ECRE COUNTRY REPORT 2002: THE NETHERLANDS

ARRIVALS

1. Total number of individual asylum seekers who arrived, with monthly breakdown and percentage variation between years:

Table 1:

Month	2001	2002	Variation +/-(%)
January	3,697	2,377	-35.7
February	2,805	1,972	-29.7
March	3,086	1,950	-36.8
April	2,781	1,767	-36.5
May	2,549	1,590	-37.6
June	2,219	1,479	-33.3
July	2,475	1,419	-42.7
August	2,462	1,350	-45.2
September	2,551	1,432	-43.9
October	3,401	1,374	-59.6
November	2,399	1,037	-56.8
December	2,154	920	-57.3
TOTAL	**32,579**	**18,667**	**-42.7**

Source: IND.
Comments: The restrictive asylum policy of the Dutch government is probably the most important reason for the decrease in the number of asylum applications (especially the high percentage of rejections in the accelerated procedure and the strict policy for unaccompanied minors).

2. Breakdown according to the country of origin/nationality, with percentage variation:

Table 2:

Country	2001	2002	Variation +/-(%)
Angola	4,111	1,891	-54.0
Sierra Leone	2,405	1,620	-32.6
Afghanistan	3,614	1,077	-70.2
Iraq	1,329	1,022	-23.1
Iran	1,519	665	-56.2
Turkey	1,400	638	-54.4
Nigeria	401	556	+38.7
China	703	541	-23.0
Others	*17,097*	*10,657*	*-37.7*
TOTAL	**32,579**	**18,667**	**-42.7**

Source: IND.
Comments: The numbers of asylum seekers from Angola, Sierra Leone and Afghanistan decreased dramatically in the period from May to December 2002, the reason for the decrease in applications from the latter two countries being that the general protection policy for Afghanistan and Sierra Leone ended in the summer of 2002.

3. Persons arriving under family reunification procedure: 549 (2001: 512).

Source: IOM Annual report.

Comment: It is likely that this number is inconclusive, since there may be people who travelled without the help of the IOM.

4. Refugees arriving as part of a resettlement programme: 159 (2001: 284).

Source: IOM.

5. Unaccompanied minors: 3,233 (2001: 5,950).

RECOGNITION RATES

6. The statuses accorded as an absolute number and as a percentage of total decisions:

Table 3:

Status	2001				2002			
	First instance		Appeal		First instance		Appeal	
	Number	%	Number	%	Number	%	Number	%
No status awarded	30,385	89.8	26,036	89.2	31,361	85.3	30,210	90.0
Convention status	176	0.5	566	1.9	244	0.7	644	1.9
'Humanitarian protection'	3,282	9.7	2,591	8.9	5,161	14.0	2,696	8.0
TOTAL	**33,843**	**100**	**29,193**	**100**	**36,766**	**100**	**33,550**	**100**

Source: UNHCR.

7. Refugee recognition rates (1951 Convention: as an absolute number and as a percentage of total decisions) according to country of origin, at first instance and appeal stages:

Figures unavailable.

RETURNS, REMOVALS, DETENTION AND DISMISSED CLAIMS

8. Persons returned on safe third country grounds: Figures unavailable.

9. Persons returned on safe country of origin grounds: Figures unavailable.

10. Number of applications determined inadmissible: Figures unavailable.

11. Number of asylum seekers denied entry to the territory: 1,776 (2001: 2,653).

This number refers to the total number denied entry at one application centre (Schiphol Airport).

12. Number of asylum seekers detained, the maximum length of and grounds for detention:

Asylum seekers who are denied entry to the territory may be detained at the border. This mostly occurs at the main Schiphol airport serving Amsterdam. After being rejected at the application centre at Schiphol they may be transferred to a detention centre (Grenshospitium) in Amsterdam. In 2002 there was also a detention centre in Hoorn, which is now closed. Some asylum seekers remain at the detention centre while going through the asylum procedure, and they may be detained until their expulsion. There is no maximum length of detention prescribed by law, and the average stay in the Grenshospitium in 2002 was around forty-one days. However, there were twenty-three cases in which asylum seekers were detained for between 116 and 442 days. In the year 2002 there were 210 places in border detention, and a total of 1,317 asylum seekers (among them 101 children) stayed in border detention.

Asylum seekers who are not denied entry to the Netherlands may be detained when they are no longer lawfully resident in the country. This detention has no maximum length, but in most cases the asylum seeker will be released if they have not been expelled after six months in detention. It is also possible to detain an alien who is still lawfully resident in the Netherlands, the maximum length of this form of detention being four weeks. The numbers of asylum seekers detained on these grounds is not available.

