



DEPORTED

HUMAN RIGHTS IN THE CONTEXT OF FORCED RETURNS - SUMMARY

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Amnesty International stands for a world where human rights are enjoyed by all. Political pressure to increase deportation rates poses a risk for the respect of human rights. This report calls for attention to human rights standards for people with removal orders who will be or have been deported from the Netherlands to their home country or another country. It addresses human rights issues before and in the immediate aftermath of the deportation flight - setting aside the dynamics on planes, as well as the question of whether or not negative asylum decisions were well-founded. The findings and recommendations are based on desk research that involves reviewing case law, studying legal files, interviewing national and international organisations, lawyers, academic researchers and NGOs, and conducting field visits to countries of origin to which people are deported.

In drawing on international, European and national human rights norms, this report explores five main issues:

1. Increasing political pressure to deport puts human rights at risk.
2. Human rights risks during pre-removal preparations.
3. Protection needs of vulnerable people prior to and after deportation.
4. Human rights risks upon arrival at airports in countries of origin.
5. Monitoring and oversight mechanisms for the protection of human rights before, during and after deportation.

1. **POLITICAL PRESSURE ON RETURNS SHOULD NEVER RESTRICT PEOPLE'S RIGHTS. HUMAN RIGHTS HAVE TO BE THE FRAMEWORK FOR ALL AGREEMENTS WITH THIRD COUNTRIES.**

Over the past few years, Dutch authorities have labelled a large number of countries as being 'safe'.¹ The far-reaching consequences that these classifications have for asylum procedures are worrisome because some refugees and people with protection claims do indeed come from these countries. Asylum seekers from listed countries are confronted with accelerated asylum procedures, a higher burden of proof in asylum applications and the rule that their appeals do not have a suspensive effect. People from listed countries are furthermore excluded from assisted 'voluntary' return trajectories.

Human rights standards are easily violated in return and cooperation agreements, as is for example the case with (EU) deals such as those made with Turkey and Afghanistan and new negotiations with Libya. The legal status of both European and Dutch agreements is unclear. There is also a lack of accountability and human rights monitoring because Dutch negotiations of Memoranda of Understanding with countries of origin are not transparent and agreements are often not publically available.

1 On the Dutch list of safe countries of origin are amongst others Albania, Algeria, Bulgaria, Bosnia and Herzegovina, Georgia, Ghana, Hungary, Kosovo, Macedonia, Montenegro, Morocco, Ukraine, Romania, Senegal, Serbia, Slovakia, Slovenia, Togo and Tunisia.

During pre-removal preparations and applications for (emergency) travel documents, information is exchanged with countries of origin, which is necessary to obtain travel documents. Dutch authorities may never exchange asylum-relevant information with authorities from countries of origin. Personal data can also put asylum seekers in serious danger as it alerts foreign authorities to the presence of individuals on Dutch territory who might be political opponents. Personal information may therefore never be shared with authorities from countries of origin when appeal procedures for asylum applications are still pending.

During this very sensitive process, transparency is required when it comes to the use, methods and agreements with taskforces (i.e. delegations of foreign officials who travel to the Netherlands to issue emergency travel documents). Individuals subject to removal orders and their lawyers need to be informed well ahead of time about the mandate of task forces and the objectives of their interviews and presentations. Lawyers need to have the opportunity to be present when task force delegates interview their clients.

Incomplete or not recognised travel documents can have consequences for deported people upon arrival, such as more intensive investigations at police posts, potentially leading to periods of detention at airports and the payment of bribes. Emergency travel documents, such as EU Laissez Passers, produced by the deporting state do not offer guarantees for people's access to national identification documents, which entails risks for statelessness.²

Woman deported to Kinshasa without ID:

She was only 16 years old when she applied for asylum in the Netherlands in 2002. Both her parents (Rwandan father and Congolese mother) had been killed in Congo (DRC). Dutch immigration authorities (IND) found her asylum narrative credible, but didn't accept the teenager's claim that since her parents had been murdered, her life was also at risk in Congo. When she turned 18, the young woman was told to return to Congo.

