

Netherlands Immigration Detention Profile

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INTRODUCTION

The number of immigration detainees in the Netherlands has dropped significantly in recent years, from 6,104 in 2011 to 2,176 in 2015.¹ According to some accounts this is due in part to the fact that the government “takes the obligation to consider alternatives more seriously than it did before” the EU Return Directive was adopted.² Another reason is a Council of State ruling prohibiting mobile surveillance teams of the Royal Military Constabulary to arrest irregular migrants at the border with other EU countries.³ Fewer detainees have in turn spurred a reduction in the capacity of the Dutch immigration detention estate, from 1,950 in 2011 to 933 in 2016.⁴

Other reform efforts have included proposed new rules on the conditions of detention. After the suicide of an asylum seeker in early 2013 in the Rotterdam Detention Centre, the Security and Justice Inspectorate conducted an investigation and found that the government acted negligently in terms of medical and legal assistance. This led to the drafting of the Return and Detention Act. The Act, which was still in Parliamentary

¹ Dienst Justitiële Inrichtingen (Custodial Institutions Agency), *DJI in getal 2011-2015*, 2016, https://www.dji.nl/binaries/dji-in-getal-2011-2015-definitief_tcm41-121762.pdf.

² Galina Cornelisse, *The Constitutionalisation of Immigration Detention: Between EU Law and the European Convention on Human Rights*, Global Detention Project Working Paper No. 15, 2016, <https://www.globaldetentionproject.org/constitutionalisation-immigration-detention-eu-law-european-convention-human-rights>.

³ ASKV Refugee Support, *Protecting stateless persons from arbitrary detention in the Netherlands*, European Network on Statelessness, 2015, http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Netherlands.pdf.

⁴ Dienst Justitiële Inrichtingen (Custodial Institutions Agency), *DJI in getal 2011-2015*, 2016, https://www.dji.nl/binaries/dji-in-getal-2011-2015-definitief_tcm41-121762.pdf.

debate as of late 2016, would regulate conditions and regime of detention, which are currently governed by rules applicable to penitentiaries.⁵ Dutch authorities have been criticized for the practice of re-detention, detaining a non-citizen after his or her release. Reportedly, almost 30 percent of immigration detainees in 2010 had previously been detained. The country has also faced criticism for its detention of children and families. This spurred the opening in October 2014 of a Closed Family Facility, which reportedly offers improved conditions.

Also important to note, two overseas territories of the Kingdom of the Netherlands, Aruba and Curaçao, operate immigration detention centres. [A report by the European Committee for the Prevention of Torture in 2015](#) provided details about operations at these immigration facilities, which the CPT found during its 2014 visit to have “adequate” material conditions despite shortcomings related to staffing, operations, and procedural standards. (For more about these facilities, see “Detention Infrastructure” below.) The plight of detainees on these islands made headlines in late 2016 as officials there ramped up efforts to interdict the thousands of Venezuelans fleeing their country in the wake of its economic collapse. Referring to growing consternation in the Netherlands over the situation and the effort to stop the flow, a Coast Guard officer in Curacao told the New York Times, “They want to prevent a situation like Libya.”⁶

LAWS, POLICIES, PRACTICES

Key norms. The principle norms governing Dutch immigration policy are contained in the 2000 [Aliens Act \(*Vreemdelingenwet*\)](#) and the 2000 Aliens Decree ([Vreemdelingenbesluit](#)). The Aliens Act provides rules governing entry, stay and departure of non-citizens from the Netherlands, including immigration detention.

Grounds for detention. There are two regimes of immigration detention (in Dutch, *bewaring*, or custody) in the Netherlands, including “border detention” and “territorial detention.”

Article 6 of the Aliens Act provides for border detention. Under articles 6(1)-6(2) a non-citizen who has been refused entry into the Netherlands may be required to stay in a place designated by a border control officer, which “may be secured against unauthorized departure.” According to article 3(1), grounds for refusing entry include

⁵ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm; ASKV Refugee Support, *Protecting stateless persons from arbitrary detention in the Netherlands*, European Network on Statelessness, 2015, http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Netherlands.pdf.

⁶ Nicholas Casey, “Hungry Venezuelans Flee in Boats to Escape Economic Collapse,” New York Times, 25 November 2016, http://www.nytimes.com/2016/11/25/world/americas/hungry-venezuelans-flee-in-boats-to-escape-economic-collapse.html?_r=1

lack of valid travel document or visa, posing a threat to the public order or national security, and insufficient means to cover costs of staying in the country.

The [Dutch Council for Refugees](#) reports that asylum seekers who enter by airplane or boat are usually required to apply for asylum at the detention centre and to stay in detention during asylum procedures.⁷

Territorial detention is laid down in article 59 of the Aliens Act. According to article 59(1) where necessary for the interests of public policy or national security, the Ministry of Security and Justice may order detention of a non-citizen in view of his expulsion if his stay is undocumented or if he awaits decision on his application for a permit. If the documents necessary for the return of the non-citizen are available or will shortly become available, it is deemed to be in the interests of public policy to detain him, unless he is lawfully resident based on a fix term or indefinite residence permit (Aliens Act, article 59(2)).