13. Deportations of rejected asylum seekers: 2,276 (2001: 2,112).

14. Details of assisted return programmes, and numbers of those returned: 380 (2001: 107).

- Forty-three persons returned to northern Iraq through the IOM, and one person to central Iraq.
- 205 ethnic Albanians returned to Kosovo through the IOM.
- Thirty-seven Angolans returned to Angola through the IOM.
- Ninety-four Afghans returned to Afghanistan through the IOM.

15. Dublin Convention practice comments:

15.1 Dublin Convention practice:

Table 4:

	Total number of requests presented by the Netherlands to other Dublin States	Total number of requests addressed to the Netherlands by other Dublin States
Requests presented	1,689	1,317
% of requests in total number of applications	9.0	7.1
Requests accepted	764	-
% of requests accepted in requests presented	45.2	-
Requests refused	189	-
% of requests refused in requests presented	11.2	-
Requests under Article 9	-	-

Source: IND.

15.2 Requests by country:

Table 5:

Country	Number of requests presented by the Netherlands to other Dublin states	Number of requests addressed to the Netherlands by other Dublin states
Austria	341	-
Belgium	120	-
Denmark	15	-
Finland	11	-
France	145	-
Germany	711	-
Greece	87	-
Ireland	3	-
Italy	108	-
Luxembourg	2	-
Portugal	34	-

Spain	28	-
Sweden	17	-
United Kingdom	24	-

Source: IND.

SPECIFIC REFUGEE GROUPS

16. Developments regarding refugee groups of particular concern:

Afghanistan

Until 15 September 2002, when the Second Chamber of Parliament approved two policy alterations, decisions on Afghan applications had been postponed. After this time Afghans no longer qualified for a permit to stay on account of the general situation in Afghanistan; and decisions on Afghan individuals' cases were resumed. A protest from the Dutch Refugee Council against these policy changes on the grounds of a continual unstable situation in Afghanistan was in vain. From 15 September 2002 the Immigration Service also started rejecting some new Afghan applications in accelerated procedures. Ultimately the courts accepted both the policy changes as well as the principle that under due circumstances an Afghan case may be rejected in an accelerated procedure. It is noteworthy that rejections of Afghan cases did not lead to expulsions until a Memorandum of Understanding was signed between Afghanistan, the Netherlands and UNHCR on 18 March 2003. Nonetheless, the Immigration Service has started withdrawing the statuses of those who cannot yet be expelled.

Iraq

At the beginning of 2002 the Dutch authorities still held the position that all Iraqis who did not fear individual persecution could return to Iraq. Throughout the year the distinction between asylum seekers from central (and southern) Iraq and those originating in the Kurdish area in the north of the country became important.

Central and southern Iraqi asylum seekers:
Iraqis from central Iraq were supposed to enjoy an internal relocation alternative in northern Iraq, regardless of the ties they did or did not have with the Kurdish region. Only after the Kurdish *de facto* authorities issued a clear and unrebutable declaration that they would not allow any person from central Iraq to northern Iraq was a moratorium on returns introduced for asylum seekers from central Iraq in May 2002. This implied that all central Iraqi asylum seekers could apply for reception conditions, including if their case were rejected. The Minister for Aliens Affairs hoped that he could reach an agreement with the Kurds in northern Iraq about allowing central Iraqis from the Netherlands to their territory, but by November all hopes of reaching such an agreement had vanished. After November 2002, then, asylum seekers from central Iraq were offered a subsidiary protection status (in cases where they were not entitled to asylum status on individual grounds).

Northern Iraqi asylum seekers:
Until 2003 there was no form of special protection for northern Iraqi asylum seekers. Since 7 February 2003 there has been a moratorium on returns for asylum seekers originating from northern Iraq because of the impending conflict and eventual war in Iraq. On 21 March 2003 a moratorium on decisions was added, and as a result decisions are generally not made in northern Iraqi cases, although interviews do take place. Both the moratorium on returns and decisions will last until 21 June 2003, although they might be prolonged thereafter.

The Dutch Refugee Council had consistently argued that central Iraqi asylum seekers should not be referred to northern Iraq if they had no ties with the region, and in 2002 the Kurdish authorities added

that they would not admit central Iraqis returning from the Netherlands. The Dutch Refugee Council also stated in October 2002 that asylum seekers from northern Iraq should enjoy a moratorium on returns because it was highly problematic to obtain a transit visa through Turkey. In January 2003, with reference to the threat of war, the organisation urged once again that this should be the case.

Sierra Leone

On 16 September 2002 the Minister for Aliens Affairs informed Parliament that he would no longer grant subsidiary protection to asylum seekers from Sierra Leone due to an improved situation in the country. The Dutch Refugee Council argued in a letter to Parliament that this policy change was premature, yet a majority in Parliament as well as the courts accepted this policy change.

