

The Kingdom of the Netherlands and the International Protection of (Asylum) Migrants

ALLOCATION OF RESPONSIBILITIES AND OPPORTUNITIES FOR COOPERATION

NOTIFICATION



Adviescommissie voor
Vreemdelingenzaken

The ACVZ

The Advisory Committee on Migration Affairs (ACVZ) consists of ten experts. The ACVZ is an independent advisory body in the Netherlands that was established by law. The committee advises the Dutch government and parliament on migration, researches policy and legislation and indicates where improvements can be made. The ACVZ issues practical, targeted advice to solve existing and expected problems.

Colophon

Notification 'the Kingdom of the Netherlands and the International Protection of (Asylum) Migrants'

Publication of the ACVZ, The Hague, 2019

ISBN: 978-90-8521-081-8

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Summary

The crisis in Venezuela is leading to a rise in emigration. A small portion of which travels to Aruba, Curaçao and Bonaire. Criticism has been raised about how the Kingdom of the Netherlands as a whole, as well as the individual countries within the Kingdom, are handling Venezuelan migrants.

Following this reporting, the ACVZ inventoried the information available on migration law and policy within the relationships of the Kingdom. The results of this inventory are outlined in this advisory report. The ACVZ addresses the following questions:

- Within the Kingdom, how are the responsibilities for international protection and migration divided?
- To what extent can the countries within the Kingdom cooperate in this area?

The division of responsibilities within the Kingdom

The division of responsibilities within the Kingdom is regulated in the Charter for the Kingdom of the Netherlands (Statuut voor het Koninkrijk der Nederlanden). It is relevant for migration policy that the Kingdom is responsible for:

- maintaining the independence and the defence of the Kingdom;
- concluding treaties;
- regulating Dutch nationality;
- establishing the terms and conditions for the admission and expulsion of foreign nationals.

International treaties relating to migration policy are applicable in all of the countries of the Kingdom, with the exception of the Refugee Convention (Vluchtelingenverdrag), which is not in force in Curaçao and St Maarten.

The constituent countries of the Kingdom have significant autonomy to pursue their own migration policy and, as such, are primarily responsible for this. The autonomy is limited by obligations arising from international treaties and by laws of the Kingdom (the Charter for the Kingdom of the Netherlands and Kingdom laws). Provided that strict assessment criteria are met, the Kingdom may intervene if one of the constituent countries does not comply with international rules or violates human rights when implementing its migration policy.

Opportunities for the constituent countries of the Kingdom to cooperate

The Charter provides sufficient opportunities for the countries within the Kingdom to cooperate on international protection and migration. Though cooperation has been under discussion since 2015, it is still modest with regard to the protection and reception of Venezuelan migrants. It bears noting that the efforts of the country of the Netherlands with regard to Venezuelan migrants in Aruba, Curaçao and Bonaire are so far unrelated to the comprehensive migration agenda of the Third Rutte cabinet.

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1. Background

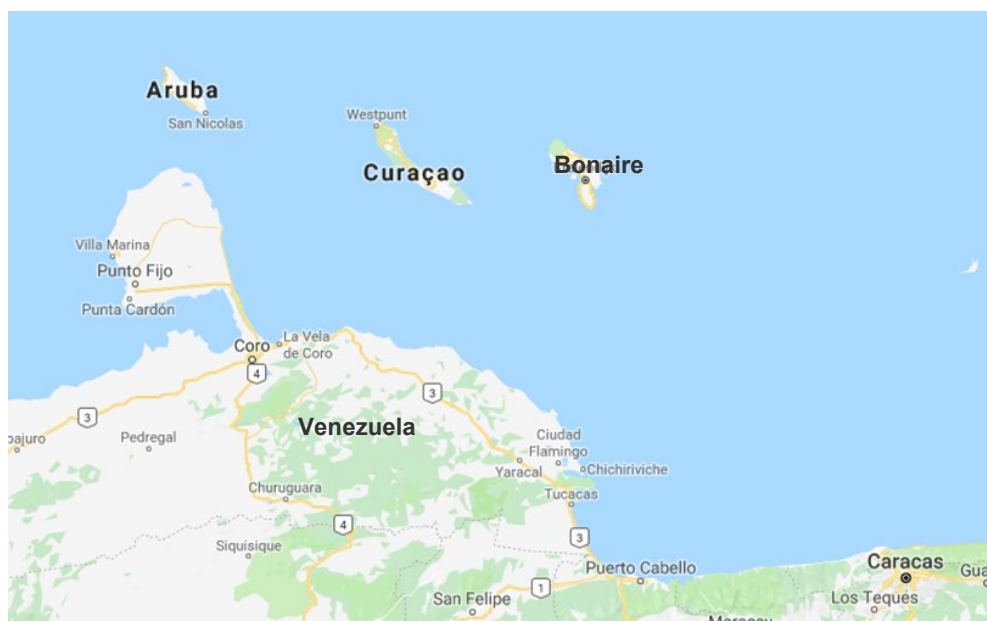
The crisis in Venezuela is leading to rising emigration.

Venezuela has been in political and economic crisis for several years now, with a resultant rise in its emigration figures. In March 2019, the Office of the United Nations High Commissioner for Refugees (UNHCR) reported that an estimated 3.4 million Venezuelans live outside of Venezuela, of which more than 2.7 million have left their country just since 2015. Of these migrants, 90% live in South America.¹ In 2018, Venezuelans submitted more than 248,000 asylum applications worldwide. To date, Venezuelans have submitted a majority of their requests for asylum in Peru, Brazil, the United States and Spain. In addition, more than 1.3 million Venezuelans have obtained legal residency via another method in one of the neighbouring countries, of which nearly 600,000 are in Colombia. According to the UNHCR, however, an estimated 60% of Venezuelan migrants are living in an irregular situation. The United Nations has announced that it will require \$738 million in 2019 to assist the countries that neighbour Venezuela with receiving refugees and migrants.²

A small portion of the Venezuelan emigration travels to Aruba, Curaçao and Bonaire.

Aruba and Curaçao, two constituent countries of the Kingdom of the Netherlands,³ as well as the public entity Bonaire are in close proximity to Venezuela (see Figure 1).

Figure 1. Map of Venezuela, Aruba, Curaçao and Bonaire



Source: Google maps



Traditionally there are many ties—both economical and social—between the three islands and Venezuela.⁴ Since 2017, the number of Venezuelans staying on the islands has been growing. According to the UNHCR, there were 679 Venezuelan asylum seekers in Curaçao on 31 December 2017; and 78 in Aruba on 30 April 2018. Estimates on the number of Venezuelan migrants residing irregularly in Curaçao and Aruba vary. In September 2018, the government of Curaçao estimated that 6,000 Venezuelans were residing on the island. On 19 February 2019, the Red Cross estimated the number of Venezuelans in Curaçao to be 26,000 and 16,000 for Aruba.⁵ Most Venezuelans enter the country legally as a tourist, but they do not leave once the free period for their stay has expired.⁶

The number of Venezuelans in Curaçao who have been refused entry and removed at the border has been on the rise since 2015. In its report *An approach to the illegal migration of Venezuelans* (Aanpak illegale migratie van Venezolanen), the Council for Law Enforcement included the following two tables on refusals at the border and removals from Curaçao, the information for which was supplied by the Curaçao Police Force (KPC):

Figure 2. Venezuelans refused entry to Curaçao and removed persons

Overview of Venezuelans refused entry by the Curaçao Police Force

Year	Men	Women	Total
2015	399	517	916
2016	663	1270	1933
2017 (March - April)	71	107	178

Overview of removals by the Curaçao Police Force

Nationalities	2013	2014	2015	2016	2017
Colombian	82	83	75	114	50
Dominican	115	112	76	46	52
Haitian	94	47	40	16	14
Jamaican	284	250	201	147	71
Venezuelan	61	124	246	539	1203

Source: Law Enforcement Council (Raad voor de Rechtshandhaving), 2018

The International Organisation for Migration (IOM) and the United Nations High Commissioner for Refugees expect the migration of Venezuelans to the Caribbean—including Aruba and Curaçao—to continue in 2019.⁷

An increase in the number of Venezuelan migrants living in Bonaire has also been noted.

Estimates point to between 200 to 1,000 irregular foreign nationals residing in Bonaire (Pro Facto, 2018, p. 4). Most of the foreign nationals enter the country legally, however, they fail to leave once the term of their free stay expires (Pro Facto, 2018, p. 74). The number of foreign nationals in detention in Bonaire has risen sharply since 2015, and this is attributed almost entirely to the increased migration of Venezuelans. In 2017, a total of 38 persons were being held in

detention in Bonaire, of which 31 were Venezuelans. By the end of October 2017, 19 people without a residence permit were detained for allegedly having committed an offence, including 14 Venezuelans. Since 2015, 50 Venezuelans have arrived in Bonaire by sea, without proof of identity before being taken into custody by the Aliens Police and being placed in detention (Pro Facto, 2018, pp. 40-41). In 2016, the number of Venezuelans who applied for a work permit in Bonaire doubled from close to 80 to 160 applicants (Pro Facto, 2018, p. 44).

Criticism has been levelled at the Kingdom of the Netherlands for how it is handling Venezuelan migrants.

Several reports have been published that criticise how the Kingdom as a whole deals with Venezuelan migrants (Human Rights Watch, 2018) (Amnesty International, 2018). The UN Human Rights Council, in its *Universal Periodic Review* in 2017, called on the Kingdom to harmonise the protection of human rights in all of its constituent parts (Advisory Council on International Affairs, 2018). In November 2018, the *Committee Against Torture (CAT)*, which monitors compliance with the United Nations Convention against Torture (Antifolterverdrag van de VN), posed a number of highly critical questions to the Kingdom (Committee Against Torture, 2018).

The Advisory Council on International Affairs (AIV) published an opinion in June 2018 in which it pointed out that safeguarding fundamental rights and freedoms is a responsibility of the Kingdom as a whole and that different international human rights standards apply to the various parts of the Kingdom (Advisory Council on International Affairs, 2018). This is problematic; all the more so because the Kingdom in its foreign policy encourages other countries to sign and abide by human rights treaties. According to the AIV, this amounts to the Kingdom of the Netherlands setting the bar lower for itself than for other countries. On 11 December 2018, the Upper House organised an expert meeting on the topic, partly in response to the publications of the AIV and Amnesty International.⁸ Following reports that the UNHCR expected the number of Venezuelan refugees arriving in the Caribbean to go up in 2019, the Lower House still saw no reason to meet a few days later.⁹

There are indications that access to the protection procedure in Curaçao is being impeded. Venezuelan migrants have received insufficient assistance on all three islands.