The Aliens Decree spells out additional grounds for detention in view of deportation or transfer, which are based on the EU legislation. Reflecting the [Returns Directive](#), article 5(1)(a)(1) provides that a non-citizen residing without authorization may be detained in the interest of public order or national security if there is a risk that he will evade supervision or he avoids or hampers the preparation of deportation. At least two of the following circumstances must be present: the person unlawfully entered the Netherlands; unlawfully evaded the supervision of the authorities; has not left the Netherlands within the time-period indicated in the return decision; failed to adequately cooperate in establishing his identity or nationality; discarded his identification or travel documents; used forged identity documents; submitted several applications for a residence permit which did not lead to granting a permit; during admission procedures provided incorrect information about his identity, nationality or migratory route; has no fix address; does not have sufficient means of subsistence; worked without permission; has been accused or convicted for a crime; or was issued a re-entry ban (Aliens Decree, article 5(1)(b)).

Pursuant to article 5(1)(a)(2) of the Aliens Decree and article 59(a) of the Aliens Act a non-citizen may be detained if there is a clear basis for a transfer under the [Dublin Regulation](#).

Territorial detention of asylum seekers is provided in article 59(b) of the Aliens Act. Grounds justifying such detention, which reflect the EU [Reception Conditions Directive](#), include (a) to establish identity or nationality; (b) to obtain information necessary for assessing the asylum application; (c) the person has already been held in pre-removal detention, had previously the opportunity to apply for asylum and there are reasonable grounds for believing that he has submitted the asylum application to delay or frustrate the implementation of the return decision; or (d) he constitutes a threat to national security or public order (article 59(b)(1)).

⁷ Dutch Council for Refugees, *Country Report: Netherlands*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/netherlands>.

Territorial detention constitutes more than 80 percent of all detention orders. However, the share of border detention has risen in the past few years, from 4 percent in 2013 to 15 percent in 2015. In 2015, of 2,176 immigration detainees, 1,852 were subject to territorial detention.⁸

According to the [Amnesty International Netherlands](#), the key difference between these two detention regimes is that in the case of border detention, detainees are considered to not have formally entered the Netherlands. Since this measure forms part of the border protection regime—with the aim of preventing undocumented entry—it is not deemed to be imposed “with a view to the expulsion” of the migrant in question, as is the case with the other form of immigration detention. Experts regard this form of formal entry refusal to be a legal fiction because the people are already physically present within the territory of the state and are subject to its jurisdiction.”⁹

In 2013, the [UN Committee Against Torture](#) (CAT) urged the Netherlands to use immigration detention as a last resort, for as short period as possible, and without excessive restrictions, and to effectively establish and apply alternatives to such detention.¹⁰

Minors. Unaccompanied children can only be detained if they have repeatedly evaded supervision, have committed an offence or if a removal is possible in the very near future. Unaccompanied minors are not placed in border detention. Since March 2011 unaccompanied children were not confined in immigration detention centres but rather in a juvenile detention centre. However some of them were still placed in a detention centre immediately after having applied for asylum.¹¹

According to official sources, families with children are detained for up to two weeks and only if they have evaded supervision before. They used to be placed in Rotterdam Detention Centre, which had a special regime for families with children.¹²

In October 2014 the policy concerning children and families has changed when a Closed Family Facility (*Gesloten Gezindsvoorziening*, GGV) was opened within the Zeist

⁸ Dienst Justitiële Inrichtingen (Custodial Institutions Agency), *DJI in getal 2011-2015*, 2016, https://www.dji.nl/binaries/dji-in-getal-2011-2015-definitief_tcm41-121762.pdf.

⁹ Amnesty International, *The Netherlands: The Detention of Irregular Migrants and Asylum-Seekers*, <http://www.refworld.org/docid/4875bc882.html>, June 2008.

¹⁰ Committee against Torture, *Concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session (6-31 May 2013)*, CAT/C/NLD/CO/5-6, 20 June 2013, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/NLIndex.aspx>.