Somalia (Puntland)

The Dutch Refugee Council urged the Minister for Aliens Affairs in January and March 2002 to no longer refer Somali asylum seekers to the Puntland region as an internal relocation alternative. The Puntland region is not considered a safe area for IDPs any more as a consequence of civil war and external military intervention. There was, however, no change in policy regarding Somali asylum seekers, though the courts' decisions on this issue in general reflect the opinion that the Immigration Service cannot consider Puntland to be a relocation alternative without additional motivation.

LEGAL AND PROCEDURAL DEVELOPMENTS

17. New legislation passed:

There was no new legislation passed in 2002.

18. Changes in refugee determination procedure, appeal or deportation procedures:

As in the year 2001, in 2002 more and more cases were determined by the 'accelerated procedure'. In 2001 it involved 22% of all asylum cases, while in early 2002 it was already at a level of 45%. During the last three months of 2002 more than 60% of cases were determined in this manner, and this number continues to increase. The Minister of Alien and Integration affairs announced that he strives for a proportion of 80%.

19. Important case-law relating to the qualification for refugee status and other forms of protection:

New facts after the first instance decision

On 16 July 2002 (No. 200202452/1) the Administrative Jurisdiction Division (AJD) judged that facts which are not brought forward during the first interview, and which are only done so after the first instance decision, during appeal, cannot be taken into consideration in the judgement of the court. In cases in which it is difficult for the asylum seeker to speak about these facts, he or she should still refer summarily to them. In this case a woman had only told after the first instance decision that the actual reason for her asylum request was the fact that she had been circumcised by force. The court had taken this fact into consideration, after which the IND (Immigration and Naturalisation Service) lodged a higher appeal at the AJD. In the same case the AJD rejected the subordinated request for a residence permit on humanitarian grounds on account of having been traumatised by the deaths of her relatives, for she had not left her country during the first six months after their deaths. If a person leaves their country more than six months after the traumatising event occurred, the burden of proof shifts to the asylum seeker, and the residence permit (on humanitarian grounds) will be rejected unless the asylum seeker can prove that there exists a causal link between the reason to leave the country and the reason to apply for asylum.

On 6 November 2002 (No. 200205002) the AJD judged that, even in cases of expulsion to a country where there is an alleged risk of ill-treatment contrary to Article 3 of the ECHR, the formal requirements laid down in domestic law should be complied with unless there are special circumstances which absolve the applicant from this obligation. In this case the asylum seeker had withdrawn his appeal, after which he had lodged a new asylum request. According to the district court and the AJD the new asylum request does not comply with the requirements of new facts or new circumstances which could not have been brought forward during the first asylum request. On 3 March 2002 (No. 200200237/1) the AJD also judged, in the case of the asylum seeker Bahaddar, that even in cases of expulsion to a country where there is an alleged risk of ill-treatment contrary to Article 3 of the ECHR, the formal requirements laid down in domestic law should be complied with unless there are special circumstances. In that case the AJD considered Article 4.6 of the General Administrative Act (Algemene Wet Bestuursrecht) to be a formal national requirement. In this article the requirement for second asylum applications is laid down: new facts or circumstances *which could not have been brought forward during the first application*. In this particular case the second asylum request was based on the fear of forced female circumcision after expulsion to the home country.

Undocumented asylum seekers, the burden of proof and the scope of the legal test of a judge

On 27 January 2003 (No. 200206297/1) the AJD judged that in cases of undocumented asylum seekers the asylum account may not have any gaps, vagueness, changes or contradictions. In this respect the Minister has to judge the credibility of the asylum account on the basis of interviews, combined with information about the general situation in the home country and information received from similar asylum cases. According to the AJD the appeal judge is unable to assess the credibility in the same way, although this does not mean that there will be no examination of decisions taken by the Minister. The standard of the examination is that the judge must establish whether, given the motivation provided by the Minister, he could reasonably have come to the judgement concerning credibility. In other words the legal test of a district court judge has to be marginal instead of a complete.

Dublin Agreement

On 25 March 2003 (No. 200206634/1) the AJD decided that Article 11 (paragraph 1) of the Dublin Agreement has direct effect. The asylum seeker complained that the district court had judged that this paragraph of the Dublin Agreement doesn't have direct effect, with the consequence that the exceeding of the six-month period during which to request the supposed responsible state to assume the asylum seeker does not result in the Netherlands assuming responsibility for the case. The consequences of the judgement of the AJD will be that asylum seekers can successfully appeal in a national procedure on Article 11 (paragraph 1) in cases where the six-month term has been exceeded.

