



# UNPROTECTED

UNVEILING GAPS IN THE PROTECTION OF VENEZUELAN REFUGEES  
IN ARUBA

AMNESTY  
INTERNATIONAL



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First published in 2024

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: EUR 35/8559/2024

Original language: English

[amnesty.org](http://amnesty.org)



**Cover photo:** Visualization of a Venezuelan seeking asylum overseeing the journey and arrival to Aruba.  
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# GLOSSARY

ABBREVIATION	DESCRIPTION
1967 PROTOCOL	UN Protocol Relating to the Status of Refugees
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CHARTER	Charter of the Kingdom of the Netherlands
COASTGUARD	Coastguard for the Kingdom of the Netherlands in the Caribbean (Kustwacht voor het Koninkrijk der Nederlanden in het Caribisch Gebied)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DIMAS	Department of Integration and Management of Foreigners (Aruban immigration service)
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECTHR	European Court of Human Rights
GNC	Guarda Nos Costa (immigration detention centre and service; staff/officials thereof)
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IND	Dutch Immigration and Naturalization Service
IOM	International Organization for Migration
LAR	National Decree for Administrative Judicial Procedures (Landsverordening Administratieve Rechtspraak)
LTU	National Ordinance on Admission and Expulsion (Landsverordening Toelating en Uitzetting)
OHCHR	Office of the UN High Commissioner for Human Rights
R4V	Regional Interagency Coordination Platform for Refugees and Migrants from Venezuela

ABBREVIATION	DESCRIPTION
SAIME	Administrative Service of Identification, Migration and Foreigners (Servicio Administrativo Identificación, Migración y Extranjería), Venezuelan passport and identification service
UNHCR	Office of the UN Commissioner for Refugees
UNHRC	UN Human Rights Council
UN REFUGEE CONVENTION	UN Convention Relating to the Status of Refugees (also known as the 1951 Refugee Convention)

# EXECUTIVE SUMMARY

**“When they [Guarda Nos Costa officers<sup>1</sup>] gave me my detention and deportation order, they told me to sign. I didn’t want to sign. No, because if I signed you were accepting everything.”**

A Venezuelan asylum seeker explains the pressure from the Aruban authorities to sign detention and deportation orders.

This report presents the findings of the first research conducted by Amnesty International into the situation for Venezuelans seeking protection in Aruba. The research focused on the protection Aruba is affording Venezuelan refugees.

Venezuela has been experiencing a profound human rights crisis for several years. Massive violations of civil, political, economic and social rights have been reflected in shortages of and lack of access to food and medicine, and a deterioration in health services, as well as violence and political repression by the state.<sup>2</sup> The human rights crisis in Venezuela has intensified during 2023 and 2024,<sup>3</sup> as evidenced by the imprisonment of human rights defenders,<sup>4</sup> the suspension of the Office of the UN High Commissioner for Human Rights (OHCHR),<sup>5</sup> heightened risks facing human rights NGOs, and reports of torture in detention.<sup>6</sup> Additionally, following the presidential elections on 28 July 2024, Venezuelan security forces have disproportionately used force, leading to the mass arbitrary detention of demonstrators.<sup>7</sup> These events led to around 20 killings during demonstrations, enforced disappearances, reports of torture, and between 1,600 and 2,000 people arbitrarily detained for political motivation. Due to the crisis and the government’s policy of repression, millions of Venezuelans have fled, making this one of the largest forced displacement crises in the world. Approximately 7.77 million Venezuelans have fled the country since 2015, which represents 25% of the whole of the country’s population.

Aruba is a constituent country of the Kingdom of the Netherlands, alongside Curaçao, Sint Maarten and the Netherlands, and has ratified international human rights treaties providing rights and obligations specifically

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<sup>1</sup> The Guarda Nos Costa (GNC) immigration detention centre in Aruba is where undocumented individuals are held under the authority of the Minister of Justice of Aruba. The term is also commonly used, as here, to refer to the staff working at the detention centre.

<sup>2</sup> Amnesty International, *Hunger for Justice: Crimes against Humanity in Venezuela* (Index: AMR 53/0222/2019), 14 May 2019, <https://www.amnesty.org/en/documents/amr53/0222/2019/en/>

<sup>3</sup> Human Rights Watch, “World Report 2024: Venezuela – Events of 2023”, Accessed in May 2024, <https://www.hrw.org/world-report/2024/country-chapters/venezuela>

<sup>4</sup> Amnesty International, “Venezuela: the government’s escalating repression and attempts at evading scrutiny face resounding condemnation from international civil society”, 16 February 2024, <https://www.amnesty.org/en/latest/press-release/2024/02/venezuela-the-governments-escalating-repression-and-attempts-at-evading-scrutiny-face-resounding-condemnation-from-international-civil-society/>

<sup>5</sup> On 15 February 2024 the OHCHR in Aruba was suspended.

<sup>6</sup> Amnesty International, “Venezuela: Arbitrary detentions continue as a tool of government control and repression”, 29 August 2023, <https://www.amnesty.org/en/latest/news/2023/08/venezuela-arbitrary-arrests-government-control-repression/>

<sup>7</sup> Amnesty International, “Venezuela: International organizations condemn the high levels of violence and repression and demand that the authorities guarantee the right to protest and full respect for the rights to life, personal integrity and freedom”, 1 August 2024, <https://www.amnesty.org/en/latest/news/2024/08/venezuela-organizaciones-internacionales-condenan-represion-masiva-exigen-autoridad-protejer-protesta/>

in the context of people seeking asylum. Aruba, for example, is bound by the UN Convention Relating to the Status of Refugees (UN Refugee Convention) and must respect the obligations set forth including the principle of non-refoulement, which prohibits any transfer of individuals to places where they may face persecution, torture or other serious human rights violations. Other treaties such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) also apply to Aruba.

Aruba is situated in the Caribbean, 24km off the Venezuelan coast, and shares historical ties with Venezuela. With more Venezuelans per capita than any other country in the world, Aruba was hosting an estimated 17,000 undocumented Venezuelans as of 2023, amounting to 159 displaced individuals per 1,000 inhabitants.<sup>8</sup> Official numbers of Venezuelans in Aruba are not publicly available through government sources; it is the Office of the UN High Commissioner for Refugees (UNHCR) situated in Aruba who makes the estimations.

Despite being subject to the UN Refugee Convention, Aruba lacks specific legislation on asylum and people seeking protection are subject to standard immigration law. There is also no dedicated policy for refugee children seeking protection, leaving children subject to the same asylum procedures as adults. People who wish to seek asylum in Aruba can do so in several ways: via regular entry at the border, while situated on the island, and when placed in the GNC immigration detention centre. Due to border restrictions preventing direct air travel between Venezuela and Aruba since 2018, Venezuelans must reach Aruba by air via other countries such as Colombia and Curaçao. Venezuelans are subject to visa requirements and other documentation to enter Aruba, which are difficult for most Venezuelans to obtain in Venezuela.

Due to these difficulties, many Venezuelans see no other option but to undertake a dangerous journey by sea, putting their lives at risk, to arrive in Aruba irregularly. Irregular entry is, however, considered a violation of Aruba's local laws and therefore Venezuelans who are intercepted by the Coastguard for the Kingdom of the Netherlands in the Caribbean (hereafter "coastguard")<sup>9</sup> are handed over to the local authorities and automatically detained in the Guarda Nos Costa (GNC) immigration detention centre in Dakota, an area of Oranjestad, the capital of Aruba.<sup>10</sup> Upon arrival, a detention order is issued within several hours, personal belongings including telephones are confiscated, and detainees are placed in cells. Within 72 hours of detention, a judge reviews the case to decide whether the detention is lawful. While in detention, Venezuelans have the opportunity to request asylum through GNC officials, who then hand over the request to the immigration authority, the Department of Integration and Management of Foreigners (DIMAS). The individual remains in detention until DIMAS decides on their asylum request. If the person can provide a guarantor, they can be released with the obligation to report three times a week at the GNC detention centre.

Amnesty International has assessed the conditions of detention and has identified concerns during three visits to the GNC immigration detention centre in 2021, 2022, and 2023. Although Amnesty International has seen improvements in the conditions at the centre over the course of these visits, they remain concerning. Concerns include poor ventilation, a lack of recreational activities, and restricted movement, with detainees only being allowed to leave their cells three times a day for approximately 30 minutes each time. Detainees had been sleeping on mattresses on the floor until beds were installed in 2024. During Amnesty's first visit in 2021, detainees were being held in shipping containers without sufficient ventilation and basic hygiene. The immigration detention centre was renovated in 2022, although concerns persist regarding conditions there. The use of shipping containers was discontinued in 2022, but Amnesty International has noted the absence of a clear policy concerning detention practices, including the discontinuation of the use of shipping containers and the duration of reporting obligations upon release, raising concerns about future practices.

Amnesty International opposes the immigration detention of Venezuelan nationals and considers their deportation to be unlawful, and furthermore, that Venezuelans should not be returned to their country. Venezuelan detainees have reported experiencing a hostile environment at the immigration detention centre and feeling pressured to sign deportation orders by GNC officers. The combination of harsh detention conditions and complex legal procedures leading to prolonged detention encourages some Venezuelans to consider returning to Venezuela, despite the risks this would entail considering the nature of the human rights crisis in Venezuela. These returns cannot be considered "voluntary" given the pressure exercised by authorities and the limited alternative options available. Lawyers have limited access to their clients and must

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<sup>8</sup> Regional Interagency Coordination Platform for Refugees and Migrants from Venezuela (R4V), "Personas refugiadas y migrantes Venezolanas" ["Venezuelan refugees and migrants"], [https://www.r4v.info/sites/g/files/tmzbdl2426/files/2024-06/Stock%20Map\\_Portrait\\_VF\\_Spa2\\_2.pdf](https://www.r4v.info/sites/g/files/tmzbdl2426/files/2024-06/Stock%20Map_Portrait_VF_Spa2_2.pdf) (accessed on 2 June 2024).

<sup>9</sup> The Coastguard for the Kingdom of the Netherlands in the Caribbean (Kustwacht voor het Koninkrijk der Nederlanden in het Caribisch Gebied) is a collaborative effort between the Caribbean countries of the Kingdom of the Netherlands and the Netherlands. The coastguard is the first authority in the immigration chain for Venezuelans attempting to reach Aruba irregularly by sea. For more information, see section 8.4.4, "Maritime boarder protection assistance".

<sup>10</sup> The Guarda Nos Costa (GNC) immigration detention centre is also known as the Dakota immigration detention centre. This is the only immigration detention centre on Aruba.



schedule appointments to visit them in detention. In some cases, clients have been deported before their lawyers could meet with them.

Amnesty International has also documented cases of insufficient medical assistance in detention, such as detainees not being seen by a doctor despite health conditions. Amnesty is aware of a case where a pregnant Venezuelan woman was detained and deported. During the research, Venezuelans told Amnesty about their experiences during detention, including where GNC officers had intimidated them with physical abuse by pushing and verbal abuse making xenophobic and derogatory remarks. Concerns about xenophobia against Venezuelan women have been expressed to Amnesty International by local organizations and a journalist.

When a person located in Aruba wants to apply for asylum there, they must first make an appointment via the DIMAS website. Timeslots are often fully booked two months in advance, leaving Venezuelans seeking asylum vulnerable due to their lack of documentation and at risk of deportation if apprehended before securing an appointment. Furthermore, when registering their asylum request, which happens at an in-person interview at DIMAS, asylum seekers are not permitted to have legal representation present.

Amnesty International has documented cases where Venezuelans who have applied for asylum have waited for more than two years without a decision on their asylum request, leaving them without a residence permit and unable to work. This situation leaves them in prolonged uncertainty and fear while residing undocumented in Aruba. In 2019, Aruba amended the procedure to allow asylum seekers to simultaneously begin the process of requesting a temporary permit, which would grant them work access. The legislation says that individuals “can” obtain such a permit, but it is not guaranteed. Furthermore, the legislation states that further conditions may be attached to receiving such a permit, although these conditions are not explained further. During its research, Amnesty International has not identified any instances of a Venezuelan national being granted such a permit.

Although children seeking protection do not arrive frequently in Aruba, Amnesty International has identified three cases where Venezuelan children have been detained.<sup>11</sup> Amnesty documented one case where children were detained in the immigration detention centre with their mother; another case where a fifteen year old was detained for several hours without the authorities informing his mother; and a case of a seventeen-year-old who was detained after arriving irregularly and being intercepted by the coastguard.

Information about seeking asylum in Aruba is inadequate. None of the Venezuelans interviewed by Amnesty International had received information through government sources, but rather via their own contacts and organizations in Aruba such as HIAS and UNHCR. Venezuelans undertaking an asylum application had to find their own legal assistance and cover the costs themselves because Aruba does not offer free legal assistance. Detention and deportation orders are written in Dutch, as well as asylum decisions, which means Venezuelans are unable to understand what is written. Legal procedures to contest a deportation order in Aruba are complex, falling under general administrative judicial law. Furthermore, the procedures are in Dutch and require the expense of hiring a lawyer. Importantly, Venezuelans remain vulnerable to deportation during legal proceedings because objecting against a negative asylum decision or a deportation order does not have a suspensive effect.

Considering the above, Aruba's practices have resulted in violations of the principle of non-refoulement, as many Venezuelans face deportation despite the significant risks to their safety and human rights in their home country.

The Netherlands has helped Aruba to manage the Venezuelan people fleeing to Aruba. Assistance by another country within the Kingdom of the Netherlands is possible under Article 36 of the Charter of the Kingdom of the Netherlands (hereafter “Charter”). The assistance has been financial as well as technical. For example, the Netherlands’ financial support extended to covering the cost of flights to deport Venezuelans, implicating the Netherlands in potential violations of the principle of non-refoulement. The assistance lacked clear human rights benchmarks and was focused on detection, detention and deportation, rather than the protection of Venezuelans.

Amnesty International opposes the deportation of Venezuelans and remains concerned about the protection afforded to them in Aruba. Despite Aruba’s efforts to enhance policies and improve detention conditions, as well as collaboration with international organizations, Amnesty International maintains serious concerns about the treatment of Venezuelans seeking protection in Aruba.

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<sup>11</sup> Amnesty International conducted interviews with a mother and her daughter, who was a minor when she was detained together with her siblings who were also minors. Additionally, Amnesty International interviewed a mother who reported that her 15-year-old son had been detained for several hours. A lawyer further informed Amnesty International that one of their clients, a 16-year-old Venezuelan male, had been placed in detention at the GNC immigration detention centre.

# KEY RECOMMENDATIONS

The government of Aruba should undertake the following:

- Refrain from deporting Venezuelans and issue a general ban on forced returns of Venezuelans to Venezuela and refrain in practice from returning, expelling or otherwise transferring Venezuelans, directly or indirectly, to their country.
- Develop legislation and regulations specifically related to asylum and separate legislation for children guided by the best interests of the child seeking asylum to ensure that they are not detained or separated from their parents.
- Ensure refugees, asylum seekers and migrants have access to information about their rights and procedures affecting them in a language they can understand.
- Ensure asylum seekers can access a fair and effective asylum procedure.
- Ensure that decisions on asylum are taken in a timely manner.
- Ensure that complementary forms of protection are accessible to Venezuelans and guarantee the full enjoyment of all their rights, including economic and social rights.
- Refrain from detaining Venezuelans because their forced return is intrinsically unlawful, and refrain from penalizing them for entering Aruba irregularly.
- End the arbitrary detention of refugees, migrants and asylum seekers. Until that happens:
  - ensure that all detainees automatically appear before a lawyer within 72 hours of their detention;
  - ensure that the conditions in the immigration detention centre are in line with international standards and ensure that all cells are equipped with integrated ventilation;
  - develop leaflets in Spanish clearly stating the rights of people who want to seek asylum;
  - train staff to approach detainees in a respectful manner without making discriminatory remarks;
  - refrain from verbal abuse and xenophobic comments against people in immigration detention, including gendered verbal abuse against Latina women;
  - create an independent complaints mechanism for detainees.

The Kingdom of the Netherlands should undertake the following:

- Ensure that human rights are respected and protected equally in all areas of the Kingdom of the Netherlands, and that any financial and technical assistance does not result in or contribute to human rights violations in Aruba.
- Before any cooperation, the Kingdom of the Netherlands should conduct prior risk assessments. If cooperation and assistance are given, this must be geared towards the protection of refugees.

The Netherlands should undertake the following:

- Ensure that, before giving assistance, it conducts a thorough investigation to ensure that the assistance reaches the target groups.
- When providing assistance and funds to Aruba, ensure due diligence and impose human rights conditions.
- Ensure that any support of Aruban detention and removal policies is consistent with international human rights law and standards. This should include supporting alternatives to detention.
- With respect to funding related to the application of the UN Refugee Convention:

- include a monitoring and evaluation component in policy and practice, and adjust collaboration accordingly based on the outcomes;
  - establish human rights benchmarks and oversight mechanisms to verify concrete steps taken to increase the protection of refugees in Aruba.
- Refrain from assisting in detection, detention and deportation, but rather focus on the protection of Venezuelans.
- Assist Aruba in creating a free legal aid scheme, providing translation into Spanish, and establishing a specific asylum procedure for children.
- Grant subsidiary protection according to the EU Qualification Directive to those Venezuelans that need it, based on the real risk of serious harm if returned to Venezuela.

# 1. METHODOLOGY

This report analyses the protection afforded by Aruba to Venezuelans in light of Aruba's international obligations. It documents human rights violations suffered by Venezuelans who have sought protection in Aruba, including violations of their right to seek asylum and their right to liberty.

Amnesty International collected information through desk research, analysing existing primary and secondary sources such as documents, policies, data and other relevant materials and literature related to asylum procedures in Aruba. In addition to the asylum procedure, this report covers the detention and deportation of Venezuelans, violations of the right to private and family life of Venezuelan children, and the responsibility of the Kingdom of the Netherlands in these matters.

The Kingdom of the Netherlands comprises four constituent countries: Aruba, Curaçao, Sint Maarten and the Netherlands. The constitutional relationship among these countries is governed by the Charter of the Kingdom of the Netherlands (hereafter "Charter"), which emphasizes the collective responsibility of the kingdom to safeguard human rights. Furthermore, any country within the kingdom can request assistance under Article 36 of the Charter.

Given that the Kingdom of the Netherlands enters into treaties on an international level and the kingdom's government is based in the Netherlands, it holds a pivotal role in addressing human rights concerns within its constituent countries. Additionally, the Government of the Netherlands, particularly the Ministry of the Interior and Kingdom Relations, as well as the Ministry of Justice, has provided assistance to Aruba in managing the reception of Venezuelans.<sup>12</sup> This will be further explored in Chapter 8, "Obligations of the Kingdom of the Netherlands".

The report's findings stem from research conducted between December 2021 and June 2024, which involved fieldwork trips to Aruba in December 2021, March 2022, October 2022 and September 2023. These trips included in-depth interviews with Venezuelan asylum seekers and several meetings with various stakeholders such as journalists, lawyers, representatives from civil society organizations, and public institutions. Although the primary research began in 2021, it encompasses events and data dating back to 2019.

Amnesty International interviewed a total of 18 Venezuelans.<sup>13</sup> Eleven were men, eight of whom were asylum seekers. Three of the male asylum seekers had previously experienced detention and the rest were interviewed during their detention periods in 2022 and 2023. Seven female asylum seekers were interviewed, with four having been detained in the Guarda Nos Costa (GNC) immigration detention centre previously.<sup>14</sup> One of the female interviewees was 19 years old and had been detained in the GNC immigration detention centre when she was 17 alongside her two younger siblings and her mother. One of the female interviewees also shared details about the detention of her 15-year-old son. In addition, Amnesty International interviewed two Colombian asylum seekers, one male and one female, as part of the research process.

The cases of the asylum seeker interviewees are used as examples throughout this report and have been anonymized unless explicit consent was given to use the interviewees' full names. An asterisk has been placed after the anonymized names. The concerns about the detention conditions arose from Amnesty International's

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<sup>12</sup> Raymond Knops, State Secretary for the Interior and Kingdom Relations, Netherlands, "Het Nederlands buitenlands beleid ten aanzien van Latijns-Amerika en de Cariben" ["Dutch foreign policy towards Latin America and the Caribbean"] (29653), 6 September 2019, [https://www.eerstekamer.nl/behandeling/20190906/brief\\_regering\\_respons\\_op/document3/f=/v1zoimiiyr.pdf](https://www.eerstekamer.nl/behandeling/20190906/brief_regering_respons_op/document3/f=/v1zoimiiyr.pdf) (in Dutch).

<sup>13</sup> Interviews were held in person in Aruba, as well as digitally via voice and video calls.

<sup>14</sup> The Guarda Nos Costa (GNC) immigration detention centre in Aruba is where undocumented individuals are held under the authority of the Minister of Justice of Aruba. The term is also commonly used to refer to the staff working at the detention centre.

visits to the GNC immigration detention centre, interviews with Venezuelans who had been or were currently detained, and other organizations who had also visited the detention centre.

Interviews were conducted with two journalists between 2022 and 2024. The journalists described how they had been obstructed from writing about the situation of Venezuelan asylum seekers. Over the same time period three Aruban lawyers were interviewed, who described the cases of clients who were Venezuelan asylum seekers. Their interviews covered providing legal assistance during asylum procedures to experiences in the GNC immigration detention centre such as securing access to medical care for their clients. Amnesty International also spoke to representatives from organizations such as the Red Cross Aruba in 2021; the Office of the UN High Commissioner for Refugees (UNHCR) from 2021 to 2024; the International Organization for Migration (IOM) and HIAS from 2021 to 2023; VenAruba in 2023; the University of Aruba in 2022 and 2023; and Fundación contra Violencia Relacional (Foundation against Relational Violence) in 2023.

Amnesty International made field visits to the GNC immigration detention centre three times (on 15 December 2021, 21 October 2022 and 13 September 2023). Three meetings were held with representatives of the Department of Integration and Management of Foreigners (DIMAS) on 15 December 2021, 21 October 2022 and 14 September 2023, in addition to correspondence. Key government officials in Aruba were also interviewed, including the Prime Minister in 2023, the Minister of Labour, Energy and Integration in 2022 and 2023, the Minister of Justice in 2023, the Chief of Police in 2023, the Attorney General in 2022 and 2023, the Dutch Representative in Aruba in 2022 and 2023, the Coordination Centre on Human Trafficking and Migrant Smuggling Aruba (Coördinatiecentrum Mensenhandel Mensensmokkel Aruba) in 2023, the Governor of Aruba in 2022, the American consul in 2022 and 2023, and the Coastguard for the Kingdom of the Netherlands in the Caribbean (hereafter “coastguard”)<sup>15</sup> in 2024.

Amnesty International corresponded with the Aruban authorities, primarily through a designated representative who facilitated all requests from Amnesty International and maintained ongoing communication following the fieldwork trips. The Aruban authorities responded promptly to Amnesty International’s enquiries and demonstrated a welcoming attitude towards the field research, being open and cooperative in answering questions and providing necessary assistance.

Although the shortcomings of the asylum procedure documented in this report may affect various nationalities, and Amnesty International did conduct interviews with Colombian nationals, this research focuses on Venezuelans. Over the last few years, Amnesty International has tried to document the situation for Venezuelans who, due to the complex humanitarian emergency and serious human rights violations in their country, have been forced to leave in search of safety. Amnesty has consistently denounced the policies and practices that deny them protection, which include collective expulsions, deportations in violation of the principle of non-refoulement, barriers to access the asylum procedure and to get their protection needs recognized, and particular obstacles faced by Venezuelan women surviving gender-based violence.<sup>16</sup>

On 21 August 2024, Amnesty International sent letters to the Aruban and Dutch governments, informing them of the report’s conclusions and providing them with an opportunity to respond to the allegations presented. Both governments have responded to the letter and their response have been included in this report where relevant.

Amnesty International expresses sincere gratitude to everyone who contributed to this research. Amnesty is grateful to the Venezuelan and Colombian interviewees who shared their personal experiences, challenges and aspirations. Amnesty International would also like to thank civil society organizations, experts and representatives of international organizations and universities who shared their expertise, and to the public officials of Aruba and the Netherlands for their openness to engage with the research, providing information and perspective on national policies. Amnesty International furthermore expresses gratitude to the Dutch Refugee Council who contributed to this research.

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<sup>15</sup> The Coastguard for the Kingdom of the Netherlands in the Caribbean (Kustwacht voor het Koninkrijk der Nederlanden in het Caribisch Gebied) is a collaborative effort between the Caribbean countries of the Kingdom of the Netherlands and the Netherlands. The coastguard is responsible for patrolling and ensuring maritime safety and security within Dutch territorial waters, which include both the Caribbean islands (Aruba, Curaçao, and Sint Maarten) and the Netherlands. The coastguard that is active in the Aruban territorial waters falls under Aruban jurisdiction. The coastguard is the first authority in the immigration chain for Venezuelans attempting to reach Aruba irregularly by sea. For more information, see section 8.4.4, “Maritime boarder protection assistance”.

<sup>16</sup> Amnesty International, *Regularization and Protection International Obligations for the Protection of Venezuelan Nationals* (Index: AMR 01/7130/2023), 21 September 2023, <https://www.amnesty.org/en/documents/amr01/7130/2023/en/>



# 2. BACKGROUND

**“I was in danger of being killed in Venezuela.”**

Ricardo\*, a Venezuelan man, explains how he feared returning to Venezuela due to the political situation; he was deported nevertheless.

## 2.1 FLEEING THE CRISIS IN VENEZUELA

Since 2014-2015 Venezuelans have experienced increasing deprivation, eroding their economic and social rights, especially to health and food. At least since 2017, many Venezuelans have fled as a result of the systematic repressive policies of the Nicolás Maduro-led government targeting government critics and opposition members.<sup>17</sup> These policies have led to a range of abuses including extrajudicial executions, use of excessive force, arbitrary detentions, torture and other forms of ill-treatment.<sup>18</sup> The government's approach of controlling and arbitrarily detaining individuals directly undermines the rights to life, liberty and protection from harm in Venezuela, raising significant concerns about widespread human rights violations.<sup>19</sup>

The crisis in Venezuela is characterized by a deepening humanitarian emergency, systematic human rights violations, and a profound economic and political downturn. Furthermore, the Venezuelan National Assembly approved a draft law aimed at obstructing and potentially criminalizing the work of civil society organizations,<sup>20</sup> further hindering efforts to document human rights violations and address the ongoing crisis.<sup>21</sup> The draft law was approved in August 2024 and at the time of writing was awaiting executive approval before coming into force. Amnesty International has issued several urgent actions related to the proposed law.

In Venezuela several groups are implicated in serious human rights violations.<sup>22</sup> The *colectivos*, for example, are irregular armed groups, which, according to the UN Fact-Finding Mission on the Bolivarian Republic of Venezuela (Fact-Finding Mission), maintain “a complex relationship with the government and the state”.<sup>23</sup> The authorities have called upon these groups to disperse demonstrations, suppress protesters, and intimidate

<sup>17</sup> See, for example, Amnesty International, “Venezuela 2023”, <https://www.amnesty.org/en/location/americas/south-america/venezuela/report-venezuela/>

<sup>18</sup> Amnesty International, *Amnesty International Report 2021/22: The State of the World's Human Rights* (Index: POL 10/4870/2022), 29 March 2022, <https://www.amnesty.org/en/documents/pol10/4870/2022/en/>

<sup>19</sup> Amnesty International, “Venezuela: Arbitrary detentions continue” (previously cited); Amnesty International, “Venezuela: Oral statement: Item 4: Interactive dialogue on the report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela” (Index: AMR 53/7227/2023), 26 September 2023, <https://www.amnesty.org/en/documents/amr53/7227/2023/en/>

<sup>20</sup> Venezuela, Ley de Fiscalización, Regularización, Actuación y Financiamiento de las Organizaciones No Gubernamentales y Afines [Law on Supervision, Regularization, Performance and Financing of Non-Governmental and Related Organizations], 24 January 2023, <https://provea.org/wp-content/uploads/2021/05/LEY-DE-FISCALIZACION-REGULARIZACION-ACTUACION-Y-FINANCIAMIENTO-DE-LAS-ORGANIZACIONES-NO-GUBERNAMENTALES-Y-AFINES-v24.01h2.00-2.pdf> (in Spanish).

<sup>21</sup> The bill is another attempt to restrict and control civil society in Venezuela. The law's strict rules would require NGOs to submit lists of their donors, members, staff and assets, as well as to register their financial transactions. Civil society organizations that fail to comply with the registration requirements could be closed down and possibly face criminal prosecution.

<sup>22</sup> Amnesty International, *Venezuela: International protection needs of Venezuelan nationals* (Index: AMR 53/7331/2023), 19 October 2023, <https://www.amnesty.org/en/documents/AMR53/7331/2023/en/>, para. 2.5.

<sup>23</sup> UNHRC, *Detailed Findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela*, 25 September 2020 (UN Doc. A/HRC/45/CRP.11), [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A\\_HRC\\_45\\_CRP.11.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11.pdf), paras 216-224.

political opponents and journalists. The Fact-Finding Mission has documented clear signs of collusion between the state and armed groups controlling illegal mining. These armed groups have committed killings, attacks, forced labour, physical punishment as a form of social control and discipline, and gender-based violence, including rape, sexual exploitation, and trafficking.<sup>24</sup>

Government authorities and security forces have been implicated in extrajudicial executions, short-term forced disappearances and the detention of opponents.<sup>25</sup> This oppressive environment adds to the complexities of the crisis in Venezuela. The Fact-Finding Mission has found grounds to believe that crimes against humanity have been committed in Venezuela.<sup>26</sup> The Office of the Prosecutor of the International Criminal Court has opened an investigation for such crimes under the Rome Statute. A preliminary examination in 2018 and a referral from six states in 2019 led to a formal investigation into the allegations by the International Criminal Court, which was temporarily halted in 2021, but resumed in June 2024.<sup>27</sup> On 25 September 2023, the Fact-Finding Mission presented another report to the UN Human Rights Council (UNHRC), maintaining that the human rights violations in Venezuela continued.<sup>28</sup> The Fact-Finding Mission is due to present another report on 19 September 2024.<sup>29</sup>

The volatile nature of the situation in Venezuela was underscored by the government's abrupt suspension of the Office of the UN High Commissioner for Human Rights (OHCHR) in February 2024.<sup>30</sup> In theory, the suspension was reversed in April 2024, but the OHCHR has yet to be granted access to the country.<sup>31</sup> Such actions highlight the ongoing instability and protection gaps faced by individuals and communities at risk.<sup>32</sup> The protests in Venezuela following the re-election of President Nicolás Maduro on 28 July 2024 also highlighted serious concerns regarding mass politically motivated arbitrary detentions, enforced disappearances and torture, leading international organizations to call on the Venezuelan authorities to comply with international standards.<sup>33</sup> In an open letter to the prosecutor of the International Criminal Court, Amnesty International called for immediate action.<sup>34</sup>

Due to the dysfunctional rule of law in Venezuela, citizens are left unable to obtain protection in their own country.<sup>35</sup> In addition to human rights abuses, Venezuela grapples with growing inequality and plummeting salaries resulting in the majority of the population being unable to pay for basic products.<sup>36</sup> There is a general lack of provision of fundamental services such as gas, electricity and water.<sup>37</sup>

The multidimensional crisis has resulted in more than 7.71 million Venezuelans, 25% of the population of Venezuela, being compelled to leave their country and seek protection elsewhere, making this one of the

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<sup>24</sup> UNHRC, *Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela* (UN Doc. A/HRC/51/43), 20 September 2022; UNHRC, *Crimes against Humanity Committed through the State's Intelligence Services: Structures and Individuals Involved in the Implementation of the Plan to Repress Opposition to the Government* (UN Doc. A/HRC/51/CRP.3), 20 September 2022; UNHRC, *The Human Rights Situation in the Arco Minero del Orinoco Region and Other Areas of the Bolívar State* (UN Doc. A/HRC/51/CRP.2), 20 September 2022, paras 234-242 (on corporal punishment by *sindicatos*) and paras 596-601 (on gender-differentiated forms of punishment); Human Rights Watch, "World Report 2021: Venezuela – Events of 2020", January 2021, <https://www.hrw.org/world-report/2021/country-chapters/venezuela>

<sup>25</sup> Amnesty International, *Hunger for Justice: Crimes against Humanity in Venezuela* (Index: AMR 53/0222/2019), 14 May 2019, <https://www.amnesty.org/en/documents/amr53/0222/2019/en/>; Amnesty International, *Venezuela: Dying before a Judge: The Arbitrary Detention, Enforced Disappearance, Torture and Death of Rafael Acosta Arévalo* (Index: AMR 53/2909/2020), 4 September 2020, <https://www.amnesty.org/en/documents/amr53/2909/2020/en/>

<sup>26</sup> UNHRC, *Report of the Independent International Fact-finding Mission on the Bolivarian Republic of Venezuela* (UN Doc. A/HRC/51/43) (previously cited).