She applied for a 'Laissez Passer' several times, but the Congolese authorities questioned her nationality due to her Rwandan father. As a result, she stayed in the Netherlands undocumented until early 2016.

In 2015, with the help of a lawyer in the DRC, she managed to receive a replacement birth certificate. The document, however, does not clarify her nationality. Nonetheless, the Congolese Embassy is now prepared to issue a replacement travel document, a so-called 'Tenant Lieu de Passeport'.

At the airport in Kinshasa, Congolese authorities confiscated the Tenant Lieu de Passeport, common practice for all temporary travel documents. The escorts from the Dutch military police (Kmar) left her without ID and support at the Kinshasa airport.

A Congolese official at the airport advised her to leave the airport as soon as possible so as to avoid being detained. The woman snuck out of the airport, ran away and ended up alone and without ID on the streets of Kinshasa, an unknown city to her.

Eventually, the woman found temporary shelter in a church. A year later she is still being sheltered by the church. A solution to her situation has still not been found. In a telephone interview with Amnesty, she shared how scared she is.

² According to the Dutch Repatriation and Departure Service, Dutch authorities have issued 380 EU Laissez Passers in 2014, 265 in 2015, 280 in 2016 and 100 between January and April 2017.

Recommendations for policymakers:

- Ensure careful and thorough asylum procedures based on individual assessments with sufficient time and due procedural safeguards (regardless of nationality, thus also when a country of origin – or first country of asylum – has been labelled ‘safe’).
- Ensure that return-relevant agreements to collaborate with third countries are devised, adopted, and implemented in a democratic and transparent manner, putting human rights centre stage.
- Ensure that collaboration agreements with third countries, such as Memoranda of Understanding, are public and accessible.
- Ensure democratic control and independent monitoring of the human rights impact of all forms of collaboration with third countries that involve the return and re-admission of migrants.

Recommendations for implementing agencies:

- Ensure that no sensitive personal information will be exchanged during visits of state officials from third countries (so-called task force visits), as well as during presentations of people with removal orders at embassies in the Netherlands. This concerns asylum applications, potential criminal records, physical and mental health and sexual orientation among other information.
- Only resort to using EU Laissez Passers when country of origin authorities guarantee in writing that individuals will be issued regular identification documents after arrival, thus guaranteeing their access to nationality.
- Wait until after the final decision in asylum applications is taken before making arrangements for emergency travel documents. Disclosing the identity of asylum seekers to country of origin officials can lead to problems in some cases, such as for their family members still in the countries of origin.
- Pro-actively inform deportees about safeguards for the exchange of personal information, as well as about what has been agreed and shared with country of origin authorities.

2. HUMAN RIGHTS RISKS DURING PRE-REMOVAL PREPARATIONS

The starting point of Dutch policy is that the responsibility to leave the Netherlands lies with the immigrants themselves. This is problematic because many rejected asylum seekers originate from countries that are relatively poor in terms of freedom, safety and living standards. Plain return seems to be more difficult for these people. Once a person is considered non-compliant, the ‘voluntary’ return procedure is ended and a forced-return process is initiated. In practice, it is not always sufficiently clear which actions (or omissions) result in a person being classified as non-compliant. During departure talks, for example, it has to be possible to discuss all the aspects of the return process. Currently, fears and concerns about returning are unduly deemed signals that a person will not comply with their return.

Right to information:

A man who needs kidney dialysis several times a week to stay alive requests information from the Dutch Return and Departure Service (DT&V) about the medical transfer in his country of origin. The DT&V interprets this request as ‘a failure to comply with his removal order’.

Preference should at all times be given to independent and assisted returns because of the potentially dramatic consequences of force, such as pre-removal detention and the use of techniques such as body cuffs and tie wraps. The use of means of constraint during deportations must always be an *ultimum remedium*. Past Dutch measures to prioritise ‘voluntary’ returns did decrease the need for additional spaces in detention places for a while. However, in the wake of the EU Commission’s action plan on forced returns in March 2017, Amnesty International is concerned about the reduced scope for spontaneous returns, rising detention rates and the extension of detention periods.