On 26 March 2003 (No. 200300151/1) the AJD took the term ‘relatives’ of Decision 1/2000 into consideration. According to the district court an illegitimate child could not be considered a relative in the meaning of Article 1 (paragraph 1) of Decision 1/2000 as this provision should not be connected with illegitimate children, but only with legitimately married persons and their children. According to the AJD this interpretation of ‘relatives’ is incorrect. Such a restrictive reading does not comply with the basis of Decision 1/2000, which tries to fulfil the requirements to respect private and family life as laid down in Article 8 of the ECHR, the provisions of which do not allow for a distinction to be made between legitimate and illegitimate children.

(Country) reports of the Ministry of Foreign Affairs: expert advice

On 11 October 2002 (No. 200204522/1) the AJD judged that (country) reports of the Ministry of Foreign Affairs, which are drawn up in individual asylum cases and at the request of the Immigration and Naturalisation Service (IND), have the status of expert advice. On 12 October 2001 (No. 20013977/1) the AJD had already judged that reports about the general situation of a country provided by the Ministry of Foreign Affairs have to be considered as expert advice. Important conditions for the qualification of expert advice are that such reports give impartial, objective and insightful information

with reference, as far as is possible, to reliable sources of information. If these requirements are met the IND may consider the information to be correct, unless there are concrete indications casting doubt on the correctness or completeness of the information. In such cases the IND must examine and confirm the information before taking a decision based upon it.

Trauma: internal flight alternative

The formal policy of the Minister is that, when a person is traumatised, it cannot be argued that he or she has an internal flight alternative. Whether the perpetrators are state actors or non-state actors is of no consequence in these cases. However, in recent cases it is possible to perceive a shift in the decisions of the IND, which tends to argue that there exists an internal flight alternative if the traumatising experiences emanate from non-state actors. Until now the district courts have not followed the shifting arguments of the IND. On 17 September 2002 the district court of Amsterdam (AWB 02/66915) noted that the IND proposition that the appeal of the asylum seeker based on the special policy for traumatised persons was ill-founded, because of the fact that the perpetrators had been non-state actors, was untenable. This judgement doesn't correspond with the policy of the Minister.

External flight alternative

On 13 March 2003 (No. 200300008/1) the AJD judged that a flight alternative existed in Armenia for ethnic Armenians originating from Azerbaijan. This flight alternative, however, should only be argued after it has been decided that there is well-founded fear of being persecuted or that there is an alleged risk of ill-treatment contrary to Article 3 of the ECHR. Before this decision of the AJD there were different judgements relating to this issue. While some district courts judged in the same way as the AJD, other courts judged that an external flight alternative is impossible unless there exist connections or close links in the meaning of Conclusion No. 15 (paragraph h, IV) of the UNHCR Executive Committee (16 October 1979).

Categorical protection

- 27 March 2003 (No. 200206931/1): the AJD judged that there is no need for a policy of categorical protection for Liberian asylum seekers.
- 26 February 2003 (No. 200206678/1): the AJD judged that there is no longer need for a policy of categorical protection for asylum seekers from Sierra Leone. There had been a policy of categorical protection from 1 June until 16 September 2002.
- 4 February 2003 (No. 200206105/1): the AJD judged that there is no longer need for a policy of categorical protection for asylum seekers from Afghanistan. There had been such a policy from 1994 until 16 September 2002.
- 20 August 2002 (No. 200203931/1): the AJD judged that there is no need for a policy of categorical protection for asylum seekers from Angola.

Single women from Angola

During the year 2002 there were positive judgements from several district courts concerning the humanitarian problems women are likely to face upon return to Angola. In these cases it is decided that the woman should receive a residence permit on humanitarian grounds. On 23 September 2002 the AJD agreed with the IND, which had lodged a higher appeal against a decision of a district court on 9 August 2002 (AWB 02/56024). According to the AJD, the IND could decide whether or not the humanitarian situation for potentially vulnerable single women is such that all these women should receive a residence permit on humanitarian grounds. The AJD stipulated that a residence permit on humanitarian grounds only is provided based upon individual circumstances, and not on the general situation in the home country. The judgement of the district court, however, was based more on the general situation than on individual circumstances.

Cessation Clauses: Article 1C of the 1951 Refugee Convention

On 20 January 2003 (AWB 01/6611) the district court of Almelo judged that Article 1C of the 1951 Refugee Convention was not applicable. In this case it concerned an Iraqi who had been recognised as a refugee in 1994 for having a well-founded fear of being persecuted by the Iraqi authorities and the Islamic movement. Later he travelled several times to northern Iraq to visit his wife, as a result of which the IND withdrew his refugee status in 1999. The district court stipulates that the application of Article 1C has to comply with the three requirements of paragraph 119 of the 'UNHCR Handbook'. In this case the court judges that the withdrawal is not in accordance with the second and third requirements: '(b) intention: the refugee must intend by his action to re-avail himself of the protection of the country of his nationality' and '(c) re-availment: the refugee must actually obtain such protection'. For the objection of Article 1C it is not enough that a person crosses the border, given that it is doubtful that the refugee crossed the border with the intention of re-availing himself of the protection of the country of his nationality. Further, the court observed that the withdrawal of refugee status was not in accordance with Article 1C(5), as this paragraph may only be applied in cases where there is a change in circumstances in the home country which is fundamental, permanent and stable. This requirement follows from the nature of the Convention.