¹¹ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

¹² European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

detention centre. Both families with children and unaccompanied children are confined in the Closed Family Facility. Families and children stay in this facility for up to two weeks before their removal from the Netherlands, unless they refuse expulsion or file a last minute application for a residence permit.¹³ The Family Facility is comprised of small, open houses for which detainees have their own keys. The houses are located in a wooded area, which is surrounded by a fence.¹⁴ Children and families with children are not confined in the Schiphol application centre after filing an application for asylum at the border (see “Detention Infrastructure”).¹⁵

There were 12 unaccompanied children placed in detention (including juvenile detention centre or GGV) in 2015, 11 in 2014, 25 in 2013, 49 in 2012, and 92 in 2011. Sixty-six families with 129 children were placed in detention in 2015, 44 families with 82 children in 2014, 89 families with 165 children in 2013, 201 families with 352 children in 2012, and 174 families with 324 children in 2011.¹⁶ The length of detention of unaccompanied children was 38 days in 2013, 43 days in 2012, 40 days in 2011, 50 days in 2010, and 40 days in 2009. The length of detention of families with children was 5 days in 2013, 8 days in 2012, 2011, and 2010.¹⁷

In 2013, the CAT noted that unaccompanied children are placed in detention if their age is in doubt. The committee urged the Netherlands to verify the age of an unaccompanied child, if uncertain, before placing the child in detention and use such detention as a last resort. The country was also reminded to apply alternative measures to avoid detention of children or their separation from their families.¹⁸ Three years earlier, the [UN Committee on the Elimination of Racial Discrimination](#) (CERD) voiced concern about detention of unaccompanied children and families with children upon arrival in the Netherlands. The committee urged the country to use detention as a measure of last resort and redouble its efforts to establish alternative living arrangements for families and children in such situations.¹⁹

¹³ Dienst Justitiële Inrichtingen (Custodial Institutions Agency), *DJI in getal 2011-2015*, 2016, https://www.dji.nl/binaries/dji-in-getal-2011-2015-definitief_tcm41-121762.pdf.

¹⁴ Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016; Dienst Justitiële Inrichtingen (Custodial Institutions Agency), *DJI in getal 2011-2015*, 2016, https://www.dji.nl/binaries/dji-in-getal-2011-2015-definitief_tcm41-121762.pdf.

¹⁵ Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016.

¹⁶ Dienst Justitiële Inrichtingen (Custodial Institutions Agency), *DJI in getal 2011-2015*, 2016, https://www.dji.nl/binaries/dji-in-getal-2011-2015-definitief_tcm41-121762.pdf.

¹⁷ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

¹⁸ Committee against Torture, *Concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session (6-31 May 2013)*, CAT/C/NLD/CO/5-6, 20 June 2013, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/NLIndex.aspx>.

¹⁹ Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by states parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination: Netherlands*, CERD/C/NLD/CO/17-18, 20 March 2010, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/NLIndex.aspx>.

Length of detention. Non-citizens placed in border detention under article 6 and territorial pre-removal and Dublin detention under articles 59 and 59(a), respectively, may be held up to six months (Aliens Act, articles 59(5) and 59(7)). This period can be extended by 12 months if deportation or transfer is taking longer because the person does not cooperate with the authorities and necessary documentation from the third countries is lacking (articles 59(6)-(7)).

Asylum seekers detained under articles 59(b)(1)(a)-(c) may be confined for up to four weeks or, if their application is to be rejected, six weeks. Such detention may be extended by additional three months (Aliens Act, articles 59(b)(2)-(3)). Persons detained under article 59(b)(1)(d) may be held in detention for up to six months. This period can be extended up to 15 months because of complex factual or legal circumstances of the case or an important interest of public order or national security (Aliens Act, articles 59(b)(4)-(5)).

According to official statistics, the average length of detention was 55 days in 2015, 67 days in 2014, 72 days in 2013, 75 days in 2012, 76 days in 2011.²⁰

The [ASKV Refugee Support](#) observed a worrisome practice of repeated detention: in 2010 27 percent of the detained population (2,255 persons) had been incarcerated at least once before. Of this group 61 percent was held once before, 29 percent two or three times, and 9 percent four times or more.²¹ In 2013, the UN Committee against Torture noted that the practice of re-re-detention goes against the maximum permissible length of detention. The committee urged the state to scrupulously observe the absolute time limit for immigration detention of foreign nationals, including in the context of repeated detention and to avoid the accumulation of administrative and penal detention, in excess of the absolute time limit of 18 months of detention of migrants.²² In this context, the [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) (CPT) reminded the Netherlands that detention could only be justifiable if there is reasonable prospect of removal.²³

Procedural guarantees. The Aliens Act empowers the Ministry of Security and Justice to detain non-citizens (article 59(1)). Detention is ordered on Ministry's behalf by the assistant public prosecutor of the National Police or the Royal Dutch Military Constabulary. The Repatriation & Departure Service has a consulting function.²⁴ Before

²⁰ Dienst Justitiële Inrichtingen (Custodial Institutions Agency), *DJI in getal 2011-2015*, 2016, https://www.dji.nl/binaries/dji-in-getal-2011-2015-definitief_tcm41-121762.pdf.

²¹ ASKV Refugee Support, *Protecting stateless persons from arbitrary detention in the Netherlands*, European Network on Statelessness, 2015,

http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Netherlands.pdf.