In addition to the Kingdom as a whole, the government of Curaçao in particular has received considerable criticism about how it handles Venezuelan migrants (Human Rights Watch, 2018) (Amnesty International, 2018). According to the international organisations above, Venezuelan irregular migrants are, in practice, being detained in Curaçao before being expelled. Apparently, they are not receiving an opportunity to apply for international protection (Ombudsman Curaçao, 2018, 3.23). The Ombudsman of Curaçao indicates that the government



response has been poor and incomplete to his requests for information about the number of persons in detention facilities for foreigners, the number of removals, the number of requests for international protection and the handling thereof (Ombudsman Curaçao, 2018, 4.9, 4.19). According to employees of the Foundation for Human Rights in the Caribbean (Stichting mensenrechten Cariben), it has been relatively peaceful for a few months since the publication of the reports by Amnesty International and the Ombudsman. However, in early 2019, the effort to detect and expel Venezuelans residing illegally was once again intensified.¹⁰

The Red Cross is deeply concerned about the situation of Venezuelan refugees in Aruba, Bonaire and Curaçao. According to this organisation, the tens of thousands of Venezuelans have inadequate food and medicine and often do not have shelter.¹¹

Curaçao denies the accusations of human rights violations and points to problems caused by the increased migration.

The government of Curaçao denies that it is violating the rights of Venezuelan migrants.¹² In a letter from September 2018, it points out that since 2012 approximately 8,000 Venezuelans have sought refuge in Curaçao and that the numbers are exerting considerable pressure on the country, which only has 160,000 residents. According to its government, Curaçao is more heavily impacted by these numbers than the far larger neighbouring countries of Venezuela. Due to the presence of thousands of irregular Venezuelans, there are problems with unfair competition on the labour market, an estimated 2,000 Venezuelan prostitutes and crimes such as human trafficking, according to the government of Curaçao. Curaçao believes that Amnesty International in its publication *Locked up and expelled* (Opgesloten en uitgezet) largely ignores the difficult situation in which Curaçao finds itself. Furthermore, in its response to this report, Curaçao has indicated that improvements are needed on several points, such as the detention facilities and access to the ECHR procedure, but that it is in compliance with international agreements, including the prohibition on refoulement.

The Netherlands notes that the Caribbean countries themselves are responsible for their migration policy, but it does offer them some assistance.

In recent years, the Dutch government's position has been that the admission of migrants is a matter for the individual country, that no large numbers of Venezuelans have arrived on the islands as of yet and that the islands are not capable of accommodating large numbers of refugees and that it concerns mainly economic migrants.¹³ The Interparliamentary Kingdom Consultation (Interparlementair Koninkrijksoverleg, IPKO) of January 2019 failed to reach an agreement on who in the Kingdom is responsible for protecting the human rights of migrants in the Caribbean countries. The parliaments of the Caribbean countries argued for joint responsibility for this protection, but Dutch parliamentarians insisted that migration policy remains the responsibility of Curaçao and Aruba.¹⁴

However, at the request of Curaçao, the Netherlands has been offering assistance since last year for coping with the situation that has arisen, including support for border control and the implementation of immigration policy.¹⁵ Multiple reciprocal visits have since taken place within the framework of that cooperation.¹⁶

In 2018, the Netherlands made €132,000 available for improving the detention facilities for foreigners in Curaçao, of which 80% was transferred at the start of 2019.¹⁷ At the beginning of January 2019, Curaçao submitted a new request for assistance due to the increase in Venezuelan migrants.¹⁸ A cooperation agreement was also concluded between the Netherlands and Curaçao in the same month, in which it was agreed in a general sense that the Netherlands would become more involved in the administration and financial management of Curaçao.¹⁹ In February 2019, the government of Aruba also submitted two official requests for assistance in the context of migration from Venezuela.

Curaçao and Aruba are participants in the Regional Refugee and Migrant Response Plan (RMRP) of the IOM and the UNHCR.

A Regional Refugee and Migrant Response Plan for Refugees and Migrants from Venezuela was launched on 14 December 2018 under the coordination of the UNHCR and the IOM.²⁰ The plan focuses on sixteen countries in the region, including Curaçao and Aruba, and consists of:

‘an operational blueprint, coordination template and strategy for responding to the needs of Venezuelans on the move and securing their social and economic inclusion in the communities receiving them.’

The RMRP contains a separate ‘Caribbean sub-regional refugee and migrant response plan.’ For 2019, this plan centres on providing emergency assistance, offering protection, socio-economic and cultural integration and capacity building.²¹

Venezuelans are generously admitted to many other neighbouring countries, but often not in accordance with the applicable treaties.

Research conducted by the Migration Policy Institute (MPI) shows that most of Venezuela's other neighbouring countries deal pragmatically with the increased migration of Venezuelans and try to hold the door open for them (Selee, Bolter, Muñoz-Pogossian & Hazán, 2019). The neighbouring countries have developed legal migration channels in a variety of ways to ensure that Venezuelan migrants can obtain legal residency status, even though, according to the UNHCR, 60% of Venezuelans who are outside of their own country are still living in an irregular situation. Some of the measures introduced by neighbouring countries have serious shortcomings in terms of coverage, duration and access to public services (Selee, Bolter, Muñoz-Pogossian & Hazán, 2019). The MPI further points out that



many of Venezuela's neighbouring countries are parties to the Cartagena Declaration on Refugees, which can serve as a basis for offering protection to Venezuelan migrants, but that in practice only Mexico uses this declaration.

The UNHCR has also observed that the circumstances leading to the emigration of Venezuelans are within the scope of the Cartagena Declaration on Refugees. This declaration was drafted in the 1980s by a colloquium of ten Central and South American countries, with the aim of formulating sustainable solutions to the refugee problems arising from the conflicts in Central America at the time. The declaration extends the definition of 'refugee' to people who have fled their country because their lives, their security or their freedom are threatened by widespread violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances that seriously disturb the public order (Amnesty International, 2018, p. 17). The Kingdom of the Netherlands is not a party to the Cartagena Declaration.

2. Purpose of this advisory report

In response to the current situation, the ACVZ has inventoried the information available on migration law and policy within the relationships of the Kingdom. The results of this inventory are outlined in this advisory report.

This advisory report provides information about:

- migration law and policies in the Caribbean countries and parts of the Kingdom;
- the position taken by the Kingdom as a whole with regard to migration law and policy in the Caribbean countries and parts of the Kingdom;
- the position of the country of the Netherlands with regard to migration law and policy in the Caribbean countries and parts of the Kingdom.

In Section 1, the ACVZ describes, based on its inventory, the circumstances under which the migration of Venezuelans to Aruba, Curaçao and Bonaire takes place. The ACVZ then answers in sections 3 and 4 the following questions:

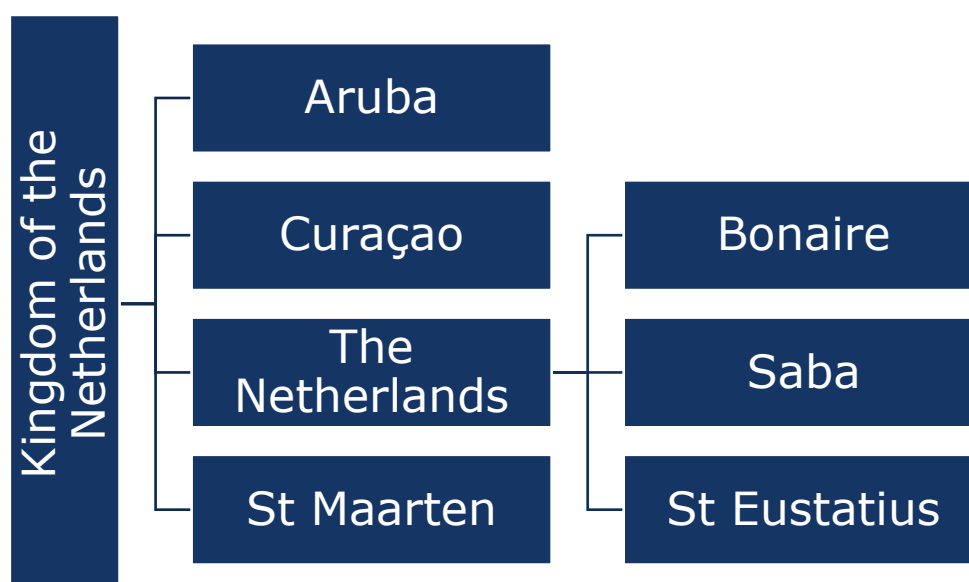
- Within the Kingdom, how are the responsibilities for international protection and migration divided?
- To what extent do the existing frameworks offer countries the opportunity to cooperate on international protection and migration?

3. Distribution of responsibilities

The division of responsibilities within the Kingdom is regulated within the Charter for the Kingdom of the Netherlands (Statuut voor het Koninkrijk der Nederlanden).

The Kingdom of the Netherlands consists of four countries: Aruba, Curaçao, the Netherlands and St Maarten. The islands of Bonaire, St Eustatius and Saba (hereinafter: BES islands) are public bodies that belong to the country of the Netherlands.

Figure 3. The Kingdom of the Netherlands as a political institution



The constitutional law of the Kingdom prioritises the autonomy of the constituent countries.²² Therefore, the four countries that make up the Kingdom are largely autonomous. The Council of State points out that the political entities 'Kingdom' and 'the Netherlands', certainly in terms of the imaging, merge easily. This is because the Kingdom has no political bodies of its own. In essence, the political bodies of the Kingdom are also the bodies of the country of the Netherlands that, within the framework of the Kingdom's function, act with due regard for certain additional procedural guarantees. According to the Council of State, this partially explains the emphasis Caribbean countries place on their own autonomy and why involvement from the Kingdom in the affairs of a country is regarded as interference by the Netherlands.²³

In Articles 3 and 43(2), the Charter exhaustively indicates which matters are the responsibility of the Kingdom as a whole.²⁴ The following provisions in Article 3 of the Charter are relevant to this subject:

- maintenance of the independence and defence of the Kingdom (Article 3(1)(a));
- external relations (Article 3(1)(b));
- Dutch nationality (Article 3(1)(c));
- establishing the terms and conditions for the admission and expulsion of foreign nationals (Article 3(1)(g)).