20. Developments in the use of the exclusion clauses of the Refugee Convention in the context of the national security debate:

On 28 November 2002 the district court of Utrecht (AWB 01/4360) judged that the IND could withdraw the permanent residence permit of an Afghan person given the fact that his recognition as a refugee in 1995 was based upon incorrect information. According to the asylum policy, with respect to Article 1F, a residence permit can be withdrawn when, after the recognition, it becomes clear that its granting was based upon incorrect information provided by the applicant. Incorrect information also means relevant information which is withheld during the interview, and which would have resulted in a denial of refugee status. In the present case, during his interview the applicant had told that he had held high positions under the former Afghan communist regime, but not that he had committed serious crimes relating to his position in the former PDPA (People's Democratic Party of Afghanistan) regime. The IND pointed out that only since 1997 had the Dutch authorities become conscious of the large scale of serious human rights violations committed by the former Afghan communist regime, with the consequence that only then did the Dutch Ministry of Foreign Affairs start to research the regime. After the Dutch authorities had obtained an improved insight into the former regime they started to re-examine Afghan cases in which a residence permit had already been provided. In the present case, the Ministry of Foreign Affairs provided in 2000 an individual report about the position of the applicant in the former Afghan regime. This information indicated that the applicant had killed his cousin, who belonged to the opposition forces, and that he could also be held responsible for the deaths of thirty-five students. According to the court, the fact that he had withheld this information during the interview in 1994 justifies the withdrawal of his residence permit.

On 4 April 2003 (No. 200206882/1) the AJD judged in a case where a permanent residence permit had been withdrawn in October 2001, because it was held that the applicant had provided incorrect information, or that he had withheld information which would have led to a denial of the asylum application on the basis of Article 1F of the Refugee Convention. After the withdrawal the case was passed on to the Public Prosecutor for criminal prosecution, but in a letter of 10 April 2002 the Public Prosecutor stated that the so-called '1F file' delivered insufficient indications to warrant considering the applicant a suspect, and consequently to justify a criminal prosecution. With this letter the applicant subsequently lodged a new asylum application, yet in a judgement of 18 December 2002 the district court of Utrecht judged that the applicant had not complied with the requirement of new facts or new circumstances. The letter of the Public Prosecutor cannot, according to the court, be regarded as a new fact due to the difference between the judicial test scope in criminal law and that in administrative law. The rules concerning proof in criminal law are not applicable in administrative law, and the fact that Article 1F speaks about 'serious reasons to consider' and 'crimes' does not make a difference. However, according to the AJD judgement of 4 April 2003 (No. 200206882/1), the letter of

the Public Prosecutor *can* be considered a new fact and, moreover, it cannot be said in advance that the letter has no bearing on the decision based on Article 1F.

21. Developments regarding readmission and cooperation agreements:

In October 2002 the Minister for Aliens Affairs presented an overview:

- With the following countries and regions the Netherlands has informal readmission agreements: Morocco, Sri Lanka, Ethiopia, Angola, Kosovo, the Czech Republic, the Slovak Republic, Romania, Bulgaria, northern Iraq and Somaliland.
- Belgium, the Netherlands and Luxembourg have, as Benelux countries, concluded (re)admission agreements with: France, Austria, Germany, Slovenia, Romania, Bulgaria (in approval procedure), Estonia, Latvia, Lithuania and Croatia.
- Furthermore, the Benelux countries are negotiating agreements with: the Slovak Republic, Armenia, Hungary, FYROM, the Czech Republic, Serbia and Montenegro, Nigeria, Mali, Moldova, Ukraine, Azerbaijan, Georgia, Algeria, Switzerland, Iceland, Syria, Jordan, Albania, India and Mongolia.
- There are also numerous agreements at the EU level.

THE SOCIAL DIMENSION

22. Changes in the reception system:

In 2002, after years of growth, the capacity of the reception system had diminished from 84,000 in January to 74,000 by the end of December. After June it was no longer possible for new asylum seekers to use the 'self care arrangement', which had involved asylum seekers finding their own accommodation with friends or family. Asylum seekers already using the self-care arrangement were offered a place in the centres, but at the end of 2002 10,000 asylum seekers were still living outside the centres. In November the COA (Central Organisation for the Reception of Asylum Seekers) announced a projected reduction of the total capacity to a half within two years, and that they would be shedding 2,000 workers.