<sup>27</sup> Reuters, "ICC prosecutor seeks to reopen Venezuela investigation", 2 November 2022, <https://www.reuters.com/world/americas/icc-prosecutor-seeks-reopen-venezuela-investigation-2022-11-01>

<sup>28</sup> UN News, "Venezuela continues crackdown on dissenters, UN rights experts warn", 25 September 2023, <https://news.un.org/en/story/2023/09/1141422>

<sup>29</sup> UNHRC, "Venezuela Fact-Finding Mission calls for end of repression, thorough investigations, after elections", 12 August 2024, <https://www.ohchr.org/en/press-releases/2024/08/venezuela-fact-finding-mission-calls-end-repression-thorough-investigations>

<sup>30</sup> Al Jazeera News, "Venezuela orders suspension of UN rights office, gives staff days to leave", 15 February 2024, <https://www.aljazeera.com/news/2024/2/15/venezuela-orders-suspension-of-un-rights-office-gives-staff-days-to-leave>

<sup>31</sup> Reformatisch Dagblad, "Venezuela heropent VN-mensenrechtenbureau" ["Venezuela reopens UN human rights office"], 24 April 2024, <https://www.rd.nl/artikel/1061175-venezuela-heropent-vn-mensenrechtenbureau> (in Dutch).

<sup>32</sup> Amnesty International, "Venezuela: The government's escalating repression" (previously cited).

<sup>33</sup> Amnesty International, "Venezuela: International organizations condemn the high levels of violence and repression" (previously cited)

<sup>34</sup> Amnesty International, "Venezuela: Open letter to the Prosecutor of the International Criminal Court: Urgent call for action" (Index: AMR 53/8415/2024), 9 August 2024, <https://www.amnesty.org/en/documents/amr53/8415/2024/en/>

<sup>35</sup> Dutch Ministry of Foreign Affairs, *Algemeen Ambtsbericht Venezuela* [General Official Message Venezuela], June 2020, pp. 30-32 (in Dutch).

<sup>36</sup> Encuesta Nacional sobre Condiciones de Vida (ENCOVI), *Condiciones de Vida de los Venezolanos* [Living Conditions of Venezuelans], November 2022 (in Spanish).

<sup>37</sup> Amnesty International, *Report 2022/23: The State of the World's Human Rights* (Index: POL 10/5670/2023), <https://www.amnesty.org/en/wp-content/uploads/2023/03/WEBPOL1056702023ENGLISH.pdf>, pp. 396-401.



largest displacement crises in the world.<sup>38</sup> Latin American and Caribbean countries have received the majority of these refugees (approximately 6.5 million), with approximately 4.4 million holding temporary residency permits.<sup>39</sup>

Aruba, part of the Kingdom of the Netherlands and with a population of 107,151 people,<sup>40</sup> is a popular destination for Venezuelans seeking protection since the outbreak of the crisis in the country. It is not only Aruba's proximity, being just 24km away from Falcón in Venezuela, that is the attraction for many Venezuelans, but also the decades of existing social, economic and historical ties between the countries.<sup>41</sup> As of June 2023, there were an estimated 17,000 Venezuelans in Aruba.<sup>42</sup> This equates to one in five residents in Aruba being a refugee or seeking international protection.<sup>43</sup>

The Aruban authorities informed Amnesty International that the arrival of Venezuelan "mixed migration flows" has presented Aruba with various challenges, including "overstayers – large numbers of Venezuelans who enter Aruba legally as tourists remain hereafter stay behind"; "pressure on public finances – costs at hospital/detention centre/social resources"; "integration perplexities"; "public order and safety as a focus of attention"; "education: size of schools, language barriers and dropouts or out-of-school children"; "the increase and growth of an informal economy"; and "human trafficking and human smuggling".<sup>44</sup>

According to Aruba's 2022 annual report, the total submitted asylum requests from 2018 to 2022 concern 5,250 people, of whom the "majority are Venezuelans".<sup>45</sup> Amnesty International asked the Aruban authorities to clarify the exact number of Venezuelans by gender and age but never received clarification. Amnesty International is therefore unable to determine the exact number of Venezuelans seeking protection in Aruba.

## 2.2 LEGAL ROUTES MADE DIFFICULT

Venezuelans seeking protection in Aruba can enter the country either by air through other countries with a visa requirement or irregularly via maritime borders. Since 2018, however, it has become extremely challenging for Venezuelans to enter and remain in Aruba through regular channels. Venezuela shut its sea and air borders connecting the Falcón province in Venezuela with Aruba, Bonaire and Curaçao multiple times in both 2018<sup>46</sup> and 2019.<sup>47</sup> Additionally, in 2020, the borders largely remained closed due to the Covid-19 pandemic. The Aruban government maintained these closures but eventually initiated a dialogue with the Venezuelan authorities regarding reopening the maritime borders. As a result of these dialogues, on 1 May 2023, the Aruban government declared the reopening of its maritime borders for the purpose of transporting goods and vessels to promote economic benefits for Aruba.<sup>48</sup> With heightened scrutiny over individuals entering the country and goods being transported by sea, Aruba deemed itself prepared for the reintroduction of maritime border operations.<sup>49</sup> Air borders between Venezuela and Aruba remained closed at the time of writing, so there are no direct flights. Venezuelans seeking to enter Aruba through air borders must do so via alternative routes.

The Kingdom of the Netherlands approved visa requirements for all Caribbean islands of the Kingdom of the Netherlands (Aruba, Curaçao and Sint Maarten) on 15 January 2021. These requirements apply to all

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<sup>38</sup> UNHCR, "Emergency appeal: Venezuela situation", <https://www.unhcr.org/venezuela-emergency> (accessed on 12 October 2023).

<sup>39</sup> R4V, "Key figures: Refugees and migrants from Venezuela", <https://www.r4v.info/en> (accessed on 5 September 2024).

<sup>40</sup> Centraal Bureau Statistiek Aruba, "Table 1.1 Population, population change and population density", 2022, <https://cbs.aw/wp/index.php/2021/07/02/population-population-change-and-population-density/?download=22466> (accessed on 1 March 2024).

<sup>41</sup> Simón Molina Duarte, "Venezuela y la cuenca del gran Caribe" ["Venezuela and the greater Caribbean basin"], GeoVenezuela – Fundación Empresas Solar, July 2008, [https://bibliofep.fundacionempresasolar.org/media/1076/gv\\_t9\\_c78\\_p298\\_341\\_lres\\_single\\_preview.pdf](https://bibliofep.fundacionempresasolar.org/media/1076/gv_t9_c78_p298_341_lres_single_preview.pdf) (in Spanish).

<sup>42</sup> R4V, "Personas refugiadas y migrantes Venezolanas" ["Venezuelan refugees and migrants"] (previously cited).

<sup>43</sup> NH Nieuws, "Een op de vijf inwoners op Aruba is vluchteling of zoekt bescherming" ["One in five residents of Aruba is a refugee or is seeking protection"], 13 June 2024, <https://www.nhnieuws.nl/nieuws/n153018/een-op-de-vijf-inwoners-op-aruba-is-vluchteling-of-zoekt-bescherming> (in Dutch).

<sup>44</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

<sup>45</sup> After Venezuelans, the largest groups of asylum seekers are Colombian and Ukrainian; Government of Aruba, *Jaarverslag 2022 de Minister-President van Aruba Evelyn Wever-Croes* [Annual Report 2022 of the Minister-President of Aruba Evelyn Wever-Croes], [https://issuu.com/gabinetewevecroesaruba/docs/jaarverslag\\_2022](https://issuu.com/gabinetewevecroesaruba/docs/jaarverslag_2022) (in Dutch).

<sup>46</sup> NOS Nieuws, "Venezuela heropent grens met ABC-eilanden" ["Venezuela reopens border with ABC islands"], 8 April 2018, <https://nos.nl/artikel/2226317-venezuela-heropent-grens-met-abc-eilanden> (in Dutch).

<sup>47</sup> Reuters, "Venezuela closes maritime border with Dutch islands to stop aid", 20 February 2019, <https://www.reuters.com/article/us-venezuela-politics-antilles-idUSKCN1Q9241/>

<sup>48</sup> Telearuba, "Aruba lo habri Frontera Maritimo cu Venezuela dia 1 di Mei" ["Aruba will open maritime border with Venezuela on 1 May"], 21 April 2023, <https://telearuba.aw/news/aruba-lo-habri-frontera-maritimo-cu-venezuela-dia-1-di-mei> (in Spanish).

<sup>49</sup> Departamento di Aduana, "Frontera a habri entre Aruba y Venezuela pa yatenan di placer" ["Border to open between Aruba and Venezuela for pleasure yachts"], <https://www.douane.aw/frontera-a-habri-entre-aruba-y-venezuela-pa-yatenan-di-placer/> (in Spanish).

nationalities requiring a visa, including Venezuelans.<sup>50</sup> Visa requirements include having a valid passport and being in possession of a daily average of USD 100 (if staying with a family member) and between USD 150 and 200 (if staying in a hotel). Where the applicant cannot prove they have sufficient funds, a family member or friend living in the Kingdom of the Netherlands can act as a guarantor.<sup>51</sup>

The 2022 annual report of Aruba states: “The visa requirement for Venezuelans introduced from 15 January 2021 has had an impact on the migration flows. A maximum of 8,000 Caribbean visas can be issued per year. In 2021, 755 requests were made and 264 granted. In 2022, 1,762 requests were made of which 733 granted.”<sup>52</sup> The 2022 report also states that “the visa requirement also offers more control options and due to the official border closure since February 2019 there are also no direct flights to and from Aruba”.<sup>53</sup> The 2023 annual report stated that in 2023 a total of 686 requests for visas to Aruba were submitted and 535 were granted. In 2023 a total of 19 passengers of Venezuelan nationality were denied access to Aruba due to not meeting all the admission criteria.<sup>54</sup>

Venezuelans face challenges in obtaining official documentation such as passports<sup>55</sup>, which are essential for visa applications. Several obstacles to obtaining official documentation in Venezuela have been documented, including a dysfunctional website for scheduling appointments with the Administrative Service of Identification, Migration and Foreigners (Servicio Administrativo Identificación, Migración y Extranjería, SAIME)<sup>56</sup> and instances where passports are seized by the regime from journalists, opposition members and National Assembly “deputies” at ports of entry.<sup>57</sup> Additionally, the cost of obtaining a passport, approximately USD 200, is prohibitive considering the average salary in Venezuela, which is around USD 24 per month.<sup>58</sup> This financial burden becomes even more difficult when multiple family members are involved.<sup>59</sup>

Due to the many challenges mentioned above, many Venezuelans see no other option than to travel to Aruba irregularly by boat. The price for a single sea crossing can be more than USD 1,000.<sup>60</sup> Although the Venezuelan coast is visible from Aruba on clear days, this visibility does not translate into a safe journey. A Venezuelan asylum seeker recounted his journey to Aruba by boat: “The journey was very difficult. The boat carried 21 people and there were strong waves. Some people were drowning.”<sup>61</sup> The sea route to Aruba is dangerous and has resulted in deaths.<sup>62</sup> Often these tragedies go unreported because boats are discovered empty, or not found at all; the authorities believe that the actual number of fatalities is higher than officially recorded. As a result, many families go months without receiving any news from loved ones who have embarked on this journey, leaving them to assume the worst.

When Amnesty International asked the Aruban authorities in March 2024 to provide official statistics for the number of fatal incidents from 2021 to 2024, the authorities replied that the coastguard and the National Police Force of Aruba are only able to register intercepts at sea or boat arrivals on land when reported either by the police, coastguard radars or the public.<sup>63</sup> Therefore, it is not possible to provide the actual number of fatal incidents and the quantity of unreported fatal incidents remains unknown. There have, however, been many cases of unreported safe arrivals via boats and it is not until the migrants leave Aruba, of their own

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<sup>50</sup> Government of Aruba, *Jaarverslag 2022* (previously cited), p. 21.

<sup>51</sup> Government of the Netherlands, “Applying for a short-stay Caribbean visa in Venezuela”, <https://www.netherlandsworldwide.nl/caribbean-visa/short-stay/apply-venezuela> (accessed on June 12 2024).

<sup>52</sup> Government of Aruba, *Jaarverslag 2022* (previously cited), p. 21.

<sup>53</sup> Government of Aruba, *Jaarverslag 2022* (previously cited), p. 21.

<sup>54</sup> Government of Aruba, *Jaarverslag 2022* (previously cited), p. 28.

<sup>55</sup> Pasaportes venezolanos: ¿papel sin valor? - DW - 10/04/2022

<sup>56</sup> SAIME is the administrative service in Venezuela responsible for identification, migration, and foreign affairs. It is the government agency that manages and issues official documents such as passports, national identity cards (*cédulas*), and other related services for Venezuelan citizens and residents. Many users have reported difficulties in making credit card payments, delays in obtaining documents, problems in accessing the system and even payment transactions that were charged but not recognized by the system; see El Diario, “Las fallas que denuncian los usuarios del SAIME tras la reactivación de la plataforma” [“The failures reported by SAIME users after the reactivation of the platform”], 16 July 2022, <https://eldiario.com/2022/07/16/fallas-del-saime-tras-la-reactivacion-de-la-plataforma/> (in Spanish).

<sup>57</sup> US Department of State, “2022 country reports on human rights practices: Venezuela”, Bureau of Democracy, Human Rights, and Labor, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/venezuela/>

<sup>58</sup> BDEX, “Salaries in Venezuela”, <https://bdeex.com/venezuela/> (accessed on 29 August 2022).

<sup>59</sup> Revista SIC, “Barreras para la identidad” [“Barriers to identity”], 31 May 2022, <https://revistasic.org/barreras-para-la-identidad/> (in Spanish).

<sup>60</sup> Crónicas del Caribe, “Cómo organizan los viajes clandestinos desde Venezuela hacia las islas de Aruba, Bonaire y Curazao” [“How they organize clandestine travel from Venezuela to the islands of Aruba, Bonaire and Curaçao”], 25 April 2021, <https://cronicasdelcaribe.com/migracion/como-organizan-los-viajes-clandestinos-desde-venezuela-hacia-las-islas-de-aruba-bonaire-y-curazao/> (in Spanish).

<sup>61</sup> Interview in person with Dario\*, a Venezuelan male in the asylum procedure, 20 October 2022, Aruba.

<sup>62</sup> NTN24, “Aruba rescató los cuerpos de tres venezolanos en una lancha que zozobró” [“Aruba rescued the bodies of three Venezuelans in a capsized motorboat”], 12 December 2023, <https://www.ntn24.com/noticias-actualidad/aruba-rescato-los-cuerpos-de-tres-venezolanos-que-viajaban-en-una-lancha-461416> (in Spanish).

<sup>63</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

accord or through deportation, that the authorities can confirm officially that they have entered Aruba irregularly.

Several news outlets and the Regional Interagency Coordination Platform for Refugees and Migrants from Venezuela (R4V)<sup>64</sup> have documented fatal accidents of Venezuelans arriving by boat in Aruba. In 2021 at least two Venezuelan men perished while attempting to reach Aruba by boat.<sup>65</sup> On 22 March 2023, a Venezuelan woman travelling to Aruba by boat went missing.<sup>66</sup> In December 2023, another tragedy occurred when a boat capsized upon arrival at Aruba. The lifeless bodies of four Venezuelans were found in the water and several others remained missing.<sup>67</sup> The authorities and organizations told Amnesty International that many people travelling by boat do not understand that they must swim the last leg of the journey to reach the Aruban coast, resulting in accidents.<sup>68</sup>

## 2.3 NO PAPERS, NO RIGHTS

**“We are people who don’t have papers and don’t have a voice.”**

Maria\*, a Venezuelan woman who lives in Aruba without residency papers.

Across Latin American countries,<sup>69</sup> temporary permits have been granted to Venezuelans fleeing the crisis in Venezuela, allowing Venezuelans to reside and work in the host country for specific durations. These temporary permits come in various forms such as humanitarian visas, complementary forms of protection or temporary residence permits. In September 2023, Amnesty International revealed that, despite host countries Colombia, Peru, Ecuador and Chile implementing measures and programmes to offer Venezuelans regular migrant status, they had failed to comply with their obligations under international law to protect people fleeing Venezuela to safeguard their lives, integrity and human rights.<sup>70</sup>

According to the Aruban authorities, pending the decision on their asylum application, asylum seekers can also apply for a temporary residence permit via the regular admission policy. This is an “alternative legal pathway”, also referred to as “regular trajectory working”, to legally reside in Aruba, provided the individual has entered Aruba in an official manner and can present the necessary documents.<sup>71</sup> The granting of this temporary work permit depends on the labour market’s needs.<sup>72</sup> Applicants must have submitted a certificate of good conduct and a valid passport, and have paid the necessary fees. According to DIMAS, it is often difficult for Venezuelans to qualify for this temporary work permit because they have expired passports.<sup>73</sup>

Since March 2023, a new admission policy has been introduced with “flexibility”, such that people who request this permit no longer need to wait for the decision abroad; however, this permit is only for people who have entered Aruba via a regular route. Furthermore, it is important to note that this “alternative legal pathway” is not the same as the permits given to asylum seekers in other countries such as in Colombia where permits are

<sup>64</sup> The R4V is a collaborative effort, co-led by IOM and UNHCR, established in response to the Venezuelan migration crisis. The platform coordinates humanitarian assistance and protection efforts for Venezuelan refugees and migrants across Latin America and the Caribbean.

<sup>65</sup> Crónicas del Caribe, “Venezolano desaparece en altamar tras hundirse una lancha con destino a Aruba” [“Venezuelan disappears on the high seas after sinking a boat bound for Aruba”], 25 April 2021, <https://cronicasdelcaribe.com/migracion/venezolano-desaparece-en-altamar-tras-hundirse-una-lancha-con-destino-a-aruba/>

<sup>66</sup> Bon Dia Aruba, “Ministerio Público a pidi 5 año di prizon pa sospechosonan di caso di Leidy Johana” [“Public Ministry requests 5 years of prison for suspect of Leidy Johana case”], 22 November 2023, <https://www.bondia.com/ministerio-publico-a-pidi-5-ana-di-prizon-pa-sospechosonan-di-caso-di-leidy-johana/> (in Spanish).

<sup>67</sup> Crónica Uno, “Asciende a cuatro cifra de fallecidos tras naufragio de venezolanos en Aruba” [“The number of deaths rises to four after the shipwreck of Venezuelans in Aruba”], 12 December 2023, <https://cronica.uno/sube-a-siete-muertes-por-naufragio-en-aruba/> (in Spanish); see also Crónicas del Caribe, “Primera Ministra de Aruba confirma que los cuatro migrantes fallecidos en naufragio son venezolanos” [“Prime Minister of Aruba confirms that the four migrants who died in the shipwreck are Venezuelans”], 15 December 2023, <https://cronicasdelcaribe.com/migracion/primera-ministra-de-aruba-confirma-que-los-cuatro-migrantes-fallecidos-en-naufragio-son-venezolanos/> (in Spanish).

<sup>68</sup> Meeting by video call with communications manager ‘Venezuela’ from the Aruban government, 9 February 2024; see also R4V, *Report: Study on the Protection Situation of Venezuelan Refugees and Migrants in the Caribbean*, November 2021, [https://www.r4v.info/sites/g/files/tmzbdl2426/files/2022-02/Protection%20study%20Caribbean%202021\\_0.pdf](https://www.r4v.info/sites/g/files/tmzbdl2426/files/2022-02/Protection%20study%20Caribbean%202021_0.pdf), p. 27.

<sup>69</sup> For example, Colombia, Peru, Ecuador and Chile.

<sup>70</sup> Amnesty International, *Regularization and Protection* (previously cited).

<sup>71</sup> DIMAS asylum unit, letter to Amnesty International, 20 December 2023, on file with Amnesty International.

<sup>72</sup> DIMAS asylum unit, letter to Amnesty International, 20 December 2023, on file with Amnesty International.

<sup>73</sup> Interview in person with DIMAS and GNC officials, 21 October 2022, Aruba.

given generally enabling access to services and work<sup>74</sup>, which is an example of a secondary pathway to a residency status, given to asylum seekers as part of the process of regularization. Since regular entry is impossible for many Venezuelans – because they cannot obtain official documentation in Venezuela – this “alternative pathway” to a temporary residence permit is not a real and effective alternative in Aruba.

Aruban legislation also enables asylum seekers to receive a temporary residence permit (which would also enable a work permit) where DIMAS takes longer than four weeks to pre-assess the asylum request.<sup>75</sup> The amended Article 19 of the National Decree on Admission (Toelatingsbesluit) extended rights to both newly arrived applicants (Article 19(1)) and those already in Aruba (Article 19(f)). Stricter conditions were imposed on the granting of temporary residence permits for asylum seekers waiting for the decision of their asylum application. The revised article states that an individual “may” obtain such a permit.<sup>76</sup> The revised Article 19(6) states that there may be “further conditions” attached to receiving the permit but these are not specified in the decree. The ambiguity of these conditions is worrying because it could lead to arbitrary decisions, violating the principle of legal certainty. Prior to the 2019 amendment of Article 19, organizations informed Amnesty International that the Aruban authorities did grant such permits, but that they have not come across any Venezuelans receiving them since the amendment. According to the Aruban authorities, since the amendment there have been four to five asylum requests made immediately upon arrival at the border. These requests were processed within the four-week limit, thus no temporary permits were required.<sup>77</sup> The Aruban authorities told Amnesty International that the majority of asylum applicants were “migrants looking for better economic opportunities and that therefore the application of a regular permit is more suitable and is an option for all asylum seekers”.<sup>78</sup>

In Aruba, general health insurance is not available for undocumented people. Individuals who lack residency papers are ineligible for public healthcare services and private healthcare schemes are financially beyond their reach. They must bear the burden of covering all medical expenses independently, leading to considerable financial strain. Emergency healthcare is provided only in life-threatening situations, leaving undocumented persons without access to essential medical care for non-emergency conditions. Medical assistance is provided through collaborative projects by medical universities and international organizations such as IOM. In 2024, IOM opened the first free clinic for refugees and migrants in Aruba.<sup>79</sup> NGOs working in Aruba also support undocumented migrants needing medical care through medical vouchers and/or access to their free medical clinic.

The Aruban authorities have stated that children between the ages of four and 16, regardless of their migrant status, have access to education as per local law. Once in school, all children have access to the national vaccination programme.<sup>80</sup>

The Aruban authorities explained to Amnesty International that upon rejection of their asylum petition the asylum seekers are asked to leave Aruba voluntarily. If they remain in Aruba and are found working without a permit, they may be subject to a policy of detention and deportation, since refoulement is no longer applicable.<sup>81</sup> Amnesty International is concerned by Aruba’s interpretation of the non-refoulement obligation. Given the crisis in Venezuela including the political-civil rights crisis as well as the humanitarian emergency, all people fleeing Venezuela should be considered to be asylum seekers prima facie and treated as such. This means that all deportations of Venezuelans would violate the non-refoulement obligation.

None of the Venezuelans interviewed by Amnesty International between 2021 and 2023 had received any form of permit or official documentation. Consequently, those without official documentation awaiting an asylum decision find themselves unable to secure regular employment. Amnesty International interviewed Venezuelan asylum seekers who had also applied for work permits. One Venezuelan woman had learnt about the option to apply for a work permit through friends rather than from official government sources. Maria\*

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<sup>74</sup> Laura Maria Rojas Morales, “Colombia’s ten-year Temporary Protection Status for Venezuelan migrants and refugees”, Inequality Solutions, 18 July 2023, <https://www.sdg16.plus/policies/temporary-protection-status-for-venezuelan-migrants-colombia/>

<sup>75</sup> It is important to note that this amendment of the article took place in 2019. Before the 2019 amendment, the asylum procedure consisted solely of Article 19 of the National Decree on Admission and a chapter in the 2018 DIMAS Admission Handbook. However, after July 2019, this procedure was expanded to include Articles 19(a)-(g) under the National Decree on Admission. Previously, the system only recognized applicants upon arrival in Aruba as being lawfully present, leaving those already in Aruba without a legal basis. Additionally, the pre-amendment Article 19 stipulated that asylum seekers awaiting their procedure should be granted a temporary residence permit without a deposit, exempting them from Article 7 of the National Ordinance on Admission and Expulsion (Landsverordening Toelating en Uitzetting, LTU), which requires a deposit for residence permit applications.

<sup>76</sup> In response to a list of questions sent by Amnesty International in December 2023, the Aruban authorities stated that government policy determines when an individual obtains such a permit and that the virtual reporting duty is to indicate whether the applicant is still interested in further processing their asylum application.

<sup>77</sup> DIMAS asylum unit, letter to Amnesty International, 20 December 2023, on file with Amnesty International.

<sup>78</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>79</sup> IOM, “Aruba”, <https://www.iom.int/countries/aruba> (accessed on 12 March 2024).

<sup>80</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>81</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

explained, “The government just says you have to have permission, but they don’t tell you how to do it or what options are available.”<sup>82</sup> A Venezuelan man expressed concerns that his health condition might hinder the approval of his work permit application. Additionally, another Venezuelan woman, Isabel\*, recounted how her employer had managed to endorse her work permit application, but this action had automatically nullified her asylum claim. This occurred approximately two years after she had filed for asylum.<sup>83</sup>

Due to their irregular status and lack of accessible legal pathways, most Venezuelans in Aruba are unable to secure formal employment and livelihood opportunities. To sustain themselves, they rely on support from others or are forced into informal work arrangements. Engaging in undocumented work exposes them to exploitation; some reported receiving threats of non-payment of wages due to their lack of documentation.<sup>84</sup> This lack of documentation also increases people’s vulnerability; for instance, a lawyer told Amnesty International about a Venezuelan woman who was arrested by the police because of a dispute with her landlord.<sup>85</sup> The fear of being reported to the immigration authorities further heightens their vulnerability. As one Venezuelan asylum seeker noted, “If someone doesn’t like you, they will call [the] immigration [service].”<sup>86</sup> This was also confirmed by a lawyer who told Amnesty International that the police had detained one of her Venezuelan clients in their house after their employer had called the police on them.<sup>87</sup>

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<sup>82</sup> Interview in person with Maria\*, a Venezuelan asylum seeker, 18 October 2022, Oranjestad, Aruba.

<sup>83</sup> Interview by voice call with Isabel\*, a Venezuelan asylum seeker, 24 June 2024.

<sup>84</sup> Interview in person with Vanessa\*, a Venezuelan asylum seeker, 17 October 2022, Oranjestad, Aruba.

<sup>85</sup> Interview by video call with Mariana\*, an Aruban lawyer, 8 November 2022.

<sup>86</sup> Interview in person with Vanessa\*, a Venezuelan asylum seeker, 17 October 2022, Oranjestad, Aruba.

<sup>87</sup> Interview by video call with Mariana\*, an Aruban lawyer, 8 November 2022.

# 3. LEGAL FOUNDATIONS OF PROTECTION FOR VENEZUELAN IN ARUBA

## 3.1 ARUBA'S LEGAL FRAMEWORK

Aruba acceded to the UN Protocol Relating to the Status of Refugees (1967 Protocol) and with that is indirectly bound by the UN Convention Relating to the Status of Refugees (UN Refugee Convention). Aruba is also bound by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). All of these international treaties are relevant to this research.

The Kingdom of the Netherlands ratifies the international treaties and it is up to each of the four countries within the kingdom to ensure that the rights and obligations of the treaties are adhered to in the local context.<sup>88</sup> When a human rights violation occurs, however, the Kingdom of the Netherlands is accountable under international law, as a party to the treaty. Furthermore, there exists a legal obligation for the kingdom to safeguard fundamental human rights and for the countries within the kingdom collectively to aid one of the other countries when they are in need. This is elaborated upon in Chapter 8, "Obligations of the Kingdom of the Netherlands".

Aruba follows the original definition of a refugee, as defined in the UN Refugee Convention and as amended by the 1967 Protocol. A refugee under the UN Refugee Convention is defined as "someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion".<sup>89</sup> Aruba does not further apply any broader, regional definitions of a refugee, as, for example, the Cartagena Declaration on Refugees does.<sup>90</sup> Aruba defines an asylum seeker as someone who makes an appeal on the treaty definitions and makes a petition for protection on the basis thereof.<sup>91</sup>

The UN High Commissioner for Refugees has observed that "while Aruba acceded to the 1967 Protocol in 1986, it has not enacted specific legislation to implement obligations under it".<sup>92</sup> Therefore, despite being bound to the UN Refugee Convention, Aruba has no specific asylum legislation. The asylum procedure has been provided for within the general immigration laws. The relevant procedures applicable to asylum seekers can be found in the following legal instruments: the National Ordinance on Admission and Expulsion (Landsverordening Toelating en Uitzetting, LTU), the National Decree on Admission (Toelatingsbesluit), the

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<sup>88</sup> Rijksoverheid, "Verdragen onderdeel van internationaal recht" ["Treaties are part of international law"], <https://www.rijksoverheid.nl/onderwerpen/internationale-verdragen/verdragen-onderdeel-van-internationaal-recht> (accessed on 10 September 2024).

<sup>89</sup> UN Refugee Convention, Article 1(2).

<sup>90</sup> The Cartagena Declaration on Refugees defines a refugee as not only those fearing persecution, but also individuals fleeing due to generalized violence, foreign aggression, internal conflicts, massive human rights violations, or other situations that seriously disturb public order.

<sup>91</sup> Presentation by DIMAS to Amnesty International, 21 October 2022, Aruba.

<sup>92</sup> UN High Commissioner for Refugees, Submission by the UN High Commissioner for Refugees: Universal Periodic Review: 3rd Cycle, 27th Session, September 2016, <https://www.refworld.org/policy/upr/unhcr/2016/en/119208>

National Decree for Administrative Judicial Procedures (Landsverordening Administratieve Rechtspraak, LAR). Furthermore, there are manuals,<sup>93</sup> guidelines<sup>94</sup> and policy instructions<sup>95</sup> to be followed by authorities falling under different ministries. Aruban authorities informed Amnesty International that a Treaty Protection Department is currently being established at DIMAS, which will be responsible for professionally implementing guidelines and obligations to ensure compliance with the Refugee Convention.<sup>96</sup>

The table below provides an overview of the instruments in Aruba's legal system that are applicable to the asylum procedure.

Legal instruments	Articles applicable to the asylum procedure
Constitution of Aruba	Article 1.9 states that the LTU regulates the admission and expulsion of foreigners.
<p><b>National Ordinance on Admission and Expulsion of Foreigners (LTU)<sup>97</sup></b></p> <p>The LTU is supplemented by various implementing regulations and the admission policy, which are documented in the DIMAS Admission Handbook.<sup>98</sup></p>	<p>Article 15 gives a legal basis for the expulsion of foreigners. It holds that expulsion is allowed for individuals for whom admission is required under the LTU and whose stay is considered undesirable for reasons of morality, public order, or public peace and safety.</p> <p>Article 16 holds that in the case of the expulsion, the minister responsible for judicial affairs may order the detention of the individual if they pose a danger to public order, public peace or safety, or good morals, or if there is well-founded fear that the individual will attempt to evade departure.</p> <p>An alternative to detention is also laid down in Article 16, allowing for an obligation of the individual to periodically report to a location designated by the minister responsible for judicial affairs or for them to be placed under electronic surveillance.</p> <p>Article 20.2 describes 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.</p> <p>(Continued overleaf)</p>
Legal instruments (continued)	Articles applicable to the asylum procedure (continued)

<sup>93</sup> Ministry of Labour, Energy and Integration, Aruba, *Handboek Toelating* [Admission Manual], 2023, <https://www.dimasaruba.aw/wp-content/uploads/2023/03/MinAEI-2023-Final-Toelatingshandboek-2023-6-maart-2023.pdf> (in Dutch).

<sup>94</sup> Ministry of Justice and Social Affairs, Aruba, *Richtlijnen Meldingsplicht* [Guidelines for Reporting Obligations] (BMJSZ000042), 2022 (in Dutch).

<sup>95</sup> Ministry of Justice and Social Affairs, Aruba, *Richtlijnen voor Inmigracion Aruba en Guarda Nos Costa* [Guidelines for Immigration, Aruba and Guarda Nos Costa] (JUSJUR22001), 2022 (in Dutch).

<sup>96</sup> Aruban government, right of reply letter to Amnesty International, 13 September 2024, on file with Amnesty International.

<sup>97</sup> The LTU serves as the primary legislation governing the admission and expulsion of individuals in Aruba and the movement of persons to and from Aruba. The LTU is of a higher order than the National Decree on Admission. The National Decree on Admission stipulates further provisions.