An act drafted by the Kingdom is referred to as a 'National Act'.

The Kingdom is responsible for maintaining the independence and defence of the Kingdom.

Firstly, Article 3 mentions 'the maintenance of the independence and defence of the Kingdom'. This means that defence has been designated as a task for the Kingdom. Consequently, the Kingdom has only one armed force. The provision is further elaborated in both the Charter and the Constitution.

Article 30 of the Charter states:

- '1. Aruba, Curaçao and St Maarten will provide the armed forces in their area with the support and assistance they require to perform their duties.
2. Regulations shall be laid down by national ordinance to ensure that the armed forces of the Kingdom in Aruba, Curaçao and St Maarten can fulfil their task.'

Furthermore, the defence of the Kingdom is largely governed by Articles 96 - 100 of the Constitution. For the Caribbean countries, the Defence Act (Defensiewet) also applies to Aruba, Curaçao and St Maarten. The result of these regulations is that the Royal Military Police and the Royal Netherlands Navy, along with immigration officials and the coastguard, perform the border controls in the Caribbean.

Only the Kingdom has the authority to conclude treaties.

Article 3(1)(b) of the Charter stipulates that external relations are a matter for the Kingdom. This means that the countries are not independently authorised to conclude treaties. Therefore, this is always performed by the Kingdom (Advisory Council on International Affairs, 2018, p. 8). However, Article 29 of the Vienna Convention on the Law of Treaties (Weense Verdrag inzake het Verdragenrecht) allows, when concluding a treaty, for the indication that it only applies to one or a few parts of the Kingdom. Article 28 of the Instructions for Regulations (Aanwijzingen voor de regelgeving) also point out that a treaty does not have to apply to all four countries. Article 27(1) of the Charter stipulates that the countries of Aruba, Curaçao and St Maarten are to be involved in the conclusion of treaties that affect them. When ratifying a treaty, the governments of Aruba, Curaçao and St Maarten are usually asked whether the treaty should also be extended to these countries. They subsequently perform an independent assessment. The governments of the BES islands are also consulted as to the desirability of the treaties being extended to them. These territorial restrictions state that the Refugee Convention does not apply to Curaçao and St Maarten, but it does apply to Aruba and the BES islands. However, both the Convention for the Protection of Human Rights and Fundamental Freedoms (also referred to as: the European

Convention on Human Rights or ECHR) and the UN Convention against Torture are applicable in Curaçao and St Maarten.

Aruba, Curaçao and St Maarten can independently become members of an international law organisation on the basis of Article 28 of the Charter if the Kingdom has concluded a treaty.

The Kingdom regulates Dutch nationality

Article 3(1)(c) of the Charter states that Dutch nationality is a matter for the Kingdom. This means that nationality law is a responsibility of the Kingdom. Dutch nationality is regulated under the Dutch Nationality Law. However, secondary legislation is possible on the national level. For example, the naturalisation test is regulated by each country. The countries also have their own 'Manual on Dutch Nationality Law', which includes policy rules.

The Kingdom has the ability to regulate the general conditions for the admission and expulsion of foreign nationals.

On the basis of Article 3(1)(g) of the Charter, the Kingdom can regulate the general conditions for admission and expulsion of foreign nationals. The National Visa Act (Rijksvisumwet) was established in 2016 on the basis of this provision. Furthermore, no use has been made of the authority provided under Article 3(1)(g) of the Charter. According to the preamble, the National Visa Act was drafted 'in light of the changed constitutional relations within the Kingdom and with a view to complying with the international obligations of the Kingdom and to combating illegal immigration'.

The explanation of the Charter states in the provision of Article 3(1)(g) that the admission policy for foreign nationals, for the most part, remains a national matter. The Kingdom must be able to lay down rules regarding the requirements foreign nationals must to meet for admission to a country. However, the government of the Netherlands cannot impose admission (Rogier & Biegelhaar, 2018, p. 28). In addition, immigration law does not fall under the principle of concordance of Article 39 of the Charter, which stipulates that the legislation referred to in that article must be regulated *mutatis mutandis* as much as possible in the Kingdom (Rogier & Biegelhaar, 2018, p. 29).

The 'National Coastguard Act for Aruba, Curaçao and St Maarten as well as for the public bodies of Bonaire, St Eustatius and Saba' provides for tasks that point to defence, foreign relations and supervision of the border and foreign nationals.

The National Coastguard Act for Aruba, Curaçao and St Maarten as well as for the public bodies of Bonaire, St Eustatius and Saba was established on the basis of Article 3(1)(a)(b) and Article 38(1)(2)(3) of the Charter. In a letter to the House dated 5 July 2017, the ministers of Foreign Affairs and of the Interior and Kingdom



Relation labelled the coastguard as 'a unique collaborative project between the four countries of the Kingdom'. On this topic, they say in the letter:

'Since 1996, this joint venture has contributed to the common interest of the countries of the Kingdom with decisive and effective action at sea within the context of maritime law enforcement in the Caribbean. This common interest is also expressed in the coastguard's duty to combat human trafficking and illegal immigration (e.g. from Venezuela). Effective cooperation with, among others, the immigration services (e.g. mutual exchange of information) is of great importance in this regard.'

'Migration policy is one of the autonomous powers of the Caribbean countries of the Kingdom. They have various instruments at their disposal within the immigration and law enforcement chain. The coastguard is one link in this chain.'

'The coastguard has a shore radar system on the Leeward Islands that support the deployment of sailing and flying units. At the Rescue and Coordination Center (RCC) on the Parera Naval Base, the shore radar system monitors the waters around the islands. They contribute significantly to detecting the boats used to smuggle people from Venezuela. The RCC coordinates the deployment of the patrol boats (cutters), the high-speed boats for the interception of vessels (Super RHIBs) as well as the air reconnaissance capacity of the DASH patrol aircraft and AW139 helicopters. In addition, the coastguard also has the station ship of the Royal Navy available to it part of the time.'

'When detecting vessels, there is a coordinated deployment of the coastguard's available resources to intercept vessels at sea. After interception, the vessel and persons found on board are transferred to one of the nautical support centres on Curaçao (Parera Naval Base) or Aruba (Savaneta Naval Barracks). There, the persons are transferred to the local National Police Agency (Korps Politie Diensten) after a security search has been performed. The countries themselves are then responsible for the further handling of the persons found, in accordance with local asylum and migration procedures.'

The countries of the Kingdom are primarily responsible for their own migration policy. The Kingdom can act as a last resort if one of the countries violates international rules and/or human rights in the implementation of its migration policy.

Articles 41 and 43 of the Charter answer the question of who is responsible for protecting human rights in the countries of the Kingdom.²⁵ Article 41(1) stipulates that the countries are to independently handle their own affairs.

Article 43 states:

- '1. Each of the countries will ensure the implementation of fundamental human rights and freedoms, legal certainty and the soundness of the governance.
2. Guaranteeing these rights, freedoms, legal certainty and good governance is a matter for the Kingdom.'

It follows from Articles 41(1) and 43(1) that Aruba, Curaçao and St Maarten are primarily responsible for protecting human rights and also have a large degree of autonomy in the choice of how to resolve these issues. However, the Kingdom also has a responsibility pursuant to Article 43(2) of the Charter and international treaties, and it has the option of intervening if a Caribbean country violates fundamental human rights and freedoms. The meaning of the concept of 'fundamental human rights and freedoms' is elaborated by human rights treaties such as the ECHR.²⁶

The possibility of the Kingdom to intervene is referred to as the 'guarantee function'. This option, however, is not to be used lightly. Regarding the possibility to intervene, the Council of State says the following:

'The official explanation for Article 43 of the Charter addresses the question of when the guarantee function of the second paragraph may be raised. From this, it can be deduced that coercive action by the Kingdom must be exercised with great restraint.'

- 1) Firstly, when assessing the soundness of the governance, the Kingdom must consider the resources available to the country.
- 2) Secondly, according to the explanation, the failure of any national body alone cannot lead to a measure being taken by the Kingdom.
- 3) Thirdly, a measure can only be considered if no redress of an intolerable situation would prove possible in the country itself.

Regarding the content of the measures to be taken, the explanation only states that an intervention should not exceed what is strictly necessary according to the circumstances and that it must always be aimed at restoring the normal situation as quickly as possible.²⁷

The Council of State, however, goes on to note:

'At the same time, the role of the Kingdom regarding the safeguarding of fundamental rights and freedoms, legal certainty and soundness of the governance is not limited to intervention only after a systematic and profound violation of these values has occurred in a country that has an untenable situation. Such an interpretation of Article 43(2) of the Charter would prejudice the intended result of the guarantee function. The 'guarantee' concept implies that the intended result is retained and not



that interventions may only take place after disasters have already occurred.'

The Council of State argues that Article 43 could serve as inspiration for cooperation and not for taking coercive measures. The Council of State also points out that waiting until an untenable situation has arisen could result in an even greater breach of the autonomy of the countries. This refers to Article 51(1) of the Charter:

'If a public body in Aruba, Curaçao or St Maarten cannot, or cannot adequately, provide what it is required to under the Charter, or an international regulation, then a national law or an Order in Council for the Kingdom can, under indication of the legal grounds and rationales on which it resides, determine how this will be provided for.'

This is referred to as the 'task observation provision'. On these grounds, the Council of Ministers for the Kingdom (Rijksministerraad) may adopt a general governmental measure if one of the countries does not, or does not sufficiently, provide what it is obliged to under international law, among other things. Intervention on the basis of this article is only possible if there is a current situation that gives rise to intervention and no other redress is possible.²⁸

Finally, Article 50(1) is relevant:

'Legislative and administrative measures in Aruba, Curaçao and St Maarten that conflict with the Charter, an international regulation, a national law or a general governmental measure or with interests whose care or guarantee is a matter for the Kingdom, may be suspended and/or destroyed by reasoned decision by the King as the head of the Kingdom. The nomination for destruction is to be made by the Council of Ministers.'