After years of criticism and political pressure, asylum seekers waiting to be processed under the Dublin Convention finally regained the right to reception facilities, when in November the COA opened a special centre for them.

There is growing concern about the financial allowance for asylum seekers. Their benefits have not been raised since 1997, and proposals for an indexation of their allowance have not yet reached Parliament.

23. Changes in the social welfare policy relevant to refugees:

All that was reported relating to the introduction of the new Aliens Act in 2001 is still valid. However, it was decided to abolish the requirement for an employer to demand a permit from a holder of asylum status as a prerequisite for employment. This decision must become part of the alterations to the Law of the Employment of Aliens before it can be implemented, which is likely to take place later in 2003.

24. Changes in policy relating to refugee integration:

The public and political climate continued to change throughout 2002 due to the events of 11 September 2001, the rise of a new political party under Pim Fortuyn and the debate surrounding the elections of 15 May 2002. The result was that discussion concerning the integration process became a political issue. Within this climate the participation of refugees became a major topic, and the new government, that held power for just eighty-five days in 2002, issued a number of new initiatives to promote the integration of foreigners, including refugees. Most of these measures amounted to stricter

demands on the integration of all newcomers, but many of these plans have been stalled until a new government can be formed:

- Newcomers must pay a contribution to their integration programme.
- Newcomers must successfully end their integration programme in order to be eligible for a permanent status.
- The duration of the new residence permit will be five years instead of three, after which time it may be replaced with a permanent status ('for an indefinite period').
- Information on Dutch history and 'norms and values' will be taken up in the compulsory integration programme.

In 1998 the Integration of Newcomers Act (WIN) came into force, and the law should be evaluated after four years. Due to the fact that the last government fell after a very short time and new elections were held on 22 January 2003, and that the formation process takes a long time, all the above-mentioned plans will likely be part of the political debate on the evaluation of this law later in 2003.

25. Changes in family reunion policy:

In 2002 there were no changes in the family reunion policy, but the former cabinet had announced several measures to make the right to family reunion, and especially to family formation, more limited. One plan is to establish integration requirements for children over the age of fifteen, and to make obligatory integration programmes for spouses in countries of origin. In January 2003 the fees for regular permits were raised exorbitantly: a permit now costs €430, the yearly renewal and permits for children cost €258, and permanent status €890. Refugees are also confronted with these high fees when asking for a regular family reunion, as well as when a child is born. Asylum seekers have to pay these fees, for instance, when they require a permit on medical grounds or for work. The political debate continues, but several organisations are already looking into the possibility of starting legal proceedings against the level of the new fees.

OTHER POLICY DEVELOPMENTS

26. Developments in resettlement policy:

For the last few years the Netherlands was supposed to resettle 500 refugees a year. Due to the very restrictive policy regarding the recognition of refugees, almost half of the nominations from UNHCR are being turned down, and the quota of 1,500 refugees for the last three years is filled with only 700 refugees. The quota for the new period has not yet been set. The former cabinet had planned to add an integration element to selection criteria, under which only refugees with secondary school education and basic knowledge of a modern language would be welcome in the Netherlands.

27. Developments in return policy:

The possibility of return is raised immediately following the first negative decision. From then, all activities offered in the reception centres are focused on return, and since 2000 the IOM have been actively offering their services to asylum seekers in reception centres. As a result of the recent alien law, reception facilities are withdrawn twenty-eight days after rejection of the appeal. Rejected asylum seekers who are not able to leave the Netherlands because they have no travel documents ultimately find themselves on the streets. Resistance is rising against a situation in which families with babies and young children and elderly people are excluded from all social benefits, many of them after having lived in the Netherlands for a long period of time. Many local governments have (financially) assisted local NGOs in putting into place small-scale facilities for those rejected asylum seekers willing but not able to leave the Netherlands; also for special humanitarian cases, for those asking for asylum for a second time and who are thus allowed to remain in the Netherlands during the procedure, and for rejected asylum seekers who asked for a regular residence permit and are awaiting the decision. In

2003 two special detention centres will be opened for rejected asylum seekers and other aliens who can be removed within four weeks.

The government is more frequently making use of chartered flights in order to remove rejected asylum seekers from the territory. The government intends to make thirty-six such flights in 2003, while the Ministry of Justice can also make use of military airplanes.

A memorandum of understanding was signed with the authorities in Dubai, allowing Somalis to travel to Dubai and from thereon continue their flight to Somalia.

