

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: 4th Cycle, 41st Session

THE NETHERLANDS

I. BACKGROUND INFORMATION

The Netherlands ratified the *1951 Convention relating to the Status of Refugees* in 1956 and its *1967 Protocol* in 1968 (hereinafter jointly referred to as '*the 1951 Convention*'). The Netherlands also ratified the *1954 Convention relating to the Status of Stateless Persons* (hereinafter referred to as '*the 1954 Convention*') in 1962 and the *1961 Convention on the Reduction of Statelessness* (hereinafter referred to as '*the 1961 Convention*') in 1985.

The Netherlands hosted 95,898 refugees and 11,882 asylum-seekers in 2020.¹ In the first half of 2021, the Netherlands hosted 97,621 refugees and 7,391 asylum seekers.² In 2021, 36,620 applications for international protection were submitted in the Netherlands.³ Compared to the 19,132 applications submitted in 2020, the 2021 figure shows an overall increase of 90%.⁴ 41% of applicants were Syrian nationals, while Turkish nationals and Afghan nationals both accounted for 9%. Afghan evacuees accounted for 2,200 applications for international protection in 2021.⁵ In 2021, 59% of initial asylum claims were granted international protection, in comparison to 22% subsequent asylum applications.⁶ The number of family members arriving under the asylum family reunification procedure has fluctuated over the past 4 years. In 2018, 6,463 family members entered the Netherlands, this figure falling in 2019 to 4,179.⁷ In 2020, the number further decreased to 3,863, due to travel and entry restrictions related to COVID-19.⁸ In 2021, 10,120 family members entered the Netherlands through family reunification.⁹ In 2020, 3,190 asylum applications were submitted by or on behalf of children, compared to 5,690 applications in 2019.¹⁰ In 2021, 5,950 asylum applications were lodged by or on behalf of children.¹¹ Approximately 1 in 3 children who apply for asylum in the Netherlands is unaccompanied.¹² In recent years there has been an increase in the number of persons of concern acquiring Dutch nationality,¹³ with 13,400 Syrians, 3,100 Eritreans and 2,400 stateless persons or persons registered as 'nationality unknown' acquiring Dutch nationality in 2020, and 16,788 persons of concern naturalising in the first half of 2021.

Reduced funding of government authorities involved in the asylum process has led to multiple issues across the Dutch asylum system in recent years. The funding shortage *inter alia* led to a large backlog of pending asylum applications in 2020, causing long waiting periods in the asylum procedure.¹⁴ The Immigration and Naturalization Service (hereinafter 'the IND') set up a Task Force in mid-2020 to deal with a backlog of some 14,000 cases. By mid-2021 virtually all 14,000 identified pending cases had been assessed and decided, concerns over the quality and accuracy of the Task Force's decision-making have however been widely reported.¹⁵ The

¹ UNHCR, *Refugee Data Finder*, available at: <https://bit.ly/3p0AyMu>.

² *Ibid.*

³ This figure includes first-time applications, repeated applications, and applications for family reunification. See: IND, *Asylum Trends: Monthly Report on Asylum Applications in the Netherlands, December 2021*, available at: <https://bit.ly/3FQT685>.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ IND, *Jaarcijfers 2021*, available at: <https://bit.ly/3s1Syr0>.

⁷ IND, *Asylum Trends: Monthly Report on Asylum Applications in the Netherlands, December 2018*, available at IND - <https://bit.ly/3fUri3W>; IND, *Asylum Trends: Monthly Report on Asylum Applications in the Netherlands, December 2019*, available at: <https://bit.ly/3loAX3k>.

⁸ IND, *Asylum Trends: Monthly Report on Asylum Applications in the Netherlands, December 2020*, available at: <https://bit.ly/3AACmRK>.

⁹ *Ibid.* 3.

¹⁰ CBS, *Asielverzoeken en nareizigers; nationaliteit, geslacht en leeftijd*, available at: <https://bit.ly/3fQhQmr>.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ CBS, *Aantal naturalisaties in 2020 verdubbeld*, 21 September 2021, available at: <https://bit.ly/3L6ZGLu>.

