

# Research Study III

## Return

### The Netherlands



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## List of abbreviations

ACVZ	Advisory Committee on Alien Affairs
AI	Amnesty International
AIV	Advisory Council on International Affairs
amv's	Unaccompanied Minor Immigrants
ANW	Surviving Dependents Benefit Act
AOW	State Pension Act
AUB	Department for Policy Implementation of the IND
Awb	General Administrative Law Act
Benelux	Belgium, The Netherlands and Luxembourg
BMA	Medical Assessment Section
CBS	Statistics Netherlands
CEV	Aliens Act 2000 Evaluation Committee
CIDIN	Centre for International Development Issues Nijmegen
CMC	Central Mission Commissariat
COA	Central Agency for the Reception of Asylum Seekers
DGIAV	Directorate-General of International Affairs and Alien Affairs
DJI	Custodial Institutions Service
DNRI	National Criminal Intelligence Department
DRC	Democratische Republiek of Congo
DT&V	Return Migration and Departure Service
DVB	Immigration Policy Department
DV&O	Transport & Support Service
EC	European Commission
EER	European Economic Area
EG	European Community
EMN	European Migration Network
EU	European Union
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
G4	Four major cities: Amsterdam, The Hague, Utrecht and Rotterdam
GBA	Gemeentelijke Basisadministratie
GGD	Municipal Health Service
HRT	Reintegration contribution for return
HRPT	Reintegration contribution for the Return Project
IND	Immigration and Naturalisation Service
INDIS	IND Information System
INLIA	International Network of Local Initiatives for Asylum Seekers
IOM	International Organisation for Migration
IRRICO	Information on Return and Reintegration in Countries of Origin
KLPD	National Police Agency
KMar	Royal Netherlands Military Constabulary
LTG	Local task groups
MIDA	Migration for development in Africa
MinBuza	Ministry of Foreign Affairs
MinJus	Ministry of Justice
MOA	Medical Care for Asylum Seekers
MoU	Memorandum of Understanding
MTV	Mobile Border Supervision of Aliens

NCP	National Contact Point
NMI	Netherlands Migration Institute
OVA	Training removal-officer
PDT	Department for Return Migration Procedures
PVRvE	Parliamentary Meeting of the Council of Europe
PVSO	Holding area at Schiphol
REAN	Return and Emigration of Aliens from the Netherlands
RITT	Regional Integration Return Teams
RvS	Council of State
SCV	Immigration Coordination Department
SRA	Foundation for Legal Aid in Asylum Cases
SVB	Social Insurance Bank
TK	House of Representatives
TMO	Return, Migration and Development
TOP	Return development-project
UC	Removal Centre
UCR	Removal Centre Rotterdam Airport
UNHCR	United Nations High Commissioner for the Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
VN	United Nations
VNG	Association of Netherlands Municipalities
VON	Refugee Organisations in the Netherlands
Vp	Aliens Police
VRIS	Protocol on Foreign Nationals in the Criminal Justice System VV (2000)
VVN	Dutch Refugee Council
Vw (2000)	Aliens Act 2000
WAO	Disability Benefit Act
ZHP	Seaport Police

## 0. Executive summary

### 0.1 Objective

The purpose of this study is to provide an insight into the approach taken by the Netherlands with respect to the return of third-country nationals to their country of origin, country of transit or another third country. As well as the substantive objective, there are also two general objectives that apply to all studies within the framework of the European Migration Network (EMN). These are: to discover gaps in the research, and to study further the strong and weak points of the EMN's performance.

In the context of these objectives, this study closely follows the specifications as drawn up by the EMN.

### 0.2 Methodology

This study into the return of immigrants is the result of desk research in recent (since 2000) Dutch publications that are publicly available. In addition, a large number of governmental and non-governmental organisations were asked for information and for their views on repatriation, or return in general, or various aspects of this process. An expert group, consisting of five experts from several different departments of the Ministry of Justice, was set up to promote the quality of the report.

### 0.3 Results

#### **A. Definitions, concepts and categories of return**

The Dutch Aliens Act and regulations do not contain a definition of return. In this study, return is taken to be the collective name for two main categories: departure and remigration.

According to the Aliens Act implementation guidelines, departure is "*when a foreign national departs, whether absconding or not, from the Netherlands either at his own volition or under compulsion*". This largely concerns foreign nationals who do not or no longer have *lawful residence* in the Netherlands, and are therefore legally required to leave the Netherlands.

Remigration is taken to mean "*to establish one's home outside the Kingdom of the Netherlands, in the country of origin*" (Remigration Act). The word remigration is used in respect of Dutch nationals or foreign nationals residing lawfully in the Netherlands and holding a residence permit.

Departure is divided into three categories in the Netherlands: forced departure, independent departure and absconding. Forced departure is when the process of removal is begun. The term removal (deportation) [*uitzetting*] is used in all cases of "*removal from the Netherlands using the strong arm of the law*". This implies that it is not a case of removal if the foreign national is given the opportunity to leave the country in a manner of his own choosing. (Aliens Act implementation guidelines A4/1) Concerning independent departure (departure at the foreign national's own volition) the Aliens Act implementation guidelines state that this can be facilitated, for example, by means of a departure scheme of the International Organisation for Migration (IOM) in the Netherlands.

Absconding is a purely administrative category. It concerns persons who have left the address known to the authorities, but about whom it is not known whether they have actually departed from the Netherlands.

With independent return and absconding, this may involve foreign nationals who do not or no longer reside lawfully in the Netherlands as well as foreign nationals whose case is still being considered and who may remain in the country to await the decision and therefore are lawfully residing in the Netherlands. Forced departure always concerns a foreign national who has no lawful right of residence in the Netherlands.

The term voluntary return is not used in this study because of the question of whether a person can actually be considered to return voluntarily if he or she does not possess and/or cannot obtain the right of lawful residence in the Netherlands.

## ***B. Political and legal framework of return***

### ***Legislation and regulations for return***

The Aliens Act 2000 forms the statutory basis for forced and independent departure. In subordinate legislation – the Aliens Decree and the Aliens Act implementation guidelines – more detailed (procedural) provisions are laid down that are necessary for its implementation. The Aliens Act states that foreign nationals without a right of residence and/or those who have exhausted all legal remedies may no longer make use of state provisions and are obliged to leave the country within four weeks of the expiry of the period of lawful residence (unless the departure date is postponed). On the other hand, the foreign national is required to depart from the Netherlands immediately if he or she has never had the right of lawful residence, or if the provisional residence period in the Netherlands has legally expired.

If the foreign national has not left the Netherlands by the departure deadline, he or she may be removed by the Dutch government. Removal is a power and not an obligation of the Minister for Immigration and Integration. The grounds for removal are the legal consequences of not granting a permit, not extending the term of a permit, or of withdrawing the permit, the termination of lawful residence, or unlawful residence (Aliens Act implementation guidelines A6/1). The Netherlands does not have a separate return decree or removal order.

A foreign national who departs at his own volition can receive assistance from the IOM, as laid down in the Aliens Act implementation guidelines. Based on the Remigration Act, certain groups of remigrants may be entitled to certain financial arrangements.

### ***Increasing priority placed on return***

The Dutch Government is placing increasing priority on the return of foreign nationals who do not lawfully reside in the Netherlands. The go-ahead for intensifying the return of foreign nationals was given with the Return Memorandum (TK: 2003b) which set out a number of new measures, including new forms of asylum reception and return as part of development cooperation policy.

### ***Setting up a separate organisation to deal with the return of foreign nationals***

Following the study carried by the Auditor's Office (TK: 2005c) the Government decided in October 2005 to create a separate organisation which would be better able to ensure the implementation of the return policy. At the time of this study, this organisation, which will become operational on 1 January 2007 and be called the Migration Return and Departure Service (*Dienst Terugkeer en Vertrek*, hereinafter abbreviated to DT&V), is in the process of being set up.



### *Criticism of return policy*

The Netherlands has a number of protest and solidarity movements that campaign against the forced departure of asylum seekers who have exhausted all legal remedies. Criticism is levelled in particular against the removal of asylum seekers who have been living in the Netherlands for a long time. In addition, there is at present a public debate on the children in alien detention centres. The call to grant a general pardon for this group of long stayers is regularly heard. Municipalities too, which believe that the national government's approach is not sound, causing asylum seekers who have exhausted all legal remedies to end up on the streets, are voicing sharp criticism.

There is also criticism of the aim of the return policy. According to an independent committee – the Aliens Act 2000 Evaluation Committee – this aim is ambiguous (CEV: 2004), since many implementing organisations believe that return *to the country of origin* is the purpose of the return policy, whereas the Return Memorandum refers to 'reducing the number of foreign nationals residing *in the Netherlands* who do not have the right of residence'. In addition, during the past few years there has been considerable commotion in connection with a number of incidents linked with the implementation of the return policy (Syria, Democratic Republic of Congo (DRC), Schiphol fire).

Although there is still much resistance to forced departure, the general impression is that the taboo surrounding the subject has gradually been broken. Various civil organisations for which forced departure was not previously open to discussion are now focusing on supporting those aliens who have exhausted all legal remedies, in the process of returning to their country of origin.

### *Influence of EU legislation*

As is the case for every member state, regulations, decrees and decisions of the Council of the European Union (and the European Parliament) are binding in the Netherlands and are directly applicable. Most EU legislation is generally applicable or has been implemented in Dutch legislation. The enlargement of the EU with ten new member states has not led to any changes to the Dutch return policy. The Schengen and Dublin agreements lead to a higher number of returns from the Netherlands, but this in fact means a relocation of persons within the areas under the treaty.

### **C. Return procedures and activities**

In this study, return is viewed as a common term for departure and remigration. Departure can be divided into three categories: forced departure, independent departure and absconding (SCV: 2005a).

Forced departure involves five procedures, of which the removal procedure was the most common in 2005 (SCV: 2005a/b). In the Netherlands, an immigrant is removed by handing him over to the foreign border authorities, or by placing him on board an aircraft or ship of the company that transported the immigrant, or by transporting him by plane or ship, either directly, or indirectly with an intermediate stop, to a country that has granted him the right to enter that country. Generally this involves removal by plane or ship with the assistance of the Royal Netherlands Military Constabulary (KMar) or the Seaport Police (ZHP). Generally the immigrant is removed from the detention location through one of the removal centres of the National Agency of Correctional Institutions (DJI). Immigrants may be removed individually or in groups,

by charter or scheduled flight, accompanied or unaccompanied. There may or may not also be special circumstances involved.

Independent departure involves three departure procedures, of which independent departure via IOM was the most common in 2005 (SCV: 2005a/b). IOM acts as an intermediary for foreign nationals who wish to leave the Netherlands at their own volition, and offers them the REAN scheme and in addition if necessary the HRT scheme. In some cases, IOM will offer individual mediation following a specific request for assistance. It works closely with Cordaid and the Central Mission Commissariat (CMC) in the *Bureau Maatwerk bij Terugkeer* [Bureau for Tailor-made Solutions when Returning to the Country of Origin]. The worldwide network of these organisations can be called upon to solve problems which hinder a successful return of asylum seekers, including those who have exhausted all legal remedies. Furthermore, there are various initiatives in the Netherlands to offer foreign nationals, through training and education, good prospects when returning to their country of origin.

The departure category absconding does not appear in the Aliens Act or the Aliens Act implementation guidelines. This category, however, is used by the Immigration Coordination Department [*Stafdirectie Coördinatie Vreemdelingenketen (SCV)*] and has five departure procedures (SCV: 2005a), of which departing from one's home (before or after the departure deadline of the procedure) was the most common in 2005. Absconding is a purely administrative category, since it is not known whether the person concerned has actually left the Netherlands.

Persons who choose for remigration can in certain cases apply for financial support under the Remigration Act, for which an application can be submitted to the Social Insurance Bank [*Sociale Verzekeringsbank (SVB)*]. The Remigration Act offers a basic provision and a remigration provision. The Netherlands Migration Institute [*Nederlands Migratie Instituut (NMI)*] informs, advises and supervises persons and groups (who are lawfully residing in the Netherlands) who have the choice of remaining in the Netherlands or returning to the country of origin. IOM offers support to immigrants who wish to return temporarily (circular migration) to make a contribution to the development of their country of origin.

#### ***D. Bilateral and multilateral cooperation in relation to return***

In the area of bilateral and multilateral cooperation in the area of return, the Netherlands focuses above all on developing and maintaining cooperative relations with the countries of origin. One form in which cooperation is laid down is the re-admission agreement. This can involve bilateral treaties as well as multilateral treaties at Benelux or EU level. Furthermore there exist bilateral treaties between the Netherlands (or the EU) and third countries with a re-admission clause. Cooperation with countries in such areas as development cooperation is linked in this way to the subject of return. Another form in which the Netherlands has made implementation and other agreements on re-admission of foreign nationals are memoranda of understanding. As well as cooperation in the area of re-admission, the Netherlands also works together with other 'countries of destination' in the process of the removal of immigrants, for example by organising government flights together with several other European countries.

### ***E. Research gaps***

As far as is known, this study is the very first to provide an overview of the entire spectrum of the return of immigrants (from forced departure to remigration). During the past few years, the attention given to return has increased substantially, and much has been published on the subject in the Netherlands. Nevertheless, research into return migration from the Netherlands of asylum seekers who have exhausted all legal remedies is still scarce. There are hardly any studies into the effectiveness of return programmes and incentives, and the extent to which those returning to their country of origin are able to reintegrate there (sustainability of their return). Most literature on decision-making processes relating to migration deals only with the 'outward journey' and not the return.

### ***F. Functioning of the EMN***

The study specifications for this study were agreed on during the regular meetings of the various national contact points of the EMN and the European Commission in the spring of 2006. During the study phase, a workshop on return was held during a regular meeting, at which both the national contact points and national experts were present. The discussions on progress and problem areas in this study during the workshop's regular meetings provided a valuable range of views for the Dutch researchers.

The Dutch national network was initially informed of this study in the spring of 2006 by e-mail and through the EMN newsletter. In a later phase, the definitive study specifications were communicated to the members of the network who are specifically involved in the return process, stating for which specifications an answer was expected. After further reminders, a large number of the network members provided a response to the questions. Face-to-face interviews were conducted with a number of members and some non-members or persons not yet members of the national network. These methods resulted in a surfeit of information. The national network would appear to be well able to generate the necessary information. By translating the specifications into Dutch for a subsequent study and communicating the specifications in a more targeted way, efficiency can be optimised.

An expert group, consisting of five experts from various departments of the Ministry of Justice, has been set up to promote the quality of the report. The participating experts helped to deal with the open questions, sometimes by answering the question directly and sometimes by referring to the correct sources. In addition, on two occasions they added their comments to a draft report. This proved to be a good working method. A number of organisations were also visited, particularly when dealing with the section on independent departure. For efficiency reasons it might have been more desirable for these organisations to have also formed part of an expert group. In the final phase of the study, all organisations were given the opportunity to add their comments to the draft text in relation to their own organisation.

## 1. Introduction

### 1.1 Purpose of the study

The purpose of this study on Return by the European Migration Network (EMN) is to analyse, by means of systematic comparisons, the differences between and similarities in the approach towards the return policies of the various EU member states. This should lead to the development of comparable and reliable data at a European level on return measures and return programmes, more detailed and up-to-date knowledge of return policy among policymakers and decision-makers, and the exchange of more information. The results of this EMN study on Return must also serve as input for the European draft directive “*on common standards and procedures in the Member States for returning illegally staying third-country nationals*” (COM(2005) 391).

This research study closely follows the specifications as drawn up by the EMN.

This report comprises the Dutch contribution to this EMN study on Return and therefore focuses solely on the Dutch approach to return policy. The central question to which this report endeavours to provide an answer is as follows:

*What is the Dutch approach to the return of third-country nationals to their country of origin, country of transit or other third country?*

This central question can be divided into the following study questions:

- A. What definitions, concepts and categories of return are adopted in the Netherlands?
- B. Within which political and legal framework can return be placed in the Netherlands?
- C. What return procedures and activities exist in the Netherlands?
- D. What bilateral and multilateral cooperation does the Netherlands pursue in the area of return?

As with any study carried out within the context of the EMN, as well as the substantive purpose and the central question, there are two more general objectives of the study. These are:

- E. To discover gaps in the study, and by doing so to identify those areas where further research is needed; and
- F. To examine further the strong and weak points of the EMN’s functioning, in particular concerning the analysis and research activities in order to learn lessons for the future development of the network.

### 1.2 The current state of knowledge and research

The past few years have seen return policy being intensively implemented in the Netherlands for the very first time. Perhaps as a response to the importance that political circles have been placing on the return policy in the Netherlands, there has recently been an increase in the socio-scientific interest in return (Engelhard: 2004)<sup>1</sup>. In the Netherlands, in the period from 2000 to the present, an increasing amount has therefore been written on return. For example, a number of general studies have

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<sup>1</sup> This publication is published jointly by Pharos and IOM, co-financed by the European Refugee Fund within the framework of the IOM project ‘Return Migration and Health’.

been published that highlight return from a variety of angles.<sup>2</sup> In addition, the Advisory Committee on Aliens Affairs (ACVZ) has analysed both the international and national aspects of return.<sup>3</sup> A number of evaluations of return policy have also been carried out.<sup>4</sup> As far as is known, this study is the first to give an overview of the entire spectrum of the return of foreign nationals from the Netherlands (from forced departure to remigration).

Although much has been published on return, research is still scarce on return migration of failed asylum seekers who have exhausted all legal remedies, and of immigrants lawfully residing in the Netherlands. Studies into the effectiveness of return programmes and incentives and the extent to which returnees are able to reintegrate in their country of origin (sustainability of return) are few and far between. Most literature on migration decision-making processes deals only with the ‘outward journey’ and not the return.

### 1.3 General overview of return in the Netherlands

The Netherlands attracts both legal and illegal immigrants. Apart from the problem of illegal entry, the Netherlands also has the problem of foreign nationals who have exhausted all legal remedies (including asylum seekers and regular foreign nationals) who do not leave the Netherlands. In order to solve these problems, the return of these foreign nationals living unlawfully in the Netherlands to the country of origin or a safe third country has been given increasing priority by the Dutch government since 1998. The Coalition Agreement of July 1998 therefore provides for an intensification of the existing return policy (TK: 1998). The central (but not new) starting point here, which is emphasised in the Return Policy memorandum of June 1999 (referred to hereinafter as: Return Policy '99), is that a decision not to allow a person entry to the Netherlands means that the person in respect of which such a decision has been made is required to depart from the Netherlands within a certain period of time. The foreign national, as stressed by the then state secretary of Justice, is himself responsible for that departure, which incidentally can also be inferred from the Aliens Act 1994, according to the then state secretary (TK: 1999).

The obligation to depart rests on the one hand on foreign nationals who under the Act reside unlawfully in the Netherlands, such as ‘overstayers’. These foreign nationals must depart from the Netherlands immediately. On the other hand, foreign nationals whose application for residency is refused are given a period of time within which they are required to depart from the Netherlands at their own volition.

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<sup>2</sup> Examples of this are: ‘Developments in the Return Policy and Regularizations in the Netherlands (1999-2005)’ by Karina Franssen and Kees Groenendijk (2005) and the Dutch part of the IOM study ‘Return Migration: Policies & Practices Europe’ (2004).

<sup>3</sup> It concerns the study reports ‘*Terugkeer, de nationale aspecten: beleid, uitvoering en draagvlak*’ (Return migration, the national aspects: policy, implementation and level of support (2005) and ‘*Terugkeer: de internationale aspecten*’ (Return migration: the international aspects (2004).

<sup>4</sup> Examples of this are: ‘*Evaluatie effectiviteit terugkeerbeleid '99. Een inventarisatie van de (on)mogelijkheden*’ (Evaluation of the effectiveness of Return Policy '99. A survey of the possibilities and impossibilities) by Mary van den Wijngaart, Madeleine Hulsen, Marjolijn Olde Monnikhof (2003), ‘*Evaluatie Remigratiewet, een kwantitatieve evaluatie*’ (Evaluation of the Repatriation Act, a quantitative evaluation) by Mary van den Wijngaart and Harry van den Tillaart (2005), ‘*Terugkeerbeleid voor afgewezen asielzoekers. Evaluatie van het Terugkeerbeleid '99 en het terugkeerbeleid onder de Vreemdelingenwet 2000*’ (Return Policy for refused asylum seekers. Evaluation of the Return Policy '99 and the return policy under the Aliens Act 2000) by Marjolijn Olde Monnikhof and J. de Vreede.

The Return Policy '99 and the accompanying Phased Plan 2000 were in force during the period from 11 February 2000 to 1 April 2001. The starting points included in this plan have also remained in force under the Aliens Act 2000. With the Aliens Act 2000, which entered into force on 1 April 2001, a more stringent and shorter asylum procedure has been introduced, also allowing foreign nationals who no longer may reside lawfully in the Netherlands to be removed more effectively from the country. The essence of this Act is that foreign nationals who have exhausted all legal remedies may not make use of facilities, and they are obliged to depart from the Netherlands within four weeks of the expiry of the period of lawful residence. The underlying principle is still that it is the personal responsibility of the immigrant residing unlawfully in the Netherlands to depart from the country at his own volition.

The principle of individual responsibility to return is underlined once again in the Return Memorandum of 21 November 2003. The government may facilitate the foreign national's departure and, if that foreign national does not leave at his own volition, may remove him. The Return Memorandum contains countless measures for a more effective return policy and aims to increase the number of illegal immigrants departing from the Netherlands.

The measures referred to in the Return Memorandum concern such things as improvements in border controls; placing more responsibility with the transport companies (both upon entry and departure); setting up information and departure centres; increasing the number of identity checks; managing the organisation of the return process more effectively; obtaining more public support for departure by putting across the message that unlawful residence in the Netherlands is unacceptable, and finally that return migration must be a part of Dutch foreign policy (TK: 2003b).

The Illegals Memorandum of 4 May 2004 subsequently aims to tackle illegality more effectively, whereby it should be noted that the group of illegal persons can be reduced by pursuing an effective return policy. The proposed measures concern border control, returning people straight away who have been refused entry, and more intensive controls within the national borders. The Illegals Memorandum also discusses a more intensive tackling of human smugglers, rack renters and employers who employ illegal persons (TK: 2004c).

The increasing priority the government is giving to the return of immigrants who remain unlawfully in the Netherlands and the emphasis on control, safety and limitations in immigration policy is partly the result of social developments and disquiet. The influx of a large number of asylum seekers and the terrorist attacks of 11 September 2001 has led to a more vociferous public debate on immigration and immigration policy. Due to the more stringent immigration policy, immigration was increasingly discouraged, whereas return migration was encouraged (IOM: 2004b, p. 253). In October 2005, the Government decided to create a separate return migration organisation, so that the policy objectives as described in the Return and Illegals Memorandum can be better safeguarded. At the time of this study this return migration organisation was in the process of being set up and will become operational on 1 January 2007. It will be called the Migration Return and Departure Service (*Dienst Terugkeer en Vertrek* - DT&V). DT&V will take over a range of activities relating to return migration and departure from organisations such as the

Immigration and Naturalisation Service (IND), the Aliens Police and the Royal Netherlands Military Constabulary (KMar).

## 2. Methodology, Definitions and Return Categories

### 2.1 Methodology

#### **2.1.1 Research methods**

This research study into return migration as part of the EMN was carried out by means of desk research of recent (from 2000) public documents found in the Netherlands. These include legislative documents such as the Aliens Act 2000 and associated subordinate legislation and regulations such as the Aliens Decree and the Aliens Act implementation guidelines, case law, policy documents, all kinds of reports and literature, statistics and information from the printed media and other media.

In order to ensure a balanced picture of Dutch return policy, information and opinions have been obtained from the national network of the Netherlands National Contact Point (NCP) of the EMN, and from a large number of organisations and institutions, including the Royal Netherlands Military Constabulary (KMar, Ministry of Defence), Statistics Netherlands (CBS), the International Organisation for Migration (IOM), the Immigration and Naturalisation Service (IND, Ministry of Justice/Minister for Immigration and Integration (V&I)), the Custodial Institutions Service (DJI, Ministry of Justice), Amnesty International, the Dutch Refugee Council (VVN), Refugee Organisations in the Netherlands (VON), the Foundation for Legal Aid in Asylum Cases (SRA), the Central Agency for the Reception of Asylum Seekers (COA), '*Bureau Maatwerk bij Terugkeer*' (Cordaid), the Netherlands Migration Institute (NMI) and the Municipal Health Service/Medical Care for Asylum Seekers (GGD/MOA).

An expert group has also been created to promote the quality of the report. The expert group has met twice and consists of five experts from various departments of the Ministry of Justice, namely the Immigration Policy Department (DVB), the Immigration Coordination Department (SCV), the Department for Policy Implementation of the IND (AUB), the Department for Return Migration Procedures of the IND (PDT) and the return migration organisation currently in formation: the Migration Return and Departure Service (DT&V).

In the final phase of the study, most of the organisations and institutions were given the opportunity to comment on the draft text in relation to their own organisation. Appendix 1 contains a further explanation of the various organisations.

#### **2.1.2 Problems and limitations**

During the study, the researchers came up against a number of problems. Firstly, the subject of the study is extremely wide-ranging, since it involves both forced and independent departure as well as remigration. The study proved to be time-consuming and labour-intensive and the set deadline proved to be unrealistic. In addition, the Netherlands, just as other non-English speaking countries, needed at least an extra four weeks to have the report translated. Furthermore, not all questions of the specifications could be answered, or answered properly. In some cases the questions could be answered in several ways. In addition, on a number of occasions not all the necessary information was present or available in the public domain.



## 2.2 Clarification of concepts and definitions

### **2.2.1 Main categories of return**

In this study, 'return' is taken as a collective name for the following two main categories:

1. Departure;
2. Remigration.

#### *Departure and remigration*

The term 'departure' originates from the Aliens Act 2000. The Aliens Act implementation guidelines state that departure is '*where a foreign national departs, whether absconding or not, from the Netherlands either at his own volition or under compulsion.*' The main difference between departure and remigration lies in the *lawfulness of the residence* of the person in question. In the case of departure, in most cases this concerns foreign nationals who do not or no longer have *lawful residence* in the Netherlands, and are therefore obliged to leave the country. In a number of cases these are foreign nationals who have lawful residence, whether or not temporarily, as the proceedings in respect of their lawful residence have not yet been completed. Remigration involves persons who *are lawfully resident* in the Netherlands, and who return to their country of origin or to the country of origin of their parents. Remigration may concern both Dutch nationals and foreign nationals with a residence permit.

### **2.2.2 Departure**

Departure is divided in the Netherlands into three categories (SCV: 2005a):

1. Forced departure;
2. Independent departure;
3. Absconding.

Forced departure and independent departure come under the definition of 'removal' (*verwijdering*). *Removal*, which does not appear in the Aliens Act 2000, comprises according to the Aliens Act implementation guidelines '*all government actions and actions on the part of carriers that aim to achieve the actual removal from the Netherlands of a foreign national who is obliged to leave the Netherlands. This includes the terms departure, either voluntary or involuntary, and removal.*'

#### *Forced departure*

Forced departure is when the process of removal is begun. The term 'removal' (deportation, *uitzetting*) is used in the Aliens Act 2000, but the Aliens Act 2000 does not provide a definition of it. According to the Aliens Act implementation guidelines, the term 'removal' is used in all cases of '*removal from the Netherlands using the strong arm of the law*'. This implies that removal does not take place if a foreign national departs from the Netherlands in a manner of his choosing. Forced departure can only occur in relation to foreign nationals residing unlawfully in the Netherlands.

Forced departure has five subcategories (SCV: 2005a/b), which are discussed further in Chapter 4:

- a. Removal;
- b. Removal following a criminal process;<sup>5</sup>
- c. Departure under the supervision of the Mobile Border Supervision of Aliens (*Mobiel Toezicht Vreemdelingen* – abbreviated to MTV);
- d. Handover at national borders after MTV checks;
- e. Removal of a foreign national who has been refused entry (Article 6 Aliens Act 2000).

#### *Independent departure*

The Aliens Act 2000 and the Aliens Act implementation guidelines contain no definition of independent departure. The Aliens Act implementation guidelines state that independent departure may also be facilitated by the International Organisation for Migration (IOM) in the Netherlands. For this purpose IOM offers a departure scheme. The Return Memorandum states in relation to independent departure that this is offered by all the chain partners from the moment of the first decision of refusal (TK: 2003b). In most cases, independent departure involves foreign nationals who do not or no longer have the right of *lawful residence* in the Netherlands. In a number of cases these are foreign nationals who have lawful residence, either temporarily or otherwise, while their application for residence is still being considered and has not been completed.

Independent departure has three subcategories (SCV: 2005a/b), which are discussed further in Chapter 4:

- a. Independent departure through IOM;
- b. Supervised departure of the self-reporter;
- c. Independent departure of a foreign national who at the time of departure is shown to have been in the Netherlands unlawfully, otherwise known as 'overstayers'.<sup>6</sup>

#### *Absconding*

The category of *absconding* does not appear in the Aliens Act 2000 or the Aliens Act implementation guidelines. However, it is a category that is used by the Immigration Coordination Department (*Stafdirectie Coördinatie Vreemdelingen* –SCV) (SCV: 2005a). Absconding refers to persons who have left the living address that is known to the authorities, but it is not known where they have gone. It is clear that at the time of checking their address they were no longer living there and had left for an unknown destination. This is a purely administrative category of departure, since it is not known whether these persons have actually departed from the Netherlands. Absconding may involve both foreign nationals without the right of lawful residence in the Netherlands as well as foreign nationals whose application for residence is still being considered.

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<sup>5</sup> This subcategory of forced departure has been used by the SCV since 2006.

<sup>6</sup> This subcategory of independent departure has been used by the SCV since 2006.

Absconding has five subcategories (SCV: 2005a/b), which will be discussed further in Chapter 4:

- a. Lifting of detention with notice to leave the Netherlands;
- b. Notice to leave the Netherlands;
- c. Departure from place of residence independently during the proceedings before the departure period has commenced;
- d. Departure from place of residence independently during or after the departure period;
- e. Eviction with notice to leave the Netherlands.

### **2.2.3 Remigration**

The Repatriation Act (see Appendix 8) adopts the following definition of remigration: *'to take up residence outside the Kingdom of the Netherlands, in the country of origin'*. The country of origin is the country in which the remigrant or one of his parents were born, or the country of which the remigrant or one of his parents holds or has held that nationality. According to the Repatriation Act, the definition of a remigrant is: *'a person, as referred to in Article 2 of the Repatriation Act, who with the application of that Act intends to relinquish his lawful main residence in the Netherlands in order to remigrate, or has remigrated and since then has taken up residence in a destination country (country in which a remigrant will take up residence)'*. If it concerns a foreign national who has lawful residence in the Netherlands on the grounds of an asylum seeker's residence permit for a limited or unlimited period, remigration is also understood to mean taking up residence in any other country outside the Netherlands. Remigration refers to Dutch nationals or foreign nationals with the right of lawful residence in the Netherlands.

### **2.2.4 Voluntariness of return**

The researchers observe that the term *voluntary return*, although no longer appearing in the Aliens Act 2000 or Aliens Act implementation guidelines, is also used in the Netherlands.<sup>7</sup> 'Voluntary return', however, is not used in this study since it is doubtful whether there is any voluntary element of return if a person does not have or fails to obtain lawful residence in the Netherlands. However, one can consider the extent to which return is voluntary. In the researchers' view, there is no question at all of a voluntary element to forced departure. There is a certain voluntary element to independent departure and absconding. Remigration is characterised by the highest level of voluntariness.

### **2.2.5 Comparison of Dutch definitions with IOM definitions**

IOM uses the term 'voluntary return', giving it the following definition:

*'Voluntary return is based on a decision freely taken by the individual. A voluntary decision embraces two elements: freedom of choice, which is defined by the absence of any physical, psychological, or material pressure; and an informed decision which requires having enough accurate and objective information available upon which to base the decision.'*

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<sup>7</sup> With the rewriting of the departure categories - in WBV 2006/15, published in the Government Gazette no. 61, dated 27 March 2006 – the term in the Aliens Act implementation regulations has been replaced by 'independent departure'.

IOM (IOM: 2004c) makes a distinction between:

- voluntary return without compulsion: ‘when migrants decide at any time during their sojourn to return home at their own volition and cost’;
- voluntary return under compulsion: ‘when persons are at the end of their temporary protected status, refused asylum, or are unable to stay, and choose to return at their own volition’;
- involuntary/forced return: ‘return as a result of the authorities of the host State ordering removal’.

‘Involuntary/forced return’ would appear to correspond to the Dutch ‘*gedwongen vertrek*’ (forced departure). It would appear here, just as with the Dutch ‘forced departure’, to involve ‘removal using the strong arm of the law’.

