Submission by the United Nations High Commissioner for Refugees

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

Universal Periodic Review: *3rd Cycle, 27th 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* (the *1954 Convention*) in 1962 and the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*) in 1985.

The Netherlands faced a significant increase of first time asylum-seeking applications in 2014 (close to 24,000) and in 2015 (close to 44,000). The number in 2014 was almost double the number of first time arrivals in 2013 (about 14,000). As a consequence of the increase in the number of asylum-seekers, the arrival of asylum-seekers reunifying with family members almost tripled in 2015 (13,800) compared to 2014 (5,400). The asylum-seekers in the Netherlands are comprised mainly of Syrians, Afghans and Iraqis nationals who have come via the Turkey-Greece route and Eritreans that have arrived via the Libya-Italy route. In 2016, it seems that the numbers have been decreasing as a result of political decisions taken at the EU level, such as the EU-Turkey agreement and the closure of the Balkan route. In the first eight months of 2016, a total of 11,505 first asylum applications have been filed, Syrians representing the largest number of applications (1,686).

As a result of the Mediterranean crisis, UNHCR has observed that the protection space in the Netherlands is under pressure. The Government of the Netherlands should be commended that it was able to offer shelter and protection to every asylum-seeker that arrived in the Netherlands. Nevertheless, the Government struggled with the influx; procedures have been taking longer and procedural safeguards are eroding. It is difficult for the authorities to ensure minimal standards of reception conditions and most of the persons were received in emergency reception centres, and at times reception conditions were below established standards. In April 2016, even though the influx of asylum-seekers had decreased, they still had to be accommodated in emergency reception centres.

The Kingdom of the Netherlands encompasses the constituent countries of Aruba, Curaçao and Sint Maarten in the Caribbean, as well as the overseas municipalities of Bonaire, Sint Eustatius and Saba (BES islands). While Aruba acceded to the *1967 Protocol* in 1986, it has not enacted specific legislation to implement its obligations under it, although it does have a procedure for processing asylum claims through its Department of Alien Integration, Policy, and Admission of Foreign Nationals (Departamento di Integracion, Maneho y Admision di

Stanhero, hereinafter: DIMAS). Meanwhile, neither Curaçao nor Sint Maarten acknowledge being bound by either the *1951 Convention* nor its *1967 Protocol*, and neither country has legislation governing refugee protection or asylum procedures. As a result, UNHCR, in collaboration with the local branch of the International Committee of the Red Cross, identifies and registers asylum-seekers, conducts Refugee Status Determination (RSD) under UNHCR's mandate in both Curaçao and Sint Maarten, and provides Advisory Opinions on asylum claims before the Government of Aruba. At the end of 2015, Curaçao hosted 48 refugees, Sint Maarten hosted three refugees, and Aruba hosted two refugees, all recognized under UNHCR's mandate. Due to the BES islands' status as overseas municipalities, the Netherlands' ratification of the *1951 Convention*, is applicable.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 98.41: "Strengthen its actions against on all forms of discrimination and effectively protect the rights of women, children and immigrants (China)."[1]

Following the enactment of the National Action Plan[2] and the additional measures put in place in 2011, the Government of the Netherlands took extra steps to tackle discrimination. These measures include, but are not limited to, the following: easily accessible procedures for reporting incidents involving racism, new anti-hate crime campaigns, and intensification of the secondary school curriculum on topics such as racism and the Holocaust. Especially since the increased influx of asylum-seekers as of 2015, asylum-seekers and refugees in the Netherlands are affected by an increased level of discrimination and anti-immigration sentiments.[3] It is therefore expected that the measures taken by the Government may be beneficial for the protection of these groups, as for other groups of people that face discrimination.

Linked to 2nd cycle UPR recommendation no. 98.115: "Review asylum procedures with a view to expediting the decisions in the cases of children asylum seekers as quickly as possible and facilitating family reunion of vulnerable children in an efficient and appropriate manner (United States of America)."

On 21 May 2015, the Minister for Migration sent a letter[4] to the House of Representatives in which he announced a more lenient family reunification policy for adult children. As result of the positive change, adult children that were part of the family at the time the parent fled his/her country are now able to reunify with their family. However, the request will be

[1] All recommendations made to Netherlands during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Netherlands" (09 July 2012), A/HRC/21/15, available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/NLSession13.aspx.