On the ground of this provision, regulations that are in conflict with, among other things, treaties can be suspended or annulled by means of a royal decree. This provision is particularly relevant because the 'procedure for protection under Article 3 of the ECHR' of Curaçao contains the rule that an application for protection may only be submitted immediately upon arrival in Curaçao and is no longer possible at a later time (see Appendix 1). According to the established case law of the European Court of Human Rights, such a provision is contrary to Articles 3 and 13 of the ECHR. The European Court of Human Rights has ruled that the absolute nature of Article 3 of the ECHR does not allow for an expulsion without 'rigorous scrutiny' of the claim for protection and an *ex nunc* review by a judge.²⁹

International treaties relating to migration law apply in all countries of the Kingdom, except in the Refugee Convention, which is not in force in Curaçao and St Maarten.

The Refugee Convention is in force in the Netherlands and Aruba. The International Covenant on Civil and Political Rights (ICCPR), the UN Convention against Torture, the UN Convention on the Rights of the Child (UNCRC) and the ECHR are in force in all of the constituent countries of the Kingdom (Advisory Council on International Affairs, 2018, Appendix 1).

Although all Dutch persons are European Union citizens, only Section 4 of the Treaty on the Functioning of the European Union applies in the Caribbean countries and parts of the Netherlands.

The Kingdom of the Netherlands in its entirety is a member of the European Union. All Dutch persons, therefore, are also citizens of the European Union. For the time being, however, the Charter of Fundamental Rights of the European Union (Handvest van de grondrechten van de EU) cannot be directly invoked by Dutch Caribbean people. Nevertheless, according to Rogier and Biegelaar, it is not inconceivable that the law on this point will change due to developments in European Union citizenship (Rogier & Biegelaar 2018, p. 179). Pro Facto considers it plausible that the Charter of Fundamental Rights of the European Union can also be applied to Union citizens in the 'overseas countries and territories' (OCTs) (Pro Facto, 2018, p. 15).

The Caribbean countries and parts of the Netherlands are designated as OCTs, so that only Section 4 of the Treaty on the Functioning of the European Union or TFEU (Verdrag betreffende de werking van de Europese Unie) applies.³⁰ Section 4 of the treaty deals with the association of the overseas countries and territories. The objectives of the association are 'to promote the economic and social development of the overseas countries and territories' and to establish close economic relations between them and the Union as a whole'. Pro Facto points out that the EU Court of Justice has increasingly applied other standards of EU law to the OCT areas, including the citizenship rights listed in Section 2 of the TFEU (Pro Facto, 2018, pp. 14 - 15).

The immigration law of Curaçao

Immigration law in Curaçao is based on the immigration law of the country formerly known as 'the Netherlands Antilles' (which was dissolved in 2010) (Deelstra, Matroos-Piar & Van Houwelingen, 2016). Since the constitutional reform of 2010, whereupon Curaçao became a country within the Kingdom, the policy on foreign nationals has only been developed to a limited extent (Rogier & Biegelaar, 2018, p. 52).

Chapter 2 of the Constitution of Curaçao describes the fundamental rights that apply to everyone, including migrants. These include the principle of equality, the submission of an application, the right to privacy, the inviolability of the body and the right to freedom (Rogier & Biegelaar, 2018, p. 22). Within the Constitution of Curaçao, Article 4(1) stipulates that the admission and expulsion of foreign



nationals must be regulated in a national ordinance. This is the National Ordinance on Admission and Expulsion (Landsverordening toelating en uitzetting, LTU).

The LTU acknowledges three categories of people who do not require a residence permit:

- certain groups of Dutch persons born in the former Netherlands Antilles and their children (for an exact description, see Article 1 of the LTU);
- persons (mainly Dutch) who are legally permitted to reside in Curaçao;
- tourists (a maximum 3 months).

The LTU applies a restrictive admission policy. This means that, subject to obligations arising from international agreements, residence permits are only granted if the stay of the foreign national serves a substantial national interest (Rogier & Biegelaar, 2018, p. 5656). The LTU does not contain any provisions pertaining to international protection. It does distinguish between expulsion (Articles 15 and 16) and removal (Article 19). Expulsion is a coercive measure against those who do not leave voluntarily once their admission expires or who present an acute danger regardless of their admission. Expulsion, which takes place on the orders of the Attorney General, has a more criminal connotation than removal (Rogier & Biegelaar, 2018, p. 132). Persons who arrived illegally or who no longer have a residence permit may be removed by the Curaçao Minister of Justice. In the event of expulsion and removal, a person can be detained if the individual concerned presents a threat to the public order, peace, safety or decency or if there is good reason to fear that the person concerned will attempt to evade his or her expulsion. Expulsion, removal and detention must take place on the basis of a reasoned order that must be hand delivered to the person in question.

For the foreign national and other stakeholders, an appeal against a rejection can be made before the Administrative Court pursuant to the National Ordinance on Administrative Jurisdiction (Landsverordening administratieve rechtspraak, LAR). Before an appeal is lodged, an optional objection can be made (Rogier & Biegelaar, 2018, p. 57). Granting access to foreign nationals at national borders also falls under the enforcement of the LTU. Helping individuals to attain unlawful access to Curaçao is considered human trafficking and is a crime (Rogier & Biegelaar, 2018, p. 63).

According to the report *An approach to the illegal migration of Venezuelans*, a 'task force on undocumented migrants' has been set up that is chaired by the prime minister and the minister of justice. This task force is responsible for monitoring irregular situations involving Venezuelan migrants. This includes border controls, tackling human trafficking, as well as an administrative approach to illegal employment and a discouragement campaign in Venezuela for young women that highlights the risk of (forced) prostitution.

Curaçao does have a procedure on paper for assessing Article 3 of the ECHR, but its implementation leaves something to be desired.

Even though Curaçao is not a signatory to the Refugee Convention, it is bound by the ECHR. Until 2017, Curaçao participated in the status determination carried out by the UNHCR. The procedure, as described by Rogier and Biegelaar in their publication *The Immigration Law of Curaçao* (het vreemdelingenrecht van Curaçao), is as follows:

- the foreign national arrives at the airport or an official port, states that he or she has fled his or her country for fear of persecution or torture and requests to stay in Curaçao;
- the immigration officer conducts an initial interview;
- if the conclusion is that the foreign national is not eligible to proceed further with the procedure and he or she cannot be sent back immediately, the foreign national will be detained. The UNHCR is then contacted, and if it holds a different opinion than the immigration officer, the foreign national will receive a residence permit for the time necessary for completing the investigation;
- if it is concluded that there may be reasons to fear a violation of article 2 or 3 of the ECHR, the Minister of Justice will be advised to grant the foreign national a temporary residence permit;
- if the conclusion is that there are reasonable grounds for accepting the foreign national's story for why he or she fled, the individual may receive a temporary permit or an attempt will be made via the UNHCR to find a country that will take in the refugee (Rogier & Biegelaar, 2018, pp. 184-185).

The cooperation with UNHCR ended in July 2017 when the government of Curaçao decided to handle status determination itself, whereby the procedure would continue along the same steps (Amnesty International, 2018, p. 28). During the same month, the Council of Ministers of Curaçao approved a procedure that would shape the assessment of an imminent violation of Article 3 of the ECHR. This procedure has since been published (see Appendix 1). As part of this procedure, an official advisory committee was established in April 2018. In April 2018, the Minister of Justice informed the Ombudsman of Curaçao that three applications for international protection had already been submitted under the new procedure. However, the report published by the Law Enforcement Council, which also appeared in 2018, mentions 94 requests for international protection (Law Enforcement Council, 2018, p. 25). The Ombudsman of Curaçao has not yet received a reply regarding his question about the state of affairs for 173 foreign nationals who were included in a Red Cross file and who received assistance from this aid agency pending the processing of their request. The government of Curaçao allegedly took over the handling of these requests once the new procedure had been initiated. The Ombudsman further states in his report that the 'procedure for protection pursuant to Article 3 of the ECHR' has not yet been elaborated, consequently, officials are able to act arbitrarily, are not sufficiently familiar with the procedure and foreigners are often refused access to the procedure. According



to the Ombudsman of Curaçao, foreign nationals have also been removed from the island without the UNHCR being consulted (Ombudsman of Curaçao, 2018). These findings are confirmed by reports from Amnesty International and Human Rights Watch, among others. In a recent newspaper report, the Caribbean Human Rights Foundation stated that Venezuelans are still being prevented from accessing the procedure for protection under Article 3 of the ECHR.³¹

Based on the report by the Law Enforcement Council, the ultimate objective of the new procedure appears to be, upon a status being granted, to request that the UNHCR resettle the refugee as quickly as possible. In the meantime, the refugee receives assistance and a temporary residence permit.³² According to the Law Enforcement Council, Curaçao is investigating the possibility of entering into bilateral agreements with several South American countries to take over asylum seekers. In addition, Curaçao has requested assistance from the IOM (Law Enforcement Council, 2018, p. 22).

The immigration law of Aruba

The first chapter of the Constitution of Aruba grants rights to everyone who is in the territory.³³ Article I.9 of the Constitution of Aruba stipulates that the admission and expulsion of foreign nationals is regulated by national ordinance. This was carried out in the National Ordinance on Admission, Expulsion and Removal (LUTV). Aruba has been part of the Kingdom as a country since 1986; therefore, it has its own development of law (Van Houwelingen, 2017). However, the national ordinance of Aruba still exhibits several similarities with those of Curaçao and St Maarten. In contrast to Curaçao, Aruba is a party to the Refugee Convention.

Article 20.2 of the LUTV stipulates that, by national decree, further rules may be established on handling a request to grant special status or protection and about the admissibility and manner of submitting the request for granting special status or protection. This article also stipulates that a decision must be made within a reasonable period. Article 19 of the Admission Decree stipulates that a person who requests special status or protection upon his or her arrival in Aruba will be granted a permit free of charge during the term in which that request is being processed. No restrictions are attached to the permit with regard to performing work for remuneration, although it may contain a notification obligation. An individual who has been refused protection must leave Aruba within thirty days. During this period, the same rights that apply to tourists apply to the individual.³⁴

Article 15 of the LUTV stipulates that persons who are not (or are no longer) legally resident in Aruba may be expelled by virtue of a reasoned order from the minister. Article 16 provides that the person concerned may be detained pending expulsion if he or she is a danger to the public order, peace, safety or decency or if there is good reason to fear that the person concerned will attempt to evade his or her expulsion. The detained person must be brought before an examining magistrate

within 72 hours. The examining magistrate, upon the request of the person concerned, may revoke the detention order at any time.

The National Ordinance on Administrative Jurisdiction in Aruba (Landsverordening administratieve rechtspraak Aruba) allows for objections and appeals to be lodged against a negative decision (a rejection).