<sup>98</sup> Ministry of Labour, Energy and Integration, Aruba, *Handboek Toelating* (previously cited). The handbook provides a summary of the various relevant laws and regulations, attempting to present them in a practical manner. The handbook is divided into a thematic representation of the applicable rules for each target group. In 2023, the new version of the handbook became publicly available; however, the chapters about asylum and people seeking protection, which were previously included, have been excluded from the new version.

<p><b>National Decree on Admission</b></p> <p>Under the authority of the LTU, the National Decree contains general migration-related measures and has only one article dedicated to people seeking protection.</p>	<p><u>Article 19</u> holds that the person seeking admission, who promptly upon arrival in Aruba informs a migration officer that they believe they are entitled to a special status or protection in Aruba based on a valid treaty for Aruba, and wishes to be admitted accordingly, is given the opportunity to submit a request for this purpose.</p> <p><u>Articles 19(a) and 19(b)</u> describe the grounds for rejection, such as if the person is already recognized as a refugee in a third country, if a subsequent application on which no new elements or findings have been made, or if an application is submitted solely for the purpose of deportation. In particular, Article 19(b)(h) holds that an asylum request can be denied where the person has entered Aruba unlawfully, or has extended their stay unlawfully and without a valid reason, and where they have not reported to the service as soon as possible expressing a desire for international protection.</p> <p><u>Article 19</u> holds that the person seeking admission should be promptly informed of the deferral of the decision to refuse admission to Aruba. If no decision has been made regarding the admissibility or manifest unfoundedness of the request within four weeks of the notification, a temporary permit can be granted to the person seeking admission. The permit includes reporting obligations and the condition that the individual cooperates in one or more hearings to verify their statements and provide explanations of the facts in the context of the decision on their request.</p> <p><u>The National Decree on Admission</u> states that additional conditions may be attached to the permit, but these are not explained in the policy. The permit is issued free of charge and the individual is not required to pay a security deposit. The temporary permit expires automatically as soon as a decision is made on the request or if the request is withdrawn. An amendment of the National Decree changed the wording to “can”, which has resulted in confusion around when a person can obtain this permit.</p> <p><u>Article 19(d)</u> holds that a person seeking protection can be detained under the authority of the Minister of Labour, Energy and Integration. Before 15 December 2022, the Schiphol model, as this policy was known (see section 3.2), was used to detain people for a maximum of 28 days while the pre-assessment of the request took place. The courts ruled, however, that there was no legal basis for the detention of people seeking protection upon admission or whose request for protection has been rejected, and since then the Schiphol model is no longer used.<sup>99</sup></p> <p>(Continued overleaf)</p>
<p><b>Legal instruments (continued)</b></p>	<p><b>Articles applicable to the asylum procedure (continued)</b></p>

<sup>99</sup> Common Court of Justice, Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba (Gemeenschappelijk Hof van Justitie, Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba), AUA2022H00089, 15 December 2022, para 4.2.



<p><b>National Decree for Administrative Judicial Procedures (LAR)</b></p> <p>The LAR regulates the procedure for administrative decisions such as detention orders, deportation orders and negative asylum decisions. It is not a legal instrument specifically created for asylum procedures, but rather administrative decisions in general.</p>	<p><u>Articles 9-14</u> describe the procedure for filing an objection against the order.</p> <p><u>Articles 23-25</u> allow for the individual affected to appeal before the Court of First Instance.</p> <p><u>Article 54</u> allows for an appeal at the Higher Court against the decision of the Court of First Instance.</p>
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## 3.2 APPLYING FOR ASYLUM IN ARUBA

This section outlines the three ways in which a person can apply for asylum in Aruba.

The **first scenario** involves applying for asylum upon arrival. If a person arrives in Aruba regularly (via official maritime or air borders), they can apply with a migration officer who will provide a registration form and grant access to the asylum procedure.<sup>100</sup> Amnesty International is also aware of a case where an asylum seeker scheduled an appointment on the DIMAS website before arriving in Aruba.

The **second scenario** involves applying for asylum when already present on the island. In this case, the only way to apply is by booking an appointment on the DIMAS website. During the appointment the registration form is filled out and an initial interview takes place. The waiting period for making an appointment via the website can be up to three months. In this scenario, the individual is not detained but must report monthly to DIMAS after booking. According to DIMAS, the reporting duty is to confirm the person's commitment to the process and have an overview of the applicant during the process.<sup>101</sup>

The detention of a person who has applied for asylum is unlawful. If for some reason a person who is waiting for an asylum decision has been detained, they should be released unconditionally because they already have a mandatory reporting duty with DIMAS and thus should not receive a mandatory reporting with GNC officials.<sup>102</sup>

According to the Aruban authorities, upon receiving a negative asylum decision, the individual will not automatically receive a deportation order; they are expected to leave Aruba voluntarily or appeal the negative decision. If the person does not leave Aruba and is caught by the authorities while working or in violation of any Aruban laws or has been incarcerated, the person will be transferred to the GNC immigration detention centre and the GNC director will issue a deportation order on behalf of the Minister of Justice.<sup>103</sup> The negative decision states that the person has six weeks to appeal the decision; however, an appeal does not suspend the deportation, which means people can be deported before completing the legal appeal procedure in Aruba.

The **third scenario** is applying for asylum while detained in the GNC immigration detention centre.<sup>104</sup> There are two situations in which a person seeking protection ends up in detention. The first is when a person arrives irregularly by boat, is intercepted by the coastguard or police, and is then handed over to GNC officials. The person is automatically detained at this point because irregular arrival in Aruba is considered a violation of Aruban law. Upon arrival in detention, they can apply for asylum and remain detained. The Aruban authorities told Amnesty International that in this scenario a deportation order is issued on the day of arrival at the GNC immigration detention centre.<sup>105</sup>

The second situation in which a person seeking protection can end up in detention is when they are detained via a traffic or work patrol by GNC officers and are found to be undocumented. Detention can also occur when a person has entered Aruba regularly but they have exceeded the period of stay granted and are not in possession of a work or residence permit. In either of these situations, the person can apply for asylum upon arrival in detention. Within 72 hours a judge must review the detention. Based on Articles 15 and 16 of the LTU, a judge could approve the detention of the individual detained based on the grounds of entering Aruba irregularly. If the reviewing judge decides that the person has been unlawfully detained – for example, because

<sup>100</sup> Common Court of Justice, Aruba, AUA2022H00089 (previously cited), para. 4.2.

<sup>101</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

<sup>102</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>103</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>104</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

<sup>105</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

they have an asylum application underway – then the person will be released immediately but may be subject to a reporting duty. In the case of a negative decision, the person is immediately scheduled for deportation and remains in detention, unless the individual challenges their deportation successfully or their detention is reviewed and the individual is released.

During the era of the Schiphol model, which was financed by the Netherlands in 2019,<sup>106</sup> a detention policy was applied to detain asylum seekers for a maximum of 28 days while DIMAS decided on their asylum request. Based on the National Decree on Admission (Article 19(d)), the Minister of Labour, Energy and Integration could decide to detain people while awaiting a decision on their application for asylum. The Schiphol model was declared unlawful by the Court of First Instance in Aruba on 14 March 2022, which was then confirmed on 15 December 2022 by the Higher Court.<sup>107</sup> According to the judge, people detained under the detention policy were deprived of their liberty on the same footing and at the same location as the person detained under Article 16 of the LTU. The judge held, “This means that this is a far-reaching encroachment on personal liberty which, given the principle of legality, should have a sufficiently clear basis in law.”<sup>108</sup> The judge concluded that Article 19(d) of the National Decree on Admission lacks a legal basis in the LTU for implementing detention measures. The judge furthermore held that the far-reaching nature of such measures suggests that the LTU did not intend to grant this authority to a lower legislator. The detention policy under the Schiphol model did not have the same strict safeguards, such as appearing before a judge within 72 hours,<sup>109</sup> so detentions under the Schiphol model were not reviewed by a judge. Amnesty International interviewed Venezuelans who had been detained but had not appeared before a judge to have their detention reviewed.

According to the Aruban authorities, the Schiphol model has been discontinued since its declaration as unlawful by the courts. The Schiphol model might be reimplemented if legislative changes go through under the Legislative and Legal Affairs Directorate (Directie Wetgeving en Juridische Zaken, DWJZ). The authorities further stated that although detention of foreigners remains possible, no “retention” of individuals under the Schiphol model can occur until the law is amended. As a result, individuals requesting asylum upon arrival are typically interviewed on the same day. If an immediate interview is not feasible, no “retention” measures are implemented.<sup>110</sup>

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<sup>106</sup> See Chapter 8, “Obligations of the Kingdom of the Netherlands”.

<sup>107</sup> Common Court of Justice, Aruba, AUA2022H00089 (previously cited), para 4.2.

<sup>108</sup> Court of First Instance in Aruba, Lar nr. AUA202101126, 14 March 2022, <https://privacy-web.nl/jurisprudentie/eclinlogeaa2022234/>, para 2.4.

<sup>109</sup> Court of First Instance in Aruba, Lar nr. AUA202101126 (previously cited), <https://privacy-web.nl/jurisprudentie/eclinlogeaa2022234/> para 2.6.

<sup>110</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

# 4. NO ASYLUM IN ARUBA

There are fundamental flaws in the asylum procedure in Aruba. According to European Court of Human Rights (ECtHR) caselaw, an asylum procedure should meet the following requirements:

- The asylum procedure must be **accessible**. The asylum seeker should receive **adequate information** about the procedures to be followed, in a language they understand, and have access to a reliable communication system with the authorities,<sup>111</sup> and have has a right of access to interpretation and translation.<sup>112</sup> Asylum seekers need to be given reasons for the decision.
- The asylum seeker should be able to **access legal aid**, including if they do not have sufficient means to pay for legal assistance.<sup>113</sup>
- No persons should be deported without a **fair and effective procedure**. An individual claim must be thoroughly examined.<sup>114</sup>
- The legal remedy brought by the asylum seeker must automatically **suspend the execution of the forcible return measure**.<sup>115</sup>

The following sections analyse the extent to which the asylum procedure in Aruba respects these requirements.

## 4.1 BARRIERS AND LACK OF INFORMATION

According to the Aruban authorities, information about asylum in Aruba is available on various websites including the DIMAS website and the “Open your Eyes” (“Habri bo wowo”) campaign website.<sup>116</sup> The Open your Eyes campaign by the Coordination Centre on Human Trafficking and Migrant Smuggling Aruba (Coördinatiecentrum Mensenhandel Mensensmokkel Aruba) provides information on human trafficking, migrant smuggling, and asylum. The page on asylum explains how the process works and directs individuals to the DIMAS website, with information available in English and Spanish. The Open your Eyes site is not solely dedicated to asylum, which may affect the accessibility and awareness of asylum procedures. The Aruban authorities claim to provide information on human trafficking in the arrivals hall at the airport, including a helpline number for further assistance and referral to DIMAS.<sup>117</sup>

The Aruban authorities also stated that information about asylum can be found on the DIMAS website. The home page of the DIMAS website gives language options of Dutch, English and Spanish, but once you are

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<sup>111</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application 30696/09, Grand Chamber judgment, 21 January 2011, <https://hudoc.echr.coe.int/eng?i=001-103050>, paras 300-2, 304 and 306-310; see also ECtHR, *Hirsi Jamaa and Others v. Italy*, Application 27765/09, Grand Chamber judgment, 23 February 2012, <https://hudoc.echr.coe.int/eng?i=001-109231>, para. 204.

<sup>112</sup> ECtHR, *Hirsi Jamaa and Others v. Italy* (previously cited), para. 202; *M.A. and Others v. Lithuania*, Application 59793/17, Grand Chamber Judgment, <https://hudoc.echr.coe.int/eng?i=001-188267>, 11 December 2018.

<sup>113</sup> ECtHR, *M.S.S. v. Belgium and Greece* (previously cited), paras 300-302, 304, and 306-310; see also ECtHR, *Hirsi Jamaa and Others v. Italy* (previously cited), para. 204.

<sup>114</sup> ECtHR, *M.S.S. v. Belgium and Greece* (previously cited); ECtHR, *Jabari v. Turkey*, Application 40035/98, Grand Chamber Judgment, 11 July 2000, <https://hudoc.echr.coe.int/eng?i=001-58900>, para. 50: “Given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialized and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and the possibility of suspending the implementation of the measure impugned.”

<sup>115</sup> ECtHR, *M.S.S. v. Belgium and Greece* (previously cited).

<sup>116</sup> Coordination Centre on Human Trafficking and Migrant Smuggling Aruba, “Habri bo wowo” [“Open your eyes”], <https://habriwowo.com/> (accessed on 20 December 2023).

<sup>117</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

redirected to the DIMAS appointment booking system page the information is only available in English. After making the appointment, individuals must fill in the registration form in person at the DIMAS office. These forms are available in Dutch, English and Spanish, but are not available online, nor does the DIMAS website explain the asylum procedure. The Aruban authorities do not appear to proactively inform individuals about their rights in a language they can understand.

Amnesty International has identified barriers hindering the accessibility and effectiveness of the asylum procedure via the DIMAS website, particularly regarding interview appointment scheduling. Although asylum seekers can theoretically schedule “protection appointments” on the DIMAS website, there are limited slots available. During its research, Amnesty International checked the DIMAS website multiple times and found that there was often a waiting period of up to three months for an interview appointment. The lack of appointments puts asylum seekers at risk of deportation before being able to apply for asylum because until the appointment there is no registration of their intention to seek asylum. When an interview is scheduled through the website, the applicant receives an email confirmation for a “protection appointment”. The registration of the asylum request occurs only once they attend the interview. Asylum seekers only receive official documentation stating that they are asylum seekers after their final interview with DIMAS. Some people have a single interview and receive the documentation thereafter, but others are required to attend multiple interviews (for further questioning or to verify information) and therefore have to wait longer for the documentation. In the interim period they remain vulnerable to detention for being “undocumented”, and at risk of deportation.

The only way for individuals already on the island to apply for asylum is through the DIMAS website, which presents a further barrier. It is not possible to request asylum by phone or in person. Amnesty International is aware of cases where individuals reported trying to go to DIMAS in person, without an appointment, only to be turned away by guards. To enter the DIMAS building, they need to show proof of an appointment. Some Venezuelan interviewees told Amnesty International that they did not get any confirmation of the booking of their appointment, nor any other response from DIMAS, leaving them in limbo regarding their legal status and protection from deportation. Even where individuals have been able to book an appointment with DIMAS, they remain at risk of detention, deportation and possible refoulement, lacking any proof of their wish to seek asylum.

Individuals arriving in Aruba via a regular route can communicate their wish to apply for asylum to a migration officer, who will then provide them with a registration form. For those who arrive irregularly by boat and are intercepted by the coastguard, accessing information about asylum is more challenging. The coastguard intercepts, rescues and transfers individuals to the Aruban authorities. Upon interception, boat passengers are handed over to GNC officials and are placed in immigration detention. When Amnesty International enquired about how GNC staff communicate information about asylum to detainees, GNC officials replied that not all migrants detained at the GNC detention centre are asylum seekers and an asylum application form will be provided to the migrant upon request.<sup>118</sup> Thus it appears the GNC immigration detention centre does not proactively give information to detainees about the asylum procedure, nor are their rights explained to them. The Aruban authorities stated that an application form is provided on request and then GNC staff deliver it to DIMAS for further processing. Once DIMAS registers the application form, the individual will be transferred to DIMAS for the interview process.<sup>119</sup> The Aruban authorities stated that a collaboration agreement exists between the GNC detention centre and DIMAS regarding the procedure to ensure that this process is handled objectively.<sup>120</sup> In this situation, the asylum seeker awaits the asylum decision in detention. In practice, a lawyer told Amnesty International that she had encountered cases where clients had specifically requested asylum while in detention, but GNC staff had refused to submit the requests. The lawyer had then used her own efforts to ensure that her clients were able to request asylum.<sup>121</sup>

One of the basic safeguards in detention is to be informed of your rights and the applicable procedures.<sup>122</sup> Under international law, detainees should be informed about applicable procedures in a language they understand so they can challenge the decisions affecting them.<sup>123</sup> Based on interviews with former detainees

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<sup>118</sup> GNC, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>119</sup> GNC, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>120</sup> GNC, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>121</sup> Interview by voice call with Cynthia\*, an Aruban lawyer, 2 February 2024.

<sup>122</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Immigration detention factsheet” (CPT/Inf(2017)3), March 2017, <https://rm.coe.int/16806fbf12>

<sup>123</sup> ECHR, Article 5 states that a detainee must be told the legal and factual grounds for his/her arrest or detention in simple, non-technical language that the detainee can understand, so as to be able, if he/she sees fit, to challenge its lawfulness in court in accordance with Article 5(4) of the Handbook on European law relating to Asylum, Borders and Immigration; European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law relating to Asylum, Borders and Immigration*, 2020, [https://www.echr.coe.int/documents/d/echr/Handbook\\_asylum\\_ENG](https://www.echr.coe.int/documents/d/echr/Handbook_asylum_ENG), p. 224. See also ECtHR, *Nowak v. Ukraine*, Application 60846/10, Grand Chamber judgment, 31 March 2011, para. 64; ECtHR, *Khlaifia and Others v. Italy*, Application 16483/12, Grand Chamber judgment, 15 December 2016, para. 115; ECtHR, *Čonka v. Belgium*, Application 51564/99, Grand Chamber judgment, 5 May 2002.

and Amnesty International's observations on the ground, the GNC staff provide minimal information to people detained at the GNC immigration detention centre about their rights and the relevant procedures. The only information detainees receive are the detention and deportation orders, in which the legal remedies are mentioned only briefly. The orders are written in Dutch and are therefore incomprehensible to most Venezuelans. It is left to GNC officers to translate the orders to the detainees verbally in Spanish. In response to a letter from Amnesty International in April 2024, the Aruban authorities said that GNC officials were making the necessary arrangements to translate the deportation orders into Spanish and English.

None of the asylum seekers interviewed by Amnesty International had learnt about the asylum procedure through government information. Most people had found out about the possibility of applying for asylum via other people at the immigration detention centre, friends, family members, or through international organizations such as the Pan American Development Foundation and HIAS, or intergovernmental organizations such as the IOM and UNHCR.

Amnesty International interviewed a Colombian asylum seeker named Carolina\*, who stated, "Everything we found out was due to our own efforts."<sup>124</sup> She explained that neither she nor her partner received any information from DIMAS about their rights or about local and international organizations on the island that help individuals seeking protection. Carolina\* emphasized her need for psychological help, noting that despite the presence of organizations in Aruba offering support to survivors of gender-based violence, DIMAS did not mention any of these resources.<sup>125</sup> The couple had to rely on their own research for information. Additionally, after their interview, they did not receive copies of the interview report or transcripts, only an email stating that they were not allowed to work.

The DIMAS interviews, known as asylum protection assessment hearings, are in Spanish, as is the interview report issued afterwards, which needs to be signed by the applicant. According to the Aruban authorities, a DIMAS asylum unit representative personally explains the document containing the asylum decision in the language of the asylum seeker if the person is in detention.<sup>126</sup>

According to the Aruban authorities a translator is not necessary during the asylum procedure because the procedure can be done in any language the asylum seeker wants, and the DIMAS employees speak Spanish. The LAR is in Dutch, however, and if a translator is needed, the applicant must pay for it themselves. Amnesty International is concerned about this because the lack of translation affects the quality of the interview, and is crucial to ensure understanding of the asylum decision and access to an effective remedy.

Amnesty International is aware of several cases where asylum seekers felt discouraged from applying for asylum during their interviews at DIMAS. Venezuelans reported to Amnesty International that DIMAS employees explicitly told asylum seekers during the interviews that asylum is not granted in Aruba. Carolina\* confirmed this, recounting that an interviewer told her, "If it is in your hands, leave Aruba. Here you don't have health insurance, no service for education, nothing." Similarly, Freddy\*, a Venezuelan asylum seeker, recounted his experience at DIMAS: "They [DIMAS interviewer] told me that my application might be denied because I am not politically persecuted or anything like that."<sup>127</sup> Freddy\* also expressed uncertainty about the status of his case during the interviews, recalling, "They didn't give me any information about my case."<sup>128</sup> Additionally, José\* recounted that during one of his interviews, a DIMAS employee told him after he had answered some questions, "[He said] they will deny it. Here in Aruba, nobody will approve that. I will be the last person you will see here to tell you, it [your asylum request] will be denied. What I recommend you do when you receive a deportation order after the negative asylum decision is to start the process to legalize – find someone to marry."

Regarding the asylum application decision, after the examination process is completed and a decision is made on the application, DIMAS issues the decision to the applicant in written form, either in person or by email. In March 2024, Amnesty International requested that the Aruban authorities show the content of a negative decision on asylum. The authorities provided a Word document that included both English and Dutch translations of the decision; in practice, however, Amnesty International has only encountered the Dutch version of the decision, as evidenced by organizations and Venezuelans. The decision letter/email states that the applicant is now expected to leave Aruba and provides very minimal information about the appeals process.

The absence of a dedicated website explaining information about asylum rights, the lack of information on the DIMAS website, and the lack of information when a person is in immigration detention demonstrate a

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<sup>124</sup> Interview in person with Carolina\*, a Colombian asylum seeker, and her partner, a male Colombian asylum seeker, 13 September 2023, Aruba.

<sup>125</sup> For example, HIAS and Fundacion Contra Violencia Relacional.

<sup>126</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>127</sup> Interview with Freddy\*, a Venezuelan male asylum seeker, 17 October 2022, Aruba.

<sup>128</sup> Interview with Freddy\*, a Venezuelan male asylum seeker, 17 October 2022, Aruba.

significant gap in information resources for individuals seeking asylum in Aruba. Furthermore, the provision of information online is not sufficient; individuals may not have access to the internet or be digitally literate.

## 4.2 NO LEGAL ASSISTANCE

Throughout the asylum procedure, Aruba does not provide free legal assistance. Assistance with local legislation is linked to possession of Dutch nationality.<sup>129</sup> According to Aruban authorities, legal procedures within the asylum procedure fall under administrative law and Aruban administrative law does not offer free legal assistance.<sup>130</sup> Therefore, if an asylum seeker wishes to seek legal assistance, they must do so either via a lawyer whom they must pay or via organizations. International organizations in Aruba such as the UNHCR sometimes provide free legal assistance to asylum seekers at their request. The Tienda di Ley (student initiative at the law faculty of the University of Aruba) may also provide free legal assistance. This legal assistance is not linked to the Aruban authorities. Although, Aruban authorities stated that they are in discussion with NGO's to develop a structural referral mechanism.<sup>131</sup>

When a person seeking asylum manages to secure an initial interview at DIMAS – often with the help of a lawyer – they cannot bring any legal representation to that meeting. Ricardo\*, a Venezuelan man, told Amnesty International: “My lawyer was not allowed to attend the interviews. ‘The asylum procedure is up to you, not your lawyer’ were the DIMAS officials’ words.”<sup>132</sup> DIMAS explained that the interviews do not have a judicial character but are rather to clarify the grounds for asylum previously stated in writing.<sup>133</sup>

Lawyers shared their experiences with Amnesty International about providing legal assistance during the asylum procedure. One lawyer highlighted the lack of information they receive about the case they are representing: “There is no asylum narrative from DIMAS; no documents. So, when you go to a hearing, you go in blank.”<sup>134</sup> Lawyers also told Amnesty International that they encountered barriers when giving legal assistance to their Venezuelan asylum seeker clients who were in the GNC immigration detention centre.

Amnesty International is concerned about the limitations to the legal assistance available to Venezuelan asylum seekers in Aruba during the asylum procedure. Section 5.3.3, “Limited access to legal assistance”, provides more detail on access to legal assistance.

## 4.3 UNFAIR AND INEFFECTIVE PROCEDURES

**“They never cared about anything. I told them they would kill me in Venezuela and I *was* almost killed when I returned.”**

Ricardo\*, a Venezuelan man, described how the Aruban migration authorities forced him to return to Venezuela.

According to official figures, the total number of asylum requests submitted from 2015 to 2023 was 4,369 and concerned 5,534 people.<sup>135</sup> The Aruban authorities claim that the majority of asylum requests are Venezuelans and Colombians.<sup>136</sup> Amnesty International asked the authorities for the exact number of Venezuelan applicants divided by age and gender. However, Aruban authorities did not provide the exact numbers of Venezuelans applying for protection, divided by age and gender, leaving Amnesty International unable to determine the exact numbers. The 2022 annual report of Aruba stated that the majority of requests were rejected, mostly due to being declared “inadmissible and manifestly unfounded”.<sup>137</sup> The 2022 annual report also stated that the acceptance rate of asylum requests was 1.1%. When Amnesty International asked the Aruban authorities

<sup>129</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International. This statement was also confirmed in an interview by voice call with Cynthia\*, an Aruban lawyer, 2 February 2024. In order to submit a request for a pro-deo lawyer for both civil and administrative law via Asunto Social Aruba, the applicant must possess Dutch nationality and a Dutch passport. This therefore excludes other nationalities.

<sup>130</sup> Aruban government, right of reply letter to Amnesty International, 13 September 2024, on file with Amnesty International.

<sup>131</sup> Aruban government, right of reply letter to Amnesty International, 13 September 2024, on file with Amnesty International.

<sup>132</sup> Interview by video call with Ricardo\*, a Venezuelan asylum seeker, 20 October 2022.

<sup>133</sup> DIMAS, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

<sup>134</sup> Interview by video call with Mariana\*, an Aruban lawyer, 8 November 2022.

<sup>135</sup> Government of Aruba, *Jaarverslag 2022* (previously cited), p. 27.

<sup>136</sup> Government of Aruba, *Jaarverslag 2022* (previously cited), p. 27.

<sup>137</sup> Government of Aruba, *Jaarverslag 2022* (previously cited), p. 20.

about the 1.1% protection rate, the authorities replied, “The 1.1% result is in granting either a refugee status or a humanitarian status based on another international protection. The nationalities are Venezuelan and Afghan.”<sup>138</sup> The number of Venezuelans who have been recognized as refugees in Aruba since 2021 is unknown.

Amnesty International asked DIMAS to explain what type of questions are asked during the initial interview. DIMAS replied that the questions asked to an asylum seeker are relevant to “assure the identity of the person”, “validate the declaration given in the asylum registration”, “assure that the person is travelling from the country of origin” and “validate if there is multi-nationality”.<sup>139</sup> DIMAS further explained that in-depth questions regarding the five convention grounds of the UN Refugee Convention may be asked depending on the declarations given in the registration form or during the interview. The applicant will also be asked if they have already requested protection in their own country or elsewhere. Furthermore, DIMAS explained that part of the evaluation in the interview includes the adjudication of the possible consequences for the individual upon return to their home country. DIMAS stated that the applicant has the opportunity throughout the process to submit any relevant documentation to substantiate their claim for protection.<sup>140</sup> DIMAS also stated that it maintains a database with current information on Venezuela and is receiving updates from the Dutch government in this regard. Additionally, it has access to other online open sources of information.<sup>141</sup>

Several Venezuelan asylum seekers in Aruba told Amnesty International that DIMAS had labelled their reason for being in Aruba as “economic”. Ricardo\*, who was undergoing the asylum procedure, recalled his interviews at DIMAS: “They state I left [Venezuela] due to economic reasons, but I did not leave for economic reasons.” He also mentioned that when he asked why his asylum request had been rejected, DIMAS cited economic reasons.<sup>142</sup>

Lawyers and other organizations have expressed concerns about DIMAS’ asylum decisions, particularly noting that country of origin information is not adequately analysed, utilized or referenced in adjudicating asylum claims and that non-state actors are not recognized as agents of persecution.<sup>143</sup> The Dutch government clearly states that criminal gangs and the police or security services are often intimately entwined in Venezuela, and armed groups are often deployed to control the population.<sup>144</sup> Lawyers and organizations further told Amnesty International that DIMAS does not recognize corrupt government officials as state agents and therefore a person citing such persecution cannot prove their incapacity to avail themselves of protection of the state. Neglect of these factors in the assessment of an asylum claim can result in denial of protection, unlawful detention and deportation, and breaches of the principle of non-refoulement.

Furthermore, asylum seekers have to prove the credibility of elements of their asylum claim, which are often hard to prove. According to information shared by lawyers and the UNHCR, there seems to be no shared duty of the asylum seeker and the immigration authorities to ascertain and evaluate all relevant facts of the case in asylum proceedings; the burden of proof remains solely on the shoulders of the asylum seeker without any assistance from the immigration authorities.<sup>145</sup> Lawyers and the UNHCR also mentioned that DIMAS fails to conduct a forward-looking assessment.<sup>146</sup> For example, when it comes to the persecution element, DIMAS seems not to produce an analysis of the potential persecution in the country of origin if an individual were returned and the documents analysed by Amnesty International do not indicate a forward-looking assessment. In addition, lawyers and the UNHCR stated that DIMAS does not consider that cumulative grounds can amount to persecution. It is not always easy to differentiate between leaving for humanitarian reasons or a more generalized threat and leaving because of targeted and individual risk of torture or persecution. In some cases, people are more affected by the lack of food or medical care, their refusal to cooperate with government-related (sometimes armed) groups, or their refusal to support the government. For example, they cannot access certain government services, including medical care and food aid if they refuse the *carnet de la patria*,

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<sup>138</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>139</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>140</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>141</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>142</sup> Interview by video call with Ricardo\*, a Venezuelan asylum seeker, 20 October 2022.

<sup>143</sup> Interview by video call with Mariana\*, an Aruban lawyer, 8 November 2022; interview by video call with Cynthia\*, an Aruban lawyer, 2 February 2024; UNHCR, 26 February 2024, on file with Amnesty International

<sup>144</sup> Ministry of Foreign Affairs, *Algemeen Ambtsbericht Venezuela 2020* [General Official Information Report Venezuela 2020], June 2020, [https://open.overheid.nl/repository/ronl-11d8145d-9ac5-4ad5-bbf7-9fa0834a90a2/1/pdf/Algemeen%20Ambtsbericht%20Venezuela%20juni%202020\\_.pdf](https://open.overheid.nl/repository/ronl-11d8145d-9ac5-4ad5-bbf7-9fa0834a90a2/1/pdf/Algemeen%20Ambtsbericht%20Venezuela%20juni%202020_.pdf), para 3.1. (in Dutch).

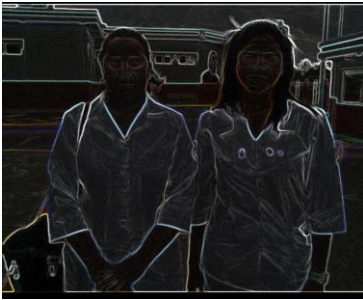
<sup>145</sup> Interview by video call with Mariana\*, an Aruban lawyer, 8 November 2022; interview by video call with Cynthia\*, an Aruban lawyer, 2 February 2024; correspondence with UNHCR, 26 February 2024, on file with Amnesty International.

<sup>146</sup> Interview by video call with Mariana\*, an Aruban lawyer, 8 November 2022; interview by video call with Cynthia\*, an Aruban lawyer, 2 February 2024; correspondence with UNHCR, 26 February 2024, on file with Amnesty International.

<sup>147</sup> an identity card created by the Venezuelan government to give citizens access to food packages and other essential services, which enables the government to establish whether citizens are registered in government programmes.<sup>148</sup>

Vanessa\*'s case described below is illustrative of the different cumulative grounds for asylum and the heavy burden of proof on asylum seekers, which can lead to the denial of protection.

## THE CASE OF VANESSA\*: INADEQUATE ASSESSMENT OF THE SITUATION IN THE COUNTRY OF ORIGIN



Vanessa\* with a fellow nurse in Venezuela.<sup>149</sup>

Vanessa\* worked as a nurse in Venezuela. She has been politically active for almost 20 years, first defending nurses' rights and later joining an opposition party. She participated in various protests against the government. She told Amnesty International that this caused problems at her work. In 2014 the hospital management accused her of stealing medical supplies and having mental health issues; she could not get a credit card to withdraw money; she was transferred to a hospital further away and had to work the night shifts. The hospital management threatened to fire her, which would mean she would lose her social benefits, such as her health insurance. She told Amnesty International that *colectivos* would drive on motorcycles past her house, shouting and intimidating her.<sup>150</sup> She filed a report at the police, but they appeared not to take any action. In 2012, her two sons and ex-husband had a car accident, in which her ex-husband died. She had to take care of her two sons who were badly injured. The government refused to offer her any social benefits.

She believed that the treatment she received in Venezuela was due to the fact that she belonged to the opposition political party "the problem is that if you are an opponent the government [the government] restricts you from the benefits that your profession gives you." Her reasons for leaving were political persecution.

In 2017 she decided to leave Venezuela with her partner because her situation had become riskier. Her sons remained in Venezuela. She was not able to get passports for them due to difficulties obtaining documents via the SAIME website. She said she could not stay in Venezuela because the government would find her through her *carnet de la patria*, which the hospital management had forced her to take. Vanessa\* recounted, "In any state [in Venezuela], the government will look for me. This happens with all the professionals who are from the opposition, they will search for you in the system."