28. Developments in border control measures:

Border control

As part of the unaccompanied minors policy (May 2001), the government strives for a doubling of the number of gate checks at Schiphol Airport to 10,000 a year.

As part of the 'action plan fight against terrorism' of 5 October 2001, border control and mobile alien control have been reinforced, more personnel are available for document control and physical security controls in Rotterdam harbour have been intensified.

Immigration officers overseas

Officers of the immigration service and the royal military police are active in countries of origin and transit countries. The latter also advise airline personnel at pre-boarding checks, and train the personnel of airlines and local governments in recognising false or falsified documents. Officers of the immigration service are active in various countries in Africa and Asia.

In February 2002, the airline KLM began copying and archiving the passports of passengers from fifteen ‘risk countries’.

Asylum requests at Dutch embassies

The Minister of Alien and Integration affairs wrote in a letter of 12 January 2003 that it would no longer be possible to lodge an asylum application at Dutch embassies in countries of origin or in third countries. If a person is still in his country of origin, he or she is not considered a refugee according to the Geneva Convention, and if in a third country, he or she should seek protection in that third country. Only in cases of emergency will it still be possible to request asylum at Dutch embassies in the country of origin or in a third country.

29. Other developments in refugee policy:

Abolition of the 'three years policy'

The Minister of Alien and Integration affairs decided to abolish the policy relating to those asylum seekers not having received a decision on their asylum request after three years being entitled, under certain conditions, to a permit on the grounds of the so-called 'three years policy'. According to the Minister, the policy didn't suit the theme of a restrictive alien policy in which a short and swift status determination is central. The heart of the restrictive asylum policy is, according to the Dutch government, that protection is only given to those who need it. However, the fact that the length of the asylum procedure rather than the flight motives are of importance for a grounded appeal on the three years policy is not consistent with this argument. The 'three years policy' no longer applies to cases in which the three-year procedure time will be completed after 1 January 2003.

Change in trauma policy

According to the 2000 Aliens Act, a person may obtain some form of status if he or she cannot, for reasons of a humanitarian nature connected with the reasons for departure from the country of origin, reasonably be expected to return to the country of origin. A person may obtain status on these grounds if he or she fulfils the conditions of the 'trauma policy', and must have experienced one or more of the listed traumatic events (for example the death of a family member). Such an event must have been caused by the government, by political or military groups who hold *de facto* power, or by groups against which the government is unable or unwilling to offer protection. The traumatic events must have been the reason for a person leaving the country, and the Minister assumes that these events were the reason for departure if the person leaves the country within six months after the traumatic event. In a letter of 10 February 2003 the Minister announced that the 'trauma policy' no longer applies to persons who left their country of origin within six months, but who lived in a third country for six months before they came to the Netherlands. An exception is made for persons who can substantiate that they couldn't maintain themselves in that third country, yet whether the asylum seeker is able to return to the third country plays no part in the decision. If the asylum seeker will not be readmitted to the third country, the asylum seeker has to return to his country of origin, and no exception is made for unaccompanied minors.

Judicial review: aliens' detention

The 2000 Aliens Act introduced a judicial review of aliens' detention. Within three days after an alien is placed in detention, the Minister of Alien and Integration affairs must give notification of this detention to the regional court, which must then hold a hearing within seven days. Seven days after the examination of the case is closed, the court must give its judgement. If the alien remains in detention, the Minister has to give a new notification to the court every twenty-eight days after the judgement (periodic review).

This system of judicial review led to a large caseload for the regional courts (more than 24,000 cases, which amounts to approximately 40% of the courts' total capacity). In response, the Minister proposed the following change of legislation. The Minister will have to give the court a notification within *twenty-eight* days instead of three, and the court must hold a hearing within *fourteen* days. After the first judgement of the court there will be no more periodic review of the detention, and the detention will only be reviewed if the alien appeals to the court, which can give its judgement without a hearing. The proposal is under discussion in the Second Chamber.

2000 Aliens Act: technical changes and Dublin II

The 2000 Aliens Act will be altered in certain respects for technical reasons. Unaccompanied minors whose asylum requests are rejected can, on certain conditions, obtain a regular permit. One proposed change to the Act makes it possible to decide about both the asylum request and the regular permit in a single procedure. Another proposed change introduces the opportunity to appeal against a decision about a departure moratorium.

According to the 2000 Aliens Act, an appeal at the regional court concerning the rejection of an asylum application suspends the decision. There are a few exceptions to this rule, for example if the application is rejected in the accelerated asylum procedure. The Minister has proposed to introduce a new exception to this rule for applications rejected on the basis of another state being responsible for the asylum application according to Dublin II regulations. The reason for this change is Article 19 of the regulation, which states that 'appeal or review concerning this decision shall not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis if national legislation allows for this'. According to general administrative law, the asylum seeker can ask the regional court for a provisional ruling on suspensive effect. The proposed change of legislation will not apply to asylum applications that are rejected before 1 September 2003.