[2] Nationaal Actie Plan, available at https://www.government.nl/documents/policy-notes/2014/03/19/national-action-plan-on-human-rights

[3] The organisation MIND (Meldpunt Internet Discriminatie / Registration Point Internet Discrimination) noticed an increase in the registrations of incidents of discrimination on the Internet since 2015 and attributed this to the influx of asylum-seekers in that year. See also: https://www.mindnederland.nl/actueel/jaarcijfers2015/ and http://nos.nl/artikel/2081952-vluchtelingencrisis-leidt-tot-meer-online-discriminatie.html

[4] National Legislative Bodies / National Authorities, Netherlands: Letter from the State Secretary of Security and Justice Nr. 57 concerning Marriage and Family Migration (32 175), 21 May 2015, available at: https://zoek.officielebekendmakingen.nl/kst-32175-57.html.

excluded if the adult child has started a family of his/her own, has established his/her own life, or is financially independent.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Expedite decision-making process with respect to unaccompanied children

Linked to 2nd cycle UPR recommendation no. 98.115: "Review asylum procedures with a view to expediting the decisions in the cases of children asylum seekers as quickly as possible and facilitating family reunion of vulnerable children in an efficient and appropriate manner (United States of America)."

A significant increase in the number of asylum-seekers has resulted in a backlog (around 12,250 at the end of August 2016) at in the processing of asylum claims. In general, the current waiting period is between six and eight months before the actual asylum process starts. It is unclear if cases concerning unaccompanied children are processed in an expedited manner. Furthermore, it is unclear how many asylum procedures of unaccompanied minors are being extended, adding another six months to the duration of this procedure. As a result of the prolonged waiting and processing time, unaccompanied minors that become of adult age (18 years old) before they receive a refugee status lose the right to family reunification. It is also unclear what the average processing time is for family reunification requests filed by unaccompanied minors. It is advisable that policies are implemented that allow for an efficient and speedy procedure.

Recommendations:
UNHCR recommends that the Government of the Netherlands:

a) Efficiently and rapidly deal with asylum requests of unaccompanied minors in order to enable children to start the family reunification procedure as quickly as possible once a residence permit has been issued;
b) Secure the right to family reunification for a minor at the moment the intention to request asylum is registered so that the duration of the asylum process will not affect the right to family reunification; and
c) Process the family reunification requests in an expedited manner so unaccompanied minors are quickly reunited with their families.

Issue 2: Review migration policies and address gaps in refugee protection and asylum procedures in the Dutch Caribbean

Linked to 2nd cycle UPR recommendation no. 98.107: "Review migration policies that exist in the country with a view to ensure the full application of international standards (Paraguay).**"**

There is a need to strengthen asylum procedures throughout the Dutch Caribbean, particularly in the constituent countries of Aruba, Curaçao and Sint Maarten, which are parties to the *European Convention on Human Rights* ("*ECHR*") and the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ("*CAT*"). Both conventions include a prohibition of "*refoulement*," which means countries may not remove

or expel an applicant to the country where he or she would be exposed to inhuman or degrading treatment or will face a risk of being tortured.

Irrespective of whether Curaçao or Sint Maarten are State Parties to the *1951 Convention*, an asylum application lodged in either country could be assessed by considering their obligations under the *ECHR* and *CAT*. However, neither Curaçao nor Sint Maarten currently have in place legislation or regulations governing asylum. This has led to UNHCR carrying out RSD procedures under its mandate in both countries, including for asylum-seekers who are detained pending possible deportation. In addition, it should be encouraged for both Curaçao and Sint Maarten to accede to the *1951 Convention.*

Aruba is bound by the *1967 Protocol* to the *1951 Convention relating to the Status of Refugees*, in addition to the *ECHR* and *CAT*. However, currently, there is no legislation to implement the *1967 Protocol* in Aruba, which has resulted in gaps in refugee protection and in confusion regarding applicable asylum procedures. UNHCR is aware, for example, of asylum-seekers who were turned away from the DIMAS procedures, or waited for years without decisions from the Government of Aruba. As a result, UNHCR has carried out mandated RSD procedures to complement existing asylum procedures in Aruba.

Finally, due to the BES Islands' status as special municipalities of the Kingdom of the Netherlands, an application for international protection submitted from there should be assessed by the Immigration and Naturalization Service (INS) unit, located on the islands, on the basis of the *1951 Refugee Convention*, the *ECHR*, and the *CAT*. The INS is an agency of the Dutch Ministry of Security and Justice and it is mandated, *inter alia*, to adjudicate all requests for legal stay in the Kingdom of the Netherlands, including asylum requests.

