,822 asylum and humanitarian claims were decided. Countries of origin with the highest recognition rates were Afghanistan, Iraq and Iran. In 2001 72,844 claims were decided<sup>8</sup>. Figure for 2002 are unavailable.

*13. Does the country take a quota of off-shore refugees each year as well as on-shore asylum seekers? If so is there a nexus between the numbers?*

Each year The Netherlands accepts a quota of off-shore refugees through the UNHCR. In 2001, 630 refugees were resettled under this program. There is no nexus between the numbers of off- and on-shore refugees.

*14. How long does an asylum claim take?*

According to the Aliens Act 2000, the IND must reach an initial decision within six months. However, this period may be prolonged in by another six months if further investigations are necessary. The Dutch Refugee Council states that the additional time needed for appeal causes the procedure to be a long process, with the maximum time taken for a definitive decision being 5 years<sup>9</sup>.

*15. How many levels of appeal are there?*

There are two levels of appeal for asylum seekers admitted to the normal procedure. When an application for asylum is rejected, the asylum seeker is able to lodge an appeal and is able to remain in The Netherlands. The appeal is heard by a single judge of the District Court. This decision can then be appealed to another single judge of the District Court, however secondary appeal does not suspend removal from the country and this decision is not subject to any further review.

*16. In what circumstances could a person be held in detention while the claim is processed?*

Asylum seekers undergoing the normal procedure are not held in detention. Asylum seekers arriving at Schiphol airport whose claims are deemed inadmissible or manifestly unfounded are held in detention, as detailed in the answer to question 3.

*17. How many overstayers a year does The Netherlands have?*

Information not available.

*18. Once an asylum seeker is rejected, are they taken into detention? If so, what are the conditions and is the decision appealable? If not, how do they arrange the removal of persons?*

Rejected asylum seekers awaiting deportation are usually detained. Detention is not supposed to exceed 1 month, although in practice, depending on the availability of travel documents and appeals lodged, asylum seekers may be detained for a maximum of 11 months pending deportation. However, if deportation within four weeks is impossible, through no fault of the asylum seeker, the Court will usually order their release.

Detention is automatically reviewed within 10 days by the District Court. The asylum seeker initiates further reviews by appeal to the Court.

<sup>8</sup> European Council for Refugees and Exiles, *Country Report 2001: The Netherlands*, p. 2, available at: [www.ecre.org](http://www.ecre.org)

<sup>9</sup> VluchtelingenWerk, *Refugees in the Netherlands*, 2002, available at: [www.vluchtelingenwerk.nl](http://www.vluchtelingenwerk.nl)

19. *What are the terms of a recognised asylum seeker (or humanitarian entrant) remaining in the country? Is there a time limit on the visa? Family reunion? Right to work? Right to travel? Social security assistance?*

1. Visa: all successful asylum seekers are granted a 3 year **temporary asylum residence permit**. The permit can be revoked if the government decides that conditions in the refugee's home country have improved sufficiently to allow repatriation. After three years, permit holders may obtain a permanent permit or **indefinite asylum residence permit**.
2. Family reunion: successful asylum seekers are entitled to family reunion with their spouse and minor children.
3. Right to work: successful asylum seekers have the right to work.
4. Right to travel: refugees have freedom of movement
5. Social security assistance: successful asylum seekers have the same rights as Dutch citizens to welfare support, health care and, primary and secondary education.
6. Housing: all municipalities in The Netherlands are required to house a certain number of refugees. If a refugee is unable to find or afford housing, it will be offered through COA. A Dutch Refugee Council counsellor will also be assigned to the individual or family to help with practical arrangements including referrals to relevant support organisations, community groups, and medical and educational institutions.
7. Integration: the 1998 Law on the Integration of Newcomers requires refugees to complete an integration program. The program consists of Dutch lessons, social and professional orientation to Dutch society, and cultural lessons. The municipalities are responsible for providing the programs. After completion of the program, refugees are able to study at a university or in a vocational training college. While undertaking study, refugees are fully financially supported by the Government under the University Assistance Fund.

20. *How stringent is the law for removal of non-citizens who have committed criminal offences and served their sentences? Is there any appeal from the decision to deport?*

The law regarding the removal of non-citizens who have committed criminal offences and served their sentences are stringent. Under Sections 19 and 20 of the Aliens Act 2000, non citizens' indefinite or definite period can be cancelled if:

- a) the non-citizen has been convicted by final judgement of a court for an indictable offence that carries a term of imprisonment of 3 or more years or who has been given a non-punitive order within the meaning of Article 37a of the Criminal Code;
- b) the non-citizen constitutes a threat to national security.

