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Human Rights Watch Commentary on Dutch Asylum Policy

*Presented on the occasion of the Parliamentary Roundtable Discussion called by
the Permanent Commission on Justice*

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Introduction

Human Rights Watch is a privately funded international non-governmental organization dedicated to monitoring human rights conditions throughout the world and advocating policies to curb abuse. Our researchers regularly monitor human rights conditions in some seventy countries in all parts of the world.

In the past four years, our work in Western Europe has focused on the treatment of migrants and asylum seekers, resulting in in-depth research, reporting, and advocacy in Greece, Spain, the Netherlands, Belgium, and the U.K. This research has revealed a wide range of issues of concern in Western Europe, including arbitrary and prolonged detention, substandard detention conditions, inadequate protections for victims of trafficking, police abuse suffered by migrants and asylum seekers, inadequate asylum procedures, and deprivation of migrants' fundamental economic social and cultural rights, such as housing, food, and education. We have also found that children are particularly vulnerable to many of these violations.

Throughout the region, we have encountered governments preoccupied with developing ever more restrictive asylum and immigration policies and disinterested in addressing the violations we have identified. Against this backdrop, we are particularly pleased with the dialogue that we have developed with the Dutch government. We very much appreciate the Dutch parliament's interest in our work and we thank you for the opportunity to discuss our findings with you today.

In April 2003 Human Rights Watch released a report entitled *"Fleeting Refuge: The Triumph of Efficiency Over Protection in Dutch Asylum Policy."* Based on three months of in-depth research, the report details the ways in which the current Dutch asylum policy and practice violate fundamental asylum and refugee rights. Using illustrative case examples in combination with an analysis of national and international law and policy, the report highlights three primary areas of concern: violation of refugee and asylum rights in the accelerated asylum determination procedure (AAC procedure); inappropriate treatment of migrant and asylum-seeking children; and restrictions on asylum seekers' rights to basic material support, such as food and housing.

In response to a request by the permanent commission of justice of the Dutch parliament, the former Minister of Immigration and Integration, Mr. Hilbrand Nawijn, formally responded to Human Rights Watch's findings and recommendations in a letter dated 20 May 2003. Given the significance of this response in terms of reflecting the government's perspective on the issues we raised and its willingness to take steps to address those concerns, Human Rights Watch's contribution to this parliamentary roundtable discussion focuses on the Minister's response.

Mr. Nawijn's response to the Human Rights Watch report was disappointing in a number of respects. As a general rule, his response simply reiterated the theoretical and procedural foundations of Dutch asylum law, emphasizing the process by which it has been enacted and its approval by Dutch courts. Unfortunately, this response ignores Human Rights Watch's findings that some aspects of Dutch law and policy—either on their face or in practice—violate human rights standards articulated by international bodies.

Mr. Nawijn notes, for example, on the first page of the reply, that the law came into being after consultation between the government and parliament and is supported by an independent judicial review opportunity, which utilizes the same international and regional standards highlighted in the Human Rights Watch report. Neither the purity of the legislative process nor the opportunity for judicial oversight guarantees that the practice of the law or even in some cases the law itself are in conformity with a State's international legal obligations.

The Human Rights Watch report specifically highlights a number of real-life cases in which Dutch law and policy has violated international standards. It outlines other cases in which otherwise adequate law and policy has not been implemented as might be expected, and thus in breach of refugee and asylum seekers' rights. Yet, nowhere in the Minister's response are these case examples addressed, nor has there been any indication that IND intends to further investigate these or other examples that clearly reveal a divergence between Dutch policy and practice and governing international standards.

As mentioned at the outset, Human Rights Watch identified shortcomings in three aspects of Dutch asylum policy and practice—the AC procedure; the treatment of child migrants and asylum seekers; and reception conditions for certain categories of asylum seekers. In our presentation today, we would like to briefly identify the inadequacies of the Minister's assertions that the Netherlands is meeting its international obligations to protect the rights of migrants and asylum seekers in each of these areas.

AC Procedure

The Minister describes the accelerated AC procedure as a mechanism for quickly filtering out manifestly unfounded asylum claims. In its report, Human Rights Watch expressed concern that in practice the AC procedure is used to process cases that require a longer, more deliberate process. We urged IND to develop clear guidelines to ensure that it is used only in appropriate cases.

The Minister resists this recommendation, arguing that no particular guidelines are required for the AC procedure because it is no different from the regular asylum procedure, just faster. In practice, however, as detailed in the Human Rights Watch report, there has been a great deal of confusion and debate over exactly what the AC procedure is and for whom it was intended, resulting in its application in cases that are clearly inappropriate for such swift, cursory review.