Vanessa\* requested asylum in Aruba in 2018. She had several interviews at DIMAS but did not receive any information about her rights to asylum or the application procedure. Furthermore, she had a monthly reporting duty at DIMAS. Vanessa\* further explained that during the interviews at DIMAS she was not allowed to bring anyone, or to have a translator, nor was she allowed to bring her phone in with her. The interviews were conducted in Spanish, but the DIMAS staff conducting the interview were talking in Dutch among themselves. "They were also laughing during the interview. That bothered me," Vanessa\* recalled.

<sup>147</sup> Reuters, "Special report: How ZTE helps Venezuela create China-style social control", 14 November 2018, <https://www.reuters.com/article/us-venezuela-zte-specialreport/special-report-how-zte-helps-venezuela-create-china-style-social-control-idUSKCN1N11T/>

<sup>148</sup> Ministry of Foreign Affairs, *Algemeen Ambtsbericht Venezuela 2020* (previously cited), pp. 30-32.

<sup>149</sup> Vanessa\* gave Amnesty International consent to use her picture, blurred to respect her anonymity.

<sup>150</sup> *Colectivos* is a term used to refer to pro-government armed groups in Venezuela.



After the interview she had to sign many documents, which were in Dutch. She told Amnesty International that she did not understand what was written in those documents. Vanessa\* also asked DIMAS about the possibility of working under Article 19 of the National Decree on Admission, but she never received an answer.

Despite the many supporting documents that she provided as proof of her persecution, protests that were stopped by the government, and the detention of colleagues at her hospital, her asylum application was rejected. One of the reasons DIMAS gave for finding her claim unfounded was that she “has not been able to prove that the local nor the central government had committed an act of persecution nor the intention to persecute”.<sup>151</sup>

Vanessa\* received the negative decision written in Dutch and she had to ask a friend to help her translate the document. “They told me that I wasn’t a refugee because my reasons for leaving were not political but economical. But that’s not true. The economic reasons are a consequence of political reasons.”

Vanessa\*\* has been living undocumented in Aruba for seven years at the time of closure of the report. With her asylum denied, she faces the constant threat of detention and deportation back to Venezuela. Vanessa fears being detained if she is returned to Venezuela, where her sons currently reside. During Amnesty International’s contact with her in June 2024, she mentioned that she was undergoing a resettlement process with the UNHCR, which began in 2023.

Vanessa\* feels disappointed and hopeless. She said, “I think I wasted my time explaining my situation at DIMAS. We Venezuelans who asked for help did not get any help from Aruba.” She has started the process of legalizing her status through a work permit, but finds it challenging: “It’s difficult to find an employer willing to sign.” Despite her efforts, she continues to struggle with the uncertainty of her situation.

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<sup>151</sup> Quoted from the decision documentation from DIMAS on Vanessa\*\*’s asylum request.

# 5. UNLAWFUL DETENTION AND DEPORTATION

## 5.1 IMMIGRATION DETENTION IN ARUBA

Legislation in Aruba holds that the detention of individuals is allowed in the context of deportation “if [the individual] poses a danger to public order, public peace or safety, or morals, and if there is a well-founded fear that the person concerned will try to evade departure”.<sup>152</sup> In this situation, individuals are sent to the GNC immigration detention centre.

In reality, individuals can be detained for a range of reasons. Irregular entry into Aruba results in automatic detention, regardless of the personal circumstances of the individual.<sup>153</sup> Individuals identified for deportation are also automatically detained. Amnesty International has documented cases where individuals were detained for a combination of factors (such as irregular entry and being caught during a work or traffic patrol without residency papers), highlighting the diverse grounds for detention.

Following detention, a judge assesses its legality within 72 hours. In a letter to Amnesty International, the Aruban authorities stated that the judge looks at the following grounds when assessing the legality of the detention: whether the individual entered Aruba irregularly or attempted to do so, has previously been removed under the LTU, lacks a fixed place of residence, is suspected of or has been convicted of a crime, or does not have sufficient financial means to support themselves.<sup>154</sup>

On the basis of Article 15 of the LTU, the Minister of Justice and Social Affairs can authorize the deportation of individuals for several reasons, at which point they are automatically detained. Grounds for deportation include failure to leave after a permit is revoked, being deemed undesirable due to concerns about morality, public order or safety, entering the country irregularly, or overstaying a temporary residence permit after it has expired.<sup>155</sup> International law holds that a person is only a “danger to public order” if he poses a present, real and sufficiently serious threat to a fundamental interest of society.<sup>156</sup> “Posing a threat” is not defined in Aruban law; the current description of the LTU allows for a broad and arbitrary interpretation.

As outlined previously, Venezuelan asylum seekers who enter Aruba irregularly and are intercepted by the coastguard are automatically detained and sent to the GNC immigration detention centre. While the detention measure is lifted if asylum is sought before detention, the Aruban authorities do not release individuals if they apply for asylum while in detention.

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<sup>152</sup> LTU, Article 16(1).

<sup>153</sup> Ministry of Justice and Social Affairs, *Richtlijnen voor Inmigracion Aruba en Guarda Nos Costa* (previously cited).

<sup>154</sup> GNC officials, letter to Amnesty International, 22 December 2023, on file with Amnesty International.

<sup>155</sup> LTU, Article 15.

<sup>156</sup> Reference to a criminal conviction is insufficient on its own to label someone a “danger to public order”. A personal assessment has to be made in which it is justified as to why the threat is really serious. In other words, the government must indicate why there is a concrete risk of recidivism for a serious crime: Court of Justice of the European Union, *Z. Zh. and O. v. Staatssecretaris van Veiligheid en Justitie*, Case C-554/13, 11 June 2015.

Detaining people who arrive irregularly breaches the principle of non-penalization of asylum seekers enshrined in Article 31(1) of the UN Refugee Convention:

*“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”<sup>157</sup>*

Furthermore, automatic detention is arbitrary and therefore unlawful under international law.<sup>158</sup>

When Amnesty International asked the Aruban authorities in March 2024 how many Venezuelans were detained in 2021-2024, the authorities replied that in 2021, 526 were detained; in 2022, 450; in 2023, 311; and in 2024, up to 10 April, 53 Venezuelans were detained.<sup>159</sup>

Amnesty International opposes the automatic use of migration-related detention. The enjoyment of personal liberty must remain any individual's default condition. Detention is allowed only in the most exceptional of circumstances. If refugees, asylum seekers and migrants are subject to any deprivation of liberty, this must be clearly prescribed by law, strictly justified by a legitimate purpose, necessary, proportionate and non-discriminatory.<sup>160</sup> States must conduct individualized assessments for each migrant or asylum seeker, taking into account their histories and specific needs. Detention may be unlawful where it is indefinite, prolonged or mandatory and the need for detention should be regularly reviewed by an independent authority.

Furthermore, there should be fundamental safeguards. (1) Detained migrants should be expressly informed, without delay and in a language that they understand, of their rights and the procedures applicable to them. They should also be able to inform a relative or third party of their choice about the detention measure. (2) They should have access to a lawyer, which includes the right to talk with a lawyer in private, as well as to have access to legal advice for issues related to residence, detention and deportation. People without a residence permit who are not in a position to appoint and pay for a lawyer themselves should have access to free legal aid. (3) They should have access to a medical doctor on an ongoing basis.<sup>161</sup>

As already mentioned in chapter 3.2, “Applying for asylum in Aruba” it is possible to apply for asylum when in detention. When this happens, the detention is not lifted but the deportation is put on hold, pending the decision on the asylum application. According to Aruban authorities, for those who seek asylum in detention, the procedure must be completed within six weeks. Some detainees in Aruba told Amnesty International that they did not choose to apply for asylum while in detention because the process from the registration of the application until the decision, including the legal procedures of appeals, can be lengthy, which would prolong their detention. Due to the poor detention conditions, detainees often opted to sign a deportation order, which automatically annulled their asylum application. Even if detainees would like to apply for asylum while in detention, an objection or appeal against a negative asylum decision “does not have a suspensive effect” and they can be subject to deportation before the appeal decision is issued.<sup>162</sup> When visiting the GNC immigration detention centre, Amnesty International spoke to detainees with differing views: some made it clear that they were not interested and felt discouraged from applying for asylum for the above-mentioned reasons, and were merely waiting for their deportation date to arrive, and others were keen to apply for asylum.

There is no maximum duration for immigration detention in Aruba; detainees can be detained for several months. Amnesty International is aware of Venezuelans who have been detained for longer than three months in immigration detention. When Amnesty International enquired about the maximum duration for detention, the authorities replied, “The main rule is that departure should take place as soon as possible. The aim is that this expulsion takes place within a period of four days.”<sup>163</sup> The authorities identified the following factors that

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<sup>157</sup> UN Refugee Convention, Article 31(1).

<sup>158</sup> Universal Declaration of Human Rights (UDHR), Arts 9 and 14; Convention Relating to the Status of Refugees (Refugee Convention), Art. 31; International Covenant on Civil and Political Rights (ICCPR), Arts 2 and 9(1); Convention on the Protection of the Rights of Migrant Workers and Members of their Families (Migrant Worker Convention), Art. 16; UN Human Rights Committee, General Comment 35: Article 9, Right to Liberty and Security of Persons (HRC General Comment 35);

<sup>159</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>160</sup> See International Covenant on Civil and Political Rights (ICCPR), Article 9(1): “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” ECHR, Article 5(1)(f): “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...] the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.” CPT, “Immigration detention factsheet” (previously cited): “Immigration detention should only be a measure of last resort, after a careful and individual examination of each case. In addition, the continued need for it should be the subject of periodic review. Alternative (non-custodial) measures should be developed and used wherever possible.”

<sup>161</sup> CPT, “Immigration detention fact sheet” (previously cited).

<sup>162</sup> LAR, Article 10.

<sup>163</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

could extend this time frame: “lack of valid travel document”, “complications with passports”, or an “interim measure”, which is a legal procedure to request that deportation is avoided during the appeal process.<sup>164</sup>

## 5.2 ALTERNATIVES TO DETENTION

Article 16(2) of the LTU sets out alternatives to detention.<sup>165</sup> If there are no applicable grounds for detention, then the person concerned is released with a duty to report back periodically, or is placed under electronic surveillance, provided that they have a guarantor.<sup>166</sup> In practice, Amnesty International has only seen examples of mandatory reporting duties and not electronic surveillance. According to the Aruban authorities, the law is currently undergoing amendments to include electronic surveillance.<sup>167</sup>

When a person is sent to the GNC immigration detention centre, a judge conducts a single review of the basis for the detention.<sup>168</sup> The detainee may request, either personally or through a lawyer or representative, to challenge or lift the detention with the Court of First Instance in Aruba.<sup>169</sup> If the judge finds the detention unlawful and determines that a lighter measure is suitable, the detainee should be released immediately, usually with a reporting duty, as explained above.<sup>170</sup> The duty to report is intended to allow the person to await deportation in freedom, while ensuring they do not evade deportation. It is therefore considered an alternative to detention.<sup>171</sup>

It is important to note that the duty to report prior to deportation (enforced by the GNC) is different from the duty to report during the asylum procedure (enforced by DIMAS). The former relates to registered asylum seekers who have a reporting duty with the GNC following detention. This is because they are subject to a deportation order issued by the GNC on behalf of the minister of justice and need to report to the GNC until they have a decision from DIMAS on their asylum application.<sup>172</sup> Whereas the latter refers to the reporting duty at DIMAS for registered asylum seekers who are not detained and are awaiting a decision on their asylum application.

Amnesty International spoke to one Venezuelan man who had an asylum claim pending and stated that he had to report at the GNC detention centre, but in doing so GNC officials had threatened him by stating that they would deport him while he was still awaiting a decision from DIMAS on his asylum application. Amnesty International considers that this discrepancy in enforcement and communication between authorities raises concerns about the treatment of individuals seeking asylum and the need for clarity and consistency in procedures related to the duty to report.

The requirements of the duty to report are laid down in policy, but the frequency of reporting is not specified.<sup>173</sup> The absence of clarity in the policy may affect its legal certainty. Amnesty International has seen the reporting duty document that is issued to asylum seekers; it is written in Dutch and is thus incomprehensible to most Venezuelans. Venezuelans interviewed by Amnesty stated that they must report three times a week, which hinders their employment opportunities and places a significant burden on those with no income.<sup>174</sup> As one Venezuelan asylum seeker explained, “I had to report three times a week – Mondays, Wednesdays and Fridays – for more than a year. It was very difficult for me because sometimes I didn’t even have money for transportation.”<sup>175</sup> Furthermore, the reporting duty includes an “employment ban”, preventing asylum seekers

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<sup>164</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

<sup>165</sup> Ministry of Justice and Social Affairs, *Richtlijnen voor Inmigracion Aruba* (previously cited). The policy instructs DIMAS and GNC officials in the context of application of deprivation of liberty measures resulting from the LTU. For example, the policy states that GNC officials must follow the outcome of judicial decisions where a judge rules that detention is unlawful (para. 4).

<sup>166</sup> The guarantor must 1) be of legal age; 2) have a valid residence permit for Aruba with permission to work; 3) must have had at least three residence permits with permission to work; 4) must have a monthly income of at least 2,040 Aruban florin (USD 1,133); LTU, Article 2.

<sup>167</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>168</sup> LTU, Article 16.

<sup>169</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>170</sup> Ministry of Justice and Social Affairs, *Richtlijnen voor Inmigracion Aruba* (previously cited).

<sup>171</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International. In their reply to Amnesty International’s enquiries, the Aruban authorities clarified that they are currently working on implementing electronic surveillance as an alternative to detention; however, Amnesty International has not seen the policy.

<sup>172</sup> GNC, letter to Amnesty International, 1 May 2024, on file with Amnesty International.

<sup>173</sup> Ministry of Justice and Social Affairs, *Richtlijnen Meldingsplicht* (previously cited).

<sup>174</sup> All interviewees stated that they had to report three times a week at the GNC detention centre if released with a guarantor. Furthermore, Amnesty International has seen the reporting duty document and it states three times a week.

<sup>175</sup> Interview by video call with Ricardo\*, a Venezuelan asylum seeker, 20 October 2022.

subject to reporting from working.<sup>176</sup> One male Venezuelan asylum seeker told Amnesty that he had been reporting at the GNC detention centre for more than three years.

Moreover, the guarantor requirement is problematic because it means that only asylum seekers who have local contacts can be protected from detention during the asylum procedure. It also places a heavy burden on the guarantors because they become responsible for the asylum seeker in terms of income and housing. According to individuals interviewed by Amnesty International, the situation also makes the person who is “guaranteed” vulnerable to exploitation or abuse by their guarantor.<sup>177</sup>

The case of Luis\* below evidences many of the problems with the asylum procedure and immigration detention in Aruba, such as the discretion of GNC officials to detain people, the ill-treatment received by GNC officers, being forced to sign deportation orders, and automatically renounced asylum claims.

## THE CASE OF LUIS\*: ILL-TREATMENT AND INVOLUNTARY RETURN



*Bruises sustained after ill-treatment by GNC officials.<sup>178</sup>*

Luis\*, a Venezuelan man, was 18 years old when he arrived in Aruba with his two siblings (14 and 16 years old) in 2019. He applied for asylum upon arrival at the airport for himself and his two siblings. His mother, Soraya\*, was already in Aruba when they arrived. Luis\* did not receive any record from DIMAS of his registration for asylum. He and his mother repeatedly requested information about their asylum procedure, as well as confirmation of the application. It was not until 2021 that they received a document from DIMAS stating that they had requested asylum and the procedure was underway.



In May 2022, the GNC arrested Luis\* because he was allegedly working without a work permit. According to his mother, however, he was not working at that time. He was detained in the GNC immigration detention centre despite the fact that he had requested asylum in 2019 and 2021, and thus was still within the asylum procedure. His mother went to the GNC detention centre as soon as Luis\* was arrested to demand his release, stating that he was still within the asylum procedure. The GNC officials replied that his asylum request had been denied by DIMAS and did not provide further details. Luis\* his lawyer successfully contested his detention and the judge ordered the GNC to release him on 10 June 2022, but according to the lawyer, the GNC refused to comply with the judge's order.

The same day his mother went to the GNC immigration detention centre to demand his release. She could hear her son inside the centre. Soraya\* said: “I heard him inside [the detention centre] and screamed to him, ‘Luis\*, come here, come here!’” Guards stopped her from approaching the gate and pushed her onto the ground. Videos

<sup>176</sup> Amnesty International saw a copy of a reporting duty form in 2022 that stated “Meldplicht/werkverbod” [“Reporting obligation/work ban”]. Interview in person with DIMAS, 21 October 2022, Aruba.

<sup>177</sup> Interviews in person with one Venezuelan asylum seeker, 18 October 2022, Aruba; interview in person with one Colombian asylum seeker, 13 September 2023, Aruba.

<sup>178</sup> Amnesty International received consent to use these pictures.

of this physical abuse have been posted on Facebook.<sup>179</sup> In March 2024, Amnesty International asked the GNC to comment on what had happened, but the authorities did not respond.<sup>180</sup>

According to Soraya\*, who was outside at the time, simultaneously inside the detention centre her son was being beaten and pushed onto the floor. One of the three guards pressed his feet against his neck and another kicked his legs. After a while the guards stopped and released Luis\* from detention.

Luis\* and his mother could not move around freely because of the negative media attention. His mother recalls: “There was a press release by 24ora in which the media outlet called on people ‘to search for us and to warn the GNC; a GNC committee would be waiting for us’.” On 31 August 2022, Luis\* went to the court for the hearing about his asylum case. While walking downtown after the hearing, he was arrested by GNC officers dressed in civilian clothes. His lawyer found out that he had been arrested when she saw a television show in which the presenters announced that “the big search for Luis\* has ended”.<sup>181</sup>

Once again Luis\* was put in the GNC immigration detention centre. Luis\* his mother recalls: “The second time my son called me crying. I never hear my son cry. He told me: ‘Mum, buy me a ticket, I’m going away. They’re not treating me well.’ He could not stand the pressure they put on him.” His mother bought him a ticket for a flight on 8 September, but on 8 September the GNC refused to let him go to the airport. DIMAS forced Luis\* and his lawyer to renounce his asylum claim, otherwise he would not be allowed to leave. The guards tried to return him to his cell, but Luis\* resisted. They told Amnesty that guards hit him and pinched his chest. Eventually he agreed to withdraw his asylum claim and left Aruba. Luis\* explains his decision to withdraw his statement and to return “voluntarily”: “I had to sign papers declaring that I was leaving Aruba voluntarily and withdrawing my asylum request. But that’s totally false. I signed it under pressure. I simply did it to escape from being detained.” Luis’\* lawyer reiterated to Amnesty International that Luis’\* signing of the deportation order was not voluntary: “He could not bear detention.”

## 5.3 DETENTION & “VOLUNTARY” RETURNS

To manage the arrival of Venezuelan migrants and asylum seekers, Aruba requested assistance from the Netherlands in 2019. Chapter 8, “Obligations of the Kingdom of the Netherlands”, explains this in detail. Part of the assistance provided by the Netherlands included funding for deportation flights for Venezuelans in Aruba. In 2020, Aruba’s Minister of Justice requested that the Dutch funding also cover flights for cases of “voluntary return”.<sup>182</sup> The Government of the Netherlands has funded the unlawful detention of Venezuelan asylum seekers and is responsible for unlawful deportation.

According to reports from Venezuelans detained in the GNC immigration detention centre, the poor conditions in detention deter people from applying for asylum. Amnesty International is concerned about the detention conditions in the GNC detention centre, which are described in detail below. The detention conditions include lack of ventilation, poor hygiene, and barriers to medical and legal assistance, as well as failures in procedural safeguards such as deportation orders only being provided in Dutch. In addition, some individuals reported beatings by officials in the detention centre.

Detention facilities should have adequate material conditions, such as access to food and drinking water, sanitary products, and sufficient living space. Detainees should have free access to outdoor exercise throughout the day and considerably more than one hour a day.<sup>183</sup>

### 5.3.1 INADEQUATE DETENTION CONDITIONS

The 11 Venezuelans interviewed by Amnesty International for this research described the conditions in the GNC immigration detention centre in Aruba as poor. The detention centre was renovated and expanded in

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<sup>179</sup> Amnesty International has seen the videos of the physical abuse circulated on Facebook but to respect the anonymity of Soraya\*, the video link will not be placed here. The physical abuse by the GNC officials was explained to Amnesty International during an interview with Luis\*, his mother and a journalist; videos on social media also confirm it.

<sup>180</sup> Amnesty International asked the Aruban authorities to explain what was happening in the video on Facebook showing Luis his mother being pushed to the ground by a GNC official.

<sup>181</sup> Amnesty International has seen the video but to respect the anonymity of Luis\*, the video link will not be placed here.

<sup>182</sup> Andin Bikker, Minister of Justice, Aruba, letter to State Secretary of Asylum and Migration, Netherlands, Ankie Broekers-Knol, 18 November 2020, <https://open.overheid.nl/repository/rnl-a85552f5-fff2-43c7-a80d-7de1a798d700/1/pdf/documenten-wob-ondersteuning-migratieproblematiek-venezuela-2.pdf>, p. 73 (in Dutch).

<sup>183</sup> CPT, “Immigration detention factsheet” (previously cited).

2021 and 2022 with the technical and financial support of the Netherlands. Before then migrants and asylum seekers were locked up in shipping containers that had been converted into cells. The new part of the centre is a prison building that has three wings with six cells per wing, each containing six beds, providing a total of 108 beds.<sup>184</sup>

When Amnesty International visited the immigration centre for the first time in December 2021, about 15 men were detained in shipping containers and about 10 women in the new building. The shipping containers were dilapidated. The men slept on the floor on thin mattresses with holes in them; there was hardly any ventilation and no hygiene products (for example, soap and toothpaste) or recreation materials (for example, books) were provided. The conditions for the women seemed slightly better. The cells were bigger and cleaner; there was more ventilation; and there were beds with mattresses. The women still lacked hygienic products and recreation materials though.

## “I felt overwhelmed, I felt bad. I could not breathe well in the container.”

Freddy\*, a Venezuelan man who has lung problems and was detained in a sea container in the Dakota detention centre.

### THE CASE OF FREDDY\* DIFFICULTIES TO BREATHE



*Inside in a sea container in the Dakota immigration detention Center, December 2021.*

Freddy had been living in Aruba without residency papers since 2018 at the time of closure of the report. During his time there, he developed a chronic lung infection. As his health rapidly deteriorated, he was hospitalized and fell into a coma. After two months, he awoke and was released from the hospital with significant medical debt. Despite his poor health, Freddy quickly started working again to manage his debts.

The GNC arrested him at work and detained him in a sea container at the Dakota detention center. Freddy recalls his experience of being detained for 20 days in the containers: "I felt overwhelmed, I felt bad. I couldn't breathe well in the container." He described the containers as "warm and full of mosquitos." He was only allowed to leave the container three times a day for thirty minutes each. The containers were dirty, and Freddy, along with other detainees, had to clean the containers themselves. Freddy requested the GNC medical assistance due to his ongoing health issues, including a fever and the need for antibiotics. A nurse visited him once, but no doctor was brought to treat him properly. "They [GNC] did not care. When I was released from detention, I went to a doctor myself."

Being detained in the containers worsened his health condition. Freddy was eventually released after his cousin applied to become his guarantor. The GNC staff told his cousin that Freddy would be released if he withdrew his asylum application and signed for deportation. His cousin refused to sign the document. A few days later, GNC decided to release Freddy with a duty to report. Freddy spent a total of 22 days in detention. With the help of a lawyer and his cousin, Freddy applied for asylum.

<sup>184</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

Freddy remains worried about his legal status, which prevents him from working to settle his medical debts. He anxiously awaits a response from DIMAS, whose decision on his case has been pending for more than two years, leaving him in legal limbo without employment or proper documentation. Despite his desire to integrate and contribute through work, Freddy must report to Guarda Nos Costa three times a week.

Amnesty International spoke to Freddy again in 2024, and he remains in limbo, awaiting news of his asylum decision. Since 2022, he has grappled with the uncertainty of his legal status, rendering him ineligible to work until a decision is reached. Any attempt to work could result in further detention. Freddy is required to report to GNC three times a week, severely limiting his employment opportunities. During one of his recent visits to GNC, he was told that he had been on the island for too long, adding to his uncertainty and frustration. He fears deportation before a decision is made on his asylum. A doctor informed him that he would not fully recover. Freddy is very worried about paying his medical bills in Aruba and sending money to his mother and son in Venezuela.

Freddy told Amnesty International "It has been very difficult for me, I feel I don't fit in here."

During Amnesty International's second visit in October 2022, the shipping containers were no longer used for regular immigration detention. At that time no women were detained and about 30 men were accommodated in the new building. There were about eight men in each cell, which measured about 4m x 6m. The new cells had deteriorated since December 2021: they were dirty and hot and there were burns and other marks on the walls and floor. The men slept on thin mattresses on the floor. The Aruban authorities stated that the containers had not been used since August 2022, apart from on one occasion.<sup>185</sup> However, Amnesty International spoke to two detainees in October 2022 (Omar\* and Juan\*, see case study on page 42) who had been placed in a container as form of punishment for allegedly starting a fire. In 2023 GNC officials told Amnesty International that although the shipping containers were being removed from the premises, the discontinuation of their use had not been written down in policy.<sup>186</sup>

During Amnesty International's third visit to the GNC detention centre in September 2023, three Venezuelan women and eight Venezuelan men were detained there.<sup>187</sup> Amnesty observed that the women's cells were comparatively cleaner and equipped with beds, unlike the men who slept on mattresses on the floor. According to the Aruban authorities, beds have been installed in all cells and have been available for use since March 2024;<sup>188</sup> however, Amnesty has not seen photos and this has not been corroborated. The cells featured a small room with a shower cap over the top of the toilet; the toilet doors did not lock.

In the visit in September 2023, Amnesty International observed that the cells did not have sufficient ventilation. The UN and ventilation must be provided in accommodation.<sup>189</sup> Two Venezuelan male detainees explained that they had been detained for several days without sufficient ventilation for the number of men detained in the cell. He had suffered from the oppressive heat and he showed Amnesty International rashes on his arm caused by the heat due to the lack of adequate ventilation. During Amnesty's visits it was noted that there were no recreational activities and detainees had limited opportunities for fresh air – two to three times a day for 30 minutes.

Upon arrival in detention detainees' belongings are placed in a box and taken away. Hygiene products are provided by the Red Cross Aruba, which has unlimited access to the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) state that sufficient air

detention centre. Detainees can make phone calls with their telephone, facilitated by the Red Cross Aruba, to inform their families that they have been detained. Visitors are restricted, with only lawyers allowed on specific days by appointment. Only the Minister of Justice, GNC staff and the Red Cross Aruba have unlimited authorization to enter.

Two Venezuelan men interviewed during the visit in September 2023 had been detained for six days. They expressed reluctance to pursue their asylum applications due to the prolonged procedures and harsh detention conditions, indicating a preference to return to Venezuela.<sup>190</sup> Some detained Venezuelans had made videos with their phones showing dirty and damaged shipping containers; a lack of recreational materials and

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<sup>185</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>186</sup> Interview in person with former interim director of GNC, 13 September 2023, Aruba.

<sup>187</sup> GNC, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>188</sup> Interview by video call with research communications manager 'Venezuela' from the Aruban government, 8 April 2024.

<sup>189</sup> Nelson Mandela Rules, Rule 13. All accommodation provided for the use of prisoners and in particular all sleeping accommodation must meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

<sup>190</sup> Interview in person with two Venezuelan male detainees, 13 September 2023, GNC immigration detention centre, Aruba.



activities; and overcrowding.<sup>191</sup> Some of these videos were shared with Amnesty International; some appeared in online media.<sup>192</sup>

The Aruban authorities stated that the GNC detention centre is not a prison;<sup>193</sup> however, the people detained there have restricted rights. They are only allowed to leave their cells at specific, restricted times; they are only allowed their phones on certain days of the week; visitors are not allowed; lawyers have limited access to their clients; and detainees' personal belongings are taken upon arrival. They cannot leave the premises and therefore their detention constitutes a deprivation of liberty. One Venezuelan man told Amnesty International, "We slept on bad mattresses; there were disgusting toilets, disgusting bread. No visits, no phone calls. The conditions were inhuman, worse than in Venezuela."<sup>194</sup>

### 5.3.2 TORTURE AND OTHER ILL-TREATMENT IN DETENTION

**“For nine days I slept on the floor, there was no running water, no light, no clean clothes, no soap, toothbrush or any other hygienic products. The guards didn’t let me to go out for fresh air.”**

Omar\*, a Venezuelan man who was held in solitary confinement in a shipping container for nine days in the GNC immigration detention centre.

All Venezuelans who had experienced detention in Aruba and were interviewed for this report referred to verbal and physical abuse at the detention centre, and a few reported that they had been placed in solitary confinement. The incidents reported amount to torture and other ill-treatment.

When Amnesty International visited the GNC immigration detention centre in October 2022, detainees were complaining about the detention conditions and the lack of information about their detention. One Venezuelan man told Amnesty International that he had been detained for three months without knowing what was going to happen to him. Another Venezuelan man told Amnesty International that on two occasions a GNC officer had hit him.<sup>195</sup> Some of the men told Amnesty International that they were only allowed to leave their cells for fresh air twice a day for one hour, which was reiterated by other interviewees. Two Venezuelan men, Omar\* and Juan\*, had just been released from solitary confinement<sup>196</sup> after nine days. Their experiences are described in the case study below.

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<sup>191</sup> Venezuelans shared various videos with Amnesty International between 2021 and 2022.

<sup>192</sup> Noticia Impacto, Facebook post: "Imágenes dejaron al descubierto el mal estado de Guarda nos costa Aruba" ["Images revealed the poor state of Guarda on the coast of Aruba"], 25 March 2021, [https://www.facebook.com/watch/?ref=search&v=1882484201914159&external\\_log\\_id=654c5788-278d-48f9-be82-d911d2ff1912&q=guarda%20nos%20costa%20venezolano%20aruba](https://www.facebook.com/watch/?ref=search&v=1882484201914159&external_log_id=654c5788-278d-48f9-be82-d911d2ff1912&q=guarda%20nos%20costa%20venezolano%20aruba) (in Spanish).

<sup>193</sup> CPT, *Report to the Government of the Netherlands on the periodic visit to the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 25 May 2022* (CPT/Inf (2023) 12), 23 June 2023, <https://rm.coe.int/1680abb4b5>, p. 54, para. 111.

<sup>194</sup> Interview in person with Venezuelan male asylum seeker, 20 October 2022, Aruba.

<sup>195</sup> Interview in person with Venezuelan male asylum seeker, 22 October 2022, GNC immigration detention centre, Aruba.

<sup>196</sup> In letter on 13 September 2024, GNC told Amnesty International that all cells at the GNC are similar, featuring windows for daylight and fresh air, beds with air mattresses as well as a functioning private bathroom. If a detainee needs to be separated from others, they will be placed in a separate cell receiving the same assistance, food, water and medical care as other detainees. There is no policy on the prohibition of solitary confinement.

## THE CASE OF OMAR\* AND JUAN\*: SOLITARY CONFINEMENT FOR NINE DAYS



*Shipping containers in which migrants and asylum seekers are detained, December 2021.*

Omar\* and Juan\*, Venezuelan asylum seekers, had just spent nine days in solitary confinement when Amnesty International spoke to them.<sup>197</sup> The GNC officers had put them separately in the old shipping containers at the centre because they had reportedly started a fire in an attempt to escape. Omar\*, who had been detained for three months by the time Amnesty International spoke to him, recalls how the guards beat him and choked him before they put him in the container: “For nine days I slept on the floor. There was no running water, no light, no clean clothes, no soap, toothbrush or any other hygiene products. The guards didn’t let me to go out for fresh air.”

Juan\* was also confined in the same dire conditions. He was undergoing the asylum procedure and had been in detention for two months and six days when Amnesty International spoke to him. He said he became dehydrated because of the heat in the container and he was only given something to drink when the guards brought him his meals three times a day. He recalls: “I was having mental problems because of the isolation. I asked the guards for psychological help, but they didn’t do anything.”

When Amnesty International asked the Aruban authorities about this case and the reasons for isolating Omar\* and Juan\*, the authorities replied that they were placed in the containers because they were considered a danger to themselves and to others having set fire to mattresses and attempted to escape.<sup>198</sup> According to the authorities, no individual risk assessments had been made at the time because urgent action was required.