¹⁴ The Dutch authorities report average processing times in the general asylum procedure of over 41-64 weeks. See *Rapportage Vreemdelingenketen Periode januari-juni 2020*, available at: <https://bit.ly/32O8chm>.

¹⁵ See amongst others the report of the independent Inspectorate of Justice and Security, 7 January 2022, <https://bit.ly/3HaPuzn>.

funding shortage and a new backlog in the asylum procedure have *inter alia* caused a ripple effect in the family reunification procedure, perpetuating the separation of families, and congestion of the reception system. The new coalition government has pledged increased funding for both the IND and the Central Reception Authority (hereinafter 'COA').¹⁶ The exact nature and extent of this funding is yet unknown.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no. 131.197: 'Expedite efforts to introduce a statelessness determination procedure and provide persons recognized as stateless with legal status and access to basic human rights, in full consultation with key stakeholders (Haiti)'

Many persons are registered as 'nationality unknown' in the Netherlands.¹⁷ Some stateless persons yet to be identified may be among this group. UNHCR wishes to commend the municipalities taking the initiative to register their statelessness status in the civil registry.¹⁸ Municipalities have identified the need for this possibility, given that the legal vacuum for stateless persons to have their statelessness determined continues to persist in the absence of a Statelessness Determination Procedure.

Linked to 3rd cycle UPR recommendation no. 131.184: 'Strengthen and standardize measures with a view to ensuring better protection of migrants, refugees and asylum seekers throughout its entire territory (Côte d'Ivoire)'

UNHCR wishes to commend the Government of the Netherlands on the efficient and thorough manner the asylum applications of Afghan persons of concern have been registered and assessed subsequent to their evacuation to the Netherlands. 2,200 asylum applications were lodged by evacuees from Afghanistan in August and September 2021, almost all of which were processed on the premises of dedicated reception facilities and decided upon within four months by a dedicated IND team. Approximately 2,000 Afghan evacuees were granted international protection, approximately 150 cases remain pending.¹⁹

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Flexible and expeditious processing of family reunification procedures

Linked to 3rd cycle UPR recommendation no. 131.195: 'Process expeditiously requests by refugees for family reunification to ensure that unaccompanied minors are able to reunite with their families (Mexico)'

In general, UNHCR considers the Dutch family reunification policy to be one of the more flexible and expansive in Europe. For instance, in recent years most family reunification applications have been approved at first instance, with an increasing approval rate since 2019.²⁰ Nevertheless, UNHCR has identified persisting challenges²¹, including a high threshold of

¹⁶ Coalition Agreement available at: <https://bit.ly/3IQXqGt>.

¹⁷ According to the most recent statistical data, 36,267 persons are registered as stateless or with nationality unknown, see <https://bit.ly/3KZKK1R>.

¹⁸ NOS, *Gemeenten willen duizenden staalozen helpen*, 8 June 2019, available at: <https://bit.ly/3s6q67r>.

¹⁹ IND, *Verblijfsvergunning voor ruim 2.000 Afgaanse evacués*, 14 December 2021, available at: <https://bit.ly/3s3VJig>.

²⁰ 2018 - 52 per cent; 2019 – 66 per cent; January-March 2020 – 76 per cent

²¹ UNHCR, *No Family Torn Apart*, 2019, available at: <https://bit.ly/3GwI8q5>.

dependency when examining whether “more than normal emotional family ties” exist²² and the balancing of the State’s interests against the interests of individual family members.

Family life must be interpreted broadly in the case of refugees, who have been obliged to flee and cannot conceivably lead a normal family life in their country. The concept of “family” and the definition of family members must be culturally sensitive and must take into account the reality of refugees’ lived experiences and current situation. Regarding the concept of dependency, a detailed assessment of all relevant facts and circumstances should be undertaken, taking into account social, emotional and/or economic factors. The reality of the refugees’ experience, which may lead to a reformed or reconstructed family unit and family ties as a result of conflict and flight, should be considered both in assessing family life and in assessing dependency between family members. Additionally, reunification of separated refugee families should take place with the least possible delay. Rather than decisions taking three months (or an additional three months in the case of complex applications), as stipulated in the Aliens law and as was the case in early 2015, the average time taken increased to over 380 days in mid-2017, before falling to around 258 days in the first months of 2020. Despite this decrease, at the end of 2021 and the start of 2022, family members awaiting family reunification face increasing waiting periods. The obligation that all reasonable steps be taken in good faith and that family reunification is made possible without unreasonable delay is an essential guarantee for refugees, for whom family reunification is often the only way to re-establish family life.