The immigration law of St Maarten

The National Ordinance on Admission and Expulsion of St Maarten is nearly identical to that of Curaçao. After all, both countries were part of the Netherlands Antilles until 2010 and based their regulations on it (Deelstra, Matroos-Piar & Van Houwelingen, 2016).

The immigration law of the BES islands

Article 132a(4) of the Constitution of the BES islands allows for a different right within a part of the country of the Netherlands (Pro Facto, 2018, p. 13) . With the constitutional reform of 2010, the decision was made to adhere to the Antillean National Admission and Expulsion Ordinance (Antilliaanse Landsverordening Toelating en Uitzetting, ALTU) for the BES islands and to adjust parts of it to the Foreign Nationals Act (Vreemdelingenwet, Vw) and the Foreign Nationals Decree (Vreemdelingenbesluit, Vb), rather than adjusting the Foreign Nationals Act to the situation on the BES islands (Van Houwelingen, 2017, p. 12) The reason being that the guiding principle for the admission policy of the Caribbean Netherlands was that it should remain simple and practical now and in the future, also in view of the insular nature of the Caribbean Netherlands and the scale of the islands. In addition, at the time of the transition in the Netherlands, an amendment to the legislation was being prepared in the context of the implementation of the Modern Migration Policy (Modern Migratiebeleid), and it was not considered advisable to implement two major legislative amendments to the Dutch Foreigners Act within a short time frame (Pro Facto, 2018, pp. 19-20). This is how the Admission and Expulsion Act of the BES (Wet Toelating en Uitzetting BES, WTU-BES) came into being. Compared to the National Ordinances of Admission and Expulsion of the other countries, this act contains much more detailed legislation for both access and admission. These provisions primarily stem from the Foreigners Act.

The general principle of the WTU-BES is that a restrictive admission policy is to be applied. The act also contains the following five key objectives:

1. Strengthening and improving border control;
2. An asylum procedure that complies with international obligations;
3. Careful and efficient handling of admission requests;
4. Detention of foreign nationals that is properly arranged and covered by adequate guarantees;
5. A careful and humane return policy.



(Pro Facto, 2018, p. 2)

Article 12a of the WTU-BES contains provisions on recognised refugees and on protection against the violation of Article 3 of the ECHR. This provision is nearly identical to Article 29 of the Foreigners Act. The secondary legislation is shaped by the Admission and Expulsion Decree of BES, the Admission and Expulsion Regulations of BES and the Admission and Expulsion Circular of BES (Pro Facto, 2018, p. 20) 20) The Circular contains extensive rules regarding asylum (Van Houwelingen, 2017). However, asylum applications have only ever scarcely been submitted on the BES islands. In the period since the transition from 10 October 2010 to the present, no asylum applications have been granted on Bonaire.³⁵

The Royal Military Police is independently responsible for the same tasks in the Caribbean Netherlands that it is also responsible for in the Netherlands. These duties have been attributed to the Royal Military Police in Article 22a of the WTU-BES and Article 5 of the Security Act of the BES (Veiligheidswet BES). The Royal Military Police is responsible for border control and cooperates extensively with the coastguard on maritime security (Pro Facto, 2018, p. 48). The Immigration and Naturalisation Service of the Caribbean Netherlands (IND-Caribisch Nederland) is responsible for processing applications (Pro Facto, 2018, p. 3).

According to Pro Facto, Bonaire lacks programmatic or targeted supervision of foreign nationals and illegal residency and enforcement is also lacking due to the insufficient capacity. Consultation between chain partners with regard to tackling immigration policy and human trafficking has intensified and a 'Venezuela consultation' has also been established (Pro Facto, 2018, p. 54).

The Caribbean countries and parts of the Kingdom have a common Court of Justice.

The Common Court of Justice of Aruba, Curaçao, St Maarten and of Bonaire, St Eustatius and Saba is responsible for the case law in first instance and in appeals on the islands. The members of the Common Court of Justice handle, both in first instance and in appeals, civil cases, criminal cases and administrative matters.

A case being tried for the first time usually falls under the jurisdiction of the Court of First Instance, which forms an organisational part of the Court. The Courts of First Instance of Aruba, Curaçao and St Maarten are located on the respective islands; that of Bonaire, St Eustatius and Saba is located on Bonaire.

The Common Court of Justice of Aruba, Curaçao, St Maarten and of Bonaire, St Eustatius and Saba handles cases being heard on appeal that were processed and decided in the Courts of First Instance.³⁶

4. Opportunities for the constituent countries of the Kingdom to cooperate

The Charter provides opportunities for the countries within the Kingdom to work together.

As described above, the Kingdom has the option, on the basis of Articles 50(1), 51(1) and 43(2) of the Charter, to intervene in the affair of a country if international rules are being violated and/or fundamental human rights and freedoms are not being achieved. However, based on the Charter, the countries also have the option of assisting one another and working together. This is elaborated in Section 3 (Articles 36 - 40) of the Charter. Articles 36 and 38(1)(2) are particularly important in this matter.

Article 36 states:

'The Netherlands, Aruba, Curaçao and St Maarten support one another.'

Both Curaçao and Aruba have now submitted a request for assistance to the Netherlands on the basis of Article 36.

Article 38(1)(2) states:

'1) The Netherlands, Aruba, Curaçao and St Maarten may make joint arrangements.

2) It may be decided, in mutual consultation, that such a regulation and its amendment shall be established by a Kingdom Act or by Order in Council for the Kingdom.'

Article 38 does not place any restrictions on the topics that can be regulated by joint arrangement.³⁷

In addition to the Coastguard National Act, there are already two joint arrangements and a Memorandum of Understanding concerning immigration policy. As a result, the countries of the Kingdom are already cooperating intensively on migration.

Chapter 3 describes how the countries of the Kingdom cooperate intensively on the implementation of the 'Coastguard National Act for Aruba, Curaçao and St Maarten as well as for the public bodies Bonaire, St Eustatius and Saba'. In addition, Curaçao, St Maarten and the Netherlands, on behalf of the BES islands, have entered into a Joint Arrangement for a Foreign Nationals Chain (Onderlinge Regeling Vreemdelingenketen) on the basis of Article 38(1).³⁸

The first article of the arrangement states that:



'There will be close cooperation between the immigration chains of the countries. The countries will work together for the proper and effective implementation of the immigration policy and nationality law within the countries and to combat illegal immigration and trafficking in human beings.'

The aim of the arrangement is to ensure that the immigration chains of the various countries are aligned as closely as possible. For this purpose, agreements have been made on 'ICT systems, border control, admission, supervision and return, the Dutch Nationality Act, population administration and on management, implementation, reporting and monitoring.' (Pro Facto, 2018, p. 20)

In addition, all four countries have entered into joint arrangements regarding supervision of the border and foreign nationals, which is named the 'Protocol on the flexible pool of deployable Royal Military Police' (Protocol flexibele inzetbare pool KMar). The purpose of the flex pool is for the Netherlands to support the Caribbean countries by providing detective and general investigating officers (Council for Law Enforcement, 2018, p. 19). In January 2019, parties agreed that the protocol will be extended indefinitely as from 1 January 2020. The renewed protocol focuses primarily on assisting with the execution of border-related police tasks. Occasionally, a portion of the personnel capacity from the flex pool may be used temporarily for tasks in areas, such as supervising foreign nationals, that require extra capacity or the transfer of knowledge and skills.³⁹

The four countries of the Kingdom have also concluded a Memorandum of Understanding (MOU) on cooperation to prevent and combat human trafficking and illegal migration. In 2015, following an internal evaluation of the MOU by the Judicial Four-Party Consultation (Justitieel Vierpartijenoverleg), the following was decided:

'The focus in future cooperations, in particular, will be on further intensifying the exchange of information and operational cooperation between the services involved. In addition, further controls will be carried out in high-risk sectors for human trafficking, and vulnerable groups such as migrants will be better informed about their rights and options for seeking help with emerging problems.'⁴⁰

With regard to the situation within Curaçao's prison, the Order in Council for the Kingdom (algemene maatregel van rijksbestuur, amvrb) 'cooperation arrangement guaranteeing action plans for the national tasks of Curaçao and St Maarten' may be relevant. This Order in Council for the Kingdom was established on the basis of Article 38(1)(2) of the Charter and entered into force when Curaçao and St Maarten became independent countries within the Kingdom on 10 October 2010. Since then, the arrangement has been extended every two years, the last time being 10 October 2018. The cooperation arrangement, which is based on Section 3 of the Charter, aims to:

'ensure that on the date that Curaçao and St Maarten become a country within the Kingdom the national tasks that cannot yet be carried out by Curaçao or St Maarten in accordance with the agreed assessment criteria, will be carried out at a sufficient level from the date of transition and that Curaçao or St Maarten can carry out these tasks in accordance with the criteria in the long term.'

Based on this arrangement and with regard to Curaçao, there was an 'action plan for the Curaçao Police Force and the Bon Futuro Prison in Curaçao'. According to the explanatory memorandum to the decision of 12 July 2018 to authorise an extension, the Curaçao Progress Committee concluded that both the police and the prison had met their obligations to build up their organisations. A letter dated 31 May 2017 from the Curaçao Progress Committee to the Minister of the Interior and Kingdom Relations stated that, in anticipation of the Ministerial Consultation's decision on termination, the committee had terminated its activities on 1 June 2017.

The Parliamentary Papers described below also illustrate that, since 2015, the countries have been discussing scenarios and action plans in the event that the numbers of Venezuelan migrants increase. This also demonstrates that the governments of the countries of the Kingdom have sufficient opportunities to cooperate on migration. At the beginning of 2019, the House was informed that cooperation was to be intensified.

Cooperation on the international protection and reception of Venezuelan migrants is but a modest part of the existing mutual cooperation, even though this subject has been on the agenda since 2015.

Since 2015, the Lower House has regularly paid attention to the deteriorating situation in Venezuela and the potential resultant migration to Aruba, Curaçao and Bonaire. Below is an outline of the parliamentary debate since that time.