According to international human rights standards, detainees may only be subjected to high-security measures such as severe restrictive confinement in exceptional circumstances<sup>199</sup> and only in a necessary and proportionate manner based on an individualized risk assessment.<sup>200</sup> There are even stricter limitations on the use of solitary confinement, which is defined as the confinement of a person for 22 hours or more a day without meaningful human contact.<sup>201</sup> The UN Human Rights Committee stated that “solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need” and that the

<sup>197</sup> One of the men made a video call about his situation, which was published on the news website 24ora: 24ora, “Famia ta denuncia: Funcionario di Guarda Nos Costa ta viola derecho humano” [“Family complaints: Guarda Nos Costa employee violates human rights”], 20 October 2022, <https://24ora.com/famia-ta-denuncia-funcionario-di-guarda-nos-costa-ta-viola-derecho-humano/> (in Spanish).

<sup>198</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>199</sup> European Prison Rules, Rule 53.3.

<sup>200</sup> For example, Rules 3 and 51.1 of the European Prison Rules state that “restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed” and that “security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody”.

<sup>201</sup> Nelson Mandela Rules, Rule 44. See also UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report to the General Assembly* (UN Doc. A/66/268), 5 August 2022, <https://documents.un.org/doc/undoc/gen/n11/445/70/pdf/n1144570.pdf>, para. 26. A group of experts that provided initial guidance on the interpretation and implementation of the Nelson Mandela Rules observed that the term “meaningful human contact” has been used to describe “the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and wellbeing. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessities; Penal Reform International and Human Rights Centre, University of Essex, *Essex Paper 3: Initial Guidance on the Interpretation and Implementation of the UN Nelson Mandela Rules*, 2017, pp. 88-89.

use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with the obligation to treat detainees humanely set out in Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR).<sup>202</sup>

Amnesty International considers, in line with international standards, that solitary confinement within places where people are deprived of their liberty should be judicially supervised and revised and may only be imposed in exceptional circumstances and as a last resort in two instances:

1. as an emergency measure to protect other prisoners or prison staff, only when no other measure can provide such protection and strictly for as long as is deemed absolutely necessary and for no longer than a few days; or
2. as a disciplinary punishment for serious infringements within the prison, as a last resort and only for a very short period lasting no more than a few days; it must never be prolonged.

Even if the authorities can demonstrate that it was necessary, as a last resort, to isolate Omar\* and Juan\* as a safety and disciplinary measure in this case, there does not seem to have been an individualized risk assessment and Amnesty International is deeply concerned about the allegations of beatings. Furthermore, placing the two men in shipping containers in poor conditions as a form of punishment falls short of international standards, and violates the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. To meet the definition of torture, an act must: (1) be intentional, (2) be carried out or condoned by a government official, (3) inflict severe pain or suffering, either physical or mental, and (4) be carried out for a specific purpose such as punishment, coercion, intimidation or for some discriminatory reason.<sup>203</sup> Where the pain or suffering caused is not severe there will still be a violation of the prohibition of ill-treatment.

### 5.3.3 LIMITED ACCESS TO LEGAL ASSISTANCE

**“What’s going on here? Let him go! They grabbed my client from behind with a neck clamp and pulled him along. I kept shouting: ‘Let him go! What are you doing?’”**

Mariana\*, a lawyer, recalls how her client, an asylum seeker, was pulled away to be detained and deported.

The Aruban authorities stated that all detainees have access to lawyers and legal advice.<sup>204</sup> In practice, however, access to lawyers and legal advice is hindered by several factors. Individuals are required to cover the associated costs themselves because there is no state-funded free legal aid in Aruba.<sup>205</sup> Furthermore, concerns were raised by some detainees regarding the lack of information about their rights and the procedures. Organizations such as the UNHCR and HIAS can provide legal assistance, but not all Venezuelan asylum seekers in the GNC immigration detention centre know about this. Moreover, organizations providing legal assistance do not know whether individuals are seeking legal assistance unless the GNC provides them with this information.

Many people are unable to understand the deportation and detention orders without legal or other assistance because they are written in Dutch. Some people reported that they had been forced to sign a deportation order without understanding what was written.

Access to the GNC immigration detention centre is restricted for lawyers; they have to make an appointment via email to visit their clients. The Aruban authorities claimed this is for “security purposes”.<sup>206</sup> Amnesty international is aware of cases where lawyers have encountered difficulties making appointments and visiting their clients in detention because visits are only permitted on specific days of the week. Furthermore, there is

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<sup>202</sup> Article 10(1) of the ICCPR states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” See UN Human Rights Committee, *Concluding Observations: Denmark* (UN Doc. CCPR/CO/70/DNK), 15 November 2000, <https://www.refworld.org/policy/polrec/hrc/2000/en/38097>, para. 12.

<sup>203</sup> CAT, Article 1, p. 85.

<sup>204</sup> CPT, *Report to the Government of the Netherlands on the periodic visit to the Kingdom of the Netherlands* (previously cited), p. 55, para. 114.

<sup>205</sup> Although the Aruban authorities stated that under the LAR there is no obligation for a lawyer; in practice Venezuelans must get a lawyer because the legal procedures for administrative procedures are in Dutch and are complex.

<sup>206</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

a waiting period for a response to a request for an appointment and a further wait until the appointment itself. For example, one lawyer noted the difficulty in assisting a client with a provisional measure (*voorlopige voorziening* or “vovo”) procedure that required immediate action,<sup>207</sup> but was delayed due to the appointment schedule, putting the client at risk of deportation. “This is different from my experience at criminal detention KIA [Korrekție Inrichting Aruba]<sup>208</sup> where there is unlimited access and no appointments are needed,” she stated. In addition to restricted access, lawyers lack privacy when meeting their clients at the GNC detention centre. There are no separate rooms for meetings, forcing lawyers to meet with their clients in an area where GNC employees are present. This lack of privacy significantly increases the chance that GNC officials can overhear their conversations. “Sometimes I need to whisper,” one lawyer told Amnesty International. Mariana\*, another lawyer, explained that before 2020 she was able to meet with her clients in a separate room, but since then she has had to meet in a large room with cameras, violating client-lawyer confidentiality.<sup>209</sup>

GNC officials told Amnesty International that the GNC detention centre “has a separate room where the lawyer and his client can conduct interviews/conversations”.<sup>210</sup> Furthermore, they stated that meetings are not recorded and that a GNC officer is standing outside the room. The statement by GNC officials that there are separate rooms for meetings is in contradiction to what lawyers have told Amnesty International.

A lawyer, Mariana\*, told Amnesty International that her access to and work for her client was obstructed when accompanying her client, a Venezuelan man who was seeking asylum, to fulfil his duty to report at the GNC detention centre. She explained that she went with her client to the detention centre to report and after he had reported he came back outside but was then called in again. She realised that they were going to take her client away. When she went to accompany him, she was pushed to the side by one of the GNC officers. She said, “What is going on here? Let him go!” She explained that they put her client in a neck clamp and took him away.

Amnesty International concludes that there are various barriers for people in immigration detention in Aruba to access legal assistance. Firstly, they receive little intelligible information about their detention and the relevant procedures. Secondly, there is no government system of free legal assistance for people in immigration detention who cannot afford a lawyer and, because information about legal assistance is not provided proactively, not everyone in detention knows about the possibility of getting legal assistance through the UNHCR and partner lawyers. Thirdly, lawyers cannot do their work properly because they are unable to visit their clients unless they make appointments.

### 5.3.4 LIMITED ACCESS TO MEDICAL ASSISTANCE

There is an office for medical assistance on the premises of the GNC immigration detention centre; however, there is no direct access to a doctor. The Aruban authorities stated: “A nurse and doctor are available during office hours and on call available outside office hours (24/7). Notification goes through the nurse first. It depends on the type of complaints but treatments are always in consultation with the doctor.”<sup>211</sup>

When Amnesty International visited the GNC detention centre in 2022, a nurse was available three times a week. In 2023, when Amnesty visited the GNC again, Amnesty saw the medical assistance office, but was not able to speak with the doctor. Amnesty International is aware of several cases of inadequate medical assistance at the GNC detention centre. One such case involves Freddy\*, a Venezuelan asylum seeker with a lung condition, who was detained in a shipping container, had difficulties breathing, and was not given adequate medical care. Additionally, two lawyers shared their experiences with Amnesty International, describing how their clients faced medical issues that were inadequately treated and that they sometimes have to push on behalf of their clients to enable them to be seen by a doctor.

One lawyer told Amnesty International that on three separate occasions their clients were given inadequate medical assistance. The lawyer stated, “Detainees are being supplied with tranquilizers without prescriptions.” In one case, the lawyer described how a Venezuelan female asylum seeker with skin and heart conditions was placed in a shipping container at the GNC detention centre without a medical review. The lawyer stated that initially only a nurse saw the client and it was the lawyer who kept pushing for a doctor to evaluate the client properly. Eventually, a doctor came to see the client and diagnosed her condition. The lawyer made numerous attempts to contact GNC officials and other Aruban authorities to request the release of the client to await a

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<sup>207</sup> A “vovo” (provisional measure or interim relief) is a legal instrument used to request a temporary measure to suspend a deportation order, pending the outcome of an asylum appeal.

<sup>208</sup> The Aruba Correctional Institution or Korrekție Inrichting Aruba (KIA) is the island’s prison.

<sup>209</sup> The last time she saw the cameras was in 2022. Amnesty International has not seen the interview rooms during its to confirm.

<sup>210</sup> GNC, letter to Amnesty International, 21 December 2023, on file with Amnesty International.

<sup>211</sup> GNC, letter to Amnesty International, 21 December 2023, on file with Amnesty International.

decision on her asylum request outside detention due to her medical condition, but the lawyer never received a response. This occurred in 2020-2021. The lawyer reported that when the client returned to Venezuela having been deported, she was detained by the police for eight hours, her passport was confiscated, and she had to pay USD 1,000 bail to be released.

The other two cases described by the lawyer occurred in 2020 and 2022. One involved a person with hypertension and heart complaints who was only seen by a nurse and not by a doctor. The other case concerned an individual suffering from toothache who was denied access to a dentist during the Covid-19 pandemic in March 2020. In July 2020, a specialist diagnosed the client with cancer after the client was released from detention. Eventually, it was discovered that the individual had throat cancer and he subsequently passed away.

Another lawyer recounted to Amnesty International a case involving her client, a pregnant Venezuelan asylum seeker who was detained in 2022.<sup>212</sup> She was in the late stages of pregnancy and began experiencing bleeding while in detention and sent photos to her lawyer. Concerned for her client's wellbeing, the lawyer sought help from a doctor, Alice\*, and they arranged for an ambulance to transport the client to hospital, where a gynaecologist was on standby to assess her condition in case of a miscarriage. Accompanied by the doctor, the lawyer went to the GNC detention centre to visit the pregnant woman, but the GNC denied access to the doctor. As a result, the pregnant woman remained in detention, bleeding, for three more days until GNC officials arranged for a midwife to examine her. The midwife cleared her as "fit to fly" and she was subsequently deported. The lawyer expressed dismay that a midwife, rather than a gynaecologist, assessed the woman despite concerns about a potential miscarriage, stating, "The fact that she was bleeding was not considered sufficient reason to halt her deportation; her situation was serious."<sup>213</sup>

Amnesty International requested a response from the Aruban authorities regarding this specific case. The authorities explained that the coastguard had intercepted the boat on which the pregnant woman was travelling because she was attempting to enter Aruba irregularly. Once at the detention centre, the authorities claimed that the woman did not show any signs of discomfort or illness until two days later, when she began complaining of pain to a nurse at the GNC. "She was then promptly transported to the emergency room for medical treatment," the authorities stated. This account contradicts the lawyer's and the doctor's versions. According to both, the pregnant woman was only seen by a nurse and was not referred to a doctor based on her symptoms. Amnesty International has also seen official letters in which it is clear that the pregnant woman was not seen by the GNC doctor. The GNC allegedly told the doctor, Alice, "These people are very manipulative and will do anything not to be deported." Shocked by this response, the lawyer formally requested that GNC officials immediately transfer the woman to hospital and refrain from deporting her, asserting that her client was unfit to travel due to her medical condition.

The same lawyer also mentioned another case from 2024 involving a man with a hearing impairment who occasionally experienced bleeding. Due to his hearing impairment and difficulty speaking clearly, the man relied heavily on the lawyer's persistent efforts to remind GNC staff that he needed medical appointments. Without these efforts, he would only have been seen by a nurse, which the lawyer considered insufficient. This situation is troubling because not all detainees have access to lawyers or are aware of the possibility of seeking legal assistance.

## 5.4 RAIDS UNDER THE "RESEARCH TEAM"

The Aruban authorities have explained to Amnesty International that migration operations include ensuring compliance with the LTU, which is conducted by "supervisors distributed across various services".<sup>214</sup> This included a so-called "Research Team", which sits within the GNC and is responsible for locating individuals who have not complied with their reporting duty and for acting upon search notices – "*opsporingsberichten*" – which are alerts about wanted individuals. The authorities further explained that if during routine checks individuals are found to be without legal status, the law allows for their administrative deportation to their country of origin. The general rule is that upon detecting LTU violations all "supervisors" transfer the individuals

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<sup>212</sup> Amnesty International has spoken to the lawyer of the deported woman and seen official letters from the doctor stating that she needed to be seen by a gynaecologist.

<sup>213</sup> Besides interviews held with the lawyer, Amnesty International has also seen the letter of the doctor Alice\* confirming that the pregnant woman should have been seen by a gynaecologist due to the urgency of her state. Contrary to the documents Amnesty International has seen, GNC replied that the nurse according to them provided daily checkups and scheduled for doctor visits.

<sup>214</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

to the GNC detention centre, which then verifies the situation, and initiates or continues the deportation process.<sup>215</sup>

The Aruban authorities informed Amnesty International that the Research Team is not permitted to conduct searches in private homes, but only in public places and workplaces. Agents must wear uniforms and use official vehicles. The authorities claim that raids have not occurred since 2022.<sup>216</sup> Feedback from organizations and interviews with Venezuelans confirmed that although raids were frequent during a certain period, they have significantly decreased since 2022.<sup>217</sup> Reports from organizations, journalists and asylum seekers revealed that during its active phase the Research Team conducted numerous raids, particularly at workplaces or during traffic patrols, actively searching for undocumented individuals. Amnesty International learnt of cases where non-uniformed GNC officials visited individuals' homes and workplaces. For instance, in Maria's\* case described below, GNC officials actively searched for her at her house and workplace, in a manner which made her feel personally targeted. The GNC confirmed in a letter to Amnesty International that they think it is their duty to follow up on tips given by civilians and conduct a control at the place where there might be undocumented.<sup>218</sup>

Amnesty International enquired whether there was an official policy outlining the conduct of the Research Team. GNC officials confirmed that there was none. Furthermore, the former interim director mentioned a transformation of the Research Team into an "Information Team", but no policies exist for this new team either.<sup>219</sup> The authorities stated that the GNC, including the Research/Information Team, acts on (often anonymous) tip-offs from the public and must follow the proper channels before taking action.<sup>220</sup>

Amnesty International emphasizes the urgent need to ensure detainees' wellbeing at the GNC immigration detention centre and to investigate human rights violations by immigration officials, including allegations of ill-treatment during detention or migration operations. Amnesty expresses deep concern about the vulnerability of Venezuelan asylum seekers and undocumented individuals due to their lack of legal papers, making them susceptible to exploitation. Amnesty highlights the importance of establishing clear policies to ensure that any operational changes, such as the transformation of the Research Team into the Information Team, are formalized to prevent any recurrence of past practices.

Amnesty International remains deeply concerned about the lack of policies regarding the transition from the Research Team to the Information Team and the experiences of harassment reported by Venezuelan asylum seekers such as Maria\*. Amnesty urges the Aruban authorities to develop and implement specific plans and policies to safeguard the rights and wellbeing of all individuals affected by migration operations.

## **THE CASE OF MARIA\*:<sup>221</sup>**

### **MISTREATED AND HUNTED**

Maria\* arrived in Aruba in 2019 and applied for asylum the same year. She had to report to DIMAS by email every month. In 2020 her request for asylum was denied without her attending an interview with DIMAS. The negative decision was sent to an email address that they had used for the monthly reporting, so she did not see it when it first arrived. The email stated that her claim had been denied and that she would be deported. The six-week appeal window had almost expired by the time she saw the email; she only had two days left to appeal. She sent a letter of appeal to DIMAS, but she did not get a response.

Shortly after, a GNC officer arrested her at her place of work. She reported how one GNC officer yelled at her: "Latina, you come to my country to make a mess, you stupid. I will get you out of my country. Your asylum will be denied." Then he grabbed her roughly and pushed her hard. Maria\* recalls, "I asked him why he was behaving like this, and he told me to shut my mouth. He had such a rage against me."

<sup>215</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

<sup>216</sup> Interview in person with former interim director of the GNC immigration detention centre, 13 September 2023, Aruba.

<sup>217</sup> Interview in person with the UNHCR, 7 September 2023, Aruba; interview in person with asylum seeker, 13 September 2023, Aruba; interview by voice call with asylum seekers, 5 September 2023; interview by voice call with asylum seeker, 13 September 2023.

<sup>218</sup> GNC, right of reply letter to Amnesty International, 13 September 2024, on file with Amnesty International.

<sup>219</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>220</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>221</sup> Interview in person with Maria\*, a Venezuelan asylum seeker, 18 October 2022, Aruba.



*Bruises Maria\* sustained after a GNC officer mistreated her.<sup>222</sup>*

The GNC officers took her to the GNC immigration detention centre and pressured her to sign a deportation order, written in Dutch. Maria\* explained: “I didn’t want to sign the deportation order because I didn’t understand what was written.” With the help of a guarantor, the GNC released her after one day in detention.

On the day of the planned deportation, Maria\* did not board the “humanitarian flight” to Venezuela because she hoped she would still find a way to live legally in Aruba.<sup>223</sup> A GNC officer had threatened her: “If you don’t leave Aruba, I’ll come and get you myself.” He followed through with his threat. With other GNC officials he went four times to the house and workplace of Maria’s\* guarantor to find out where she was. They took a photo of the guarantor’s licence plate. They also went to the house where Maria\* was staying and asked her landlord to call her. The landlord was told to ask Maria\* to come to the house without saying that the GNC officials were there, but he refused. The officers then went to the hotel where Maria\* was working and sent her manager a message telling him that he had to report her. Maria\* recounted, “With a photo of me, they went everywhere to search for me, like I was a serious criminal.”

Maria\* felt imprisoned living in Aruba: “Maybe they [GNC officers] do that because they know I’m a woman alone, I don’t have family, and I’m more vulnerable. But it’s unfair. I want to settle down; I want to be legal here.” When Amnesty International contacted Maria\* in June 2024, she explained that she no longer lives in Aruba since her family had arranged a humanitarian parole for her in another country.

Following Amnesty International’s visit in 2023, international organizations based in Aruba and individuals seeking protection stated that the searches and raids were very rare and had almost stopped, in comparison with 2022. This was attributed to a policy change that had transformed the Research Team into the Information Team. When Amnesty International spoke to the former interim director of the GNC detention centre during the visit in September 2023,<sup>224</sup> and described the allegations made by Venezuelan detainees about the ill-treatment by certain GNC staff members, the former interim director claimed that he had not been fully aware of the hostility shown towards detainees. He mentioned that he had had plans for improving the conditions at the detention centre, as well as training GNC staff.

<sup>222</sup> Maria\* gave consent for Amnesty to use these pictures.

<sup>223</sup> The terminology “humanitarian flight” was often used by the Aruban authorities when answering questions posed by Amnesty International in 2022 and 2023. It was also used in publicly available documents from the Dutch government and news media: Overheid.nl, “Besluit Wob-verzoek humanitaire vluchten uit Curaçao en Aruba naar Venezuela” [“Decision Wob request for humanitarian flights from Curaçao and Aruba to Venezuela”], 25 April 2022, <https://open.overheid.nl/Details/ronl-bd877801963b525949eca9723cbaa806ee70a656/1> (in Dutch); Caribisch Network, “Steeds moeilijker om naar Aruba te vluchten; ‘we blijven het proberen’” [“Increasingly difficult to flee to Aruba; ‘We’ll keep trying’”], 20 June 2021, <https://caribischnetwerk.ntr.nl/2021/06/20/steeds-moeilijker-om-naar-aruba-te-vluchten-we-blijven-het> (in Dutch); Aruba Nu, “Nu wel humanitaire vlucht van Aruba naar Caracas” [“Now a humanitarian flight from Aruba to Caracas”], 28 April 2021, <https://aruba.nu/2021/04/nu-wel-humanitaire-vlucht-van-aruba-naar-caracas/> (in Dutch).

<sup>224</sup> In March 2024, a new interim director was appointed; Amnesty International has not spoken to him. Noticia Cla, “Hoo: Como hefe interino nobo di Guarda Nos Costa e kier e.o drecha e imagen” [“Hoo: As the new interim head of the Guard Nos Costa he wants to improve the image”], 22 March 2024, [https://www.noticiacla.com/news/30774?fbclid=IwZXh0bgNhZWQCMTEAAR3PCCHGLdczZCG6Dk2IfJOMXX09B9BtIsLH5fj1B8PMma7PP-H7ZSxkFIY\\_aem\\_AUWDOUEYjx6c0zSzrD0aNhDLaxf9KwDvckBntOuk7nrX0jD4Ngqomo9uRnWl-oTr8068UXJhXua6gSpRrN-lpt3](https://www.noticiacla.com/news/30774?fbclid=IwZXh0bgNhZWQCMTEAAR3PCCHGLdczZCG6Dk2IfJOMXX09B9BtIsLH5fj1B8PMma7PP-H7ZSxkFIY_aem_AUWDOUEYjx6c0zSzrD0aNhDLaxf9KwDvckBntOuk7nrX0jD4Ngqomo9uRnWl-oTr8068UXJhXua6gSpRrN-lpt3) (in Dutch).

Amnesty International welcomes plans and intentions to change conditions at the GNC detention centre; however, it is important that these changes are laid down in policy so that they are official and continue over time and with staff changes. Despite the changes, Amnesty International considers that Venezuelans should not be in detention and that immigration detention is the last resort. The right to liberty should be the default for everyone. Furthermore, considering the testimonies of Venezuelans who have been detained at the GNC detention centre about their negative experiences at the hands of certain GNC staff members, Amnesty International highlights the urgent need to ensure the wellbeing of detainees at the GNC immigration detention centre.

According to the Aruban authorities, GNC officials have implemented a complaints procedure through the use of a “*spreekbrief*” (a form or letter for expressing complaints). The authorities claim that all individuals detained at the GNC can fill out this form, which will then be submitted to a jurist to be handled internally by the person in charge of the GNC detention centre. The authorities further explained that to ensure the integrity and protection of the detainees, the forms will be given to the detainees by a doctor or nurse who will then submit them in a sealed envelope to the GNC legal representative. This is not, however, an independent complaints mechanism because the complaints are handled internally within the GNC organization. When Amnesty International asked the Aruban authorities how many complaints had been submitted between 2020 and 2022, the Aruban authorities replied that that information was not available due to the lack of a central record of submissions.<sup>225</sup>

## 5.5 FORCED RETURNS

**“I had to sign papers declaring that I was leaving Aruba voluntarily and withdrawing my asylum request. But that’s totally false. I signed it under pressure. I simply did it to escape from being detained.”**

Luis\*, a young Venezuelan man who was detained while applying for asylum.

Within six hours of arriving at the GNC immigration detention centre, detainees are issued with a deportation order.<sup>226</sup> If the reviewing judge finds the detention lawful, the person remains in the GNC detention centre until deportation to their country of origin/nationality.<sup>227</sup> The Aruban authorities stated that deportation only takes place if local procedures have determined that the person is not a refugee as defined by the UN Refugee Convention, nor is in need of protection under the ECHR or CAT.<sup>228</sup> As noted previously, appeals against deportation orders do not have a suspensive effect and people can be deported before completing the appeals process. People who the Aruban authorities consider to have breached the national migration law<sup>229</sup> or whose asylum claim has been rejected can be deported and refused admission to Aruba for up to eight years.<sup>230</sup> Amnesty international has been unable to conclude whether a case-by-case analysis is conducted on people being detained and/or deported. Certainly, the time frame for such an analysis is very short if the deportation order is issued within six hours of detention and the aim is to execute deportation within four days.

According to the Aruban authorities, more than 10 “humanitarian” flights were organized in collaboration with the Venezuelan consul in Aruba and the Venezuelan authorities. The collaborative arrangement included the local distribution of deported Venezuelans back to their homes in Venezuela, via buses. The Dutch government has also assisted Aruba financially to facilitate deportations of Venezuelans.<sup>231</sup>

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<sup>225</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

<sup>226</sup> Aruban government letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>227</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

<sup>228</sup> Aruban government, email to Amnesty International, 29 March 2023, on file with Amnesty International.

<sup>229</sup> LTU Article 15.

<sup>230</sup> LTU, Article 15; Ministry of Justice and Social Affairs, Aruba, *Richtlijnen voor Inmigracion Aruba en Guarda Nos Costa* (previously cited).

<sup>231</sup> Interview in person with Aruban asylum and migration authorities (including DIMAS and GNC), 21 October 2022, Aruba; Raymond Knops, State Secretary for the Interior and Kingdom Relations, Netherlands, “Vaststelling van de begrotingsstaten van Koninkrijksrelaties (IV) en het BES-fonds (H) voor het jaar 2022” [“Adoption of the budget statements of Kingdom Relations (IV) and the BES fund (H) for the year 2022”] (35 925 IV), 6 January 2022, <https://zoek.officielebekendmakingen.nl/kst-35925-IV-39.html> (in Dutch).



With the closure of air border between Aruba and Venezuela, people are deported on commercial flights through other countries; currently Venezuelans are deported via Panama or Curaçao.<sup>232</sup> In principle, they have to buy their own plane ticket, but if they continue refusing, the GNC will buy it for them. They are not escorted by GNC officials. Amnesty International enquired in December 2023 for clarification on who escorts deportees; the Aruban authorities replied that deportees are only escorted where necessary, such as because of refusal to cooperate. The police and/or KIA staff who are trained for escort will do this.<sup>233</sup> Provisional passports are arranged with the Venezuelan consul based in Aruba. The Aruban authorities told Amnesty International that there are verbal agreements regarding the facilitation of official documentation for deportation purposes.<sup>234</sup> They also told Amnesty that no human rights violations have been registered regarding deported Venezuelans. It is difficult, however, to determine how people fare after they are deported because the authorities do not follow up on their cases. Some interviewees who had been deported told Amnesty International that they had fled in the transit country or after arrival in Venezuela had quickly left for another country. Furthermore, as in the case of Ricardo\* on page 50, deported Venezuelans are at risk of their lives upon returning to Venezuela. According to the Aruban authorities, Ricardo\* was doing “fine”, but he told Amnesty International a different story.

## 5.5.1 FORCED RETURNS DISGUISED AS “VOLUNTARY”

Individuals are encouraged to return to Venezuela “voluntarily”; however, Amnesty International is concerned that these returns are not genuinely voluntary or free of pressure and coercion.

The detention conditions, including prolonged detention, deter detainees from starting the asylum application procedure, and as Venezuelans interviewed by Amnesty International explained, some decide to return to Venezuela because they do not want to endure the conditions in detention. Amnesty International spoke to two Venezuelan men in detention and asked them whether they were applying for asylum. They stated that because of the detention conditions, and the lengthy asylum procedure that prolongs detention, they were not seeking asylum. For example, Jesus\*, a Venezuelan asylum seeker, told Amnesty International, “Due to the lengthy procedures to apply for asylum and the detention conditions, I prefer to return [to Venezuela] rather than staying detained.”

In the case of José\* described previously, the Venezuelan consul arranged a provisional passport so he could be deported and told him, “Go back to your homeland and work for your people.” He eventually signed the deportation order in 2023 and was deported to Venezuela. “They gave me a [deportation order] paper in Dutch; the pressure they put on me... it was madness,” he said. José\* is planning to seek protection in another country.

A lawyer also told Amnesty International about a client who was a Venezuelan man seeking asylum while detained in the GNC detention centre. He did not want to return to Venezuela. According to the lawyer, GNC officials told him that he had to do a Covid-19 test for his deportation, and if he would not cooperate, they would call the police in Venezuela to detain him upon arrival. The lawyer in Aruba had contact with his lawyer in Venezuela, who explained that when he arrived in Venezuela the police were waiting for him and he was detained for 8-10 hours. He was thereafter released and went to a friend’s house, but because he was harassed, he had leave there as well.<sup>235</sup>

Amnesty International questions whether returns to Venezuela from Aruba are genuinely “voluntary” when, as described to Amnesty, individuals’ only options are to endure challenging detention conditions or accept their return to Venezuela. This pressure to sign deportation orders can result in asylum seekers who have received negative asylum decisions being scheduled for deportation before their lawyer has had the chance to appeal the decision.<sup>236</sup> Amnesty International has been told of three cases between September and December 2022 where the asylum applicant was deported before the date of their appointment with a lawyer and without notification to the lawyer.<sup>237</sup>

Considering the crisis in Venezuela, Amnesty International asserts that no Venezuelans should be deported or forced to return to Venezuela, as this would violate the principle of non-refoulement. Aruba’s legal asylum procedure, which lacks suspensive effect combined with testimonies from Venezuelans who feel coerced into signing deportation orders despite not wanting to return, places Venezuelans in Aruba in a vulnerable position,

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<sup>232</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>233</sup> GNC, Aruban government, letter to Amnesty International, 22 December 2023, on file with Amnesty International.

<sup>234</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>235</sup> Interview by video call with Mariana\*, Aruban lawyer, 8 November 2022.

<sup>236</sup> Meeting in person with UNHCR, October 2022, Aruba; interview by video call with Mariana\*, Aruban lawyer, 8 November 2022; interview by video call with Cynthia\*, Aruban lawyer, 2 February 2024.

<sup>237</sup> Interview by video call with Aruban lawyer, 8 November 2022.

because they may still be in the phase of appealing and at risk of deportation. The practice of deporting Venezuelans to Venezuela is a violation of the principle of non-refoulement considering the risk of life upon return.

This became evident in the case of Ricardo\*, a male Venezuelan whose asylum request was rejected by DIMAS, allegedly on the basis of economic reasons, which Ricardo\* and his lawyer dispute. Despite being in the appeal process, Ricardo\* received a deportation order. His lawyer informed Amnesty International that the UNHRC issued an interim measure to halt his deportation<sup>238</sup>, communicated via the Kingdom of the Netherlands, as state party under international law. Aruban authorities however did not follow through with the interim measure and consequently Ricardo\* was deported through a third country. His deportation took place without supervision of Aruban authorities. Ricardo\* told Amnesty International that upon his return in Venezuela he was detained and tortured. After spending twelve days in detention in Venezuela, he was released because a family member had paid a bribe, but he was warned that he was still considered a fugitive. He and his family fled to another country, where he now struggles with mental health issues and has no income. Ricardo\* expressed anger towards the Aruban authorities, stating, "They never cared about anything. I told them they would kill me in Venezuela, and I was almost killed when I returned." This case illustrates the risk Venezuelans face if deported to Venezuela and underscores the necessity for all states to refrain from deporting Venezuelans. The organization has widely documented the lack of independence from the judiciary and how people is often subjected to politically motivated arbitrary detentions.<sup>239</sup> When Amnesty International asked Aruban authorities to give an explanation on the deportation the DIMAS official said: "Nothing went wrong on his return to Venezuela; he's fine. We called him because we received signals from the lawyer that he wasn't doing well. We also had contact with his mother, but he himself stated that he was fine." The UNHRC arranged an emergency resettlement to another country where Ricardo\* has been recognized as a refugee.

Ricardo's\* case shows that the Aruban authorities have blatantly breached the principle of non-refoulement, despite UN calls and interim measures to halt his deportation. According to Aruban authorities, the deportation of Ricardo\* took place in accordance with a local court decision. Aruban authorities also stated that an interim measure is not binding and therefore they did not follow through with request to halt his deportation by the UN Human Rights Committee. Aruban authorities furthermore stated that Ricardo\* still had options such as appealing. However as Amnesty International's research shows Aruba's asylum procedure including appealing and objecting deportation orders do not suspend the deportation and the person can still be deported before finalizing the entire legal procedure. This has happened in Ricardo's\* case. The ECHR requires that a legal remedy should suspend the execution of a forcible return measure, but this is not the case in Aruba. As explained previously, appeals against a negative asylum decision or a deportation order do not have a suspensive effect, which means that the individual can be deported before a decision has been made on the appeal. The individual can, however, submit an interim measure to ask the Court of First Instance of Aruba to halt deportation because an appeal has been lodged. The interim measure costs 25 Aruban florin (USD 13.50). This legal measure cannot proceed without payment. Interim measures can be requested for negative asylum decisions as well as deportation orders.