The human rights consequences of being the subject of a 'voluntary' or forced-return procedures are vast. People in forced-return procedures are issued an entry ban, lose their right to emergency shelter and become subject to detention. When classified as non-compliant, individuals also lose the possibility of obtaining a residence permit through Dutch regularisation programs, such as the one for children who have been in the country for longer than five years. Asylum seekers cannot be expected to comply with the demands for their return as long as appeal procedures for asylum applications are still pending.

Recommendations for policymakers:

- Ensure clear procedures and criteria to guarantee that forced-return procedures are only ever implemented as an *ultimum remedium*.
- Invest in 'voluntary' return support mechanisms and open these up to all individuals who have to return (including people from countries classified as 'safe').

Recommendations for implementing agencies:

- Start return proceedings only after final decisions on applications for residence are rendered, and do not use non-compliance during ongoing procedures as an indication that a person needs to be forced to return.
- Ensure that all the aspects of return (including fears about safety upon return) can be discussed in departure talks.

3. PROTECTION NEEDS OF VULNERABLE PEOPLE PRIOR TO AND AFTER DEPORTATION

State authorities are legally obliged to pay extra attention to vulnerable people, such as children and individuals with medical needs. Dutch authorities have set a high threshold for refraining from deportations. Medical care will only be provided after the deportation if a medical emergency, such as death, disability or other form of serious mental or physical harm were to occur within three months of the deportation, or the deportation will be waived. Dutch authorities only examine whether medication and treatment or facilities are, in theory, present in countries of origin, therefore neglecting the fact whether or not deportees would in practice be able to access this medical care. With the ECtHR ruling *Paposhvili vs. Belgium* from December 2016 this needs to change. When a deportation can lead to irreversible harm to a person's health, authorities must waive this risk.

The Netherland's 2013 regularisation program for children who have been in the country longer than five years has, in practice, only led to residence permits in 2% of all applications. The main reason that Dutch authorities turn down applications is that, according to them, the parents were not complying and actively helping with preparations for their deportation and that of their children. A deportation carried out after more than five years can be in conflict with the best interests of the child and their right to survive and develop as set out in Articles 3 and 6 of the UN Convention on the Rights of the Child. Research conducted by Defence for Children in Armenia has shown that (forced) returns and conditions upon arrival were problematic for the children's development.

Non-accompanied minors can only be deported if authorities have ascertained that the respective minor will be returned to a member of the family, a guardian or to adequate reception facilities in the country of return. This was not the case in the deportation of two Afghan brothers.

Afghan brothers:

Two Afghan brothers, 17 and 16 years old at the time, applied for asylum in the Netherlands on 17 August 2016, but their application was rejected.

The IND believes that the boys can be returned to family in Afghanistan, even though the Red Cross had declared that a search for their family was too dangerous for them to carry out. It is therefore unclear whether the brothers still have family, or whether family members have also since fled the region. The IND nevertheless argues that the lack of family members has not been sufficiently demonstrated and continues to execute the deportation order.

In the meantime, the oldest brother has turned 18 and can supposedly therefore act as 'reception for his younger brother'. Nidos, a custody organisation for minor asylum seekers in the Netherlands, opposes this. Research from a behavioural scientist shows that the eldest brother cannot be considered a care provider for his minor brother as he is struggling with psychological problems himself.

On 8 March 2017, both brothers were deported to Kabul. Because they are originally from Herat, they will have to travel 1000 kilometers through a Taliban-controlled region to find potential family members. There is a very real possibility that their parents have fled to other places in the region.

Dublin returns can also entail risks for vulnerable people. Despite the principle of mutual trust, it appears that vulnerable people do not always have access to asylum procedures and shelter in the responsible EU member state.

What did you come here to do?

A severely traumatised and physically injured young Eritrean woman comes to the Netherlands on a French visa and applies for asylum. Her application for asylum is not processed because of the Dublin Convention.