Recommendations:
UNHCR recommends that:

a) Curaçao and Sint Maarten accede to the *1951 Convention* and its *1967 Protocol*;
b) Aruba, Curaçao and Sint Maarten develop and implement asylum legislation and procedures consistent with international standards and their various treaty obligations, including fair and efficient procedures for adjudicating asylum claims, as well as guaranteeing the rights of persons found to be in need of international protection; and
c) The Governments of the constituent countries of the Kingdom of the Netherlands adopt comprehensive integration policies that protect the civil, political, social and cultural rights of recognized refugees.

Issue 3: <u>The protection of asylum-seeking children</u>

Linked to 2nd cycle UPR recommendation no. 98.117: "<u>Consider additional measures to ensure that the interests of children are properly taken into account in provisions for asylum seeking families, since they are especially impacted by long delays and uncertainty (United Kingdom of Great Britain and Northern Ireland).</u>"

The increase in the number of asylum-seekers in the Netherlands in the past two years resulted in prolonged waiting time for the asylum procedure to start. Currently, asylum-seekers are waiting on average six to eight months before they can present their asylum claim to the immigration authorities and another nine months before they can be reunited with their partner and their children. In addition, due to the high influx of asylum-seekers since 2015,

medical examination of children in the asylum procedure oftentimes take longer than six months. UNHCR is concerned that long waiting periods might aggravate the trauma asylum seekers experienced in the country of origin, in particular in the case of children. Frequently, children are also psychologically affected by the absence of one of their parents. The fact that they have to wait for at least one year and half before they are reunited can be psychologically difficult for them.

Recommendations:
UNHCR recommends that the Government of the Netherlands:

a) Ensure that asylum-seeking children receive as early as possible standard medical examinations aimed at identifying eventual needs of treatment and support in light of their best interests.

Additional protection challenges

Issue 4: Medical examination to assess eventual needs of treatment and support due to ill-treatment, torture or trauma suffered

During the medical examinations that form a part of the asylum procedure, asylum-seekers are interviewed without regard to their eventual specific needs resulting from ill-treatment, torture or trauma. There are concerns that this practice is not in conformity with Articles 3 and 10 of *the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (*Istanbul Protocol*).[5]

Recommendations:
UNHCR recommends that the Government of the Netherlands:

a) Apply the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in the asylum procedures; and
b) Provide training for concerned professionals to facilitate monitoring, documenting and investigating torture and ill-treatment, focusing on both physical and psychological traces, with a goal to provide redress to victims, as per the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Issue 5: Statelessness

The Government of the Netherlands has undertaken steps towards the adoption of a legal framework to establish a statelessness determination procedure. However, the Dutch authorities have made clear[6] that the intended procedure would not give way to a right of residence following a determination of statelessness, even though granting such a right would fulfil the object and purpose of the *1954 Convention*. A formal proposal is still waited for.

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[5] UN Office of the High Commissioner for Human Rights (OHCHR), Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol"), 2004, HR/P/PT/8/Rev.1, available at: http://www.refworld.org/docid/4638aca62.html.

[6] National Legislative Bodies / National Authorities, Netherlands: Letter from the Secretary to the House as a Response after the Advice from the Advisory Committee on Alien Affairs on Statelessness (ACVZ), 10 September 2014, available at: http://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vjn4mn1fcmz1.

In addition, the Government of the Netherlands proposed informally[7] an amendment to the *Netherlands Nationality Act*[8] which would allow children born stateless in the Netherlands, who are not lawfully staying in the country to acquire Dutch nationality after five years of habitual residence. For these children to be granted nationality, one of the requirements in the informal proposal is that the parents should not have obstructed the family's departure and have not withdrawn themselves from supervision by the authorities. This requirement is not in line with the safeguard against statelessness at birth according to Article 1 of the *1961 Convention*.

Since 2011, UNHCR has requested for the removal of Netherlands' reservations made to Articles 8 and 26 of the *1954 Convention*. In September 2014, the Government mentioned its willingness to consider abolishing these two reservations.[9] UNHCR was informed that a comprehensive package with regard to the abovementioned issues related to statelessness will be submitted to Parliament in the summer of 2016. This package consists of a proposal to establish a statelessness determination procedure, a proposal to amend the *Nationality Act* and a proposal to abolish reservations to the 1954 Convention.

Recommendations:
UNHCR recommends that the Government of the Netherlands:

a) Include, in the proposed legislation establishing a statelessness determination procedure, the grant of a residence permit to persons recognized as stateless so as to ensure the enjoyment of their basic rights under the *1954 Convention relating to the Status of Stateless Persons*;
b) Delete from the proposed amendments to the *Netherlands Nationality Act* the requirement that the parents should not have obstructed their departure and have not withdrawn themselves from supervision by the authorities.