²² Committee against Torture, *Concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session (6-31 May 2013)*, CAT/C/NLD/CO/5-6, 20 June 2013, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/NLIndex.aspx>.

²³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 October 2011*, CPT/Inf (2012)21, August 2012, <http://www.cpt.coe.int/en/states.htm>.

²⁴ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service

the non-citizen is taken into custody, he should be heard. Non-citizen shall receive a copy of the detention order (Aliens Decree, articles 5(2)-(3)).

Immigration detention, which is ordered by administrative authority, is to be formally endorsed by a judicial authority. Within 28 days after imposing or extending detention, the Minister shall notify detention order to the District Court, unless the detainee has already himself applied for a judicial review. In case of initial detention decision, the court immediately determines the date of the hearing, which shall take place no later than fourteen days following the notification or appeal. Detainee or his counsel shall be present at the hearing. The court makes oral and written statement (Aliens Act, article 94). Non-citizen may appeal the District Court's decision before the Administrative Jurisdiction Division of the Council of State (Aliens Act, article 95).

According to some reports, since the transposition of the EU Returns Directive, the judges has started to scrutinize the legality of detention and availability of alternatives to detention in a more thorough way.²⁵

Detainees have the right to a legal counsel paid by the state. If the person wishes to be assisted by a legal advisor, the authorities will notify one, unless the person has his own. This lawyer also prepares the appeal.²⁶ According to official sources, if necessary, detainees are provided with interpretation assistance per telephone.²⁷

Under article 106 of the Aliens Act, non-citizens unlawfully detained have the right to compensation. As observed by Dutch experts, the amount of compensation for a day of unlawful detention in a police cell is 150 Euros and in a detention centre 80 Euros. However the court may reduce this amount if the detainees refused to cooperate with the authorities.²⁸

(IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

²⁵ Galina Cornelisse, *The Constitutionalisation of Immigration Detention: Between EU Law and the European Convention on Human Rights*, Global Detention Project Working Paper No. 15, 2016, <https://www.globaldetentionproject.org/constitutionalisation-immigration-detention-eu-law-european-convention-human-rights>.

²⁶ Galina Cornelisse and John Bouwman, *Completed Questionnaire for the project Contention, National Report: Netherlands*, Contention Project, 2014, <http://contention.eu/country-reports/>.

²⁷ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

²⁸ Galina Cornelisse and John Bouwman, *Completed Questionnaire for the project Contention, National Report: Netherlands*, Contention Project, 2014, <http://contention.eu/country-reports/>; European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

Trends and statistics. The number of detainees has been decreasing over the past years. The Netherlands detained 2,176 non-citizens in 2015, 2,728 in 2014, 3,668 in 2013, 5,420 in 2012, and 6,104 in 2011. Out of the total number of immigration detainees 1,852 were subject to territorial detention in 2015, 2,467 in 2014, 3,504 in 2013, 5,168 in 2012, 5,844 in 2011. Since 2011, men constituted 85-89 percent of all detainees. The most common countries of origin of immigration detainees in 2015 were Albania (8.9 percent), Morocco (8.4 percent), Algeria (3.6 percent), Nigeria (3.5 percent), Iraq (3 percent), Afghanistan (2.8 percent), and Vietnam (2.6 percent).²⁹

Non-custodial measures and alternatives to detention. Article 59 of the Aliens Act provides that detention can be ordered only if less coercive measures cannot be applied effectively. According to the 2000 Aliens Circular (*Vreemdelingencirculaire* 2000, adopted in October 2016), such less coercive measures may include reporting obligations and bail. The amount of bail is typically 500 Euros.³⁰

Additionally, Article 56 of the Aliens Act allows limitation of non-citizen's freedom and under article 57 non-citizen whose application for a residence permit has been refused may be required to stay in designated area or place. According to official sources, restriction of movement may take two forms: stay in a "reception facility with restricted movement," during which they are obliged to stay within municipal border, or in accommodation in a family centre.³¹

The European Commission reported in 2014 that release on bail as an alternative to detention is used in practice.³² Previously, in 2008, Amnesty International reported that "alternatives to detention are hardly used in practice ... research shows that in detention cases the ground for ordering the detention are given, but that there is a lack of substantive arguments for not using alternatives to immigration detention in particular cases, such as a reporting measure or providing a surety. The existence of a former criminal background, the mere absence of official registration or an address, and a lack of financial means are considered sufficient grounds to show that there is a risk of absconding."³³

²⁹ Dienst Justitiële Inrichtingen (Custodial Institutions Agency), *DJI in getal 2011-2015*, 2016, https://www.dji.nl/binaries/dji-in-getal-2011-2015-definitief_tcm41-121762.pdf.

³⁰ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

³¹ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

³² European Commission, *Communication from the Commission to the Council and the European Parliament on EU Return Policy*, COM(2014)199, March 2014, [http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2014\)0199/com_com\(2014\)0199_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2014)0199/com_com(2014)0199_en.pdf).