‘Voluntary return under compulsion’ would appear to correspond to ‘independent departure’. ‘Compulsion’ would seem to refer, we believe, to the compulsion arising from the legal obligation to depart from the country within a certain period of time after the application for residence has been refused, and not force within the meaning of ‘removal using the strong arm of the law’. ‘Voluntary return without compulsion’ would appear to be most similar to the Dutch use of the word *remigration*. The immigrant may decide at any moment, and at his own expense, to return at his own volition. The researchers infer from this that there is no *obligation* to leave a country; the person concerned has lawful residence in that country.

### **2.2.6 Comparison with the proposal for an EU Directive for the Return of Foreign Nationals.**

The definition of *return*, as stated in the Dutch translation of the existing proposal for a draft directive (COM(2005) 391) “on common standards and procedures in the Member States for returning illegally staying third-country nationals” is ‘*the independent or forced return to the country of origin, the country of transit or another third country.*’

As already said, no definition of return is given in the Dutch Aliens legislation, only of departure. According to the Aliens Act implementation guidelines, *departure* is involved ‘*if a foreign national departs from the Netherlands, whether absconding or not, independently or under compulsion.*’ This Dutch definition of *departure* and the EU definition of *return* as contained in the existing proposal for the draft directive differ on the following points:

1. The Dutch definition focuses on departure *from the Netherlands*. The EU definition focuses on return from the host country *to* the country of origin, country of transit or another third country;
2. The Dutch definition focuses on the departing *person* (foreign national); the EU definition focuses on a return *process*;
3. The Dutch definition distinguishes between documented departure and absconding, whereas the EU definition does not.

### **2.2.7 Other definitions**

The Aliens Act implementation guidelines contain – in accordance with the definition as set out in the Schengen border code – the following definition of a *subject of a third country or a third-country national*: ‘*subject of a third country is anyone who is not a subject of the EU, the EEA or Switzerland and does not come under the*

*application of Community law concerning the free movement of persons'* (Aliens Act implementation guidelines A2/1).

In the Illegals Memorandum (TK: 2004c, p.6) the following definition is given of *detention of aliens*: '*detention of aliens is an administrative measure that can be applied in order to prevent aliens that are to be removed from evading removal.*'

In the Netherlands, the definition of *refoulement* is used as stated in the Geneva Convention on Refugees. The Aliens Act implementation guidelines refer to this definition. In the Netherlands, in accordance with Article 33 of the Convention on Refugees, there is a prohibition on refoulement. Article 33, paragraph 1, of this convention states: '*no Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*'

## 2.3 Categorisation of Returnees

### **2.3.1 Legal and illegal immigrants**

#### *Legal immigrants*

According to the Aliens Act (Article 8), the category of legal immigrants consists of four subcategories:

- a. Dutch nationals: immigrants who have acquired Dutch citizenship;
- b. Immigrants who possess a residence permit or have the right of lawful residence in the Netherlands under the terms of an international treaty. These are immigrants:
  - who possess a regular or asylum residence permit for a fixed or indefinite period;
  - who reside as European Community citizens<sup>8</sup>, as long as this residence is on the grounds of a scheme under the Treaty establishing the European Community (EC) or the Agreement on the European Economic Area (EEA). These are 'persons who come under Community Law concerning the free movement of persons' in accordance with Article 8.7 of the Aliens Decree 2000;
  - who derive their right of residence from the Association Decree 1/80 of the EEC-Turkey Association Council.
- c. Immigrants whose application proceedings are still in progress and who may legally remain in this country for that reason, or who may remain while awaiting the legal decision on these proceedings. These are immigrants:
  - who are awaiting the decision on their first application for asylum or regular residence. This also includes the 'Dublin claimants';
  - who are awaiting the decision on a subsequent application;
  - who are awaiting the decision on an application for review or a (higher) appeal.
- d. Other immigrants with right of lawful residence. These are immigrants:
  - with residence during the free period (in principle up to a maximum of three months) (visa);

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<sup>8</sup> Although the term 'community citizen' must no longer be used with the entering into force of the Directive on the free movement of persons, this term is still currently used in the Aliens Act implementation guidelines.

- with residence during the period in which they are given the opportunity to report human trafficking;
- who cannot be removed as there are medical reasons that preclude removal.

### *Illegal immigrants*

Unlawful residence as such is not a criminal offence in the Netherlands, but in some cases, criminal law may apply indirectly to illegal immigrants.<sup>9</sup> The illegal immigrant has the statutory obligation to leave the Netherlands.

According to the Illegals Memorandum (TK: 2004c), the category of illegal immigrants consists of three subcategories:

- a. those who deliberately enter the Netherlands in an illegal manner;
- b. those who exceed the duration of lawful residence or lose the regular right of residence in another manner;
- c. asylum seekers who have exhausted all legal remedies:
  - asylum seekers who have exhausted all legal remedies and who made their first application for asylum under the old Aliens Act (before 1 April 2001);<sup>10</sup>
  - asylum seekers who have exhausted all legal remedies and who made their first application for asylum under the new Aliens Act (from 1 April 2001), and received a negative decision from the IND before 1 January 2005;
  - asylum seekers who have exhausted all legal remedies and who submitted their first application for asylum under the new Aliens Act, and received a negative decision from the IND after 1 January 2005.

## **2.3.2 Return policy for legal and illegal immigrants**

### *Legal immigrants*

#### *a. Dutch nationals: immigrants who have acquired Dutch citizenship*

Forced or independent departure is not applicable to Dutch nationals. When Dutch nationals wish to return to their country of origin or that of their parents, this is known as remigration. If the person concerned does not have enough financial resources to remigrate, an appeal may be made to financial assistance that is provided under the terms of the Repatriation Act. In that case, remigrants who rely on the Repatriation Act are required to relinquish their principal residence in the Netherlands and surrender their Dutch nationality.

#### *b. Immigrants in possession of a residence permit or with lawful residence (due to an international treaty)*

This group of immigrants concerns foreign nationals, not Dutch nationals. For these immigrants, just as with the above category, forced or independent departure is not applicable. When this group wishes to return, this constitutes

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<sup>9</sup> This means that the foreign national who does not or no longer has lawful residence has committed a criminal offence by not complying with the obligation to report his presence. In addition, it is possible to declare foreign nationals remaining unlawfully in the Netherlands as undesirable on the grounds of Article 67 of the Aliens Act 2000, if they have repeatedly committed a criminal offence under the Aliens Act 2000 or if they form a danger to public order or national security. Contrary to the residence of an ‘ordinary’ illegal person, the residence of a foreign national who has been declared undesirable is indeed a criminal offence. A foreign national who resides in the Netherlands while at the same time knowing, or having a serious reason to suspect, that he has been declared an undesirable alien, may receive a custodial sentence of up to a maximum of six months.

<sup>10</sup> These asylum seekers who have exhausted all legal remedies and have resided in the Netherlands for a long period of time are the target group for the Return Project. For more information about this Return Project, please refer to Appendix 4.

remigration. If such persons do not have sufficient financial resources to remigrate, they can apply for the financial assistance given under the terms of the Repatriation Act. Immigrants with an asylum residence permit may also take up residence in a country other than their country of origin (transit migration). Remigrants who rely on the Remigration Act are therefore required to relinquish their principal residence in the Netherlands. These immigrants may qualify for IOM schemes for independent departure.

*c. Immigrants in proceedings and who may remain in the country while awaiting a decision*

Immigrants who have submitted a residence application may in principle await the decision on this application in the Netherlands. Immigrants who have submitted an application for review or (higher) appeal may await the decision or ruling if this follows directly from the law or a court decision.<sup>11</sup> With immigrants whose application is being considered and who may remain in this country while awaiting the decision, forced departure and remigration is not applicable. However, these immigrants may decide to depart at their own volition and may qualify for the IOM schemes for independent departure.

*Dublin claimants*

A special category of immigrants who may remain in the Netherlands while awaiting a decision on their residence application is formed by the asylum seekers in respect of whom a claim has been or will be made on the grounds of the Dublin Agreements. These are the Dublin claimants. The Dublin Agreements and Regulation (EC) no. 343/2003 of the Council of the EU are applicable to asylum applications and requests for the re-admission of asylum seekers. An asylum application may only be refused if the claim is honoured by the other country or, under Article 11, paragraph 4, of the Dublin Agreements, when no response has been received three months after making the Dublin claim, which is equivalent to accepting the request to re-admit the asylum seeker (Aliens Act implementation guidelines C1/2.2.2). Dublin claimants may depart at their own volition (whether or not with the assistance of IOM). Remigration is not applicable.

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<sup>11</sup> The decision on an application for review that is submitted in response to a negative decision on a regular residence application may be awaited if this follows directly from the law. The enforcement of the decision is deferred upon submission of an application for review. If the enforcement of the decision is not deferred until a decision is made on the application for review and the foreign national may not remain in the Netherlands while the application for review is being dealt with, the court may be asked to make a provisional ruling. As a rule, a request for a provisional ruling against removal may be awaited in the Netherlands. The submission of an appeal (in a regular residence procedure) to the court (Aliens Division) does not defer the enforcement of the decision (but it does in an asylum procedure). A provisional ruling may be requested for removal to be deferred pending the appeal. If the foreign national has submitted a request for a provisional ruling in time, removal will generally be deferred until the court in interlocutory proceedings has made a decision. An appeal to the Administrative Jurisdiction Division of the Council of State does not defer the enforcement of the decision by the Aliens Chamber. A provisional ruling may be requested of the Chairman of the Administrative Jurisdiction Division of the Council of State in order to obtain a deferral of enforcement of the disputed decision pending the appeal. If the foreign national has submitted a request for a provisional ruling in time, generally removal will not follow until the president has made a ruling (Aliens Act implementation guidelines B1/4.6). N.B. This does not apply to appeal proceedings.

*d. Other immigrants with lawful residence*

Residence during the free period (as referred to in Article 12 of the Aliens Act 2000) is permitted for certain duration, if and as long as the conditions imposed are met.<sup>12</sup> For immigrants with lawful residence during their free period, forced departure or remigration is not applicable. However, they may depart at their own volition, but in that case they cannot apply for support, financial or otherwise, from the IOM.

Immigrants who are suspected of being victims of human trafficking are given a period of up to a maximum of three months, within which they must make a decision whether or not to report human trafficking (Aliens Act implementation guidelines B9). During this period, their removal from the Netherlands will be deferred and they will have lawful residence in the Netherlands. With this group of immigrants, forced departure and remigration is not applicable. These immigrants may however leave the country independently and will receive support, financial or otherwise, from the IOM.

A special category of immigrants with lawful residence are migrants who appeal to Article 64 of the Aliens Act 2000 (Aliens Act implementation guidelines A4/7). In that case, the foreign national is unable to travel for medical reasons and removal will be temporarily deferred. It may also be decided not to remove the foreign national on the grounds of Article 64 of the Aliens Act 2000 if stopping the medical treatment may cause a medical emergency situation. An appeal to Article 64 of the Aliens Act 2000 is only possible from the moment at which there is the legal obligation to depart from the Netherlands, whereby it is not important whether actual removal has been planned in the short term. Immigrants with medical reasons preventing removal cannot be forced to leave the country, nor can they rely on the Repatriation Act. However, they can leave at any time at their own volition, and in doing so they will qualify for support, financial or otherwise, from the IOM, and possibly from other organisations.

*Illegal immigrants*

For all of the three categories referred to below, when the foreign national's period of lawful residence has ended, generally speaking he is required to depart from the Netherlands within a period of four weeks (departure deadline) at his own volition. If the foreign national does not comply with this obligation, removal may follow (Aliens Act implementation guidelines A4/3.1).

No departure period will be granted to the foreign national whose lawful residence ended with the expiry of the free period (as referred to in Article 12 of the Aliens Act 2000), to the alien who never had lawful residence in the Netherlands, and to the alien whose asylum application was refused in the AC procedure (Aliens Act implementation guidelines A4/3.4). These foreign nationals are obliged to depart from the Netherlands immediately.

For all of the three categories below, as well as removal by the Dutch government, independent departure with the IOM – through the REAN scheme – is also an option.

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<sup>12</sup> The right of residence in the free period (as referred to in Article 12 of the Aliens Act 2000) is obtained by law as soon as the foreign national complies with a number of conditions, such as complying with the obligations in relation to crossing the national frontier, possessing sufficient means of existence and not forming a danger to public order or national security. The free period will be set at a maximum of six months. Different periods of time may be set for differing categories of foreign nationals. For example, a free period of three months applies to those not requiring a visa.



*a. Persons who deliberately enter Dutch territory in an illegal manner*

These are immigrants who use, for example, forged or fake travel and identity documents. Some of the immigrants who enter the country in this way make use of intermediaries and smuggling organisations (TK: 2004c).

*b. Persons who exceed the duration of lawful residence or lose their right to regular lawful residence in another manner*

Immigrants may lose their right of residence if they exceed the term of their lawful residence after having entered the Netherlands legally (TK: 2004c). These immigrants are also known as ‘overstayers’. Immigrants may also lose their right of residence in another way, such as by working illegally or committing a criminal offence.

*c. Asylum seekers who have exhausted all legal remedies*

For these immigrants, the application for asylum has been refused by the courts and they have already been living illegally for a shorter or longer time in the Netherlands. The decision of refusal also constitutes an order to return, in which in principle a period of four weeks is given for the foreign national to leave the country.

Differing policies are applicable to the different categories of asylum seekers who have exhausted all legal remedies. These asylum seekers who submitted their first application for asylum under the old Aliens Act and are obliged to leave the country come under the ‘Return Project’. The return policy for these failed asylum seekers that come under this project, as also the return policy for the other two categories of asylum seekers who have exhausted all legal remedies (see paragraph 2.3.1) is discussed in Appendix 4.

### **2.3.3 Demographic characteristics of returnees**

#### *Registration of returnees*

Immigrants who depart from the Netherlands are not registered in all cases. Some of the immigrants departing from the Netherlands have been registered in the Municipal Administration (GBA). If they leave the Netherlands, they will be deregistered in the GBA at their own request, after checking the address or after an administrative correction. Statistics Netherlands (CBS) has at its disposal the emigration figures for non-Dutch nationals based on deregistrations from the GBA for the period 2000 to 2005 (see Appendix 3).<sup>13</sup> Some of these persons, however, were never registered in the GBA, so the CBS knows nothing about these returnees. There is also no information available on some of the immigrants who depart from the Netherlands independently. These are immigrants who have departed from the country independently at their own volition, i.e. without the assistance of IOM. However information is available for those persons departing independently through the IOM. There are also no records maintained with respect to remigrants who do not make use of financial provisions on the grounds of the Repatriation Act. On the other hand, remigrants who do make use of these financial provisions are registered.

If registration takes place, usually characteristics such as gender, age and nationality of returnees are recorded. Characteristics such as income, educational qualifications and occupation are not recorded.

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<sup>13</sup> A person has emigrated if he has been deregistered in the GBA for a period of at least eight months.

### *Notification of departure*

The Aliens Police (Vp), the Seaport Police (ZHP) or the Royal Netherlands Military Constabulary (KMar) are required to notify the IND of the independent departure, forced departure or absconding of a foreign national by sending the notification of departure (*bericht van vertrek*) form (model M100) (Aliens Act implementation guidelines A4/6.9). If it concerns an asylum seeker, this must also be reported to the COA. The COA draws up a notification of eviction (*bericht van ontruiming*) (model M100a) on the eviction of asylum seekers.

The notification of eviction will state the personal details (surname, forename, date of birth, nationality, gender and alien number) and the date of eviction. The notification of departure will state the personal details, departure category and the date of departure. When recording the departure, a distinction is made between asylum and non-asylum. The IND enters the information in the IND Information System (INDIS) and passes the information on to SCV. SCV then draws up a report on the total number of departure activities in the Immigration Process report (*rapportage Vreemdelingenketen*). In addition to the notifications of departure, KMar provides SCV with some additional departure information.

In the Immigration Process report for the period from January to April 2005, SCV states that as from 1 January 2005 the form 'Notification of Departure' has been revised due to definition and registration problems. The terms and definitions that are used in the new 'Notification of Departure' form have been incorporated in the Aliens Act implementation guidelines as from 1 January 2005, and since then have had to be unambiguously incorporated in the Immigration Process. As a result, no reports can be made with retrospective effect with the modified list of definitions in the Immigration Process report, and only the subtotals are visible (SCV: 2005e). This also means that no comparison can be made either in this research study between the figures for 2005 and those from previous years.

### *Independent departure via IOM*

IOM registers the immigrants who depart independently through IOM. IOM informs the IND at an individual level on foreign nationals who have departed with the support of the REAN programme. IOM passes on cumulative statistical information to the SCV. IOM possesses information concerning the gender and nationality of these persons returning independently.

### *Remigrants*

Remigrants who apply for assistance under the Repatriation Act are registered. The Social Insurance Bank (SVB), the organisation that arranges payments under the Repatriation Act, records the gender, nationality and age of the remigrants.

### *Returnees: forced departure*

Table 1a shows the number of forced departure procedures for the years 2003, 2004 and 2005. Although there would appear to be a sharp increase in the number of registered forced departure procedures in 2005 compared to the two preceding years, SCV states that 2005 should not be compared to previous years, because of the transfer of categories as a result of the introduction of the new notification of departure in 2005 and the above-mentioned changes to definitions (SCV: 2005e).

Table 1a. Number of procedures of forced departure

Forced departure	2003	2004	2005	
			Asylum	Non-asylum
Removal	-	-	1,323	7,589
Handover after MTV check at national borders	-	-	-	1,084
Removal of foreign nationals refused residence (Article 6 Aliens Act 2000)	-	-	-	4,284
Departure under supervision of MTV	-	-	-	5,994
Totals asylum/non-asylum			1,323	18,951
<b>Total</b>	<b>11,374</b>	<b>9,218</b>	<b>20,274</b>	

Source: SCV: 2006a/b

Table 1b shows removals – this is a subcategory of forced departure – by gender in percentages. Table 1b shows that of the persons removed in 2005, 78% were male.

Table 1b. % Removal by gender in 2005

Gender	Asylum	Non-asylum
Male	77%	79%
Female	22%	20%
Unknown	1%	1%

Source: IND

Table 1c shows removals by age in percentages. Removals are most common in the 18 to 30 years age category.

Table 1c. % Removal by age in 2005

Age	Asylum	Non-asylum
0 to 18 years	12%	3%
18 to 30 years	52%	50%
30 to 40 years	26%	33%
40 to 50 years	8%	12%
50 to 65 years	2%	2%
≥65 years	0%	0%
Unknown	0%	0%

Source: IND

#### *Returnees: independent departure*

Table 2a shows the number of independent departure procedures for the years 2003, 2004 and 2005. Although there would appear to be a sharp decline in the number of registered independent departure procedures in 2005 compared to the two preceding years, SCV states that 2005 should not be compared to previous years, because of the transfer of categories as a result of the introduction of the new notification of departure in 2005 and the abovementioned changes to definitions (SCV: 2005e).

Table 2a. Number of procedures of independent departure

Independent departure *	2003	2004	2005	
			Asylum	Non-asylum
Supervised departure of the self-reporter	-	-	216	2,540
Departure through IOM	-	-	1,741	1,469
Total asylum/non-asylum			1,957	4,009
<b>Total</b>	<b>14,343</b>	<b>13,123</b>	<b>5,966</b>	

Source: SCV: 2006a/b

Table 2b shows departures through IOM by gender. It shows that more men than women depart through IOM. The male-female ratio with independent departure through IOM is 70/30%, whereas with removal, men account for a larger share, namely 78/22%.

Table 2b. % Departure via IOM by gender in 2005

Gender	Asylum	Non-asylum
Male	69%	71%
Female	31%	28%
Unknown	0%	1%

Source: IND

Table 2c shows the departure percentages through IOM by age. Departure through IOM is most common in the 18 to 30 years age category.

Table 2c. % Departure through IOM by age in 2005

Age	Asylum	Non-asylum
0 to 18 years	22%	8%
18 to 30 years	38%	44%
30 to 40 years	25%	31%
40 to 50 years	9%	12%
50 to 65 years	4%	4%
≥65 years	1%	1%
Unknown	0%	0%

Source: IND

### *Returnees: absconding*

In table 3a, the number of absconding procedures is shown for the years 2003, 2004 and 2005. In 2005, there was an increase in the number of registered absconding procedures compared to 2004, but a decline compared to 2003.

Table 3a. Number of absconding procedures

Absconding	2003	2004	2005	
			Asylum	Non-asylum
Departure from residence during the procedure before the departure period	-	-	3,633	1,539
Departure from residence during and after the departure period	-	-	3,910	4,567
Eviction with notice to leave the Netherlands	-	-	352	106
Notice to leave the Netherlands	-	-	795	4,527
Lifting of detention with notice to leave the Netherlands			289	2,584
Subtotals asylum / non-asylum			8,979	13,323
<b>Total</b>	<b>29,930</b>	<b>19,554</b>	<b>22,302</b>	

Source: SCV: 2006a/b

Table 3b shows absconding by gender. Absconding is more common among men than women.

Table 3b. % Absconding by gender in 2005

Gender	Asylum	Non-asylum
Male	71%	70%
Female	28%	27%
Unknown	0%	3%

Source: IND

In table 3c, the percentages of absconders are shown by age. Absconding is most common within the 18 to 30 years age category.

Table 3c. % Absconding and age in 2005

Age	Asylum	Non-asylum
0 to 18 years	17%	8%
18 to 30 years	54%	43%
30 to 40 years	20%	30%
40 to 50 years	7%	12%
50 to 65 years	2%	5%
≥65 years	1%	3%
Unknown	0%	0%

Source: IND

#### *Returnees: remigration*

The Repatriation Act (see Appendix 8) distinguishes between two types of provision for remigrants who do not possess sufficient financial resources. The basic provision is intended for adult applicants and the remigration payment for migrants aged 45 years or older (together referred to as the remigration facility).

Table 4a shows the number of remigrants who made use of the remigration provision in the years from 2000 to 2004. Since 2000, the number of remigrants who have made use of a remigration facility has increased. In 2004, there was almost a doubling in the number of remigrants who made use of the remigration facility compared to 2003.

Table 4a. Number of remigrants who make use of the basic provision or a remigration payment

	2000	2001	2002	2003	2004
Basic provision	55	144	219	235	330
Remigration payment	220	515	509	482	1,001
Total/Remigration facility	275	660	728	717	1,331

Source: Evaluation of the Repatriation Act (Wijngaart; Tillaart: 2005)

Table 4b shows the percentage of remigrants who make use of a remigration facility, by gender. Almost three-quarters of the remigrants who make use of a remigration facility are male.

Table 4b. % Remigrants who make use of a remigration facility, by gender

	2000	2001	2002	2003	2004
Male	73%	79%	73%	72%	73%
Female	27%	21%	27%	28%	27%

Source: Evaluation of the Repatriation Act (Wijngaart; Tillaart: 2005)

Table 4c shows that almost half of the remigrants who make use of a remigration facility are aged between 50 and 65 years. Two-thirds (68%) are older than 50 years.

Table 4c. % Remigrants who make use of a remigration facility, by age

	2000	2001	2002	2003	2004
<30 years	5%	4%	5%	7%	5%
30 to 45 years	9%	9%	13%	12%	9%
45 to 50 years	16%	15%	13%	16%	18%
50 to 65 years	50%	51%	43%	38%	48%
≥65 years	20%	21%	26%	27%	20%

Source: Evaluation of the Repatriation Act (Wijngaart; Tillaart: 2005)

### 2.3.4 Spatial concentrations of returnees

In the Netherlands, returnees are found in a number of places.

A growing group of asylum seekers who have exhausted all legal remedies and other illegal immigrants are to be found, according to the IOM, for a large part in the four major cities: Amsterdam, The Hague, Utrecht and Rotterdam (G4). Illegal immigrants are also concentrated at places where they are being held at internal border locations and external borders (seaports, Schiphol).

Asylum seekers who have been granted a period within which they are obliged to depart from the Netherlands at their own volition are found at the reception centres of the COA focusing on return (return centres). These centres are dotted around the country, with the greatest concentration in the northern Netherlands.

Foreign nationals awaiting removal are found at the removal centres at Schiphol and Rotterdam airports. They are also in detention centres at locations such as Rotterdam (Reno and Stockholm detention boats), Zeist, Tilburg, Ter Apel and the

Amsterdam Detention Centre for foreign nationals awaiting removal (*Grenshospitium Amsterdam*).

Lastly, within the Return Project there are departure centres. These are located in Vught and Vlagtwedde (see Appendix 4).

### **2.3.5 Origin and nationality of returnees**

#### *Returnees: forced departure*

Table 5a shows the top 5 percentages of removals in 2005 by nationality. Both with asylum and non-asylum related removals, immigrants of Turkish nationality are the most common.

Table 5a. % Removal and nationality in 2005

<b>Nationality</b>	<b>Asylum</b>	<b>Nationality</b>	<b>Non-asylum</b>
Turkish	10%	Turkish	15%
Iraqi	6%	Bulgarian	12%
Serbian & Montenegrin	6%	Moroccan	7%
Nigerian	5%	Romanian	5%
Chinese	5%	Nigerian	5%
Total Top 5	31%	Total Top 5	44%
Other	69%	Other	56%

Source: IND

#### *Returnees: independent departure*

Table 5b shows the top 5 percentages of departures through IOM in 2005, by nationality. Immigrants of Angolan nationality are the most common in the case of departure through IOM.

Table 5b. % Departure through IOM, by nationality in 2005

<b>Nationality</b>	
Angolan	12%
Afghan	8%
Serbian & Montenegrin	8%
Ukrainian	8%
Iranian	5%
Total Top 5	41%
Other	59%

Source: IOM

#### *Returnees: absconding*

Table 5c shows the top 5 percentages of absconding in 2005 by nationality. Persons of Angolan nationality are the most common with asylum-related departure. With non-asylum related departures, immigrants of Turkish nationality are the most common.

Table 5c. % Absconding and nationality in 2005

Nationality	Asylum	Nationality	Non-asylum
Angolan	11%	Turkish	15%
Sierra Leonian	7%	Moroccan	9%
Afghan	7%	Egyptian	6%
Unknown	7%	Chinese	6%
Guinean	5%	Bulgarian	3%
Total Top 5	37%	Total Top 5	39%
Other	63%	Other	61%

Source: IND

### *Returnees: remigration*

Table 5d shows the percentages of remigrants who made use of a remigration facility in 2005, by nationality. It is largely those remigrants of non-Dutch or dual nationality who make the most frequent use of a remigration facility.

Table 5d. % Remigrants who make use of a remigration facility, by nationality

	2000	2001	2002	2003	2004
Dutch nationality	0%	3%	5%	6%	9%
Non-Dutch or dual nationality	92%	84%	81%	81%	87%
Not specified	8%	13%	14%	13%	4%

Source: Evaluation of the Repatriation Act (Wijngaart; Tillaart: 2005)

### **2.3.6 Countries of return**

#### *Forced departure, independent departure and absconding*

It is not recorded on the notifications of departure to which countries the immigrants are travelling. This information is not recorded in another manner either. It is therefore not known to which countries immigrants are forced to depart. For independent departure through IOM, reference is made to Table 5b. The destination of immigrants who abscond is unknown.

#### *Remigration*

Table 6a shows the top 5 of the number of remigrants departing in 2004 who made use of a remigration facility, by country of destination. The numbers for 2000 to 2003 are also shown for these countries.

Table 6a. Top 5 destination countries in 2004 to which remigrants return that make use of a remigration facility

Top 5	2000	2001	2002	2003	2004
Remigration facility	275	660	728	717	1,331
Spain	17%	24%	29%	32%	23%
Former Yugoslavia	26%	18%	15%	19%	22%
Turkey	28%	20%	12%	13%	19%
Morocco	17%	16%	14%	11%	13%
Surinam	1%	10%	17%	13%	11%
Total Top 5	-	-	-	-	88%
Other	-	-	-	-	12%

Source: Evaluation of the Repatriation Act (Wijngaart; Tillaart: 2005)



### **2.3.7 Absconding**

Table 3a already shows the number of procedures of persons whose departure from the Netherlands is undocumented. It is not known whether these persons have actually left the Netherlands or remain in the country illegally. The destination of these persons is unknown.

#### *Measures to reduce absconding*

Measures to limit or remove personal freedom are used to prevent persons departing for an unknown destination. These measures are discussed in Section 4.3.2. Besides these measures, reintegration schemes for independent departure may also help to reduce the number of persons whose departure is classified as undocumented.

## 3. The political and legal framework

### 3.1 Regional, federal and national legal and political frameworks

#### **3.1.1 Political debate and definitions of political principles**

##### *Increasing priority given to return*

The Dutch government takes the view that without an effective return policy, there can be no effective migration and asylum policy.

This viewpoint is expressed in the Coalition Agreement of 3 July 2002 (TK: 2002), the Outline Agreement of 16 May 2003 (TK: 2003a), the Return Memorandum of 21 November 2003 (TK: 2003b) and the Illegals Memorandum of 24 April 2004 (TK: 2004c). Return policy must be an integral part of foreign nationals policy. After all, more than 70% of all asylum applications eventually prove to be unfounded, and of all the applications for a regular residence permit, about 35% are refused (TK: 2003b). The Dutch government is therefore giving increasing priority to the return of foreign nationals who are residing unlawfully in the Netherlands. The Return Memorandum (TK: 2003b) mentions a number of new measures, including new forms of asylum reception and return as an element of development cooperation policy.

##### *Political principles*

The following starting points, which largely ensue from the Aliens Act 2000, are applicable with the proposals made in the Return Memorandum:

- Foreign nationals are themselves responsible for departing from the Netherlands if they do not or no longer have lawful residence;
- The Dutch government (national, provincial and municipal authorities) must only facilitate departure from the Netherlands of the foreign nationals concerned;
- If a foreign national who is in the Netherlands illegally does not comply with his legal obligation to depart from the Netherlands at his own volition, the government may make use of its powers to force him to depart from the Netherlands;
- Termination of the government provisions therefore follows by law from the unlawful residence in the Netherlands;
- Carriers are responsible for removing foreign nationals they have transported and who have been refused entry to the Netherlands.

Another principle is the recently made link between return and development cooperation.

##### *Setting up a separate return organisation*

Following the study carried out by the Audit Department (TK: 2005c), which showed that the realisation of policy objectives to do with the return of foreign nationals is insufficiently safeguarded in the organisational structure of the return process, the Government decided in October 2005 to create a separate organisation to deal with the return of foreign nationals. Various options for improvement could be better realised with the aid of such a separate organisation (pDGHV: 2006a). At the time of this study, this organisation, which will be operational from 1 January 2007 and will be called the Migration Return and Departure Service (DT&V) is in the process of being set up. The aim of DT&V is to achieve the actual departure of all illegal immigrants who have been identified in connection with alien supervision or border controls and all asylum seekers who are obliged to leave the country. In doing so,

DT&V places the greatest emphasis on the independent departure of the foreign national. In addition, DT&V aims to operate in a careful manner, with respect for the dignity of the foreign national, even if forced departure is involved. It will adopt a person-oriented and multidisciplinary approach (pDGHV: 2006b).

### *Political discussion*

In the run-up to the national elections in 2003, there was, according to IOM (IOM: 2004b, p. 253), a heated public debate in the Netherlands on immigration policy, which was attributed by some critics to an excessive emphasis in Dutch immigration law and policy on control, security and restriction. The political debate within and outside the House of Representatives was, and still is, regularly about the group of asylum seekers who have been living in the Netherlands for a long period of time and who submitted their request for asylum under the old Aliens Act. The call is repeatedly heard within sections of the public and among the supporters of a number of political parties to adopt a more generous policy for those asylum seekers who have been in the Netherlands for a long time and have become known under the term ‘26,000’ (VVN: 2006). Furthermore, the debates have been about whether or not to separate families, the criteria for a residence permit because of the inability of the foreign national to depart from the Netherlands through no fault of his own, and the criteria that the Minister for Immigration and Integration adopts in assessing the level of distress.<sup>14</sup>

### *Criticism from municipalities*

A considerable number of municipalities have expressed criticism about various elements of the return policy. These include the concerns of local politicians about families who, after many years living in their municipality, now have to leave the Netherlands after all, as well as the large numbers of asylum seekers who have exhausted all legal remedies and who absconded from reception centres in the Netherlands and may therefore be residing in the Netherlands illegally. It does occur that municipalities take in such asylum seekers in order to prevent them from being made homeless and ending up on the street where they cause problems. This, however, is at odds with the interests of the Government with regard to an effective return policy, in which the withdrawal of facilities to asylum seekers forms an incentive to encourage them to leave at their own volition.

The discussions with the municipalities focus on the agreements that the Minister for Immigration and Integration has made on how to tackle the group of asylum seekers that have been in the Netherlands for a long time and who fall within the remit of the Return Project (see Appendix 4). In the spring of 2006, a large majority of municipalities at the conference of the Association of Netherlands Municipalities (VNG) passed a motion in which the Minister for Immigration and Integration was asked to give a more generous pardon to this group of people. Although an emergency debate was held on this motion, it was not adopted by parliament or by the Minister for Immigration and Integration. The reason for this is that parliament voted in favour of the policy as it is now being pursued. In addition, a one-off arrangement had in fact been made back in 2003 for foreign nationals who had applied for asylum before 1 April 2001, on the basis of which 2,097 residence permits were granted (LOGO: 2005; SCV: 2005c; SCV; DVB: 2006).

