

Curaçao: Little improvement in the Protection of Venezuelans

Monitoring report 2023

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First published in 2023
by Amnesty International Ltd
Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: AMR 05/6404/2023
Original language: English

amnesty.org

Cover photo: *Shoes of Venezuelans that have washed ashore at Curaçao's North Coast © Berber van Beek / Studiorootz*

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GLOSSARY

AIV	The Advisory Council on International Affairs
ALTERNATIVES TO DETENTION	Non-custodial measures restricting the rights of migrants and asylum seekers, often the rights to feedom of movement or the right to privacy. They vary in levels of intrusiveness and can range from registration requirements to bond/bail, designated residence, community release/supervision, reporting conditions, electronic tagging or home curfew.
ASYLUM SEEKERS	People who have left their coountry and are seeking international protection but have yet to be recognised as refugees.
CARTAGENA DECLARATION	A declaration adopted by a colloquium of experts from the Americas. The Declaration expands the definition of refugee to include people who have fled their coutnry because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations off human rights or other circumstances that have seriously disturbed public order.
CHARTER	The Charter for the Kingdom of the Netherlands is a legal instrument that lays down the political relationship between the four constituent countries of the Kingdom of the Netherlands: Aruba, Curaçao and Sint Maarten in the Caribbean, and the Netherlands in Europe.
CMW	UN Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	UN Committee on the Rights of the Child
DEPORTATION	The return to a person's country of origin or habitual residence following an official order to leave. Deportations vary in the way they take place but usually involve a person being detained and, being escorted to their destination by a security officer from the national police or immigration authority of the country from which they are being sent.
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms/European Convention on Human Rights Article 3 states: "No one shall be subjected to torture or to inhuman or degrading treatment of punishment." From this follows the prohibition against deporting a person to a foreign state if they are likely to be subjected to torture there.
ECtHR	European Court of Human Rights
ENCOVI	Encuesta Nacional de Condiciones de Vida – National Survey on Living Conditions
FFM	United Nations Fact-Finding Mission
FOREIGNERS BARRACKS	Part of the the Sentro di Detenshon i Korekshon Korsou (SDKK) prison reserved for immigration detention.
HRDC	Human Rights Defense Curaçao

ICCPR	International Covenant on Civil and Political Rights
IND	Dutch Immigration and Naturalization Service
INTERNATIONAL PROTECTION	International protection is an obligation under international refugee law, and arises when a person is outside their own country and unable to return home because of the risks they would face. It refers to all activities aimed at obtaining full respect for the rights of the individual in accordance with international human rights, humanitarian and refugee law. It encompasses the protection given to people who fall under the classical refugee definition in the Refugee Convention and under the expanded refugee definition under the Cartagena Declaration, and includes complementary forms of protection.
LTU	National Ordinance Admission and Deportation (the Curaçao immigration law)
THE MEIJERS COMMITTEE	A standing committee of experts on international immigration, refugee and criminal law in the Netherlands
MIGRATION-RELATED DETENTION OR IMMIGRATION DETENTION	The deprivation of an individual's liberty, usually of an administrative character, for an alleged breach of the conditions of entry, stay or residence in the receiving country. Detention for migration-related purposes can take many forms, including detaining people in penal institutions, specialized detention centres or closed camp settings, or imposing restricted movement arrangements.
NON-REFOULEMENT	A principle binding on all states prohibiting them from sending anyone, in any manner whatsoever, to a place where they would be at real risk of serious human rights violations.
OVV	The Venezuelan Observatory of Violence
R4V	Inter-Agency Coordination Platform for Refugees and Migrants from Venezuela
REFUGEE	A person outside his or her country of origin who has a well-founded fear of persecution for reasons of their race, religion, nationality, membership of a particular social group or political opinion, as defined under the 1951 Convention Relating to the Status of Refugees (the Refugee Convention).
SDKK	Sentro di Detenshon i Korekshon Korsou prison
UNCAT OR CAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Venex	Venezolanos en el Exterior – Venezuelans Abroad
WGAD	UN Working Group on Arbitary Detention

1. EXECUTIVE SUMMARY

> **"I still feel imprisoned, even though I'm not in prison any more. I don't want to stay in Curaçao. I want to go to another country and seek asylum there."**
>
> José, who has requested protection. He was detained for almost a year during 2020 and 2021. [1]

In this report, Amnesty International provides an update on the situation of Venezuelans seeking protection in Curaçao, and evaluates the Curaçaoan authorities' compliance with international human rights standards. More than a year after Amnesty International published *Still no Safety: Venezuelans Denied Protection in Curaçao*,[2] the organisation still has serious concerns about the situation of Venezuelans seeking protection in Curaçao. Curaçao, a constituent country of the Kingdom of the Netherlands,[3] did not not join the UN Refugee Convention and therefore does not offer international protection under this convention.[4] People can seek international protection in Curaçao under Article 3 of the European Convention on Human Rights (ECHR)[5], which stipulates: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."[6] This also includes the principle of non-refoulement, a principle binding on all states prohibiting them from sending anyone, in any manner whatsoever, to a place where they would be at real risk of serious human rights violations.[7]

However, the authorities are using the Article 3 ECHR Protection Procedure as a vehicle to reject protection claims: they act as though Venezuelans are not at risk of torture or inhuman or degrading treatment or punishment, which defeats its purpose. The Curaçaoan authorities have not granted protection to a single person since they introduced the new Protection Procedure in 2019. For those seeking protection, access to information and legal assistance are not yet guaranteed. Curaçao continues to place adults and children in immigration detention automatically and without any judicial review. The inhuman conditions in which they are held, such as being imprisoned in a cell for most of the day and a lack of hygiene products and recreational activities, remain a deterrent to people initiating the Protection Procedure or following it through.

For more than a year, Amnesty International followed up the cases of four men and one woman whose stories had been included in the 2021 *Still no Safety* report, and interviewed them again between December 2021 and October 2022. Their situation in the last year has not improved and in some cases has worsened, such as that of Juan, who is still waiting for an independent investigation into the alleged ill-treatment he suffered in the Foreigners Barracks in February 2021,[8] or Yusmary, who was in immigration detention for five months.[9]

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[1] Interview with José (name has been changed to respect the interviewee's anonymity), Willemstad, Curaçao and by phone, March 2022 and 1 August 2022.
[2] Amnesty International, *Still no Safety. Venezuelans Denied Protection in Curaçao* (Index: EUR 35/4724/2021), 11 October 2021.
[3] Curaçao is, along with Aruba, Sint Maarten and the Netherlands, a constituent country of the Kingdom of the Netherlands, Charter for the Kingdom of the Netherlands, Decree of 1 November 2010, Bulletin of Acts and Decrees of the Kingdom of the Netherlands (Staatsblad), Volume 2010, 775.
[4] Only the Kingdom of the Netherlands as a whole (not the individual countries) can ratify treaties and subsequently indicate which countries a treaty will apply to. The Kingdom of the Netherlands ratified the 1951 UN Refugee Convention but declared that this convention did not apply to its overseas territories. In contrast to Aruba, Curaçao did
[5] Curaçao is a constituent country of the Kingdom of the Netherlands and thereffore subject to the ECHR.
[6] Council of Europe, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950.
[7] UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994.
[8] Interview with Yusmary, 9 September 2022.
[9] Interview with Juan (name has been changed to respect the interviewee's anonymity), 28 July 2022.

Amnesty International acknowledges that the authorities have taken small steps to address the situation: the Curaçaoan government has made some effort to improve the quality of interviews and assessments of protection needs; access to legal assistance has slightly improved; and new and better facilities have been built to improve conditions in the immigration detention centre, the Foreigners Barracks. But most of their plans to bring their policy into line with international human rights standards – such as by improving access to information, legal assistance and a complaints procedure for people in immigration detention – have not been implemented. Any improvements are the result of pressure from civil society organizations like the local NGO, Human Rights Defense Curaçao (HRDC), and regional bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), rather than the efforts of the Curaçaoan authorities.

Amnesty International encourages the Curaçaoan government to significantly increase their efforts to improve the human rights situation of Venezuelans seeking protection in Curaçao. The organization reiterates the recommendations included in the *Still no Safety* report listed on the chart below.

OVERVIEW OF THE EVALUATION AND KEY RECOMMENDATIONS

The colours indicate what progress, if any, has been made. The evaluation focuses on the actions of the Curaçaoan government, not on the situation in general.

No improvement: no effort or progress has been made – the situation may even have worsened.

Slight improvement: positive improvements in policy and/or practices, not necessarily due to government actions, and with mixed or only slight improvements in outcomes.

Substantial improvement: government efforts have resulted in improvements at the level of both policy and practice, significantly ameliorating the situation of the Venezuelans. However, no structural legislative change has taken place.

Total improvement: the ending of a human rights violation or violations. The government has initiated structural legislative improvements that are experienced by Venezuelans.

4	PROTECTION PROCEDURE	
4.3	Adopt a humanitarian approach	
4.4	No detention of people who seek protection	
4.5	Adhere to international standards	
	4.5.1 The asylum procedure must be *accessible*	
	4.5.2 The asylum seeker should be able *to access legal aid*	
	4.5.3 A claim must be *thoroughly examined*. Deportation should not be carried out without a fair procedure.	
4.6	Cooperate with the Dutch government	
5	DETENTION	
5.1	Introduce automatic review by a court	
5.2	Give access to information and legal assistance	
5.3	Prioritize the best interests of the child	
5.4	Provide humane alternatives to immigration detention	
5.5	Investigate allegations of ill-treatment	
6	CIVIL SOCIETY	
6.1	Cooperate with stakeholders	
6.2	Make data transparent and publicly available	

2. INTRODUCTION

In October 2021 Amnesty International published the report *Still no Safety: Venezuelans denied protection in Curaçao*, which documented the many obstacles Venezuelans faced when seeking international protection in Curaçao. The Protection Procedure did not seem to meet international standards. The Curaçaoan authorities deported Venezuelans without them having completed a fair and effective international protection procedure. The authorities failed to assess their individual claims thoroughly or to evaluate the risks they would face upon return to Venezuela. Curaçao therefore violated the non-refoulement principle which prohibits the transfer of anyone to a place where they are at risk of serious human rights violations. In particular, Venezuelans – including children – were automatically detained in the immigration detention centre. Conditions at the so-called Foreigners' Barracks were inhuman; anyone who applied for protection faced an indeterminate period of detention and had very limited access to legal assistance. This deterred most Venezuelans from embarking on or pursuing the international protection procedure. Amnesty International made some specific recommendations to the Curaçaoan and Dutch governments to improve the human rights situation of Venezuelans seeking protection in Curaçao.

