

United Nations High Commissioner for Refugees

Netherlands

We would like to bring your attention to the following excerpts, taken directly from Treaty Body Concluding Observations and Special Procedure reports, relating to issues of interest and concern to UNHCR with regards to Netherlands.

Treaty Body Concluding Observations

CAT/C/NET/CO/4 38th Session
3 August 2007

7. The Committee is concerned at the difficulties faced by asylum-seekers in the European part of the Kingdom of the Netherlands in substantiating their claims under the accelerated procedure of the 2000 Aliens Act, which could lead to a violation of the non-refoulement principle provided for in article 3 of the Convention. The Committee is particularly concerned that:

(a) The 48-hour timeframe of the accelerated procedure may not allow asylum seekers, in particular, children, undocumented applicants and others made vulnerable to properly substantiate their claims;

(b) The time provided for legal assistance between the issuance of the report from the first interview and the Immigration and Naturalization Service's decision is allegedly only five hours and that an asylum-seeker may not be assisted by the same lawyer throughout the proceedings;

(c) The accelerated procedure requires asylum-seekers to submit supporting documentation that they are "reasonably expected to possess," leaving a wide margin of discretion in relation to the burden of proof;

(d) The appeal procedures only provide for a "marginal scrutiny" of rejected applications and that the opportunity to submit additional documentation and information is restricted.

The Committee takes note of the State party's intention to revise the accelerated procedure, notwithstanding which, the State Party should consider the following when reviewing the procedure:

(a) Applications from all asylum-seekers, in particular, children, undocumented applicants and others made vulnerable are processed in such a way that those in need of international protection are not exposed to the risk of being subjected to torture. This may require the State party to establish criteria for cases which may or may not be processed under the accelerated or the normal procedure;

(b) All asylum-seekers have access to adequate legal assistance and may be, as appropriate, assisted by the same lawyer from the preparation of the first interview to the end of the proceedings;

(c) The procedures with regard to required supporting documentations for asylum are clarified;

(d) The appeal procedures entail an adequate review of rejected applications and permit asylum-seekers to present facts and documentation which could not be made available, with reasonable diligence, at the time of the first submission.

8. The Committee notes with concern that medical reports are not taken into account on a regular basis in the Dutch asylum procedures and that the application of the Istanbul protocol is not encouraged.

The State party should reconsider its position on the role of medical investigations and integrate medical reports as part of its asylum procedures. The Committee also encourages the application of the Istanbul Protocol in the asylum procedures and the provision of training regarding this manual to relevant professionals.

9. While taking into consideration the State party's clarification that unaccompanied children asylum-seekers in the European part of the Kingdom of the Netherlands are placed in detention centres only when there is doubt about their age, the Committee remains concerned at the situation of young asylum-seekers.

The State party should take measures to ensure that when the age of an unaccompanied child is uncertain, verification should be made before placing the child in detention. The State party should pay particular attention to the situation of young asylum-seekers and only use detention as a measure of last resort. The State party should provide adequate housing and education for young returnees awaiting expulsion (CRC/C/15/Add.227, para. 54 (d)).

16. The Committee recommends that, in order to have a clearer view of the situation regarding protection against torture, the State party systematically include in its future reports, data which are disaggregated by age, sex and ethnicity, on:

(a) The number of asylum applications registered and the number of applications processed respectively under the normal and accelerated procedures;

(b) The number of applications accepted;

(c) The number of applicants whose application for asylum was accepted on grounds that they had been tortured or might be tortured if returned to their country of origin and data on asylum granted on grounds of sexual violence;

(d) The number of cases of refoulement or expulsion.

18. The Committee urges the State party to take sustained measures to accelerate women's full and equal participation in public life and decision-making, especially in high-ranking posts, at the provincial and municipal levels and in the private and business sectors. It calls upon the State party to use temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendations 25 on temporary special measures, and 23 on women in political and public life. It encourages the State party to ensure that the representation of women in political and public bodies reflects the full diversity of the population and to include immigrant, refugee and minority women. The Committee requests the State party to provide detailed sex-disaggregated data and information on the representation of women, including immigrant, refugee and minority women, in elected and appointed bodies, including at the decision-making level, and trends over time in its next periodic report.

19. While acknowledging plans to adopt protection orders, the Committee is concerned about the persistence of violence against women, including domestic violence, and that there is insufficient data on all forms of violence against women, in particular against immigrant, refugee and minority women. The Committee is also concerned that the policy on violence against women is couched in gender-neutral language, which undermines the notion that such violence is a form of discrimination against women.

27. The Committee is concerned that immigrant, refugee and minority women continue to suffer from multiple forms of discrimination, including with respect to access to education, employment and health and prevention of violence against them. The Committee is particularly concerned that racism persists in the Netherlands, particularly against women and girls. The Committee is further concerned that many immigrant, refugee and minority women are unable to qualify for independent residence permits because of stringent requirements in law and policy. The Committee is especially concerned about the requirement that migrant victims of domestic violence must press charges against their abusers before they may be considered for an independent residence permit, the mandatory requirement in the Immigration Act that women follow expensive integration courses and pass integration examinations and the increase in the income requirement for family reunification. The Committee is also concerned that, with the exception of female genital mutilation, sexual and domestic violence is not recognized generally as grounds for asylum.