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<sup>14</sup> This also included the settlement of the so-called ‘14-1’ letters, in which the Minister for Immigration and Integration was asked to grant a residence permit on the basis of distress.

### *Criticism of (ambiguous) aim of return policy*

There is also criticism of the aim of the return policy. The independent Aliens Act 2000 Evaluation Committee states in its evaluation report on 'Terugkeerbeleid en Operationeel Vreemdelingentoezicht' that the aim of the Dutch return policy is ambiguous (CEV: 2004), since many implementing organisations believe that return *to the country of origin* is the aim of the return policy, whereas the Return Memorandum refers to 'reducing the number of foreign nationals living *in the Netherlands* who have no right of lawful residence'. (CEV: 2004) Each departure from the Netherlands, both to the country of origin and (unlawfully) to another EU member state, can therefore be counted as a success. The Aliens Act 2000 Evaluation Committee advises bringing an end to this ambiguity (CEV: 2004). How this should be done has not already been decided, according to the Committee. A possible choice to bring this ambiguity to an end is to state in no uncertain terms that unauthorised residence in another EU member state under the return policy is regarded as a success. On the other hand, it is doubtful whether, partly in the light of the Europeanisation of migration policy, this is an acceptable option (CEV: 2004).

In a letter to the House of Representatives the Minister for Immigration Integration gives a number of comments on the evaluation of the Committee. The Minister comments that the Committee regards the promotion of (voluntary) return of aliens (who have not received entrance to the Netherlands) to their countries of origin as the central aim of the Return Policy '99/Aliens Act 2000. In the evaluation of the Committee the success of the return policy is thus measured by the rate of successfulness of the Dutch government in returning unlawfully (or no longer lawfully) residing foreign nationals to their countries of origin. On the basis of the policy documents used by the Committee, the Committee also establishes that the final aim of the Dutch return policy is to prevent illegal stay in the Netherlands and to diminish the number of asylum seekers who have exhausted all legal remedies residing in the Netherlands. The Minister comments that the final aim of the return policy and its success can not only be achieved by returning the foreign nationals to the countries of origin, but also by the departure of the foreign nationals to a country other than their country of origin. The organisations which took part in the evaluation of the Committee also share this observation. The Minister comments that the main research objective of the evaluation does not take this into consideration (TK: 2005e).

### *Public debate*

Outside the political world too, much attention has been focused on the target group of the Return Project, such as by film directors with the film portrait series '26,000 faces' or the '*Royal Gebaar*' (Royal Gesture) campaign, with the call to grant a general pardon for the group of 26,000 in the Queen's jubilee year of 2005. In addition, campaigns have been pursued in schools and foreign nationals have gone on hunger strike. There is a campaign at present entitled '*Aftellen tot het pardon*' (Countdown to the pardon) whereby the initiators hope that after the elections of 2007 (now brought forward to November 2006) there will be a consensus for announcing a general pardon. In addition, children who have lived in the Netherlands for more than five years have started the campaign '*Wij willen blijven*' (We want to stay). They want a decision to be made by the courts.

The commotion that has arisen in both the media and the House of Representatives following the problems in implementing the return policy (DR Congo and Syria<sup>15</sup>) did not lead to the return policy itself being put up for discussion. However, after debates in the House of Representatives, supplementary measures have been taken in the return process and it did lead to the setting up of a Return Supervisory Committee (*Commissie van Toezicht Terugkeer*). The Committee began formally with its activities on 1 June 2006 (DGIAV: 2006). Another subject that attracted a considerable amount of attention at the time of conducting this study is the matter of children in alien detention centres. This is dealt with in more detail in Section 4.3. Furthermore, the fire in the removal centre at Schiphol Airport in the autumn of 2005, which cost the lives of eleven foreign nationals, logically also received a great deal of attention. The Safety Investigation Board (*Onderzoeksraad voor de Veiligheid*) concluded in its report that three government bodies failed in their duties. The government bodies did not give full attention to safety and fire safety measures. These conclusions led to the resignation of the Minister of Justice and the Minister of Housing, Spatial Planning & the Environment.

Based on a review of the past five years (2000-2006), IOM observes that consensus among public organisations for the return of foreign nationals has increased. IOM states that it has contributed to this by raising awareness<sup>16</sup> among foreign nationals of the actual opportunities for and support with departure and by promoting knowledge in this area.<sup>17</sup>

#### *Return, migration and development*

During the past few years there has been an increasing interest in the Netherlands in the relationship between development and migration. This should be placed within the context of a broader international trend. The Dutch government has taken a first step towards a coherent migration policy with its policy memorandum 'migration and development' (debated in the House of Representatives on 7 December 2004). The advice in response to this memorandum by the Advisory Council on International Affairs of June 2005 (AIV: 2005) has focused on the need to achieve a win-win situation within the context of migration between the developed and underdeveloped countries. The two ministers involved (Van Ardenne for Development Cooperation and Verdonk for Immigration & Integration) committed themselves to producing a six-monthly report on the progress of the implementation of the policy intentions referred to in the memorandum. Three progress reports have meanwhile been presented to the House of Representatives. In addition, the increased interest has led to the development of a specific programme for Return, Migration and Development (*Terugkeer, Migratie en Ontwikkeling* – TMO), that was published on 10 March 2005 in the Government Gazette. The aims of the TMO programme are, in order of priority: the return and reintegration of asylum seekers who have exhausted all legal remedies; the (temporary) return of status holders to help rebuild their country of origin, and policy development in the area of development and migration. About € 5

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<sup>15</sup> The discussions in the House of Representatives were to do with the question whether asylum-related details had been supplied to the authorities of the countries of origin or their diplomatic representations.

<sup>16</sup> By means of a decentralised procedure whereby at numerous locations distributed throughout the country – in reception locations and in interview rooms at public organisations – foreign nationals will be informed of the options for voluntary return, according to IOM.

<sup>17</sup> In the form of an IOM course '*Omgaan met Terugkeer*' (Dealing with Return), which was followed in the years 2003, 2004 and 2005 by 150, 290 and 310 persons respectively, working at the COA, the Dutch Council for Refugees and countless other organisations (IOM annual reports 2003, 2004, 2005).

million is set aside each year for the TMO programme, which has been set up for both asylum seekers who have exhausted all legal remedies as well as status holders (TK: 2005a).<sup>18</sup>

### *Circular migration*

Circular migration consists of circular immigration (foreign nationals working or studying temporarily in the Netherlands) and circular emigration (immigrants working in the Netherlands who temporarily emigrate or remigrate to their country of origin). The Dutch government believes that encouraging circular migration, within the frameworks of the national migration policy, is a strategy that can unite the interests of the migrant, the countries of origin and the countries of destination. An important point here is how temporary labour migration can actually be facilitated and regulated (TK: 2005a). The memorandum on reviewing the regular admission of foreign nationals into the Netherlands (MinJus: 2006) discusses the introduction of a residence permit for a maximum of one year, in order to encourage circular migration.

The fact that within the framework of circular migration there is also a need to return to the country of origin to work and set up one's own business there is shown in the report 'Return Migration and employment' by Regioplan (Berkhout; Brink; Hello: 2005). However, there is not yet a permanent infrastructure in the Netherlands in employment mediation for (temporary) remigrants, although there are various initiatives in this area.<sup>19</sup>

### **3.1.2 Legal basis for return**

The legal basis for forced and independent departure is the Aliens Act 2000<sup>20</sup>, which provides for the admission and removal of foreign nationals. Central to this Act is that foreign nationals without the right of lawful residence and/or who have exhausted all legal remedies may no longer make use of state provisions and are obliged to leave the country no later than four weeks after their lawful residence has ended.<sup>21</sup> On the other hand, the foreign national must leave the Netherlands immediately if he has never had the right of lawful residence or the free residence period in the Netherlands has expired by law. The underlying principle of the Dutch return policy is the personal responsibility of the foreign national living illegally in the Netherlands to leave the country. If the foreign national does not comply with his obligation to leave the Netherlands at his own volition within the prescribed period of time, he may be

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<sup>18</sup> For example, the TMO fund finances reintegration support programmes for failed asylum seekers as part of the Return Project (IOM Nederland annual report 2005). Since April 2006 the IOM has been implementing the project 'Temporary Return of Qualified Nationals' that is also financed by the TMO fund.

<sup>19</sup> For example, IOM has already acquired experience in the past in supervising temporary circular migration of Polish nurses to the Netherlands (2002-2004, see IOM annual report 2003). The IOM project for the temporary secondment of Ghanaian migrants from the Netherlands to Ghana and for the temporary stay of Ghanaian medical specialists in the Netherlands are examples of circular migration (see website [www.iom-nederland.nl](http://www.iom-nederland.nl)). Another example is the project (with a grant from the Ministry of Foreign Affairs /TMO) of two Somali organisations in the Netherlands (FSAN and NEDSOM, with the assistance of CARE), focusing on providing temporary work for Somali Dutch nationals in Somalia/Somaliland.

<sup>20</sup> The legal basis for forced and voluntary departure is laid down in Chapter 6, sections 1 and 2, Articles 61 to 66 of the Aliens Act 2000. The implementation rules are laid down in the Aliens Act implementation guidelines (Aliens Act implementation regulations A4).

<sup>21</sup> Incidentally, the generally applicable departure period of four weeks may be reduced by the Minister for Immigration and Integration in the interests of removal or for reasons of public order or national security.

compelled to leave the Netherlands by being removed.<sup>22</sup> The Netherlands does not have a separate return decision, nor does it have a deportation order.

The fact that a foreign national who leaves the country independently can be assisted by IOM is laid down in the Aliens Act implementation guidelines (A4/5). The currently applicable implementation scheme of the REAN programme came into effect on 1 May 2006 and is published in the Government Gazette of 1 May 2006, no. 84 (see Appendix 6). The fact that a specific group of remigrants can appeal to certain financial provisions is laid down in the Remigration Act.

### **3.1.3 Provisions and standards in the area of return policies without a legal basis**

Refugee Organisations in the Netherlands (*Vluchtelingenorganisaties Nederland* – abbreviated to VON) believes that the Dutch policy to remove asylum seekers who have exhausted all legal remedies and who have been living in the Netherlands for many years is at odds with human rights conventions. VON sees this view confirmed in the recommendations of the Parliamentary Meeting of the Council of Europe (PVRvE: 2006) for amendments to the Dutch return policy (resolution 1483), following a report of the Committee on Migration, Refugees and Population (PVRvE: 2005). The International Network of Local Initiatives for Asylum Seekers (INLIA) also referred on its website to the concerns expressed by the Council of Europe. According to the Minister for Immigration and Integration, however, the report by the Committee on Migration, Refugees and Population is positive, which therefore in fact supports her policy. According to the Minister, the Committee observed that asylum and return policy is properly implemented in the Netherlands and there are sufficient safeguards in place. According to the Dutch government, no-one departs from the Netherlands without a legal basis.

### **3.1.4 Variations in return policy in provinces and regions**

Return policy is established at a national level. This means that there are no variations in policy. As far as the *implementation* of the return policy is concerned, there are variations from municipality to municipality. A number of municipalities, for example, refuse to cooperate with the removal of asylum seekers who have exhausted all legal remedies and whose departure period has expired.

### **3.1.5 Experiences with protest and solidarity movements**

There are a number of protest and solidarity movements. Some are national movements, such as *Van Harte Pardon*, *Een Royaal Gebaar* and *Aftellen tot het Pardon*. Others concern local campaigns. Many organisations, including church organisations, offer assistance to asylum seekers who have been refused asylum, often with the support of the local authorities. Furthermore, there are hunger strikers and schools which conduct campaigns for individual cases.

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<sup>22</sup> Articles 63 to 65 of the Aliens Act 2000 contain rules for the removal of the foreign national, whereby the Minister is given the authority to remove the foreign national, and whereby the foreign national may be summoned to cooperate with preparations for the removal.

## 3.2 Influence of European legislation

### **3.2.1 Situation on adopted EU legislation**

As is the case for every member state, regulations, decrees and decisions of the Council of the European Union (and the European Parliament) are binding and directly applicable. In subordinate legislation – the Aliens Decree and the Aliens Act implementation guidelines – further procedural provisions are laid down for implementation as required.

Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders is an example of a decision which is followed in Dutch practice with the organisation of joint flights. It is considered not necessary in this respect to lay down further provisions in subordinate legislation.

Directives of the Council (and Parliament) that are binding in respect of the result to be achieved but leave it to the authority of the national institutions to choose the form and means by which they are implemented are set out in further detail in the Aliens Act 2000 and subordinate legislation. For example, the Aliens Act implementation guidelines set out in further detail how Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air should be implemented.

An example of a directive that has not been incorporated further in Dutch Aliens legislation and regulations is Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals. This applies not only to the Netherlands but also to the other member states, and is partly due to the fact that the reasons underlying a decision in respect of removal have not been harmonised and that, in practice, member states do not know about another member state's decision to remove a third-country national. With the current proposal for a directive on joint standards and procedures for the return of third-country nationals who reside illegally in the territory of a member state, it is proposed revoking Directive 2001/40/EC and partly replacing it by Article 16 of the existing Directive proposal.

Finally, recommendations by the Council may be cited that are not binding to the member states. One example of a recommendation which the Netherlands follows in day-to-day practice is the Recommendation of the Council of 30 November 2004 concerning the acceptance of a standard travel document for the removal of third-country nationals. The Aliens Act implementation guidelines describe in which situations and under which conditions the 'EU-staat' can be used.

### **3.2.2 Effects of European framework**

Depending on the direction in which the proposal for the European draft directive "*on common standards and procedures in the Member States for returning illegally staying third-country nationals*" (COM(2005) 391) ultimately takes, it is possible that changes will need to be made in national legislation and regulations. It is not known how far-reaching these changes will be. The draft directive is currently being under consideration by the EU Council 'Migration and Removal' working group.



### **3.2.3 Effect of Schengen and Dublin on return policies**

Some returns, namely to Schengen and EU partners, can take place within the Schengen regulations and the Dublin Agreements. These instruments have been incorporated where possible or necessary in national legislation and regulations. The agreements concerned make it possible for some of the removals to be made to a partner state, instead of the returnee actually returning to the country of origin. This leads to a higher total number of persons departing from the Netherlands, but in fact is merely a relocation of persons within the treaty areas.

### **3.2.4 Effect of EU expansion on return policies**

EU expansion has not led to any changes in the return policies.

The ten new member states have changed from being third countries to EU member states.

### **3.2.5 Article 3 of the ECHR**

If a realistic risk can be assumed as referred to in Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the person concerned will not be removed to the country where there is a risk of such violations. The Aliens Act 2000 lays down that the risk of violation of Article 3 of the ECHR may lead to the granting of an asylum residence permit for a fixed period of time. The risk of violation may be to do with expected criminal treatment upon return (such as the death penalty), but also medical circumstances (the terminal phase of an incurable illness). The foreign national, who believes that there is a risk of violation of Article 3 of the ECHR, may apply for a residence permit for a fixed period of time.

### **3.2.6 Implementation of EU RETURN Preparatory Action programme**

In 2005, the IND submitted a project proposal (International co-operation in the field of removals) under the budget line. This proposal was approved and the project is currently being implemented. The project is being implemented jointly by the Netherlands, England, Belgium, France, Germany, Malta and Slovakia, the aim being to introduce and improve the organisation and implementation of specific measures in the area of return management. These objectives are being aimed for in the joint programme for forced departure from the EU with government flights, from March 2006 to June 2007. The new member states of Slovakia and Malta may learn from this project and acquire experience on the organisation and operation of such activities. In addition, costs are shared and the number of illegal immigrants removed will increase.

In addition, IOM participates in two projects that have been approved under the Programme.<sup>23</sup>

### **3.2.7 Experiences with the first joint flights**

The Netherlands has been organising joint flights since 2002, well before the adoption of the above-mentioned Council Decision, working first with Belgium, Germany and France and in subsequent years also with England, Ireland, Luxembourg and Switzerland. On 26 May 2004, for the first time since the above-mentioned Council Decision, a common flight was organised by the United Kingdom,

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<sup>23</sup> These were the projects 'Return and Reintegration of irregular Nigerian Migrants from the Netherlands and Ireland', in cooperation with IOM Dublin and IOM Abuja, and 'Information on Return and Reintegration in Countries of Origin' (IRRICO), in cooperation with IOM London and fourteen other countries.

Germany, France, Belgium and the Netherlands. This flight returned 44 asylum seekers who had exhausted all legal remedies to Togo and Cameroon. Such common government flights are also organised within the framework of the Benelux, for which purpose there is close cooperation between the Dutch IND and the immigration authorities in other EU member states (Franssen; Groenendijk: 2005).

## 4. Return actions

### 4.1 Overview

#### **4.1.1 Departure categories and return actions**

Generally, return can be broken down into two main categories:

1) Departure and 2) Remigration. Departure can be broken down into: 1a) Forced departure; 1b) Independent departure; and 1c) Absconding. The sub-categories within these return categories can be regarded as return actions and are elaborated on in the Aliens Act implementation guidelines. A return action is an action geared towards departure from the Netherlands. This act can be initiated by: a) the immigrant himself; b) the International Organisation for Migration (IOM) (with the cooperation of the immigrant; and c) the Royal Netherlands Military Constabulary (KMar) and the Aliens Police. An overview of return actions follows below.

#### *Forced departure*

The forced departure category consists of five return actions (SCV: 2005a/b):

- a. Removal;
- b. Removal following a criminal process;
- c. Departure under the supervision of the Mobile Border Supervision of Aliens (MTV);
- d. Hand-over at national borders after MTV checks;
- e. Removal of a foreign national who has been refused entry (Article 6 Aliens Act 2000).

#### a. Removal

This return action involves enforced removal from the Netherlands of a foreign national residing illegally in the Netherlands (including Dublin claimants and individuals falling under other transfer agreements). If the foreign national has not left the Netherlands within the departure period, he may be removed by the Dutch government. Removal is a power, not an obligation, on the part of the Minister for Immigration and Integration.<sup>24</sup> The grounds for removal will be the consequence, by operation of law, of an illegal stay or the termination of legal stay through, for example, the failure to issue or extend a residence permit, or its withdrawal. A foreign national can be removed if he fails to leave the Netherlands of his own accord within the departure period stipulated (Aliens Act implementation guidelines A4/6.1 and 6.9).

Removal occurs (Aliens Act implementation guidelines A4/6.1):

1. by hand-over to the foreign border authorities; or
2. by placing the foreign national on board an aircraft or ship belonging to the organisation that carried the foreign national in question; or
3. directly, or indirectly by means of a stop-over, by aircraft or ship to a country to which the foreign national is granted entry.

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<sup>24</sup> Further to a ruling by the Administrative Law Division of the Council of State [*Afdeling Bestuursrechtspraak van de Raad van State*], dated 14 May 2003, there is now a legal discussion on the obligation on the part of government to remove foreign nationals. At the current time, the Aliens Act implementation guidelines still refer to a power, not to an obligation.

Generally, removal involves removal by aircraft or ship, aided by the Royal Netherlands Military Constabulary or the Seaport Police (Aliens Act implementation guidelines A4/6.1).

Generally, removal occurs via one of the removal centres of the Custodial Institutions Service [*Dienst Justitiële Inrichtingen (DJI)*], even where removal concerns a group removal by government flight (Aliens Act implementation guidelines A4/6.4). The removal of foreign nationals via a removal centre can occur in two ways:

- foreign nationals that have already been detained are transferred to the removal centre on the basis of the custodial measure already imposed;
- foreign nationals that have not yet been detained as foreign nationals will be detained in a removal centre under Article 59 (1 and 2) of the Aliens Act (Aliens Act implementation guidelines A4/6.4).

In the event of removal by aircraft, the Royal Netherlands Military Constabulary will be responsible for booking a flight for the removal of a foreign national with a travel agency designated for this purpose. At least 48 hours before departure, the Royal Netherlands Military Constabulary will check that the foreign national has:

- a valid flight ticket;
- his money and other belongings;
- valid (replacement) travel documents, or a written undertaking on the replacement travel documents required;
- personal luggage (maximum 20 kg);
- where necessary: being medically fit to fly, i.e. a fit-to-fly certificate (Aliens Act implementation guidelines A4/6.4).

In the case of removal, the Royal Netherlands Military Constabulary will notify the Aliens Police of the flight date planned in writing (Aliens Act implementation guidelines A4/6.6). The Aliens Police or the return officer at the Custodial Institutions Service will inform the Royal Netherlands Military Constabulary beforehand of all circumstances, including medical circumstances, that could be important for flight safety or the safety of the officers responsible for border control. If the behaviour of the foreign national gives cause for this, the officer responsible for border control or for the supervision of foreign nationals can request the Royal Netherlands Military Constabulary to escort the foreign national during the flight. When transferring the foreign national to the Royal Netherlands Military Constabulary for removal, the removal form [*Opdracht tot verwijdering*] (model M24-A) will be used. After a foreign national is transferred, one copy of this form will be signed by the Royal Netherlands Military Constabulary and immediately handed to the officer that transferred the foreign national. The Royal Netherlands Military Constabulary will use the removal form to produce a written report on each removal to the Aliens Police. The Aliens Police, the Seaport Police or the Royal Netherlands Military Constabulary will prepare a notification of departure after a removal. A 'notification request' form [*Verzoek tot signalering*] (model M93) is also produced (Aliens Act implementation guidelines A4/6.6).

#### b. Removal following a criminal process

When foreign nationals commit offences, it is important to consider the corresponding consequences within the context of aliens law. Wherever possible, criminal illegal immigrants must be removed from the Netherlands on the completion of their

sentence, preferably directly following criminal detention. Where possible, they must also be pronounced undesirable (Aliens Act implementation guidelines A4/10.1). In the interest of coordination between the chain partners involved, a number of working agreements have been laid down in this framework in the protocol on Foreign Nationals in the Criminal Justice System [*Vreemdelingen in de Strafrechtketen protocol (VRIS)*]. These agreements must be observed in respect of criminal immigrants (Aliens Act implementation guidelines A4/10.1).

Besides removal in the context of the criminal law system, foreign nationals can also be extradited. Extradition has a criminal law objective, namely to place an individual at the disposal of foreign authorities, in relation to either a criminal investigation directed against the foreign national, or the enforcement of a sentence or criminal measure. Extradition occurs solely in accordance with conventions and in accordance with the provisions of the Extradition Act [*Uitleveringswet*]. Moreover, extradition only occurs at the request of a foreign authority (Aliens Act implementation guidelines A4/10.1).

c. Departure under the supervision of the Mobile Border Supervision of Aliens (MTV) Departure under the supervision of the Mobile Border Supervision of Aliens (MTV) entails the arrangement of the enforced departure from the national borders of a foreign national residing illegally in the Netherlands, who has been discovered during an MTV check. Under this arrangement, the foreign national is transferred, albeit not physically, to the authorities in Belgium or Germany (Aliens Act implementation guidelines A4/6.9).

The supervision designed to combat illegal immigration is geared towards combating illegal residence through illegal immigration, whether or not in an organised context, as early as possible (Aliens Act implementation guidelines A3/2.4). This supervision is also geared towards the prevention and discouragement of future illegal immigration. Individuals who have travelled into the country can be subjected to aliens supervision after crossing the border. This applies, for instance, for international trains and in cars that have passed the Dutch border, but also in the case of international air traffic, involving intra-Schengen flights into Dutch territory. MTV-checks can be carried out at the border crossing points and in a border area up to three kilometres behind the border. This form of supervision will only be permitted for individuals who may be assumed to be border-crossers. These checks take place as soon as reasonably possible after the border has been crossed and there has not yet been any, or only limited, contact with domestic travellers (Aliens Act implementation guidelines A3/2.4).

As regards foreign nationals who are discovered in the framework of the Mobile Supervision of Aliens, the Royal Netherlands Military Constabulary is responsible for putting measures in place for removal. The same applies for the situation in which, after entry has been refused by the Royal Netherlands Military Constabulary, the Royal Netherlands Military Constabulary is able to achieve the removal of the foreign national within the short term.

d. Hand-over at national borders after MTV checks

Hand-over after an MTV check at the country borders is the enforced physical hand-over of a foreign national residing illegally in the Netherlands to the authorities in the

adjacent Schengenland, which foreign national was discovered during an MTV check (Aliens Act implementation guidelines A4/6.9).

e. Removal of a foreign national who has been refused entry (Article 6 Aliens Act 2000)

This return action involves the forced removal from the Netherlands of an individual who has been refused entry to the Netherlands at a Schengen external border.

Anyone who fails to comply with entry conditions will be refused entry (Aliens Act implementation guidelines A2/5). The individual in question must leave the Netherlands immediately, unless he requests asylum. The refusal of entry is a reasoned decision that cannot be postponed, must be taken delivery of by the foreign national and by means of which the foreign national is denied entrance and residence in the territory of the Netherlands or the Schengen area where he does not comply with conditions for entry. The written refusal of entry is a decision against which the foreign national can lodge an administrative appeal with the Immigration and Naturalisation Service (IND). Each case of refused entry must be registered. If entry is refused, an endorsement will be placed in the travel document or identity document of the foreign national in question, in order to prevent the foreign national attempting to enter the Netherlands again without complying with the requirements for entry (Aliens Act implementation guidelines A2/5).

The Royal Netherlands Military Constabulary is responsible for the physical removal of the immigrant. While the immigrant is waiting for his flight to his country of origin or to a country where his entry has been assured, the Royal Netherlands Military Constabulary imposes a liberty-restricting measure (freedom of movement in the airport lounge) or a custodial measure. The measure imposed will depend on the reason for refusal and the risks involved. The Royal Netherlands Military Constabulary will decide on this. In this case, the foreign national will be transferred to the holding area at Schiphol East [*Passantenverblijf Schiphol Oost (PVSO)*], the detention centre for foreign nationals awaiting expulsion [*Grenshospitium (GH)*], or somewhere that complies with the Border Holding Area Regime Regulations [*Reglement regime grenslogies*].

If it is known which route the foreign national took and which carrier he used to enter the Netherlands, a return trip will be claimed with the carrier. In this case, a guiding letter or covering letter will be produced. The Royal Netherlands Military Constabulary (Bureau Inadmissibles) will produce this guiding letter.

The carrier will be obliged to immediately ensure the return of a foreign national who has been refused entry to the Schengen area (Aliens Act implementation guidelines A2/5.5.7). At the request of the border control authorities, the carrier must return the foreign national to the third country from which he was carried, to the third country that issued the border crossing document that he used to travel with, or to any third country where his entry is assured (Aliens Act implementation guidelines A2/5.5.7).

*Independent departure*

Three return actions fall under the independent departure category (SVC: 2005a/b):

- a. Independent departure through IOM;
- b. Supervised departure of the self-reporter;

c. Independent departure of a foreign national who at the time of departure is shown to have been in the Netherlands unlawfully, otherwise known as ‘overstayers’.

a. Independent departure through IOM

The International Organisation for Migration (the Netherlands) supports the independent departure of foreign nationals wanting to leave the Netherlands. To this end, it implements the REAN scheme, (Return and Emigration of Aliens from the Netherlands) for instance (also see Section 4.2.3). The conditions applicable for an appeal to REAN have been laid down in the new REAN implementation regulations, which entered into force on 1 May 2006 (Appendix 6). One of the conditions is the lack of personal resources to fund the independent departure. In the case of unlawful residence or the restriction of freedom of movement, or detention, the foreign national will also be able to report for independent departure with the assistance of IOM, provided the IND consents to this (Aliens Act implementation guidelines A4/5.1). Independent departure via IOM may comprise both return and resettlement in a third country.

b. Supervised departure of the self-reporter

Supervised departure of the self-reporter is the supervised departure of a foreign national residing unlawfully in the Netherlands, which foreign national has voluntarily reported to the Royal Netherlands Military Constabulary or the Seaport Police at an airport or seaport to obtain travel documents (Aliens Act implementation guidelines A4/6.9). Although the initial procedure is restrictive, this is a type of departure in which the foreign national has indicated his wish depart at his own volition. In this sense, this can be compared with departure via IOM, subsequent to immigrant detention. This category also falls under independent departure from the Netherlands (SCV: 2005a).

c. Independent departure of a foreign national who at the time of departure is shown to have been in the Netherlands unlawfully, otherwise known as ‘overstayers’

The fact that an immigrant has resided in the Netherlands unlawfully may be found during a check when leaving the Schengen area (via the Netherlands) via a border-crossing point, for instance. This applies both for foreign nationals that have entered the country illegally and for foreign nationals who have remained in the Netherlands illegally after the expiry of lawful residence. In this case, a departure notice must be produced by the border control officer. Thus, this concerns the independent departure of a foreign national who has stayed in the Netherlands illegally, whether or not after the expiry of the unrestricted period, and who was discovered leaving the country during an exit check at the external border (Aliens Act implementation guidelines A4/6.9; SCV: 2005b).

#### *Absconding from the Netherlands*

Five return actions fall under the ‘absconder’ category (SCV: 2005a/b):

- a. Lifting of detention with notice to leave the Netherlands;
- b. Notice to leave the Netherlands;
- c. Departure from place of residence independently during the proceedings before the departure period has commenced;
- d. Departure from place of residence independently during or after the departure period;
- e. Eviction with notice to leave the Netherlands.

a. Lifting of detention with notice to leave the Netherlands

Giving notice to leave the Netherlands when lifting the detention of a foreign national residing illegally in the Netherlands (Aliens Act implementation guidelines A4/6.9).

b. Notice to leave the Netherlands:

Giving notice to leave the Netherlands, during an address check, MTV check or after having been stopped, to a foreign national residing illegally in the Netherlands, but who it is found, after an identity and nationality check, cannot actually be removed from the Netherlands (Aliens Act implementation guidelines A4/6.9).

c. Departure from place of residence independently during the proceedings before the departure period has commenced

During the asylum procedure or standard (*reguliere*) procedure observing that an immigrant's accommodation has been vacated permanently (Aliens Act implementation guidelines A4/6.9).

d. Departure from place of residence independently during or after the departure period

During or after the departure period of the asylum procedure or regular (*reguliere*) procedure observing that the immigrant's accommodation has been permanently vacated (Aliens Act implementation guidelines A4/6.9).

e. Eviction with notice to leave the Netherlands

The removal, with the help of the police, whether or not with the help of a bailiff, of a foreign national from the accommodation offered to this foreign national by operation of law, and who is no longer residing legally in the Netherlands. In the case of an eviction, the Central Agency for the Reception of Asylum Seekers [*Centraal Orgaan opvang Asielzoekers (COA)*] produces an M100a form and sends this to the Immigration and Naturalisation Service. The Immigration and Naturalisation Service then checks whether procedures remain that entitle the foreign national to residence in the Netherlands. If this is not the case, the eviction will be registered as the departure category 'eviction with notice to leave the Netherlands' (SCV: 2005a).

### *Remigration*

Migrants who remigrate perform this action themselves. Certain cases may invoke financial support under the Remigration Act [*Remigratiewet*], for which a request can be submitted to the Social Insurance Bank [*Sociale Verzekeringsbank (SVB)*] (also see Appendix 8). This concerns foreign nationals with legal residence or Dutch citizens who opt to give up their lawful residence in the Netherlands. After the Social Insurance Bank has granted the remigration provision, people must actually return within six months. All remigrants who return under the remigration scheme claim an average of € 2000 for the reimbursement of relocation expenses. Added to this, they can receive a basic provision for bridging costs for the first two months after return or receive a remigration benefit. In 2004, the provision amounted to an average of € 904. The remigration benefit is a monthly benefit for people over the age of 45. In 2004, this benefit was € 481 per month on average. When a remigrant receives an exportable benefit such as state pension (*AOW*), disability benefit (*WAO*) or surviving dependents benefit (*ANW*), this is deducted from the remigration benefit. If this amount is greater than the remigration benefit, a 'nil payment' will apply. In the period



from 2000 to 2004, ‘nil payments’ were applicable for approximately one in three to four migrants (Wijngaart; Tillaart: 2005, pages 30-34).

#### **4.1.2 Organisation of the return process**

Since 1 January 2004, central management of the return process has been the responsibility of the Immigration Coordination Department [*Stafdirectie Coördinatie Vreemdelingenketen (SCV)*]. This has been done with the intention of ensuring that tasks and responsibilities are allocated clearly and that work processes are seamlessly aligned and are aimed at the actual departure from the Netherlands of foreign nationals without a residence permit. So-called Regional Integration Return Teams [*Regionale Integratie Terugkeer Teams (RITT)*] have been created for the coordination of the implementation activities of the organisations involved. These teams are responsible for directing the implementation of return policy, information provision on this policy and alignment with other chain organisations in the police regions in question. A RITT consists of a representative from the Central Agency for the Reception of Asylum Seekers, the Immigration and Naturalisation Service and the police force in question. These teams are responsible for the integral processing of individual files on foreign nationals. Each RITT can decide on specific forms of consultation, depending on the regional problems at hand. The actual implementation of return policy occurs at a local level, in so-called local task groups [*Lokale Taakgroepen (LTG)*], which consist of reception staff from the Central Agency for the Reception of Asylum Seekers, supervision and return staff from the Immigration and Naturalisation Service and the coordinator from the Alien Police. This is also where actual activities take place for the return of individual rejected asylum seekers. RITTs coordinate the implementation of these LTGs (Olde Monnikhof; Vreede: 2004, p. 60-61).