³³ Amnesty International, *The Netherlands: The Detention of Irregular Migrants and Asylum-Seekers*, June 2008, <http://www.refworld.org/docid/4875bc882.html>.

Privatisation and outsourcing. The provision of security and medical care at detention centres is outsourced to private companies. G4S, one of a [growing number of multinational companies](#) involved in immigration detention, provides security at all detention centres, while medical care is provided by various companies.³⁴ According to Dutch sources, the Schiphol and Rotterdam centres were set up and are operated as public-private partnerships, although these sources do not make clear who all the private partners are.³⁵

Regulation of detention conditions. According to article 5(4) of the Aliens Decree, territorial detention under article 59 of the Aliens Act shall be carried out in a police station, a cell of the Royal Military Constabulary, “detention house” (*huis van bewaring*) or a space or place referred to under article 6(2), which is designated by a border control officer and “may be secured against unauthorized departure.” If detention is initially carried out at the police station or a cell of the Royal Military Constabulary, the person should be transferred to a “detention house” or the space referred to in article 6(2) of the Aliens Act. As clarified the Aliens Circular, detention for longer than 10 days at a police station or a cell of the Royal Military Constabulary for longer than 10 days should be avoided whenever possible.

Whereas border detention is governed by the Regulation on Border Accommodation/ Border Detention Act ([Reglement Grenslogies](#)), territorial detention, like other kinds of detention, is regulated by the Penitentiary Principles Act ([Penitentiaire Beginselen Wet](#)). Regulation of immigration detention by the same piece of legislation as applies to penitentiary detention has attracted criticism. According to the Dutch Ombudsman, immigration detention should be subject to a separate regime.³⁶ Currently a draft of Return and Immigration Detention Act (*Wet Terugkeer en vreemdelingenbewaring*) awaits debate in the Dutch parliament. When adopted the act will replace the Penitentiary Principles Act in relation to immigration detention.³⁷

³⁴ G4S, “Ondersteuning politie en Justitie,” *Website*, <http://www.g4s.nl/nl-NL/oplossingen/services/Politie%20en%20justitie/>, visited 23 November 2016; Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016.

³⁵ Custodial Institutions Agency, “Justitieel Complex Schiphol,” *Website*, <https://www.dji.nl/locaties/detentiecentra/justitieel-complex-schiphol/index.aspx>, visited 28 November 2016; Custodial Institutions Agency, “Detentiecentrum Rotterdam,” *Website*, <https://www.dji.nl/locaties/detentiecentra/detentiecentrum-rotterdam/index.aspx>, visited 28 November 2016.

³⁶ National Ombudsman, *Vreemdelingenbewaring, strafregime of maatregel om uit te zetten*, 2012, https://www.nationaleombudsman.nl/uploads/2012-105_-_vreemdelingenbewaring.pdf,

³⁷ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm; Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016.

Cost of detention. A government report to the European Migration Network in 2014 appears to indicate annual total costs of immigration detention for that year amounted to 139.1 million Euros, including 81 million staffing costs, 7.2 million medical costs, 44.7 million food and accommodation costs, and 6.2 million other costs.³⁸ The report lacked clarity and details; however, the Global Detention Project's request for clarification from the government source had not received a response as the date of this publication.

Caribbean part of the Kingdom of the Netherlands. Along with the Netherlands, the Kingdom of the Netherlands includes several islands in the Caribbean, including Aruba and Curaçao, both of which operate dedicated immigration detention centres. The conditions of detention on the islands came under scrutiny in late 2016 in the wake of the economic collapse of nearby Venezuela. Press reports indicated that Aruba resorted to using a sports stadium to cope with increasing detainee numbers as it tried to halt the arrival of migrant boats.³⁹

The islands, considered constituent countries of the Kingdom of the Netherlands, have their own legal system and separate status. The Aruban government deals with immigration autonomously, while the Kingdom is responsible for citizenship matters.⁴⁰ However, the Kingdom of the Netherlands is the subject of international law and is responsible for, among other things, safeguarding fundamental rights and freedoms.⁴¹ In 2014, the Europe Committee for the Prevention of Torture visited the immigration detention facilities, and included details about immigration detention practices in Aruba and Curaçao in [a 2015 report](#).

DETENTION INFRASTRUCTURE

Non-citizens apprehended without documents in the Netherlands may be detained for up to five days in any police station. In theory they should be detained separately and

³⁸ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

³⁹ Nicholas Casey, "Hungry Venezuelans Flee in Boats to Escape Economic Collapse," New York Times, 25 November 2016, http://www.nytimes.com/2016/11/25/world/americas/hungry-venezuelans-flee-in-boats-to-escape-economic-collapse.html?_r=1

⁴⁰ Dutch Caribbean Legal Portal, "The Dutch Caribbean," *Website*, <http://www.dutchcaribbeanlegalportal.com/about-us/the-dutch-caribbean>, visited 1 December 2016; Visit Aruba, "Government & Politics," *Website*, <https://www.visitaruba.com/about-aruba/general-aruba-facts/government-and-politics/>, 2016.