Human Rights Liaison Unit
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UNHCR
September 2016

[7] Brief van de Staatssecretaris van Veiligheid en Justitie, Aanvullende reactie van het kabinet op het ACVZ-advies inzake staatloosheid, 12 november 2014, https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2014Z20325&did=2014D41178

[8] Netherlands Nationality Act [Netherlands], 13 April 2010, available at: http://www.refworld.org/docid/4d3838932.html.

[9] National Legislative Bodies / National Authorities, Netherlands: Letter from the Secretary to the House as a Response after the Advice from the Advisory Committee on Alien Affairs on Statelessness (ACVZ), 10 September 2014, available at: http://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vjn4mn1fcmz1

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

NETHERLANDS

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations. Please note that no relevant reports by UN Special Procedures mandate holders have occured since the 2nd UPR cycle.

I. Universal Periodic Review (Second Cycle – 2012)

Recommendation[10]	**Recommending State/s**	**Position**[11]
Discrimination against women		
98.39. Ensure that existing statutes prohibiting gender discrimination are properly implemented and enforced, and increase through effective implementation and enforcement efforts to address violence against women and children;	United States of America	Supported
98.41. Strengthen its actions against on all forms of discrimination and effectively protect the rights of women, children and immigrants;	China	Supported
98.62. Take appropriate measures in combating discrimination and marginalization against vulnerable groups, particularly migrants, minorities, women, children and persons with disabilities;	Viet Nam	Supported
98.64. Intensify its efforts to eliminate discrimination against migrants and other minority women, who still face multiple forms of discrimination with respect to education, health, employment and social and political participation;	Azerbaijan	Supported
98.65. Intensify its efforts to eliminate discrimination against migrant, black, Muslim and other minority women, who still face multiple forms of discrimination;	Bangladesh	Supported
Gender-based violence		
98.71. Fully implement the measures regarding violence against women as outlined in its UPR interim report and consider implementing the recommendations of the Special Rapporteur on violence against women and CEDAW;	India	Noted[12]
98.72. Adopt effective measures to combat violence against women and to fight poverty;	Cuba	Supported[13]

[10] All recommendations made to Netherlands during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Netherlands" (09 July 2012), A/HRC/21/15, available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/NLSession13.aspx.

[11] Netherlands's views and replies can be found in: *Addendum* (12 October 2012), A/HRC/21/15/Add.1/Rev.1, available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/NLSession13.aspx.

[12] ***Addendum:*** "The Netherlands actively contributes to implementing the recommendations of the Special Rapporteur on violence against women."

98.79. Adopt practical measures to ensure absolute prohibition of violence against women and cruel treatment of children;	Uzbekistan	Noted
98.82. Continue strengthening the functions of the competent institutions and use of adequate mechanisms to more efficiently combat domestic violence, which mainly affects women and children;	Chile	Supported
Migrants		
98.40. Devise more specific measures to eliminate discrimination against women, ethnic minorities, migrants, Muslim and people of African origin;	Thailand	Supported
98.43. Review, amend and repeal its national discriminatory laws and regulations against persons of certain religious backgrounds, in particular Muslim migrants;	Egypt	Noted[14]
98.97. Ensure the equal enjoyment of economic, social and cultural rights by all individuals and groups under its jurisdiction and adopt a national plan of action to combat the rise in homelessness;	Azerbaijan	Noted[15]
98.104. Develop a migration policy, taking into account the international human rights standards in this respect;	Guatemala	Supported
98.105. Promote substantive reforms in the immigration policy, which guarantee its conformity with international standards, revoking measures exposing foreigners to marginalization;	Mexico	Noted[16]
98.106. Take all necessary measures, in accordance with international human rights law, to reduce the use of detention of persons solely on grounds of immigration reasons or because they belong to minority groups;	Nicaragua	Noted[17]
98.107. Review migration policies that exist in the country with a view to ensure the full application of international standards;	Paraguay	Supported
98.108. Introduce measures to reduce detention of individuals solely for immigration purposes and consider other alternatives than detention to use when possible;	Sweden	Supported [18]
98.110. Protect the social and cultural rights of migrants	Bangladesh	Supported

[13] ***Addendum:*** "With regard to violence against women, see 98.71. The Netherlands is in a good position with regard to the number of people at risk of poverty and social exclusion. The government intends to use existing measures and instruments to involve more people in society by reducing the number of jobless households.