#### **4.1.3 Costs involved in the return actions**

The Netherlands does not have a clear overview of the total government costs for return and remigration. Therefore, the question of how the costs of independent departure relate to the costs of forced departure cannot be answered. Below, a limited number of organisations involved in the return process estimate their costs.

##### *The Immigration and Naturalisation Service*

The Immigration and Naturalisation Service indicates that, in 2005, the costs for the centres and staff directorates of the Immigration and Naturalisation Service were € 89 million. Of this amount, € 8.5 million was spent on all costs for secure transport (via the Transport & Support Service [*Dienst Vervoer & Ondersteuning (DV&O)*]) and € 11.2 million on the costs incurred for forced removals (flight tickets for foreign nationals and flight tickets for escorts and the cost of government flights, excluding the efforts of the Immigration and Naturalisation Service). The costs cannot be broken down further into independent departure and forced departure since efforts by the Immigration and Naturalisation Service can lead to both results.

##### *Royal Netherlands Military Constabulary*

The Royal Netherlands Military Constabulary indicates that the costs for 2006 are estimated at € 13.3 million.

### *The International Organisation for Migration*

The 2005 annual report by IOM (2006d) states that in 2005, a total of 3,510 individuals left under the REAN scheme. In 2005, total expenditure on the REAN scheme was € 7,632,889. This means that the average costs per return per person under the REAN scheme were € 2,175. In 2005, the total costs for reintegration support, which, subject to conditions, was also provided to a number of returnees<sup>25</sup>, was a total of €2,557,853. This means that an average of € 1,381 was spent on reintegration per person.

#### **4.1.4 Evaluations**

##### *Evaluations published*

In 2005, the 'remigration' return action was evaluated under the title Evaluation of the Dutch Remigration Act [*Evaluatie Remigratiewet*], conducted by Van den Wijngaart and Van den Tillaart. This evaluation shows that the Remigration Act is effective. In 2005, a study was conducted into the return possibilities of foreign nationals in aliens detention. This study shows which factors can impede or promote return to the country of origin or to another country that is willing to accept an illegal immigrant (Van Kalmthout: 2005). In 2006, the so-called 'Return Project' [*Project Terugkeer*] (see Appendix 4) was evaluated by the Dutch Refugee Council [*Stichting Vluchtelingenwerk Nederland*], under the title *Geen Pardon, geen Terugkeer*. The Dutch Refugee Council observes that, given the results of the Return Project, the subject matter is far more unmanageable than the Cabinet had expected and that it may be years before the problem of longstayers has been resolved.

##### *Best practices*

Despite the above observation from the Dutch Refugee Council, a number of best practices can be derived from the Return Project:

- *Case management*

The Return Project uses case management. In this way, attempts are made to achieve the return of asylum seekers who have exhausted all legal remedies. An individual-based approach is key here. Within the Return Project, the case management method is considered so successful that it will form the basis for the work processes of the Migration Return and Departure Service [*Dienst Terugkeer en Vertrek (DT&V)*].

- *Information provision to foreign nationals*

The Return Project informs foreign nationals of the possibility to depart independently with the assistance of IOM (if their asylum applications are rejected) and the financial support offered in this context. IOM considers an informed decision one of the main pillars of - in the words of IOM - voluntary return. Therefore, IOM indicates information provision as an example of a good practice that ought to be used in more countries (IOM: 2004b, page 269).

- *Reintegration scheme*

In the context of the Return Project implemented by the government, the International Organisation for Migration was awarded extra reintegration funds by the Ministry of Foreign Affairs, for which independent returnees are eligible, subject to certain conditions. Amongst other things, this 'return project reintegration scheme' [*Reintegratieregeling Project Terugkeer (HRPT)*] has caused a significant group of individuals to opt for independent departure (TK: 2006b). Information on

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<sup>25</sup> In 2005, a total of 1,852 individuals were entitled to reintegration funds.

implementation of the HRPT shows that the financial incentive to leave the country has a positive effect. For this reason, it has been decided to make the reintegration contribution [*Herintegratiebijdrage (HRT)*] available to a bigger target group, i.e. for all foreign nationals who have submitted an initial application for an asylum residence permit prior to the entry into force of the scheme on 15 June 2006 (TK: 2006b) (also see Appendix 7).

#### **4.1.5 Positive aspects of return**

The government experts mentioned in Section 2.1.1 suggest that the return policy in conjunction with the restrictive admissions policy is part of a clear foreign nationals policy. A clear return policy contributes to support from Dutch society for policy regarding foreign nationals. Added to this, a clear return policy gives a signal to foreign nationals. Foreign nationals must bear in mind that an application for a residence permit may be rejected and that they may be expected to return to their country of origin.

According to IOM, an increasing number of organisations are viewing return as a better alternative than foreign nationals remaining in the country, living illegally, on the street. Even individuals who are experiencing problems, such as somatic or psychological health problems, actually prefer to return to their country of origin (IOM: 2004b). For IOM, the temporary return of migrants with a residence status in the Netherlands for the purpose of reconstruction is a good example of circular migration and is certainly positive. In this framework, IOM has programmes for Afghanistan, Serbia, Bosnia-Herzegovina, the province of Kosovo, Sierra Leone, Sudan, Iraq and the great lakes region of Africa. The programme is experienced as positive by the migrants themselves, by the Dutch government (the programme is embedded in the reconstruction policy document [*Wederopbouwnota*]) and by governments in the receiving countries. The MIDA programme (Migration for development in Africa) between Ghana and the Netherlands, developed by IOM, is also experienced as positive by all of the parties involved – including the state and/or private hospitals (IOM: 2006d). The programme helps to counteract a ‘brain-drain’.

## **4.2 Independent departure and remigration**

### **4.2.1 The main motives for independent departure and remigration by migrants**

Engelhard (2004)<sup>26</sup> observes that by far the most literature on migration decision-making processes discuss the ‘outward journey’ and not the return. In comparison, research into return migration is scarce, and the return of (rejected) asylum seekers and status holders from the Netherlands has certainly been subject to very little research to date. However, there has recently been an increase in socio-scientific interest, perhaps in response to the importance that politics is placing on return (Engelhard: 2004).

#### *Independent departure*

As already indicated, little (finished) research is available in the Netherlands on (the motives that migrants have for their) return. The Centre for International Development Issues Nijmegen (CIDIN) at the Radboud University Nijmegen is

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<sup>26</sup> Engelhard was commissioned by the IOM project “Return Migration and Health” to conduct a study that focused on problems in the area of (a lack of) health and return.

currently conducting a research project on return migration.<sup>27</sup> However, when writing this report, the outcomes of this project were not yet available. Nor is the (small-scale) study conducted by *Bureau Maatwerk bij Terugkeer*, as commissioned by the World Wide Foundation [*Stichting Wereldwijd*], amongst Angolan unaccompanied minor immigrants who have returned to their country, has not yet been completed.

In 2005, the Ministry of Justice commissioned IOM to conduct a study into the motives for return by Angolan returnees. In-depth interviews were held with Angolans in the Netherlands and in Angola, and interviews were held with organisations (including IOM Luanda) involved in the return and reintegration process. The study shows that the main reasons for returning to Angola from the Netherlands were as follows (in order of importance):

1. Dutch asylum policy and its consequences;
    - (the anticipation of) a negative decision, i.e. the decision stating that they must leave the country;
    - lack of prospects, not having any future in the Netherlands;
    - frustrations in the field of education;
    - not having any access to work;
    - not wanting to live an illegal life in the Netherlands.
  2. Longing for Angola, wanting to be with family and friends, and homesickness;
  3. Peace in Angola.
- (IOM: 2006c)

The reasons above largely reflect the information raised by a number of organisations in the Dutch national network, thanks to their professional contacts with immigrants. An overview follows below.

The **International Organisation for Migration (IOM)** in the Netherlands distinguishes the following reasons for return, based on the experiences of IOM district staff and logistical staff who have contact with returnees at Schiphol airport, and based in part on the above study amongst Angolans:

- The asylum policy pursued by the Dutch government. Since the introduction of the new Aliens Act in April 2001, it has become more difficult to gain asylum status, while on the other hand, more pressure is being put on those individuals whose applications for asylum status have been rejected, as a result of which it is easier to organise forced departure;
- In some countries, the political situation has improved in the eyes of potential returnees. This applies particularly for (Northern) Iraq, Angola, Afghanistan and Serbia-Montenegro;
- Others return because they are living rough in the Netherlands. This group includes asylum seekers who have exhausted all legal remedies, but also illegal immigrants who

<sup>27</sup> In 2006, CIDIN, in collaboration with the Dutch Refugee Council and *Bureau Maatwerk bij Terugkeer (Cordaid)*, started a pilot research project on return migration. Students conducted (small-scale) research into different aspects of return migration to Surinam, Great Britain (this concerned the onward migration of Somalis from the Netherlands to Leicester), Guinea-Bissau, Angola and Bosnia-Herzegovina. The objective of the research project is to fill knowledge gaps that exist in the field of remigration and development. The studies focused on remigrants, as well as on independent and forced returnees. The central question in all of the studies is the extent to which return (remigration and departure) can be sustainable. To this end, the studies sought to ascertain the extent to which the returnees were successful in achieving a sustainable existence and which form the reintegration process took. The various studies emphasised different aspects of the reintegration process: some studies emphasised the socio-economic aspects more, while other studies emphasised the identity of the returnees more. In 2007, the research project will be continued by students, and there are also plans to extend the project to the level of doctoral (PhD) research.

- have not been able to find (suitable) employment;
- The return package offered by IOM is generally an additional reason to leave the Netherlands;
- Family circumstances in the country of origin and homesickness are other reasons to return.

Based on experiences gained in the return project, the **Migration Return and Departure Service [Dienst Terugkeer en Vertrek (DT&V)] of the Ministry of Justice**, currently being established, indicates the following motives:

- No hope of long-term lawful residence in the Netherlands;
- Disappointment with residence in the Netherlands, which has proved to be less ideal than they had expected in their country of origin;
- Political and social changes in the country of origin;
- Developments in family circles in the country of origin;
- A premium that can be used to finance the return and reintegration.

**Refugee Organisations in the Netherlands [Vluchtelingenorganisaties Nederland (VON)]** indicates that some asylum seekers (who have exhausted all legal remedies) return to help with the reconstruction of their country, after the replacement of the regime that they had fled from. Examples given are Afghans and Iraqis. Some return because they do not see any prospects for themselves in the Netherlands, and, according to the Refugee Organisations in the Netherlands, they often prefer to accept safety risks to life as an illegal immigrant in the Netherlands.

The **Central Agency for the Reception of Asylum Seekers [Centraal Orgaan Opvang Asielzoekers (COA)]** indicates the following push factors:

- The pressure to return that the government puts on asylum seekers who have exhausted all legal remedies;
- There are no prospects for the future in the Netherlands, starting with a lack of social facilities and social security;
- Support from the Dutch government and non-governmental organisations, such as financial schemes or the provision of medication.

The Central Agency for the Reception of Asylum Seekers indicates the following pull factors:

- Family reunification;
- Local pull factors, such as the possibility to start a career or business and home facilities. These possibilities arise either through their own existing network or through local non-governmental organisations and relatively often through international organisations such as Cordaid.

The overviews above show that the Central Agency for the Reception of Asylum Seekers, DT&V and IOM indicate the push factors (pressure from Dutch government to leave and the lack of prospects for the future in the Netherlands) as the first reasons for immigrants to leave the Netherlands. Pull factors (such as family circumstances, improved conditions in the country of origin and the possibility to work in the country of origin), are only indicated in the second instance. Financial schemes are indicated last by all of the above organisations.

These outcomes are not entirely compatible with what was observed by the British researchers Black, Koser and Munk (2004) on the basis of existing literature. According to them, in existing literature, pull factors in the country of origin are

identified as more important than push factors. However, the Dutch organisations indicate push factors first, not pull factors.<sup>28</sup> However, a fact that does reflect existing literature is that, according to Dutch organisations too, economic factors (such as policy incentives in the form of financial schemes) would seem to be less important generally than non-economic factors.

Incidentally, literature also suggests that the decision to return is complex, and not simply an individual rational choice. The study by Black, Koser and Munk (2004) showed that there are a number of partly overlapping factors that can be considered relevant in the process leading up to the decision to return.

### *Remigration*

Due to their strong rights of residence, the push factors indicated above – pressure from government and the poor prospects for the future as illegal immigrants in the Netherlands – do not play a role in remigrants' decision to return. There are signs that strong rights of residence in the Netherlands in fact play a facilitative role in foreign nationals' return to their country of origin.<sup>29</sup> The Netherlands Migration Institute [*Nederlands Migratie Instituut (NMI)*] also indicates the facilitative role of the return option (scheme for individuals who later regret the option that they have chosen: the so-called *spijtoptantenregeling*) for remigration: remigrants who regret their decision can return to the Netherlands up to one year after their departure from the Netherlands and regain their Dutch citizenship. This reportedly encourages more people to decide to remigrate.

The **Netherlands Migration Institute (NMI)** indicates the following motives for migrants to return:

- Family in the country of origin. Caring for old, sick relations in the country of origin;
- The (old) age of the remigrant. After retirement, many immigrants want to return to their country of origin;
- The health of the person in question. Immigrants often want to die in their country of origin. For the rest, poor health can be a reason to stay in the Netherlands. Someone who is already ill or too weak to travel usually opts for Dutch healthcare;<sup>30</sup>
- The availability of good financial schemes.<sup>31</sup>

## **4.2.2 Obstacles for independent departure and remigration**

### *Independent departure*

As already indicated, relatively little research has been done in the Netherlands on the return of migrants. As such, little research has been done on obstacles to independent departure too. In research by *Stichting Return and Progress*, young people from Sierra Leone living in the Netherlands indicate safety, (problems with)

<sup>28</sup> It is not known whether these differences in outcomes may be connected with differences in the residence status of immigrants. Existing literature may relate particularly to immigrants with a residence status, for whom certain push factors do not apply.

<sup>29</sup> For example, according to the Netherlands Migration Institute (NMI), there was an increase in the number of Congolese return to the Congo when many Congolese asylum seekers were given a residence permit for the Netherlands.

<sup>30</sup> Engelhard (2004) also states that refugees (status holders) and asylum seekers are both inclined to return because of their health and inclined not to return because of their health. Asylum seekers in particular are negative about return, based on the idea that they will only become more ill; on the other hand, refugees (status holders) with health problems do often long to return, because they expect to feel better in their country of origin.

<sup>31</sup> The much utilised relocation scheme for young Antilleans is indicated as an example.

housing, work, education/training and the attitude of the population towards returnees as possible obstacles to a successful return to Sierra Leone.<sup>32</sup>

Thanks to their regular professional contacts with migrants, a number of organisations in the Dutch national network have been able to contribute to an insight into obstacles to independent departure. An overview follows below.

**IOM** indicates that, although not studied, the following obstacles to return can be distinguished on the basis of the day-to-day experience of IOM:

- The hope that migrants are given that their residence in the Netherlands could perhaps be legalised at some point;
- The political and/or economic situation in the country of origin often makes it more attractive to live rough in the Netherlands than live legally in the country of origin;
- The fact that migrants come to Europe with the intention of staying there and earn an income for their family in the country of origin;

Possible obstacles to departure, once a choice has been made:

- Medical and/or psychological problems;
- Obtaining travel documents when identity documents are missing;
- Wanting children to finish their education/school.  
In the case of minors: no reception facilities available in the country of origin
- Lack of opportunities for work and accommodation.

Based on experiences gained in the return project, **DT&V**, currently being established, indicates the following obstacles:

- Doubts about the outcome of their asylum application;
- Shame about returning empty-handed;
- Fear of insecurity and acclimatisation to the Dutch situation;
- Hospitalisation;
- Financial problems or debts.

**VON** indicates the following obstacles:

- Difficulty obtaining travel documents;
- For naturalised immigrants, the condition stipulating that they give up their Dutch nationality before being able to benefit from certain (financial) schemes.

**COA** indicates the following obstacles:

- The (safety) risks experienced by asylum seekers who have exhausted all legal remedies. Although it is unclear how realistic these fears are, asylum seekers who have exhausted all legal remedies do identify them as the most important obstacle;
- Other reasons are: the absence of a (support) network in the country of origin; the lack of prospects of work and a home; (political) instability in the country of origin; protracted procedures in the Netherlands that complicate a legal and rapid return; medical problems.

<sup>32</sup> *Stichting Return and Progress* has discontinued its activities with effect from 1 June 2005. Until this time, it helped unaccompanied minor immigrants wanting to return to their country of origin to build a new existence for themselves. The reports published by Return and Progress can be found on the following website: [www.returnandprogress.nl](http://www.returnandprogress.nl).

## Remigration

**NMI** indicates the following obstacles for remigration:

- Relations left behind. Potential female remigrants in particular find it difficult to leave their (grand)children in the Netherlands;
- Living situation in the country of origin. Often, remigrants move in with their (very elderly) parents and women leaving the Netherlands become responsible for their care;
- Safety in the country of origin. This chiefly plays a role for immigrants with an asylum status from Iraq, Afghanistan and the Democratic Republic of Congo;
- Health. Poor health can be a reason to both stay in the Netherlands for the good-quality healthcare and to remigrate to the country of origin. Older immigrants often want to die in their country of origin.

### **4.2.3 Procedures established for independent departure and remigration**

#### *Independent departure with IOM assistance*

Foreign nationals whose lawful residence has expired are expected to leave the Netherlands (within four weeks). In the Aliens Act, the starting point is for foreign nationals who have not been granted any (further) residence in the Netherlands to have the responsibility to leave the Netherlands within the period allowed for this purpose. Should foreign nationals wish, their independent departure can be arranged by IOM.

#### *REAN scheme*

IOM supports the independent departure of foreign nationals wanting to leave the Netherlands and implements the REAN scheme (Return and Emigration of Aliens from the Netherlands) amongst other things (Aliens Act implementation guidelines A4/5.1). The conditions for the invocation of REAN have been laid down in the new REAN implementation regulations that entered into force on 1 May 2006 (Netherlands Government Gazette no. 84, 1 May 2006; see Appendix 6)<sup>33</sup>. One of the conditions is a foreign national's inability to finance independent departure himself. In the case of unlawful residence or restricted freedom of movement, or detention, foreign nationals will also have the opportunity to register for independent departure with the help of IOM, provided the Immigration and Naturalisation Service (IND) consents to this (Aliens Act implementation guidelines A4/5.1). The REAN programme is implemented by IOM and is funded by the Dutch government.

The REAN scheme provides foreign nationals with plane tickets for departure to their countries of origin or third countries, if it can be assumed, based on the whole of the facts and circumstances, that foreign nationals will be granted access to these

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<sup>33</sup> On 1 May 2006, the new implementation and finance regulations for the REAN programme entered into force. The previous regulations dated back to 1991 and were outdated. An important difference with the old scheme is that the system for the determination of the level of the support contribution has been changed. Before, the level of this contribution was determined on the basis of the residential status situation, duration of stay in the Netherlands and family composition. Under the present scheme, there are just two sorts of support contribution: a standard contribution and a (lower) limited contribution. For each individual, a number of criteria are used to determine for which contribution eligibility exists. An exception has been made for individuals who have never had lawful residence, individuals for whom public order aspects apply and foreign nationals who have been detained. These groups are only eligible for a more limited package. Furthermore, the new scheme gives consideration to the victims of human trafficking. The procedure for departure under the REAN scheme will briefly be summarised and explained in Appendix 5.



countries. Depending on a foreign national's situation, a supporting contribution may be awarded for living expenses in the initial period following departure from the Netherlands. Foreign nationals may also be reimbursed for the costs involved in obtaining a replacement travel document. Foreign nationals may also be eligible for travel costs within the country of destination, to their place of residence (Aliens Act implementation guidelines A4/5).

The REAN programme is subject to conditions stipulated by the Ministry of Justice, as set out in the REAN conditions 2006 [*REAN voorwaarden 2006*] (see Appendix 6). IOM develops internal guidelines for the implementation of the various aspects of REAN and related projects. When developing these guidelines, IOM observes the provisions of IOM Geneva, for instance, on 'Assisted Voluntary Return' and related activities.

#### *REAN target group*

The REAN scheme is particularly aimed at the category of foreign nationals residing in this country with the consent of government after the initial rejection of an application for a residence permit. Given the object to operate a humane and effective return policy, other foreign nationals are not automatically precluded from the REAN scheme, provided this does not interfere with Dutch removal policy either. In the case of illegal residence, restrictions on freedom of movement or detention, foreign nationals will also have the possibility to register themselves for independent departure with the help of IOM. When a foreign national has restricted freedom of movement or is being detained, the IND must give its consent for independent departure with the assistance of IOM (Aliens Act implementation guidelines A4/5).

#### *Reintegration scheme (HRT)*

In addition to the supporting contribution, foreign nationals may also be eligible for a reintegration contribution.<sup>34</sup> Just like the old scheme<sup>35</sup>, the new return reintegration scheme [*Reintegratieregeling Terugkeer (HRT)*], which entered into force on 15 June 2006, is a 'REAN plus scheme'. This means that the REAN scheme, which is funded by the Ministry of Justice, forms the basis, while the reintegration contribution is funded by the Ministry of Foreign Affairs, from the Return, Migration and Development fund [*fonds voor Terugkeer, Migratie en Ontwikkeling*]. With the entry into force of the HRT, the existing REAN plus schemes for return to Iraq, Afghanistan and Angola have lapsed (TK: 2006b). However, the projects focusing on the reception of minor returnees to Angola and the Democratic Republic of Congo have remained in place.

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<sup>34</sup> The following tariffs apply for the one-off reintegration contribution, which (rejected) asylum seekers receive in addition to the supporting contribution: € 1,750 per adult or unaccompanied minor immigrant and € 875 per minor accompanying family member. Foreign nationals with a residence permit are not eligible for the reintegration contribution.

<sup>35</sup> The old scheme was called the 'return project reintegration scheme' [*Herintegratieregeling Project Terugkeer (HRPT)*] and applied only to the target group for the return project (Appendix 4). The 'return project reintegration scheme' has contributed to the decision by a significant group of people to opt for independent departure. Information on implementation of the HRPT shows that the financial incentive to leave the country is having a positive effect. Because of this, it has been decided to make the reintegration contribution available to a bigger target group, i.e. for all foreign nationals who submitted their first application for a residence permit before the entry into force of the scheme on 15 June 2006.

### *Support during reintegration*

Besides a plane ticket and a supporting contribution from the REAN programme, foreign nationals who return independently can also receive information on reintegration possibilities in the country of origin (e.g. on training, the labour market, or schools) further to a specific question in this regard. This concerns mediation by IOM further to a specific request for help. IOM also offers extra support to:

- Minor returnees, by tracing members of their families or (in Angola and the DRC) offering shelter;
- Victims of human trafficking, when requested by them, by, for example, calling in the IOM mission in the country of origin to establish contact with family members, shelter or (in some countries) a full reintegration programme;
- Individuals with medical and/or psychological problems, by mediating for the provision of a supply of medicines, offering the assistance required during the trip or providing topical information on medical provisions in the country of origin.

### *Bureau Maatwerk bij Terugkeer*

In the field of individual mediation, IOM works closely with Cordaid and the Central Mission Commissariat (CMC) in *Bureau Maatwerk bij Terugkeer* [Bureau for Tailor-made Solutions when Returning to the Country of Origin].<sup>36</sup> The Bureau was created at the initiative of Cordaid. The worldwide network of these organisations can be used to meet requests for assistance from foreign nationals. In collaboration with partner organisations in various countries of origin, the Bureau helps to resolve problems that impede the successful return of asylum seekers (who have exhausted all legal remedies). For example, the Bureau can help to find accommodation, help resolve medical problems, trace lost family members and mediate in finding work or setting up their own businesses. The Bureau mediates between the demand for help in the Netherlands and the supply of help in the countries of origin.

### *Remigration*

The Remigration Act, which entered into force on 1 April 2000, offers individuals wanting to remigrate to their country of origin and who form part of the target group the facilities to achieve this. The country of origin is the country in which the remigrant or one of his parents was born, as well as the country for which the remigrant or one of his parents has, or used to have, the nationality of (also see Appendix 8).

In the first instance, the target group comprises individuals who themselves (or their parents) originate from Turkey, Morocco, Surinam, Tunisia, Cape Verde Islands, the states of former Yugoslavia, the Molucca Islands, Greece, Italy, Portugal or Spain and who want to return to their country of origin. The second group consists of recognised refugees and individuals entitled to asylum (and their children), who want to leave for their country of origin or to a different country of their choice, which is willing to allow them entry. Both groups are immigrants who are residing legally in the Netherlands.

The Remigration Act offers the basic provision<sup>37</sup> and the remigration provision<sup>38</sup>. The conditions to be met by remigrants in order to be considered eligible for the basic provision are less selective than for the remigration provision (also see Appendix 8).

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<sup>36</sup> [www.cordaid.nl/maatwerkbijterugkeer](http://www.cordaid.nl/maatwerkbijterugkeer)

<sup>37</sup> The basic provision consists of a one-off payment for:

The Netherlands Migration Institute (NMI) informs, advises and guides individuals and groups (residing lawfully in the Netherlands) who are faced with the choice of staying in the Netherlands or return to their country of origin. The Netherlands Migration Institute also provides information and advice on the Remigration Act. The Remigration Act is implemented by the Social Insurance Bank.

#### *Circular migration or temporary remigration*

IOM can also offer support to immigrants who want to be sent temporarily to contribute to the development of their country of origin. In the field of temporary posting, IOM is currently implementing projects for Ghana, Iraq, the great lakes area (the Democratic Republic of Congo, Burundi and Rwanda) and for Afghanistan, Sudan, Sierra Leone, Serbia and Montenegro (including the autonomous province of Kosovo) and Bosnia-Herzegovina. Many development organisations, such as PSO and ICCO, are developing projects focusing on the posting of migrants to their country or region of origin. Added to this, self-help organisations (organisations formed by migrant groups) are also actively sending migrants to provide support for reconstruction and development.

#### **4.2.4 Sustainability of independent departure and remigration**

The term ‘sustainability’ evokes confusion. A number of members of the Dutch national network indicated their confusion as to its exact meaning. In a narrow sense, the sustainability of return could relate to the non-return to the Netherlands of foreign nationals who have returned to their countries of origin. In a broader sense, sustainability (also) relates to the extent to which the returnee has managed to build up a sustainable existence, the level of reintegration, in his country of origin.

According to Black, Koser and Munk (2004), ‘sustainability’ entails more than the question of whether people who have returned actually stay away too. According to them, the point is whether returnees have reintegrated sufficiently from a social, economic and political point of view, in their countries of origin.

Hammond (1999; in Black et al.: 2004) describes return as ‘a new start rather than a return to the past’. Hammond explains that there is a striking difference between the expectations of authorities and support agencies on the one hand and returnees on the other hand in respect of the situation after their return. The unwillingness to monitor the return of refugees lies in the fact that a simple recognition of the problems that could arise after return brings the starting point of the UNHCR<sup>39</sup> into doubt, says Hammond (1999; in Engelhard: 2004).

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- Travel costs to and in the destination country;
  - The transport of luggage to and in the destination country;
  - Living expenses during the first two months of resettlement (so-called resettlement costs). This amount is equal to two times the amount of the monthly 45+ benefit.

<sup>38</sup> The remigration provision consists of:

- a monthly 45+ benefit, the level of which will depend on family composition and standard of living in the destination country. However, changes in a remigrant’s personal circumstances can lead to a reduction in the monthly benefit but never to an increase. A remigrant who is entitled to the 45+ benefit is also entitled to the payments forming part of the basic provision, with the exception of resettlement costs;
- compulsory national health insurance or a contribution towards the cost of health insurance to be taken out by the foreign national in question.

<sup>39</sup> Its starting point is that voluntary return is self-evidently regarded as the most desirable solution of the three sustainable solutions for refugees, i.e.: integration, onward migration and voluntary return.

As already noted above, Engelhard (2004) observes that by far the majority of literature on migration decision-making processes discusses the ‘outward journey’ and not the return. Research into return migration is scarce in comparison and the return of (rejected) asylum seekers and status holders from the Netherlands has certainly been the subject of very little research to date. According to Engelhard (2004), the reason for this lies partly in the fact that governments (including the Dutch government) generally (want to) give very little attention to the monitoring of the situation after return.

IOM indicates that it does not generally monitor returnees.<sup>40</sup> The Central Agency for the Reception of Asylum Seekers (COA) observes that it sees monitoring and aftercare as important elements of the return process, but that they do not fall within the scope of its activities. IOM also indicates that it does not have any access to data on (renewed) admission to Dutch territory and that it incidentally deals with migrants who want to utilise the REAN scheme for a second time. These immigrants are rejected, since it is only possible to use the REAN scheme once.

In the case of remigration too, the provisions arising from the Remigration Act can only be utilised once. According to the NMI, the following factors increase the sustainability of return:

- The presence of a social safety net in the country of origin. Remigrants can call on this for support if they experience homesickness for the Netherlands and for help with other problems, such as discrimination in the country of origin (e.g. because they fled during the war);
- Proper preparation for remigration. On the basis of reliable information and expert guidance, being able to make a personal, well-considered choice for remigration.

#### **4.2.5 Information campaigns**

Throughout the asylum procedure, foreign nationals with an asylum background are informed both in writing and verbally of the consequences resulting from the final rejection of their asylum application and their own responsibility to leave the Netherlands if there is no prospect of sustainable lawful residence in the Netherlands. COA indicates that asylum seekers are informed of the return possibilities as soon as they receive their (first) negative decision. This information is provided by a case manager of COA, where necessary with the assistance of an interpreter. At this point, foreign nationals are also informed of the possibility for IOM to supervise independent departure.

The provision of information to foreign nationals without an asylum background is more difficult, as these foreign nationals generally remain out of sight of central government. IOM is trying to inform interest groups who may come into contact with the latter target group as effectively as possible. An example is the joint project initiated by IOM and a number of social organisations in the Netherlands’ four major cities (G4), which focuses on the independent departure of illegal immigrants in the Randstad conurbation. The Randstad Return Initiative Project was implemented in 2003/2004 and a follow-up to this project was launched on 1 May 2006.

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<sup>40</sup> With the exception of returnees who indicate their wish to use the reception and/or reintegration possibilities present in their country of origin (victims of human trafficking and minors), returnees with medical problems, who receive further assistance from an IOM mission after arrival in their country of origin and returnees within a project implemented in Nigeria on 1 September 2006, for the return and reception of vulnerable illegal migrants.

The object of the Randstad Return Initiative is to inform the target group, i.e. illegal immigrants and foreign nationals who have exhausted all legal remedies, about the possibilities for independent departure. After all, illegal immigrants and foreign nationals who have exhausted all legal remedies are often living in difficult situations and have little or no hope of any improvement of their living conditions in the Netherlands.

Added to the above, the collaboration between IOM and social organisations is intended to improve information on supervision for independent departure and onward migration. Interest groups like the Salvation Army [*Leger des Heils*] receive a payment if they supervise the independent departure of foreign nationals.

In order to reach the target group, IOM has eight ‘country of origin’ counsellors (men and women of different ages), who themselves originate from the main origin countries for the target group. They also have valuable information on origin countries. The aid workers use outreach methods, have supervisory meetings and offer tailor-made information. They can bridge the gap between institutions and clients. The counsellors refer foreign nationals on to district staff from IOM, who have walk-in consultancies in every city ([www.iom-nederland.nl](http://www.iom-nederland.nl)).

IOM informs both legal and illegal immigrants. IOM indicates that it has the following information material for this purpose:

- Flyers (in 13 languages);
- A website (Dutch and English);
- Consultation hours (interpreters present where necessary);
- Information sessions (interpreters present where necessary);
- Networks with ministries and Dutch government organisations (immigration service, police, asylum seekers’ centres, etc.), foreign embassies, non-governmental organisations, interest groups, migrant organisations, churches (particularly in Dutch and English).

### *Remigration*

For information about the Remigration Act, potential remigrants can visit the website for the Social Insurance Bank (SVB) ([www.socialeverzekeringsbank.nl](http://www.socialeverzekeringsbank.nl)). Brochures are also available from this site. Information and brochures are available in six languages: Dutch, French, English, Spanish, German and Turkish. For an application form and help filling it in, individuals are referred to an office of the Social Insurance Bank and to the NMI.