Before returning the woman to France, the officer of the Dutch Return and Departure Service (DT & V) assures her that 'all the arrangements have been made' and that she will receive care in France just like she did in the Netherlands. It turns out the opposite is true. When the Eritrean woman deplanes in Nice late at night, nobody is waiting for her at the airport. The French police laugh at her and say, 'What are you doing? We do not have a camp here! Do you want to go to Calais?' The next night, she walks alone on the streets of Nice, where two men find and rape her.

After this traumatic event, the woman returns to the Netherlands of her own accord. A physician at the Institute for Human Rights and Medical Research (IMMO) examines her and notes, 'The person concerned has all the symptoms of PTSD (...) these symptoms began after the traumatic events in Eritrea (...). These symptoms were manageable in the Netherlands. However, the PTSD complaints have worsened considerably due to the events in France and the now renewed threat of a repeat deportation to France. (...) The pending deportation is causing her so much stress that the PTSD symptoms are worsening and she has reached the stage of a severe psychopathology. (...) Also, the person has a great deal of pain from extensive scars. (...) Surgery is necessary to alleviate the pain.' When Amnesty International contacted the DT&V about the traumatic deportation to France, the events were not investigated. Only a short reference was made to the possibility of reporting a possible trafficking crime and assault/rape in France. 'The woman can contact the French authorities about what happened to her.'

In response to Amnesty's questions about this matter, the Secretary of State merely refers to Dublin regulations. The Eritrean woman is again ordered to be deported to France.

Recommendations for policymakers:

- Ensure safeguards are in place to prevent vulnerable people from ever being deported when this can cause irreparable harm to their health.
- In regulations for the return of vulnerable people consider not only the availability, but also the accessibility and adequacy of medical care in countries of origin.
- Expand post-deportation medical care to include serious medical needs beyond and in addition to immediately life-threatening illnesses. Do not limit this care to a period of three months, but allow for customised responses and careful consideration of individual circumstances.
- Ensure that the rights of children with deep social ties to the Netherlands who apply for regularisation are not undermined by a potential lack of compliance on the part of their parents.

Recommendations for implementing agencies:

- Make clear agreements with countries of origin about care and shelter upon arrival, including when people are returned under Dublin regulations to other EU countries.
- Be pro-active in informing people involved in removal proceedings about agreed arrangements upon arrival.

4. HUMAN RIGHTS RISKS UPON ARRIVAL AT AIRPORTS IN COUNTRIES OF ORIGIN

When decisions to deport are not taken carefully, the return can lead to persecution as defined in the Refugee Convention or to a real risk of torture and inhumane and degrading treatment as described in the European Convention on Human Rights. Even if the asylum decisions were sufficiently thorough, people may face human rights risks upon arrival. Problems after deportation can vary from mistreatment, arbitrary detention, intimidation, monetary extortion, loss and confiscation of property at police posts and airports, to statelessness, homelessness and as, previously mentioned, lack of access to indispensable medical care.

Treated as criminals:

'When the plane arrived with my brother and another 21 deportees, we were told by the police at the airport in Kinshasa that everyone first needed to go for identification with the ANR (the Congolese Intelligence Service). They were all taken into town by bus. When I went to bring food and water to my brother, this was refused. My brother told me later that they were all treated as criminals. They were accused of having damaged the image of the country. My brother was released after two days, but that was not the case for all the others. Two weeks after his release, the ANR drove by to check out our address. They said they would keep an eye on him. We were scared and moved house.'

When deported people arrive at the airport, the escorts hand over the emergency travel documents to the local border officials. This can leave deported persons without any form of identification documents when they exit the airport (which makes it more difficult to obtain regular national identification documents, potentially leading to statelessness). Without national identification documents, people are vulnerable to become victims of bribery, intimidation and threats at checkpoints or roadblocks.

At the mercy of police officers:

After her deportation in 2010, a Cameroonian woman had to spend three nights and three days in a police cell at the airport in Douala. During this time, she could only wash herself once. It

was only after having been able to call her sister with the help of one of the police officers that Miranda was able to get – from her sister – food and water.

The police demanded 1,000 Euros for Miranda's release. Thanks to the mediation of an acquaintance who used to work with the police, Miranda was eventually able to leave the airport in exchange for 450 Euros. Her passport was not returned to her.