⁴¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Government of the Netherlands on the visit to the Caribbean part of the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 22 May 2014*, CPT/Inf (2015)27, August 2015, <http://www.cpt.coe.int/en/states.htm>.

under a different regime than those in penal detention.⁴² The main facilities used for immigration detention in the Netherlands are its three dedicated centres.

In addition, the Netherlands operates at least two immigration detention centres in the Caribbean, in Aruba and Curaçao. These facilities were not listed by the Immigration and Naturalisation Service Research and Analysis Department (Dutch Immigration and Naturalisation Service) in its 2014 report to the European Migration Network on immigration detention in EU countries.⁴³

Long-term immigration detention centres. As of November 2016, the Netherlands operated three dedicated immigration detention centres, located in **Zeist**, **Rotterdam**, and at the **Schiphol International Airport** (Justitieel Complex Schiphol, previously called “Schiphol-Oost (Oude Meer)”). Immigration detention facilities in the Netherlands are managed by the [Custodial Institutions Agency](#) (DJI) of the Ministry of Security and Justice. “Border detention” is carried out at the Schiphol centre, while persons in “territorial detention” may be placed in any of these three centres.⁴⁴

In 2012 the centre in Rotterdam had a capacity of 586, Zeist 473, and Schiphol 293.⁴⁵ Although the Global Detention Project was not able to verify the current individual capacities of the three centres, the overall capacity of immigration detention in the country has been repeatedly reduced. The total capacity of Dutch immigration detention centres was 1,950 in 2011, 1,750 in 2012, 1,691 in 2013, 1,522 in 2014, 1,179 in 2015, and 933 in 2016.⁴⁶

According to official sources, non-citizens are mostly detained in 2-person cells and women are held separately from men. Detainees have that right to at least one hour outdoor exercise per day and receive visitors for at least one hour per week. The centres are equipped with telephones and internet facilities, with possibility to surf permitted pages. Reportedly, authorities intend to allow the use of mobile telephones in the future.

⁴² Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016.

⁴³ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

⁴⁴ Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016; Dutch Council for Refugees, *Country Report: Netherlands*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/netherlands>; European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

⁴⁵ Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016.

⁴⁶ Dienst Justitiële Inrichtingen (Custodial Institutions Agency), *DJI in getal 2011-2015*, 2016, https://www.dji.nl/binaries/dji-in-getal-2011-2015-definitief_tcm41-121762.pdf.

The centres do not employ pedagogical or educational staff and no schooling is offered.⁴⁷

Located next to the Schiphol Airport, the **Judicial Complex Schiphol** has been built and is operated as public-private partnerships, i.e. cooperation between the government and one or more private enterprises. Besides the detention centre, the Judicial Complex also accommodates an “application centre” (see below) and a court. The Royal Military Constabulary, Probation Service, International Organization for Migration, and the Dutch Refugee Council all operate in the Judicial Complex. The immigration detention centre at Schiphol has 450 cells, most of which are double occupancy. The centre also confines drug smugglers caught at the airport.⁴⁸ However immigration detention and penitentiary detention sections of the same building are subject to separate administrative regimes and thus the Global Detention Project classifies the immigration detention centre as a “dedicated” facility.⁴⁹

Located next to the Hague Airport, the **Rotterdam detention centre** was built in 2010. It was the first centre built and operated in public-private partnerships. The facility has 320 cells, divided in ten departments. According to the Custodial Institutions Agency all cells feature a shower, toilet, sink, telephone, refrigerator, TV and microwave.⁵⁰ Until a few years ago, the centre had a special regime for families with children.⁵¹ During its 2011 visit to the centre, the CPT noted that the material conditions were of a high standard. The cells were fully equipped and had adequate access to natural light and good lighting and ventilation. The sanitary annexes were fully partitioned from the rest of the cells. The CPT also praised the regime of activities offered to detainees, including the possibility to cook together, watch TV, play board games, table tennis or badminton. The centre has a gymnasium and library. A general practitioner was present at the centre during working days and several nurses were working daily. However the committee

⁴⁷ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

⁴⁸ Custodial Institutions Agency, “Justitieel Complex Schiphol,” *Website*, <https://www.dji.nl/locaties/detentiecentra/justitieel-complex-schiphol/index.aspx>, visited 28 November 2016.

⁴⁹ Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016; Dutch Council for Refugees, *Country Report: Netherlands*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/netherlands>.

⁵⁰ Custodial Institutions Agency, “Detentiecentrum Rotterdam,” *Website*, <https://www.dji.nl/locaties/detentiecentra/detentiecentrum-rotterdam/index.aspx>, visited 28 November 2016.