The website ([www.nmigratie.nl](http://www.nmigratie.nl)) for the NMI states the following objective: ‘The NMI supplies coherent and objective information, counselling and supervision to any persons or groups that are faced with the choice of staying here or returning to their country of origin’. The NMI can also provide information about the combination of a remigration benefit with other (exportable) benefits, such as disability benefit (WAO) and state pension (AOW). The website is also available in English. The NMI also has a telephone information line. The NMI Institute also has brochures in thirteen different languages: Dutch, Turkish, Arabic, French, Bosnian, Serbo-Croatian, English, Spanish, Italian, Portuguese, Greek, Somali, Dari and Farsi. No active promotion is permitted for remigration provisions.

#### **4.2.6 Incentives for independent departure and remigration**

##### *Independent departure*

Via IOM, the government provides financial support (REAN, HRPT and HRT), pays for plane tickets, provides help to obtain travel documents, transit and arrival assistance. Added to this, IOM supports return by providing information on reintegration, by tracing family members and/or providing shelter for minors, supervision, reception and the reintegration of victims of human trafficking. There are also various organisations that use their networks to try to trace family members in the country of origin and establish contact with them (Bureau Maatwerk bij Terugkeer, the Red Cross). Sometimes, steps are taken to ascertain whether certain medical help is available and whether there are any job guarantees upon individuals' return. Various initiatives exist, aimed at the provision of training facilities offering foreign nationals prospects upon their return to their countries of origin.

IOM tries to organise tailor-made returns; to a certain extent, migrants are able to indicate when they wish to return; specific assistance is offered to vulnerable migrants, such as those with medical problems, unaccompanied minor immigrants and victims of human trafficking. Based on a demand-driven supply, COA also offers mediation for return. It does this in its so-called 'plus programmes' (also see Section 4.4.4). The plus programme consists of incentives to resolve obstacles to return. In a return plan, the asylum seeker and case manager identify the problems to be resolved. This mediation can serve as an incentive for independent departure. For many requests for practical support, the help of other organisations, such as World Wide Foundation [*Stichting Wereldwijd*], IOM or Bureau Maatwerk bij Terugkeer, is brought in.

##### *Other projects and initiatives*

In the Netherlands, there are also various projects and initiatives in which extra help and guidance is offered to (potential) returnees, often in collaboration with IOM (for the REAN scheme, extra assistance given to vulnerable migrants and the global network) and with the government. For example, World Wide Foundation [*Stichting Wereldwijd*] offers unaccompanied minor immigrants vocational education and training that will be useful to them not only in the Netherlands, but also in the country of origin.<sup>41</sup> Added to this, a covenant has been entered into between IOM and Humanitas/Novib, the Organisation against Trafficking in Women [*Stichting tegen Vrouwenhandel*] and the Foundation of Religious against Trafficking in Women [*Stichting Religieuzen tegen Vrouwenhandel*] in order to be able to offer optimal support to victims of human trafficking and to their return. Other examples are the EQUAL projects ROC Nijmegen and ROC Drenthe, a collaborative arrangement between IOM, Cordaid and COA.<sup>42</sup>

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<sup>41</sup> Unaccompanied minor immigrants who have to return are helped to put together a business plan and are offered financial help to buy the starter products that they need. These products may be taken to the country of origin in a wooden crate. This project, which was initiated by the World Wide Foundation, has now been placed within the regional 'return development-project' [*Terugkeer Ontwikkelings Project (TOP)*], implemented by the foundation called *Stichting HIT*, based on collaboration between municipalities in Limburg and Brabant, COA, the business sector, the World Wide Foundation, Bureau Maatwerk bij Terugkeer and IOM.

<sup>42</sup> These projects provide professional development for teachers and activities for migrants who want to return via this project. The specific target group for the project are unaccompanied minor immigrants. Partners in this project are IOM, COA and Cordaid. Amongst other things, they provide information on specific sectors in the country of origin, for the purpose of the modification of tuition curricula in preparation for return. These projects

### *Remigration*

Remigrants who meet the conditions applicable can utilise the financial provisions available under the Remigration Act. For information, counselling and supervision, potential remigrants can contact the NMI.

#### **4.2.7 Effectiveness of incentives**

Research on the effectiveness of the incentives offered is scarce in the Netherlands. DT&V, currently being established, indicates that it does not record the effectiveness of incentives. IOM does not monitor returnees after their departure from the Netherlands either.<sup>43</sup> However, the wishes and needs of immigrants who want to return are monitored via the district staff at IOM and, where possible, these wishes are met.

Of course, figures on immigrants and remigrants who have left independently can be an indicator of effectiveness. However no in-depth research has been conducted on how migrants experience (or have experienced) incentives and the extent to which they experience the supervision offered by the Netherlands for return, resettlement and reintegration as being effective.

#### **4.2.8 Departure period for independent departure**

Under Article 62(1) of the Aliens Act, foreign nationals whose lawful residence has ended must generally leave the Netherlands within four weeks (departure period). This four-week departure period commences as soon as lawful residence ends under Article 8 of the Aliens Act. Foreign nationals must leave the Netherlands of their own accord within this period. Where foreign nationals fail to comply with this obligation, they may be removed (Aliens Act implementation guidelines A4/3.1).

The departure period can be reduced in the interest of removal and in the interest of public order or national security. Illegal immigrants are not permitted a departure period. Illegal immigrants must leave the Netherlands immediately. DT&V indicates that foreign nationals will no longer be given the opportunity to arrange their independent departure after the expiry of the departure period, once the government sees an opportunity to remove a foreign national. The Aliens Act implementation guidelines (Aliens Act implementation guidelines A5/5.2) state that if concrete removal measures have already been put in place against a foreign national, the Immigration and Naturalisation Service (IND), in consultation with the Aliens Police, can decide whether or not to grant consent for a foreign national's independent departure (departure via IOM).

### **4.3 Forced departure**

#### *Agencies involved in forced departure*

Foreign nationals who are residing unlawfully in the Netherlands may be removed. Officers from the Aliens Police and the Royal Netherlands Military Constabulary are

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are implemented by the regional training centres (ROCs) in Drenthe and Nijmegen. Funding is obtained from the EU's EQUAL fund.

<sup>43</sup> With the exception of returnees that indicate their wish to utilise reception and/or reintegration possibilities available in the country of origin (victims of human trafficking and minors), returnees with medical problems, who receive further help by an IOM mission after arrival in the country of origin, and returnees taking part in a project initiated in Nigeria on 1 September 2006, on the return and reception of vulnerable illegal migrants.

authorised to and responsible for the removal of foreign nationals. In cases where no travel documents are available, a passport-replacing travel document will be requested from the diplomatic representation. Depending on the country in question, the above application will be submitted by the Aliens Police, the Royal Netherlands Military Constabulary or the Immigration and Naturalisation Service. The Custodial Institutions Service [*Dienst Justitiële Inrichtingen (DJI)*] (DV&O), which is part of the Ministry of Justice, is responsible for transportation of the foreign national to be removed to his place of departure from the Netherlands. For a description of the (government) agencies, see Appendix 1.

#### *Problems encountered with forced departure*

Government experts and the national network observe a number of problems in relation to forced departure.

For example, in practice, removal is only possible when the identity and nationality of a foreign national have been established and when the foreign national has a valid passport or another valid travel document. If a foreign national does not cooperate in the determination of his identity and nationality, travel documents will be difficult to obtain. Incidentally, according to some, the determination of a foreign national's identity and nationality does not guarantee that travel documents will be obtained. After all, according to Franssen and Groenendijk, there are instances where certain countries do not want their own subjects back or are not willing to cooperate in the provision of travel documents (Franssen; Groenendijk: 2005, p.569). The Return Memorandum states that the countries of origin recognise their international obligation to accept the return of their own subjects (TK: 2003b). Therefore, this is the standpoint that the Dutch government stands by.

Refugee Organisations in the Netherlands (VON) raise the problem of the violation of the non-refoulement principle. According to VON the issues of Democratic Republic of Congo (DRC) and Syria are examples in which violation of the non-refoulement principle has been the case. According to VON these were situations in which foreign nationals were in danger as the authorities in the countries of origin learned that the foreign nationals in question had applied for asylum in the Netherlands. The Dutch Cabinet however has a different opinion on these matters.

The Cabinet generally remarks – in reaction to the conclusions of the final report of the Commission 'factual investigation into removals to the Democratic Republic of Congo' – that the Dutch foreign nationals policy, which asylum policy and return policy are a part of, is in accordance with international treaties and substantiated with sufficient safeguards (TK: 2006d). The Netherlands attaches great importance to prevent violation of the non-refoulement principle. The Cabinet also remarks that the Commission states - in general terms - that the Dutch Aliens Act and its regulations (which contains a provision for article 3 ECHR) has provided in a procedure in which is investigated if the person involved has to fear prosecution by the authorities of his country of origin (which in case makes return impossible), before the return of the asylum seeker is at hand. Only when irrevocably is established that the foreign national involved will not get a residence permit on asylum grounds and when the foreign national involved has not yet departed independently, develops the power to remove the foreign national (TK: 2006d). More focussed on the issue of the DRC the Cabinet observes that, according to the Country Report DRC [*Algemeen*



*Ambtsbericht DRC*<sup>44</sup>, a number of independent sources indicate that the fact that someone has applied for asylum is not considered a problem in the DRC and, as such, is not a reason for arrest by the *Direction Générale de Migration Congolaise* (DGM), even if this information were known (TK: 2006d).

A third problem raised is that the group of individuals who are forced to leave as part of the Return Project includes individuals who have integrated into Dutch society as a result of their years of residence in the Netherlands. Part of Dutch society considers it inhumane to force this group to leave at this stage. This problem is also raised by VON (also see Section 3.1).

A fourth problem, which is raised by government experts, is the problem that war criminals (so-called '1F-ers') cannot be removed by the Dutch government to their country of origin when there is a risk of possible violation of Article 3 ECHR, even though they are not permitted lawful residence either.

#### *Deterring the evasion of return*

There are two different ways in which immigrants are deterred from evading return:

- a. Discontinuation of provisions;
- b. Placement in alien detention locations.

#### *a. Discontinuation of provisions*

One way to deter asylum seekers who have exhausted all legal remedies from evading the departure imposed on them by means of a decision is to stop the provisions granted to them by government (reception, allowance and medical insurance). If, after the expiry of the departure period, it is observed that a foreign national has not yet left at his own volition, and no documents are available to facilitate the foreign national's removal from the Netherlands at that stage, COA will proceed to discontinue the provisions provided by the government, and the police will be asked to clear the accommodation.

An asylum seeker who has exhausted all legal remedies will then be removed from the reception facility by the police, with force if necessary (Olde Monnikhof; Vreede: 2004, p. 55-56, 93). The discontinuation of the government provisions will follow, by operation of law, from unlawful residence in the Netherlands. The underlying idea is that a foreign national will be more inclined to opt for independent departure if he is no longer receiving any provisions and becomes an illegal immigrant and may end up on the street. Therefore, COA informs foreign nationals about the negative consequences of life as an illegal immigrant.

Various respondents were interviewed in the publication entitled 'return policy for rejected asylum seekers. Evaluation of return policy '99 and return policy under the Aliens Act 2000' [*Terugkeerbeleid voor afgewezen asielzoeker. Evaluatie van het Terugkeerbeleid '99 en het terugkeerbeleid onder de Vw 2000*]. These respondents see the discontinuation of provisions as an appropriate tool for the promotion of independent departure. However, the problem lies with the enforcement of this tool. If the discontinuation of provisions is not enforced, this will send the wrong signal to

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<sup>44</sup> Formulated by the Ministry of Foreign Affairs, dated 30 September 2005, page 27, further to the debate in the House of Representatives on 23 June 2005.

foreign nationals. In a number of cases, against national policy, municipalities and churches are taking over reception from COA.

Work has been made of the enforcement of this tool since the Phased Plan 2000 [*Stappenplan 2000*], but only really took off in 2004. One important problem about discontinuing provisions is the lack of support for this from society (Olde Monnikhof; Vreede: 2004, p.64).

The discontinuation of provisions is not always followed by a foreign national's actual departure. Some asylum seekers consider existence as an illegal immigrant as more attractive than an existence in their country of origin. Young men are more likely to decide to become illegal immigrants. Women, old people and families with children are the groups most unlikely to opt to become illegal immigrants (Olde Monnikhof; Vreede: 2004, p.70-71).

#### *b. Placement in alien detention locations*

Another way to deter illegal immigrants from trying to evade departure is to detain them or to impose another custodial measure or liberty-restricting measure (see Section 4.3.2).

Placement in alien detention locations is only possible when foreign nationals fail to cooperate in their departure and only where there is a likelihood of removal.<sup>45</sup>

Detention must also be demanded in the interest of public order or national security. For example, this might be a situation where there is a suspicion that the foreign national will evade supervision (Aliens Act implementation guidelines A6). The Netherlands does not have a maximum term for placement in detention locations. Detention may continue while removal remains likely. This is subject to judicial review.

The Immigration and Naturalisation Service indicates that, in 2005, it had been possible to proceed with actual removal in approximately 60% of all cases in which foreign nationals had been detained. In the remaining 40% of cases, the detention measure was lifted and it was not subsequently possible to proceed with removal.

#### *Removal orders*

The Netherlands does not have separate removal orders. Nor does it have any separate return decisions. Both are included in the decision with multiple consequences [*meeromvattende beschikking*], which will be elaborated on in the section below.

### **4.3.1 Procedures of forced departure**

#### *Standardised procedures*

For details of the standardised procedures for forced departure, see the return actions for forced departure in Section 4.1.2.

#### *Decision with multiple consequences*

Dutch legislation distinguishes between a return decision [*besluit tot vertrek*] (*de jure*) and a forced (*de facto*) return (IOM: 2004b, p. 256). An immigrant will receive the return decision as part of the decision with multiple consequences, in which his residence permit application is rejected. The Netherlands does not have a separate

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<sup>45</sup> In some cases, a foreign national may also be detained if he does cooperate in his departure. For example, this would apply when the foreign national in question has criminal antecedents or if it is anticipated that removal can take place in the very short term.

return decision. Nor does it have a separate removal order. This too has been included in the decision with multiple consequences.

A decision with multiple consequences is a negative (or a positive) decision on a residence permit, which automatically has a number of other consequences. One automatic consequence of a negative decision is that the foreign national in question must leave the Netherlands of his own accord within four weeks. If he fails to do this, he may be removed – without the need for a separate decision. Contrary to the Aliens Act 1994, no removal order is necessary anymore. A decision with multiple consequences by the Immigration and Naturalisation Service also provides grounds for eviction from the home in order to terminate reception (the asylum procedure). The introduction of decisions with multiple consequences has released the reception provider from the obligation to obtain grounds for eviction from the court (Olde Monnikhof; De Vreede: 2004, p. 58).

#### *Illegal stay and statutory obligation*

A foreign national whose lawful residence has ended must generally leave the Netherlands within four weeks (departure period), under Article 62(1) of the Aliens Act. This four-week departure period will commence once lawful residence has ended under Article 8 of the Aliens Act. The foreign national will be expected to leave the Netherlands of his own accord during this period. If the foreign national fails to comply with this obligation, he may be removed (Aliens Act implementation guidelines A4/3.1). In the case of a foreign national who has never had lawful residence in the Netherlands and who has, thus, gained access to the Netherlands illegally, no departure period applies. So, these foreign nationals must leave the Netherlands immediately (Aliens Act implementation guidelines A4/3.4). They will not receive a decision with multiple consequences in this respect.

#### *Content of the decision with multiple consequences*

A decision with multiple consequences is a decision in accordance with the General Administrative Law Act [*Algemene wet bestuursrecht (Awb)*]. In the case of rejection, this decision states that the application of the residence permit applicant in question has not been granted and the reason for the rejection. The decision also states that the individual in question has the legal obligation to leave the Netherlands of his own accord within four weeks. This decision also includes the legal remedies available for the residence permit applicant.

#### *Statutory departure period*

Under the Aliens Act 2000, a four-week departure period usually commences after each negative decision or court ruling. If the appropriate legal remedy has been submitted on time – within the period applicable (in most cases four weeks) – and the decision on this remedy can be awaited in the Netherlands, this departure period will be deferred. If the departure period is not deferred, the reception provisions will lapse following the expiry of the departure period, by operation of law (Olde Monnikhof; Vreede: 2004, p. 58). After this four-week period, the foreign national may be removed. A decision with multiple consequences does not indicate a time or date at which removal will actually be effected. The decision states that the foreign national may be removed following the expiry of the four-week departure period. The decision with multiple consequences does not indicate which country the foreign national must leave for, just that he must leave the Netherlands (Olde Monnikhof; Vreede: 2004, p.

91). Nor does the order indicate which country removal will occur to, where relevant. Pursuant to Dutch legislation and regulations, removal may be effected to the foreign national's country of origin or to a third country where the foreign national's entry is assured.

#### *Language used for a decision with multiple consequences*

In a standard procedure, a decision with multiple consequences is sent to the foreign national in question, or his lawyer, by (registered) post. In an asylum procedure, the Aliens Police issue the decision to the foreign national if no counsel is known. The decision is not accompanied by a written translation in a language the foreign national may be expected to understand.

#### *Suspension of return*

As already indicated above, foreign nationals have four weeks to leave the country of their own accord after a negative decision. This period can be postponed by lodging an objection or appeal and/or by lodging and/or the granting of provisional relief by the court. Suspension may also be granted due to medical impediments. A suspension will also be granted if an indication or otherwise reveals that a foreign authority is requesting the detection (and arrest for extradition) of a foreign national or if the foreign national in question has been arrested as the suspect of a criminal offence, or against whom criminal proceedings have been instituted in relation to a criminal offence, or who has been sentenced to a non-suspended prison sentence, or on whom a custodial measure has been imposed (Aliens Act implementation guidelines A4/6.2). For the judicial authority (the Immigration and Naturalisation Service and the foreign nationals sections) this suspension period means an increase in their workload, since more procedures must be settled and medical advice must be obtained, etc.

#### *Proof of the postponement of departure*

If a foreign national objects to a decision in which he is denied further residence, his residence document will not be withheld if removal is not effected. In this situation, a sticker will be placed in the foreign national's passport: "*Verblijfsaantekeningen Vervolgprocedures*" (Aliens Act implementation guidelines B1/4.7).

Foreign nationals who are awaiting a decision or a judicial decision on a (permanent or) temporary asylum residence permit will receive a so-called W document. The other foreign nationals with lawful residence (see Section 2.3.1), as referred to in Article 8 (f) or (g) of the Aliens Act will receive a sticker "*Verblijfsaantekeningen Algemeen*" in their passports. Added to this, the other foreign nationals with lawful residence, as referred to in Article 8(h) of the Aliens Act will receive a sticker "*Verblijfsaantekeningen Vervolgprocedures*". These endorsements are valid for up to six months. If the validity of the endorsement expires before a decision has been taken on the application, objection or appeal, the endorsement in question can be added again, with a validity of up to six months (Regulations on aliens (VV) 2000: Article 3.3).

If removal is temporarily not effected due to medical impediments (due to the successful invocation of Article 64 of the Aliens Act), the Aliens Police will place a sticker "*Verblijfsaantekeningen Algemeen*" in the foreign national's passport, stating the duration of the suspension of departure. If the foreign national does not have a passport, he will receive a letter or a W2 document, depending on the duration of the

application of Article 64 of the Aliens Act (Aliens Act implementation guidelines A4/7.3).

#### *Deviations applicable for not effecting departure*

A foreign national who has been granted lawful residence will not be expected to leave the Netherlands. Foreign nationals who are residing unlawfully in the Netherlands will have the obligation and responsibility to leave the Netherlands within a certain period or immediately. There are no reasons to deviate from the above, other than the reasons applicable for the temporary suspension of departure, as already indicated above.

#### **4.3.2 Detention**

##### *Current practice for liberty-restricting measures and custodial measures*

In order to realise its supervisory and departure-related tasks, the Dutch government can utilise liberty-restricting measures and custodial measures.

The restriction and deprivation of liberty are only permissible on the basis of a statutory provision. Due to their drastic nature, the application of a liberty-restricting measure or custodial measure must only be used where absolutely necessary. It must always be ascertained whether a lighter remedy would be sufficient. The principles of proportionality (suitability) and subsidiarity (application of a lighter remedy) must continually be observed. Moreover, the implementation of these remedies is covered by strict guarantees. The restriction and deprivation of liberty may not be applied solely on the basis of considerations of a general nature. This must be related to facts and/or circumstances that relate to the person of the foreign national. The interests of public order and national security must always be carefully assessed against the individual interests of the foreign national in question. A foreign national can lodge an appeal against a decision to impose a liberty-restricting measure or custodial measure with the court (Aliens Act implementation guidelines A6/1). Legal protection is in line with the requirements of Article 5 of the ECHR.

##### *Placement in a detention location in accordance with Article 59 of the Aliens Act*

Placement in a detention location is a measure that is designed to effect the removal of a foreign national. Article 59 of the Aliens Act makes it possible to detain foreign nationals for this purpose. Article 59 (1) of this Act determines that the Minister for Immigration and Integration can detain a foreign national in the interests of public order or national security.<sup>46</sup> Article 59 (2) determines that if the documents necessary for the return of a foreign national are available, or will be available within a short period of time, it will be considered in the interest of public order to demand the detention of the foreign national, except where the foreign national has lawful residence.<sup>47</sup> The documents referred to above are a passport, laissez-passer (or other valid border crossing documents) or a claim against a passenger carrier. The phrase ‘will be available within a short period of time’ refers, for example, to a situation where the diplomatic representation from the foreign national’s country of origin has held out the prospect of a replacement border crossing document. Before a foreign national can be detained under Article 59 of the Aliens Act, he will be heard

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<sup>46</sup> This concerns foreign nationals who are residing in the Netherlands illegally and foreign nationals who are residing in the Netherlands legally in the sense of Article 8 (f), (g) and (h) of the Aliens Act.

<sup>47</sup> Lawful residence in the sense of Article 8 (a to e inclusive) and (1) of the Aliens Act.

in the presence of his lawyer and he will be issued with a copy of the measure (Aliens Act implementation guidelines A6/5.3).

Such detention of foreign nationals occurs in the Detention centre for foreign nationals awaiting removal in Amsterdam, the removal centres at Schiphol and Rotterdam Airport, standard detention centres (remand prisons) and the detention boats in Rotterdam. There are currently two forms of placement in a detention location for foreign nationals, each with its own regime: on the one hand, implementation on the basis of the Prisons Act [*Penitentiare Beginnselenwet (PBW)*] and applied in respect of adult illegal immigrants without minors and, on the other hand, implementation on the basis of the Border Holding Area Regime Regulations that is applicable to adults, but also to the detention of immigrant parents and their minor children (MinJus: 2005, p. 31). In research into the return possibilities of foreign nationals in detention locations, Van Kalmthout (2005) concludes that achieving the return of foreign nationals in detention locations in the Netherlands is very difficult.

#### *Parents with minor children in detention locations*

In 2005, the inspection service for the implementation of sanctions [*Inspectie voor Sanctietoepassing*] at the Ministry of Justice conducted research into parents with minors in detention locations (MinJus: 2005). This research was conducted at the Detention Centre for foreign nationals awaiting removal [*Grenshospitium (GH)*] and the removal centre at Rotterdam Airport [*Uitzetcentrum Rotterdam Airport (UCR)*]. This research revealed the following:

The Detention Centre for foreign nationals awaiting removal is intended for the reception of men, women and children. This primarily concerns detained foreign nationals who have been refused entry under Article 3 of the Aliens Act, or under Article 13 in conjunction with Article 5 of the Borders Code bye-law [*Verordening "Borderscode"*]. The Detention centre for foreign nationals awaiting removal falls under the Border Holding Area Regime Regulations and is a lenient regime with a relatively high level of freedom of movement for residents. The Detention centre for foreign nationals awaiting removal has a separate department for families. Of the centre's 120 places, 48 are available for this purpose. The length of stay for (a) parent(s) with minor children varies from several days to almost a year and averages at approximately three months (MinJus: 2005, p. 14-15).

The removal centre at Rotterdam Airport is part of the detention centres system of Rotterdam. The regime in place at the removal centre at Rotterdam Airport is also based on the above-mentioned Border Holding Area Regime Regulations. The removal centre at Rotterdam Airport is chiefly used for foreign nationals who have been detained under Article 59 of the Aliens Act, with the object of removing them from the country. In 2005, the removal centre at Rotterdam Airport had 198 places. For families, the removal centre at Rotterdam Airport chiefly has one department consisting of 36 places. The average length of stay for (a) parent(s) with minor children is 14 days (MinJus: 2005, p. 14-15).

The policy at both the Detention Centre for foreign nationals awaiting removal and the removal centre at Rotterdam Airport is to place families together. At both the Detention Centre for foreign nationals awaiting removal and the removal centre at

Rotterdam Airport, families have access to private living accommodation. Larger families with more than four adults or older children cannot be placed together. However, the living accommodation in the residential areas is limited, and the areas should be considered more as night accommodation. During the day programme, family life occurs mainly in the communal areas, which can be used by a number of families simultaneously (MinJus: 2005, p. 33-40).

At both the Detention Centre for foreign nationals awaiting removal and the removal centre at Rotterdam Airport, the inspection service for the implementation of sanctions has put provisions in place that bear in mind the presence of children. Both sites have a varied range of toys for young children. Possibilities are more limited for older children. Given the restricted nature of their stay in the institution, freedom of movement for both adults and children is limited. At both the Detention Centre for foreign nationals awaiting removal and the removal centre at Rotterdam Airport, specific attention has been given to the possibility for children to play with other children (outside). The material provisions put in place in this respect are satisfactory, although there are more possibilities in the Detention Centre for foreign nationals awaiting removal. At both the Detention Centre for foreign nationals awaiting removal and the removal centre at Rotterdam Airport, parents and children can be together outside (MinJus: 2005, p. 33-40).

At both the Detention Centre for foreign nationals awaiting removal and the removal centre at Rotterdam Airport, sufficient possibilities exist for contact between minors. Both the Detention Centre for foreign nationals awaiting removal and the removal centre at Rotterdam Airport have childcare facilities. Education is available to a limited extent in the Detention Centre for foreign nationals awaiting removal and is of an elementary nature (MinJus: 2005, p. 33-40). The removal centre at Rotterdam Airport has had a teacher since December 2005.

Generally, in the institutions inspected, explicit consideration is given to the presence of parents and minors. They are treated with respect and both material and immaterial provisions are available specifically for parents with minors. However, none of the provisions of the Border Holding Area Regime Regulations focus on minors and/or their parents. The provisions observed by the Inspectorate specifically for parents and minors are primarily the result of generally-accepted opinion in the Dutch system of how to treat people humanely who are living in a forced setting (MinJus: 2005, p. 31).

The inspectorate is of the opinion that neither the Detention Centre for foreign nationals awaiting removal nor the removal centre at Rotterdam Airport is an appropriate environment for a detention stay for minors. This particularly applies for older children with a greater awareness of the circumstances and environment in which they find themselves; the environment of the institutions inspected is too limitative for this and is insufficiently challenging, particularly in the case of a stay in excess of four weeks (MinJus: 2005, p. 31).

There has been considerable social discussion on the subject of children in detention locations in recent years, and this discussion continues today. A recent collection of criticism of current policy on children in detention locations can be found in the black book '*Kinderen horen niet in vreemdelingenbewing*' ('children don't belong in

detention locations') by *Stichting Een Royaal Gebaar* (2006). The report by the inspection service for the implementation of sanctions (MinJus: 2005) prompted a political discussion and resulted in the carrying of a motion by the House of Representatives in which the government is requested to carefully consider alternative forms of reception for parents with minors in detention locations (TK: 2005d). On 27 June 2006, in a letter written to the House of Representatives in response to this motion, the Minister for Immigration and Integration undertook to see whether it is possible to detain one parent and suffice with a duty to report for the other parent and children (TK: 2006c). Further to this letter, a number of collaborative social organisations, including Amnesty International, Unicef and *Stichting INLIA*, sent a letter to the Minister for Immigration and Integration in which they allege that the approach in place for the detention of families is different in practice than suggested by the Minister for Immigration and Integration in her letter (Tilborg: 2006).

#### *Alternatives for alien detention under Article 59 of the Aliens Act*

In the Netherlands, there are alternatives to alien detention under Article 59 of the Aliens Act, according to which foreign nationals without lawful residence are supervised (Aliens Act implementation guidelines A6). These measures are indicated below.

#### *Custodial measures*

Besides alien detention under Article 59 of the Aliens Act, the Aliens Act also has three other custodial measures:

- The detainment of foreign nationals who have been refused entry, in a designated area or place that has been secured against unauthorised departure (Article (1) and (2) of the Aliens Act);
- The transfer of individuals (who have been stopped) (Article 50 (2), (3) and (4) of the Aliens Act);
- The detainment of foreign nationals whose asylum applications have been rejected, in a certain area or place that has been secured against unauthorised departure (Article 58 of the Aliens Act).

#### *Liberty-restricting measures*

The Aliens Act includes five liberty-restricting measures:

- The detention of foreign nationals to whom entry has been refused, in a designated area or place (in principle, in the international lounge at the airport in question) (Article 6 (1) of the Aliens Act);
- Stopping and detaining individuals in order to establish their identities, nationalities and residential status (Article 50 (1) of the Aliens Act);
- Holding foreign nationals with lawful residence available under Article 8 (f) of the Aliens Act (Article 55 of the Aliens Act) in a place designated for this purpose;
- Restricting the freedom of movement of foreign nationals where this is in the interest of public order or national security (Article 56 of the Aliens Act);
- The detention of foreign nationals whose asylum applications have been rejected, in a certain area or place (Article 57 of the Aliens Act).

#### *Duty to report*

Foreign nationals who do not have lawful residence and who are awaiting the actual possibility of departure or removal may have a duty to report imposed on them by the commissioner of police of the regional police force in the municipality in which the



foreign nationals in question are residing (Aliens Act implementation guidelines A3/3.7). This will be a weekly duty to report, except where an alternative period is decided on or an exemption is granted. The duty to report for foreign nationals who have been served with a final departure order will apply provided the departure period has not yet expired. If a foreign national fails to observe the duty to report, despite being obliged to do so, this may be an indication that he has left the country or has permanently removed himself from supervision.

#### *Actions relating to documents*

In performance of their duties, officers responsible for border control and officers responsible for the supervision of foreign nationals have the authority to withdraw, temporarily confiscate and endorse individuals' travel documents and identity documents. In itself, the temporary confiscation of documents is not a measure designed to counteract unauthorised departure, but functions as an additional measure to the duty to report in this context. In principle, this measure is intended to accomplish removal, amongst other things. The confiscation of a border crossing document or the residence permit will, in any case, be permitted where necessary with a view to the removal or hand-over of the immigrant to foreign border authorities. All documents confiscated must be returned to foreign nationals if they indicate their wish to leave the Netherlands and do actually do so. In the case of removal, travel and identity documents can be transferred to the individual responsible for border control in the country to which admission is assured.

#### *Detention centres for removal*

Foreign nationals who are awaiting departure are placed in the detention centres, removal centres or detention boats intended for this purpose. They are not placed in normal penal institutions intended for criminal detainees (anymore). In its annual report for 2005, the Custodial Institutions Service states that it had started, in 2005, to transfer foreign nationals awaiting removal, from institutions that are part of the prison system to detention centres. This process will be completed during the course of 2006 (DJI: 2006, p. 21).

#### *Maximum detention period*

The Act has not stipulated any statutory maximum period for the liberty-restricting measure or the custodial measure under Article 6 of the Aliens Act. The measure and length of the measure will be reviewed by the court within 42 days. The court will then consider whether the measure complies with the object applicable and whether the measure is justified, based on a consideration of the interests involved (Aliens Act implementation guidelines A6/2.7).

The duration of the liberty-restricting measure and the custodial measure under Articles 57 and 58 of the Aliens Act is not subject to a specific period (Aliens Act implementation guidelines A6 / 5.2.4). Measures may not be permitted to last any longer than strictly necessary with a view to the object in question (removal). Given this fact, the commissioner of police will have to put every measure in place to ensure removal in the shortest term possible. Once grounds for the application of the measure in Article 57 or 58 of the Aliens Act no longer exist, the commissioner of police will lift this measure. The measure can also be lifted by the court.

Article 59 (4) of the Aliens Act indicates how long alien detention is permitted under Article 59. No statutory period applies here either. However, the following does apply for special categories:

- a. if a residence permit application is pending, detention must be limited to just four weeks (as the foreign national has lawful residence and the main rule is that there is no detention in the case of lawful residence);
- b. if an asylum application is pending, detention must be limited to a maximum of just six weeks (as the foreign national has lawful residence);
- c. four weeks in the case of foreign nationals who have been detained under Article 59 (2) of the Aliens Act.

The period indicated under a and b will commence on the date on which an application is received by the administrative body and will end on the date on which the decision is announced. If detention continues, the interest of the foreign national's release increases.