During a visit by Dutch Secretary of State, Alexandra van Huffelen, in February 2022,[10] the Curaçaoan government stated it had begun to follow up on some of the recommendations. Now, a year after publication, Amnesty International is evaluating what progress the Curaçaoan authorities have made in improving their international protection framework and how the framework is implemented in practice. Each chapter starts with the recommendations Amnesty International made in 2021, then goes on to evaluate the progress – if any – that has been made. All recommendations made to the Curaçao government in the *Still no Safety* report will be evaluated, but some will be combined, and this will be indicated in the report.

The colour code indicates how much progress the Curaçaoan government has made.



No improvement. No effort or progress has been made – the situation may have even worsened.



Slight improvement. Positive improvements in policy and/or practice, not necessarily due to government actions, and with mixed or only slight improvements in outcomes.



Substantial improvement. Government efforts have resulted in improvements at the level of both policy and practice, significantly ameliorating the situation of the Venezuelans. However, no structural legislative change has taken place.



Total improvement. The ending of a human rights violation or violations. The government has initiated structural legislative improvements that are also experienced by Venezuelans.

[10] Noordhollands Dagblad, *Akkoord Curaçao en Nederland over verbetering vluchtelingenopvang,* 13 February2022.

3. METHODOLOGY

This report is based on desk and field research that Amnesty International carried out in Curaçao from December 2021 to November 2022. Amnesty International decided to focus on Venezuelans since they represent the largest group within the undocumented population, though the need for protection may apply to undocumented people of other nationalities who are living on the island.[11] For this report, the organization met with the Curaçaoan Ministry of Justice, Human Rights Defense Curaçao (HRDC), The Curaçaoan Ombudsman and lawyers during research visits in December 2021, March 2022 and October 2022. They spoke to them by phone and also corresponded with them by email and text messages between December 2021 and November 2022. Between March and August 2022, Amnesty International contacted the two supervisory institutions in the field of immigration detention, the Supervisory Committee on Immigration Detention and the Arrestee Care Committee, but neither responded. Amnesty International has not been able to find online any specific policy documents, regulations or government data that relates to immigration detention, the Article 3 Protection Procedure or people who live undocumented in Curaçao. The only publicly available information was laws and court decisions. This organization received a few documents sent personally by civil servants about detention and protection requests.

Amnesty International also conducted interviews with one woman and four men from Venezuela whose cases and testimonies had previously been documented in the *Still no Safety* report. Amnesty International met with Miguel and José during their visits to Curaçao in March 2022 and also spoke with them by telephone. The other interviews were conducted by phone. The information obtained from the interviews and correspondence was corroborated by supporting evidence, such as court and other legal documents, as well as written and recorded statements, photographs and videos.

In order not to expose interviewees to further risk, most names have been changed and – when necessary – some identifying information has been withheld. The only exception is the case of Yusmary, who gave explicit consent to Amnesty International to discuss her case in public. Also included in the report is the story of David, who was diagnosed with cancer in the spring of 2022 and died in August 2022 (see paragraph 4.3, “Adopt a humanitarian approach”). Amnesty International expresses its sincere condolences to his loved ones and is very grateful to him for sharing his story and giving a voice to Venezuelans seeking protection in Curaçao.

On 10 November 2022 Amnesty International discussed the findings of the report with the Curaçaoan Ministry of Justice, on 16 January this organization wrote to the Curaçaoan authorities requesting clarification on the report’s findings. The Curaçaoan authorities have not given any response.

Amnesty International would like to thank everyone who contributed to this research, including the Venezuelans interviewed and their friends and advocates in Curaçao.

[11] Exact numbers of people in irregular situations living in Curaçao are unavailable. Estimates are around 25,000, of whom approximately 17,000 are Venezuelan. Other nationalities include people from Colombia, Jamaica, Haiti and the Dominican Republic. *Caribisch Netwerk,*, Elisa Koek, *Curaçao start met registratie migranten via voedselpakketten*, 23 April 2020, https://caribischnetwerk.ntr.nl/2020/04/23/curacao-start-met-registratie-migranten-via-voedselpakketten/, email correspondence with Curaçao Police Corps Immigration Unit, *Removals Overview 2020*, 21 January 2021.

4. SEEKING PROTECTION IN CURACAO

THE CASE OF MIGUEL: STILL WAITING FOR PROTECTION IN CURAÇAO



Miguel, a Venezuelan man who was detained in the Foreigners Barracks: "They didn't let me sleep in the barrack." @ Berber van Beek / Studiorootz

Miguel[12] fled Venezuela and arrived Curaçao in April 2019 after receiving death threats from what he claims to be government-allied criminal groups. The coastguard intercepted his boat and, after handing him over to the Curaçaoan immigration police, he was detained in the Foreigners Barracks. Neither in the police cell nor in the barracks was he told about his rights or of the possibility of asking for international protection: "They didn't tell us about our rights – nothing. They forced us to sign a letter [a deportation order]. We had no idea what would happen to us," said Miguel. When he had been placed in the Foreigners Barracks, he was able to get the number of Human Rights Defense Curaçao (HRDC), who helped him find a lawyer to start his Protection Procedure.

In June 2019, police officers shot Miguel and four other Venezuelans in the Foreigners Barracks using rubber bullets.[13] The men had no access to a complaints procedure, nor was there a prompt, thorough and independent investigation. Together with the other men affected, Miguel started a procedure at the European Court on the grounds of detention and the conditions of detention. The European Court proposed that the involved parties should try to reach a friendly settlement. Finally, following a decision by the Minister of Justice, Miguel was released in September 2019, after five months in detention.

At the time of the writing of this report, more than three years after Miguel's protection request, the authorities have still not decided on his case. The process of reaching a friendly settlement is still ongoing. He has not heard about his protection case, nor about the procedure at the European Court: "Nothing, nothing… We don't know anything at all... We feel lost."[14] He is not permitted to work, and finds it hard to support himself and his family: "We live day by day. If I can find work, we eat. If I don't have work, we don't eat."[15]

[12] Amnesty International, *Still no Safety*, "The case of Miguel", p. 21.
[13] Amnesty International, *Still no Safety*, "Shot with rubber bullets", p. 40-41.
[14] Interview with Miguel (name has been changed to respect the interviewee's anonymity], 1 August 2022.
[15] Interview with Miguel, 1 August 2022.

4.1 FLEEING HUMAN RIGHTS VIOLATIONS IN VENEZUELA

Venezuela faces a grave human rights crisis which has deepened as a result of the Covid-19 pandemic. The government of Nicolás Maduro has adopted a policy of repression in which human rights violations against critics of the government remain unpunished. These include extrajudicial executions, excessive use of force, arbitrary detentions and torture, and other ill-treatment.[16] The United Nations Fact-Finding Mission (FFM) stated there were grounds for believing that crimes against humanity had been committed in Venezuela.[17] The International Criminal Court has started a formal investigation into these allegations.[18] According to the Venezuelan Observatory of Violence (OVV), criminal gangs and the police or security services are often intimately entwined in Venezuela. There are criminal "circles" made up of police officers, and in some cases military troops, with an adequate level of organization to commit criminal acts.[19] Venezuela's rule of law is not functioning, so citizens cannot obtain protection in their own country.[20] At the same time, the humanitarian situation has deteriorated further.

Inequality has grown and salaries are below subsistence level for the majority of the population, who cannot pay for basic products.[21] There is a general lack of provision of services such as gas, electricity, water and domestic fuel, as well as medical care. Around 96% of Venezuelan households live in poverty, with 79% in extreme poverty.[22] This has caused over 7 million Venezuelans to flee their country, making this the second largest external displacement crisis in the world.[23] Almost 6 million Venezuelans are in Latin American and Caribbean countries, of whom 2.4 million have residency permits.[24] Curaçao remains a hosting country, despite the air and sea borders having been closed by the Venezuelan authorities. An estimated 17,000 undocumented Venezuelans live in Curaçao, and this number is expected to grow to 19,000 by the end of 2022.[25] Curaçao is third in the world league tables of host countries measured in the number of Venezuelans per 1,000 inhabitants.[26]

4.2 INTERNATIONAL PROTECTION AND THE KINGDOM OF THE NETHERLANDS

The Kingdom of the Netherlands dissolved the Netherlands Antilles on 10 October 2010, reconstituting Curaçao and Sint Maarten as new constituent countries within the Kingdom. Aruba, Curaçao, Sint Maarten and the Netherlands are now the four countries that make up the Kingdom of the Netherlands.[27] The Charter for the Kingdom of the Netherlands regulates the constitutional relationship between the four countries, all of which have their own governments and parliaments.[28] The Charter provides that each of the countries has a responsibility to protect human rights. However, accession to international human rights treaties is a "Kingdom affair", for which the countries are jointly responsible.[29] Only the Kingdom of the Netherlands as a whole (not the individual countries) can ratify treaties and subsequently indicate which countries a treaty will apply to.[30] The Kingdom of the Netherlands ratified the 1951 UN Refugee Convention but declared that this convention did not apply to its overseas territories.[31] In contrast to Aruba, Curaçao did not join the UN Refugee Convention and therefore does not offer international protection under this convention.