Recommendations:

UNHCR recommends that the Government of THE NETHERLANDS:

- a) Ensure generous, inclusive, and flexible criteria are applied in family reunification procedures which consider the specific circumstances of refugee families, including by avoiding a narrow interpretation of dependency and exploring flexible requirements on evidence to prove family links); and
- b) Explore further ways in which family reunification procedures can be expedited, for example by linking the asylum and family reunification procedures more efficiently.

Issue 2: Expedite establishment of statelessness determination procedure

Linked to 3rd cycle UPR recommendation no. 131.197: ‘Expedite efforts to introduce a statelessness determination procedure and provide persons recognized as stateless with legal status and access to basic human rights, in full consultation with key stakeholders (Haiti)’

The Government of the Netherlands has taken steps towards the adoption of a draft legal framework which would establish a statelessness determination procedure. However, the Dutch authorities have made clear²³ that the intended procedure would not include a right to residency following a determination of statelessness, even though granting such a right would fulfil the object and purpose of the *1954 Convention*. The draft proposal has been published, but a formal proposal is still awaiting submission to the House of Representatives.

The Government of the Netherlands proposed an amendment to the *Netherlands Nationality Act* which would allow children and young adults born stateless in the Netherlands and who irregularly reside in the Netherlands to acquire Dutch nationality after ten years of habitual residence, of which five years continuous, before submitting an application.²⁴ Additionally, for these children to be granted nationality, it is required that the parents have not obstructed the

²² Where persons are not considered to be family members under the definition of family²², refugees can apply for family reunification under the “Article 8 ECHR” family reunification procedure, which requires the sponsor to substantiate that “more than normal emotional ties” with the dependent family member exist. In practice, the assessment of the existence of “more than normal emotional ties” is heavily focused on elements of dependency between the family members. The IND demands a very high threshold of dependency, requiring family ties and dependency between the family members to be so strong as to amount to the family members being unable to function independently upon separation and examining whether family members are exclusively dependent on one another. See: UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Abdi Ali Mahamud v. the Netherlands (Appl. no. 64534/19) before the European Court of Human Rights*, 8 April 2021, available at: <https://bit.ly/34m47RU>.

²³ *Inter alia* in the *Explanatory Memorandum to the draft proposal on statelessness determination*, September 2016, available at: <https://bit.ly/3ISpxoQ>. Previously a letter was sent in 2014 as a Response after the Advice from the Advisory Committee on Alien Affairs on Statelessness (ACVZ), 10 September 2014, available at: <https://bit.ly/3raGzZ7>.

²⁴ See the *Explanatory Memorandum to the draft amendment of the Nationality Act*, available at: <https://bit.ly/3obbfaT>. Also see the response to advice from the Advisory Committee on Alien Affairs on Statelessness (ACVZ), 10 September 2014, available at: <https://bit.ly/3DWodiq>.

return process and have not withdrawn themselves from the supervision of the authorities. These requirements are not in line with the safeguard against statelessness at birth as enshrined in Article 1 of the *1961 Convention*.

Recommendations:

UNHCR recommends that the Government of THE NETHERLANDS:

- a) Establish a statelessness determination procedure and ensure that recognized stateless persons are granted legal residency and can fully enjoy their basic rights under the *954 Convention*;
- b) Ensure that the statelessness determination procedure adopts as standard of proof that a finding of statelessness would be warranted where it is established to a "*reasonable degree*" that an individual is stateless; and
- c) Take steps to further facilitate naturalization for stateless children and refrain from creating additional legal barriers to naturalization, such as the requirement that the parents should not have obstructed their departure and have not withdrawn themselves from supervision by the authorities.