⁵¹ European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

found that the number of doctors and nurses was not sufficient for a centre which at the time of the visit had a capacity of 600.⁵²

Zeist detention centre has 264 rooms, mostly double occupancy and divided into six sections. The Custodial Institutions Agency reports that all cells have a shower, toilet, sink, refrigerator, TV and microwave. Since October 2014 the Zeist centre has a special unit, called Closed Family Facility (*gesloten gezinsvoorziening*, GGV).⁵³ The Closed Family Facility confines families with children and unaccompanied children. Families and children stay in this facility for up to two weeks before their planned removal from the Netherlands. The Family Facility is comprised of small, open apartments for which detainees have their own keys. There are 12 apartments with the capacity of six persons each and a special 10-person section for unaccompanied children. The houses are located in a wooded area, which is surrounded by a fence.⁵⁴

Reports on conditions of detention. In 2013, the CAT expressed concern that the legal regime in immigration detention centres was not different from the legal regime in penal detention centres. The committee pointed to confinement in cells for 16 hours, the absence of day-activities, the use of isolation cells, handcuffs and strip searches. The committee urged the Netherlands to ensure that the legal regime of alien detention is suitable for its purpose and that it differs from the regime of penal detention.⁵⁵

Previously, in 2008, Amnesty International Netherlands reported in 2008 that Dutch detention practices were rife with problems, highlighting in particular the prison-like quality of most detention centres. “Amnesty International expresses serious concern about the fact that the conditions under which migrants and asylum-seekers are detained are similar to those in regular (remand) prisons and that migrants and (rejected) asylum-seekers are held under a regime that is based on one designed for regular prisons. Despite the fact that under all regimes individuals may not be further restricted in the exercise of their rights than is necessary to safeguard their presence in

⁵² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 October 2011*, CPT/Inf (2012)21, August 2012, <http://www.cpt.coe.int/en/states.htm>.

⁵³ Custodial Institutions Agency, “Detentiecentrum Zeist,” *Website*, <https://www.dji.nl/locaties/detentiecentra/detentiecentrum-zeist/index.aspx>, visited 28 November 2016; European Migration Network (EMN) National Contact Point for the Netherlands (Immigration and Naturalisation Service Research and Analysis Department/ Dutch Immigration and Naturalisation Service (IND)), *The use of detention and alternatives to detention in the context of immigration policies*, November 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

⁵⁴ Custodial Institutions Agency, “Gesloten Gezinsvoorziening Zeist,” *Website*, <https://www.dji.nl/locaties/detentiecentra/gesloten-gezinsvoorziening-zeist/index.aspx>, visited 28 November 2016; Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016.

⁵⁵ Committee against Torture, *Concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session (6-31 May 2013)*, CAT/C/NLD/CO/5-6, 20 June 2013, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/NLIndex.aspx>.

the detention centre or to maintain the safety and order in the facility, most migrants experience and describe the regimes as 'harsh' and even 'inhuman'.⁵⁶

Over the past years the country closed down several detention facilities. As of November 2009, in addition to three currently existing immigration detention centres the Netherlands also operated centres Dordrecht (aka Detentieboot Zuid-Holland and Detention Boat Kalmar), Zaandam, and Alphen aan den Rijn. The total detention capacity of those six then-operating detention facilities was 2,757.⁵⁷ The country was also notorious for using boats as detention centres, including in Dordrecht and Rotterdam ("Stockholm").⁵⁸

Caribbean part of the Kingdom of the Netherlands. The constituent countries of Aruba and Curaçao in the Caribbean operate detention centres, which are under a separate legal system although the Kingdom remains the subject of international law and is responsible for safeguarding fundamental rights and freedoms.⁵⁹

Immigration detention in **Aruba** is regulated by the 1993 National Ordinance on Admission, Expulsion and Departure. Under article 19(2) of the Ordinance, a person may be detained if the Minister of Justice considers him a danger to public order, safety, or good morals or if there is a well-founded fear that the person will attempt to evade expulsion. Aruba operates one immigration detention facility, called the **Centro Dakota Immigration Detention Facility**. Centro Dakota has been operational since February 2013 and is run by the Aruban Police Force's Department for Supervision of Foreigners.

Most immigration detainees are from Spanish-speaking countries. At the time of the CPT visit, the centre confined four people. From January to April 2014, 78 persons were detained in the centre. The majority were confined up to three days but the maximum length of detention was between 15 and 18 days. One person was detained for almost two months. As noted by the committee, the majority of persons awaiting expulsion are subject to non-custodial measures, such as regular reporting to the police.

The CPT found that the material conditions were generally adequate. The centre was located in a one-storey building and had 16 single-person cells. The cells measured roughly nine square meters, were equipped with bed and a semi-partitioned sanitary annex, and had adequate access to natural light and sufficient artificial lighting and ventilation.