However, the Kingdom of the Netherlands has ratified the following treaties without reservations for the constituent countries: the European Convention on Human Rights (ECHR),[32] the International Covenant on Civil and Political Rights (ICCPR),[33] and the UN

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[16] Amnesty International, *Annual Report 2021-2022, The State of the World's Human Rights* (POL 10/4870/2022).
[17] UN Human Rights Council, *Report of the Independent International Fact-finding Mission on the Bolivarian Republic of Venezuela* (A/HRC/51/43) 20 September 2022.
[18] Reuters, "ICC prosecutor seeks to reopen Venezuela investigation", 2 November 2022, https://www.reuters.com/world/americas/icc-prosecutor-seeks-reopen-venezuela-investigation-2022-11-01
[19] OVV cited in: European Asylum Support Office, *Venezuela Country Focus: Country of Origin Information Report*, August 2020, p. 72.
[20] Dutch Ministry of Foreign Affairs, *Algemeen Ambtsbericht Venezuela*, June 2020, pp. 30-32.
[21] Encuesta Nacional sobre condiciones de vida (ENCOVI), *Condiciones de vida de los venezolanos*, November 2022.
[22] Tal Cual, *Encuesta Encovi: solo 3% de los hogares en Venezuela tiene seguridad alimentaria*, 7 July 2020, talcualdigital.com/encuesta-encovi-793-de-los-venezolanos-no-tiene-como-cubrir-la-canasta-de-alimentos/
[23] UNHCR, *Venezuela Situation*, https://www.unhcr.org/venezuela-emergency
[24] R4V, Refugees and migrants from Venezuela, https://www.r4v.info/en, accessed on 29 November 2022.
[25] UNHCR, Aruba & Curaçao Fact Sheet May-June 2022, https://data.unhcr.org/en/documents/details/97132
[26] UNHCR, Aruba & Curaçao Fact Sheet May-June 2022, data.unhcr.org/en/documents/details/97132
[27] The three countries with the highest percentages of Venezuelans per 1,000 inhabitants are located in the Caribbean. The Kingdom of the Netherlands has a European part and a Caribbean part. Curaçao is a constituent country within the Kingdom of the Netherlands. Bonaire, St. Eustatius and Saba became special municipalities within the Netherlands.
[28] *Statuut voor het Koninkrijk der Nederlanden*, Decree of 1 November 2010, Bulletin of Acts and Decrees of the Kingdom of the Netherlands (Staatsblad), Volume 2010, 775. The text of the Charter for The Kingdom of the Netherlands as last amended by the Kingdom Act in connection with the dismantling of the present Constitutional Order of the Netherlands Antilles.
[29] Dutch government, *Rijkswet goedkeuring en bekendmaking verdragen (BWBR0006799)*.
[30] The government of each constituent country decides if they want to accede to the treaty. Advisory Council on International Affairs (AIV), *Fundamental rights in the Kingdom: Unity in Protection*, June 2018, pp. 8-9.
[31] According to Article 40 of the Refugee Convention, "Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of its territories for the international relations of which it is responsible." UN General Assembly, UN Refugee Convention, 1951, p. 137.
[32] The Curaçao Supreme Administrative Court ruled in 2011 that requests for protection must be assessed under Article 3 of the ECHR, ECLI:NL:OGHACMB:2011:BV2081; see also ECLI:NL OGEAM:2016:8; Curaçao's Ombudsman, *Ambtshalve onderzoek naar de rol van de Minister van Justitie in het kader van het Curaçaose vreemdelingen - c.q. vluchtelingenbeleid*, 27 June 2018.
[33] UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (ICCPR, 1966).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).[34] All obligations stemming from these treaties also apply to Curaçao, including the principle of non-refoulement, which prohibits the transfer of anyone, in any manner whatsoever, to a place where they would be at real risk of persecution or other serious human rights violations.[35] For the principle of non-refoulement to be breached, it is therefore not necessary for serious harm to occur: the human rights violation takes place when someone is returned to a real *risk* of such harm.

People can seek international protection in Curaçao under Article 3 of the ECHR, which stipulates: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."[36] This also includes the principle of non-refoulement, which is a rule of customary international law and therefore applies to all states, regardless of whether they are parties to the relevant treaties.[37] However, Amnesty International concluded in 2021 that the Article 3 ECHR Protection Procedure in place in Curaçao was not in line with international standards.[38] People did not have access to information about legal assistance; the protection assessment interviews were inadequate; and the decision-making process only ever led to rejection.[39] Applying for protection was like an obstacle course, particularly for those in immigration detention and, along with the flaws in the procedure itself, the authorities put considerable pressure on applicants to refrain from seeking protection.

Amnesty International therefore called on the government of Curaçao to:

- Implement protection measures that follow a humanitarian approach and expedite access for Venezuelans to legal residency, while strengthening the Protection Procedure. In the meantime, ensure that people who are in the Protection Procedure and irregular migrants in need are provided with basics such as shelter, food and adequate healthcare.
- Refrain from detaining and deporting anyone until their claim for protection has been promptly, individually, fairly and effectively assessed – and incorporate this into legislation.
- Have a transparent migration and protection policy that is legally binding and in line with international standards. This involves examining protection claims on their merits in a full and fair protection process with all procedural and substantial safeguards, such as provision of information, good quality translation/interpretation, access to legal aid, and access to effective remedy against a negative decision. The effective remedy should include suspension of the decision to deport.
- Ensure that all foreigners in need of protection can access the Protection Procedure, regardless of how and when they arrived on the island, and that no person is deported to a place where they are at real risk of serious human rights violations, which would thereby violate the principle of non-refoulement.
- Cooperate with and request assistance from the Dutch government to strengthen the international protection framework, in particular in the field of free legal assistance for people in immigration detention.

4.3 ADOPT A HUMANITARIAN APPROACH

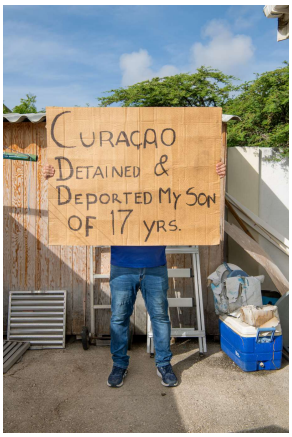
> **"I'm going through a difficult time. I've been diagnosed with cancer, and people who live undocumented in Curaçao don't have access to public healthcare or private healthcare insurance. I need to go to a country where I can get a treatment."**
>
> David, a Venezuelan man who shared his story with Amnesty International. He died in November 2022.[40]

[34] Committee on Economic, Social and Cultural Rights, Sixth periodic reports of States parties due in 2015: The Netherlands, UN Doc. E/C.12/NLD/6, 20 May 2016, para. 3.
[35] Article 3 and Article 13 of the ECHR, Article 3 of the CAT and Article 2(3)(a) (right to an effective remedy) and Article 7 of the ICCPR (prohibition against torture and other inhuman or degrading treatment). The European Court of Human Rights (ECtHR) has held in its jurisprudence that non-refoulement is an inherent obligation under Article 3 of the ECHR in cases where there is a real risk of exposure to torture, inhuman or degrading treatment or punishment. See in particular the Court's decisions in *Soering v. United Kingdom*, Application No. 14038/88, 7 July 1989. The Human Rights Committee interpreted the ICCPR as encompassing the obligation to not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. See Human Rights Committee General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992, U.N. Doc. HRI/ GEN/1/Rev.7, para. 9; Article 3 of the CAT contains an explicit non-refoulement provision which prohibits the removal of a person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. UNCAT, 1984.
[36] Council of Europe, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950.
[37] UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994.
[38] Amnesty International, *Still no Safety*.
[39] Amnesty International: *Still no Safety*, Chapter 7: "Seeking Protection in Curaçao".
[40] Interview with David, 1 August 2022.

Unlike many countries in the region, such as Colombia[41] and Brazil,[42] Curaçao does not grant humanitarian residency permits to Venezuelans. From March to December 2021, Curaçao established a project called "Integrashon responsabel",[43] which was supposed to help undocumented people obtain temporary residency permits.[44] However, according to the Curaçaoan authorities, out of the 2,735 requests made, only 386 (14%) were granted temporary residency permits, and 1,285 were denied. The rest are still pending.[45] Half of the requests were deemed ineligible.[46] This appears to be a direct consequence of the strict requirements, such as having to have arrived regularly by air (which excludes anyone who arrives irregularly by sea); having an employer; and having sufficient financial means. In addition, many of the Venezuelans are unable to obtain the required documentation, such as a valid passport or a birth certificate.

Curaçao does not provide for the basic needs of people in the Protection Procedure, nor are they permitted to work. Undocumented people, including people seeking protection, are not allowed to access public healthcare. The only free primary healthcare available is provided by the NGO Salú pa Tur, which is tolerated by the Curaçaoan government but not financed. The Curaçao Medical Centre does treat people who are in acute, life-threating medical situations, but patients have to pay for the treatment, leaving most of them in great debt.

David, who told Amnesty International in 2021 that his son had been detained and deported in 2020, was diagnosed with cancer in August 2022. At the time, he told Amnesty International: "I'm going through a difficult time. I've been diagnosed with cancer and people who live undocumented in Curaçao don't have access to public healthcare or private healthcare insurance. I need to go to a country where I can get a treatment." David died in November 2022.



David, a Venezuelan man whose son was deported © Berber van Beek / Studiorootz

4.4 NO DETENTION OF PEOPLE WHO SEEK PROTECTION

> **"I still feel imprisoned, even though I'm not in prison any more. I don't want to stay in Curaçao. I want to go to another country and seek asylum there."**
>
> José, who has requested protection, was detained for almost a year during 2020 and 2021.[47]

There are no reception facilities in Curaçao for people seeking protection. People continue to be automatically detained when they arrive irregularly (by boat) or are stopped by the police, primarily with the aim of ensuring their deportation. The practice of automatic detention is, by definition, arbitrary and therefore unlawful, as it ignores the individual circumstances and needs of those arriving, including whether they have the intention to seek protection.

The authorities do not regard a request for protection as an element to be considered when someone is placed in immigration detention. The Curaçao immigration law, the National Ordinance Admission and Deportation (LTU), focuses on migrants with irregular status and contains no regulations to exempt people seeking protection from detention.[48] Under international refugee law, in order to comply with the obligation of non-refoulement, states must refrain from expelling asylum seekers before a final decision on their asylum application has been made, and must undertake an individual assessment of the risks they face upon their return to the country they have left. If a protection claim is pending, there is no immediate prospect of deportation, therefore the detention is unlawful. Amnesty International's position is that the enjoyment of personal liberty must remain any individual's default condition. The right to liberty can

[41] R4V, Refugees and migrants from Venezuela, https://www.r4v.info/en/refugeeandmigrants; El Tiempo, *Migración: 611.000 venezolanos han sido acogidos en Colombia,* 19 February 2022, https://www.eltiempo.com/politica/acnur-cuantos-migrantes-venezolanos-hay-en-colombia-en-el-2022-652926
[42] ACNUR, *Brasil reconhece mais 7,7 mil venezuelanos como refugiados*, 28 August 2020, https://www.acnur.org/portugues/2020/08/28/brasil-reconhece-mais-77-mil-venezuelanos-como-refugiados
[43] Curaçaoan Ministry of Justice: *Verantwoordelijke Integratie*, https://immigrationcur.org/verlenging-traject-verantwoordelijke-integratie
[44] Regering van Curaçao, *Toelatingsorganisatie lanceert traject van verantwoorde integratie*, 16 March 2021, https://gobiernu.cw/nl/nieuw/toelatingsorganisatie-lanceert-traject-van-verantwoorde-integratie
[45] Interview with the Curaçaoan Ministry of Justice, 10 November 2022.
[46] Amigoe, *Helft aanvragen Integrashon Responsabel gehonoreerd*, 3 September 2022 (online access requires a subscription).
[47] Interview with José, 1 August 2022.
[48] Article 19(2) of the LTU, Landsverordening van de 24ste april 1962 houdende regeling van de toelating tot en de uitzetting uit de Nederlandse Antillen, https://lokaleregelgeving.overheid.nl/CVDR7406
(P.B. 1966, no. 17), zoals gewijzigd en het Toelatingsbesluit (P.B. 1985, no. 57), zoals gewijzigd, Gegeven door het Minister van Justitie, June 2006.