Issue 3: Guarantee a fair and efficient asylum procedure for persons applying for international protection, with a view to preventing instances of *refoulement*

Linked to 3rd cycle UPR recommendation no. 131.184: 'Strengthen and standardize measures with a view to ensuring better protection of migrants, refugees and asylum seekers throughout its entire territory (Côte d'Ivoire)'

Funding cuts in previous years led to increased pressure on the IND,²⁵ resulting in backlogs of pending asylum applications and a decrease in the quality of asylum decision-making. A taskforce was created in March 2020 to deal with the backlog of cases.²⁶ Concerns have been raised regarding this taskforce and the new processing methodologies it employs to process backlogs, including replacing asylum interviews by written statements, and the outsourcing of conducting interviews and drafting intended rejections.²⁷ More specific concerns relate to logistics, training of new staff and the quality of the interviews and decisions.²⁸ Concerns relating to the quality of decision-making in the asylum procedure do not solely apply to the work carried out by the taskforce.²⁹

UNHCR is concerned that the risk of *refoulement* is increased by the decrease in quality of the refugee status determination procedure. Instances have been reported where forced returns have led to arrests of failed asylum-seekers upon arrival in the country of origin.³⁰ In some instances, the restrictive interpretation, and application of core concepts of the *1951 Convention* have led to a reduced protection space in the Netherlands. As such, additional thresholds have been introduced for the interpretation of persecution on ground of political opinion, requiring the opinion to be *fundamental* to the applicant or requiring political activities to evidence *significant* criticisms.³¹

²⁵ Parliamentary Papers II, 2019-2020, 19 637, no. 2543, available at: <https://bit.ly/3J0lgzp>.

²⁶ This taskforce was assigned 15,350 asylum applications which were filed before 1 April 2020 with a deadline to decide on these cases by the end of 2020. The Taskforce was extended and by mid-July 2021 14,100 cases had been decided upon. See: IND, *Task force to fight backlog of asylum applications is completing its work*, 13 July 2021, available at: <https://bit.ly/32RRYUI>

²⁷ See amongst others, Inspectorate of Justice and Security, 7 January 2022, <https://bit.ly/3HaPuzn>; VluchtelingenWerk Nederland, *Resultaten quickscan taskforce IND*, 19 November 2020, available at: <https://bit.ly/3qnY6LA>; And the concerns voiced by the Association of Asylum Lawyers in: Volkskrant, *Chaos bij taskforce die onder grote druk duizenden achterstallige asielaanvragen moet afhandelen*, 6 August 2020 available at <https://bit.ly/32MEeu2>.

²⁸ *Ibid.*

²⁹ *Inter alia* as observed by UNHCR through the continual monitoring of individual asylum claims and refugee status determination procedures. See also: Specialistenvereniging Migratierecht Advocaten and Vereniging Asieladvocaten & -Juristen Nederland, *Ongehoord onrecht in het vreemdelingenrecht*, April 2021, available at: <https://bit.ly/3qknL7D>.

³⁰ In 2018, a rejected asylum-seeker from Bahrain was immediately detained upon arrival after his forced return, he has since been sentenced to life imprisonment and stripped of his nationality. According to Amnesty International, there are strong indications that he suffered ill-treatment in prison. See: Amnesty International, *Door Nederland uitgezette vluchteling krijgt zonder eerlijk proces levenslang in Bahrein (update)*, 4 June 2020, available at: <https://bit.ly/3qhg0iY>. See also recent research by a Dutch newspaper on the forced return of rejected asylum-seekers from Sudan despite strong indications of torture. See: NRC, *Wat er met Ali, Samoal, Ibrahim gebeurde na hun uitzetting naar Soedan*, 22 January 2021, available at: <https://bit.ly/3gO0c44>, and, *Nederland zet Soedanese asielzoekers uit die gemarteld worden - hoe kan dit?*, 31 May 2021, available at: <https://bit.ly/3qmo5mE>. The Dutch Minister of Migration has stated in this regard that there is no obligation, international or otherwise, to monitor the situation of the rejected asylum seeker subject to forced return upon arrival in their country of origin. See: Staatssecretaris Ankie Broekers-Knol, *Antwoorden Kamervragen over het uitzetten van asielzoekers naar Soedan*, 23 February 2021, available at: <https://bit.ly/35KNnkD>.