[14] ***Addendum:*** "Discrimination is forbidden by law in the Netherlands. No discriminatory legislation exists. See National Report VII.A."

[15] ***Addendum:*** "Recommendation is in line with existing policies."

[16] ***Addendum:*** "The Immigration and Naturalisation Service assesses the application of aliens that request asylum in the Netherlands This procedure meets international standards. Opportunities exist to lodge an objection to and request judicial review of the rejection of an application."

[17] ***Addendum:*** "Not accept. Under Dutch policy, rejected asylum seekers and undocumented aliens may be detained on grounds of public policy or national security with a view to arranging their repatriation. Detention may also be used if people are refused entry at the border. It may only be used as a last resort and may not last longer than strictly necessary to arrange the return of the person concerned. The maximum limit on detaining undocumented aliens in the Netherlands is six months, which in special circumstances may be extended to 18 months, in line with the EU Return Directive."

[18] ***Addendum:*** "Alternatives to detaining aliens are since January 2012 part of policy."

while taking integration measures and policies aimed at migrants;		
98.111. In coordination with OHCHR, IOM, ILO and relevant special procedures of the Human Rights Council, develop a comprehensive strategy to protect the rights of migrants and persons belonging to ethnic minorities;	Belarus	Supported
98.112. Due to the criminalization of irregular residency in the country, design alternatives for the detention of irregular or undocumented immigrants;	Brazil	Noted[19]
98.113. Reduce the number of persons in the detention centres for migrants and create alternative measures to detention, especially for families with children or unaccompanied minors;	Ecuador	Supported [20]
98.114. Improve the conditions of migrants detention centres, especially with regard to the medical and psychological attention, as well as contact with the outside;	Ecuador	Supported
Refugees and asylum-seekers		
98.115. Review asylum procedures with a view to expediting the decisions in the cases of children asylum seekers as quickly as possible and facilitating family reunion of vulnerable children in an efficient and appropriate manner;	United States of America	Noted[21]
98.116. Ensure increased transparency and oversight exercised by civil society of the conditions, in which asylum seekers are kept and treated;	Russian Federation	Noted[22]
98.117. Consider additional measures to ensure that the interests of children are properly taken into account in provisions for asylum seeking families, since they are especially impacted by long delays and uncertainty;	United Kingdom of Great Britain and Northern Ireland	Noted[23]

[19] ***Addendum:*** "Irregular residence in the Netherlands is not a criminal offence. However, illegal residents are required to leave. If they do not leave voluntarily, detention is used as a last resort to force them. Alternatives to detention are already part of policy."

[20] ***Addendum:*** "See 98.108 and 98.112. There are special policies aimed at avoiding detention of families with minors. If it is necessary to have a family under supervision for a longer period while their return is being prepared, they may be placed in a centre where their freedom of movement is restricted."

[21] ***Addendum:*** "Recently new plans were developed and presented to the Dutch parliament to enhance and speed up the Dutch asylum procedure: asylum seekers must be provided with clear information as early as possible in the procedure. Similar plans are being developed for vulnerable minors, so that a clear perspective is offered to these minors as soon as possible. When a child has no right to asylum, reunifying the child with their family in the country of origin is the highest priority. European cooperation is viewed as crucial in this connection."

[22] ***Addendum:*** "Not accept. The Dutch asylum procedure and reception centres are open to oversight by civil society. During the asylum procedure the Dutch Refugee Council is responsible for giving asylum seekers information on the procedure. They are also allowed, if the asylum seekers give permission, to be present during the interviews. The Dutch Refugee Council is present at the reception centres to assist asylum seekers and advise them on any issues or problems that may arise. Other NGOs (such as NGOs specifically concerned with minor asylum seekers) visit regularly the reception centres."

[23] ***Addendum:*** "Dutch aliens policy and practice take into account the vulnerable position of minors, especially unaccompanied minors. The best interest of the child is incorporated into policy and practice. Specific measures are taken in children"s interests. For example, there are specially trained officials who interview children, special child-friendly offices for conducting interviews with young children, and specific asylum policies for child soldiers and on female genital mutilation. As long delays and uncertainty are seen as undesirable, there is a constant focus on swift decision-making."