only be restricted in specific and the most exceptional of circumstances. Like anyone else, migrants, refugees and asylum seekers must benefit from a legal presumption of liberty. As a consequence, any deprivation of liberty they are subjected to must be clearly prescribed by law, strictly justified by a legitimate purpose, necessary, proportionate and non-discriminatory. Detention solely for purposes related to migration is allowed only in the most exceptional circumstances, and there is a presumption against such detention. States must conduct individualized assessments for each migrant or asylum seeker, taking into account their histories and specific needs. Detention for the sole purpose of determining the elements on which an individual's claim to asylum is based – as is still occurring in Curaçao – should not be allowed.[49]

The Curaçaoan government claims that it has become common practice to re-evaluate the detention if there are "changes in the circumstances" of a detained person, such as an application for protection – and this has been confirmed by HRDC.[50] This may lead to the lifting of the detention order and suspension of the deportation order. People can be released if they have a guarantor and regularly report to the authorities. However, the guarantor system is proble matic as it places a heavy responsibility on individuals in terms of the "guaranteed" person's income and housing. It also makes them vulnerable to exploitation or abuse by their guarantor.[51] Even if a guarantor fulfils all the requirements, a decision to release someone is often made arbitrarily, and they may still have to wait before they are released.[52] Moreover, requesting protection still does not confer any rights on the person who has made the request. José, who has requested protection and was detained for almost a year during 2020 and 2021, told Amnesty International in March 2022 that he still does not feel free: "I still feel imprisoned, even though I'm not in prison any more. I don't want to stay in Curaçao. I want to go to another country and seek asylum there."[53]

According to the government, their intention is to change the policy in the revised LTU so that people who arrive irregularly and then apply for protection are not detained, provided they have guarantor and report to the immigration authorities regularly. But it remains unclear when this will happen.[54] Until it does, the decision to impose and prolong detention remains arbitrary and is therefore unlawful.

The inhuman detention conditions and the pressure that guards and migration officers put on people to prevent them from requesting protection remain a deterrent to seeking protection.[55]

4.5 BRING THE PROTECTION POLICY INTO LINE WITH INTERNATIONAL STANDARDS

This section will examine the extent to which the Protection Procedure has been brought into line with international standards since the publication of the *Still no Safety* report. In summary, the Curaçaoan government has not made any progress in ratifying the UN Refugee Convention nor in creating a refugee policy. Therefore, we could only evaluate the current Protection Procedure.

According to international law, a procedure to seek protection should meet the following standards:

- The asylum procedure must be accessible: the asylum seeker should receive information about the procedures to be followed,[56] and has a right of access to interpretation and translation.[57]
- The asylum seeker should be able to access legal aid, even if they do not have sufficient means to pay for it.[58]
- A claim must be thoroughly examined.[59]
- The legal remedy brought by the asylum seeker must automatically suspend the execution of the forcible return measure.[60]

4.5.1 MAKE THE PROCEDURE ACCESSIBLE



The Curaçaoan police continue to take undocumented Venezuelans who arrive irregularly or have been automatically arrested to the police station at Rio Canario. There they have to sign a deportation order as proof of receipt, even if they seek protection.[61] The

[49] See also Amnesty International, *Still no Safety,* para. 5.2.2 "Detention Principles".
[50] Interview and correspondence with the Curaçaoan Ministry of Justice between April and September 2022; interview with HRDC, 28 September 2022.
[51] Amnesty International, *Still no Safety*.
[52] Telephone interview with HRDC, 15 September 2022.
[53] Interview with José, 1 August 2022.
[54] Interview and correspondence with the Curaçaoan Ministry of Justice between April and November 2022.
[55] Interview with HRDC, 28 September 2022.
[56] ECtHR: *M.S.S. v. Belgium and Greece* (30696/09), 21 January 2011, para. 304.
[57] ECtHR: *Hirsi Jamaa and others v. Italy* (27765/09), 22 February 2021, para. 202.
[58] Article 6.3.b-c ECHR, Article 14.3 ICCPR; Article 8.2 ECHR; the right to defence is protected by Article 6.1 ECHR in civil proceedings, see for example ECtHR Oferta Plus SRL v. Moldova, 14385/0 4, 19 December 2006, para. 145.
[59] ECtHR: *Jabari v. Turkey* (40035/98), 11 July 2000, para. 50: "… given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialized and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and the possibility of suspending the implementation of the measure impugned."
[60] ECtHR: *Gebremedhin v. France* (no. 25389/05), 26 April 2007, para. 66: "… Article 13 requires that the person concerned should have access to a remedy with automatic suspensive effect."
[61] Interviews and correspondence with the Curaçaoan Ministry of Justice between April and November 2022. Conversations and correspondence with HRDC between January and November 2022.

migration authorities do not inform them of their rights to seek protection nor of their right to challenge the deportation order. The current Protection Procedure is not explained, nor can it be found on the government's immigration website. Moreover, the detention of people seeking protection, without informing them of their rights, creates a great obstacle to accessing the Protection Procedure. This does not conform with international standards on the accessibility of the procedure and the right of people to receive information about their rights and available procedures. The Curaçaoan authorities are reported to have created an information brochure to explain the procedure in Spanish,[62] and have said they plan to make it available by the end of August 2022 for detained people who are seeking protection. However, at the time of writing this report, HRDC, the NGO providing legal assistance to people in immigration detention, has not seen the brochure nor heard of it from any of their clients.[63]

Regarding access to interpretation and translation, the deportation order is still mostly in Dutch. However, it contains a section on the deportation decision, its consequences and legal remedies that is now translated into Spanish. This is only a summary of the Dutch text; it says that the person can object to the decision within six weeks but without any further explanation as to *how* they can do this.[64] As yet, there are no independent translation services. Curaçaoan migration officials conduct the protection assessment interviews with Venezuelans in Spanish,[65] then they translate the interview transcripts into Dutch themselves. Since most of the Venezuelans do not speak Dutch, their legal representative has to approve the transcript.[66] This highlights their vulnerable legal position: often they cannot afford a lawyer and are dependent on the legal assistance provided by HRDC. There are no official requirements for the migration officials to have Spanish language skills, nor are they obliged to sign the transcript under oath of office.[67] So there is a risk that the reasons for leaving Venezuela and the context for the decision to leave are not being correctly documented.[68] The Curaçaoan court ruled in March 2022 that in their negative decision against a Venezuelan man, the Curaçaoan government had failed to comply with procedural safeguards. It stated that the migration officials did not provide an independent interpreter during the interview, nor did they translate the transcript into Spanish to ensure that the interviewee could check if the transcript was correct.[69]

4.5.2 GIVE ACCESS TO LEGAL AID

Even though Venezuelans are allowed to start the Protection Procedure without a legal representative, in practice they depend on legal assistance because the laws are in Dutch and are complex. Since 2021 increasing numbers of people have applied for protection with the help of a legal representative. According to government figures, in 2021 eight people started the procedure, all of whom were in immigration detention; in 2022 the number increased to 50 people, of whom 46 were in immigration detention.[70] There have been some improvements in access to legal aid for the Protection Procedure, but there are still many obstacles to Venezuelans obtaining legal aid.

There is still no system of free legal aid for the Protection Procedure for people with insufficient means. As most of these Venezuelans do not have the financial resources for legal aid, they rely on their social network on the island or on HRDC to provide a lawyer. For those who are in the Foreigners Barracks, the immigration detention section of the Sentro di Detenshon i Korekshon Korsou prison (SDKK), there are additional obstacles: neither the migration police nor the prison personnel will inform them of their rights to seek protection and to receive legal assistance, nor will they tell them how to start the procedure. In addition, they cannot use internet and have only limited access to a phone, which is located within hearing distance of the prison guards' office. They can only use the phone with prepaid telephone cards, bought by relatives from outside the prison or via NGOs such as HRDC. The Curaçaoan authorities reported that they are planning to hire a person to liaise between people in immigration detention and the immigration authorities. This individual will supposedly explain to people in immigration detention what their rights are and which procedures they need to follow. The Curaçaoan government does not yet know when anyone will start work in this role.[71]

In June 2021 HRDC reached a settlement with the Curaçaoan government to improve access for clients in immigration detention to their lawyers but, despite that, unhindered access is still not guaranteed. One lawyer told Amnesty International that even though access to his clients in immigration detention had improved in general, the Curaçaoan authorities had denied him access several times in the last year.[72] Another lawyer told Amnesty International: "Our access is certainly not perfect. Every time we want to get an

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[62] Government of Curaçao: *Notificación. Política que incluye el procedimiento a seguir en caso de una solicitud de protección con arreglo al artículo 3 del CEDH Junio del 2019*. Received on 28 June 2022.
[63] Conversations and correspondence with HRDC between January and November 2022.
[64] Amnesty International has received a standard deportation order from April 2022. HRDC has confirmed that these deportation orders are still being used. Interview with HRDC, 28 September 2022.
[65] Gerecht in eerste aanleg van Curaçao (CUR202100204) par. 5.6, 21-03-2022, https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:OGEAC:2022:85
[66] Conversations and correspondence with HRDC between January and November 2022 and with the Curaçaoan Ministry of Justice between April and November 2022.
[67] Gerecht in eerste aanleg van Curaçao (CUR202100204) par. 5.6, 21-03-2022, https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:OGEAC:2022:85
[68] Conversations and correspondence with HRDC between January and November 2022, Interview with lawyer Seyed Navid Sahedi, 9 November 2022.
[69] Gerecht in eerste aanleg van Curaçao (CUR202100204) par. 5.6, 21-03-2022, https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:OGEAC:2022:85
[70] Curaçaoan Ministry of Justice, *Overview Requests in 2021 and 2022*, received by email on 14 November 2022.
[71] Interview with Curaçaoan Ministry of Justice, 10 November 2022.
[72] Interview with lawyer Seyed Navid Sahedi, 9 November 2022.

appointment with a client in immigration detention, we have a discussion with the Curaçaoan government."[73] The SDKK authorities have denied HRDC entry on a few occasions for random reasons or for no reason at all.[74] Moreover, legal aid can only be provided if legal representatives have the names of the people detained.[75] That is often not possible because people are detained immediately after arrest or interception at sea, without being given information about their rights or the opportunity to contact anyone to arrange legal assistance. A lawyer told Amnesty International: "In order to visit people in immigration detention, we have to prove to the Curaçaoan authorities that we are their lawyers, but that's hardly possible because we haven't had the chance to contact them."[76] In addition, if people are being deported quickly, there is no opportunity to provide substantive legal aid.[77] In a recent case, two men in immigration detention said that the prison guards put pressure on them not to request protection. According to them, the prison guards did not want to answer the phone in case it was HRDC calling. Indeed, HRDC said it had attempted to contact the two men on different occasions but none of the prison guards answered their phone calls.[78] The Curaçaoan government has refuted this; they say that there are no barriers to HRDC lawyers or other lawyers visiting their clients in the Foreigners Barracks.[79]