Court case law usually assumes that, after six months of detention, a foreign national's interest in being released generally outweighs the general interest of detaining the foreign national for the purpose of removal. However, under certain circumstances, this period may be longer or shorter. The six-month period can be exceeded if the following applies, for example:

- a. pronouncement of undesirability or serious criminal antecedents;
- b. frustration by the foreign national of the investigation into the determination of his identity or nationality;
- c. the fact that, after detention, the foreign national has instituted one or more proceedings in order to obtain a residence permit, with the apparent objective of delaying removal or delaying issue of a travel document;
- d. the fact that once the period of six months has expired, there is a probability bordering on certainty that the foreign national will be removed in the short term.

Furthermore, detention may not last any longer than strictly necessary with a view to the object of this measure. The following may be grounds not to use detention locations or to discontinue the use of detention locations:

- a. private individuals or organisations who can be considered reliable guarantee that they will house the foreign national throughout the period in which a decision is yet to be made on his removal or during which removal cannot yet be effected;
- b. there is no prospect of the possibility to remove the foreign national;
- c. the foreign national has a demonstrable fixed domicile or residence in the Netherlands;
- d. a lighter measure can be used.

#### *Decision to impose alien detention*

The Aliens Police or Royal Netherlands Military Constabulary decide on the imposition of a custodial measure on behalf of the Minister for Immigration and Integration (administrative authority). In accordance with Article 94 of the Aliens Act, the Immigration and Naturalisation Service, on behalf of the Minister, will notify the court (legal authority) of this decision by the 28<sup>th</sup> day after the announcement of a decision to impose a custodial measure as referred to in Articles 6, 58 and 59 of the Aliens Act, except where the immigrant himself has lodged an appeal before this date. As soon as the court has received the notification, the foreign national will be

deemed to have appealed against the decision to impose a custodial measure. The appeal will also serve as a request for the awarding of compensation.

The court will immediately decide on the date of the examination in court. The hearing will occur by the 14<sup>th</sup> day after receipt of the notice of appeal or notification. The court summons the foreign national and the Minister for Immigration and Integration to be heard. The court will deliver its judgment orally or in writing. A written judgment will be issued within seven days of the closing of the examination. If the court is of the opinion, on the appeal, that the application or implementation of the measure is contrary to this Act, or, upon consideration of all of the various interests, cannot reasonably be justified, it will uphold the appeal. In this situation, the court will order the lifting of the measure or changes to the way in which it is implemented (Aliens Act implementation guidelines A6/6). An appeal can be lodged against the court's judgement within one week, to the Administrative Law Division of the Council of State.

#### **4.3.3 Transport and removal measures**

Foreign nationals without lawful residence in the Netherlands may be removed individually or as part of a group after the expiry of the departure period. In the case of group removal, groups of immigrants are removed by means of charter flights arranged by the government. An advance party from the Immigration and Naturalisation Service and the Royal Netherlands Military Constabulary prepares arrival. These flights may also be arranged in collaboration with other European countries. Group removal is also used for large groups of illegal immigrants apprehended as part of police sweeps (police actions in which large groups of illegal immigrants are picked up where they are working or living).

Individual or group removal may be supervised or unsupervised. Generally, supervised removal entails supervision by the Royal Netherlands Military Constabulary. Foreign nationals are supervised by the Royal Netherlands Military Constabulary when serious resistance is expected, which could jeopardise the safety of the passengers in the plane. Medical complaints may also prompt supervision. Supervision may also be effected in the form of interpreters.

The Royal Netherlands Military Constabulary indicates that the success of the methods used is indeed measured on the basis of figures. Table 7 provides an overview of the number of immigrant removals effected with and without Royal Netherlands Military Constabulary supervision.

Table 7. Number of removals by the Royal Netherlands Military Constabulary, at airports and seaports

	<b>2003</b>	<b>2004</b>	<b>2005</b>
Removals	15,697	13,057	11,873
- supervised	1,648	1,420	2,029
- unsupervised	14,049	11,637	9,844

Source: SCV

### *Aids used for removal*

Occasionally, foreign nationals resist removal. In order to tackle this situation, the Royal Netherlands Military Constabulary is permitted to use certain coercive measures. The following aids may be used, either separately or in combination:

- Steel handcuffs: to secure hands and/or feet;
- Combination belt with handcuffs: to secure an individual's wrists to the front of the body, with the possibility of attachment to the ankles;
- Velcro fastening: to secure hands and/or feet;
- Tie-raps: plastic binding strips to secure hands and/or feet;
- Foam helmet: a helmet that is used to prevent a foreign national from injuring himself or others by biting, for example (Aliens Act implementation guidelines A4/6.6).

Strict conditions apply for the use of these aids.

### *Training in the actual removal of foreign nationals*

Royal Netherlands Military Constabulary staff receive special, professional training in the actual removal of foreign nationals, in the form of the so-called 'training removal-officer' [*Opleiding Verwijder Ambtenaar (OVA)*]. Staff are trained separately on the use of the coercive measure referred to as the 'body cuff', a new version of the combination belt with handcuffs. The body cuff was introduced in 2006.

There is currently no joint European training. This may occur in the future, under the aegis of Frontex.

### *Medical impediments to removal*

Article 64 of the Aliens Act lays down that removal must not be effected while it is not wise to travel, given the state of the health of a foreign national or one of the members of his family. The invocation of Article 64 of the Aliens Act is an application in the sense of the General Administrative Law Act. Applications of this nature are submitted in writing to the Immigration and Naturalisation Service and must always be supported by all data and documents necessary for the assessment of the question of whether removal can be effected given the health of the individual in question. In most cases, the Immigration and Naturalisation Service will approach the medical adviser for the Medical Assessment Section [*Bureau Medische Advisering (BMA)*]. The submission of an application for the application of Article 64 of the Aliens Act does not defer the foreign national's obligation to leave the country. During the investigation and processing of applications, the foreign national in question does not have lawful residence. However, in principle, the power of removal will not be used, while no decision has been made on an application.

If, according to the Immigration and Naturalisation Service, there are no travel impediments, the application will be rejected and the obligation to leave the country and the power of removal will not be deferred. If there are travel impediments, the application will be granted and the obligation to leave the country and the power of removal will be deferred in accordance with the Act. The Immigration and Naturalisation Service will inform the Aliens Police, the Seaport Police and/or the Royal Netherlands Military Constabulary that the removal will temporarily not be effected. In principle, the duration of the deferment is equal to the period in which it is expected that the medical impediments will apply, with a maximum of half a year.

The foreign national and family will have lawful residence during this period (Aliens Act implementation guidelines A4/7.1 up to and including 7.5).

#### *Relations with passenger carriers*

In accordance with Article 65 of the Aliens Act, the carrier of a foreign national who has been refused entry is obliged to return him to his country of origin, or any other country to which his entry is assured. With the implementation of the EC Directive on Carriers' Responsibilities in 2004, the costs involved in the accommodation of a foreign national at Schiphol can be recovered from the carrier too (IOM: 2004b, p. 258). The return obligation applies to the foreign national, who will be expected to leave the Netherlands immediately, or who has been apprehended within six months of arrival, with a view to removal.

#### *Experiences with air transport and the IATA guidelines*

The researchers have not found any public information on experiences with air transport and IATA guidelines on "Removal and Escort".

### **4.3.4 Sustainability of forced departure**

#### *Registration of removed foreign nationals*

Foreign nationals who are removed from the Netherlands are registered in OPS<sup>48</sup> and/or in (N)SIS<sup>49</sup> as 'OVR' or as 'ONGEW'. Foreign nationals who are registered as 'OVR' have been detected for the purpose of refusal of access. Foreign nationals who are registered as 'ONGEW' are foreign nationals who have been pronounced undesirable (in accordance with Article 67 of the Aliens Act) (Aliens Act implementation guidelines A3/9.1 and 9.2). The identification 'OVR' is a special instruction from the Minister for Immigration and Integration to officers responsible for border control and the supervision of foreign nationals, which is issued in the interest of public order or national security. Foreign nationals described as undesirable are not permitted residence in the free period. Foreign nationals described as 'ONGEW' have been pronounced undesirable by decision of the Minister for Immigration and Integration (in accordance with Article 67 of the Aliens Act) and cannot have any lawful residence in the Netherlands, which means that these foreign nationals will not be permitted to enter or reside in the Netherlands while the pronouncement of undesirability remains in force. Foreign nationals who are residing in the Netherlands or who are returning to the Netherlands while knowing, or having serious reason to suspect, that he has been pronounced undesirable is guilty of a crime (Aliens Act implementation guidelines A3/9.1 and 9.2).

#### *Experiences with re-entry bans*

In principle, foreign nationals who are encountered in the context of border control and who have been identified, will be refused entry to the Netherlands. Foreign nationals who are encountered in the context of domestic immigrant supervision can

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<sup>48</sup>The OPS contains identifications in respect of the Aliens Act. Other identifications in the OPS relate to the enforcement of sentences and the apprehension of or bringing before the public prosecutor of individuals who are suspected of an offence. The enforcement of these identifications does not fall under implementation of the Aliens Act.

<sup>49</sup> This is the joint investigation system that was built in implementation of the Schengen Agreement, which provides for the abolition of checks at internal borders in the Schengen countries. The central computer, to which each Schengen country has a connection (for the Netherlands, this is the (N)SIS), is in Strasbourg and can be consulted by all of the Schengen countries. The (N)SIS is a system that operates in addition to the other systems (such as the OPS). The (N)SIS does not replace other national systems.

be transferred to a police station or to a Royal Netherlands Military Constabulary brigade. The starting point of identification is that the foreign national in question must be removed from the Netherlands. Therefore, this removal must be effected as soon as possible (Aliens Act implementation guidelines A3/9.3).

The Aliens Police, the Seaport Police or the Royal Netherlands Military Constabulary must always notify *Bureau SIRENE* at the National Police Agency [*Korps Landelijke Politiediensten (KLPD)*] of a ‘hit’. The *Bureau SIRENE Nederland* will then notify the Immigration and Naturalisation Service. *Bureau SIRENE* registers hits in the (N)SIS and records a number of details, including when the Immigration and Naturalisation Service will be starting an enquiry procedure in respect of a particular foreign national. After having made enquiries with the relevant Schengen state, the Immigration and Naturalisation Service will inform *Bureau SIRENE*. Incidentally, the Immigration and Naturalisation Service itself can also observe that a foreign national who has submitted an application for a residence permit has been identified in the (N)SIS by a Schengen State for the purpose of the refusal of entry. In the case of a positive decision, the Immigration and Naturalisation Service will request the identifying state to remove the identification from the (N)SIS. Where appropriate, the identifying country can add the individual in question to the national identification list (Aliens Act implementation guidelines A3/9.3 and 9.4).

#### *Termination of a re-entry ban*

The period for which the identification ‘OVR’ applies depends on the circumstances that prompt identification and can vary from two years for the removal of a non-criminal immigrant and ten years for an immigrant who is a threat to national security. The duration of the ‘ONGEW’ identification depends on an application for the lifting of a pronouncement of undesirability and the granting of this application (Aliens Act implementation guidelines A3/9.1 and 9.2).

The indications are subject to periods, which are terminated automatically, except where changes have occurred within the period in question and lead to a new identification or (premature) cancellation. Added to this, due to his identification in (N)SIS, the foreign national can lodge an appeal. This appeal may be aimed specifically at the improvement, removal or to being given access to the identification or to compensation. A foreign national may request the cancellation of an identification in the SIS with the state responsible for the identification. In the Netherlands, foreign nationals must approach the National Criminal Intelligence Department [*Dienst Nationale Recherche Informatie (DNRI)*] with a reasoned request of this nature. Requests for the cancellation of identifications added by the Netherlands and appeals submitted against rejection of cancellation requests are forwarded to and processed by the Immigration and Naturalisation Service. The Immigration and Naturalisation Service will decide on a request within four weeks of its receipt. An identification will be removed from the (N)SIS anyway once the identification period has expired. Thus, cancellation requests focus on cancellation before the identification period has expired. An identification can be lifted where circumstances have changed and prompt a cancellation.

This applies in the following cases at least:

- a. the basis for identification has lapsed (for example, because the pronouncement of undesirability has been lifted);
- b. the foreign national demonstrates that the identification is based on incorrect grounds;
- c. the foreign national is granted residence in the Netherlands;
- d. the foreign national is granted residence in another member state (Aliens Act implementation guidelines A3/9.6).

In themselves, humanitarian circumstances are not a reason to decide to cancel identification. In the case of short-term humanitarian circumstances, an identified immigrant can request entry to the Netherlands for a period of up to three months. If a foreign national invokes more long-term circumstances such as family life, or a fear of persecution in his country of origin, he will be expected to apply for a residence permit for the purpose in question. If a residence permit is granted, the identification must be cancelled (Aliens Act implementation guidelines A3/9.6).

An individual who is registered in the OPS has the right to submit a request to remove data from the system. The reasoned request must be addressed in writing to the National Criminal Intelligence Department. This request is forwarded to the Immigration and Naturalisation Service, which will decide on it in writing within four weeks of the request's receipt. An identification will be removed from the OPS once the identification period has expired. So, cancellation requests focus on cancellation before the identification period has expired. An identification in the OPS can be lifted if changed circumstances apply, thereby prompting cancellation. This applies in the following cases at least:

- a. the grounds for identification have lapsed (for example, because the pronouncement of undesirability has been lifted);
- b. the foreign national demonstrates that the identification rests on incorrect grounds;
- c. the foreign national is granted residence in the Netherlands (Aliens Act implementation guidelines A3/9.6).

Schengen Member States may decide to grant a foreign national access for short-term residence, despite the fact that the foreign national has been identified in the SIS for the purpose of refused entry. Entry for short-term residence can be granted for humanitarian reasons, for reasons of national importance or due to international obligations. Where circumstances of this nature apply, it will not be necessary to lift identification temporarily; instead, it can be decided to grant the foreign national entry for a period of up to three months, limited to Dutch territory. The other Member States must be notified of the entry granted. The following are some of the circumstances that may apply:

- a. serious family circumstances;
- b. testimony by the foreign national in (criminal) proceedings;
- c. entry by the foreign national for the purpose of his own legal proceedings (Aliens Act implementation guidelines A3/9.6).

## 4.4 Return assistance and return counselling

### **4.4.1 Return assistance and return counselling (general)**

In principle, return assistance and return counselling only applies for independent departure and remigration. Return assistance and return counselling do not apply in the case of forced departure. Wherever possible, foreign nationals who have exhausted all legal remedies are advised to utilise the possibility of independent departure.

### **4.4.2 Institutions responsible for return**

In the case of independent departure, the main institutions responsible are the Central Agency for the Reception of Asylum Seekers (COA) (only for asylum seekers (who have exhausted all legal remedies)) and the International Organisation for Migration (IOM). In the case of remigration, the Netherlands Migration Institute (NMI) in particular is responsible for return assistance and return counselling.

Ultimate (political) responsibility for the implementation of return policy, including return assistance and return counselling, lies with the Minister for Immigration and Integration.

### **4.4.3 Return counselling in more detail**

#### **COA**

COA will notify foreign nationals whose asylum applications have been rejected of their own responsibility to return. Added to this, COA will inform these foreign nationals of the activities expected of them by the Dutch government and about the support that can be obtained in this respect. COA will also point to the possibility of independent departure via IOM and the return schemes offered by IOM. Added to this, COA will support foreign nationals in their exploration of return in the form of return interviews and facilitate (course) provisions geared towards return to the foreign nationals' countries of origin (Olde Monnikhof; Vreede: 2004, p. 91-91). COA points out that there is little time or space for education or courses.

COA advises returnees to start to prepare for their return as soon as possible. This means: arranging identity papers, the trip back, arranging contacts in the country of origin, including accommodation, work opportunities or training opportunities (if possible). COA will start to advise an asylum seeker once he receives his first negative decision to his asylum application, or when an asylum seeker indicates that he would like to receive advice from the COA or IOM. To a certain extent, the advice provided by COA is standardised. Advice from COA is provided at certain fixed locations: at reception centres for return (return centres) and at the (two) departure centres where asylum seekers who have exhausted all legal remedies are placed who submitted their first asylum application before 1 April 2001 in the Netherlands.

COA not only has an advisory role. To a certain extent, it is also involved in exerting influence and supervision. The interviews held after receipt of the first negative decision are intended to show asylum seekers that return really is a matter at hand. These interviews are compulsory. This is a major difference with the interviews conducted at IOM (see below). The case manager at COA encounters far more resistance than applicable from foreign nationals who speak to IOM. After all, he speaks to foreign nationals who do not want to discuss return. Foreign nationals who



speak to IOM have already thought a lot about return and themselves initiate a meeting with IOM.

#### *IOM*

IOM provides information about independent departure, the conditions applicable for eligibility for financial schemes and the possibilities of reintegration. It is up to the individual migrant to decide whether or not to utilise the possibilities available from IOM. Independence and a voluntary approach based on an informed decision are paramount for IOM. Immigrants who have made the decision to return will be advised by staff at IOM on how to organise their return. Where necessary, IOM can also arrange help after a foreign national's arrival in his country of origin.

District officers from IOM operate consultancies in approximately 25 places in the Netherlands. In some cases, district officers visit immigrants in person too. Contact is often established by telephone.

#### *NMI*

For information about the NMI, see Sections 4.2.3, 4.2.5 and 4.2.6.

### **4.4.4 Return assistance in more detail**

#### *COA*

COA does not provide any post- arrival assistance. COA does offer a series of 'plus programmes'. These may include vocational training, skills training or the composition of a toolkit, etc. There are a number of projects in the Netherlands, which focus on return assistance and return training (often in collaboration with COA).<sup>50</sup>

#### *IOM*

IOM provides arrival assistance where required. IOM Migration primarily has experience with the provision of post-arrival assistance to minor returnees (minors cannot return via IOM if reception is not guaranteed by family or otherwise), victims of human trafficking and individuals with medical and/or psychological problems, and, in some countries, with special programmes (Afghanistan, Iraq, Sri Lanka). For information on the programmes provided by IOM, see Sections 4.2.3. and 4.2.6.

#### *Bureau Maatwerk bij Terugkeer*

For information on Bureau Maatwerk bij Terugkeer, see Sections 4.2.3 and 4.2.6.

#### *NMI*

For information on the NMI, see Sections 4.2.3, 4.2.5 and 4.2.6.

## 4.5 Identification and acquisition of travel documents

### **4.5.1 Determining nationality and identity**

An identity investigation and nationality investigation are conducted in relation to foreign nationals who are not in the possession of a passport. This occurs, for example, by hearing a foreign national and by comparing photographs. If there is any doubt about the nationality of the foreign national in question, it is possible, in special

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<sup>50</sup> [www.terugkeerloket.nl](http://www.terugkeerloket.nl)

cases, to conduct a language analysis via the Immigration and Naturalisation Service.

#### **4.5.2 Assistance in obtaining travel documents**

##### *Assistance from the Immigration and Naturalisation Service*

Foreign nationals who are expected to leave the Netherlands, but who do not have valid travel documents must ensure that they obtain these in good time. To this end, foreign nationals can approach their own diplomatic representation.

Where foreign nationals have done this and indicate that they have not been successful in obtaining replacement travel documents, they can approach the Immigration and Naturalisation Service for assistance and mediation in contacts with and/or any presentation to the diplomatic representation in question. Requests of this nature will be honoured by the Immigration and Naturalisation Service. For the sake of completeness, it is observed that, in practice, this means that, after a mediation request of this nature, the foreign national in question will be requested to submit an application for a laissez-passer with the Aliens Police. An application of this nature will serve as the starting point for the mediation procedure with the Immigration and Naturalisation Service (Aliens Act implementation guidelines A4/4.1).

Where foreign nationals do not utilise the possibility of independent departure and are not in the possession of travel documents assuring them entry to their country of destination and any onward journey through a third country, the border control officer or officer responsible for the supervision of foreign nationals can apply for a travel document (passport, laissez-passer, emergency travel document) and any (transit) visa required from the closest relevant foreign representation. An exception to the above is formed by cases in which immediate removal is possible by means of a hand-over to foreign border authorities or by placing the individual in question on board a boat or plane.

If the removal of a foreign national as referred to here cannot be effected in the manner prescribed, contact must be established with the Immigration and Naturalisation Service. For a limited number of nationalities, the application of replacement travel documents is arranged centrally through the mediation of the Immigration and Naturalisation Service (Aliens Act implementation guidelines A4/4.1). The Immigration and Naturalisation Service will attempt to obtain replacement travel documents via its contacts and/or possibly via a presentation to the diplomatic representation in question. All travel costs (plane ticket) for forced departure by means of removal are paid by the Immigration and Naturalisation Service.

##### *Assistance from IOM*

IOM also helps individuals to obtain travel documents. This does not include visas. Where necessary, IOM has the possibility to request waivers for transit visas. IOM has regular contacts with the embassies for the most important countries of origin and more ad-hoc contacts with other embassies. Agreements are made with some embassies on presentations by applicants. Costs incurred for travel documents can be reimbursed by IOM, based on the REAN scheme.

#### **4.5.3 Problems with identification and in obtaining travel documents**

In a number of cases, foreign nationals who are expected to leave the Netherlands do not have valid travel documents. In these cases, a passport-replacing travel document (*laissez-passer*) is required in order to effect their return. The procedure applicable for applications for *laissez-passers* varies per representation. Amongst other things, these differences relate to presentation in person or not, whether or not there is independent authority to decide on an application, investigation possibilities in the country of origin and the capacity and priority at the diplomatic representations.

Success in obtaining a positive response on time depends mainly on cooperation from the foreign national in question. A cooperative foreign national who provides the information required on his nationality and identity, preferably supported by (copy) documents, is generally issued with a travel document in practice. Operational practice shows that a large number of foreign nationals fail to cooperate, resulting in serious delays to the application procedure for a pass and the ultimate outcome often being negative.

The Immigration and Naturalisation Service has centralised the application procedure for *laissez-passers*. The advantage of doing this is that the diplomatic representations have a fixed point of contact, applications are streamlined from both a qualitative and quantitative point of view and a better insight is obtained in issue results. Finally, by developing country strategies, an attempt is being made to achieve better cooperation from foreign authorities.

#### **4.5.4 European and international cooperation**

The Netherlands does not have any international or bilateral agreements for European and international cooperation on identification and obtaining documents. However, this does form an intrinsic part of the return agreements and hand-over agreements entered into in a Benelux and EU context (see Section 5).

#### **4.5.5 Problems and conditions when issuing passports**

The biggest problems in relation to the issuance of passports occur in cases where foreign nationals have not provided the correct or incomplete personal details. If a foreign national's identity cannot be determined or proved, no *laissez-passer* will be issued and, as such, removal is not possible in these cases. In some cases, a travel document will only be issued if a foreign national indicates that he wishes to return voluntarily. Another problem is the often protracted duration of the identity investigation by the diplomatic representation. Given the differences between the application procedures for each country, the problems per country are different too.

#### **4.5.6 Informal procedures when obtaining documents**

No informal procedures apply for acquiring documents. Agreements have been made with the authorities from the various countries on the procedure applicable when applying for a *laissez-passer*. Although these have not always been recorded in writing, they are formal agreements.

#### **4.5.7 Removal of 'unknown' immigrants**

In practice, foreign nationals for whom neither the nationality nor identity can be determined are not removed. IOM observes that foreign nationals for whom just the

nationality is known are sometimes removed from the Netherlands (IOM: 2004b, p. 261).

**4.5.8 Biometric database for individuals who have been removed**

In cases where foreign nationals have been detained, fingerprints are taken. These are stored centrally in a database maintained by the National Criminal Intelligence Department (the Dactyloscopy Department).

## 5. Bilateral and Multilateral cooperation

### 5.1 Overview

The Netherlands focuses on bringing about and maintaining cooperative relations with countries of origin. In addition, cooperation is sought with receiving countries in the region. For this purpose, the first step is to examine whether it is possible, with or without the assistance of UNHCR or other like-minded Western countries, to work with these countries to improve protection together in the region. In the long term, the possibility of protecting asylum seekers in the region is also being examined. According to the Return Memorandum, Dutch efforts to return third-country nationals focus in particular on Afghanistan, Algeria, Angola, China, the Democratic Republic of Congo, Guinea, Iran, Nigeria, Serbia and Montenegro, Somalia and Syria. There is already a form of cooperation with these countries on the matter of return. Important criteria for the choice of these countries are on the one hand the number of immigrants of such nationalities without a right of residence, and on the other hand the estimate that the EU return policy in respect of that country will provide insufficient concrete results in the short term (TK: 2003b, p. 24). A form in which cooperation is laid down is the re-admission agreement.

Re-admission agreements are agreements between countries of departure and countries of origin or third countries in order to arrange re-admission through procedural and actual measures (ACVZ: 2004, p. 16). Re-admission means the mutual admission of the country's own nationals, as well as the mutual admission of third-country nationals and stateless persons who, for example, have received a visa for the country of re-admission or have resided there for some time (TK: 2004b, p.5). There are bilateral and multilateral treaties to which the Netherlands is a party, which concern the re-admission of persons. For example, there are agreements on re-admission between the Benelux countries and the Benelux and the EU have re-admission agreements with third countries (see Section 5.2). In addition, a re-admission agreement has been concluded with Poland under the Schengen agreement and Regulation (EC) 232/2003 and the Dublin Agreements also contain re-admission provisions (Aliens Act implementation guidelines A4/11). There are also bilateral treaties between the Netherlands (or the EU) and third countries with a re-admission clause. Cooperation with countries in such areas as development cooperation or trade is linked in this way to cooperation in the return of such third-country nationals.

Another form in which agreements are made about such aspects as return are memoranda of understanding (MoU). The Netherlands has these with Afghanistan, Angola, Bulgaria, China, the Democratic Republic of Congo, Dubai, Guinea, Kosovo (UNMIK), Morocco, Sri Lanka, Armenia and Mongolia. These memoranda of understanding contain implementation agreements in respect of re-admission (TK: 2006a).

### 5.2 Re-admission agreements in further detail

Re-admission agreements are necessary in order to remove obstacles to the return process. One obstacle, for example, is that some countries, contrary to their international obligation, are unwilling to re-admit their own nationals and are therefore not willing to provide travel documents. This is even more difficult in the case of

criminal illegal immigrants. (IOM: 2004b, p. 259-260). Re-admission agreements were created in order to facilitate the forced departure of foreign nationals.

The Return Memorandum emphasises the need for re-admission agreements, and also underlines the importance of coherence in foreign policy. In order to improve this, country-specific strategies will be drawn up, in which return policy forms an integral part. It is all about achieving cooperation in the return of immigrants by means of dialogue, support and pressure. In all relations with the country of origin, the subjects of migration and return will be placed on the agenda. The ACVZ underlines the need for country-specific strategies as an integral part of Dutch foreign policy. However, this must be done while awaiting a European approach. The inclusion of return clauses in trade agreements must form part of these strategies (ACVZ: 2004, p.34).

The Netherlands will normally conclude re-admission agreements in a Benelux or EU context. In a Benelux context, re-admission agreements have been concluded with Austria, Bulgaria, Croatia, Estonia, France, Germany, Latvia, Romania and Slovenia, Slovakia, Macedonia, Switzerland, Hungary, Albania, Lithuania, the Federal Republic of Yugoslavia and Bosnia-Herzegovina (IOM: 2004b, p. 270 and Ministry of Foreign Affairs: 2006). Negotiations are in progress at a Benelux level on re-admission agreements with Algeria, Armenia, Azerbaijan, Cyprus, the Czech Republic, Georgia, Mali, Nigeria, Moldova, Mongolia and Ukraine (IOM: 2004b, p.260, 270-271).

At an EU level, there are re-admission agreements with Sri Lanka, Hong Kong, Macau and Albania. An agreement with the Russian Federation was signed on 4 July 2006 but still needs to be ratified. In an EU context, formal negotiations on re-admission agreements are being held with Ukraine, Morocco, Pakistan and Turkey. Informal negotiations are underway with China and Algeria. For the future, the focus will be on Macedonia, Serbia, Montenegro, Bosnia-Herzegovina, and possibly also Moldova (Dewenter: 2006).

At an EU level, association and/or combined agreements with a re-admission clause have been agreed with a number of countries. These are Albania, Algeria, Azerbaijan, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Egypt, El Salvador, Georgia, Guatemala, Honduras, Croatia, Lebanon, Macedonia, Nicaragua, Uzbekistan, Panama, Peru, Syria, Venezuela and the countries that are party to the Treaty of Cotonou (TK: 2004b, p. 11-12).

If a country refuses to include a re-admission clause in a specific bilateral treaty, the Netherlands will not proceed to conclude this specific treaty unless Dutch interests lead to a different consideration. A number of countries (priority countries) refuse to agree on a re-admission clause. If these countries receive financial and/or non-financial support or assistance, the nature and extent of this will be critically reviewed until a re-admission clause is agreed. (TK: 2004b, p. 9-10)

## 5.3 Cooperation

### **5.3.1 The status of bilateral and multilateral cooperation with transit countries**

#### *Transit within the EU*

Council Directive 2003/110/EC provides for assistance in cases of transit for the purposes of removal by air and lays down rules for uniform procedures. If no direct flight to the destination country can be used when removing persons by air, The Royal Netherlands Military Constabulary (KMar) may be asked to supervise transit by air via another EU member state (Aliens Act implementation guidelines A4/6.7).

#### *Transit outside the EU*

During the past few years MoUs have been signed with the transit countries outside the EU with which the Netherlands cooperates. De MoUs between the IND and the United Arab Emirates of November and December 2002, containing agreements on the return of foreign nationals through Dubai Airport, is just such an example. Somalian asylum seekers who have exhausted all legal remedies have been returned to their country of origin through this airport since 2003. In addition, Afghans and nationals of other countries have also been returning through Dubai. The IND has an Immigration Liaison Officer in Dubai to improve cooperation. Another example of an MoU with a transit country was the MoU concluded between the IND and the Jordanian authorities in October 2003, under which Iraqi nationals who wish to return voluntarily to Iraq may do so through Jordanian territory (MinJus: 2000-2006).

### **5.3.2 Experiences with regard to cooperation with return countries**

Since 2000 to 2005, government flights for the removal of illegal immigrants have been organised to Nigeria, the Democratic Republic of Congo, Cameroon, Romania, Surinam, Togo, Yugoslavia, Bulgaria, Ukraine, Sri Lanka, Kosovo, Bosnia and Senegal. The Netherlands has made specific agreements or concluded an MoU with a number of these countries, but also with other countries to which the Netherlands sends foreign nationals.

For example, in 2002, agreements were made with the Romanian authorities on group removals. The passport of Romanians removed from the Netherlands may be confiscated by the Romanian authorities for a maximum of five years.

Another example is Bulgaria, with which the Netherlands signed an MoU in 2003, as a result of which the passports of removed illegal Bulgarians can be confiscated for a period of two years. In 2003, agreements were made with Nigerian authorities on the deployment of Nigerian immigration experts for the purpose of identity and nationality investigations into alleged Nigerian asylum seekers who have exhausted all legal remedies.

In Luanda, a number of places have been reserved in an existing orphanage for the independent departure of Angolan unaccompanied minors. The project is being implemented by IOM. As well as establishing their identity and nationality, a reception facility must also be arranged for unaccompanied minors before they can return. It had already been agreed with the Angolan authorities to use immigration experts for investigations into the identity and nationality of Angolan asylum seekers who have exhausted all legal remedies (MinJus: 2000-2006).

### **5.3.3 Cooperation with diplomatic representations**

Apart from those countries with which a re-admission agreement has been concluded, there are no other types of agreements on the issue of identity documents. In such cases, this issue is based on bilateral agreements.

### **5.3.4 Pilot projects**

In 2001, a pilot project was started up in the Netherlands in cooperation with China, Nigeria and Angola, in which immigration experts from these countries were deployed in the Netherlands to establish the nationality and identity of foreign nationals. This has been added to over the years with immigration experts from the Democratic Republic of Congo and other countries (MinJus: 2000-2006).

### **5.3.5 Cooperation with intergovernmental and non-governmental organisations**

The Dutch government has return programmes in cooperation with IOM and other organisations. The government finances the schemes such as the REAN and HRT schemes (see Appendices 6 and 7).

Concerning the return of foreign nationals, the Netherlands also works together with UNHCR. An example of this is the tripartite agreement concluded on 18 March 2003 by the Netherlands with the Afghan government and UNHCR on the return of Afghan asylum seekers who have exhausted all legal remedies. The agreement provides for the voluntary departure of Afghans to Afghanistan, but also allows for forced departure (TK: 2005b).



## 6. Conclusions

This chapter gives an answer to the four main questions of the study (see Chapter 1.1), as well as discussing further the two general objectives.

### 6.1 Definitions, concepts and categories of return

Dutch Aliens legislation and regulations do not give a definition of return. In this study, return is viewed as a collective term for two main categories:

1. Departure;
2. Remigration.

Departure is “*when a foreign national departs, whether or not absconding, from the Netherlands either at his own volition or under compulsion*” (Aliens Act implementation guidelines A4/1). Departure largely concerns foreign nationals who do not or no longer have *lawful residence* in the Netherlands, and are therefore legally required to leave the Netherlands.