25 June 2015: The House adopts two motions, wherein the government is asked to develop scenarios together with the authorities of Aruba, Bonaire and Curaçao for coping with concerns about migration⁴¹ and in which the Dutch government is asked to urge the governments of Aruba and Curaçao to monitor illegal migration and, if necessary, to consider in consultation what role the Caribbean Coastguard could play in this.⁴²

28 July 2015: The Minister of Foreign Affairs indicates in the Lower House that, following 'initial indications of drop-by-drop migration to Curaçao', the Netherlands and Curaçao have performed an analysis and are reviewing how Curaçao and the Dutch defence organisation can cooperate in emergency situations should there be large migratory flows to the region.⁴³



29 June 2016: The cabinet reports that there is not yet a massive influx of Venezuelan migrants to the Kingdom, but the coastguard has increased the frequency of its patrols. It is also reported that there are regular consultations between the parties involved within the Kingdom (such as the ministries of Foreign Affairs, Internal Affairs and Kingdom Relations and Defence, the autonomous Caribbean Kingdom countries, the Kingdom Representative in Bonaire and the Embassy of the Kingdom of the Netherlands in Caracas) and that the frequency of these consultations has increased.⁴⁴

30 June 2016: MP Bosman (VVD party) poses questions about the quality of the reception of asylumseekers in Aruba and Curaçao and, referring to the arrest of Murray against the Netherlands, asks whether the Kingdom is responsible for poor asylum reception in the Caribbean countries. The Minister of Foreign Affairs replies that should a situation arise in which there is a migratory flow that a Caribbean country does not have sufficient capacity to handle, there is naturally an obligation to provide assistance and that the Minister of the Interior can both anticipate this and play a coordinating role. He further states that the coastguard monitors ships at sea and that foreign nationals who do not meet the conditions for residency are first placed in detention before being removed.⁴⁵ He also says that it is impossible for the small islands of Aruba and Curaçao to receive large numbers of refugees and that this is one of the aspects under review in the scenarios. In response to the debate, MP Bosman submits a motion that calls on the Dutch government to urge the Curaçao authorities to improve both the admission and screening of Venezuelans and its asylum legislation. This motion is adopted.

7 July 2016: The Minister of Foreign Affairs writes to the Lower House that 'the parliamentary delegations of Aruba, Curaçao, St Maarten and the Netherlands have called on their respective governments to intensively and proactively collaborate on the situation in Venezuela and to exchange information, both politically and officially.'⁴⁶

26 October 2016: The Minister of the Interior and Kingdom Relations again tells the Lower House that there is no trend of migration to Aruba, Curaçao and Bonaire. The Minister adds that the Venezuelans prefer to go to Brazil or the United States. He does, however, agree with MP Bosman (VVD) that in the case of the small islands of Aruba and Curaçao, several hundred migrants already constitute 'mass immigration' and that the islands do not have the capacity to receive thousands or tens of thousands of refugees.⁴⁷

12 May 2017: The ministers of Foreign Affairs and of the Interior and Kingdom Relations send a letter to the House in which they report that there is a slight uptick in the number of migrants travelling to the Caribbean countries and parts of the Kingdom and that consultations are taking place. They report that illegal migrants are being sent back, additional patrols are being performed and there is contact with the Venezuelan authorities. The ministers also report that, upon the request of Aruba and Curaçao, the UNHCR and the IOM have been contacted.

30 May 2017: During the General Consultation of 30 May following the letter, MP Ojik (GroenLinks party) asks how authorities determine whether someone is an illegal migrant or a political refugee who is eligible for asylum and protection. Ojik expresses concern that the letter from the cabinet states that those who enter illegally will be immediately expelled. In response to this question, the Minister of the Interior and Kingdom Relations initially replies that Venezuela is seen as a safe country and that people found on the coast or intercepted on the water without identification are sent back, but he says he will endeavour to return to this topic in a letter at a later date.⁴⁸

5 July 2017: The ministers of Foreign Affairs and of the Interior and Kingdom Relations send a letter in which they note the following:

'The authorities of the island nations of the Kingdom are concerned about the number of illegal Venezuelans in the island nations. There has been close contact within the Kingdom for some time to develop a crisis plan in case there is a sharp rise in migrants. They also noted that not all illegal immigrants arrive by boat. As stated earlier, the majority of the problem concerns so-called illegal 'overstay,' where a person enters the country legally but does not return at the end of his or her permitted stay. The authorities of Aruba and Curaçao are trying to discourage the arrival of illegal immigrants by, among other methods, intensifying their efforts at detection, enforcement and expulsion. Since 2016, the coastguard has intensified its patrols.'

At the time of the General Consultation on 17 May, the ministries of Internal Affairs and Kingdom Relations, Foreign Affairs, Defence and Security and Justice went on a working visit to Aruba, Curaçao and Bonaire where, among other things, the emergency plans of Aruba, Curaçao and Bonaire were considered.'

Furthermore, the letter is sufficient to describe the procedures for international protection applicable in Aruba, Curaçao and Bonaire.⁴⁹

04 September 2017: In a letter, the cabinet states that there are still no indications of a (forthcoming) significant migratory flow to the island nations and, furthermore, that the expectation that the migratory flow to the neighbouring countries of Venezuela will primarily run overland is undiminished. This does not alter the fact that there is already an increase in the number of illegal immigrants that have been arrested by the coastguard in comparison to previous years. The cabinet also reports that:

'The immigration and admission policy is the responsibility of the autonomous countries within the Kingdom. The authorities of Aruba and Curaçao are trying to discourage the arrival of illegal immigrants by,



among other methods, intensifying their efforts at detection, enforcement and expulsion. Taking into account the limited absorption capacity of the island nations as well as the applicable international treaties, the cabinet supports the restrictive immigration policy pursued in the Caribbean portion of the Kingdom.'

And:

'The Dutch services involved, as well as the authorities of Aruba, Curaçao and Bonaire, have been in close contact for some time should there, contrary to the indications, be a substantial increase in migration. As stated in the answer to the parliamentary questions posed by MP Sjoerdsma (D66 party) on 4 April 2017 (Appendix to Parliamentary Proceedings II 2016/17, no. 1565), as well as in the letters of 12 May 2017 and 5 July 2017, the Caribbean countries of the Kingdom and the Netherlands have, of course, already taken the necessary preparations and preventive measures, including the development of operational crisis plans. In addition, exchange and support is taking place not only through Dutch services, but also through international organisations such as the Red Cross, the UNHCR and the IOM.'⁵⁰

3 April 2018: The Minister of Foreign Affairs reports that he has spoken with Aruba and Curaçao about the border and migration issues that are of concern. Once more he states that both Aruba and Curaçao pursue a restrictive admission policy when it comes to Venezuelan migrants. The Minister of Foreign Affairs adds that Aruba and Curaçao find it important to quickly yet carefully distinguish between economic migrants and potential political refugees, with due consideration of the applicable international treaties, and that the Netherlands is willing to help and advice in the further development of the procedures.⁵¹

30 May 2018: During a General Consultation, the Minister of Foreign Affairs, says that it is important that a serious assessment of asylum applications takes place in all countries of the Kingdom and that the Netherlands will offer technical support in that context. He says that it is not necessary for the Kingdom to use the guarantee function of Article 43(2) within the Charter because the countries are willing to assess the asylum applications. The State Secretary of the Interior and Kingdom Relations says that he does not want conditions like those in the Mediterranean Sea and that the Netherlands would rather help Colombia to receive migrants than have them make a perilous journey by sea before being immediately arrested, held in immigration detention and 'placed in a procedure'.

12 December 2018: Motion of Upper House MPs Strik et al. concerning reception and asylum procedures within the Kingdom. In this motion, the Upper House requests that:

'The ministers of Justice and Security and of Foreign Trade and Development Cooperation and the state secretaries of Justice and Security

and of the Interior and Kingdom Relations provide adequate assistance in consultation with the Caribbean countries in the Kingdom to ensure that asylum seekers can be humanely received and can proceed through a careful and appropriate procedure, so that conflict with human rights is prevented at all times.¹⁵²

22 February 2019: The State Secretary for the Interior and Kingdom Relations also announces the motion by Strik et al. that Curaçao made an additional request for assistance on 10 January 2019 and that it is focusing on optimising the application procedure for protection on the basis of Article 3 of the ECHR, so that it is in line with international obligations. Following this, the Netherlands has offered to provide technical assistance in the short term with establishing adequate procedures and processes within various parts of the immigration chain. The Ministry of Justice and Security will provide training and educational courses. The assistance focuses on the further elaboration of the application procedure for protection on the basis of Article 3 of the ECHR, reinforcement of the immigration authorities for the identification and registration of foreign nationals and the return process. The State Secretary also announced that Aruba submitted a request for assistance on both 1 and 20 February and that the State Secretary for Justice and Security informed the government of Aruba that his ministry would provide the requested support. This concerns temporary support for the Aruban immigration chain aimed at education and training in order to optimise the asylum procedure and assist with the processing of asylum applications.⁵³

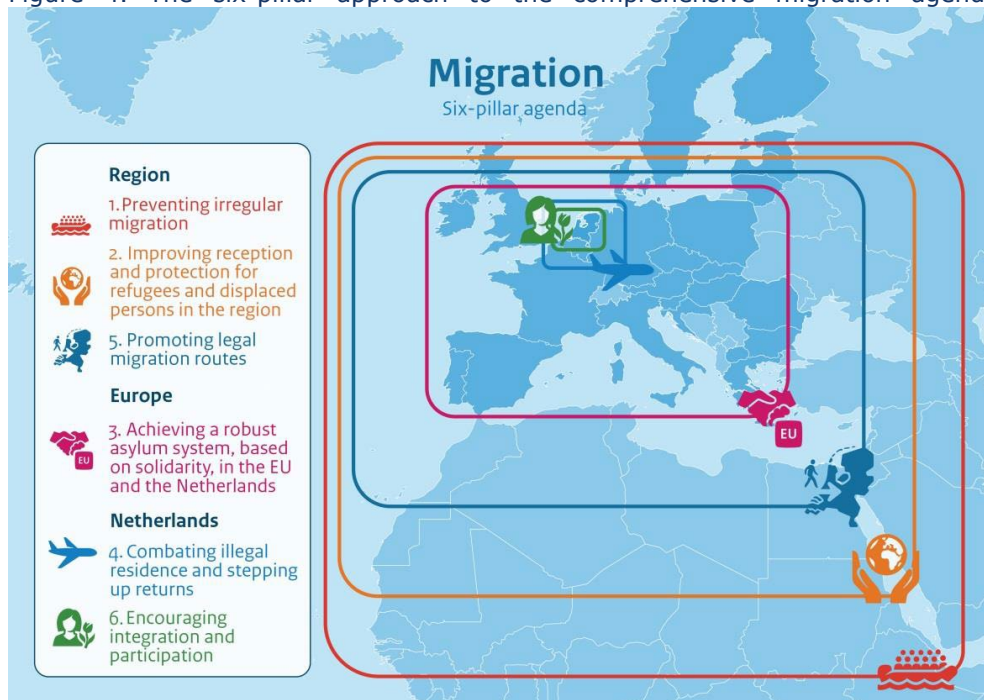
The efforts of the country of the Netherlands in relation to Venezuelan migrants in Aruba, Curaçao and Bonaire are so far unrelated to the comprehensive migration agenda of the Third Rutte cabinet.