98.118. Carry out investigations into complaints and information on cruel treatments during the expulsions of foreigners from the Netherlands and ensure transparency when investigating such complaints;	Uzbekistan	Noted
Trafficking in persons		
98.17. Approve, in all the countries that form the Kingdom, legislation that criminalizes all forms of trafficking in persons;	Nicaragua	Supported
98.80. Carry out actions to improve the current strategy to combat trafficking in human beings, taking into account, among other, intensifying investigations, training professional staff and creating assistance centres;	Mexico	Supported [24]
Racism and xenophobia		
98.42. Establish mechanisms to monitor, investigate, prosecute and punish incitement to and acts of hatred, intolerance, racism and xenophobia;	Egypt	Supported
98.45. Intensify efforts to combat the dissemination of ideas based on the racial superiority through Internet, as well as other media including racist speech by political parties;	Poland	Supported [25]
98.48. Take more serious measures to prevent and suppress manifestation of racism, xenophobia and intolerance against minority groups in the country, in particular the Muslims;	Malaysia	Noted[26]
98.50. Adopt all the measures necessary to combat discrimination in all its forms, including racism and xenophobia;	Nicaragua	Supported
98.58. Approve a plan of action to fight discrimination, and against any initiatives of political associations or groups that promote racism or xenophobia;	Spain	Supported
Rights of the Child		
98.13. Reconsider the possibility of lifting reservations to the CRC.	Russian Federation	Noted[27]

II. Treaty Bodies

Committee on the Rights of the Child

Concluding Observations, (08 July 2015), CRC/C/OPAC/NLD/CO/1

Data

[24] ***Addendum:*** "Combating trafficking in human beings is given the highest priority".
[25] ***Addendum:*** "Accepts the recommendation to combat discrimination on the internet. Combating hate speech on the internet is part of our policy on fighting discrimination and racism. See 98.38.60 With regard to racist speech by political parties, see National Report VII.A.50 and XIII.120."
[26] ***Addendum:*** "Everyone in the Netherlands is protected by law from discrimination. In case of an infringement, access to justice is provided. In addition active policies to prevent discrimination are implemented."
[27] ***Addendum:*** "The arguments for entering these reservations still apply."

8. The Committee is concerned about the lack of data on asylum-seeking, refugee and migrant children who enter the State party and may have been recruited or used in hostilities abroad.

9. The Committee recommends that the State party establish a mechanism for the comprehensive collection of data, disaggregated by sex, age, nationality and ethnic origin, for asylum-seeking, refugee and migrant children who enter the State party and may have been recruited or used in hostilities abroad.

Measures adopted to protect the rights of child victims

18. The Committee notes that children below the age of 15 years are exempted from article 1 F of the 1951 Convention relating to the Status of Refugees, which excludes protection for those who commit a crime against peace, a war crime or a crime against humanity. It is seriously concerned, however, that such exemption does not extend to all children below the age of 18 years.

19. The Committee strongly recommends that the State party amend its legislation regarding the exemption from article 1 F of the 1951 Convention relating to the Status of Refugees without delay and extend the protection provided under that Convention to all children between 15 and 18 years of age irrespective of the crimes committed.

Committee on the Rights of the Child

Concluding Observations, (08 June 2015), CRC/C/NLD/CO/4

Non-discrimination

24. The Committee welcomes the Municipal Anti-Discrimination Services Act, which allows citizens to address reports of discrimination to local Anti-Discrimination Services. However, it is concerned that children in marginalized and disadvantaged situations such as refugee children, asylum seeking children, undocumented children, children belonging to ethnic minority groups, children with disabilities, chronically ill children and LGBTI children continue to face discrimination. The Committee is also concerned that children in the Caribbean part of the Kingdom do not enjoy the same rights as children in the European Netherlands.

25. The Committee recommends that the State party take all necessary measures to ensure that all children under the State party's jurisdiction enjoy the same rights without any discrimination on the basis of their nationality, residency status, ethnicity, identity, health, disability, sexual identity and orientation throughout the Kingdom. It urges the State party to pay particular attention to children in the Caribbean part of the Kingdom who do not have access to the same rights as children in the European Netherlands.

Asylum-seeking and refugee children

52. The Committee welcomes the decision of the State Secretary of September 2014 not to detain asylum seeking families with children in Schipol Airport and instead send them to the open central registration centre in Ter Apel. However the Committee is concerned about:

(a) The "eight-day procedure" aimed at speedy consideration of asylum applications thus placing constraints on procedural safeguards;
(b) Reports that inconsistencies in a child's statement or between statements of a child and his or her siblings or parents during the interviews with immigration authorities may count against them without proper attention to the child's developmental stage;
(c) Lack of adequate consideration for the best interests of the child in asylum cases and insufficient training of professionals dealing with asylum requests involving children;
(d) Poor conditions in asylum reception centers where children are not allowed to move freely and lack of monitoring of the reception of children and families; and
(e) Deportation of children in vulnerable situations to their countries of origin where they may end up in orphanages.