According to the Aruban authorities, the LAR procedure, including the interim measure,<sup>240</sup> has been designed with the accessibility of vulnerable persons in mind; therefore, the fees are low and there is no obligation to have a lawyer. Lawyers and organizations have, however, told Amnesty International that for Venezuelans who want to challenge decisions, the LAR procedures are challenging because they are conducted in Dutch, are time consuming, and, if the applicant wants a lawyer, involve expenses. The LAR applies broadly and is not specifically tailored to asylum procedures, which, lawyers argue, makes it challenging for asylum seekers to contest their decisions. As reported by lawyers and Venezuelans in detention interviewed by Amnesty International, the lengthy legal processes involved can discourage individuals from challenging their deportation via interim measures. The ECHR has repeatedly highlighted that "an effective remedy must provide for an automatic suspensive effect in expulsion cases".<sup>241</sup>

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<sup>238</sup> Ratifications of treaties under international law is done by the Kingdom of the Netherlands, therefore if an infringement of one of the rights laid down in the treaty occurs, it is the Kingdom of the Netherlands who holds legal personality for accountability.

<sup>239</sup> Amnesty International, *Venezuela: Life detained: Politically-motivated arbitrary detentions continue in Venezuela*, (Index: AMR 53/7077/2023), 29 August 2023, <https://www.amnesty.org/en/documents/amr53/7077/2023/en/>

<sup>240</sup> LAR, Article 54.

<sup>241</sup> ECHR, *A.M. v. The Netherlands*, Application 29094/09, Grand Chamber judgment, 5 July 2016, <https://hudoc.echr.coe.int/eng?i=001-164460>, para. 66.

# 6. DISCRIMINATION AND XENOPHOBIA

**“Latina, you come here to my country to make a mess, you stupid.’ He [a GNC officer] then grabbed and pushed me.”**

Maria\* explains what a GNC officer said to her while detaining her.

The Durban Declaration and Programme of Action recognizes that xenophobia is one of the main contemporary sources and forms of discrimination. Xenophobia should be understood as an intersectional form of discrimination that is not limited to a single protected form of discrimination under international law. Xenophobia has often been defined as discrimination based on the perception of being a foreigner and non-citizen, but it also involves an intersection between racial and other types of discrimination such as language.<sup>242</sup>

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by the Kingdom of Netherlands and applicable to Aruba, prohibits national origin-based discrimination. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has defined “national origin” as the country of origin or one’s ancestry.<sup>243</sup> National origin-based discrimination refers to a type of racial discrimination exercised against persons based on their ties with a specific national group at the time of birth. Under the ICERD, states have the obligation to prevent and take all the necessary measures to address national origin-based discrimination. Furthermore, the UN Committee on the Elimination of Racial Discrimination has stated in its General Recommendation No. 30 that states have the obligation to take steps to address xenophobic attitudes and behaviour towards non-citizens, particularly advocacy of hatred and racial violence, and to promote non-discrimination.<sup>244</sup> Moreover, Article 3 of the UN Refugee Convention establishes that “states shall apply the provisions of this Convention to refugees without discrimination as to race, religion, or country of origin”.

Refugee women often experience heightened risks of intersectional forms of discrimination in the context of migration and asylum, and disproportionate discriminatory effects of laws, policies and practices.<sup>245</sup> In the context of asylum, real and perceived characteristics are often used to make assumptions, justify stereotypes, or sustain biases about a person’s migration-related behaviours. Amnesty International found that in at least two of the cases documented for this report, Venezuelan women had faced discriminatory treatment by Aruban officials based on their national origin, migration status, and gender.

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<sup>242</sup> Amnesty International, *Submission to the UN CERD-CMW joint general comment/recommendation: Obligations of state parties on addressing and eradicating xenophobia and its impact on the rights of migrants, their families, and other non-citizens affected by racial discrimination* (Index: IOR 40/7898/2024), 4 April 2024, <https://www.amnesty.org/en/documents/ior40/7898/2024/en/>.

<sup>243</sup> UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, *Report: Note by the Secretariat* (UN Doc. A/HRC/38/52), 25 April 2018, <https://documents.un.org/doc/undoc/gen/g18/117/79/pdf/g1811779.pdf>

<sup>244</sup> UN Committee on the Elimination of Racial Discrimination, *General Recommendation 30: Discrimination against non-citizens* (UN Doc. CERD/C/64/Misc.11/rev.3), March 2004.

<sup>245</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), *General Comment 32: on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women* (UN Doc. CEDAW/C/GC/32), 14 November 2014.

Amnesty International interviewed two Venezuelan women who shared their experiences of discrimination by Aruban officials. These women reported feeling targeted due to their national origin and migration status, and had experienced psychological ill-treatment. They recounted that certain officials and staff members of the GNC immigration detention centre had exhibited bias and stereotyping based solely on their national origin, migration status, and gender.

In the case of Maria\* (whose case is described on page 46), officials expressed assumptions and stereotypes about her behaviour, intentions and characteristics based on her national origin, migration status and identity, subjecting her to discriminatory unequal treatment during her arrest. Maria\* told Amnesty International, “There is a xenophobia that they have with Venezuelans at the moment. If you see the news, everything is about Venezuelans.” Maria\* continued, “The system of immigration in Aruba is xenophobic, so is the news media. If you see the comments of people on the social media posts by the news media, they all say, ‘Good job,’ ‘Out with illegals,’ ‘Get out of our country!’ This will not help our situation; there is a crisis in Venezuela. Nobody wants to leave their comfort zone.”

Maria’s\* sentiments were echoed by others; another interviewee expressed how Venezuelan women are unfairly stigmatized in Aruba. One Venezuelan woman awaiting her asylum decision reported: “In Aruba, us Venezuelan women experience a bad time because the local women in Aruba say that we come to steal their partners.” This underscores assumptions and biases about Venezuelan women and their behaviours based on their national origin and gender, demonstrating xenophobia and systemic discrimination. Similar biases have already been documented by Amnesty in the region.<sup>246</sup>

Discrimination and xenophobia towards Venezuelan refugees and migrants have also been highlighted in other reports by international organizations, such as the R4V, underscoring the challenges faced by Venezuelan migrants and asylum seekers. In 2021, the R4V published a report of a study identifying the protection needs of Venezuelan refugees and migrants in Aruba and other Caribbean islands. The study highlighted the main risks for refugees and migrants from Venezuela as “violence, exploitation and abuse aimed at refugees and migrants due to increasing discrimination, xenophobia, usually focused on certain economic sectors or activities”.<sup>247</sup> From interviews, the study concluded that in Caribbean countries including Aruba,<sup>248</sup> xenophobic behaviour, racism, and discrimination “[...] are of a major concern for refugee and migrant vulnerability”.<sup>249</sup> Specifically in Aruba, the experiences of Venezuelan migrant and refugee women mean that “it is difficult for them to get a job because of local perceptions over women”, with one interviewee stating that “local women think we will steal their husbands; some even treat us badly when we are in the supermarket”.<sup>250</sup> Regarding the experiences at schools in Aruba, interviewees stated that “when you find a teacher or staff that does not like migrants, you will see how their behaviour changes”.<sup>251</sup> In its integration report of 2021, the R4V concluded, “While xenophobia is not a widespread phenomenon on the island, the unanticipated and sudden increase in the Venezuelan population without the development of social cohesion programmes, and the perceived “threat” that refugees and migrants pose as competition in the labour market, exposes them to intolerance and rejection.”<sup>252</sup> A study by the R4V also revealed that Venezuelans in Aruba are often linked with the term “illegals” and that these negative associations lead to discrimination.<sup>253</sup>

Aruba has no legislation prohibiting discrimination or harassment on the grounds of migration status. The Constitution of Aruba prohibits discrimination on the grounds of religion, philosophy of life, political affiliation, race, gender, colour, language, national or societal background, national minorities, birth and capital. Perpetrators of discriminatory behaviour are liable to imprisonment up to one year or a fine of up to 10,000 Aruban florins (USD 5,587). Organizations such as HIAS, the Red Cross Aruba and IOM have previously recommended the creation of comprehensive anti-discrimination policies that include migration status.<sup>254</sup>

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<sup>246</sup> Amnesty International, *Americas: Unprotected: Gender-based Violence against Venezuelan Refugee Women in Colombia and Peru* (Index: AMR 01/5675/2022), 12 July 2022, <https://www.amnesty.org/en/documents/amr01/5675/2022/en/>

<sup>247</sup> R4V, *Study on the Protection Situation of Venezuelan Refugees and Migrants* (previously cited), p. 7.

<sup>248</sup> The other Caribbean countries were Trinidad and Tobago and Curaçao.

<sup>249</sup> R4V, *Study on the Protection Situation of Venezuelan Refugees and Migrants* (previously cited).

<sup>250</sup> R4V, *Study on the Protection Situation of Venezuelan Refugees and Migrants* (previously cited), p. 26. See also: UNHCR, *Venezuela Situation: Responding to the Needs of People Displaced from Venezuela*, March 2018, <https://www.unhcr.org/sites/default/files/legacy-pdf/5ab8e1a17.pdf>; UN Office for the Coordination of Humanitarian Affairs, “Dutch Caribbean: Overseas profile (as of June 2022)”, 20 September 2022, <https://www.unocha.org/publications/report/aruba-netherlands/dutch-caribbean-overseas-profile-june-2022>; Ellen J. Boekelder, *Identity as a tool: The Venezuelan migration crisis in Aruba*, Master’s thesis, 31 July 2020, <https://studenttheses.uu.nl/bitstream/handle/20.500.12932/38949/Master%20Thesis%20Ellen%20J.%20Boekelder%206317022.pdf?sequence=1&isAllowed=y>, Chapter 3.2.

<sup>251</sup> R4V, *Study on the Protection Situation of Venezuelan Refugees and Migrants* (previously cited), p. 19.

<sup>252</sup> R4V, *Integration: Background Notes*, May 2021, <https://www.r4v.info/sites/g/files/tmzbd12426/files/2021-06/Integration%20Background%20Notes%20-%20R4V%20Caribbean.pdf>, p. 3.

<sup>253</sup> R4V, *Study on the Protection Situation of Venezuelan Refugees and Migrants* (previously cited), p. 20.

<sup>254</sup> IOM, *Aruba Needs Assessment on Migration Governance*, 2021, <https://kmhub.iom.int/sites/default/files/2022-02/aruba-needs-assessment-migration-governance.pdf>, p. 17.

Amnesty International spoke with two journalists and one lawyer about their experiences investigating topics related to Venezuelans in Aruba, including migration and asylum.<sup>255</sup> Their cases are described below.

## **THE CASE OF MANUEL\*, SUSANA\* AND MARIANA\*: OBSTRUCTED FROM DOING THEIR WORK**

In Aruba, there are hardly any local organisations defending the rights of migrants, asylum seekers or refugees.<sup>256</sup> Their advocates are mainly international organizations such as the UNHCR, the Red Cross Aruba, the IOM and HIAS, which provide social, emotional, legal and advocacy support.<sup>257</sup> Only the Red Cross has been granted access to the GNC immigration detention centre to provide essential items such as women’s sanitary products, but its role is limited to providing humanitarian assistance rather than advocacy. Moreover, in the Aruban parliament refugee-related issues are rarely the subject of debate.<sup>258</sup> There are no oversight or supervisory bodies in this area, as there are in other parts of the Kingdom of the Netherlands such as the ombudsman or the Law Enforcement Council, which explains why there are hardly any non-governmental reports about the asylum procedure or immigration detention in Aruba.

Local human rights defenders such as lawyers and journalists who work for the rights of Venezuelan asylum seekers have told Amnesty International that they have been obstructed from doing their work through intimidation. Manuel\*, an Aruban journalist, reported feeling discouraged from continuing to write about undocumented Venezuelans in Aruba. Through contacts, he learnt that the publishing media had requested for him to stop covering the topic, saying, “It’s not our problem.” Although he does not see it as a structural limitation to his work, he expressed, “I feel they did not take the topic seriously.” Manuel\* also mentioned an incident when he criticized the detention conditions of Venezuelans in immigration detention in Aruba. Following the publication of his article, there was a press conference the next day where the authorities stated that his claims were false and conducted a tour of the detention facility to showcase the immigration conditions. Manuel\* highlights that this illustrates the challenges faced by investigative journalists who write critically about such topics. He remarked, “Eventually, you become excluded and sources are cut off, making it difficult to continue doing your job.”

Susana\*, a Venezuelan journalist based in Aruba who writes and investigates issues related to asylum, migration and government corruption in Aruba, told Amnesty International about the harassment she has faced while doing her job as an investigative journalist. Susana\* has also been subjected to online intimidation and discrimination, including harassment and threats from Aruban civil servants, through Facebook. She told Amnesty International that it is very difficult for her to do her work because she is not provided with the information she needs as a journalist. This was confirmed by Manuel\*, who explained that journalists have to temper their criticism of the authorities or they would be left without sources at the various institutions to verify their stories.

Furthermore, Susana\* recounted the challenges she faces specifically because of her advocacy for Venezuelans, which she believes is related to the xenophobia against Venezuelans that is prevalent in Aruba. She revealed to Amnesty International that she had been the target of defamation in the media for reporting on corruption in Aruba and for questioning the treatment of migrants. She also told Amnesty International that some media outlets are aligned with the government and political parties, which makes unbiased journalistic work more difficult.

Susana\* managed to document three cases, which have all been verified by Amnesty International,<sup>259</sup> about the treatment of undocumented Venezuelans in Aruba: Luis\* (page 37), Omar\* and Juan\* (page 42), and Adriany\* and her three children (in the following chapter on page 60).

Mariana\*, a lawyer who has defended the rights of asylum seekers, described to Amnesty International how she has been treated when defending asylum cases. She explained that that she has been ridiculed by online news media for defending Venezuelan asylum seekers and has been called “too activist” by a judge

<sup>255</sup> Manuel\* shared his experiences from the years 2018-2019, whereas Susana\* is still active and shared experiences up to 2024.

<sup>256</sup> R4V, “2023-24 Caribbean RMRP”, <https://www.r4v.info/sites/g/files/tmzbd12426/files/2023-01/2023-24%20Caribbean%20RMRP%20Partners.pdf>

<sup>257</sup> HIAS, *2022-2023 Overview Aruba*, 2022, <https://hias.org/wp-content/uploads/hias-aruba-overview.pdf>

<sup>258</sup> Amnesty International searched in the parliamentary archive from 2013 with refugee- and Venezuela-related search terms, but only found a few relevant items: <https://statenvanaruba.ibabs.org/Reports/Details/bdc805ed-128c-4d10-b680-360b1c912398>

<sup>259</sup> Interview by voice call with the mother of Luis\*, 17 October 2022; Interview by video call with Luis\* and his lawyer, 8 November 2022; interview in person with Omar\* and Juan\*, 21 October 2022, GNC detention centre, Aruba; interview in person with Adriany\* and her daughter, 21 October 2022, Aruba.

when defending her client in court. Furthermore, she described to Amnesty International how she had experienced physical intimidation when trying to defend her client, a Venezuelan asylum seeker, who was detained when reporting at the GNC detention centre. Mariana\* said to Amnesty International that due to all the harassment she has experienced she is currently taking a break from asylum cases: “I’ve never doubted the rule of law, but I lost my confidence. It makes me tired.”

# 7. VENEZUELAN CHILDREN SEEKING PROTECTION IN ARUBA

**“We had no beds, only four mattresses without any sheets, no sanitary products. We were allowed some fresh air just one hour per day; the rest of the day we were locked up in a cell. The guards saw my children cry, but they didn’t do anything.”**

Adriany\*, a Venezuelan woman who was detained with her three children.

## 5.6 CHILDREN’S RIGHTS

Aruba has been a party to the Convention on the Rights of the Child (CRC) since 2001.<sup>260</sup> Article 22 of the CRC holds that states must ensure that a child seeking refugee status shall receive appropriate protection.<sup>261</sup> Furthermore, the principle of the best interests of the child,<sup>262</sup> which is fundamental to the convention, holds that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.<sup>263</sup>

International law prohibits the detention of children or the separation from their parents based on their migration status because this can never be in the best interests of the child.<sup>264</sup> The Working Group on Arbitrary Detention states: “Children must not be separated from their parents and/or legal guardians. The detention of children whose parents are detained should not be justified on the basis of maintaining the family unit, and

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<sup>260</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International; see also Overheid.nl, “Verdrag inzake de rechten van het kind” [“Convention on the Rights of the Child”], <https://verdragenbank.overheid.nl/nl/Verdrag/Details/003908> (accessed on 12 February 2024).

<sup>261</sup> CRC, Article 22.

<sup>262</sup> A comprehensive description of the best interests of the child is laid down in the Committee on the Rights of the Child’s General Comment 14, which explains that administrative authorities making decisions on asylum must take individual decisions that are guided by the best interests of the child.

<sup>263</sup> CRC, Article 3(1).

<sup>264</sup> UNHCR, *UNHCR’s position regarding the detention of refugee and migrant children in the migration context*, January 2017, p. 1.

alternatives to detention must be applied to the entire family instead.”<sup>265</sup> Other human rights are also relevant to the detention of children and/or their parents, including the right to family unity,<sup>266</sup> the right to liberty, and the right to freedom from torture and other ill-treatment. The detention of children not only causes stress for the child but also for the parent. In ECtHR caselaw, the court concluded that the detention of a child, without the knowledge of the parent, may constitute a violation of Article 3 of ECHR due to the severity of the resulting distress and anxiety: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”<sup>267</sup>

The Committee on the Rights of the Child has underlined that “the detention of any child because of their or their parents’ migration status constitutes a violation of children’s rights and contravenes the principle of the best interests of the child”.<sup>268</sup> Under the CRC, a child has at all times the fundamental right to liberty and freedom from immigration detention.<sup>269</sup>

Article 9 of the CRC holds that a child shall not be separated from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In such proceedings, all parties shall be given an opportunity to participate in the proceedings and make their views known.<sup>270</sup> Article 22 of the CRC also obliges state parties to take “appropriate measures” to ensure that a child, whether unaccompanied or accompanied, who is seeking refugee status, receives appropriate protection. This entails, among other things, the responsibility to set up a functioning asylum system and, in particular, to enact legislation addressing the particular treatment of unaccompanied and separated children and to build capacities necessary to realize this treatment in accordance with applicable rights codified in the CRC and in other international human rights, refugee protection or humanitarian instruments to which the state is a party.

The Committee on the Rights of the Child’s General Comment 6 lays down procedural safeguards and support measures regarding the treatment of unaccompanied or separated children. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including their nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.<sup>271</sup> In the context of unaccompanied and separated children who are seeking asylum, states bear a specific responsibility outlined in Article 31(1) of the UN Refugee Convention. Additionally, states should recognize that irregular entry or stay by an unaccompanied or separated child may be justified under general legal principles if it is the only means of preventing a violation of the child’s fundamental human rights. Broadly speaking, when formulating policies for unaccompanied or separated children, states must ensure that these children are not criminalized solely due to entry or presence in the country. In application of Article 37 of the CRC and the principle of the best interests of the child, unaccompanied or separated children should not be detained. The detention of children is never in their best interests, causing harm regardless of the conditions or duration of confinement.<sup>272</sup> Every child is entitled to protective measures commensurate with their status as a child without discrimination.<sup>273</sup>

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<sup>265</sup> Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on Deprivation of Liberty of Migrants*, 7 February 2018, para. 40.

<sup>266</sup> An interference with the right to family life and family unity (ECHR, Article 8) is arbitrary and a violation of that right if it is not both necessary and proportionate to a legitimate aim and conducted in accordance with the law. See UN Human Rights Committee, *Winata v. Australia* (UN Doc. CCPR/C/72/D/930/2000), 26 July 2001, para. 7.3. See also UN Human Rights Committee, *General Comment No. 16* (UN Doc. HRI/GEN/1/Rev.1 at 21), 1994, para. 4; UN Human Rights Committee, *General Comment No. 31* (UN Doc. CCPR/C/74/CRP.4/Rev.6), 2004, para. 6; UN Human Rights Committee, *General Comment No. 34* (UN Doc. CCPR/C/GC/34), 2011, para. 35.

<sup>267</sup> ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, Application 13178/03, Grand Chamber judgment, 12 October 2006, paras 55-59; ECtHR, *Tarak and Depe v. Turkey*, Application 70472/12, Grand Chamber judgment, 9 April 2019, para. 79.

<sup>268</sup> Committee on the Rights of the Child, *General Comment 23: State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return* (CMW/C/GC/4-CRC/C/GC/23), 16 November 2017, para. 5.

<sup>269</sup> CRC, Article 37; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, *Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return*, 16 November 2017, p. 2, para. 5.

<sup>270</sup> CRC, Article 9; Article 9(4) furthermore mentions that, in the case of separation, the state must also provide the family with essential information concerning the whereabouts of the absent member(s) of the family.

<sup>271</sup> Committee on the Rights of the Child, *General Comment 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin* (UN Doc. CRC/GC/2005/6), 1 September 2005, p. 8.

<sup>272</sup> American Academy of Pediatrics, “Policy statement: Detention of immigrant children”, *Pediatrics*, Volume 139, Issue 5, May 2017, <https://pediatrics.aappublications.org/content/139/5/e20170483.full>

<sup>273</sup> ICCPR, Article 24.



## 5.7 CHILDREN SEEKING ASYLUM IN ARUBA

Children who want to apply for asylum in Aruba are subject to the same asylum procedure and criteria as adults, since Aruba does not have a specific policy for asylum-seeking children.<sup>274</sup> In the case of accompanied children, DIMAS processes the child's application together with the main applicant. According to DIMAS, there have been no cases of unaccompanied minors in recent years. Similarly, when Amnesty International asked the Aruban authorities for data on the number of children who had sought asylum at the border via regular entry from 2021 to 2024, the authorities replied that no children have applied independently for asylum at the border since 2021.<sup>275</sup> If such a case were to arise, however, a child with independent reasons to flee may be eligible for a temporary permit under Article 7 of the LTU.<sup>276</sup> Organizations such as the UNHCR have confirmed that the arrival and detention of children have not been frequent since 2020.

Venezuelan children who arrive Aruba irregularly via boat may be intercepted by the coastguard. The coastguard hands intercepted passengers, including children, over to the local authorities for further assessment without conducting an identity assessment. Passengers are passed on to GNC officials and sent to the GNC immigration detention centre.<sup>277</sup> The Aruban authorities told Amnesty International that, according to their records, three unaccompanied minors were intercepted by the coastguard in 2020. They explained that the children's mother and relatives were in Aruba and were contacted, with the involvement of the Guardianship Council.<sup>278</sup> Amnesty International has not been able to verify this case.

When Amnesty International asked the Aruban authorities in 2023 whether children were detained and, if so, whether they were detained together with their parents, the authorities replied that, as a rule, children are not placed in immigration detention and that the majority are able to wait for their asylum decision in freedom.<sup>279</sup> According to the Aruban authorities, in response to enquiries by Amnesty in March 2024, no children were detained at the GNC detention centre from 2021 to 2024. The Aruban authorities also stated that, where a child's parents are detained at the GNC detention centre, the usual practice is to place the child with family members or acquaintances. Where this is not possible, collaboration between the GNC detention centre and care homes<sup>280</sup> may lead to a child being placed in one of these homes under the management of the Guardianship Council. Regarding the involvement of the Guardianship Council, the authorities stated, "The Guardianship Council and other agencies, including Bureau Sostenemi, may be involved if we judge from the welfare of the child that a government intervention is necessary."<sup>281</sup> This statement is concerning because it implies that the Guardianship Council is not automatically involved, whereas international law requires that the Guardianship Council is involved.

Contrary to the Aruban authorities' statement that children are not placed in detention,<sup>282</sup> Amnesty International is aware of three separate cases – in 2020, 2021 and 2022 – involving the detention of children at the GNC detention centre, without the involvement of the Guardianship Council. These cases are described below. Court records provide further evidence that children have been detained at the GNC detention centre.<sup>283</sup> Moreover, the court has ruled that the GNC detention centre is not a place where children can walk freely and leave the premises, and therefore being detained there amounts to a deprivation of their liberty.<sup>284</sup>

Cynthia\*, a lawyer, told Amnesty International that she had assisted a 17-year-old Venezuelan male who had arrived in Aruba irregularly by boat and been detained by the local authorities at the GNC detention centre in 2021. The lawyer explained that she heard about his detention via the UNHCR. When she met with him at the detention centre, he told her that he did not have any family in Aruba and was alone. The lawyer described to Amnesty International that she was shocked and worried that this child had been detained without the

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<sup>274</sup> In December 2023, Amnesty International asked the Aruban authorities to describe the asylum process for children. They replied that they take into account the child's mental development and maturity in relation to the well-founded fear of persecution and their personal and cultural background. A minor cannot be expected to provide the same level of substantiation and detail in statements as an adult.

<sup>275</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>276</sup> DIMAS, letter to Amnesty International, 20 December 2023, on file with Amnesty International.

<sup>277</sup> The captain of the boat is handed over to local police for investigation for human trafficking.

<sup>278</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>279</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

<sup>280</sup> GNC has partnerships with Casa Cuna and Imeldahof, which are not places of detention according to authorities. The authorities furthermore clarified that all minors receive the same quality and available protection as per local laws regardless of migration status. Once placed in the local care homes, subject to the legal review by the courts, all children receive the same care and participate in all activities.

<sup>281</sup> Aruban government, letter to Amnesty International, 20 December 2023, on file with Amnesty International. The authorities also referred to the Family Justice Center, in formation, which is a multidisciplinary approach regarding children, including children of asylum seekers.

<sup>282</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International, responding to Amnesty's enquiries about what factors lead to the dismissal of the duty to report.

<sup>283</sup> Court of First Instance of Aruba, Ruling of September 3, 2020, Official report before conduct B.N. DIAZ, ex Article 16, National Ordinance Admission and Expulsion.

<sup>284</sup> Court of First Instance of Aruba, Ruling of September 3, 2020 (previously cited).

involvement of the Guardianship Council. She stated, “If it was not for my involvement, the child would have been there without knowing anything.”<sup>285</sup>

Amnesty International also spoke to Isabel\*,<sup>286</sup> a Venezuelan woman who had fled Venezuela with her 12-year-old son after her husband was killed by *colectivos*. In 2020 she applied for asylum in Aruba for both of them, six months after their arrival, because they had not known about the possibility of applying for asylum when already situated in Aruba. Isabel\* explained to Amnesty International that, while they were waiting for a decision on their asylum application, her son was caught by GNC officials and detained at the (former) detention centre at the airport. She explained that the officers took her son’s phone away and left him in a waiting room alone, unable to call anyone, not even his mother. After a few hours, the GNC officers contacted Isabel\*. She enlisted the help of a lawyer who advised her not to sign the deportation order for her son. Her son was released after eight hours. He had been detained without being offered any drinks or food. Furthermore, the Guardianship Council had not been involved. Isabel\* recounted: “I felt scared because he was still a boy. The lawyer said I was lucky that the GNC didn’t detain me as well. It often happens that GNC officials call the parents to come pick up their children and then they are detained too and the whole family is deported.”

Amnesty International opposes the migration-related detention of all children, whether accompanied or unaccompanied, migrants or asylum seekers. Amnesty International also takes the position that a presumption against detaining family units of parents and children for immigration-related reasons should be enshrined in law. Detaining children because of their parents’ migration status will never be in the children’s best interests, nor will separating them from their parents. Separating children from their families may amount to torture or other forms of ill-treatment in some cases.<sup>287</sup>

Although Amnesty International did not see recent cases of children being detained during its visit to Aruba in September 2023, the Aruban authorities should enshrine the prohibition of the detention of children and families in legislation and develop a policy aimed at children seeking protection, whether accompanied or unaccompanied, with the best interests of the child as a primary consideration.

According to Aruban authorities, the Coordination Center Human Trafficking Human Smuggling Aruba (Coördinatie Centrum Mensenhandel Mensensmokkel Aruba, CMMA) is creating a protocol guide to manage and address possible arrival of minors and provide assistance to potential victims.<sup>288</sup>

The case of Adriany\* and her children, described below, provides further evidence that children have been detained at the GNC detention centre.

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<sup>285</sup> Interview by voice call with Cynthia\*, Aruban lawyer, 2 July 2024.

<sup>286</sup> Interview by in person with Isabel\*, 18 October 2022, Aruba.

<sup>287</sup> Amnesty International, *‘You Don’t Have any Rights Here’: Illegal Pushbacks, Arbitrary Detention and Ill-treatment of Asylum-seekers in the United States* (Index: AMR 51/9101/2018), 11 October 2018, Chapter 3, “Policy and practice of family separations constitute torture”.

<sup>288</sup> Aruban government, right of reply letter to Amnesty International, 13 September 2024, on file with Amnesty International.

## THE CASE OF ADRIANY\* AND HER THREE CHILDREN: SEPARATED AND DETAINED



Adriany\* fled Venezuela and travelled to Aruba by boat together with her three children (17, 15 and 11 years old). The boat, which was carrying 14 people, was intercepted by the coastguard, which brought them to shore and handed them over to GNC officials. Adriany\* and her children were taken to the GNC immigration detention centre.

Adriany\* and her 17-year-old daughter told Amnesty International about their experience in the detention centre. Adriany\* recalls, "They [GNC officials] screamed at all my children that they had to go away from Aruba." She also recalled that GNC officers pressured her to sign a deportation order to leave Aruba with her children. She refused to sign the paper because it was written in Dutch and she did not understand it. Adriany's\* daughter told Amnesty International that she also

refused to sign the order: "When I said no, they slammed the doors in my face and they spoke badly to me. They said: 'You have to leave this country because you're not from here.'"

Adriany\* and her children were detained at the GNC detention centre and then transferred to a hotel for 15 days. The Aruban authorities stated that the hotel accommodation was provided to the family through HIAS. Adriany\* and her children were released conditionally from the detention centre with a duty to report to the GNC three times a week. On one occasion shortly after their release, Adriany\* and her 11-year-old daughter went to report at the GNC detention centre. The GNC officials decided to detain her and took away her phone. Adriany\* explained that she was confused when the GNC officials told her that she was not allowed to be outside on the streets because that she believed she was doing the right thing by going to the centre to fulfil her reporting duty. "They said I shouldn't be in the streets, but I had to go out to report at GNC," she said. Her eldest daughter recalls: "I was very worried because I didn't know she was detained again."

Adriany\* was detained with her 11-year-old daughter for three days at the GNC immigration detention centre. GNC officers then also took the other children and "reunited" the family in detention. After a few days, with the help of a lawyer, they were placed in one cell together. Adriany\* described the situation: "We had no beds, only four mattresses on the floor without any sheets; no sanitary products. We were allowed some fresh air just one hour per day, the rest of the day we were locked up in a cell. The guards saw my children cry, but they didn't do anything."

With the help of her lawyer, a judge reviewed Adriany's\* case and ruled that the detention was unlawful and that an alternative, lighter measure should be implemented. Furthermore, the children had not received a detention warrant and therefore they were detained without any legal basis, making their deprivation of liberty unlawful. Adriany\* told Amnesty International: "We are together, but we live in fear. We're afraid that we'll be grabbed by the GNC again. I'm not allowed to work, but I need to support my family."

# 8. OBLIGATIONS OF THE KINGDOM OF THE NETHERLANDS



## 8.1 THE KINGDOM OF THE NETHERLANDS

In addition to Aruba's responsibilities towards Venezuelans seeking protection, the Kingdom of the Netherlands also plays an important role due to the technical and financial assistance provided by the Dutch government to Aruba under the Charter of the Kingdom of the Netherlands (Charter). A central player in this context is the Coastguard for the Kingdom of the Netherlands in the Caribbean (coastguard), a collaborative effort between the Caribbean countries of the Kingdom of the Netherlands and the Netherlands. The policy for the coastguard is determined by ministries from the four constituent countries of the kingdom.<sup>289</sup> The assistance provided by the kingdom and the role of the coastguard will be explained in detail in section 8.4, "Assistance from the Netherlands".

The Charter of the Kingdom of the Netherlands, which came into effect in 1954, is the legal instrument governing the constitutional relationship between the four countries that make up the Kingdom of the Netherlands: Curaçao, Sint Maarten, Aruba and the Netherlands. The historical roots of the Kingdom of the Netherlands date back to the Dutch colonization of six Caribbean islands in 1630.<sup>290</sup> The end of World War II marked the formal end of colonial rule and the beginning of a new structure within the Kingdom of the Netherlands encompassing the Netherlands, Suriname and the Netherlands Antilles, as a result of the enactment of the Charter in 1954.<sup>291</sup> The transition aimed for equality among the constituent countries, but tensions arose within the former Netherlands Antilles. Administrative power dynamics, with Curaçao acting as the central government, resulted in inefficiencies among the other islands.<sup>292</sup> Additionally, cultural and ethnic differences, along with anti-immigrant sentiments, fuelled a growing desire for autonomy. Aruba was the first island to pursue separation from the Netherlands Antilles. Through negotiations within the kingdom, Aruba was eventually granted a separate status, declaring itself autonomous in 1986.<sup>293</sup>

The new constitutional relationship that resulted from the revised structure of the Kingdom of the Netherlands, implemented on 10 October 2010, brought about challenges on political and governance levels, particularly regarding autonomy.<sup>294</sup> Despite being unified, the countries had to adapt to a new administrative structure, which was complicated by factors such as colonial legacies, population size and composition, and socio-economic and socio-cultural developments.<sup>295</sup> In particular, the scope of the autonomy of the different countries was, and remains, challenging.