The Third Rutte cabinet has developed a comprehensive migration agenda for the Netherlands that stems 'from the realisation that migration is a dynamic, multifaceted and complex issue'.⁵⁴ This agenda consists of six pillars:

1. Preventing irregular migration
2. Improving reception and protection for refugees and displaced persons in the region
3. Achieving a robust asylum system, based on solidarity, in the EU and the Netherlands
4. Combating illegal residence and stepping up returns
5. Promoting legal migration routes
6. Encouraging integration and participation



Figure 4. The six-pillar approach to the comprehensive migration agenda



Source: <https://www.government.nl/documents/parliamentary-documents/2018/07/10/comprehensive-agenda-on-migration>

The letter in which the cabinet presents the comprehensive migration agenda to the House has been signed by five ministers, including the Minister of the Interior and Kingdom Relations.⁵⁵ In this letter, the cabinet’s position is ‘that first and foremost a comprehensive approach means that governmental actions in different areas cannot be viewed independently from one another.’

From that point of view, it would be obvious that the government should determine its strategy for international protection and migration in the Caribbean countries and parts of the Kingdom on the basis of the strategic migration agenda. As is clear from Figure 4, pillars **1, 2 and 5** of that agenda focus on the region of the migrants, which, in this case, includes the islands. These three pillars, therefore, could help the country of the Netherlands to formulate a strategy with regard to international (asylum) protection for migrants in Aruba and Curaçao, while potentially all six pillars of the strategic migration agenda could assist with formulating a strategic policy for Bonaire. However, for reasons unknown to the ACVZ, such an approach has not been adopted thus far.

¹ <https://data2.unhcr.org/en/documents/download/68386>

² For an overview of the situation in Venezuela and the most relevant figures, see the interactive map of the UNHCR available at: <https://data2.unhcr.org/en/situations/vensit>.

³ In this memorandum, 'the Kingdom' or 'the Kingdom of the Netherlands' is used when the Kingdom as a whole is meant. The term 'the Netherlands' refers only to the country of the Netherlands. Sometimes 'the country of the Netherlands' is also used to emphasise that only the country is meant rather than the Kingdom.

⁴ *Parliamentary Papers II*, session 2014-2015, 29 653, no.18

⁵ <https://nos.nl/artikel/2272577-zorgen-rode-kruis-over-venezolaanse-vluchtelingen-op-abc-eilanden.html>

<https://caribischnetwerk.ntr.nl/2017/10/09/er-zijn-al-duizenden-venezolaanse-vluchtelingen-op-aruba/>

⁶ *Parliamentary Papers II*, session 2016-2017, 29 653, no. 33

⁷ https://www.iom.int/sites/default/files/press_release/file/rmrp_venezuela_2019_onlineversion_final.pdf p. 79

⁸ https://www.eerstekamer.nl/kamerstukdossier/nederlands_buitenlands_beleid_ten

⁹ <https://koninkrijksrelaties.nu/2018/12/18/coalitiegenoten-gunnen-d66-geen-kamerdebat->
; <http://curacaochronicle.com/politics/caribbean-islands-can-expect-greater-influx-of-venezuelans/>

¹⁰ <https://www.trouw.nl/sameteit/curacao-jaagt-op-vluchtelingen-uit-venezuela~aee9596a>

¹¹ <https://nos.nl/artikel/2272577-zorgen-rode-kruis-over-venezolaanse-vluchtelingen-op-abc-eilanden.html>

¹² <https://www.gobiernu.cw/nl/nieuws/persberichten/curacao-wijst-perceptie-mensenrechten-schendingen-af/>

¹³ *Parliamentary Papers I*, session 2017-2018, 29,653, report of an oral consultation.

¹⁴ <https://koninkrijksrelaties.nu/2019/01/09/venezuela-verdeelt-ipko-opvang-migranten-wel-of-geen-zaak-van-koninkrijk/>

¹⁵ *Parliamentary Papers II*, session 2016 - 2017, Appendix to Parliamentary Proceedings no. 1565

¹⁶ *Parliamentary Papers II*, session 2018 - 2019, Appendix to Parliamentary Proceedings no. 872963

¹⁷ *Parliamentary Papers II*, session 2018 - 2019, Appendix to Parliamentary Proceedings no. 872963

¹⁸ <https://www.volkskrant.nl/nieuws-achtergrond/curacao-wil-meer-hulp-van-nederland-bij-opvang-venezolaanse-vluchtelingen~b48fe50f/>

¹⁹ <https://nos.nl/artikel/2268494-nederland-gaat-zich-nadrukkelijker-bemoeien-met-bestuur-op-curacao.html>

²⁰ <https://www.iom.int/news/emergency-plan-refugees-and-migrants-venezuela-launched>

²¹ https://www.iom.int/sites/default/files/press_release/file/rmrp_venezuela_2019_onlineversion_final.pdf p. 77-88

²² *Parliamentary Papers II*, session 2010 - 2011, 32500-IV no. 50 (information to the Council of State for the development of a vision of the Kingdom).

²³ *Parliamentary Papers II*, session 2014 - 2015, 34000-IV, no. 52 (information to the Council of State on giving instructions to the governors of the countries in the Caribbean portion of the Kingdom.)

²⁴ *Parliamentary Papers II*, session 2014 - 2015, 34000-IV, no. 52 (information to the Council of State on giving instructions to the governors of the countries in the Caribbean portion of the Kingdom.)

²⁵ *Parliamentary Papers II*, session 2018 - 2019, 29 653, no. C.

²⁶ *Parliamentary Papers II*, session 2010 - 2011, 32500-IV no. 50 (information to the Council of State for the development of a vision of the Kingdom).

²⁷ *Parliamentary Papers II*, session 2014 - 2015, 34000-IV, no. 52 (information to the Council of State about giving instructions to the governors of the countries in the Caribbean portion of the Kingdom).

²⁸ *Parliamentary Papers II*, session 2014-2015, 34000-IV, no. 52 (information to the Council of State about giving instructions to the governors of the countries in the Caribbean portion of the Kingdom).

²⁹ M.S.S. against Greece and Belgium [ECLI:NL:XX:2011:BP4356](https://www.eclj.europa.eu/eur-lex/en/doc/2011/01/2011BP4356); M.A. against Lithuania (NJB 2019/477) [ECLI:CE:ECHR:2018:1211JUD005979317](https://www.eclj.europa.eu/eur-lex/en/doc/2018/12/2018CE:ECHR:2018:1211JUD005979317); De Souza Ribeiro against France (JV2013/860 [ECLI:CE:ECHR:2012:1213JUD00226890](https://www.eclj.europa.eu/eur-lex/en/doc/2012/12/2012CE:ECHR:2012:1213JUD00226890)); Bahaddar against The Netherlands (JV 1998/45) case no. 145/1996/764/965.

³⁰ Article 52 of the Treaty on the European Union, in conjunction with Article 355(2) of the Treaty on the Functioning of the European Union

³¹ <https://www.trouw.nl/samenleving/curacao-jaagt-op-vluchtelingen-uit-venezuela~aee9596a>

³² *Parliamentary Papers II*, session 2016 - 2017, 29653, no. 33



- ³³ https://www.overheid.aw/bestuur-organisatie/wetteksten-0101-staatsregeling-van-aruba_41326/item/0101-staatsregeling-van-aruba_5724.html
- ³⁴ https://www.overheid.aw/bestuur-organisatie/05-openbare-orde_3459/item/0503-toelating-en-uitzetting_3853.html
- ³⁵ IND written information
- ³⁶ <http://www.gemhofvanjustitie.org/>
- ³⁷ *Parliamentary Papers II*, session 2010 - 2011, 32500-IV no. 50 (information to the Council of State for the development of a vision of the Kingdom).
- ³⁸ <http://wetten.overheid.nl/jci1.3:c:BWBR0028136>
- ³⁹ *Parliamentary Papers II*, Letter to Parliament 12/02/2019.
<https://www.rijksoverheid.nl/documenten/kamerstukken/2019/02/12/kamerbrief-over-werkbezoek-bonaire-curaçao-en-aruba-20-25-januari-2019>
- ⁴⁰ *Parliamentary Papers II*, session 2014 - 2015, 28638, no. 130.
- ⁴¹ *Parliamentary Papers II*, session 2014 - 2015, 29 653, no. 19.
- ⁴² *Parliamentary Papers II*, session 2014 - 2015, 29 653, no. 20.
- ⁴³ *Parliamentary Papers II*, session 2014 - 2015, 29653, no. 23.
- ⁴⁴ *Parliamentary Papers II*, session 2014 - 2015, 29653, no. 24.
- ⁴⁵ *Parliamentary Papers II*, session 2015 - 2016, debate over the outcome of the Venezuelan elections and their consequences for the Netherlands' relationship with Venezuela.
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- ⁴⁸ *Parliamentary Papers II*, session 2016 - 2017, 29653, no. 32
- ⁴⁹ *Parliamentary Papers II*, session 2016 - 2017, 29653, no. 33
- ⁵⁰ *Parliamentary Papers II*, session 2016 - 2017, 29653, no. 34
- ⁵¹ *Parliamentary Papers II*, session 2017 - 2018, 29653, no. 38
- ⁵² *Parliamentary Papers I*, session 2018 - 2019, 35 000 VI, no. J
- ⁵³ *Parliamentary Papers II*, session 2018 - 2019, 35 000 VI, no. N
- ⁵⁴ *Parliamentary Papers II*, session 2017-2018, 19637, no. 2375
- ⁵⁵ *Parliamentary Papers II*, session 2017-2018, 19637, no. 2375. The other ministers who have signed the Comprehensive Migration Agenda include: the State Secretary for Justice and Safety, the Minister for Foreign Affairs, the Minister for Foreign Trade and Development Cooperation and the Minister for Social Affairs and Employment.