53. The Committee recommends that the State party:

(a) Review its "eight day procedure" in order to ensure fair and efficient asylum procedures by guaranteeing that all procedural safeguards are observed and the international protection needs of asylum seeking children are duly identified and addressed;
(b) Ensure that examinations of asylum requests take into account the developmental stage of a child and that statements made by a child are not used against his or her case;
(c) Ensure that best interests of the child is taken as a primary consideration in all asylum cases involving children and provide appropriate training to the professionals dealing with such cases;
(d) Avoid detaining children and families in reception centers with limited freedom of movement and ensure that their living standards are adequate; and
(e) Take measures to prevent deportation of children to their countries of origin where they may end up in orphanages.

Committiee against Torture

Concluding Observations, (20 June 2013), CAT/C/NLD/CO/5-6

Non-refoulement

11. Noting the positive impacts of amending the asylum procedure in July 2010, introducing the eight-day accelerated procedure, and the information that almost 90 per cent of new asylum applications were processed or at least interviewed under the eight-day procedure, the Committee is nevertheless concerned that the pressure to decide claims speedily puts constraints on procedural safeguards and fair review of applications by the Immigration and Naturalization Service. In particular, the Committee is concerned that:

(a) The accelerated procedure may prevent asylum seekers from fully presenting and substantiating their claims and therefore put the persons in need of international

protection at heightened risk of rejection and possible return to a country where they may face persecution, torture or ill-treatment, in violation of the non-refoulement principle (art. 3);

(b) Only 12 hours of legal aid are allocated during the asylum procedure, which may limit the quality of legal advice to asylum seekers with complex claims (art. 3);

(c) The information forwarded by the asylum seeker after the initial decision has been taken by the authorities concerned is considered to have less value than the information provided before the initial decision was adopted and that the appeal procedures before the Council of State (the Administrative Jurisdiction Division) provide only for a marginal review of the facts which substantially limits the effectiveness of the appeal procedures (art. 3).

Noting the intention of the State party to evaluate the accelerated asylum procedure in 2013, the Committee recommends that the State party consider the following revisions:

(a) Allow sufficient time for asylum seekers, especially those in the accelerated procedures, to fully indicate the reasons for their application and obtain and present crucial evidence in order to guarantee fair and efficient asylum procedures in order to ensure that the legitimacy of applications for protection by refugees and other persons in need of international protection is duly recognized and refoulement is prevented;

(b) Allow for adequate legal assistance to all asylum seekers including by providing for exceptions from the maximum number of hours of legal assistance during the asylum procedure to facilitate submission of complex claims; and

(c) Allow asylum seekers to present new evidence which could not be made available at the time of the first interview on the merits and ensure that the appeal procedures before the Council of State provide for a full review of rejected applications.

Medical examinations as part of asylum procedure

12. The Committee is also concerned that during medical examinations that form a part of asylum procedure, individuals are primarily assessed on their ability to be interviewed while disregarding their eventual needs of treatment and support due to ill-treatment, torture or trauma suffered. This practice of not using the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) as a means for establishing a link between the asserted ill-treatment in the asylum application and the findings of actual physical examination is not in conformity with the requirements set out in the Istanbul Protocol (arts. 3 and 10).

The Committee recommends that the State party take measures:

(a) To identify asylum seekers with specific needs as early as possible by ensuring that during the medical examination as part of asylum procedure the applicants are assessed for both their capacity to be interviewed properly as well as their eventual needs of treatment and support due to ill-treatment, torture or trauma suffered;

(b) To apply the Istanbul Protocol in the asylum procedures and to provide training thereon for concerned professionals to facilitate monitoring, documenting and investigating torture and ill-treatment, focusing on both physical and psychological traces, with a view to providing redress to the victims.

Residence permits to asylum seekers

13. The Committee notes with concern the reports by reliable sources on the Government's intention to change the Aliens Act to abolish article 29, paragraph 1 (c), of the Act providing for residence permit based on humanitarian grounds, leaving discretion to the Government to reflect, for example, on the level of the asylum seeker's integration into society. This intention is reportedly motivated by the new Government policy to counter the perceived abuse of the law by requiring the asylum seekers to prove the well-founded fear of persecution or real risk of suffering cruel or inhuman treatment. The Committee is also concerned at reports that in the context of such evaluations the Government tends to place emphasis on the fact that if perpetrators of atrocious acts are duly prosecuted in the country of destination, the victims are no longer considered being at risk to be subjected to torture or ill-treatment upon return to that country. This policy may not fully address the psychological conditions of the concerned individual and therefore should not result in a negative decision on asylum and return of the person to his country (art. 3 and 16).