Timely preparation of return processes and the presence of embassy staff or Dutch liaison officers can help prevent problems for deported people upon arrival. The scheduling of deportation flights and the time of arrival at airports are also crucial to a person's security upon return. Deportation flights prior to weekends or public holidays complicate identification processes and can result in detention periods prior to admission into the country. Without connecting flights and appropriate transfers to places of origin, people are left to their own devices in places where they might never have been before and where they might not have any social ties or contacts.

It is important for Dutch officials to be aware of post-deportation risks. Current country of origin reports often do not address risks after return or only do so to a very limited degree. Information about such risks can be relevant for both asylum decisions as well as for the preparations of return processes. Some risks can be avoided. Further research in countries of deportation and more transparent information is necessary for better policies.

Recommendations for policymakers:

- Carry out research to assess potential human rights violations and post-deportation risks such as arbitrary detention, bribes, threats of statelessness, and include these in country of origin reports.
- Investigate whether the presence of embassy staff, Dutch liaison officials or local NGOs can help to prevent problems upon arrival at the airport in countries to which people are deported.

Recommendations for implementing agencies:

- Ensure that people are in possession of travel documents which allow them to access national identification documents without problems after admission into the country.
- Ensure that travel and identification documents are shown to deportees before the deportation flight, so that they can discuss these with their lawyers prior to departure.
- Provide deportees with access to means of communication prior to, during and after the deportation so that family and friends can help with potential problems upon arrival.
- Ensure that people always receive support with their onward travel when they are being sent to a transit country or a capital city which is far from their region of origin.
- Do not schedule deportation flights at the end of the week or before a public holiday to avoid detention during identification procedures.

5. MONITORING AND OVERSIGHT MECHANISMS FOR THE PROTECTION OF HUMAN RIGHTS BEFORE, DURING AND AFTER DEPORTATION

The Inspectorate of Security and Justice coordinates the Netherlands' National Preventative Mechanism (NPM) and is charged with (human rights) monitoring of Dutch deportations. Over the past few years, several national and international authorities have criticised the Dutch human rights monitoring system. The criticism targeted both the lack of independence and the scope of monitoring activities. The Inspectorate of Security and Justice is located in the same building as the Ministry of Security and Justice. While international human right norms are cited, the Inspectorate does not systematically operationalise these in its implementation manual.

UN Committee Against Torture, 13 November 2016:

'The proximity of the Inspectorates to the Ministries, both in their establishment and their functioning, threatens the NPM's credibility. For example, inspectorates are housed together with their respective ministries and are connected to them financially, logistically and in terms of supervision.'

Human rights monitoring stops when the plane arrives at the airport in a country of destination. Effective human rights monitoring must not only cover the conditions and circumstances of the return process, but also the situation and individual circumstances of the third country national after arrival. Dutch authorities do not know what happens even in sensitive cases, such as the deportation of vulnerable people such as individuals in need of medical care, as well as children and pregnant women.

Independent oversight and human rights monitoring can provide information that can be used for country of origin reports, better agreements with countries of origin and working instructions seeking to better support individuals with removal orders before, during and after deportation processes.

Recommendations for policymakers:

- Ensure thorough and independent monitoring of all aspects of the return process, based also directly on international human rights norms.
- Ensure an easy complaint mechanism that is accessible for all agencies involved in removal proceedings, and which is also open for complaints involving harm inflicted after deportation.
- Investigate complaints at all times, even if allegations concern events occurring immediately after arrival of the deportation flights in countries of origin or EU member states in the case of Dublin transfers.
- Ensure the monitoring of reception proceedings and identification procedures at airports of arrival.

Recommendations for implementing agencies and oversight agencies:

- Arrange for additional monitoring mechanisms for the transfer of vulnerable people and people with medical needs, including the actual transfer of care to a medical doctor or care provider.
- Ensure effective complaint and remedy mechanisms by:
 - Facilitating and pro-actively informing people how to file complaints.
 - Providing deportees with the contact details (of a deportation focal point at respective Dutch embassies for example) where they can receive support with complaints and any questions.