⁵⁶ Amnesty International, *The Netherlands: The Detention of Irregular Migrants and Asylum-Seekers*, June 2008, <http://www.refworld.org/docid/4875bc882.html>.

⁵⁷ J. Van Opstal (Dutch Ministry of Justice), *Email correspondence with Alexandra Lamb* (Global Detention Project), November 2009.

⁵⁸ Amnesty International, *The Netherlands: The Detention of Irregular Migrants and Asylum-Seekers*, June 2008, <http://www.refworld.org/docid/4875bc882.html>.

⁵⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Government of the Netherlands on the visit to the Caribbean part of the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 22 May 2014*, CPT/Inf (2015)27, August 2015, <http://www.cpt.coe.int/en/states.htm>.

During most of the day, detainees had access to a common recreation room, which was equipped with tables, chairs, TV, card and board games. Detainees could go outdoors twice per day for an hour but the space available for it did not offer any shelter from sun or rain and its narrow shape and uneven gravel surface did not allow undertaking any sport activities. No specific activities were offered to detainees. The CPT found that this regime of activities was not adequate for persons confined for more than a few days.

The CPT noted that detainees do not undergo medical screening upon admission and the first medical aide is given by a police nurse. The committee recommended that introducing systematic medical screening respecting medical confidentiality.⁶⁰

Curaçao operates one immigration detention centre, called **Illegal Barakken Immigration Detention Facility**. Immigration detention is ordered by an inspector of the Curaçao Police Force, while responsibility for the accommodation of immigration detainees was transferred from the police to Curaçao's prison, called Centre for Detention and Correction Curaçao. There are no specific regulations governing detention of migrants nor a maximum limit on detention. Most detainees are held for up to three days, however delays with obtaining necessary document or inability to pay for a flight ticket can lead to detention lasting several months. Reportedly, if after approximately five months a detainee still cannot afford a flight ticket, authorities take these cover these costs. The CPT urged authorities to provide these funds much earlier in the expulsion process. The committee found the regime in the centre "very basic and restrictive."

The centre consisted of three blocks, one of which is used for female detainees and another for male detainees. The block for male detainees had a dormitory with 12 beds, while the dormitory for female detainees had 14 beds. The CPT found that the state of repair of the buildings, including sanitary facilities, was good and the access to natural lights and ventilation was adequate.

The CPT expressed a concern at an absence of purposeful activities in the centre. The block for male detainees had a recreation room with a TV, basic games and fitness equipment but it was locked overnight. The block for female detainees features a TV directly in the dormitory. The CPT found that the regime of activities was inadequate for stays longer than three days.

The centre did not provide a medical screening upon admission and health care was provided by medical staff from the Curaçao's prison. The CPT recommended introducing a systematic medical screening, in line with the principles of medical confidentiality.⁶¹

⁶⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Government of the Netherlands on the visit to the Caribbean part of the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 22 May 2014*, CPT/Inf (2015)27, August 2015, <http://www.cpt.coe.int/en/states.htm>.

⁶¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Government of the Netherlands on the visit to the Caribbean part of the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or*

“Application centres.” In addition to its dedicated immigration detention centres, the Netherlands employs a range of facilities for housing asylum seekers and people slated for deportation, including “application centres.” Operated by the Immigration and Naturalization Service, application centres are used to accommodate or confine asylum seekers during the initial procedure to decide whether their application is well founded. This period can last up to four weeks.⁶² Application centres can be considered a form of “transit zone” detention because while people are held in these facilities, they are considered not to have officially entered the Netherlands.⁶³

There are two application centres, at Schiphol airport and in Ter Apel. According to Dutch experts, only the application centre at Schiphol should be considered a secure detention site as Ter Apel centre allows people to leave the premises before the initial investigation has been completed, although doing so results in the person forfeiting his/her opportunity to apply for asylum. People confined at the Schiphol application centre can only leave by voluntarily exiting the country.⁶⁴ All persons applying for asylum at Schiphol Airport are first detained, except from families with children, who are sent to non-secure asylum centres.⁶⁵ The Global Detention Project qualifies the application centre in Schiphol as secure transit zone detention centre because it is not possible for asylum seekers to leave the premises.

Degrading Treatment or Punishment (CPT) from 12 to 22 May 2014, CPT/Inf (2015)27, August 2015, <http://www.cpt.coe.int/en/states.htm>.

⁶² Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016.

⁶³ Amnesty International, *The Netherlands: The Detention of Irregular Migrants and Asylum-Seekers*, June 2008, <http://www.refworld.org/docid/4875bc882.html>.

⁶⁴ Steven Ammeraal (Dutch Refugee Council), *Telephone conversation with Michael Flynn* (Global Detention Project), 10 July 2009.

⁶⁵ Jakob de Jonge (Amnesty International Netherlands), *Email exchange with Izabella Majcher* (Global Detention Project), November 2016.

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