The Committee recommends that the State party consider maintaining the provision in article 29(1) (c) of the Aliens Act and ensure that the assessment of well-founded fear take into account, inter alia, previous experience of persecution or serious harm as being seriously indicative of a well-founded fear and whether or not protection against widespread and generalized violence in the country of destination can be provided by either the state or other actors, in accordance with article 3 of the Convention.

Detention of asylum seekers and foreigners based on migration law

14. The Committee is concerned at reports that asylum seekers arriving at Amsterdam's Schiphol airport are systematically detained for average duration of 44 days due to a failure to comply with the necessary visa requirements, which, for example, prompted a hunger strike by 19 detainees on 30 April 2013 and the incidents of suicide in protest against detention. Their grounds for stay are processed according to the Dublin II Regulation procedure and they remain detained until its outcome (arts. 11 and 16).

The Committee urges the State party to ensure that the detention of asylum seekers is only used as a last resort, and, where necessary, for as short period as possible and without excessive restrictions, and to effectively establish and apply alternatives to the detention of asylum seekers.

15. The Committee is concerned that the maximum time lime of 18 months for administrative detention of foreign nationals who await expulsion or return to their country of origin, based on article 59 of the Alien Act and article 15 of the EU Return Directive (EU directive 2008/115/EG) is not strictly observed in practice. There have been reports of about 30 per cent of aliens being administratively detained repeatedly for periods longer than 18 months because of apprehensions by the police after the release from their first detention due to absence of valid residence permit.

The Committee recommends that the State party:

(a) Scrupulously observe the absolute time limit for the administrative detention of foreign nationals, including in the context of repeated detention;

(b) Avoid, wherever possible, the accumulation of administrative and penal detention, in excess of the absolute time limit of 18 months of detention of migrants under migration law.

16. The Committee further notes with concern that the legal regime in alien detention centres in not different from the legal regime in penal detention centres. The reports received by the Committee with regard to the confinement in cell for 16 hours, the absence of day-activities, the use of isolation cells, handcuffs and strip searches of aliens detained under migration law who await expulsion to their home country have been of particular concern (arts. 11 and 16).

The Committee urges the State party to ensure that the legal regime of alien detention is suitable for its purpose and that it differs from the regime of penal detention. The State party is also urged to use alien detention as a last resort and where necessary, for as short period as possible and without excessive restrictions, and to effectively establish and apply alternatives to such detention.

Unaccompanied children asylum seekers and children in detention

17. The Committee notes the State party's information that unaccompanied children asylum-seekers continue to be placed in detention centres in the European part of the Kingdom if there is doubt about their age. The Committee is also concerned about the reports by the European Committee for the Prevention of Torture regarding families with children, who await expulsion, being detained longer than the maximum limit of 28 days (arts. 3 and 11).

The Committee recommends that the State party:

(a) Verify the age of an unaccompanied child, if uncertain, before placing the child in detention. Such detention should be used as a last resort;

(b) Take alternative measures to avoid detention of children or their separation from their families;

(c) Ensure that unaccompanied minors can enjoy the rights guaranteed by the Convention on the Rights of the Child, to which the Kingdom of the Netherlands is a party.

Forced removals

18. The Committee notes the State party's clarifications of the figures on removals and forced returns of foreign nationals. Out of the total number of removals in the recent years amounting to about 20.000 per year, the number of forced returns was around 6.000. The Committee is concerned at the reported incidents of the excessive use of restraints during forced returns, some of which, according to NGO sources of information, have not been duly investigated (arts. 2, 3, 11, 12 and 16).

The Committee urges the State party to use restraints during forced returns only in accordance with the principle of proportionality, and to investigate any incidents of excessive use of restraints and force during forced returns.

Illegal treatment by the police and prison and border guards

19. The Committee expresses concern at the alleged incidents of illegal use of force, insults and mistreatment in the Koraal Specht prison in Curaçao and the cells at the police stations on the islands of St. Maarten, Bonaire and Aruba, as well as ethnic profiling by the police and border guards aimed in particular at foreigners and members of minorities.

The State party should take measures to strengthen adequate training of law enforcement personnel and justice officials about the obligations stemming from the Convention and regularly assess the impact and effectiveness of such training measures in order to prevent the acts of torture, ill-treatment and violence.