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Appendix 1. Procedure for protection under Article 3 of the ECHR of Curaçao

Procedure for protection under Article 3 of the ECHR

The country of Curaçao is a party to the European Convention on Human Rights (ECHR).

Article 3 of the ECHR specifies that: 'No one may be subjected to torture or to inhumane or degrading treatment or punishment.'

The principle of non-refoulement follows from Article 3 of the ECHR. This is an international law principle that states that a person cannot be sent back to a country where his or her life is in danger.

Now that the country of Curaçao is a party to the ECHR and is bound by this principle, the Minister of Justice responsible for the public order, security and law enforcement of Curaçao has established a procedure for foreign nationals who enter Curaçao and request protection, claiming that they cannot return to their country of origin as their life is at risk there.

Foreign nationals who travel to Curaçao and want to apply for protection in Curaçao because they cannot return to their country of origin because their life is at risk must go through this procedure before becoming eligible to receive protection from Curaçao, in the context of Article 3 of the ECHR.

The foreign national must establish sufficient plausibility as to why his or her life is at risk, thereby preventing the individual from returning to his or her country of origin.

Foreign nationals who travel to Curaçao and believe that they cannot return to their country of origin for fear of their life must go through the following procedure.

Protection procedure provided by Article 3 of the ECHR

Upon his or her arrival in Curaçao, the foreign national must immediately inform the staff of the Immigration Affairs Unit of the Border Control Department of the Curaçao Police Force (the Border Control) at the airport or harbour in Curaçao that he or she wants to request the protection of the country of Curaçao because he or she cannot return to his or her home country for fear of his or her life.

If the foreign national does NOT submit his or her request to Border Control staff upon his or her arrival in Curaçao, he or she will no longer be able to request protection later on while staying in Curaçao.

The Surveillance and Investigation Officers (Toezicht en Opsporingsambtenaren) will accompany the foreign national to a police complex for further intake regarding the foreign national's request for protection. The entire intake process takes one (1) to two (2) days.

After the intake process by the Supervision and Investigation Officers, the foreign national will be referred to the Admissions Organisation of Curaçao (Toelatingsorganisatie Curaçao, TO) to submit a written request for protection. The foreign national must go to the admissions organisation within three (3) working days after he or she has been with the Surveillance and Investigation Officers.

The request will be processed and if the information obtained from the intake process and the information from internal investigations demonstrates that the foreign national is at risk in his or her country of origin, the request for protection of the foreign national will be granted.

Honouring the foreign national's request for protection means that he or she will not be sent back to his or her country of origin. In response to his or her request for protection, the foreign national will receive a letter (a reply) from the Minister of Justice stating that he or she will receive protection for a period of one (1) year. This period can be extended once by the same period of one (1) year.

Failure to honour the request for protection will result in the foreign national having to leave Curaçao within two (2) weeks.

During the period that the foreign national is protected by the country of Curaçao, the admissions organisation will ensure that the foreign national is in contact with the United Nations High Commissioner for Refugees (UNHCR). This international organisation will ensure that the foreign national submits to it an application for refugee status.

In the event of a positive decision on the foreign national's application for refugee status, the foreign national will be repatriated by the UNHCR to a country that is a party to the Refugee Convention.

Curaçao is NOT a party to the Refugee Convention.

Should the foreign national's application for refugee status be denied, he or she must leave Curaçao within two (2) weeks.



Appendix 2. Immigration law in the Kingdom: legal framework

The Kingdom of the Netherlands

Charter for the Kingdom of the Netherlands

Dutch Nationality Act (Rijkswet op het Nederlandschap, RWN)

National Visa Act (Rijkswet op het Visum)

Coastguard Act for Aruba, Curaçao and St Maarten as well as for the public bodies Bonaire, St Eustatius and Saba

Aruba

Refugee Convention (Vluchtelingenverdrag)
International Covenant on Civil and Political Rights (ICCPR)
UN Convention against Torture (Antifolterverdrag)
United Nations Convention on the Rights of the Child, UNCRC (VN-Verdrag inzake de Rechten van het Kind)
European Convention on Human Rights, ECHR (Europese Verdrag van de Rechten van de Mens)

Treaty on the Functioning of the European Union (TFEU), part 4

Dutch Nationality Act (Rijkswet op het Nederlandschap, RWN)
National Visa Act (Rijkswet op het Visum)
Coastguard Kingdom Act of the Netherlands Antilles and Aruba

Constitution (Staatsregeling)

National Ordinance on Admission and Expulsion (Landsverordening toelating en uitzetting, LTU)
National Ordinance on Administrative Jurisdiction (Landsverordening administratieve rechtspraak)

Admission Decree (Toelatingsbesluit)

Protocol on the flexible pool of deployable Royal Military Police (Protocol flexibele inzetbare pool KMar)

Curaçao

International Covenant on Civil and Political Rights (ICCPR)
UN Convention against Torture (Antifolterverdrag)
United Nations Convention on the Rights of the Child, UNCRC (VN-Verdrag inzake de Rechten van het Kind)
European Convention on Human Rights, ECHR (Europese Verdrag van de Rechten van de Mens)

Treaty on the Functioning of the European Union (TFEU), part 4

Dutch Nationality Act (Rijkswet op het Nederlandschap, RWN)
National Visa Act (Rijkswet op het Visum)
Coastguard Kingdom Act of the Netherlands Antilles and Aruba
Constitution (Staatsregeling)

National Ordinance on Admission and Expulsion (Landsverordening toelating en uitzetting, LTU)
National Ordinance on the Employment of Foreign Nationals (Landsverordening arbeid vreemdelingen)
National Ordinance on Administrative Jurisdiction (Landsverordening administratieve rechtspraak)

Admission Decree (Toelatingsbesluit)
Island Decree on the Employment of Foreign Nationals (Eilandsbesluit arbeid vreemdelingen)

Joint Arrangement for a Foreign Nationals Chain (Onderlinge Regeling Vreemdelingenketen)
Protocol on the flexible pool of deployable Royal Military Police (Protocol flexibele inzetbare pool KMar)

Revised Instructions for Lieutenant Governors (Herziene instructies aan de Gezaghebbers, HIG) regarding LTU and the Admissions Decree Admission policy of Curaçao 2016

St Maarten

International Covenant on Civil and Political Rights (ICCPR)
UN Convention against Torture (Antifolterverdrag)
United Nations Convention on the Rights of the Child, UNCRC (VN-Verdrag inzake de Rechten van het Kind)
European Convention on Human Rights, ECHR (Europese Verdrag van de Rechten van de Mens)

Treaty on the Functioning of the European Union (TFEU), part 4

Dutch Nationality Act (Rijkswet op het Nederlandschap, RWN)
National Visa Act (Rijkswet op het Visum)
Coastguard Kingdom Act of the Netherlands Antilles and Aruba

Constitution (Staatsregeling)

National Ordinance on Admission and Expulsion (Landsverordening toelating en uitzetting, LTU)
National Ordinance on the Employment of Foreign Nationals (Landsverordening arbeid vreemdelingen)

Admission Decree (Toelatingsbesluit)
Implementation Decision on the Employment of Foreign Nationals (Uitvoeringsbesluit arbeid vreemdelingen)

Joint Arrangement for a Foreign Nationals Chain (Onderlinge Regeling Vreemdelingenketen)
Protocol on the flexible pool of deployable Royal Military Police (Protocol flexibele inzetbare pool KMar)

Revised Instructions for Lieutenant Governors (Herziene instructies aan de Gezaghebbers, HIG) regarding LTU and the Admissions Decree

The Netherlands

Refugee Convention (Vluchtelingenverdrag)
International Covenant on Civil and Political Rights (ICCPR)
UN Convention against Torture (Antifolterverdrag)
United Nations Convention on the Rights of the Child, UNCRC (VN-Verdrag inzake de Rechten van het Kind)
European Convention on Human Rights, ECHR (Europese Verdrag van de Rechten van de Mens)
Charter of Fundamental Rights of the European Union (Handvest EU)

Treaty on the Functioning of the European Union (TFEU)

Dutch Nationality Act (Rijkswet op het Nederlandschap, RWN)
National Visa Act (Rijkswet op het Visum)
Coastguard Kingdom Act of the Netherlands Antilles and Aruba

Constitution (Grondwet)

Foreign Nationals Act (Vreemdelingenwet, Vw)
Foreign Nationals Employment Act (Wet arbeid vreemdelingen, Wav)

Foreign Nationals Decree (Vreemdelingenbesluit)
Foreign Nationals Regulations (Vreemdelingenvoorschrift)
Foreign Nationals Employment Act (Wav)

Joint Arrangement for a Foreign Nationals Chain (Onderlinge Regeling Vreemdelingenketen)
Protocol on the flexible pool of deployable Royal Military Police (Protocol flexibele inzetbare pool KMar)

Foreign Nationals Circular (Vreemdelingen-circulaire)

Bonaire, St Eustatius and Saba

Refugee Convention (Vluchtelingenverdrag)
International Covenant on Civil and Political Rights (ICCPR)
UN Convention against Torture (Antifolterverdrag)
United Nations Convention on the Rights of the Child, UNCRC (VN-Verdrag inzake de Rechten van het Kind)
European Convention on Human Rights, ECHR (Europese Verdrag van de Rechten van de Mens)
-
Treaty on the Functioning of the European Union (TFEU), part 4

Dutch Nationality Act (Rijkswet op het Nederlandschap, RWN)
National Visa Act (Rijkswet op het Visum)
Coastguard Kingdom Act of the Netherlands Antilles and Aruba

Constitution (Grondwet)

Admission and Expulsion Act of the BES (Wet toelating en uitzetting BES)
Foreign Nationals Employment Act of BES (Wet arbeid vreemdelingen BES)

Admission and Expulsion Decree of the BES (Besluit toelating en uitzetting BES)
BES Admission and Expulsion Regulation (Regeling toelating en uitzetting BES)
Decree implementing the Foreign Nationals Employment Act of the BES (Besluit uitvoering wet arbeid vreemdelingen BES)

Joint arrangement foreign nationals chain (vreemdelingenketen)
Protocol on the flexible pool of deployable Royal Military Police (Protocol flexibele inzetbare pool KMar)

Admission and Expulsion Circular of Bonaire, St Eustatius and Saba (Circulaire toelating en uitzetting Bonaire Sint Eustatius Saba)