4.5.3 NO DEPORTATIONS WITHOUT A FAIR AND EFFECTIVE PROCEDURE

This section combines two recommendations: to adhere to international standards, specifically that a claim must be thoroughly and fairly examined;[80] and to suspend deportation pending the process. There are no official data on the number of people who have applied for protection since the revised Protection Procedure was introduced in 2019. However, based on the cases HRDC and lawyers have dealt with, along with government data from the last two years, it is estimated that up to 100 people have applied for protection.[81] The Curaçaoan authorities have indicated that no one has received Article 3 ECHR protection since 2019.[82] In comparison, the Netherlands has a recognition rate of first instance decisions of 34%, and the EU as a whole, of 78%.[83]

There have been some improvements in the protection interviews: they are now carried out by immigration officials rather than immigration police officers – and there are reports that they are being done more thoroughly.[84] The decisions seem to be better thought through: they include not only the rejection, but the government's legal considerations. However, the argumentation still seems very much focused on rejection.[85] The officials have received technical assistance from the Dutch Immigration and Naturalization Service (IND) for the protection interviews, assessments and decisions.[86] The Curaçaoan authorities indicated that the Protection Procedure would be revised and published at the end of August 2022. As of October 2022, no new procedure has been published.[87]

The procedure has also shown slight improvements in reducing the waiting time for applicants in detention to be interviewed. Instead of having to wait for up to six months, people have their first interview after a few days.[88] However, it is estimated that dozens of people are still waiting for a decision, some of them since 2019.[89] Before being interviewed for this update, the Venezuelans interviewed in 2021 who had applied for protection had still not had an interview nor any news about their procedure . They are not permitted to work, nor do they have access to the public health system.

The Protection Procedure stipulates that the Advisory Group must submit its final advice on the protection decision to the Ministry of Justice.[90] In 2020, the Ombudsman expressed his concerns over the Advisory Group's composition and its decision-making. He argued that the participation of a member of the immigration police – who would therefore already be involved in the procedure – may create

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[73] Interview with lawyer Alicia Blonk, 24 November 2022.
[74] Conversations and correspondence with HRDC between January and November 2022. See also: https://www.vluchtelingenwerk.nl/nl/artikelen/persbericht/human-rights-defense-curacao-krijgt-wederom-geen-toegang-tot
[75] Interview and correspondence with the Curaçaoan Ministry of Justice between April November 2022;/ telephone interview with HRDC, 14 September 2022.
[76] Interview with lawyer Alicia Blonk, 24 November 2022.
[77] Conversations and correspondence with HRDC between January and November 2022.
[78] Correspondence from HRDC to Minister Shalten Hato, including statements by the two men who were in immigration detention, 11 August 2022.
[79] Interview and correspondence with the Curaçaoan Ministry of Justice between April and November 2022. See also https://kikotapasando.com/2022/05/30/ministerie-van-justitie-betreurt-berichtgeving-vluchtelingenwerk-nederland
[80] ECtHR: *Jabari v. Turkey* (40035/98) (11 July 2000) para. 50: "… given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialized and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and the possibility of suspending the implementation of the measure impugned."
[81] Amnesty International, *Netherlands: Still no Safety* para. 7.1 "The new protection procedure"; and Curaçaoan Ministry of Justice, *Overview requests in 2021 and 2022*, received by email on 14 November 2022.
[82] Interview and correspondence with the Curaçaoan Ministry of Justice between April and November 2022.
[83] Eurostat database, *First instance decisions on applications by citizenship, age and sex – annual aggregated data (rounded)*, https://ec.europa.eu/eurostat/databrowser/view/MIGR_ASYDCFSTA__custom_2920615/default/table?lang=en, accessed on 3 August 2022.
[84] Interview and correspondence with the Curaçaoan Ministry of Justice between April and November 2022; telephone interview with HRDC, 14 September 2022; interview with lawyer Seyed Navid Sahedi, 9 November 2022.
[85] Interview with lawyer Seyed Navid Sahedi, 9 November 2022. Amnesty International has also viewed several negative decisions. Further in-depth analysis would be needed to gain more insight into the legal quality of the rejections.
[86] Interview with the Curaçaoan Ministry of Justice, 10 November 2022.
[87] Interview and correspondence with the Curaçaoan Ministry of Justice between April and November 2022.
[88] Telephone interview with HRDC, 14 September 2022.
[89] There are no available official data about this, Amnesty International has combined HRDC's information about their undecided cases since 2019 (telephone interview with HRDC, 14 September 2022) with the undecided cases of the people interviewed for *Still no Safety*.
[90] Government of Curaçao, *Beleid inhoudende het te volgen procedure bij een verzoek om bescherming ex artikel 3 EVRM*, June 2019.

the appearance of a conflict of interest.[91] Over the last year, during the course of different court cases, HRDC asked the Curaçaoan government about the Advisory Group's composition, but their questions remain unanswered.[92] The Curaçaoan authorities explained to Amnesty International that they did not want to share this information in order to protect the privacy of their civil servants.[93]

Migration officers are supposed to check if someone is in the Protection Procedure before taking measures to deport them. Submitting a protection application under the Protection Procedure should suspend the possibility of deportation – this is the so-called "absolute nature" of Article 3 of the ECHR.[94] If individuals are deported before the protection question has been investigated, they could be put at risk, in violation of the principle of non-refoulement.[95] This so-called suspensive effect has not been laid down in the national migration policy (LTU), but, in the last year, has become standard practice for migration officials.[96] The Curaçaoan authorities have indicated that they are planning reforms to the LTU in which the suspensive effect will be made explicit. The schedule for this law reform remains unclear as it has to go through the parliamentary decision-making process, which has not yet begun.[97] Until then, people cannot derive any rights from the current practice, making them dependent on the decisions of government officials and a lawyer to defend their rights. This creates the risk of arbitrariness and legal uncertainty.

Despite minor changes, in practice there is no substantial improvement, as no one has received protection. The Meijers Committee, a standing committee of experts on international immigration, refugee and criminal law, concluded in 2020: "The [Curaçaoan international protection] procedure has to a great extent the character of a fig leaf instead of really helping undocumented people."[98] This conclusion remains valid.

4.6 COOPERATE WITH THE DUTCH GOVERNMENT

In January 2022 the Dutch government decided to freeze financial aid to the Foreigners Barracks, largely because Curaçao had not made significant progress in improving conditions like access to legal assistance and medical care.[99] Both countries have continued the dialogue to see if and how the remaining financial assistance can be provided.

The IND continued to offer support to the Curaçaoan migration authorities. Later in the year they stopped providing personnel because of their own staff shortage in the Netherlands. Instead, the Dutch government provided the financial means for the local authorities to recruit immigration staff themselves. So far, no one has received protection and the IND's assistance has made no contribution to granting protection to Venezuelans.[100] Neither have there been any developments regarding the Netherlands assisting Curaçao to set up a system for free legal aid.

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[91] Ombudsman, *Zorgbrief met betrekking tot het vreemdelingenbeleid (2109) ex. artikel 3 EVRM*, 30 September 2020.
[92] Interview with HRDC, 28 September 2022.
[93] Interview with the Curaçaoan Ministry of Justice, 10 November 2022.
[94] This "absolute nature" is also mentioned in the current Protection Procedure: Government of Curaçao, Procedure of Protection Based on Article 3 of the ECHR (previously cited), p. 5.
[95] This was confirmed by a Curaçaoan judge in a ruling to a lawsuit brought by a Venezuelan against her deportation. The judge ruled in her favour, because the government should have investigated whether she could be deported in the context of Article 3 of the ECHR, regardless of her behaviour and lack of valid residency documents. Nu.cw, *Ongedocumenteerde Venezolaanse mag nog niet uitgezet worden*, 26 November 2020, https://nu.cw/2020/11/26/ongedocumenteerde-venezolaanse-mag-nog-niet-uitgezet-worden
[96] Interview and correspondence with the Curaçaoan Ministry of Justice between April and November 2022; this was confirmed by HRDC, telephone interview with HRDC, 15 September 2022.
[97] Interview and correspondence with the Curaçaoan Ministry of Justice between April and November 2022.
[98] Commissie Meijers, *Notitie aangaande de asielprocedure op Curaçao*, 22 June 2020, p. 4.
[99] Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, *Uitvoering van de motie Koekkoek over binnen twee maanden een schriftelijke reactie op de bevindingen uit het rapport van Amnesty International (*2021-0000671193), 6 January 2022.
[100] Eurostat Database: *First instance decisions on applications by citizenship, age and sex – annual aggregated data (rounded),* accessed on 3 August 2022.

5. DETENTION

THE CASE OF YUSMARY AND HER TWO SONS



Yusmary, a Venezuelan woman living in Curaçao. Her children were deported to Venezuela: "They took my children without warning"
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Yusmary, a Venezuelan woman who lives without residency papers in Curaçao, told Amnesty International about her two sons, aged 15 and 16 at the time, who took a boat to Curaçao in November 2019. They were detained and handcuffed immediately upon arrival; after a brief stop in Rio Canario, they were taken to the Foreigners Barracks. From there they managed to call their mother. After two days in the barracks, they were taken to the juvenile detention centre. They were not allowed any contact with their mother for two weeks. Yusmary told Amnesty International: "They said I was no longer allowed to talk to them because they were being deported." With the help of a go-between, Yusmary was able to arrange a visit. When she arrived at the juvenile detention centre, she was told her sons had already been deported a few days earlier – a fact that was not communicated to her earlier by the Curaçaoan authorities.

In July 2022, Yusmary was imprisoned in the women's ward of the SDKK after what appears to be a potential case of gender-based violence against women. She told Amnesty that her partner was beating her up at home. When the police came, she wanted to file a report against her partner. But instead, they were both locked up in the SDKK. This seems to violate the international obligation to protect survivors of gender-based violence and ensure that they have access to justice and to an effective remedy.[101] Yusmary said: "My detention lasted five months. It was a fight. I was praying to God that everything would be alright. It was not easy being locked up with women who had committed a crime."[102] The court ruled that her detention was unlawful because she was detained with convicted criminals, so she had to be released.

[101] Convention on the Elimination of All Forms of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, paragraph 29(a), 26 July 2017.
[102] Interview with Yusmary, 9 September 2022.