All countries within the kingdom have their own government and parliament.<sup>296</sup> This means they can enact legislation related to their own affairs. Affairs related to the entire kingdom are addressed in the Council of Ministers of the Kingdom, which consists of the ministers of the Netherlands and the three plenipotentiary ministers appointed by Aruba, Curaçao and Sint Maarten.<sup>297</sup> Although the plenipotentiary ministers of Aruba,

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<sup>289</sup> Ministry of Defence, Netherlands, "Kustwacht" ["Coastguard"], <https://www.defensie.nl/onderwerpen/taken-in-nederland/kustwacht> (in Dutch) (accessed on 12 February 2024).

<sup>290</sup> Curaçao, Aruba, Bonaire, Saba, Sint Eustatius, and Sint Maarten. Suriname was also colonized by the Netherlands but, unlike the other islands, Suriname became fully independent in 1975 and no longer forms part of the kingdom. Gert Oostindie, "Het Trans-Atlantische Koninkrijk: een koloniale erfenis met hedendaagse uitdagingen" ["The Transatlantic Kingdom: a colonial legacy with contemporary challenges"], *Groniek, Historisch Tijdschrift*, 2019, <https://scholarlypublications.universiteitleiden.nl/access/item%3A2982558/view>, pp. 362-363 (in Dutch).

<sup>291</sup> G.A.H. Bakhuis, *Autonomie, Toezicht en Interventie in de Caribische landen van het Koninkrijk der Nederlanden* [Autonomy, Supervision and Intervention in the Caribbean Countries of the Kingdom of the Netherlands], March 2020, Erasmus University Rotterdam, <https://repub.eur.nl/pub/124927/dissertation-Bakhuis.pdf>, p. 27 (in Dutch).

<sup>292</sup> G.J. Oostindie and I. Klinkers, *Gedeeld Koninkrijk: De Ontmanteling van de Nederlandse Antillen en de Vernieuwing van het Trans-Atlantische Koninkrijk der Nederlanden* [The Dismantling of the Netherlands Antilles and the Renewal of the Transatlantic Kingdom of the Netherlands], 2012, Amsterdam University, <https://scholarlypublications.universiteitleiden.nl/access/item%3A2866499/view>, p. 34 (in Dutch); see also Nationaal Archief, "Koloniale geschiedenis" ["Colonial history"], <https://www.nationaalarchief.nl/onderzoeken/zoekhulp/oloniale-geschiedenis> (in Dutch) (accessed on 12 February 2024).

<sup>293</sup> Lucas J. Alofs, *Onderhorigheid en Separatisme, Koloniaal Bestuur en Lokale Politiek op Aruba, 1816-1955* [Subordination and Separatism, Colonial Rule and Local Politics on Aruba, 1816-1955], 2011, Leiden University, <https://scholarlypublications.universiteitleiden.nl/handle/1887/17992> (in Dutch).

<sup>294</sup> G.J. Oostindie and I. Klinkers, *Gedeeld Koninkrijk* (previously cited), p. 39.

<sup>295</sup> Raad van State, "Voorlichting inzake een te ontwikkelen visie op het Koninkrijk" ["Information about a vision of the kingdom to be developed"], 5 September 2011, <https://www.raadvanstate.nl/adviezen/@61632/w04-11-0154/>, para 2.3 (in Dutch).

<sup>296</sup> The governments of the Netherlands, Curaçao, Aruba and Sint Maarten operate independently and are distinct from the kingdom government. Statuut voor het Koninkrijk der Nederlanden, "Text of the Charter of the Kingdom of the Netherlands as last amended by Kingdom act in connection with the dismantling of the present Constitutional Order of the Netherlands", Bulletin of Acts and Decrees of the Kingdom of the Netherlands (Staatsblad), Volume 2010, 775, Decree of 1 November 2010 (in Dutch).

<sup>297</sup> Plenipotentiary ministers represent the affairs of the countries in the Kingdom of the Netherlands. They are not members of the kingdom government but may participate in meetings of the Council of Ministers. Article 7 of the Charter states that there is also a "duty of confidentiality with regard to what is discussed or happened at the meeting", see Overheid.nl, "Reglement van orde voor de ministerraad"

Curaçao and Sint Maarten are based in the Netherlands, they do not form part of the government of the Kingdom of the Netherlands. The kingdom's government consists of the King of the Netherlands and Dutch ministers.<sup>298</sup>

## 8.2 SAFEGUARDING HUMAN RIGHTS

The Charter makes a distinction between national affairs and kingdom affairs. Article 3 of the Charter specifies kingdom affairs as: defence, foreign relations, the Dutch nationality and “the general conditions for the admission and expulsion of aliens”.<sup>299</sup> The Charter also allows for new kingdom affairs to be added, with collective agreement.<sup>300</sup>

The protection and promotion of human rights is a responsibility of each autonomous country within the kingdom; however, the safeguarding of these fundamental rights ultimately falls under the responsibility of the kingdom, and is thus deemed a kingdom affair, as per Article 43(2) of the Charter:

### ARTICLE 43, CHARTER FOR THE KINGDOM OF THE NETHERLANDS

1. “Each of the Countries shall promote the realisation of fundamental human rights and freedoms, legal certainty and good governance.”

2. “The safeguarding of such rights and freedoms, legal certainty and good governance shall be a Kingdom affair.”

The exact application of Article 43(2) remains unclear because the Charter does not define the scope of rights and freedoms under Article 43(1), nor does it elaborate on the safeguarding function.<sup>301</sup> Official interpretation suggests that while ensuring basic human rights, legal certainty and sound governance is primarily the responsibility of individual countries, it is in the interest of the kingdom to take appropriate measures if these are not upheld. Such action must be temporary and aimed at restoring the country's normal situation.<sup>302</sup> The article's meaning is, however, contested and it has never been used in practice in the context of migration. Academics have sought to clarify the interpretation of Article 43. For example, Arjen van Rijn argues that the safeguarding function is activated in the case of a violation of human rights or fundamental freedoms, where it is also established that the normal mechanisms of legal protection and political control are no longer sufficient to rectify the violation.<sup>303</sup> Hirsch Ballin writes, “If the lights are on orange, something is at risk of going wrong or may already be going wrong in some respects, but that is not a situation in which intervention should take place against the will of the national government. Then you need to engage in fact-finding, monitoring, and consultation, and you need to create solutions and approaches that genuinely help.”<sup>304</sup>

[“Rules of Procedure for the Council of Ministers”], 5 November 2011, <https://wetten.overheid.nl/BWBR0006501/2011-11-05#Paragraaf6>, Article 26 (in Dutch).

<sup>298</sup> De Nederlandse Grondwet, “Koninkrijksregering” [“Kingdom government”], <https://www.denederlandsegrondwet.nl/id/vid1iwwcekzu/koninkrijksregering#:~:text=De%20Koninkrijksregering%20wordt%20gevormd%20door,geen%20lid%20van%20de%20Koninkrijksregering> (in Dutch) (accessed on 12 February 2024).

<sup>299</sup> Charter of the Kingdom of the Netherlands, Article 3.

<sup>300</sup> Charter of the Kingdom of the Netherlands, Article 55.

<sup>301</sup> In a note explaining the vision of the Dutch Cabinet, former minister of the interior and kingdom relations, J.P.H. Donner, stated that the scope of Article 43(1) of the Charter is broad and difficult to define and that the safeguarding clause under paragraph 2 does not include a well-defined task and competence. Letter from the Minister of the Interior and Kingdom Affairs, Netherlands, “Waarborgfunctie Koninkrijk: Het waarborgen van rechten en vrijheden, rechtszekerheid en deugdelijk bestuur in het Koninkrijk der Nederlanden” [Kingdom guarantee function: Guaranteeing rights and freedoms, legal certainty and good governance in the Kingdom of the Netherlands], 2011, <https://www.tweedekamer.nl/downloads/document?id=2011D38238>, p. 5 (in Dutch).

<sup>302</sup> House of Representatives of the States General, Netherlands, “Brief van de Minister van Binnenlandse Zaken en Koninkrijksrelaties,” [“Letter from the Minister of Interior and Kingdom affairs”], (Tweede Kamer, vergaderjaar 2013-2014, 32 850, nr. 5), 26 November 2013, <https://zoek.officielebekendmakingen.nl/kst-32850-5.html>; see also Raad van State, “Voorlichting van de Raad van State” [“Information from the Council of State”], 5 September 2011, [https://www.parlementairemonitor.nl/9353000/1/j4nvgs5kjg27kof\\_j9vvi5epmj1ey0/visqndziflfb/f=/kst32500iv50.pdf](https://www.parlementairemonitor.nl/9353000/1/j4nvgs5kjg27kof_j9vvi5epmj1ey0/visqndziflfb/f=/kst32500iv50.pdf) (in Dutch).

<sup>303</sup> A. van Rijn, *Handboek Caribisch Staatsrecht* [Handbook of Caribbean Constitutional Law], 2019, p. 219 (in Dutch).

<sup>304</sup> Senate of the States General, Netherlands, “Het Nederlands buitenlands beleid ten aanzien van Latijns-Amerika en de Cariben: Verslag van een Deskundigenbijeenkoms” [“Dutch foreign policy towards Latin America and the Caribbean: Summary of expert meeting”] (Eerste Kamer, vergaderjaar 2018–2019, 29 653, C ), 16 January 2019, [https://www.eerstekamer.nl/behandeling/20190116/verslag\\_van\\_een\\_p.28](https://www.eerstekamer.nl/behandeling/20190116/verslag_van_een_p.28) (in Dutch).

The safeguarding clause under Article 43(2) has become a prevalent subject of debate in the context of autonomy.<sup>305</sup> The complex interplay between the autonomy and collective responsibility of the four constituent countries of the kingdom can be seen in the context of Venezuelan asylum seekers, with successive Dutch state secretaries of the interior and kingdom relations repeatedly stating that the policy of migration is a country affair.<sup>306</sup> State Secretary for Kingdom Relations and Digitalization Alexandra Van Huffelen, for example, references her predecessor by stating that Article 43 of the Charter is to inspire collaboration among the countries of the kingdom and not to enforce coercive measures.<sup>307</sup> Regarding migration policy, Van Huffelen mentions that cooperation between the countries in the kingdom is based on equality, mutual support and a good mutual relationship. For example, this is achieved through collaboration by the kingdom countries in a working group under the Mutual Arrangement Immigration Chain (*Onderlinge Regeling Vreemdelingenketen*), which reports to the Judicial Four Party Consultation and focuses on exchanging best practice depending on mutual desires and needs.<sup>308</sup> Furthermore, in an update to the Dutch parliament on 17 October 2023, Van Huffelen highlighted the progress in implementing the Simons Motion (“*motie Simons*”), adopted on 22 October 2022, which emphasizes collaboration, exchange of expertise, and technical assistance.<sup>309</sup> The Simons Motion encourages engagement with NGOs, particularly human rights organizations, to address immigration challenges in the Caribbean countries of the kingdom.<sup>310</sup>

The Charter does not specify which fundamental rights are to be protected. The selection of fundamental rights is mainly left to the discretion of the respective countries. This margin of discretion is nonetheless limited by the fact that the kingdom government must be consulted before these countries alter any provisions affecting the protection of fundamental rights.<sup>311</sup> The continuous assertion by Dutch officials that the migration crisis in the Caribbean islands is a national affair is legally dubious. Chrisje Sandelowsky-Bosman from Leiden University notes with regard to Article 43 of the Charter and the Caribbean countries of the kingdom: “Safeguarding fundamental rights and freedoms of migrants [...] is a joint responsibility, in which Dutch administrators and parliamentarians are expected to be highly committed. Furthermore, the complexities of internal constitutional structures cannot be used as a justification for disregarding international law.”<sup>312</sup>

## 8.3 APPLICABILITY OF INTERNATIONAL NORMS

The Kingdom of the Netherlands is a unitary subject of international law, concluding and signing treaties on behalf of the whole kingdom. The constituent parts are not authorized to conclude treaties independently,<sup>313</sup> the Kingdom of the Netherlands can therefore be held accountable under public international law.<sup>314</sup> Article 29 of the Vienna Convention on the Law of Treaties allows for territorial limitations, meaning treaties can apply

<sup>305</sup> House of Representatives of the States General, Netherlands, “Brief van de Minister van Binnenlandse Zaken en Koninkrijksrelaties” [“Letter from the Minister of Interior Affairs and Kingdom Relations”] (Tweede Kamer, vergaderjaar 2014–2015, 32 850, nr. 6 32 850), 25 September 2014, [https://www.parlementairemonitor.nl/9353000/1/j4nvg5kig27kof\\_j9vvi5epm1ey0/vjnnhr65wguh/f=/kst328506.pdf](https://www.parlementairemonitor.nl/9353000/1/j4nvg5kig27kof_j9vvi5epm1ey0/vjnnhr65wguh/f=/kst328506.pdf) (in Dutch); see also letter from the Minister of the Interior and Kingdom Affairs, Netherlands, “Waarborgfunctie Koninkrijk: Het waarborgen van rechten en vrijheden” (previously cited) (in Dutch).

<sup>306</sup> Alexandra van Huffelen, State Secretary for Kingdom Relations and Digitalization, Netherlands, “Beantwoording vragen van schriftelijk overleg over de kabinetsreactie op het rapport van Amnesty ‘Curaçao: weinig verbetering in de bescherming van Venezolanen’” [“Answers questions in written consultation about the government’s response to Amnesty’s report ‘Curaçao: Little improvement in the protection of Venezuelans’”], 17 October 2023, <https://open.overheid.nl/documenten/2d2892ef-454f-40ce-8a98-690e9abaf365/file>, p. 8 (in Dutch).

<sup>307</sup> Alexandra van Huffelen, State Secretary for Kingdom Relations and Digitalization, Netherlands, “Beantwoording vragen van schriftelijk overleg over de kabinetsreactie op het rapport van Amnesty ‘Curaçao: weinig verbetering in de bescherming van Venezolanen’” (previously cited); see also Kamerstuk I, 2018/19, 35 000-VI, <https://zoek.officielebekendmakingen.nl/dossier/35000-VI> (in Dutch).

<sup>308</sup> Alexandra van Huffelen, State Secretary for Kingdom Relations and Digitalization, Netherlands, “Kabinetsreactie op rapport ‘Curaçao: weinig verbetering in de bescherming van Venezolanen’ van Amnesty International” [“Cabinet response to Amnesty International’s report ‘Curaçao: Little improvement in the protection of Venezuelans’”], 7 June 2023, <https://open.overheid.nl/documenten/93e18ed9-6d84-4a96-b07f-4b5af5a5ca24/file>, p. 3 (in Dutch).

<sup>309</sup> Alexandra van Huffelen, State Secretary for Kingdom Relations and Digitalization, Netherlands, “Voortgang uitvoering motie Simons c.s. inzake aanpak vreemdelingenproblematiek op de Caribische Landen van het Koninkrijk” [“Progress in the implementation of the Simons et al. motion regarding tackling immigration problems in the Caribbean countries of the kingdom”], 17 October 2023, <https://open.overheid.nl/documenten/2d0d45b0-b26b-4624-bb87-4ab50493f661/file> (in Dutch).

<sup>310</sup> House of Representatives of the States General, Netherlands, “Motie van het lid Sylvana” [“Motion from the member Sylvana”] (36 200 VI, nr. 94), 17 November 2022, [https://www.parlementairemonitor.nl/9353000/1/j4nvg5kig27kof\\_j9vvi5epm1ey0/vly4p0go50zg/f=/kst36200vi94.pdf](https://www.parlementairemonitor.nl/9353000/1/j4nvg5kig27kof_j9vvi5epm1ey0/vly4p0go50zg/f=/kst36200vi94.pdf) (in Dutch).

<sup>311</sup> Irene Broekhuijse, Ernst Hirsch Ballin, and Sofia Ranchordás, “The Constitutions of the Dutch Caribbean”, in Richard Albert, Derek O’Brien, and Se-shauna Wheatle (editors), *The Oxford Handbook of Caribbean Constitutions*, 2020, [https://pure.rug.nl/ws/portafiles/porta/195068520/law\\_9780198793045\\_chapter\\_9.pdf](https://pure.rug.nl/ws/portafiles/porta/195068520/law_9780198793045_chapter_9.pdf)

<sup>312</sup> L.F.M. Besselink, “Internationaal recht en nationaal recht” [“International law and national law”], in N. Horbach, R. Lefeber and O. Ribbelink (editors), *Handboek Internationaal Recht* [Handbook of International Law], 2007, p. 4, <https://www.asser.nl/media/1583/h-3-internationaal-recht-en-nationaal-recht-leonard-besselink.pdf> (in Dutch).

<sup>313</sup> L.F.M. Besselink, “Internationaal recht en nationaal recht” (previously cited), p. 8.

<sup>314</sup> Committee on Economic, Social and Cultural Rights, *Sixth Periodic Reports of States Parties due in 2015: The Netherlands* (UN Doc. E/C.12/NLD/6), 20 May 2016, para. 3. The Kingdom of the Netherlands has recognised that “[i]nternational treaty obligations are binding on the Kingdom as a whole and the Kingdom can be held accountable under public international law”.

only to certain parts of a territory. Article 26 of the Charter permits a country within the kingdom to request exclusive application of an international agreement, so a treaty concluded by the kingdom does not automatically apply to all constituent countries. This requires a separate decision by the Council of Ministers for the Kingdom, initiated by the Dutch Minister of Foreign Affairs.<sup>315</sup> In practice, the governments of Aruba and other countries are consulted on treaty applicability before ratification.<sup>316</sup>

Each constituent country is responsible for implementing treaty legislation, except where kingdom legislation is required.<sup>317</sup> The 2018 report of the Advisory Council on International Affairs (Adviesraad Internationale Vraagstukken) identifies obstacles to implementation, such as “costs”, “limited attention, knowledge, coordination in the Netherlands”, “expertise and implementing capacity”, and “the impact of the 2010 constitutional reforms”.<sup>318</sup> For example, the kingdom ratified the UN Refugee Convention, initially excluding its overseas territories.<sup>319</sup> Over time, other countries within the kingdom ratified the convention.<sup>320</sup> Since Aruba ratified the Protocol to the Refugee Convention,<sup>321</sup> it must comply with its obligations, including the principle of non-refoulement, the cornerstone of the international protection regime, and also a norm of customary international law.

Both the Kingdom of the Netherlands and Aruba are required under international law to respect the principle of non-refoulement. The principle of non-refoulement is laid down in the ECHR, the ICCPR and the CAT.<sup>322</sup> As the principle of non-refoulement is customary international law, it is applicable even to those countries that have not ratified conventions in which it is laid down.<sup>323</sup> Aruba has ratified these human rights treaties and is thus obliged to protect people from being sent back to a place where they could face torture or other cruel, inhuman or degrading treatment or punishment. The Kingdom of the Netherlands is responsible for safeguarding human rights and has assisted Aruba in various ways regarding the Venezuelan crisis, as is explained in the following section.

## 8.4 ASSISTANCE FROM THE NETHERLANDS

### ARTICLE 36, CHARTER FOR THE KINGDOM OF THE NETHERLANDS

“The Netherlands, Aruba, Curaçao and Sint Maarten shall accord one another aid and assistance.”

The Charter makes it possible for countries within the kingdom to request assistance from any other country in the kingdom to uphold international standards.<sup>324</sup> Articles 37-40 further explain the concrete implementation of Article 36.

<sup>315</sup> Committee on Economic, Social and Cultural Rights, *Sixth Periodic Reports of States Parties due in 2015: The Netherlands* (previously cited), p. 10.

<sup>316</sup> Committee on Economic, Social and Cultural Rights, *Sixth Periodic Reports of States Parties due in 2015: The Netherlands* (previously cited), p. 10. However, their answer need not be the last word on the matter. It is up to the kingdom government, if necessary, after further consultation, to make decisions on the international relations of the kingdom.

<sup>317</sup> Charter, Article 43, para. 1.

<sup>318</sup> Advisory Council on International Affairs, *Fundamental Rights in the Kingdom of the Netherlands: Equivalent Protection in All Parts of the Kingdom*, Advisory Report No. 107, 8 June 2018,

<https://www.advisorycouncilinternationalaffairs.nl/documents/publications/2018/06/08/fundamental-rights-in-the-kingdom-of-the-netherlands>, pp. 29-33.

<sup>319</sup> Convention Relating to the Status of Refugees, with Annexes, Geneva, 28 July 1951, <https://zoek.officielebekendmakingen.nl/trb-1957-21.pdf>, p. 10. The Kingdom of the Netherlands ratified the UN Refugee Convention in 1956. In its declaration, it stated that the convention only applies to the Netherlands and not the former Netherlands Antilles nor Suriname. In 1968 the Netherlands ratified the Protocol to the Refugee Convention and Aruba ratified the protocol in 1986. According to Article 40 of the UN Refugee Convention, “Any state may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of its territories for the international relations of which it is responsible.” See Convention and Protocol Relating to the Status of Refugees, <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.

<sup>320</sup> Aruba ratified the Protocol to the Convention and is therefore also bound to the UN Refugee Convention. After the new status of the Kingdom of the Netherlands in 2010, the UN Refugee Convention also applied to Bonaire, Sint Eustatius and Saba; however, Curaçao and Sint Maarten have not ratified the UN Refugee Convention. Convention Relating to the Status of Refugees, with Annexes, Geneva, 28 July 1951, <https://zoek.officielebekendmakingen.nl/trb-1957-21.pdf>, p. 14.

<sup>321</sup> Since Aruba ratified the Protocol to the Refugee Convention, Articles 2-34 of the UN Refugee Convention also apply in Aruba; *Overheid.nl, Tractatenblad van het Koninkrijk der Nederlanden* [Treaty Journal of the Kingdom of the Netherlands], 9 July 1987, <https://zoek.officielebekendmakingen.nl/trb-1987-107> (in Dutch).

<sup>322</sup> ECHR, Articles 3 and 13; CAT, Articles 3 and 2(3)(a); ICCPR, Article 7.

<sup>323</sup> Committee on Economic, Social and Cultural Rights, *Sixth Periodic Reports of States Parties due in 2015: The Netherlands* (previously cited), para. 3.

<sup>324</sup> Charter of the Kingdom of the Netherlands, Article 36.



At the start of 2019, Aruba and Curaçao asked the Netherlands for assistance because of “increased migration due to the political situation in Venezuela”.<sup>325</sup> Aruba requested assistance in February 2019 and again in May 2019 because of the impact of the situation in Venezuela on various policy areas. In response, the Dutch government gave assistance, focusing on financial and technical support. The Dutch government made EUR 23.8 million available for Aruba and Curaçao, which was divided equally between the two islands as follows:<sup>326</sup>

- EUR 10.7 million for “crisis management” to prepare the kingdom for possible disasters;
- EUR 7.2 million for “optimizing the immigration chain”;
- EUR 2.2 million for the protection of maritime borders;
- EUR 1.7 million for various assistance projects in Aruba;<sup>327</sup>
- EUR 2 million for the immigration detention centre in Curaçao.

This breakdown shows that almost half of the funding was allocated to “crisis management”; this was to prepare Aruba and Curaçao for possible crisis scenarios including natural disasters such as the hurricanes Irma and Maria of 2017 or the consequences of possible “mass migration”.<sup>328</sup> In official letters seen by Amnesty International, where crisis management is mentioned the text is blacked out and therefore Amnesty International has been unable to determine how and on what this money was specifically spent.<sup>329</sup> In a letter dated 11 September 2024, the Dutch government responded: “The emergency provision is for the benefit of the entire Caribbean part of the kingdom and is held by the Cabinet. Therefore, it cannot be focused or subdivided by country.”<sup>330</sup>

Amnesty International asked the Aruban authorities what type of assistance they would like to receive. In a letter dated 29 March 2023, the authorities replied that the Aruban government struggles with a structural shortage of resources to execute deportation policies. In this context, the Aruban government would like to submit a request for assistance, including various projects related to different aspects of the process. This is intended to be supported by the Netherlands through the usual channels or from other sources through international organizations (such as the UNHCR) or European funds.

When specifically asked about the role the Netherlands must play in this regard, the Aruban authorities replied that the Netherlands, as a country within the kingdom, has the responsibility to continuously ensure that all countries within the kingdom adhere to applicable treaty obligations. This includes technical assistance, support with training, capacity-building and manpower, support with internships, various research projects, and budgeting to address the situation in Venezuela and its implications for countries including Aruba.<sup>331</sup>

## 8.4.1 AIDING DETENTION

The Netherlands provided EUR 7.2 million for the optimization of the immigration chain in Curaçao and Aruba. The immigration chain consists of organizations in charge of coastal and border surveillance, admission of persons, supervision, expulsion, removal and departure or return. Aruba received approximately EUR 3.6

<sup>325</sup> Andin Bikker, Minister of Justice, Security and Integration, Aruba, letter to the State Secretary for Justice and Safety, 17 December 2019, <https://www.google.nl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewi1tvqM35SGAxV2gIHbS7AtkQFnocCBkQAQ&url=https%3A%2F%2Fwww.rijksoverheid.nl%2Fbinaries%2Frijksoverheid%2Fdocumenten%2Fwoobesluiten%2F2022%2F12%2F08%2Fbesluit-woo-verzoek-steun-aruba-en-curaçao-voor-migratieproblematiek%2Fdocumenten%2B1%2Ben%2B2.pdf&usq=AOvVawOg6Xdk3ggGbt84HEBm5Edu&opi=89978449>, p. 1 (in Dutch); Eugene Rhuggenaath, (former) Prime Minister of Curaçao, “Vervolg verzoek ondersteuning en 1 van 6 2 samenwerking inzake migratie crisis Venezuela” [“Follow-up request for support and 1 of 6 2 cooperation on migration crisis Venezuela”], 10 January 2019, p. 4 (in Dutch).

<sup>326</sup> Raymond Knops, State Secretary of the Interior and Kingdom Relations, Netherlands, “Respons op ondersteuningsverzoeken Aruba en Curaçao” [“Response to support requests from Aruba and Curaçao”], 6 September 2019, <https://open.overheid.nl/documenten/ronl-1c305647-4ceb-491a-8302-563eeaa2d951/pdf>, p. 2 (in Dutch).

<sup>327</sup> This includes education programmes for Venezuelan children; the reception of vulnerable persons such as victims of human trafficking, smuggling, and domestic violence; and an inventory of the “informal circuit” (informal economy) in Aruba, as well as of the labour market opportunities for asylum seekers and migrants. Since these topics are beyond the scope of this research, Amnesty International will focus on the aid destined for the immigration chain and maritime border protection.

<sup>328</sup> Raymond Knops, State Secretary of the Interior and Kingdom Relations, Netherlands, letter to Evelyn Wever-Croes, Prime Minister of Aruba, 5 September 2019, <https://open.overheid.nl/documenten/ronl-a85552f5-fff2-43c7-a80d-7de1a798d700/pdf> (in Dutch).

<sup>329</sup> Raymond Knops, State Secretary of Interior and Kingdom Relations, Netherlands, “Respons op ondersteuningsverzoeken Aruba en Curaçao” (previously cited), p. 3; interview by video call with official from the Ministry of the Interior and Kingdom Relations, 15 April 2022x. The Dutch government has published several policy documents and correspondence with the Aruban authorities because of freedom of information requests, but the parts in which crisis management are mentioned are blacked out. See Dutch government’s database: <https://open.overheid.nl/documenten/ronl-a85552f5-fff2-43c7-a80d-7de1a798d700/pdf> <https://www.rijksoverheid.nl/onderwerpen/wet-openbaarheid-van-bestuur-wob/documenten> (accessed on xxx12 February 2024).

<sup>330</sup> Dutch government, right of reply letter to Amnesty International, 11 September 2024, on file with Amnesty International.

<sup>331</sup> Aruban government, letter to Amnesty International, 29 March 2023, on file with Amnesty International.

million, which was divided across four categories: infrastructure, education and training, technical assistance and equipment, and computing and communications.<sup>332</sup>

Under the category of “infrastructure”, part of the Dutch aid was used to “expand detention facilities of the GNC”.<sup>333</sup> This resulted in approximately EUR 603,000 being spent on renovations and the purchase of emergency barracks and shipping containers at the GNC immigration detention centre.<sup>334</sup> The containers were dilapidated and insufficiently ventilated, reaching high temperatures inside. This was confirmed in a report by the CPT.<sup>335</sup> Although the Aruban authorities claim that the containers are no longer in use, they were financed by the Netherlands and were in use from 2019 up to 2022.

Furthermore, the Netherlands assisted in the implementation of the Schiphol model, a procedure whereby people who requested asylum at the border were detained for 28 days while awaiting the assessment of their asylum application, without an automatic review of the detention by a judge.<sup>336</sup> According to the Aruban authorities, the Schiphol model is no longer in use and is currently subject to legislative changes after a higher court ruled that it was unlawful.

The GNC immigration detention centre remains in use and detentions there continue to violate human rights standards. The fact that Dutch aid has facilitated detentions at the GNC detention centre is problematic because undocumented Venezuelans, including some children, as revealed in this report, are detained at the GNC. Automatic detention for irregular entry, for example, leaves Venezuelans seeking international protection at risk of deportation and refoulement. There is no maximum duration for detentions; procedural safeguards are lacking; the authorities do not actively inform the detainees about their rights and asylum procedures; and as witnessed by Amnesty International and as recounted in interviews with Venezuelans, the conditions in detention are poor, including reports of physical and verbal abuse by certain GNC staff.

## 8.4.2. FINANCING RETURNS

Part of the assistance provided by the Netherlands was directed towards facilitating deportations, which included organizing “humanitarian”, “repatriation”, or “voluntary” flights to Venezuela via various countries.<sup>337</sup> As stated in official letters, the Netherlands collaborated on “a pilot project for the return process of Venezuelans without the right to stay”.<sup>338</sup> The aid also extended to transport to support the border services in the adequate performance of their duties. At the end of 2020 the Aruban Minister of Justice, Andin Bikker, wrote to the Dutch State Secretary of Asylum and Migration, Ankie Broekers-Knol:

“The ‘departure fund’ has so far been used only for the deportation of individuals to neighbouring Venezuela. In addition to the costs of the tickets, there are also the costs of Covid[-19] tests and airport taxes tied to such a return. The request is that these expenses will also be financed from this fund and to use this fund for follow-up flights of a humanitarian nature, for cases of voluntary return where the person is unable to pay for the costs of an airline ticket.”<sup>339</sup>

The fund’s objective was to reduce “the disproportionate number of Venezuelans who are in the informal circuit [informal economy] through repatriation to their country of origin”.<sup>340</sup> One method involved booking charter flights to Venezuela for the deportation of undocumented migrants.<sup>341</sup> The Aruban authorities clarified that the flights took place during the pandemic when all air travel was halted and all countries had closed their

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<sup>332</sup> EUR 3.3 million was allocated to financing the spending plan for the optimization of the immigration chain as well as the projects included in the accompanying plan of action. The costs covered infrastructural facilities, education, training, twinning and internships, technical assistance for the chain partners to adequately execute migration policies, and resources to promote (digital) information exchange between chain partners; Andin Bikker, Minister of Justice, Security and Integration, Aruba, letter to Ankie Broekers-Knol (previously cited).

<sup>333</sup> Andin Bikker, Minister of Justice, Security and Integration, letter to Ankie Broekers-Knol (previously cited), p. 73.

<sup>334</sup> Andin Bikker, Minister of Justice, Security and Integration, letter to Ankie Broekers-Knol (previously cited), p. 73.

<sup>335</sup> CPT, *Response of the Government of the Netherlands to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Kingdom of the Netherlands from 10 to 25 May 2022*, 25 August 2015,

[https://www.refworld.org/reference/countryrep/coecpt/2015/en/107448?prevDestination=search&prevPath=/search?sm\\_country\\_name%5B%5D=Netherlands+Antilles&sort=score&order=desc&result=result-107448-en](https://www.refworld.org/reference/countryrep/coecpt/2015/en/107448?prevDestination=search&prevPath=/search?sm_country_name%5B%5D=Netherlands+Antilles&sort=score&order=desc&result=result-107448-en), p. 13.