The other main category of remigration means “*to establish one’s home outside the Kingdom of the Netherlands, in the country of origin*” (Repatriation Act). The word remigration is used in respect of Dutch nationals or foreign nationals residing lawfully in the Netherlands and holding a residence permit.

The main category of departure is divided in the Netherlands into three categories (SCV: 2005a):

- Forced departure;
- Independent departure;
- Absconding.

The term removal [*verwijdering*], which does not appear in the Aliens Act 2000, comprises all government procedures and activities by carriers aimed at ensuring that a foreign national who is required to depart from the Netherlands actually does so (Aliens Act implementation guidelines A4/1). *Forced departure* is when the process of removal is begun. The term removal (deportation) [*uitzetting*] is used for all cases of “*removal from the Netherlands using the strong arm of the law*” (Aliens Act implementation guidelines A4/1). The Aliens Act implementation guidelines note in respect of independent departure that this can also be facilitated by IOM in the Netherlands by means of a departure scheme. The category absconding is a purely administrative category. It concerns persons who have departed from the address known to the authorities, but about whom it is not known whether they have actually departed from the Netherlands.

Independent departure and absconding may involve foreign nationals who reside unlawfully in the Netherlands as well as foreign nationals whose application is still being considered and who may remain in the country while awaiting the decision and therefore are residing lawfully in the Netherlands. Forced departure always relates to foreign nationals who have no right of lawful residence in the Netherlands.

The main differences between the Dutch definition of departure and the EU definition of return are that:

- The Dutch definition of departure focuses on departure *from* the Netherlands, whereas the EU definition focuses on return *to* the country of origin, transit country or another third country;
- The Dutch definition of departure may be documented departure or absconding whereas this distinction is not made with the EU definition of return.

### *Voluntary return*

The term voluntary return is not used in this study, since it gives rise to the question whether or not there can be any voluntary element to departure if a person does not have or obtain the right of lawful residence in the Netherlands. In the researchers' view, actual voluntariness can only apply to remigration. With independent departure and absconding, there may be a certain degree of voluntariness. At any rate, there is no voluntary element to forced departure.

### *Legal and illegal immigrants*

Persons with lawful residence in the Netherlands are legal immigrants. Illegal immigrants do not have lawful residence in the Netherlands. Although unlawful residence in the Netherlands as such is not a criminal offence, the illegal immigrant has the legal obligation to depart from the Netherlands. If illegal immigrants do not depart from the Netherlands at their own volition, they may be removed by the Dutch government.

## 6.2 Political and legal framework for return

### **6.2.1. Legislation and regulations for return**

The Aliens Act 2000 forms the legal basis for forced and independent departure. This Act states that foreign nationals without the right of residence and/or who have exhausted all legal remedies may no longer make use of any state provisions and have the obligation to depart from the country within four weeks of expiry of the period of lawful residence (unless the departure period is postponed). On the other hand, the foreign national must depart from the Netherlands immediately if he has never had lawful residence or the free residence period in the Netherlands has expired by law. If the foreign national has not departed from the Netherlands within the departure period, he may be removed by the Dutch government. No separate decision is required for this in the Netherlands. The order to depart from the Netherlands is part of the negative decision with multiple consequences on the application for a residence permit. The Netherlands therefore has no separate removal decision or deportation order. Incidentally, removal is a power and not an obligation of the Minister.

The Netherlands has a national return policy: there are no provincial or regional variations. Final responsibility for the implementation of the return policy, including assistance and counselling on departure, rests with the Minister for Immigration and Integration.

The underlying principle of the Dutch return policy, as laid down in the Return Memorandum (TK: 2003b), is the personal responsibility of the foreign national residing illegally in the Netherlands to depart from the country. A foreign national who departs independently can be assisted by the IOM, as laid down in the Aliens Act implementation guidelines. If the foreign national does not comply with his obligation

to depart from the Netherlands at his own volition, his departure from the Netherlands can be forced by means of removal.

Based on the Repatriation Act, certain groups of remigrants can appeal to financial schemes.

### **6.2.2 Increasing priority to return**

The Dutch Government is placing increasing priority on the return of foreign nationals who do not lawfully reside in the Netherlands. The go-ahead for intensifying the return of foreign nationals was given with the Return Memorandum (TK: 2003b), which set out a number of new measures, including new forms of asylum reception and return as part of development cooperation policy. During the past few years, increasing attention has been given in the Netherlands, as also in neighbouring countries, to the relationship between development and migration. This has led, for example, to the development of a specific programme for Return, Migration and Development [*Terugkeer, Migratie en Ontwikkeling (TMO)*], that was published on 10 March 2005 in the Government Gazette. In order of priority, the objectives of the TMO programme are: the return and reintegration of asylum seekers who have exhausted all legal remedies; the (temporary) return of status holders for the reconstruction of the country of origin, and policy development in the area of development and migration (TK: 2005a). The Dutch government believes that encouraging circular migration, within the frameworks of the national migration policy, is a strategy that can unite the interests of the migrant, the countries of origin and the countries of destination.

#### *Setting up a separate organisation to manage return*

Following the study carried out by the Audit Department, the Government decided in October 2005 to create a separate organisation that could safeguard better the objectives of the return policy. At the time of this study, this organisation, which will be operational from 1 January 2007 and will be called the Migration Return and Departure Service [*Dienst Terugkeer & Vertrek (DT&V)*] is in the process of being set up. The aim of DT&V is to achieve the actual departure of all illegal immigrants who have been identified as part of alien supervision or border controls and all failed asylum seekers who are obliged to leave the country. In doing so, DT&V places the greatest emphasis on the independent departure of the foreign national. DT&V aims to operate in a careful manner, with respect for the dignity of the foreign national even if forced departure is involved, and for this purpose it will adopt a person-oriented and multidisciplinary approach (pDGHV: 2006b).

### **6.2.3 Criticism of return policy**

The Netherlands has a number of protest and solidarity movements that campaign against the forced departure of asylum seekers who have exhausted all legal remedies. Criticism is levelled in particular against the removal of asylum seekers who have been living in the Netherlands for a long time. This group is made up of persons who submitted an application for asylum under the old Aliens Act (before 1 April 2001), who have become known under the term '26,000', and are the target group for the Return Project. The call to grant a general pardon is regularly heard. Some organisations believe that government policy to remove failed asylum seekers who have been living in the Netherlands for many years is in breach of conventions on human rights. Many municipalities too have expressed criticism. According to them, the 'sound approach' promised by the Minister has not been delivered. A

sound approach means that asylum seekers who have exhausted all legal remedies either depart from the Netherlands or are granted a residence permit. The large number of such failed asylum seekers that absconded (from reception centres), is still in the country illegally, according to the municipalities, and often end up on the streets. Municipalities therefore often refuse to cooperate in removing failed asylum seekers from (central) reception centres.

There is also criticism of the aim of the return policy. According to an independent committee – the Aliens Act 2000 Evaluation Committee – it is ambiguous (CEV: 2004), since many implementing organisations believe that return *to the country of origin* is the purpose of the return policy, whereas the Return Memorandum refers to ‘reducing the number of foreign nationals residing *in the Netherlands* who do not have the right of residence’. In addition, during the past few years there has been considerable commotion in connection with a number of incidents to do with the implementation of the return policy (Syria, DRC, Schiphol fire).

Although there is still much resistance to forced departure, the general impression is that the taboo surrounding the subject has gradually been broken. Several social organisations for whom repatriation was not previously open to discussion are now focusing on supporting those foreign nationals who have exhausted all legal remedies in returning to their country of origin.

#### **6.2.4 Influence of EU legislation**

Generally speaking, regulations, decrees and decisions of the Council of the European Union and the European Parliament are binding in the Netherlands and are directly applicable. In subordinate regulations – the Aliens Decree and the Aliens Act implementation guidelines, - the necessary further (procedural) provisions are laid down for their implementation. Most EU legislation is generally applicable or has been incorporated in Dutch legislation. At present, it is insufficiently clear how the European Directive on the return of foreign nationals will take shape to enable us to gain an overview of its effects on national legislation and regulations.

The enlargement of the EU with ten new member states has not led to any changes in Dutch return policy.

The Schengen and Dublin agreements allow for some removals to take place to a partner state, instead of the returnee actually returning to the country of origin. This leads to a higher number of persons departing from the Netherlands, but in fact simply means a relocation of persons within the treaty areas.

At present the Netherlands, under the budget line of the EU preparatory programme relating to return, is implementing an international cooperative programme with England, Belgium, France, Germany, Malta, Slovakia for forced departure from the EU with government flights. In addition, IOM participates in two projects that have been approved under the Programme.

The Netherlands has been organising joint EU flights since 2002, well before the adoption of Council Decision 2004/573/EC. Such joint flights also take place within the framework of the Benelux.

### **6.3 Return procedures and return activities**

This study uses the term return as a combined name for departure and remigration. Departure can be divided into three categories: forced departure, independent departure and absconding (SCV: 2005a).

### **6.3.1 Forced departure**

Forced departure involves five return procedures (SCV: 2005a/b):

- Removal;
- Removal following a criminal process;
- Departure under the supervision of the Mobile Border Supervision of Aliens (*Mobiel Toezicht Vreemdelingen* – MTV);
- Hand-over at national borders after MTV checks;
- Removal of a foreign national who has been refused entry (Article 6 Aliens Act 2000).

The removal procedure, whether or not following a criminal process, was the most common in 2005. In the Netherlands, an immigrant is removed by handing him over to the foreign border authorities, or by putting him on board an aircraft or ship of the company that transported the immigrant, or by transporting him by plane or ship, either direct or indirect with an intermediate stop, to a country that has granted him the right to enter that country. Generally this involves removal by aircraft or ship with the assistance of the Royal Netherlands Military Constabulary (KMar) or the Seaport Police (ZHP). Generally the immigrant is removed from the detention location through one of the removal centres of the Custodial Institutions Service [*Dienst Justitiële Inrichtingen* (DJI)]. Immigrants may be removed individually or in groups, by charter or scheduled flight, accompanied or unaccompanied. There may or may not also be special circumstances involved.

### **6.3.2 Independent departure**

Independent departure has three subcategories (SCV: 2005a/b):

- Independent departure through IOM;
- Supervised departure of the self-reporter;
- Independent departure of a foreign national who at the time of departure is shown to have been in the Netherlands unlawfully, otherwise known as 'overstayers'.

In 2005, independent departure via IOM was the most common. The Aliens Act 2000 takes the starting point that the foreign national who is not or no longer permitted to remain in the Netherlands is himself responsible for departing from the Netherlands within the set period of time. In doing so, the foreign national may be facilitated by IOM should he so wish. IOM acts as an intermediary with the independent departure of foreign nationals wishing to leave the Netherlands, and offers two schemes for this purpose (REAN and HRT schemes).

#### *Incentives for independent departure*

As part of the REAN scheme, which is financed by the Ministry of Justice, the foreign national receives an airline ticket for his flight to his country of origin or a third country. In addition, the foreign national may qualify for travel costs within the destination country to the place where he will be taking up residence, and the costs of obtaining replacement travel documents may be reimbursed. Depending on the situation of the foreign national, a sum of money may be granted to cover the costs of maintenance in the free period following departure from the Netherlands. In addition to this sum, foreign nationals may also qualify for a reintegration contribution. The Reintegration Scheme for Returnees (HRT) is financed by the Ministry of Foreign Affairs from the fund for Return, Migration and Development.

In some cases, individual mediation is offered by IOM in response to a concrete request for assistance. This is done in close cooperation with Cordaid and the Central Mission Commissariat (CMC) in *Bureau Maatwerk bij Terugkeer*. This organisation's worldwide network can be used to solve problems that would otherwise prevent a successful return of asylum seekers who have exhausted all legal remedies. Furthermore, there are various training initiatives in the Netherlands which will give foreign nationals better prospects upon their return to the country of origin.

Departure assistance and counselling is in principle only relevant to cases of independent departure. Failed (or illegal) foreign nationals are advised as much as possible to make use of the options for independent departure through IOM. There is virtually no experience in post-arrival departure assistance in the Netherlands.

No research has been carried out into how immigrants perceive or have perceived return incentives, and to what extent they feel the assistance offered for return, resettlement and reintegration has been effective. The number of immigrants (and remigrants) who departed independently gives only a partial picture of effectiveness. The sustainability of independent departure, either in the sense of not returning to the Netherlands again, or to the extent of reintegration of the returnee in the country of origin, is not monitored by the Dutch authorities or organisations.

#### *Motives for and obstacles to independent departure*

Very few studies have been made of the departure of (failed) asylum seekers and status holders from the Netherlands (Engelhard: 2004). Dutch organisations which play a role in the departure of such persons refer to push factors, such as the pressure exerted on them by the Dutch government to depart and the lack of future prospects in the Netherlands, before pull factors such as family circumstances and improved conditions in the country of origin (peace and safety, work). This is at odds with existing literature (Black, Koser & Munk: 2004) in which it is precisely pull factors that emerge as more important than push factors. Neither Dutch organisations nor the literature regards the financial schemes offered by the government as the determining factor.

With regard to obstacles to independent departure, the following are mentioned: the hope that the asylum seeker will be able to remain in the Netherlands after all (hope of a positive decision on the asylum application, hope of a general pardon); prolonged procedures; political and/or economic situation and the safety risks experienced in the country of origin; the lack of work prospects, training and/or housing and the lack of a (support) network in the country of origin; the shame of returning empty-handed; the attitude of the population in the country of origin towards returnees; fear of the unknown; hospitalisation and the fact that the asylum seeker has become used to Dutch circumstances; medical or financial problems, and difficulty in obtaining travel documents.

#### **6.3.3 Absconding**

The category of absconding does not appear in the Aliens Act 2000 or Aliens Act implementation guidelines. However, it is a category that is used by the Immigration Coordination Department (SCV) and there are five categories (SCV: 2005a):

- Lifting of detention with notice to leave the Netherlands;
- Notice to leave the Netherlands;

- Independent departure from place of residence during the proceedings before the period has commenced during which the foreign national must depart;
- Independent departure from place of residence during or after the period within which the foreign national must depart;
- Eviction with notice to leave the Netherlands.

In 2005, independent departure from the place of residence during or after the departure period was the most common. These are cases where the Aliens Police ascertains when checking the address during or after the departure period of the asylum procedure or regular procedure that the foreign national has permanently departed from his place of residence.

Absconding is a purely administrative departure category, since it is not known whether the person has actually departed from the Netherlands.

#### **6.3.4 Remigration**

Persons who remigrate may in certain cases apply for financial support under the Repatriation Act, for which an application may be submitted to the SVB. The Repatriation Act offers a basic facility and a remigration facility. The basic facility consists of a one-off payment for travel costs and baggage transport to and in the destination country, and the costs of maintenance in the first two months of resettlement. The remigration facility consists of a monthly benefit for persons aged 45 years and older, and health insurance or a contribution towards the costs of health insurance that the person takes out himself. To qualify for a remigration facility, the person must be on a low income. The NMI informs, advises and assists persons and groups (residing lawfully in the Netherlands) who are faced with the choice of remaining in the Netherlands or returning to the country of origin. The NMI also gives information and advice to do with the Repatriation Act.

IOM offers support to immigrants who want to return temporarily (circular migration) to contribute to the development of their country of origin.

#### *Motives for and obstacles to remigration*

With remigrants, because of their strong residence rights, push factors hardly play any role at all with their return. The following motives are cited for remigration: family members in the country of origin; the (old) age and health of the remigrant and the availability of good financial schemes.

Apart from the safety and living situation in the country of origin and health, obstacles to remigration are family members who have remained behind and, in the case of immigrants who have become naturalised Dutch citizens, the condition that they must give up their Dutch nationality in order to benefit from certain (financial) schemes.

#### **6.4 Bilateral and multilateral cooperation**

In the area of bilateral and multilateral cooperation, the Netherlands focuses above all on creating and maintaining cooperation with the countries of origin. According to the Return Memorandum, Dutch efforts for the return of immigrants focus in particular on Afghanistan, Algeria, Angola, China, the Democratic Republic of Congo, Guinea, Iran, Nigeria, Serbia and Montenegro, Somalia and Syria. A form in which cooperation is laid down is the re-admission agreement. This can involve bilateral treaties as well as multilateral treaties at a Benelux or EU level. There are also bilateral treaties between the Netherlands (or the EU) with third countries with a re-admission clause. Cooperation with countries in such areas as development

cooperation is linked in this way to cooperation on the matter of return. Another form in which the Netherlands has made implementation and other agreements for the return and re-admission of foreign nationals are memoranda of understanding.

As well as cooperation in the area of re-admission, the Netherlands works with several other countries to remove foreign nationals, such as by organising joint government flights.

## 6.5 Research gaps and further study

This study is, as far as we know, the first one to provide an overview of the entire spectrum of the return of immigrants from the Netherlands (from forced departure to remigration). During the past few years, the attention given to return has increased significantly and much has been published on the subject in the Netherlands. Nevertheless, research into return migration of (failed) asylum seekers and status holders from the Netherlands is still scarce. Hardly any research has been carried out into the effectiveness of return incentives and return programmes and the extent to which returnees are able to reintegrate in the country of origin (sustainability of return). Most literature on migration decision-making processes deals with the 'outward journey' and not the return. It is recommended filling these research gaps in the near future. Furthermore, there is no clear overview of the total costs of independent and forced departure.

## 6.6 The performance of the EMN

The research specifications for this study were established during the regular meetings of the various national contact points of the EMN and the European Commission in the spring of 2006. During the research phase, a workshop on return was held during a regular meeting, attended by national experts as well as the national contact points. During this workshop, the various national contact points gave their views on their own, country-specific approach to return in national legislation and regulations and implementation practice. This workshop was extremely useful in helping to understand the concept of return and for developing the Dutch study in further detail. Discussions on progress and problems relating to this study during the regular meetings and the workshop provided valuable insights for the Dutch researchers.

During the spring of 2006, the Dutch national network was initially informed of this study by e-mail and through the EMN newsletter. In a later phase, the definitive study specifications were notified to the members of the network who are specifically involved in return, stating to which specifications a response was expected. A large number of network members replied to the questions, some only after being sent a reminder. A visit was made to a number of members and a few non-members or those not yet members of the national network, and face-to-face interviews were held. All these methods led to a surfeit of information. The national network would appear to be well able to generate the necessary information. By translating the specifications into Dutch in a subsequent study and setting out the specifications in an even more targeted way, efficiency can be optimised.

An expert group, consisting of five experts from various departments of the Ministry of Justice, has been set up to promote the quality of the report, and has met three



times. The participating (government) experts helped with answering the open questions, sometimes by answering the question directly and sometimes by referring to the correct sources. In addition, on two occasions they added their comments to a draft report. This proved to be a good working method. A number of organisations were also visited, particularly when dealing with the part on independent departure, and input was obtained through interviews and mail exchanges. For efficiency reasons it might have been more desirable for these organisations to have formed part of an expert group. In the final phase of the study, all organisations were given the opportunity to add their comments to the draft text in relation to their own organisation.

## Appendix 1: Institutions and organisations

This information has been taken from the Aliens Decree implementation guidelines 2000 and the Postbus 51 government information leaflet on the return of asylum seekers who have exhausted all legal remedies and other foreign nationals (2005).

### *Advisory Committee on Alien Affairs*

The Advisory Committee on Alien Affairs (*Adviescommissie voor Vreemdelingenzaken - ACVZ*) is an independent advisory committee that advises on alien law and foreign nationals policy. It gives its advice, on request and otherwise, to parliament.

### *Central Agency for the Reception of Asylum Seekers*

The Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan opvang Asielzoekers - COA*) is responsible for taking in asylum seekers. The COA provides housing during the asylum procedure and prepares asylum seekers for their stay in the Netherlands, return to the country of origin or transit migration. The COA is an independent administrative body that comes under the responsibility of the Ministry of Justice.

### *Custodial Institutions Service*

The Custodial Institutions Service (*Dienst Justitiële Inrichtingen - DJI*) is responsible for implementing custodial sentences and measures, including alien detention in the removal centres, detention boards and custodial institutions. DJI comes under the responsibility of the Ministry of Justice.

### *Migration Return and Departure Service*

The Migration Return and Departure Service (*Dienst Terugkeer en Vertrek - DT&V*) is an organisation to be newly set up and which will come under the responsibility of the Minister for Immigration and Integration. The Aliens Police, Royal Netherlands Military Constabulary and the IND are the main parties involved in the return process, and will make personnel available to DT&V. The aim of DT&V is to realise the actual departure of illegal immigrants who have been reported within the framework of aliens supervision or border controls and all asylum seekers who are obliged to leave the country.

### *Transport and Support Service*

The Transport and Support Service (*Dienst Vervoer en Ondersteuning - DV&O*) is a national department of the DJI. DV&O arranges the transport of arrested persons, foreign nationals and detained persons and also transports goods and prison files. DV&O also provides assistance in emergencies and seconded DV&O security personnel to support DJI and organisations affiliated to the Ministry of Justice.

### *Immigration Policy Department*

The Immigration Policy Department (*Directie Vreemdelingenbeleid - DVB*) of the Ministry of Justice is responsible for national and international policy development in the area of asylum and immigration, as well as in the reception of asylum seekers. The department therefore focuses on admission, stay, supervision, return, border control, visa policy, reception and the coordination of policy and combating illegal residence.

### *Municipalities*

Municipalities are responsible for asylum seekers living within their boundaries. If asylum seekers who have exhausted all legal remedies have to move to a removal centre, it is the task of the municipality to terminate the housing of asylum seekers in a municipal reception centre. In addition, municipalities have the task of tackling illegal residence.

### *Immigration and Naturalisation Service*

One of the responsibilities of the Immigration and Naturalisation Service (*Immigratie-en Naturalisatiedienst* - IND) is to assess all applications for entry and naturalisation of foreign nationals.

The IND decides on behalf of the Minister for Immigration and Integration who will be permitted to enter the Netherlands. Together with the Aliens Police and the Royal Netherlands Military Constabulary, the IND is responsible for border control, monitoring illegal residence and the return of foreign nationals who may not remain in the Netherlands. The IND is an agency of the Ministry of Justice.

### *International Organisation for Migration*

The aim of the International Organisation for Migration (*Internationale Organisatie voor Migratie* - IOM) is to facilitate the orderly and humane migration of persons throughout the world. IOM supports migrants both coming into and departing from the Netherlands. For this purpose it has a worldwide network. IOM focuses above all on supporting migrants who want to return to their country of origin but have insufficient resources to do so. IOM also focuses on integration and reintegration, combating human trafficking, labour migration and development, and migration and health.

### *Royal Netherlands Military Constabulary*

The Royal Netherlands Military Constabulary (*Koninklijke Marechaussee* - KMar) is engaged in border control at the external borders (airports and seaports) and mobile control of foreign nationals (*mobiel toezicht op vreemdelingen* - MTV) at internal borders (with Germany and Belgium and at Schiphol). In addition, KMar is responsible for accompanying asylum seekers who have exhausted all legal remedies and are forced to depart. KMar comes under the Ministry of Defence. KMar is a police organisation with a military status. As one of the four armed forces, the Marechaussee forms part of the Ministry of Defence. However, 80% of the duties carried out by KMar come under the authority of other ministries, such as Justice and Internal Affairs. It is an organisation with a varied range of duties in both the civil and military service, which is described in the Police Act.

### *Ministry of Foreign Affairs*

The Ministry of Foreign Affairs is responsible for dealing with visa applications for a stay shorter than three months and authorisations for temporary stay (*machtiging tot voorlopig verblijf* - MVV). These are in principle dealt with at Dutch embassies and consulates abroad. If embassies and consulates are unable to or may not make a decision independently, the visa applications for a stay shorter than three months will be submitted to the Aliens and Visa Division of the Movement of Persons, Migration and Consulate Affairs Department of the Ministry of Foreign Affairs. The Ministry of Foreign Affairs is also responsible for general and individual official announcements that are used by the Minister for Immigration and Integration as a source of

information, such as in assessing asylum applications. The Ministry of Foreign Affairs is also responsible for organising the basic integration examination at Dutch representations.

#### *Ministry of Justice (Minister for Immigration and Integration)*

The Minister for Immigration and Integration has political responsibility for the Dutch government's immigration policy. This includes the return policy and tackling illegal immigration. The Minister for Immigration and Integration does not have a separate Ministry, and together with the Minister of Justice comes under the Ministry of Justice.

#### *Netherlands Migration Institute*

The Netherlands Migration Institute (*Nederlands Migratie Instituut* - NMI) gives coherent and objective information, counselling and assistance to all persons and groups who are faced with the choice of remaining in this country or returning to the country of origin. These also include refugees and those entitled to asylum who wish to return or continue on to a third country. The NMI also gives information on the combination of a remigration payment with other (exportable) benefits, such as invalidity benefit and the state old age pension. The NMI can also provide information on developments in the social security system.

#### *Council of State*

Besides being an independent advisor to the Government on legislation and administration, the Council of State (*Raad van State* - RvS) is also the highest general administrative court in the country. The Administrative Jurisdiction Division of the Council of State adjudicates in the highest instance in disputes between the citizen and the government. Since the Aliens Act 2000 entered into force, this has also applied to disputes under alien law.

#### *Immigration Coordination Department*

The Immigration Coordination Department (*Stafdirectie Coördinatie Vreemdelingenketen* - SCV) of the Ministry of Justice supports the Director-General of International Affairs and Alien Affairs in carrying out his tasks as the person in charge of the immigration process. In doing so, the SCV ensures harmonisation between the various (implementing) organisations and work processes in the immigration process, also ensuring that they organise and implement their primary processes in such a way that from the point of view of efficiency and effectiveness an optimal result in the immigration process as a whole can be achieved, and the policy objectives can be decisively realised.

#### *Foundation for Legal Aid in Asylum Cases*

The Foundation for Legal Aid in Asylum Cases (*Stichting Rechtsbijstand Asiel* - SRA) organises, coordinates and gives legal aid to asylum seekers and monitors the quality of legal aid.

#### *Association of Netherlands Municipalities*

The Association of Netherlands Municipalities (*Vereniging van Nederlandse Gemeenten* - VNG) promotes the interests of all municipalities towards other government bodies. Applications for regular residence permits and naturalisation are made to the municipality. In addition, municipalities are responsible for registering

personal data in the Municipal Administration (*Gemeentelijke Basisadministratie - GBA*).

#### *Dutch Refugee Council*

The Dutch Refugee Council (*Vluchtelingenwerk Nederland*) promotes the interests of refugees and asylum seekers in the country, and helps them to build up a new life in the Netherlands.

#### *Refugee organisations in the Netherlands*

Refugee organisations in the Netherlands (*Vluchtelingenorganisaties Nederland - VON*) promotes the interests of and acts as a mouthpiece for refugees in the Netherlands, and is also a consultative partner of the government on behalf of refugees in the Netherlands.

#### *Aliens Police*

The Aliens Police (*Vreemdelingenpolitie - Vp*) monitors persons who are residing in the Netherlands but who do not possess Dutch nationality, and is also responsible for removing foreign nationals residing illegally in the Netherlands. The Aliens Police is a specialist department of the Dutch Police, with a presence in all 25 regional police forces. These forces come under the management of the police force manager. Day-to-day management of the force is conducted by the regional chief constable. The Minister of the Interior and Kingdom Relations is responsible for the Dutch police as a whole.

#### *Seaport Police*

The Seaport Police (*Zeehavenpolitie - ZHP*) is responsible for border controls in the Rotterdam-Rijnmond police region of control, as well as at sea, port-related alien supervision and combating (migration-related) crime in the Rotterdam ports. In addition, the Seaport Police deals with granting and extending visas for seamen within the Rotterdam-Rijnmond police region.

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## Appendix 3: Statistics

These tables are followed by an explanation by CBS.

Table 7a. Total number of non-Dutch emigrants

Age	Year	Total	Male	Female
Total	2000	31,106	17,015	14,091
	2001	31,852	17,592	14,260
	2002	39,594	22,791	16,803
	2003	43,861	25,143	18,718
	2004	46,074	26,426	19,648
	2005	47,188	26,808	20,380

Source: CBS

Table 7b. Number of non-Dutch emigrants, by age category

Age	Year	Total	Male	Female	Age	Year	Total	Male	Female
0 to 10	2000	3,163	1,599	1,564	50 to 60	2000	1,902	1,177	725
	2001	2,942	1,463	1,479		2001	1,993	1,218	775
	2002	3,638	1,889	1,749		2002	2,256	1,447	809
	2003	4,249	2,109	2,140		2003	2,394	1,497	897
	2004	3,888	1,988	1,900		2004	2,759	1,743	1,016
	2005	3,865	1,969	1,896		2005	2,707	1,693	1,014
10 to 20	2000	2,705	1,399	1,306	60 to 70	2000	848	522	326
	2001	2,669	1,325	1,344		2001	954	613	341
	2002	3,157	1,650	1,507		2002	1,114	685	429
	2003	3,642	1,913	1,729		2003	1,170	717	453
	2004	3,638	1,941	1,697		2004	1,259	816	443
	2005	3,379	1,817	1,562		2005	1,293	799	494
20 to 30	2000	9,172	4,540	4,632	70 to 80	2000	257	125	132
	2001	9,208	4,620	4,588		2001	229	118	111
	2002	11,917	6,298	5,619		2002	313	159	154
	2003	13,650	7,304	6,346		2003	314	163	151
	2004	14,989	8,007	6,982		2004	353	180	173
	2005	15,635	8,202	7,433		2005	354	200	154
30 to 40	2000	8,961	5,216	3,745	80 to 90	2000	83	35	48
	2001	9,502	5,607	3,895		2001	63	25	38
	2002	11,975	7,278	4,697		2002	75	33	42
	2003	12,783	7,874	4,909		2003	65	16	49
	2004	13,208	7,942	5,266		2004	69	28	41
	2005	13,559	8,079	5,480		2005	87	35	52
40 to 50	2000	4,007	2,399	1,608	≥ 90	2000	8	3	5
	2001	4,282	2,598	1,684		2001	10	5	5
	2002	5,135	3,347	1,788		2002	14	5	9
	2003	5,585	3,549	2,036		2003	9	1	8
	2004	5,899	3,776	2,123		2004	12	5	7
	2005	6,297	4,013	2,284		2005	12	1	11

Source: CBS

### *Foreign migration*

The statistics on foreign migration concern all persons who take up residence for a certain period of time in the Netherlands or leave the Netherlands for a certain period of time. Until September 1994, apart from a number of special cases, a person of Dutch nationality was registered in the population register if he or she intended to stay for longer than 30 days, and for a non-Dutch national if the expected duration of stay would exceed 180 days. Persons are removed from the population register, regardless of their nationality, if they intend to leave the Netherlands permanently or for an indefinite period, but at least for a period of longer than 360 days. With the introduction of the Municipal Administration (*Basic Gemeentelijke Basisadministratie persoonsgegevens* - GBA) in October 1994, the distinction by nationality has disappeared in this respect. The registration criterion is met if the expected duration of residence in the Netherlands in the six months following the date of taking up residence is at least four months. For emigration, the expected duration of residence abroad in the year following departure must be at least eight months.

### *Administrative corrections*

An administrative correction is each inclusion in or removal from the municipal personal records database other than as a consequence of birth, death, residence, departure or changes to the municipal boundary. Inclusion usually involves persons who appear once again (in the same or another municipality) and are registered in the municipal personal records database. This explains why we do indeed add the balance of the administrative corrections to emigration (and the migration balance) and not to the immigration figures. However, this does mean that in a number of cases (such as for specific ages) the value of the emigration, including the balance of the administrative corrections, can be negative.

### *Age*

The number of whole years that has passed since the date of birth of the person on 31 December.

### *Non-Dutch nationals*

Non-Dutch nationals are understood to mean persons who do not hold Dutch nationality, either exclusively or as dual nationality. This does not include persons for whom exceptional rules apply relating to inclusion in the personal records databases, such as foreign diplomats and members of the NATO armed forces.

## Appendix 4: Return Project

This Appendix is based upon information taken from the Return Project Handbook [*Handboek Project Terugkeer*] (Version 3.0) published by the Ministry of Justice (2005), the leaflet from Postbus 51 relating to the return of asylum seekers and other foreign nationals who have exhausted all legal remedies (2005) and the report entitled “De Rekening” that was published by LOGO (2005).

### Target group for Return Project

The target group at which the Return Project is aimed consists of asylum seekers who have exhausted all legal remedies and who submitted their initial application for asylum in the Netherlands prior to 1 April 2001. This group largely consists of asylum seekers who have already resided in the Netherlands for a considerable period as a result of long asylum procedures (which were permitted in accordance with the Aliens Act of 1994). All of them live in a reception centre (an independent dwelling, reception centre belonging to the Central Agency for the Reception of Asylum Seekers (COA) or an emergency facilities provided by a local authority) and so have far have not fulfilled their obligation to leave the country independently.