Amnesty International concluded in 2021 that immigration detention in Curaçao did not meet international standards. Venezuelans were automatically detained, regardless of their need for protection. The rights of children were violated in many ways, including by detaining them in the Foreigners Barracks and youth facilities, and by separating them from their parent(s). The conditions in immigration detention were inhuman: the period of detention was indefinite, as it was not bound by any judicial review; basic needs such as sufficient food and hygiene were not met; people were psychologically and physically mistreated, and had very limited access to legal assistance or a complaints procedure. One of the cases of ill-treatment investigated by Amnesty International involved a group of five Venezuelans who were shot with rubber bullets by the police in the Foreigners Barracks. As the men involved had not engaged in any violence against others, the organisation concluded that the shooting of rubber bullets was a disproportionate act. They had not had access to a complaints procedure, nor was an independent investigation conducted. The excessive use of force amounted to inhumane and degrading treatment and could even be defined as torture. Therefore, this incident appeared to be a violation of Article 3 of the ECHR.

Amnesty International reiterates that automatic detention is arbitrary and therefore unlawful. The organization reminds authorities that the enjoyment of personal liberty must remain any individual's default condition. Detention solely for migration-related purposes is allowed only in the most exceptional of circumstances. If refugees, asylum-seekers and migrants are subject to any deprivation of liberty, this must be clearly prescribed by law, strictly justified by a legitimate purpose, necessary, proportionate and non-discriminatory.

While Amnesty urges the Curacao authorities to refrain from detaining people seeking protection, and to enshrine a presumption against detention in legislation, pending these reforms, the organization made the following recommendations to the Curaçaoan government.

- Ensure that any detention decision and detention conditions are automatically and regularly reviewed by a court or similar competent, independent and impartial body.
- Ensure that all detained migrants are informed in their own language about their rights when they are arrested, in the police station and in the detention centre. Refrain from making them sign a deportation order in Dutch before they have been able to apply for protection.
- Ensure that in all decisions relating to children, the best interests of the child shall be a primary consideration.
    - Stop the detention of children and separation from their parent(s) and/or legal guardian(s), regardless of their immigration status.
    - When the government proves that migration enforcement measures which restrict human rights are necessary and proportionate, apply alternatives to detention of the entire family.
    - Include the rights of undocumented children in legislation and develop policy to better protect their rights.
- Ensure that detained migrants and people seeking protection have unfettered access to legal assistance while in detention; and that free legal aid is provided to anyone who cannot afford their own lawyer.
- Provide non-custodial, more humane alternatives to detention by law. In the meantime, improve conditions in the Foreigners Barracks and ensure a humane approach to detained foreigners. Refrain from detaining migrants and people seeking protection with convicted prisoners.
- Ensure that allegations of ill-treatment, excessive use of force or any other abuses during arrests or in immigration detention are investigated promptly, effectively, independently and impartially by an independent body. Perpetrators should be prosecuted, and victims should receive reparations.
- Conduct an independent, impartial, prompt and thorough investigation into the shooting with rubber bullets by police officers in the Foreigners Barracks in June 2019. Ensure the participation of the Venezuelans who were present at the incident in any inquiry and ensure that the findings are made public.

5.1 INTRODUCE AUTOMATIC REVIEW BY A COURT

People continue to be automatically detained for breaches of the LTU, either because they have arrived irregularly or for lacking the required residency papers.[103] The LTU states that people shall be detained if they "pose a threat to public order, public peace or safety or morality, or if there is a well-founded fear that the foreigner will try to avoid his removal".[104] Concepts like "threat to public order" or "well-founded fear" are, however, not defined, which leaves much room for interpretation. The Curaçaoan authorities regard any breach of the LTU as a threat to public order and therefore grounds for detention.[105] This is not in line with international law, which holds that a

[103] According to article 19.1 of the LTU.
[104] According to article 19.2 of the LTU, *Herziene Instructie aan de Gezaghebbers (HIG) Inzake de toepassing van de LTU, (P.B. 1966, no. 17), zoals gewijzigd en het Toelatingsbesluit (P.B. 1985, no. 57), zoals gewijzigd, Gegeven door het Minister van Justitie*, June 2006.
[105] Interview with the Curaçaoan Ministry of Justice, 10 November 2022.

person is only a "danger to public order" if they pose a present, real and sufficiently serious threat to the fundamental interests of society.[106]

The standard immigration detention term, 30 days, is imposed by an assistant prosecutor rather than by an examining judge.[107] If the foreigner cannot be deported within this period for some reason, such as the failure of the actual deportation, they may be detained for an official maximum period of six months.[108] But there is no automatic judicial review of the detention, so people may be detained for longer or even for indefinite periods. This violates due process protections. Detained migrants and asylum-seekers have a right to take proceedings before a court, which may decide, without delay, on the lawfulness of the detention and its continued necessity and proportionality. The court can order less coercive measures, if warranted, or unconditional release if the detention is not lawful. A review by a court only takes place if the individual has a lawyer to challenge the detention. In most cases this does not occur because of the obstacles to legal assistance described above. Since October 2021, Amnesty International has not documented any cases of people being detained for longer than six months. The Curaçaoan government has stated that it plans to include an automatic judicial review of detention in the revised LTU but this may take a long time to come into force. There are no plans for other policy measures in the meantime that would ensure a judicial review of detention.

5.2 GIVE ACCESS TO INFORMATION AND LEGAL ASSISTANCE



This item combines the second and fourth recommendations in the introduction to Section 5 (page 19) of this report: to inform people in immigration detention about their rights and the relevant procedures; and to give them access to legal assistance.

When people are automatically placed in immigration detention, they receive a detention and deportation order, but they are not given a written decision on why non-custodial measures are not applicable. Neither are Venezuelans informed of their rights, nor are they told about how to seek legal assistance or how they can file a complaint about the detention conditions.[109] The Curacaoan authorities reported that, along with the building of new Foreigners Barracks, they are planning to provide specific rules for the treatment of people placed in immigration detention within these barracks. In addition, they plan to introduce a new liaison role (see 4.5.2) but no one has yet been appointed to it.[110] So for now, this cannot be seen as an improvement.

As already shown (also in 4.5.2), obstacles remain to people seeking legal assistance while in immigration detention: they still have only limited access to a fixed phone, which has to paid for by someone from outside the prison; they do not have access to the internet; and, most importantly, the government does not provide free legal assistance for people who cannot afford a private lawyer. The Curaçaoan government has indicated that they are in the process of setting up a law clinic with the University of Curaçao, which could help migrants to challenge their detention and deportation orders,[111] but it is not clear if or when this will be realized so it cannot be regarded as an improvement.

For human rights organisations, HRDC and their lawyers, access to the Foreigners Barracks has slightly improved. Amnesty International, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)[112] and VluchtelingenWerk (the Dutch Refugee Council) were able to visit the Foreigners Barracks in March, May and September 2022. However, UNHCR does not have access, and HRDC still does not have unhindered and regular access (as also described in 4.5.2).

5.3 PRIORITZE THE BEST INTERESTS OF THE CHILD



Amnesty International reminds the authorities that the UN Committee on the Rights of the Child (CRC) and the UN Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families (CMW) have underlined that "the detention of any child because of their or their parents' migration status constitutes a child rights violation and contravenes the principle of the best interests of the child." The UN Working Group on Arbitrary Detention has also stated that, "Children must not be separated from their parents and/or legal guardians. The detention of children whose parents are detained should not be justified on the basis of maintaining the family unit and alternatives to detention must be applied to the entire family instead."[113]Amnesty International urges the authorities to

[106] Reference to a criminal conviction alone is not sufficient to label someone a "danger to public order". A personal assessment has to be made which justifies why the threat is really serious and topical. In other words, the government must indicate why there is a concrete risk of recidivism for a serious crime (ECLI:EU:C:2015:377).
[107] Article 10.5 of the LTU, 2006.
[108] Article 10.5 of the *Herziene Instructie aan de Gezaghebbers (HIG) Inzake de toepassing van de LTU, (P.B. 1966, no. 17), zoals gewijzigd en het Toelatingsbesluit (P.B. 1985, no. 57), zoals gewijzigd, Gegeven door het Minister van Justitie*, June 2006.
[109] Interview with HRDC, 14 September 2022.
[110] Interview with the Curaçaoan Ministry of Justice, 10 November 2022.
[111] Interview and correspondence with the Curaçaoan Ministry of Justice between April and November 2022.
[112] Council of Europe, *Council of Europe anti-torture Committee visits the Netherlands*, 31 May 2022, https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-carries-out-16-day-visit-to-the-netherlands.
[113] UN Working Group on Arbitrary Detention (WGAD) 2018, para. 40.

refrain from detaining children and families, and establish a presumption in law against detaining family units of parents and children for reasons related to migration.

The Curaçaoan authorities, however, continue to ignore these international standards. They have not shared any data about the numbers of children detained either in the Foreigners Barracks or in juvenile institutions over recent years. HRDC knows of at least four children who have been detained in juvenile institutions since October 2021, including a 12-year-old boy who was separated from his mother, who lived on the island. She could not visit her son.[114]

The Curaçaoan government has shared with Amnesty International its policy on immigration detention for children, which violates the principle of the best interests of the child being paramount.[115] According to this policy, children will be placed in a shelter or juvenile institution until they can be deported with their parent(s). If there are family members residing on the island, the child will be united with them with a duty to report to the authorities. Children between the ages of 16 and 18 can be detained with or without their parents as a measure of last resort to ensure their deportation. At the new Foreigners Barracks there are special family cells for mothers with their child(ren).[116] Detention will be imposed if there is deemed to be a "flight risk", namely that the child has already left the reception location to an unknown destination or has not adhered to the duty to report or other non-custodial measure. Another requirement for the detention of children is that the deportation must take place within 14 days.[117] The policy does not specify where a child should be detained. According to the Curaçaoan authorities, children are placed in Correctional Institutions for Juvenile Offenders (Justitiële Jeugd Inrichting Curaçao) under a civil law regime, or in the Foreigners Barracks, if their the age has not been established. Furthermore, the policy holds that if a child requests protection under the Article 3 Protection Procedure, the CRC should be taken into consideration.[118]

The policy on the immigration detention of children does not meet international standards. The detention of children in relation to migration is strictly prohibited in international law on the basis that it can never be in their best interests.[119] Despite this, immigration detention of children is still permitted in Curaçao. Even though the possibility exists in civil law of detaining children in juvenile institutions, this is a custodial measure that is not in their best interests. In the new Foreigners Barracks, mothers can be detained with their children while the father is separated from the rest of the family, but where children are travelling only with their father, they may be detained separately. The fact that the Foreigner Barracks are located on the SDKK prison premises, and the father is separated from his family, violates the principles of the best interests of the child and the right to private and family life.[120] Although the policy (which is not publicly available) stipulates that the CRC will be taken into consideration when a child applies for protection, this is clearly not the case.