³¹ See: UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in case numbers 202003129/1/V2 and 202004875/1/V2 before the Council of State*, 17 November 2020, available at <https://bit.ly/3gjdN24>.

Another point of concern is that if an applicant's identity, nationality or origin is not deemed credible, the IND does not assess whether the person is at risk of persecution, torture or ill-treatment upon return to the disputed country of origin/habitual residence.³² After the rejection of the asylum application, the return process is initiated by the Repatriation and Departure Service (hereinafter 'the DT&V'), who are not responsible for examining persecution risks.³³ However, if the nationality of a person is determined during the return procedure, DT&V will not halt the return procedure and refer the case back to the IND to carry out an assessment of fear of persecution.³⁴

Recommendations:

UNHCR recommends that the Government of THE NETHERLANDS:

- a) Ensure that all assessments of asylum applications are of a high standard so as to guarantee decisions are in accordance with the *1951 Convention* and do not lead to *refoulement*; and
- b) Ensure sufficient capacities and resources in the early stages of asylum determination procedures, particularly when those are accelerated procedures and/or admissibility to mitigate potential risks and ensure adequate identification of those in need of international protection; and
- c) Further the structural inclusion of an external quality mechanism to signal and address quality concerns and to actively engage with experts and stakeholders when considering solutions to address backlogs and/or increase efficiency in the asylum process.

Additional protection challenges

Issue 4: Ensure a sustainable, flexible, and responsive reception system

The reception system in the Netherlands is currently under pressure due to a multitude of factors including an increase in arrivals, a shortage on the Dutch housing market and a reduction in budget as well as an altered budget structure directly affecting the reception authorities.³⁵ 80% of reception facilities opened since September 2021 are emergency facilities and, with a shortage of 6,000 beds for persons of concern estimated in 2022, it is highly likely persons of concern will continue to be accommodated in emergency reception facilities. Aside from the lack of continuity and durability, there have been wide-spread concerns over the reception standards within emergency reception facilities.³⁶ In order to absorb increases in influx while maintaining existing standards as observed in the durable reception facilities, UNHCR recommends maintaining a flexible capacity of at least 30% within individual reception facilities. In times of lower influx, the capacity of the centres could then be used for 70%. In the latter case, asylum-seekers and refugees would (temporarily) be given a little more space and privacy. Creating or maintaining extra capacity in existing centres will lead to a more sustainable reception system, more flexibility in times of a high influx when extra beds are needed, will reduce the direct impact (including on mental and physical health) of emergency facilities and transfers on persons of concern, will allow for persons granted international protection to further their integration prospects.

Recommendations:

UNHCR recommends that the Government of THE NETHERLANDS:

- a) Ensure increased availability of sustainable, flexible and responsive reception facilities for asylum-seekers and refugees, while upholding high reception standards; and
- b) Reduce the over-reliance on emergency reception facilities for asylum-seekers and refugees, to minimize the disruptive and potentially harmful impact of such emergency facilities.

³² Amnesty International, *Bewijsnood: Wanneer nationaliteit en identiteit ongeloofwaardig worden bevonden*, November 2020, at page 10, available at: <https://bit.ly/3gMpKP5>.

³³ *Ibid.*, at page 35.

³⁴ *Ibid.*

³⁵ COA, 'COA pleit aan formatietafel voor toekomstbestendig en stabiele opvangsysteem', 3 November 2021, available at: <https://bit.ly/3xy44gq>.

³⁶ National Ombudsperson and The Netherlands Institute for Human Rights, *Letter to Secretary of State for Justice and Security*, 8 November 2021, available at: <https://bit.ly/3tjg4k0>; Dutch Council for Refugees, *Onderzoek: leefomstandigheden noodopvang schieten ernstig tekort*, 14 December 2021, available at: <https://bit.ly/3td8rLX>; The Netherlands Red Cross, *Vluchtelingenopvang dreigt door humane ondergrens te zakken*, available at: <https://bit.ly/3tj2GMX>, 10 October 2021, at: <https://bit.ly/3tj2GMX>.



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