### Measures that form part of the Return Project

Within the Return Project, a number of specific measures have been taken in order to provide substantial assistance to asylum seekers who have exhausted all legal remedies to return to their country of origin. These measures consist of assistance and support to enable them to return independently. At the same time, all necessary preparations are made to deport asylum seekers who have exhausted all legal remedies but do not wish to leave the country of their own accord. In this instance, this primarily involves carrying out identity and nationality checks. For this group of individuals, the Return process consists of four stages.

### Stages of Return Project Stage 0 (six weeks)

Depending upon the background of the foreign national, the necessary preparations will be made to provide the most appropriate assistance in order to enable him/her to leave the country independently. During a personal interview, the foreign national will be made aware of the possibility of leaving the country with the assistance of IOM and the Return Project Reintegration Scheme (HRPT). The foreign national will also be informed of the programme that will apply to him/her as soon as he/she reaches Stage 1. During Stage 0, the purpose is to complete the project dossier. Stage 0 will begin by compiling a new dossier for the foreign national and will end on the date upon which the first departure interview with the foreign national is scheduled.

### Stages of Return Project Stage 1 (eight weeks)

From the location where he or she resides, the foreign national will receive regular support in arranging his/her departure. Staff from the IND and COA will hold discussions with the foreign national regarding the steps that he/she needs to take in order to return and will monitor progress in that regard. Foreign nationals who wish to leave at their own volition can receive assistance from IOM. COA provides practical assistance and will help foreign nationals to use or acquire knowledge and skills so that they may make independent preparations for their return to their country of origin. Foreign nationals also receive support from the Dutch government. Their airline ticket will be paid for and they will also receive a financial contribution in order to support them during the initial period after they arrive in their country of origin (the REAN scheme). Foreign nationals who leave the Netherlands of their own accord during Stage 1 will also receive financial support to transfer their household effects and a contribution to assist their reintegration in their country of origin (the HRPT scheme). These schemes are implemented by IOM. At the same time, investigations will be carried out into the identity and nationality of the foreign national, so as to enable him/her to be deported. Once these have been determined and an asylum seeker who has exhausted all legal remedies does not possess valid travel documents, contact is sought with the Embassy of the country of origin in order to obtain replacement documents. Once the individual is in possession of travel documents and he/she is unwilling to leave the country independently, he/she will be removed. It should be observed that at any time leading up to a possible removal, a decision may be taken to place the foreign national in detention. In that instance, the foreign national would be transferred to a removal centre or detention centre [Huis van Bewaring (HvB)].

### **Stages of Return Project Stage 2 (eight weeks)**

In the event that an asylum seeker who has not left the country of his/her own accord by the end of Stage 1 or has not yet been removed, the reception facility will be terminated and, if necessary, his/her dwelling cleared. An asylum seeker who has exhausted all legal remedies is then placed in a departure centre and will then enter Stage 2. A departure centre is a temporary facility for asylum seekers who have exhausted all legal remedies and who are eligible for the Return Project. In these centres, asylum seekers who have exhausted all legal remedies are not kept under lock and key. They are able to leave the centre, but are required to report at regular intervals. The asylum seeker must report on a daily basis and be available for any investigations into their identity and nationality. These centres are operated by COA. During this stage, the foreign national will take part in personal return interviews with the IND and COA on a regular basis. The foreign national will still be eligible for the REAN scheme. He/she will however no longer be entitled to the reintegration contribution. In the event that once eight weeks have elapsed, an asylum seeker who has exhausted all legal remedies has not left the country or been removed, a decision will be taken as to whether removal can still take place within a reasonable timescale. If that is not the case, the foreign national's stay in the departure centre will come to an end. From that point onwards, an asylum seeker who has exhausted all legal remedies is required to leave the Netherlands immediately, without government assistance.

### **Stages of Return Project Stage 3**

In the event that at the end of Phase 2, removal is still a possibility, the foreign national will be placed in detention and transferred to the removal or detention centre. Phase 3 will then begin. The decision as to whether to send an individual to a removal or a detention centre depends upon the period within which deportation can be achieved.

In cases where an individual is in possession of travel documents and is only waiting for a suitable flight to become available, he/she is transferred to a removal centre. The purpose of a removal centre is to remove illegal foreign nationals and asylum seekers who have exhausted all legal remedies to their country of origin within a short period of time. Foreign nationals in a removal centre are categorised as detained foreign nationals. This means that they are held under lock and key and are not permitted to leave the centre. These centres are controlled by the Ministry of Justice.

If removal remains a possibility in principle, but not in the short term, asylum seekers who have exhausted all legal remedies will be transferred to a detention centre. As soon as a foreign national can be removed within the short term, he/she will be transferred once more to the removal centre. If there is no prospect of removal whatsoever, a judge may order detention to be terminated and the individual will be required to leave the country immediately without assistance from the Dutch government. Once again, this will mean that the foreign national will end up on the street.

Throughout the entire Return Project, the Minister for Immigration and Integration may, in individual cases, decide that asylum seekers who have exhausted all legal remedies but who, for reasons beyond their control, are unable to return to their country of origin and who fulfil the necessary conditions, may nevertheless be granted a residence permit. In pressing individual cases, the Minister may, during the course of the return programme, also decide to grant a residence permit after all.

### **Other categories of asylum seekers who have exhausted all legal remedies**

The new reception policy that had been announced in the Return Memorandum took effect on 1 January 2005. This new reception policy applies to asylum seekers who submitted their initial application for asylum under the new Aliens Act and who received a negative decision after 1 January 2005. At the start of their asylum proceedings, these asylum seekers will already have been given a clear indication that there was a significant chance that they would not be permitted to remain in the Netherlands. The idea behind an indication such as this is to enable them to make preparations in good time for their possible return. Once asylum has been refused, these asylum seekers are moved to a reception location managed by COA, with a view to returning them to their country of origin. Once his/her asylum application has finally been rejected, an asylum seeker will be required to leave the Netherlands within four weeks. After those four weeks have elapsed, his/her reception facility and accommodation at the return location will be terminated. The asylum seeker is then required to ensure that he/she leaves the Netherlands in good time. Once the first decision is taken to refuse asylum, a long time before the asylum seeker has exhausted all legal remedies, he/she will attend interviews with the IND and COA, during which he/she will be made aware of the possibility of returning of his/her own accord to the country of origin with the assistance of the IOM. Once an asylum seeker who has exhausted all legal remedies has indicated a willingness to depart independently, he/she may receive accommodation for a further 8 weeks. If an asylum seeker who has exhausted all legal remedies does

not leave the Netherlands of his/her own accord, he/she may be removed by the Royal Netherlands Military Constabulary, in collaboration with the Aliens Police.

Asylum seekers, who submitted an asylum application after 1 April 2001 and received a negative decision before 1 January 2005, will form a transitional group who will not be eligible either for the Return Project or the current reception policy. At the time, it was decided by local authorities that asylum seekers who fall into this category could be moved into temporary accommodation until the new reception policy came into effect. These must however be asylum seekers for whom it can objectively be demonstrated that they are taking active steps to prepare for their return. In practical terms however, this transitional solution is not being used, which has meant that a large proportion of this particular group has ended up on the street (LOGO: 2005).

## Appendix 5: Procedure for independent departure with IOM

This appendix is based on information from the Aliens Act implementation guidelines A4/5.

### **1. A foreign national submits an application for return to IOM**

IOM informs the foreign national of the support available from IOM in relation to his return to his country of origin and onward migration. IOM ensures that it provides optimal availability. Amongst other things, this means that district staff from IOM operate walk-in consultancies at the reception centres, centres for alien detention and other centres. In these activities, staff are supported by staff from IOM (the Netherlands) in The Hague. If a foreign national wishes to utilise the support of IOM, he can submit an application for departure. At the same time, the foreign national will sign a form in which he states that he has no objection to the exchange of details relevant for departure between IOM and the IND.

### **2. IOM ascertains whether a foreign national complies for the conditions stipulated for the scheme**

District staff from IOM assess all applications. If an application complies with all of the conditions stipulated by IOM, the application will be processed. Given the conditions for departure under the REAN programme, coordination occurs between IOM and the IND on each application. If the foreign national in question is residing in this country without the consent of the government, the IND will ascertain whether specific removal measures have already been put in place against him. Where this is the case, the IND, in consultation with the commissioner of police, will decide whether or not to permit departure via IOM. If consent is granted by both the IND and IOM, IOM will inform the commissioner of police of this decision. Existing removal measures will be suspended where consent is granted.

### **3. A foreign national complies with the conditions applicable**

If an application has been approved, IOM will organise the journey and determine any financial contribution to be paid for initial living expenses. Foreign nationals themselves are responsible for obtaining travel documents. If a foreign national indicates that the travel document is with the commissioner of police, IOM will be able to request the commissioner of police to send it the travel document. At the request of IOM, the original document being held by the commissioner of police will be sent to IOM at Schiphol, and will be presented to the foreign national in question upon his departure from Schiphol. The following applies when obtaining travel documents for foreign nationals on whom a limitation of freedom of movement has been imposed or who have been detained:

- If the IND has already arranged a replacement travel document for the removal of a foreign national, IOM can use this for the voluntary procedure;
- If no replacement travel document exists, the IND or the commissioner of police respectively will facilitate the acquisition of travel documents from the diplomatic representation. In this case too, the travel document obtained will be made available to IOM for the voluntary return facilitated. If the foreign national in question has a(n) (electronic) W document, IOM will inform the foreign national that he should surrender this to the commissioner of police before leaving the country.

### **4. The foreign national leaves**

The foreign national will leave from Schiphol, where he will receive his ticket and any one-off financial support after the withdrawal of any procedures for obtaining a residence permit. The office of IOM at Schiphol will perform the exit formalities. Staff from IOM will accompany the foreign national to the plane. Where liberty-restricting measures apply, or when a foreign national leaves directly subsequent to alien detention, a member of staff from IOM will ensure the actual departure of the foreign national, after being handed over to the Royal Netherlands Military Constabulary. Before hand-over to IOM, the Royal Netherlands Military Constabulary will lift the liberty-restricting measure or the alien detention. In these cases, the Royal Netherlands Military Constabulary will receive written notification from IOM of the foreign national's actual departure. In the presence of IOM, the foreign national signs a declaration stating that he will waive all residence permit application procedures in relation to current applications. The IND will receive written notification from IOM that the foreign national has left the country with the support of IOM. No notification of departure need be sent to the IND. Prior to the departure, the IND does in this case issue information to IOM on any chain partners to be notified of the foreign national's ultimate departure by IOM.



## Appendix 6: REAN implementation regulations 2006

Source: The Netherlands Government Gazette no. 84, 1 May 2006.

### *Article 1: IOM*

The activities of the mission from IOM (IOM) in the Netherlands are based on the Cooperation Treaty between the Kingdom of the Netherlands and IOM (Bulletin of Treaties 1997, 259). Article I of this Treaty determines that IOM will implement migration programmes and other activities. The method used to implement these programmes and activities, as well as the financing method, is agreed on, on behalf of the Director-General of IOM, by the head of IOM mission in the Netherlands and the Minister for Immigration and Integration.

### *Article 2: Outline of the REAN programme*

The REAN programme focuses on the implementation of a humane and effective policy on the voluntary return or resettlement of certain immigrant categories. In order to achieve this goal, based on its mandate and depending on the resources available, IOM mission in the Netherlands is responsible for providing information, processing applications for return, arranging travel and supervising return. If return or resettlement can actually be achieved, IOM will also ensure the payment of financial contributions for voluntary return or resettlement in a third country. Furthermore, IOM can put specific provisions in place for certain categories of leavers, such as unaccompanied minor immigrants.

### *Article 3: Target group*

The REAN programme is primarily intended for foreign nationals who are residing in this country with the consent of the Dutch government, in anticipation of a decision on their application for residence or after the rejection of their applications. Foreign nationals with a residence permit who wish to return or wish to resettle can also invoke the REAN programme if they comply with the conditions stated in Article 4 and do not make any claims under the remigration scheme. Foreign nationals who, under aliens legislation, are not permitted to reside in the Netherlands (anymore), are not automatically excluded from the programme.

### *Article 4: Conditions*

All of the conditions below apply for eligibility for assistance from IOM:

- a) the individual in question has come to the Netherlands with the object of settling here for the long term;
- b) the individual in question does not have sufficient financial resources to leave the Netherlands of his own accord;
- c) the individual in question is not a subject of one of the countries indicated in Appendix 1;
- d) the individual in question cooperates with IOM by providing (or arranging the provision) of the information required and by observing instructions with a view to his return;
- e) the individual in question agrees to the termination of any procedures still pending with the IND, and – where applicable – to the withdrawal of his residence permit;
- f) the departure from the Netherlands of the individual in question will not result in the frustration of criminal prosecution proceedings in which he is involved;
- g) in the five years prior to his application to IOM, the individual in question has not left the Netherlands voluntarily on the basis of a return scheme of IOM, or a similar provision. Nor has the individual in question been removed at the expense of the Dutch government in the five-year period in question;
- h) the application for assistance from IOM in the case of voluntary return is not based on improper grounds;
- i) the departure of the individual in question can actually be achieved;
- j) the departure of the individual in question by means of this programme will not result in the frustration of specific measures for the implementation of his removal. For each individual application, IOM will seek alignment with the chain partners involved, which will always include the IND, in order to ascertain where there are impediments to return with the assistance of IOM, in the sense of Conditions a, b, f, g, h and/or j.

Explanation

Re a. This condition prevents a situation in which foreign nationals residing in the Netherlands for a tourist visit or as a stop-over can invoke the REAN programme in order to ensure the arrangement and funding of their return journey or onward journey. In principle, assessment will be based on the statements made by the individual in question. If an application has been submitted for a residence permit, it can be assumed, in principle, that a foreign national has come to the Netherlands with the object of settling here for the long term. An application for assistance upon return must be rejected by IOM if there are specific indications that a foreign national has not come to the Netherlands to settle here for the long term.

Re b. In principle, assessment of this condition will also be based on the statements made by the individual in question. Added to this, IOM will ask foreign nationals to sign a declaration in which they state that they lack sufficient financial resources to achieve their return themselves.

Re c. Where necessary, this country overview can always be modified by the Ministry of Justice, after consultation with IOM. An exception to this rule are (possible) victims of human trafficking originating from countries who joined the EU on 1 May 2004. This exception will apply until 1 May 2009, at which time it will be ascertained whether there is cause to continue this exception.

Re e. Partly with a view to this condition, a provision has been included in the declaration signed by the individual foreign national and IOM upon the departure of the individual in question. This declaration is included in Appendix 2. Where necessary, this declaration can be modified at any time, in consultation between IOM and the Ministry of Justice.

Re f. The return of a foreign national who is involved in criminal proceedings may only be facilitated by IOM once the IND has given its explicit consent to this end.

Re g. With a view to f above, for a period of five years, IOM registers the personal details of all foreign nationals who have left with the assistance of IOM. The digital signature taken from foreign nationals when leaving is also registered by IOM. In order to ascertain whether a foreign national has been removed in the five years prior to the application to IOM, at the expense of the Dutch government, IOM must contact the IND.

Re h. Improper grounds apply, for example, if there are indications that a foreign national does not have the intention to leave permanently. Partly with a view to this fact, a provision has been included in the declaration, which is signed by the foreign national and IOM upon the departure of the individual in question (Appendix 2).

Re i. The absence of valid travel documents falls under this ground for rejection, for example. The applicant himself is responsible for obtaining travel documents. However, IOM can provide general practical information on obtaining travel documents. In certain cases, IOM can also act as intermediary.

Re j. This condition is intended to prevent the frustration of government efforts in the context of deportation policy by the invocation of the REAN programme. The return of a foreign national for whom the government is already organising removal may only be facilitated by IOM with the explicit consent of the IND.

#### *Article 5: Provisions*

The provisions offered to foreign nationals by IOM pursuant to the REAN Programme, with due observance of the provisions of Articles 4 and 6 up to and including 9, are:

1. advice and information on return and resettlement;
2. a one-way plane ticket to the country of destination or the reimbursement of expenses for a one-way journey over land to the country of destination;
3. a supporting contribution to provide for living expenses in the initial period following arrival;
4. supervision during departure from Schiphol. Where necessary for the realisation of departure, one or more of the provisions below may be offered:
5. reimbursement of travel expenses for a visit to the closest consular representation;
6. reimbursement of costs for a replacement travel document;

7. individual mediation with a view to return;
8. short-term accommodation prior to departure;
9. reimbursement of the cost of transport to Schiphol;
10. supervision during the journey and/or upon arrival;
11. reimbursement of travel costs in the country of destination, to the foreign national's ultimate destination.

Re 7. Individual mediation focuses on removing any obstacles to return. This includes the provision of information on starting a business in the country of destination, tracing family or arranging a doctor or carer for a foreign national with medical problems upon arrival.

Re 8. If a foreign national for whom all central government provisions have ended and who, given the current flight schedules for airlines, still has a short period to wait before his departure can actually be effected, IOM can arrange a limited number of overnight stays in a hotel or bed-and-breakfast establishment as an extra departure facility. If a foreign national wants to invoke this facility successfully, the following conditions must be met:

- the foreign national must be willing to leave voluntarily;
- departure must be achievable in the short term;
- the maximum period is one week.

Re 10. IOM may decide to supervise vulnerable immigrant categories during their journey and upon arrival.

#### *Article 6: The supporting contribution*

There are two categories of supporting contribution: a standard supporting contribution and a limited supporting contribution. The Ministry of Justice determines the amounts applicable for the standard and limited supporting contributions on an annual basis. Whether a foreign national will receive a supporting contribution and the level of this contribution is determined for each foreign national individually, therefore separately from (any) family members.

#### *Article 6:1 Standard supporting contribution*

With due observance of the provisions of Articles 8, 9 and 10, eligibility for the standard supporting contribution will apply in principle for foreign nationals who:

1. are still involved in a procedure under legislation relating to foreign nationals or for whom the departure period has not yet expired *and* who have been residing in the Netherlands for a period in excess of three months;
2. have a residence permit.

#### *Article 6:2 Limited supporting contribution*

With due observance of the provisions of Articles 8, 9 and 10, eligibility for the limited supporting contribution will apply in principle for foreign nationals who:

1. are still involved in a procedure under legislation relating to foreign nationals or for whom the departure period has not yet expired *and* who have been residing in the Netherlands for a period of less than three months;
2. no longer have lawful residence in the Netherlands.

#### *Article 6:3 Minor immigrants*

With due observance of the provisions of articles 4 and 7 up to and including 10, unaccompanied and accompanied minors will be eligible for the provisions indicated in Article 5. Here, a distinction is made between 'unaccompanied' and 'accompanied' in respect of the level of supporting contribution available:

- Unaccompanied minor immigrants receive the same (standard or limited) supporting contribution as adult immigrants;
- Accompanied minor immigrants receive 20% of the (standard or limited) supporting contribution received by adult immigrants and unaccompanied minor immigrants.

*Article 7: Immigrants who do not have lawful residence in this country and who have not had this either during a certain period (illegal immigrants)*

With due observance of the provisions of Article 4, the International Organisation can only offer a limited package of provisions to foreign nationals without lawful residence in this country, who have not had this during a certain period either (i.e. illegal immigrants):

1. advice and information on return and resettlement;
2. reimbursement of the cost of a replacement travel document;
3. a one-way plane ticket to the country of destination or the reimbursement of a one-way ticket over land to the country of destination;
4. supervision upon departure from Schiphol and, if necessary, during the journey and/or arrival.

*Article 8: Foreign nationals whose applications for residence have been rejected/whose permits have been withdrawn because the foreign nationals in question form a danger to public order or national security and/or who have been pronounced undesirable immigrants*

With due observance of the provisions of Article 4, IOM can only offer a limited package of provisions to foreign nationals whose applications for residence have been rejected/whose permits have been withdrawn because the foreign nationals in question are a danger to public order or national security and/or who have been pronounced undesirable immigrants:

1. advice and information on return and resettlement;
2. reimbursement of the cost of a replacement travel document;
3. a one-way plane ticket to the country of destination or the reimbursement of a one-way journey over land to the country of destination;
4. supervision upon departure from Schiphol and, if necessary, during the journey and/or upon arrival.

*Article 9: Foreign nationals who have had lawful residence and who have been detained for the purpose of their removal*

With due observance of the provision of Articles 4 and 8, IOM will only be able to offer a limited package of provisions to foreign nationals who have had lawful residence and who have been placed in detention for the purpose of their removal:

1. advice and information on return and resettlement;
2. reimbursement of the cost of a replacement travel document;
3. a one-way plane ticket to the country of destination or the reimbursement of a one-way trip over land to the country of destination;
4. supervision upon departure from Schiphol and, if necessary, during the journey and/or upon arrival;
5. the limited supporting contribution.

*Article 10: (Possible) victims of human trafficking*

(Possible) victims and witnesses reporting human trafficking in the sense of sexual exploitation and of other serious instances of exploitation under Article 273a of the Criminal Code [*Wetboek van Strafrecht*] form a special category in the framework of these implementation regulations. The so-called B9 procedure, named after Chapter B9 of the Aliens Act implementation guidelines 2000 [*Vreemdelingencirculaire 2000*], is intended to encourage victims of human trafficking to file a report and to remain in the Netherlands for criminal proceedings. Therefore, where the encouragement of voluntary return with IOM is concerned, this demands a different approach than the one adopted with the other immigrant categories. Four sub-categories are distinguished for (possible) victims of human trafficking:

1. (possible) victims who are still within the three-month reflection period for filing a report and who have lawful residence under Section 8(k) of the Aliens Act 2000 [*Vreemdelingenwet 2000*];
2. (possible) victims for whom the three-month reflection period has expired without them having filed a report and who no longer have lawful residence;
3. victims who are involved in the B9 procedure and who have a residence permit under Chapter B9 of the Aliens Act implementation guidelines 2000;
4. victims for whom the B9 procedure has been completed and for whom the ordinary residence permit that they were granted under Chapter B9 of the Aliens Act implementation guidelines has been withdrawn/not been extended.

Re 1, 2 and 3. In principle, individuals who fall under these three categories and who indicate that they want to leave the Netherlands with the assistance of IOM will be eligible for the provisions indicated in

Article 5 and for the limited supporting contribution. The provisions of Articles 4, 8 and 9 must be complied with in relation to the above.

Re 4. Individuals who fall under this category and who indicate that they want to leave the Netherlands with the assistance of IOM will be eligible for the provisions indicated in Article 5 and for the standard supporting contribution. The provisions of Articles 4, 8 and 9 must be complied with in relation to the above.

*Article 11: Information, application, alignment and registration*

- IOM provides information on the possibilities to leave voluntarily with the assistance of IOM;
- Applications for support from IOM in relation to voluntary return must be submitted to and dealt with by IOM;
- in order to be able to decide on an application, IOM will seek alignment with the chain partners involved, which will always include the IND;
- IOM asks each foreign national leaving the country for a digital signature, which it then registers with the (IOM) file number of the individual in question;
- IOM also registers all other relevant personal details of the individual leaving the country;
- The IND is notified of an foreign national's departure by IOM;
- where necessary, IOM will notify the IND and the Aliens Police of the reasons for the rejection of an application by IOM.

*Article 12: Financing of implementation*

In accordance with the conditions set out in the Financing arrangement for the REAN programme, a central-government contribution is made available to IOM each year, on request, for the implementation costs of this agreement.

*Article 13: Consultation*

In principle, consultation will occur four times per year between IOM and the Ministry of Justice on the implementation of the REAN programme. If necessary, and depending on the agenda, other partners will be invited too.

**Appendix 1 to the implementation regulations**

*Overview of countries whose subjects are not eligible for return under the REAN programme:*

Andorra, Australia, Belgium, Denmark, Luxembourg, Malta, Monaco, the Netherlands, Canada, New Zealand, Cyprus, Norway, Germany, Austria, Estonia, Poland, Finland, Portugal, France, San Marino, Greece, Singapore, Greenland, Slovenia, Hungary, Slovakia, Ireland, Spain, Italy, the Czech Republic, Iceland, Vatican City, Japan, the United Kingdom, Latvia, the United States, Liechtenstein, Sweden, Lithuania and Switzerland.

**Appendix 3 to the implementation regulations**

*Overview of supporting contribution*

A. Standard supporting contribution

- Adults € 500.00
- Non-adult € 100.00
- Unaccompanied minor immigrant € 500.00

B. Limited supporting contribution

- Adults € 200.00
- Non-adult € 40.00
- Unaccompanied minor immigrant € 200.00

## Appendix 7: Return Reintegration Scheme 2006

This information is from the Netherlands Government Gazette of 1 May 2006.

### Return Reintegration Scheme 2006

The Return Reintegration Scheme 2006 has been designed for (former) asylum seekers who have submitted asylum applications prior to the entry into force of this scheme. Initially, this scheme applied solely to (former) asylum seekers who had submitted their asylum applications under the old Aliens Act (before 1 April 2001). This scheme may be utilised if individuals wish to leave the Netherlands independently, with the assistance of IOM. The Return Reintegration Scheme is valid as of 15 June 2006.

### Target group

The following foreign nationals fall within the target group of the Return Reintegration Scheme 2006:

- (Former) asylum seekers who submitted an (initial) application for an asylum residence permit before the date on which this scheme entered into force; and
- who are not involved in the so-called 48-hour procedure; and
- who were consecutively in a form of reception immediately prior to their application for independent departure; and
- who depart independently or submit a request to depart independently before the end of their departure period at the latest (or the period preceding stage 2 of the Return Project); and
- who are not subjects of the countries indicated in Appendix 1 to the implementation regulations for the REAN programme 2006; and
- who do not fall under the immigrant categories indicated in Articles 7, 8 and 9 of the implementation regulations for the REAN programme 2006.

### Content of the regulations

The implementation regulations for the REAN programme 2006 (Appendix 6) form the basic regulations for independent departure from the Netherlands via IOM. The Return Reintegration Scheme is a REAN plus scheme [*REAN-plus-regeling*], which means that the reintegration contribution is granted in addition to the REAN supporting contribution. Individuals who are not eligible for the reintegration contribution are still able to leave under the implementation regulations for the REAN programme 2006, provided they comply with the conditions applicable. The special conditions for the target group of the Return Project will be maintained. These regulations offer the following facilities in addition to the facilities offered within the implementation regulations for the REAN programme 2006.

### Reintegration contribution

All foreign nationals who have submitted an initial application for a temporary asylum residence permit, who are involved in a procedure under legislation relating to foreign nationals – not being the 48-hour procedure – and who depart independently or submit a request for independent departure before the end of the departure period following the (final) decision (or the period preceding Stage 2 of the return project) may be eligible for the reintegration contribution. To be considered eligible for this contribution, foreign nationals will refrain from submitting subsequent applications. The contribution paid is as follows:

Adults or an unaccompanied minor immigrant € 1,750. Non-adults (not being unaccompanied minor immigrants) € 875.

### General conditions and provisions

- The reintegration contribution will only be paid out at the time of actual departure.
- Foreign nationals will only be eligible for this scheme if they have submitted a signed application form and departure declaration to IOM.
- The time at which a foreign national submitted a signed application form to IOM will be decisive for the answer to the question of whether a foreign national is eligible for this scheme.
- Entitlement to the reintegration contribution will lapse if a foreign national frustrates return, for example by withdrawing from supervision, failing to cooperate in obtaining the travel documents required or by submitting a subsequent application.

- The reintegration scheme for the Return Project [*Herintegratieregeling Project Terugkeer*], which has applied since 22 June 2004, has been incorporated into the Return Reintegration Scheme. The special conditions continue to apply for the target group identified for the return project.
- Upon entry into force of this scheme, the country-related REAN plus schemes will lapse, with the exception of the Mulemba project in Angola and the Don Bosco project in the Democratic Republic of Congo.
- This scheme does not apply with retrospective effect.

#### **Other conditions**

- Children with the Dutch nationality: If a family wanting to return includes a child with the Dutch nationality (the child being the only person in the family with the Dutch nationality), the same amounts and facilities will be made available for this child as for a non-adult falling under this scheme. In doubtful cases, contact should be sought with the Ministry of Justice.
- Children born after the entry into force of this scheme: If a family wanting to return includes a child that was born after the entry into force of this scheme, the same amounts and facilities will be made available for this child as for a non-adult falling under the reintegration scheme. In doubtful cases, contact should be sought with the Ministry of Justice.
- Time of application versus time of departure: There are instances where a foreign national has submitted a signed application form to IOM, but – for example, because the travel document required takes longer than expected to obtain – is unable to leave within the departure period. In this case, the individual in question will still be eligible for the scheme, except where this frustrates removal.
- Relationship between the reintegration scheme and the Return Project: individuals who have submitted an initial application for a temporary asylum residence permit under the Aliens Act 2000 and, as such, do not form part of the target group for the Return Project, will not be eligible for the facilities specifically applicable for the Return Project.

## Appendix 8: Payment under the Repatriation Act

This information is based on information from the websites for the Social Insurance Bank [*Sociale Verzekeringsbank (SVB)*] and the Netherlands Migration Institute [*Nederlands Migratie Instituut*]: [www.svb.nl](http://www.svb.nl) and [www.nmigratie.nl](http://www.nmigratie.nl)

### Repatriation Act

The Remigration regulation came into force in the Netherlands in 1985. It became obvious through the years that the regulation had need for improvement with respect to a number of issues. After a careful preparation, the Repatriation Act came into effect on 1 April, 2000.

The Repatriation Act offers those who wish to remigrate to their country of origin and who belong to the target group the facilities with which to realise that wish.

The country of origin is the country in which the remigrant, or one of his parents, was born as well as the country of which the remigrant, or one of his parents, has or had the nationality.

### Target group for the Repatriation Act

An individual forms part of the target group when:

- he or one of his parents has or has had the nationality for one of the following countries: Bosnia-Herzegovina, the Federal Republic of Yugoslavia (Serbia/Montenegro), Greece, Italy, Cape Verde Islands, Croatia, Macedonia, Morocco, Portugal, Slovenia, Spain, Surinam, Tunisia, Turkey;
- he is a refugee or entitled to asylum;
- he has the Dutch nationality and was born in Surinam, or one of his parents has the Dutch nationality and was born in Surinam;
- he or one of his parents was or has been added to the register maintained under the Rietkerk (Benefit) Act [*Wet Rietkerkuitkering*]. This concerns people who were brought to the Netherlands by the Dutch government in 1951 or 1952, as members of the Moluccan group.

### Payment

The Repatriation Act provides for a payment for people who want to return to their country of origin.

The payment consists of two different provisions:

- a basic provision;
- a remigration provision.

For the amounts applicable for these provisions, see the following website: [www.nmigratie.nl](http://www.nmigratie.nl).

The **basic provision** is a one-off payment and consists of a contribution towards travel and relocation expenses and a contribution towards the costs incurred during the first two months after return. The level of the basic provisions will depend on the remigration country, the number of remigrants and their ages.

The conditions to be met by a remigrant in order to be eligible for the basic provisions are as follows:

- belong to the target group;
- at the time of the application have had his main residence in the Netherlands for at least one consecutive year for reasons other than a temporary purpose;
- not already made use of a provision within the scope of the Repatriation Act or the Remigration regulation 1985;
- not have any debts towards the State or have agreed upon a repayment scheme for that purpose;
- not owe any wealth tax;
- be of a nationality other than the Dutch nationality. If the applicant has both the Dutch nationality and the nationality of the country of destination, then he/she must renounce the Dutch nationality before the remigration can take place.
- In the event of a marriage or a registered partnership, then the partner of the applicant, if he/she is also residing in the Netherlands, must proceed with remigration as well.



### **Remigration provision**

The remigration provision consists of a monthly 45+ benefit and health insurance or a contribution towards the cost of health insurance to be taken out by the individual himself. The remigration provision offers the following extra facilities:

- an annual indexation of the 45+-benefit;
- the possibility of returning to the Netherlands within one year after one's remigration in the event of regret;
- an extended visa for visiting (family in) the Netherlands;
- an individual benefit for both partners if the relationship is terminated;
- a financial provision for orphans until they become of age;
- the partner of the applicant may retain the Dutch nationality (if he/she has it);
- the possibility for reassessed and remigrated recipients of disablement insurance benefits (WAO), who remigrated before 1 April, 2000, to apply for a remigration benefit if they met the conditions at the time of their departure.

To be considered eligible for this provision, the applicant must:

- belong to the target group;
- be at least 45 years of age on the day of the application;
- have received unemployment benefits, disablement benefits or social security payments or an old age pension (AOW) for the period of at least 6 months (immediately prior to the date of the application);
- at the time of the application have had his main residence in the Netherlands for at least 3 solid years, for reasons other than a temporary purpose;
- not have any debts towards the State or have agreed upon a repayment scheme for that purpose;
- not owe any wealth tax;
- be of a nationality other than the Dutch nationality. If the applicant has both the Dutch nationality and the nationality of the country of destination, then he/she must renounce the Dutch nationality before the remigration can take place;
- not already made use of a provision within the scope of the Repatriation Act or the Remigration regulation 1985;
- In the event of a marriage or registered partnership, then the partner of the applicant, if he/she is also residing in the Netherlands, must proceed with remigration as well.