5.4 PROVIDE HUMANE ALTERNATIVES TO IMMIGRATION DETENTION

Since the last report, there have been several changes in relation to detention. In January 2022 Raymond Knops, then State Secretary of Kingdom Affairs, decided to freeze financial assistance to the Foreigners Barracks. He stated in a letter to the Dutch Parliament: "At the end of 2021 I unfortunately had to conclude that Curaçao still falls short on crucial … conditions," such as access to legal and medical aid.[121]

International institutions such as the Special Rapporteur on the Human Rights of Migrants[122] and the CPT[123] criticized the system of automatic immigration detention and the inhumane conditions in the Foreigners Barracks. Following this, the Curaçaoan government decided to close the barracks at the end of March 2022. Venezuelans who were still detained there were transferred to police cells and Block 1 of the SDKK prison. In other words, they were detained with convicted criminals in violation of international law. HRDC

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[114] Phone interview with HRDC, 14 September 2022.
[115] Internal circular produced by the Ministry of Justice for the benefit of the judicial process: "Policy on immigration detention for minors".
[116] Visit by Amnesty International to the Foreigners Barracks on 15 March 2022, https://www.amnesty.nl/actueel/venezolanen-bescherming-curacao
[117] Internal circular produced by the Ministry of Justice for the benefit of the judicial process: "Policy on immigration detention for minors".
[118] Internal circular produced by the Ministry of Justice for the benefit of the judicial process: "Policy on immigration detention for minors".
[119] The CRC clearly stipulates that the interests of the child should be the primary consideration. Article 3 of the CRC states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, CMW, Concluding observations on the initial report of Nicaragua, 11 October 2016, (CMW/C/NIC/CO/1) paras 39-40; Concluding observations on the initial report of Turkey, 31 May 2016, (CMW/C/TUR/CO/1), para. 47-48; Concluding observations on the initial report of Niger, 11 October 2016, (CMW/C/NER/CO/1), para. 33. See also WGAD 2018, para. 11; Inter-American Court of Human Rights, Advisory Opinion OC-21-14: Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, 19 August 2014, para. 154; Special Rapporteur on Migrants 2017, para. 61; and UNHCR, "UNHCR's position regarding the detention of refugee and migrant children in the migration context," January 2017.
[120] Article 3 of the CRC, Article 8 of the ECHR.
[121] Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, *Uitvoering van de motie Koekkoek over binnen twee maanden een schriftelijke reactie op de bevindingen uit het rapport van Amnesty International (*2021-0000671193), 6 January 2022.
[122] UN Special Rapporteur on the Human Rights of Migrants (AL NLD 2/2022), 2 March 2022.
[123] Council of Europe, *Council of Europe anti-torture Committee visits the Netherlands*, 31 May 2022, https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-carries-out-16-day-visit-to-the-netherlands

therefore initiated a law suit against the Curaçaoan government to demand their release. The first case resulted in the release of Yusmary in June 2022.[124] The court ruled that her detention was unlawful because she was detained with convicted criminals.

This opened the door to the release of other imprisoned Venezuelans receiving legal assistance from HRDC. Shortly after Yusmary's release, four other women were set free by order of the judge.[125] In the following court case, which involved five detained Venezuelan men, the judge visited Block 1 to check the conditions. She concluded that the Venezuelans had to be released immediately because they were being detained in a criminal prison under a regime that was even stricter than that of the regular prison.[126]

> **"Plaintiffs have to stay in their cell for 18 hours a day. The cells are stuffy and dark and the lights are only turned on between 7pm and 9pm. Plaintiffs are only allowed to leave their cells for six hours a day. Even during those hours, the plaintiffs have no view of the outside world, few recreational opportunities and no meaningful recreational activities. That's different with the criminal detainees."**
>
> Curaçaoan judge who visited the Foreigners Barracks in July 2022

The court ruling has strengthened the legal position for undocumented people in detention but still requires people to go to court, which is not always feasible.

The Curaçaoan government appealed against this judgement and, within just one day of the ruling, again started to detain Venezuelans in Block 1. In October a judge ruled that the detention of migrants in Block 1 was legal because the Curaçaoan authorities had proved that the conditions there had substantially improved.[127] The judge had not visited Block 1, but based his judgement on statements given by the state attorney, including a document outlining the detainees' daily schedule.[128] HRDC and their lawyer say this is the opposite of the truth, and that the Curaçaoan authorities have made only a few cosmetic improvements. One of the lawyers said: "The Curaçaoan authorities showed the court a picture of a bookcase in Block 1 to show that there is some kind of library, but in the image you couldn't see that the books were all in Dutch and therefore useless for the Venezuelans."[129] Their clients tell them that the conditions remain inhumane, with a lack of fresh air, no view of the outside and large numbers of mosquitoes.[130]

The Curaçaoan government has completed the construction of the new Foreigners Barracks at SDKK prison and was planning to phase them in, starting in November 2022. During that month a group of 23 Venezuelans were put into the new barracks, even though there had not been an official inauguration nor a phased opening, During visits in March and October 2022, Amnesty International observed that the design of the new barracks included more space and ventilation, and there were rooms for legal and medical assistance. But some fundamental concerns remain: the new buildings do not make the detention lawful since people continue to be automatically and arbitrarily detained simply for being undocumented, The barracks are still on prison premises, and people will be locked up in their cells for a substantial part of the day. It remains to be seen if there are any improvements in the quality of the food, access to legal and medical assistance, the treatment of detainees while they are in detention, and the duration of their detention.

5.5 INVESTIGATE ALLEGATIONS OF ILL-TREATMENT



In 2021, Amnesty International documented several cases of ill-treatment during immigration detention.[131] Five Venezuelans who were shot with rubber bullets by the police brought their case to the European Court of Human Rights at the end of 2019. They challenged

[124] Curaçao.nu, *Curaçao moet Venezolaanse vrouw zonder papieren vrijlaten na tik op de vingers van de rechter: schending mensenrechten*, 22 June 2022, https://curacao.nu/curacao-moet-venezolaanse-vrouw-zonder-papieren-vrijlaten-na-tik-op-de-vingers-van-de-rechter
[125] Curaçao.nu, *Curaçao moet Venezolaanse vrouw zonder papieren vrijlaten na tik op de vingers van de rechter: schending mensenrechten*, 22 June 2022,
[126] Nos.nl. Dick Drayer, *Rechter zet streep door vreemdelingenopvang op Curaçao, regime te streng*, 15 July 2022, https://nos.nl/artikel/2436787-rechter-zet-streep-door-vreemdelingenopvang-op-curacao-regime-te-streng.
[127] Gerecht in eerste aanleg van Curaçao, *Vonnis in kort geding Stichting Human Rights Defense Curaçao vs. Het land Curaçao* (CUR202203444), 30 September 2022.
[128] Curaçao.nu, Dick Drayer, Venezolanen zonder papieren mogen weer opgesloten worden in de SDKK-gevangenis, 1 October 2022, https://curacao.nu/curacao-moet-venezolaanse-vrouw-zonder-papieren-vrijlaten-na-tik-op-de-vingers-van-de-rechter
[129] Interview with lawyer Alicia Blonk, 24 November 2022.
[130] Interview with HRDC, 14 September 2022; and Curaçao.nu, *Human Rights Defense Curaçao bezorgd om vonnis kort geding*, 3 October 2022, https://curacao.nu/human-rights-defense-curacao-bezorgd-om-vonnis-kort-geding; interview with lawyer Alicia Blonk, 24 November 2022.
[131] Amnesty International, *Still no Safety*.

their detention and the inhuman conditions in detention, including this incident. The ECtHR proposed that the involved parties reach a friendly settlement. This process is continuing at the time of publication of this report and is not publicly accessible.

In March 2022, the Curaçaoan government denied the allegations in the media. Prime Minister Gilmar Pisas said: "The report [*Still No Safety*] states that rubber bullets were fired at a Venezuelan individual in detention. Without the context it looks as though this person was shot because he is a migrant. However, the reality is that this happened when a group of detained Venezuelans set a fire. When the guards entered, they were attacked. Therefore, action had to be taken. And if it had not happened, it would have become much worse."[132] The Venezuelan men strongly deny these accusations of arson. There have been no media reports of a fire on the date of the shooting incident (though there are reports of a fire more than a week prior to that).[133] For this reason, it remains essential for an independent body to conduct a thorough investigation into the excessive use of force.

This has not been the only report of ill-treatment of Venezuelans while in detention. Juan told Amnesty International that he was beaten by a guard in February 2021, resulting in a ruptured eardrum. He has not been able to make a formal complaint because the SDKK has still not produced a complete medical report, despite multiple requests. [134]

There are two supervisory institutions for immigration detention. One is the Arrestee Care Committee, established by the Minister of Justice as an independent committee to monitor the "quality of the care for detainees".[135] It has not published any new reports on immigration detention since 2020.[136] The government has indicated that there is also a new Supervisory Committee on Immigration Detention,[137] but its composition and mandate remain unclear. Amnesty International contacted both institutions between March and August 2022 but has not received responses from either of them.

[132] Antilliaans Dagblad, *Oneens met Amnesty*, 10 March 2022, https://antilliaansdagblad.com/nieuws-menu/25330-oneens-met-amnesty
[133] Dolfijn FM, *Brand in vreemdelingenbarak*, 2 June 2022, https://dolfijnfm.com/brand-in-vreemdelingenbarak
[134] Interview with Juan, 28 July 2022.
[135] De Gouverneur van Curaçao, *Landsbesluit (2014/058153)*, 23 January 2015.
as well as monitoring the quality of care for other detainees who fall under the responsibility of the Minister of Justice"
[136] Commissie Monitoring en Toezicht politiecellen Curaçao, Rapportages van de commissie, https://toezichtarrestantenzorg.cw/rapportages
[137] Interview and correspondence with the Curaçaoan Ministry of Justice between April and November 2022.

6. CIVIL SOCIETY

Oversight bodies and civil society organisations play an essential role in the promotion and protection of human rights. They are an essential tool enabling individuals to work towards the elimination of human rights violations and to hold those responsible to account.[138] The *Still no Safety* report showed that the Curaçaoan authorities did not facilitate or cooperate with civil society or other relevant stakeholders. They scarcely shared any key information about their migration policy, either publicly or in their correspondence with Amnesty International. Amnesty International therefore called on the Curaçaoan government to:

- engage in constructive dialogue and cooperation with stakeholders, such as the Ombudsman, advisory bodies and human rights organizations.
- ensure that data, regulations and other relevant documents are communicated transparently; and make this information available and accessible to the public.