Once an indefinite or definite residence permit is cancelled, the holder is required to leave The Netherlands within four weeks.

Information on the possibility of appeal from the deportation decision is not available in English.

21. *How does the country ensure compliance with the Convention Against Torture, the ICCPR, and the Convention on the Rights of the Child before ordering forcible removal of a failed asylum seeker?*

Grant of temporary asylum residence permit is on the basis of a variety of humanitarian classifications, as detailed in the answer to question 11.

22. *Is there any distinctive jurisprudence by the domestic courts or parliaments qualifying or restricting the terms of the Geneva Convention?*

Unable to locate information in English

23. *How does the country apply the cessation clause once there is a change in the situation of the home country? Does The Netherlands insist on the refugee re-establishing their individual claim or does The Netherlands permit the refugee to remain pending proof of a substantial, durable solution in the home country?*

The holders of temporary asylum residence permits are able to apply for permanent (or indefinite) permits after an initial 3 year period, subject to the conditions in the country of origin. However, the Dutch Refugee Council states that, unless the holder commits a serious crime, the request for an indefinite permit is rarely rejected<sup>10</sup>.

24. *Does The Netherlands countenance anything like the Pacific Solution?*

No.

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<sup>10</sup> VluchtelingenWerk, *Refugees in the Netherlands*, 2002, available at: [www.vluchtelingenwerk.nl](http://www.vluchtelingenwerk.nl)

## Websites for further information

### **Dutch websites:**

Dutch Refugee Council: <http://www.vluchtelingenwerk.nl/nl/cover.html>

Immigration and Nationality Directorate: <http://www.immigratiedienst.nl/>

Institute for Migration and Ethnic Studies, University of Amsterdam:  
<http://www.pscw.uva.nl/imes/stats.htm#refugees>

Ministry of Foreign Affairs: <http://www.minbuza.nl/>

Ministry of Justice: <http://www.iafmhs.org/journal/Spring2002/vanMarle.pdf>

### **European websites:**

Amnesty International, European Union Office: <http://www.amnesty-eu.org/>

Eurasylum Portal: <http://www.eurasylum.org/portal/DesktopDefault.aspx>

European Commission: <http://europa.eu.int/>

European Committee for Refugees and Exiles:

European Migration Information Network: <http://www.emin.geog.ucl.ac.uk/>

European Parliament: <http://www.europarl.eu.int/>

European Refugee Fund: <http://www.european-refugee-fund.org/>

Harvard Law School, Guide to EU Documents and Treaties:  
[http://www.law.harvard.edu/library/ref/ils\\_ref/eu\\_guide/eu\\_legal\\_research\\_treaties.htm](http://www.law.harvard.edu/library/ref/ils_ref/eu_guide/eu_legal_research_treaties.htm)

Jesuit Refugee Service, European Office: <http://www.jrseurope.org/>

Migration Policy Group: <http://www.migpolgroup.com/>

Odysseus Network, Academic Networks for Legal Studies on Immigration and Asylum in Europe: <http://www.ulb.ac.be/assoc/odysseus/index2.html>

RefugeeNet: <http://www.refugeenet.org/>

University of Kent, EU Information: <http://www.ulb.ac.be/assoc/odysseus/index2.html>

**General Websites:**

Amnesty International: [www.amnesty.org](http://www.amnesty.org)

Human Rights Watch: [www.hrw.org](http://www.hrw.org)

Jesuit Refugee Service: [www.jesref.org](http://www.jesref.org)

Lawyers Committee for Human Rights: <http://www.lchr.org/>

Migration Information Source: <http://www.migrationinformation.org/>

Migration Policy Institute: <http://www.migrationpolicy.org/>

Refugee Studies Centre, University of Oxford: <http://www.rsc.ox.ac.uk/>

United Nations High Commissioner for Refugees: [www.unhcr.ch](http://www.unhcr.ch)

US Committee for Refugees: [www.refugees.org](http://www.refugees.org)

Vera Institute of Justice: <http://www.vera.org/>

**\* Please contact the Uniya researcher at [researcher@uniya.org](mailto:researcher@uniya.org) for any further information, documents or details.**