On the basis of its review of dozens of case records, Human Rights Watch has concluded that cases involving complex legal and factual questions should always be transferred to the full asylum procedure and that this should be clearly spelled out in IND guidelines. The types of cases for which the AC procedure should be clearly specified as always inappropriate include those involving the application of the six-month trauma guideline, questions of internal flight options, and other complex interpretative questions, such as whether persecution as a member of a social group occurred. These types of cases should always be transferred to the full asylum determination procedure. In addition, cases involving psychological, as well as physical, problems or trauma at the time of the interview or that reveal possible torture or sexual violence should be exempted from accelerated consideration.

The Minister defends the AC procedure on the grounds that such speedy decision-making reduces the period of uncertainty suffered by asylum seekers. It is indeed in the best interests of asylum seekers to have certainty on their legal status without the years-long delays experienced by many asylum seekers under the former asylum policy. Nonetheless, Human Rights Watch is concerned that in shifting to processing a majority of asylum cases in a mere three and one-half days, IND has gone too far in the opposite direction.

The Minister's assertion that the AC procedure gives asylum seekers a full and fair opportunity to explain their reasons for seeking asylum is unresponsive to the real-life examples Human Rights Watch and other groups have identified, in which asylum seekers have faced significant obstacles to obtaining meaningful counsel, documenting their need for protection, or effectively challenging a negative decision on appeal.

The Minister indicates that the specific issue of access to legal counsel will be addressed more closely in an evaluation of the AC procedure being conducted by the IND. Human Rights Watch looks forward to continued dialogue on this issue once the results of that evaluation are made available. We would encourage the commission to seek regular, independent evaluations of the AC procedure and other policy issues highlighted in Human Rights Watch's report.

Treatment of Migrant and Asylum-Seeking Children

The Minister's response to our findings of abuses of migrant and asylum-seeking children raises three specific concerns.

The first is his insistence that the Convention on the Rights of the Child is inapplicable to certain migrant children present in the Netherlands. Human Rights Watch reiterates that the United Nations Committee on the Rights of the Child has consistently stressed that in acceding

to the Convention, states commit themselves to protect all children within their borders, without discrimination. That the Convention's applicability could lead to difficult choices is hardly a justification for alleviating the Dutch government of its obligations.

Human Rights Watch is further concerned by the Minister's response to our findings regarding interviews of migrant and asylum-seeking children. We welcome the decision to halt interviews of children aged four and five, but we are concerned that continuing interviews of children aged six and older fails to address the many real-life problems with child interviews identified in the Human Rights Watch report. Citing major organizational and financial consequences, the Minister also rejected Human Rights Watch's recommendation that children each receive a single guardian to accompany them to all interviews and otherwise follow them throughout the procedure. The Convention on the Rights of the Child's best interests of the child standard is paramount in all proceedings affecting children and cannot simply be ignored because of organizational or financial consequences. It is critical that the Ministry urgently address these concerns in consultation with VluchtelingenWerk, SRA, and NIDOS.

Thirdly the Minister's response to our findings about child migrants and asylum seekers fails to address abuses stemming from the definition of "accompanied" children employed by the Dutch government. As detailed in the Human Rights Watch report, in practice this policy has the effect of leaving the care of children to adult relatives resident in the Netherlands, without regard to whether they are willing or able to meet the child's needs or whether this assignment of responsibility is in the best interests of the child. It is hoped that these gaps in the Minister's response will be filled in by the evaluation of the minors policy mentioned in his response.

Reception Conditions

Regarding the issue of whether asylum seekers whose claims have been denied in an accelerated procedure should have access to basic material support pending an appeal, Human Rights Watch would encourage the Ministry and parliament to further consider the meaning of an effective appeal and the character of the AC procedure. Particularly given the problems with the AC procedure identified above, an effective appeal procedure is critically important to the Dutch government's adherence to the non-refoulement principle, ensuring that it never returns an asylum seeker to a country in which his or her life or freedom are at risk. Human Rights Watch has identified cases in which the lack of inadequate reception conditions rendered it difficult or impossible for asylum seekers to pursue a meritorious appeal. We believe that the Netherlands' commitment to the principle of non-refoulement dictates review of this policy.

Conclusion

In sum, the Minister's response to Human Rights Watch's report does little to seriously address the concerns and recommendations we outline in that report. We welcome this roundtable discussion and look forward to other parliamentary efforts to reinvigorate the debate over the AC procedure, including material reception issues and Dutch policy regarding the treatment of migrant and asylum-seeking children. We hope that our report can inform this

debate, in particular focusing policy-makers attention on the practical effect of existing policies and pointing to areas in which practice diverges from policy intent.

This initiative is particularly important as the Dutch government anticipates its 2004 presidency of the European Union, which will offer it an important opportunity to ensure that asylum policy promulgated at the E.U. level fosters European-wide compliance with international standards. We hope that the Dutch government will seize this opportunity not only to improve its own asylum policy, but also to extend its humanitarian tradition to the broader European community.