POLITICAL CONTEXT

30. Government in power during 2002:

The May 2002 parliamentary elections were won by the Christian Democrats (Christen Democratisch Appel - CDA) and the populist party, Lijst Pim Fortuyn (LPF). A few months later a new government was formed, together with the conservative liberals, Volkspartij Voor Vrijheid en Democratie (VVD). Again a few months later, this government had to step down, mainly because of the unreliability of the populist party, and elections were again held in January 2003. The results were a relative normalisation of the political balance, although there is still a right wing majority. Attempts by the CDA and the labour party, the Partij van de Arbeid (PvdA), to form a government failed. By May 2003 there was still no new government, and the VVD/CDA/LPF government retained control.

31. Governmental policy vis-à-vis EU developments:

The Dutch government stated in 2002: *'The government will continue to work towards the creation of a common European asylum and immigration policy, and towards a swift implementation of measures taken to establish a European space of freedom, security and justice'.* However, the government also stated that as a long-term objective it envisages a revision of the Refugee Convention, in order to create a system of processing in the region of origin by UNHCR. The Netherlands would then receive a fair and proportional quota of Convention refugees. As a short-term objective the government aims at establishing a system whereby asylum requests are processed in the EU state in which the asylum seeker first enters the EU. From there the asylum seekers will be distributed fairly between Member States. Following other international developments, such as UNHCR's Agenda for Protection, the focus of a new Dutch government may have changed toward finding solutions within the Convention's framework. The mid- and long-term visions of the Dutch government will be explained in more detail in a paper expected to appear in May 2003. This paper will also address the UK proposal on processing asylum requests in the region of origin. The Netherlands are likely to focus on 'strengthening the region' and 'regional solutions' within the framework of the UNHCR Agenda for Protection and the Convention Plus.

As to the EU proposals on Justice and Home Affairs (JHA) discussed in 2002 and 2003, a more restrictive approach of the Dutch government is noticeable. For example, the Dutch government was in favour of adding extra integration requirements to the proposals on long-term residents and family reunification. The Dutch government in general supports a more coordinated common approach on integration issues, since integration of third country nationals also played an important role in the May 2002 elections. Overall, the positions of the Dutch government seem more consensus-oriented and less ambitious. For example, regarding the 'qualification directive', the Dutch government held that it attaches great importance to this directive and is therefore willing to reach a compromise with the 'one state' that wishes to make a clearer distinction between the position of refugees and those receiving complementary protection. The Dutch government still supports widening the scope of all asylum and immigration proposals by including persons receiving or requesting subsidiary forms of protection, although to date there has been insufficient support for this in the Council. As to the directive on asylum procedures, the criteria for accelerated procedures could become a problem for the Netherlands, as the controversial accelerated procedure in the Netherlands does not have a substantial criterion such as grounds for inadmissibility or ‘manifest unfoundedness’. The Netherlands may have to amend their asylum procedure in this respect.

The Dutch Senate (First Chamber) was especially critical about the late-stage JHA documents that were received prior to JHA council meetings. As a matter of principle it does not discuss documents that have not been public for six weeks. As a result, political agreements reached in the Council have met with a Dutch parliamentary reservation on several occasions (for example the directives on reception and family reunification). The Senate further argued in favour of increased transparency of JHA documents, so that civil society could give its views to Parliament, and thus contribute to the parliamentary discussions.

As to the role of the European Court of Justice in JHA matters, the Dutch government, together with the Spanish government, sent a paper to the European Convention aimed at preventing legal procedures before the Court becoming clogged. Amongst the proposed solutions the governments mentioned specialised sections of the Court, accelerated procedures or withholding suspensive effect to prejudicial procedures.

32. Asylum in the national political agenda:

In the period before the elections in 2002 asylum was the most important issue, together with the integration of migrants. The program of the right-wing government that won the elections aimed at a further restriction of the number of asylum seekers, with the view that in the long run, most or all asylum requests should be processed in the region of origin. Like in Denmark, family reunification should be restricted by high costs and extra demands relating to the willingness to integrate within Dutch society. Furthermore, it was proposed that the age of twenty-one should be introduced as the minimum for being entitled to a residence permit for a foreign marriage partner, and that the period of potential withdrawal of asylum status should be lengthened from three to five years.

One proposal that has already come into effect is that asylum seekers can no longer obtain permission to remain in the Netherlands on the grounds of the time (three years) that the government has taken to decide on the asylum request. This is very important, since more then 20,000 asylum seekers continue to await their decision in an asylum centre after waiting for more than three years.