<sup>336</sup> <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/woo-besluiten/2022/12/08/besluit-woo-verzoek-steun-aruba-en-curaacao-voor-migratieproblematiek/Documenten+1+en+2.pdf>

<sup>337</sup> Interview in person with the Dutch Ministry of Justice, 12 October 2022, the Hague, Netherlands; interview in person with Aruban asylum and migration authorities (including DIMAS and GNC), 21 October 2022, Aruba; Raymond Knops, State Secretary of the Interior and Kingdom Relations, Netherlands, “Vaststelling van de begrotingsstaten van Koninkrijksrelaties” (previously cited).

<sup>338</sup> Raymond Knops, State Secretary of the Interior and Kingdom Relations, Netherlands, letter to Evelyn Wever-Croes, Prime Minister of Aruba (previously cited), p. 3.

<sup>339</sup> Andin Bikker, Minister of Justice, Security and Integration, letter to Ankie Broekers-Knol (previously cited), p. 73.

<sup>340</sup> Andin Bikker, Minister of Justice, Security and Integration, letter to Ankie Broekers-Knol (previously cited), p. 73.

<sup>341</sup> Andin Bikker, Minister of Justice, Security and Integration, letter to Ankie Broekers-Knol (previously cited), p. 73.

borders. The repatriation flights were also used for people who asked to return voluntarily, including those who had permits but had lost their jobs.<sup>342</sup> Aruban authorities told Amnesty International in March 2023 that the funds made available by the Dutch government for the purpose of deportation have been exhausted.<sup>343</sup>

The Dutch “departure” or “repatriation” fund for Aruba is deeply concerning because its purpose was to send people back to a country where they might face grave human rights violations, without any assessment of the risks. Aruban authorities told Amnesty International that the asylum seekers who used the repatriation flights had voluntarily signed their withdrawal of their asylum application.<sup>344</sup> However, Amnesty International concludes differently, based on its research. Several Venezuelans who had experienced detention reiterated that the flights are not truly voluntary. Many detainees felt hopeless and needed a way to escape the unbearable living conditions in the detention centre, as well as avoid the uncertainties of the lengthy asylum procedures, and so they decided to agree to deportation, through lack of better options, rather than volition.<sup>345</sup> The cases described in this report have shown that not all returns that the authorities consider to be “voluntary” are genuinely so. Notably, in the case of Ricardo\*, the UN Human Rights Committee even issued an interim measure to the Kingdom of The Netherlands to prevent his deportation. The Aruban authorities decided not to follow the interim measure and the Kingdom of the Netherlands did not consider the case within its responsibility to protect and respect human rights. As a consequence, Ricardo\* was deported.

As this report demonstrates, Aruba has arbitrarily detained Venezuelans, compelled them to return to Venezuela and violated the principle of non-refoulement. By giving assistance that funded the staff and infrastructure for these acts, the Netherlands has contributed to these human rights violations, both by providing this funding and by failing to conduct any due diligence or monitoring of how this funding would be used.

### 8.4.3 TECHNICAL ASSISTANCE

Dutch migration officials advised and trained the staff at the GNC immigration detention centre, the immigration police and the coastguard.<sup>346</sup> For instance, the Dutch Immigration and Naturalization Service (IND) has provided training and technical assistance to DIMAS in the field of the asylum procedure, including “on-the-job training” in which IND officials participated in asylum interviews and advised on asylum decisions.<sup>347</sup>

According to official letters, the Dutch government also provided financial assistance for the translation of “various information products”, such as the DIMAS asylum rejection document (*afwijzingslegende*), brochures, the website, and policy documents into English, French and Spanish.<sup>348</sup> Earlier chapters of this report revealed that the Aruban authorities do not provide essential information about the asylum and migration procedures in Spanish and that the limited information that is available is not easily accessible. In the progress reports that the Aruban authorities sent to the Dutch government, there are no observations about the human rights situation of the people concerned (Venezuelans), nor did the Dutch authorities consult them or their representatives to explore the human rights consequences of the Dutch support.<sup>349</sup>

The Netherlands also claims to have provided “hostmanship” training to the GNC staff,<sup>350</sup> providing guidance around the treatment of foreigners.<sup>351</sup> The Venezuelans who spoke to Amnesty International, however, reported experiencing racial abuse and derogatory treatment at the GNC immigration detention centre, perpetrated by staff members. These interviewee experiences aligned with observations by the CPT during its periodic country visit to Aruba. The CPT noted that during its visit to the GNC detention centre the delegation was confronted with an “openly hostile and aggressive attitude from the officer in charge of the facility at the time of the visit”.<sup>352</sup>

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<sup>342</sup> Aruban government, letter to Amnesty International, 16 April 2024, on file with Amnesty International.

<sup>343</sup> Aruban government, letter to Amnesty International 29 March 2023, on file with Amnesty International; See also “*Voorjaars Nota 2019 (bestedingsplan Vreemdelingenketen)*”.

<sup>344</sup> Aruban government, right of reply letter to Amnesty International, 13 September 2024, on file with Amnesty International.

<sup>345</sup> Interview in person with two detained Venezuelans, 13 September 2023, GNC immigration detention centre, Aruba.

<sup>346</sup> The IND, the Royal Military Constabulary and the Dutch Repatriation and Departure Service.

<sup>347</sup> Interview in person with Aruban asylum and migration authorities (including DIMAS and GNC), 21 October 2022, Aruba. See also Ministry of the Interior and Kingdom Relations, “Optimalisering vreemdelingenketen” [“Optimizing the migration chain”], 13 December 2019, <https://open.overheid.nl/documenten/ronl-a85552f5-fff2-43c7-a80d-7de1a798d700/pdf>, p. 40, section 4 (in Dutch).

<sup>348</sup> Dutch government, right of reply letter to Amnesty International, 11 September 2024, on file with Amnesty International; see also Ministry of Interior and Kingdom Relations, “Optimalisering vreemdelingenketen” (previously cited).

<sup>349</sup> Official letters, “Voortgangrapportage reservering Venezuela Voorjaarsnota 2019” [“Progress report on reservation Venezuela Spring Memorandum 2019”], <https://open.overheid.nl/documenten/ronl-a85552f5-fff2-43c7-a80d-7de1a798d700/pdf> (in Dutch).

<sup>350</sup> “Hostmanship” refers to providing a high standard of hospitality and personal engagement.

<sup>351</sup> Official letters: <https://open.overheid.nl/documenten/ronl-a85552f5-fff2-43c7-a80d-7de1a798d700/pdf>

<sup>352</sup> CPT, *Report to the Government of the Netherlands on the Periodic Visit to the Kingdom of the Netherlands* (previously cited), Executive Summary, p. 5

Furthermore, the CPT noted that one of its delegation members received a racist remark. In its report the CPT also writes that it received “several allegations of verbal abuse, including threats and bullying, as well as racist, mocking, provocative and dismissive remarks, made by a senior member of the management [of the GNC detention centre]”.<sup>353</sup>

Between 2019 and 2022, the IND provided technical assistance to the immigration services of Aruba and Curaçao in relation to asylum and Article 3 of the ECHR (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”).<sup>354</sup> Furthermore, the assistance from the Netherlands included support with various projects such as educational initiatives, awareness campaigns on human trafficking, and establishing shelters for Venezuelan victims of domestic violence, human trafficking and smuggling.

Amnesty International asked the IND whether it played a role in deciding on or advising in asylum application cases in Aruba. The IND replied that this fell under the responsibility of the local authorities.<sup>355</sup> The IND also stated that it was not involved in appeals. When asked about the low protection rates in Aruba,<sup>356</sup> the IND said that it lacked data or knowledge of individual cases to assess the situation.<sup>357</sup> Amnesty International asked the IND whether it was aware of the case of the Venezuelan man (Ricardo\*) who was deported despite the UN Human Rights Committee’s request, via a letter sent on 17 September 2021, not to deport him by way of an interim measure. The IND replied that it was unaware of the case and said that they were open to hear about the case once the Aruban authorities wanted to share it.<sup>358</sup> The case had, however, been communicated to the Government of the Netherlands, as it falls within the Kingdom of the Netherlands, so it is unclear whether or not any information about it was passed on to the IND. In a letter on 19 July 2022, the Government of the Netherlands requested to lift the UN Human Rights Committee’s interim measure. As a consequence, the Venezuelan man, Ricardo\*, was deported (see page 50). The case is currently still in progress and pending a response from the UN Human Rights Committee, so further information is not yet publicly available.

## 8.4.4 MARITIME BORDER PROTECTION ASSISTANCE

The Netherlands also provided EUR 2.2 million for the protection and strengthening of the maritime borders around Aruba and Curaçao. Maritime border control is, unlike migration policy, considered a kingdom affair. The aid from the Netherlands focused partly on the detection of migrants. As can be seen in official letters, “improved sensors enhance the capability to detect and manage a (sudden) migration flow from Venezuela by sea to Aruba, Bonaire and Curaçao”.<sup>359</sup> The Dutch aid included the deployment of the Curaçao and Aruban militia to supplement the coastguard personnel teams on the boats, which meant that the “boat team” was available almost 24/7 at the support points on Curaçao and Aruba.<sup>360</sup>

The coastguard is the first authority in the immigration chain for Venezuelans attempting to reach Aruba irregularly via the maritime routes. The coastguard is a collaborative effort among the four countries of the kingdom and serves both the interests of the individual countries and the kingdom as a whole. Operating under the legal framework of the Coastguard Act 2008<sup>361</sup>, it undertakes various responsibilities such as search and rescue, enforcement actions and supervision in the Caribbean region. These duties include drug control, policing, counterterrorism, and border surveillance. The mission of the coastguard is to ensure maritime safety in the Caribbean part of the kingdom through detection, surveillance and service delivery. The coastguard operates in the following zones: “the Inland Waters of Aruba, the Dutch Caribbean, Curaçao and St. Maarten;

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<sup>353</sup> CPT, *Report to the Government of the Netherlands on the Periodic Visit to the Kingdom of the Netherlands* (previously cited), p. 69, para. 207.

<sup>354</sup> Ministry of the Interior and Kingdom Relations, “Optimalisering vreemdelingenketen” (previously cited).

<sup>355</sup> Christine Nijkamp, Director Asylum and Protection, IND, letter to Amnesty International, 1 September 2023, on file with Amnesty International.

<sup>356</sup> “Protection rate” refers to the rate of granting refugee status.

<sup>357</sup> Christine Nijkamp, Director of Asylum and Protection, IND, letter to Amnesty International, 1 September 2023, on file with Amnesty International. See also Alexandra van Huffelen, State Secretary for Kingdom Relations and Digitalization, Netherlands, “Antwoorden op Kamervragen over kabinetsreactie op Amnesty-rapport bescherming Venezolanen” [“Answers to parliamentary questions about the government’s response to Amnesty’s report on the protection of Venezuelans”], 17 October 2023, <https://www.rijksoverheid.nl/ministeries/ministerie-van-binnenlandse-zaken-en-koninkrijksrelaties/documenten/kamerstukken/2023/10/17/beantwoording-vragen-van-schriftelijk-overleg-over-de-kabinetsreactie-op-het-rapport-van-amnesty-curaçao-weinig-verbetering-in-de-bescherming-van-venezolanen> (in Dutch).

<sup>358</sup> Christine Nijkamp, Director of Asylum and Protection, IND, letter to Amnesty International, 1 September 2023, on file with Amnesty International.

<sup>359</sup> Andin Bikker, Minister of Justice, Security and Integration, letter to Ankie Broekers-Knol (previously cited), p. 73.

<sup>360</sup> “Support points” are the locations where the coastguard teams are based. Aided by the Dutch Ministry of Defence; see Raymond Knops, State Secretary of the Interior and Kingdom Relations, Netherlands, “Respons op ondersteuningsverzoeken Aruba en Curaçao” (previously cited), p. 2.

<sup>361</sup> Overheid.nl, Rijkswet Kustwacht voor Aruba, Curaçao en Sint Maarten, evenals voor de openbare lichamen Bonaire, Sint Eustatius en Saba [Coastguard Kingdom Act for Aruba, Curaçao and Sint Maarten as well as for the public bodies Bonaire, Sint Eustatius and Saba], 10 October 2010, <https://wetten.overheid.nl/BWBR0023731/2010-10-10/> (in Dutch).

the Territorial Waters (TTW) of Aruba, Dutch Caribbean, Curaçao and Sint Maarten; the adjacent Economic Exclusive Zone (EEZ) of Aruba, the Dutch Caribbean, Curaçao and St. Maarten, including the Exclusive Fishing Zone (EVZ), as established by Aruba, Netherlands, Curaçao and St. Maarten; the Connecting Zone (AZ) and the other sea area in the Caribbean Sea, insofar as this fits within the prevailing international legal frameworks”.<sup>362</sup>

The annual plan of the coastguard is a crucial document outlining the organization’s activities and serving as a roadmap for operational planning and execution in the upcoming year. For several years the plan has acknowledged the impact of various contextual factors on its operational field, with specific reference to the ongoing crisis in Venezuela. The *Annual Plan 2023* makes several references to the ongoing crisis in Venezuela and also makes references to Venezuelans. For instance, the plan explicitly states: “In this regard, the coastguard focuses on combating human smuggling, human trafficking and irregular immigration (e.g. coming from Venezuela).”<sup>363</sup> Furthermore, the plan mentions that “the crisis in Venezuela has destabilizing consequences for the entire region, including towards the Leeward Islands (irregular migration and cross-border criminal activities)”.<sup>364</sup>

The coastguard’s task when intercepting Venezuelans attempting to reach Aruba irregularly by boat is to bring them safely to shore at the support point, Savaneta Marine Barracks. After a security search, anyone suspected of smuggling goods is handed over to the local police department and the other passengers are handed over to GNC officers for automatic detention at the GNC immigration detention centre, where further identification is done. Any children on board are brought to the GNC immigration detention centre, where an assessment is made, ideally by the Guardianship Council, as to whether the child should be taken to a care home or will stay with family on the island.<sup>365</sup> Once the coastguard has handed the intercepted people over, the countries themselves are responsible for the handling of the individuals in accordance with local asylum and migration procedures, which are considered country affairs.<sup>366</sup>

Amnesty International asked the Dutch Ministry of Defence to what extent the coastguard is responsible for ensuring compliance with the human rights granted to migrants and for preventing or stopping human rights violations, the ministry replied: “Apprehended migrants are detained by the coastguard at one of the three maritime support points in Curaçao, Aruba and Sint Maarten on land. There, the migrants are handed over to the police organization of the relevant country.”<sup>367</sup> Furthermore, the Dutch government stated that the coastguard is part of the immigration chain and that good cooperation with the other immigration services (such as the mutual exchange of information) is very important.<sup>368</sup> Yet, at the same time, the coastguard “has no further insight or influence on the following process on lands”.<sup>369</sup>

Irregular entry is a violation of Aruba’s local laws; however, under international law, the automatic detention of irregular migrants is not permitted, regardless of status. By handing over Venezuelans intercepted at sea to GNC officials, the coastguard is aware, or at least should be, that those people will be automatically detained. A transfer of jurisdiction arises, resulting in breaches of human rights.

## 8.5 PROTECTING VENEZUELAN IN ARUBA

The financial aid requested by the Aruban authorities from the Netherlands, and subsequently received, was used in ways that led to the arbitrary detention and deportation of asylum seekers, rather than focusing on the protection of Venezuelan asylum seekers, in violation of the principle of non-refoulement. International human rights law protects the right to liberty and security of a person by prohibiting the arbitrary deprivation of personal liberty for all individuals, including asylum seekers. The ICCPR, for example, holds: “Everyone has the right to

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<sup>362</sup> Coastguard for the Kingdom of the Netherlands in the Caribbean, *Jaarplan 2011* [Annual Plan 2011], <https://www.tweedekamer.nl/downloads/document?id=2011D09399>, p. 16 (in Dutch).

<sup>363</sup> Coastguard for the Kingdom of the Netherlands in the Caribbean, *Jaarplan 2024* [Annual Plan 2024], <https://open.overheid.nl/documenten/6260b87b-d4d4-42da-915e-ff4bcea6daab/file>, p. 8.

<sup>364</sup> Coastguard for the Kingdom of the Netherlands in the Caribbean, *Jaarplan 2023* [Annual Plan 2023], <https://www.tweedekamer.nl/downloads/document?id=2023D02994>, p. 5. The same references are also made in the Annual Plans 2021 and 2022.

<sup>365</sup> Interview by video call with Aruban civil servant, 25 March 2024.

<sup>366</sup> Minister of Foreign Affairs and Minister of the Interior and Kingdom Relations, letter to the Chairman of the House of Representatives of the States General (Kamerstuk 29653, n. 33), 5 July 2017, <https://zoek.officielebekendmakingen.nl/dossier/kst-29653-33.html> (in Dutch).

<sup>367</sup> Ministry of Defence, “Beantwoording schriftelijke vragen Jaarplan 2022 Kustwacht Caribisch Gebied” [“Answering written questions Caribbean Coast Guard Annual Plan 2022”], 22 April 2022, <https://open.overheid.nl/documenten/ronl-9a0398c852461f0b5e5e2b6b68a23fe521b21ec6/pdf>, question and answer 7.

<sup>368</sup> Minister of Foreign Affairs and Minister of the Interior and Kingdom Relations, letter to the Chairman of the House of Representatives of the States General (previously cited).

<sup>369</sup> Minister of Foreign Affairs and Minister of the Interior and Kingdom Relations, letter to the Chairman of the House of Representatives of the States General (previously cited).

liberty and security of person. No one shall be subjected to arbitrary arrest or detention.”<sup>370</sup> Administrative detention for purposes of immigration control also applies. The prohibition against arbitrary detention is also a customary principle of international law.<sup>371</sup> Venezuelans who have been intercepted by the coastguard are immediately detained at the GNC immigration detention centre, whereas Article 31 of the UN Refugee Convention prohibits the penalization of irregular entry. Furthermore, there is no time limit for detention in Aruba. Mandatory and indefinite detention impedes access to asylum and can lead to refoulement.<sup>372</sup>

Codified in various international law treaties, the principle of non-refoulement has the binding force of a customary norm and is applicable to all states of the international community. By providing financial assistance to Aruba for the unlawful deportation of Venezuelans back to Venezuela, the Netherlands is violating the principle of non-refoulement. The Netherlands failed to conduct a proper risk assessment, establish clear human rights criteria, or provide oversight. The case of Ricardo\* exemplifies the severe risks Venezuelans face when returned to Venezuela and demonstrates a violation of the principle of non-refoulement.

Despite Dutch assistance in training Aruba’s immigration authorities, including courses on Article 3 of the ECHR and advisory decisions in the protection process, there is a gap in providing accessible information and protection for Venezuelan asylum seekers. In practice, none of the interviewed asylum seekers had received information from the Aruban authorities. Asylum seekers and lawyers indicated a lack of support for asylum seekers during their interviews at DIMAS, a lack of legal representation, and examples of the immigration authorities leaving asylum seekers discouraged and without further information about their rights and opportunities to work and sustain themselves.

Amnesty International concludes that the Dutch government’s ongoing support to Aruba, without prior risk assessment, human rights criteria or oversight, contributes to a system of abuses. Aruba’s policy and practice concerning the admission and expulsion of immigrants and asylum seekers prompt the crucial conclusion that detaining and forcibly deporting Venezuelans, including asylum seekers, is inherently a violation of their human rights. International law obliges states to ensure they protect human rights in the measures they take, including providing assistance. States must ensure the protection of human rights and employ due diligence to ensure that any assistance they provide does not lead to human rights violations. Therefore, the Netherlands bears a responsibility to exercise due diligence oversight when providing financial assistance to ensure that it does not contribute to human rights violations. This entails conducting a risk assessment before providing any form of assistance, including technical or financial assistance, establishing clear human rights benchmarks with robust oversight mechanisms, to allow both parties to be held accountable in the case of human rights violations.

Although safeguarding human rights is a collective responsibility of the Kingdom of the Netherlands, as per Article 43 of the Charter, the State Secretary of the Interior and Kingdom Relations has clarified that it is not the kingdom government’s role to “ensure that and how human rights treaties are respected in all areas of public life in the countries are complied with”.<sup>373</sup> This does not, however, absolve the Netherlands from exercising due diligence to ensure its financial assistance does not contribute to human rights violations.

Although there are no specific requirements on assistance based on Article 36 of the Charter,<sup>374</sup> the Netherlands has previously imposed requirements related to immigration detention facilities in Curaçao.<sup>375</sup> Regarding the Dutch assistance to Aruba, the cooperation must be geared towards strengthening the protection and asylum system and conditioning the cooperation to concrete and verifiable steps such as passing asylum legislation, ending or reducing detention, and stopping the deportation of Venezuelans. It is important that when the Netherlands provides assistance, clear human rights benchmarks are established

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<sup>370</sup> ICCPR, Article 9.

<sup>371</sup> UN Human Rights Committee, *General Comment No. 5: On Migrants’ Rights to Liberty and Freedom from Arbitrary Detention* (UN Doc. CMW/C/GC/5), 23 September 2011.

<sup>372</sup> UN Human Rights Committee, *General Comment No. 35: Article 9 (Liberty and Security of Person)* (UN Doc. CCPR/C/GC/35), 16 December 2014.

<sup>373</sup> Alexandra van Huffelen, State Secretary for Kingdom Relations and Digitalization, Netherlands, “Beantwoording vragen van schriftelijk overleg over de kabinetsreactie op het rapport van Amnesty ‘Curaçao: weinig verbetering in de bescherming van Venezolanen’” (previously cited), p. 7.

<sup>374</sup> Alexandra van Huffelen, State Secretary for Kingdom Relations and Digitalization, Netherlands, “Beantwoording vragen van schriftelijk overleg over de kabinetsreactie op het rapport van Amnesty ‘Curaçao: weinig verbetering in de bescherming van Venezolanen’” (previously cited), p. 6.

<sup>375</sup> The former state secretary of the interior and kingdom affairs, Raymond Knops, stopped funding to Curaçao based on the observation that Curaçao fell short in immaterial aspect such as access to legal assistance and medical care, and training of personnel with regard to the treatment of aliens. However, Knops’s successor, Alexandra van Huffelen, nevertheless distributed the money after noting that there had been improvement. See Raymond Knops, State Secretary of the Interior and Kingdom Relations, “Uitvoering van de motie Koekkoek over binnen twee maanden een schriftelijke reactie op de bevindingen uit het rapport van Amnesty International” [“Implementation of the Koekkoek motion on a written response to the findings of Amnesty International’s report within two months”], 6 January 2022, <https://dossierkoninkrijksrelaties.nl/wp-content/uploads/2022/01/kamerbrief-inzake-uitvoering-van-motie-koekkoek-over-schriftelijke-reactie-op-bevindingen-uit-het-rapport-van-amnesty-international.pdf> (in Dutch).

and the assistance is directed towards the protection of Venezuelans. Cooperation between the Netherlands and Aruba, as well as other countries within the kingdom, should aim to strengthen Aruba's protection system without compromising its autonomy. This can be achieved by providing aid and assistance,<sup>376</sup> conducting consultations,<sup>377</sup> and making collateral arrangements.<sup>378</sup>

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<sup>376</sup> Charter of the Kingdom of the Netherlands, Article 36.

<sup>377</sup> Charter of the Kingdom of the Netherlands, Article 37.

<sup>378</sup> Charter of the Kingdom of the Netherlands, Article 38.

# 9. CONCLUSIONS AND RECOMMENDATIONS

## 9.1 CONCLUSIONS

The ongoing humanitarian and human rights crisis in Venezuela, exacerbated by a policy of repression by the government, has forced millions of Venezuelans to flee the country and seek protection elsewhere. Therefore, efforts to address the crisis in Venezuela must include the protection of the rights of Venezuelans seeking protection in other countries.

Aruba, 24km off the Venezuelan coast, is a common destination for Venezuelans seeking refuge; however, legal routes to enter Aruba are complicated for Venezuelans due to challenges in obtaining official documentation and border closures. Although Aruba is bound by the UN Refugee Convention, it lacks specific asylum legislation, so asylum seekers are subject to standard migration regulations and policies, resulting in a significant gap in the legal framework concerning their rights, including safeguards protecting them against refoulement.

Despite the various ways in which they can apply for asylum, Venezuelans face barriers in asylum application procedures, including a lack of information about their rights. The Aruban authorities do not proactively and adequately inform individuals seeking asylum about the relevant procedures and their rights in a language they can understand. None of the asylum seekers interviewed for this research had found out about the option to seek asylum through government information channels; instead, they had learnt about it from personal contacts, family members, or organizations such as the UNHCR and HIAS. Detainees at the GNC immigration detention centre are not provided with information about asylum procedures unless they specifically request it themselves.

In Aruba, the legal safeguards against unlawful detention are insufficient and there is no time limit for the duration of immigration detention. Irregular migrants and asylum seekers, including children, can be detained and deported. Those arriving irregularly are detained automatically because irregular entry is considered a violation of Aruban law. Depriving individuals of their liberty, solely on the basis of their migration status, has devastating impacts on the sense of dignity and the mental and physical health of migrants, asylum seekers and refugees. It is a violation of the right to freedom from arbitrary detention. Once detained, they receive deportation orders on the same day, written in Dutch, a language that most Venezuelans do not understand. Although it is possible to appeal these administrative decisions and initiate legal proceedings to object to deportation orders in Aruba, such objections do not suspend deportation, leaving Venezuelans in this situation at risk of deportation. The lack of free legal assistance in Aruba further complicates matters because Venezuelan asylum seekers must arrange and pay for their own legal representation. Additionally, lawyers must schedule appointments to visit their clients in detention, and lawyers are not permitted to accompany their clients during their asylum interviews at DIMAS, further hindering access to legal assistance. Amnesty International has serious concerns about the unlawful detention of individuals who should not be detained such as pregnant women or children.

Detention conditions remain inadequate. Venezuelans who seek asylum while in immigration detention fear their asylum application will prolong their detention. The desire to be released from detention and avoid prolonged detention, compounded by harsh conditions and complex legal procedures for appeals, deters many people from applying for asylum or continuing with the asylum application procedure. Many end up



accepting a return to Venezuela that cannot be considered genuinely “voluntary”. Several Venezuelans told Amnesty International that they felt coerced to sign deportation orders and that their return was not truly voluntarily; they did not want to leave Aruba. Additionally, some Venezuelans reported enduring verbal and racist abuse by the GNC staff at the immigration detention centre. The documented ill-treatment and hostility towards detainees at the GNC immigration detention centre in Aruba, as reported by Amnesty International, highlights the need to protect detainees’ rights and wellbeing.

Furthermore, the conditions under which deportation flights are organized and executed, including the use of commercial flights through other countries and the lack of escort by GNC officials, raise additional concerns about the safety and rights of deported individuals. Reports of coercion and pressure to accept deportation underscore the need for enhanced safeguards and oversight mechanisms to protect the rights of detainees, including the right to non-refoulement.

While Aruba, a small island with only 107,780 inhabitants and limited capacity, struggles to address the challenges posed by the crisis in Venezuela, it has sought assistance from the Netherlands. The Netherlands’ approach to assisting Aruba has not prioritized the rights of Venezuelan asylum seekers; instead, it has contributed to human rights violations by aiding in the detection, detention and deportation of Venezuelans, contributing to breaches of the principle of non-refoulement. Financial assistance from the Netherlands facilitated “humanitarian” flights to deport Venezuelans; the money was also used to improve detention conditions, which remain worrying nonetheless. The assistance of the Netherlands lacked clear human rights benchmarks and mechanisms to ensure the protection of the rights of Venezuelans. Training was provided to DIMAS employees by the Netherlands, but asylum seekers can still go years without a decision on their asylum application, DIMAS employees often tell asylum seekers that asylum is not granted in Aruba, and Aruba deported a Venezuelan asylum seeker despite an interim measure by the UN Human Rights Committee requesting he not be deported due to the risk of refoulement.

Amnesty International opposes the deportation of Venezuelans and is concerned about the practice of automatic detention and deportation of Venezuelans in Aruba. The detention and deportation of people from Venezuela in Aruba is always going to be in violation of their human rights because Venezuelans should not be forced to return to Venezuela. Given the crisis in Venezuela, all people fleeing Venezuela should be considered to be asylum seekers above all else and treated as such. This means that all deportations of Venezuelans violate the right to non-refoulement, as set out in international law.

## 9.2 RECOMMENDATIONS

### 9.2.1 TO THE GOVERNMENT OF ARUBA

- Do not deport Venezuelans back to Venezuela. Issue a general ban of forced returns of Venezuelans to Venezuela and refrain in practice from returning, expelling or otherwise transferring Venezuelans, directly or indirectly to their country.
- Refrain from detaining Venezuelans as their forced return is intrinsically unlawful, and refrain from penalizing Venezuelans for entering Aruba irregularly.
- Ensure that complementary forms of protection are accessible to Venezuelans and guarantee the full enjoyment of all their rights, including economic and social rights.
- Adopt legislation and regulations specifically related to asylum.
- Ensure that the Government of Aruba develops policies specifically targeting accompanied and unaccompanied children seeking protection, always guided by the best interests of the child.
- Do not deprive children of their liberty and pass legislation to enshrine in law the prohibition of the detention of children and their families.
- Ensure refugees, asylum seekers and migrants have access to information about their rights and the relevant procedures, including around asylum, in a language they can understand.
- Ensure asylum seekers can access a fair and effective asylum application procedure.
- Ensure that no asylum seeker is detained or deported while their asylum application is being examined. Ensure that appeals have a suspensive effect.

- Ensure the availability of translation services for asylum seekers, including translation of their asylum decision, so that they are able to challenge it effectively.
- Ensure that decisions on asylum application are taken in a timely manner.
- Ensure personnel are adequately trained to deal with cases of gender-based violence, and that asylum procedures are child and gender sensitive.
- End the arbitrary detention and isolation of refugees, migrants and asylum seekers. In the meantime:
  - ensure that all detainees automatically appear before a lawyer within 72 hours of their detention;
  - ensure that the conditions in the immigration detention centre are in line with international standards and ensure that all cells are equipped with integrated ventilation;
  - develop flyers in Spanish clearly informing people who want to seek asylum of their rights;
  - train personnel to approach detainees in a respectable manner without discriminatory remarks;
  - refrain from verbal abuse and xenophobic comments against people in immigration detention, including gendered verbal abuse against Latina women;
  - create an independent complaints mechanism for detainees.

## 9.2.2 TO THE KINGDOM OF THE NETHERLANDS

- Ensure that human rights are respected and protected equally in all areas of the Kingdom of the Netherlands, and that any financial and technical assistance provided does not cause or contribute to human rights violations in Aruba.
- Ensure that the coastguard, in collaboration with Aruba's authorities, takes the following steps:
  - Prioritize the safety and protection of Venezuelans intercepted at sea. They should be brought to a place of safety rather than automatically detained, with their rights fully protected.
  - Evaluate and consider the transfer of Venezuelans to a port of safety. The Kingdom of the Netherlands must take collective responsibility for receiving and processing Venezuelans across all kingdom countries, rather than relying solely on Aruba.
- With respect to funding related to the application of the UN Refugee Convention, include a monitoring and evaluation component in policy and practice and adjust collaboration accordingly based on the outcomes. Establish human rights benchmarks and oversight mechanisms to verify concrete steps taken to increase protection for refugees in Aruba.
- Ensure that prior risk assessments are conducted before any assistance and cooperation are agreed.
- Ensure that any assistance given is geared towards the protection of refugees.

## 9.2.3 TO THE GOVERNMENT OF THE NETHERLANDS

- Ensure that human rights are respected and protected in the Kingdom of Netherlands, and that any financial and technical assistance provided does not contribute to human rights violations in Aruba.
- When giving assistance, ensure that a thorough investigation is conducted to ensure that the assistance reaches the target group – Venezuelans seeking protection.

- When providing assistance and giving funds to Aruba, ensure due diligence and impose human rights conditions in doing so. Ensure that any support for Aruban detention and removal policies is consistent with international human rights law and standards. This should include supporting alternatives to detention.
- Assist Aruba in creating a free legal aid scheme, providing translation into Spanish, and establishing a specific asylum procedure for children.
- Grant subsidiary protection according to the EU Qualification Directive to those Venezuelans that need it, based on the real risk of serious harm if returned to Venezuela.

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# UNPROTECTED

## UNVEILING GAPS IN THE PROTECTION OF VENEZUELAN REFUGEES IN ARUBA

Is Aruba providing sufficient protection to Venezuela asylum seekers? This report presents the findings of Amnesty International's first research into the reality for Venezuelans seeking asylum in Aruba. Despite its obligations under international human rights treaties, Aruba faces significant challenges in providing adequate protection. This report highlights the lack of specific asylum legislation in Aruba, issues with immigration detention, and concerns over the treatment of Venezuelan asylum seekers, including children. It also explores the involvement of the Netherlands in assisting Aruba, particularly in deportation practices, raising concerns about potential violations of human rights principles. Despite improvements in the situation for asylum seekers in Aruba, Amnesty International remains deeply concerned about the overall treatment of Venezuelans seeking protection in Aruba.