28. The Committee urges the State party to take effective measures to eliminate discrimination against immigrant, refugee and minority women, both in society at large and within their communities. It encourages the State party to increase its efforts to prevent acts of racism, particularly against women and girls. The Committee urges the State party to conduct impact assessments of the laws and policies which affect immigrant, refugee and minority women and to include data and analyses in its next report. The Committee also requests the State party to include information on the number of women who were granted residence permits, as well as those who were granted refugee status on grounds of domestic violence.

14. *The Committee takes note of the Aliens Act 2000, which came into force on 1 April 2001, and welcomes the possibility that asylum-seekers can be granted a residence permit even after their claim has been rejected on judicial appeal, provided they are able to demonstrate objectively that they cannot return to their country. However, it is of the opinion that the criteria for any decisions by the authorities in this regard should be as clearly defined as possible, taking into account all aspects of the individual case. The Committee is also concerned about the possible risks which the Government's plan to return a very large number of failed asylum-seekers may entail, particularly with regard to respect for their human rights and the unity of their families.*

The Committee requests the State party ensure that its asylum procedures are in full conformity with international standards and, when proceeding with the return of asylum-seekers to their countries, to respect the principle of non-refoulement when there are substantial grounds for believing that there is a risk to their lives or physical integrity, as well as the principles of family unity and appropriate treatment of minors.

**CCPR/CO/72/NET 72nd Session
27 August 2001**

11. *The Committee appreciates the new instructions issued by the Immigration and Naturalization Service aimed at drawing the competent officials' attention to specific aspects of female asylum-seekers' statements peculiar to their gender. However, it remains concerned that a well-founded fear of genital mutilation or other traditional practices in the country of origin that infringe the physical integrity or health of women (article 7 of the Covenant) does not always result in favourable asylum decisions, for example when genital mutilation, despite a nominal legal prohibition, remains an established practice to which the asylum-seeker would be at risk.*

**CRC/C/15/Add.114 22nd Session
26 October 1999**

23. *While noting the efforts to deal with unaccompanied asylum-seeking minors, the Committee is concerned that they may need to receive increased attention. The Committee recommends that the State party strengthen measures so as to provide immediate counselling and prompt and full access to education and other services for refugee and asylum-seeking children. Furthermore, the Committee recommends that the State party take effective measures for the integration of these children into its society.*

28. *The Committee notes the concern of the State party with respect to the problem of the sexual exploitation of children, often victims of trafficking, including the disappearance of unaccompanied minor asylum-seekers from reception centres. The Committee, however, remains concerned that no specific policies and measures appear to be contemplated at this point to address the problem as a matter of urgency. The Committee urges the State party to give prompt and serious attention to the need to ensure that children are not used as prostitutes and that asylum-seeking procedures, while fully respecting the rights of unaccompanied minor*

asylum-seekers, effectively protect children from involvement in trafficking for sexual exploitation.

CESCR E/C.12/1/Add.25
16 June 1998

18. The Committee views with concern the living conditions of asylum seekers in some reception centres in the country.

Special Procedure Reports

Implementation of General Assembly Resolution 60/251 of 15 March 2006
Entitled “Human Rights Council”
A/HRC/4/34/Add.4
7 February 2007

63. Asylum-seeking women also have specific concerns that relate to gender-based violence. Asylum-seekers have to show a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion to be recognized as a refugee under Dutch Law. Gender-related persecution is not explicitly recognized as a ground for asylum. However, under certain circumstances gender-based violence (e.g. sexual violence) can substantiate fear of persecution on one of the aforementioned grounds and give rise to a refugee claim.

64. In practice, it is often difficult for asylum-seeking women to gain refugee status if their persecution claim stems from a traumatic experience of gender-based violence. Most asylum cases are disposed of under the Accelerated Procedure, which allows for a dismissal of manifestly unfounded claims within the first 48 hours of the process. In order to maintain her claim, an asylum-seeking woman has to at least mention the persecution experience in the second interview upon arrival (the nader gehoor). In the Accelerated Procedure this interview may take place very soon after arrival, when the asylum-seeker is often still very tired, confused, and lacks trust in the authorities.

65. Under these circumstances, women are often unable to relate experiences of rape or other traumatic incidents to the interviewer, which means that they will be precluded from basing a claim on these experiences at a later stage of the process. An exception only applies if the women can adduce sufficient evidence proving that she was medically unable (e.g. due to trauma) to relate her persecution experience. According to legal experts this evidentiary burden is often very hard to meet. The Government was not in a position to provide me with information on how many women successfully invoked this exception.

68. Minor girls are also among the victims of trafficking into sexual exploitation. The National Rapporteur on Trafficking in Persons, an independent monitoring institution established by the Government, has reported that some of these girls are trafficked into the Netherlands by being made to pose as unaccompanied underage asylum-seekers. There are also strong indications that pimps deliberately

seek to recruit minor girls (and sometimes also boys) at asylum-seeking centres. In this context, it is a subject of grave concern that a number of minors disappear from asylum-seeker centres every year and their whereabouts cannot be traced.

**Protection Operations and Legal Advice Section
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