6.1 COOPERATE WITH STAKEHOLDERS



Different stakeholders such as Human Rights Defense Curaçao, Venezolanos en el Exterior (Venex) and the Ombudsman have indicated that they are not engaged in constructive dialogue with the Curaçaoan authorities, despite having contacted them multiple times. HRDC's relationship with the government varies depending on the circumstances. In some cases there is open dialogue, such as during the Roundtable on Inclusive Migration and Integration;[139] in other cases – such as concerning access to the Foreigners Barracks – the relationship is unpredictable.[140] No formal and regular cooperation exists. However, the Curaçaoan authorities told Amnesty International that they are working on a protocol to formalize their cooperation in the field of legal assistance with an NGO. Neither VENEX nor HRDC have been approached by the authorities to provide legal assistance.[141] From October 2010 to June 2017, UNHCR in Curaçao granted international protection to people who had fled Venezuela. But in 2017 the government of Curaçao decided to take on this responsibility itself, and established a Protection Procedure based on Article 3 of the ECHR. Now UNHCR is still active in Aruba, but not in Curaçao.

As stated in section 5.5, between March and August 2022, Amnesty International contacted the two institutions tasked with oversight of immigration detention – the Supervisory Committee on Immigration Detention and the Arrestee Care Committee – to ask for information about their work. Neither have responded, and none of these bodies have made any information on detention conditions or complaints by detained migrants in the last year publicly available. The Ombudsman has never received any response from either the government or the parliament to his reports or letters of concern regarding the treatment of irregular migrants and the Article 3 Protection Procedure.[142]

[138] United Nations General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144).
[139] Amigoe, *Helft aanvragen Integrashon Responsabel gehonoreerd*, 3 September 2022.
[140] Curaçao.nu, *Human Rights Defense Curaçao krijgt wederom geen toegang tot vreemdelingenbarakken*, 30 May 2022, https://curacao.nu/human-rights-defense-curacao-krijgt-wederom-geen-toegang-tot-vreemdelingenbarakken
[141] Interview with VENEX, 6 September 2022. Phone interview with HRDC, 14 September 2022.
[142] Ombudsman, *Zorgbrief met betrekking tot het vreemdelingenbeleid (2109) ex. artikel 3 EVRM,* 30 September 2020; Ombudsman, *Onderzoek naar de rol van de minister van justitie in het kader van het Curaçaose vreemdelingen c.q. vluchtelingenbeleid* (201700427_49), 28 June 2018; Paradise FM, *Zorgbrieven Ombudsman niet behandeld*, 21 July 2021, https://paradisefm.cw/zorgbrieven-ombudsman-niet-behandeld

6.2 MAKE DATA TRANSPARENT AND PUBLICLY AVAILABLE



There is scarcely any political debate or public information about this situation. The only information that could be found was a question from a Curaçaoan Member of Parliament to the government about the Integrashon Responsabel program:[143] why it had not met its objectives and why there are no figures available.[144] The government's response has not been published, nor has any other information about this programme. During a meeting organized by HRDC, the government did indicate that about half of the requests for the programme would be honoured.[145] When Amnesty International asked the government to provide these figures, they did share the information with the organization, but this information is not publicly available.

Amnesty International has not been able to find any specific policy documents online, nor any regulations or government data related to immigration detention, the Article 3 Protection Procedure or to people who live undocumented in Curaçao. Laws and court decisions are the only publicly available information. Upon request, civil servants shared Information with Amnesty International – which is an improvement since the previous research. But the authorities need to take many more steps to ensure that data is publicly accessible and that their policies and actions are transparent.

[143] See also paragraph 4.3 of this report: "Adopt a humanitarian approach".
[144] Parlemento di Kòrsou, *Preguntanan konforme artíkulo 96 di Reglamento di Ordu, tópiko: Indokumtadonan no por kontinuá biba i traha ilegal*, 11 May 2022.
[145] Amigoe, *Helft aanvragen Integrashon Responsabel gehonoreerd*, 3 September 2022.

7. CONCLUSIONS AND RECOMMENDATIONS

More than a year after Amnesty International published *Still no Safety: Venezuelans Denied Protection in Curaçao*, the organisation still has serious concerns about the situation of Venezuelans seeking protection in Curaçao. Curaçao, a constituent country of the Kingdom of the Netherlands, did not not join the UN Refugee Convention and therefore does not offer international protection under this convention. People can seek international protection in Curaçao under Article 3 of the ECHR, which stipulates: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." This also includes the principle of non-refoulement, a principle binding on all states prohibiting them from sending anyone, in any manner whatsoever, to a place where they would be at real risk of serious human rights violations.

However, the authorities are using the Article 3 ECHR Protection Procedure as a vehicle to reject protection claims: they act as though Venezuelans are not at risk of torture or inhuman or degrading treatment or punishment, which defeats its purpose. The Curaçaoan authorities have not granted protection to a single person since they introduced the new Protection Procedure in 2019. For those seeking protection, access to information and legal assistance are not yet guaranteed. Curaçao continues to place adults and children in immigration detention automatically and without any judicial review. The inhuman conditions in which they are held, such as being imprisoned in a cell for most of the day and a lack of hygiene products and recreational activities, remain a deterrent to people initiating the Protection Procedure or following it through.

For more than a year, Amnesty International followed up the cases of four men and one woman whose stories had been included in the 2021 *Still no Safety* report, and interviewed them again between December 2021 and October 2022. Their situation in the last year has not improved and in some cases has worsened, such as that of Juan, who is still waiting for an independent investigation into the alleged ill-treatment he suffered in the Foreigners Barracks in February 2021, or Yusmary, who was in immigration detention for five months.

Amnesty International acknowledges that the authorities have taken small steps to address the situation: the Curaçaoan government has made some effort to improve the quality of interviews and assessments of protection needs; access to legal assistance has slightly improved; and new and better facilities have been built to improve conditions in the immigration detention centre, the Foreigners Barracks. But most of their plans to bring their policy into line with international human rights standards – such as by improving access to information, legal assistance and a complaints procedure for people in immigration detention – have not been implemented. Any improvements are the result of pressure from civil society organizations like the local NGO, HRDC, and regional bodies such as the CPT, rather than the efforts of the Curaçaoan authorities.

Amnesty International encourages the Curaçaoan government to significantly increase their efforts to improve the human rights situation of Venezuelans seeking protection in Curaçao. The organization reiterates the recommendations included in the *Still no Safety* report listed below.

PROTECTION PROCEDURE

- Refrain from detaining and deporting anyone until their claim for protection has been promptly, individually, fairly and effectively assessed – and enshrine these obligations in legislation.
- Implement protection measures, adopt a humanitarian approach and expedite access for Venezuelans to legal residency while strengthening the Protection Procedure. In the meantime, ensure that people who are in the Protection Procedure and migrants in an irregular situation are provided with basics such as shelter, food and adequate healthcare.

- Have a transparent migration and protection policy that is legally binding and in line with international standards. This involves examining protection claims on their merits in a fair and effective protection process, compliant with all procedural and substantive safeguards, such as provision of information, good quality translation/interpretation, access to legal aid and access to an effective remedy against a negative decision. The effective remedy should include having the effect of suspending any deportation decision.
- Ensure that all foreign nationals in need of protection can access the Protection Procedure, regardless of how and when they arrived on the island, and that no person is deported to a place where they are at real risk of serious human rights violations, thereby violating the principle of non-refoulement.
- Cooperate with and request assistance from the Dutch government to strengthen the international protection framework – in particular to provide free legal assistance to people in immigration detention.

IMMIGRATION DETENTION

While Amnesty urges the Curacao authorities to refrain from detaining people seeking protection and enshrine in legislation a presumption against detention, pending these reforms, the organization reiterates the following recommendations to the Curaçaoan government.

- Ensure that any detention decision and detention conditions are automatically and regularly reviewed by a court or similar competent, independent and impartial body.
- Ensure that all detained migrants are informed about their rights in their own language when they are arrested, in the police station and at the detention centre. Refrain from making them sign a deportation order in Dutch before being allowed to apply for protection.
- Ensure that in all decisions relating to children, the best interests of the child are the primary consideration.
    - Stop the detention of children and separation from their parent(s) and/or legal guardian(s), regardless of their immigration status.
    - When the government proves that migration enforcement measures that restrict human rights are necessary and proportionate, apply non-custodial measures to the entire family.
    - Enshrine the rights of undocumented children in legislation, and develop policy to better protect their rights.
- Ensure that detained migrants and people seeking protection have unfettered access to legal assistance while in detention and that free legal aid is provided to anyone who cannot afford their own lawyer.
- Always consider non-custodial, more humane alternatives to detention and include them in legislation. In the meantime, improve conditions in the Foreigners Barracks and adopt a humane approach to detained foreigners. Refrain from detaining migrants and people seeking protection with convicted prisoners.
- Ensure that allegations of ill-treatment, excessive use of force or any other abuses during arrests or in immigration detention are investigated promptly, effectively, independently and impartially by an independent body. Perpetrators should be brought to justice, and victims should receive reparations.
- Conduct an independent, impartial, prompt and thorough investigation into the firing of rubber bullets by police officers in the Foreigners Barracks during April 2019. Ensure the participation in any inquiry of the Venezuelans who were present at the incident, and ensure that the findings are made public.

CIVIL SOCIETY

- Engage in constructive dialogue and cooperation with stakeholders, such as the Ombudsman, advisory bodies and human rights organizations.
- Ensure that data, regulations, and other relevant documents are communicated transparently, and make this information available and accessible to the public.

Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

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CURAÇAO: LITTLE IMPROVEMENT IN THE PROTECTION OF VENEZUELANS

In this report Amnesty International has found that the situation of Venezuelans seeking protection in Curaçao has not substantially improved since it published the report Still no Safety in 2021. Despite the small steps the Curacaoan authorities have taken, they continue denying protection to Venezuelans and detaining them automatically, inhuman conditions, including children.

Amnesty International calls on the Curaçaoan authorities to guarantee the rights of Venezuelans seeking protection. Authorities should set up and ensure access to a fair and effective asylum procedure that meets international standards. As a matter of urgency, they should end the automatic detention of people seeking protection, and immediately stop the detention of children, as it is never in their best interest. The government of the Netherlands should assess the human rights risks of the support they provide to Curaçaoan authorities and establish binding human rights safeguards.

INDEX: AMR 05/6404/2023
FEBRUARY 2023
LANGUAGE: ENGLISH
amnesty.org

AMNESTY INTERNATIONAL