Immigration Detention: penal regime or step towards deportation?

About respecting human rights in immigration detention

7 August 2012
2012/105
People are entitled to be treated properly by the government. And let's be honest: they usually are. But not always. So it is good for a person who feels disadvantaged or unfairly treated to be able to turn to an independent body for protection. This body is the National Ombudsman.

The National Ombudsman helps to restore confidence in government. He does so by sharing his knowledge with government agencies, initiating investigations and lending a helping hand to people who encounter unnecessary bureaucracy. An investigation by the National Ombudsman may conclude with a report. These reports are in the public domain and are published on the website www.nationaleombudsman.nl.
Immigration Detention: penal regime or step towards deportation?
About respecting human rights in immigration detention

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Consideration

The stories of foreign nationals published in this report bear witness to despair and frustration. By implementing the current method of immigration detention the government has established a system that has a mind-numbing effect on many people. The accounts given by foreign nationals inevitably have an undertone of despair, because without the right to stay in the Netherlands they must leave the country. If they do not leave the country, whether forced by circumstances or of their own volition, the government acts to remove them mandatorily.

In and of itself it is a legitimate goal for a government to restrict people's freedom pending successful deportation. However, the way this restriction of freedom occurs under the current regime of immigration detention impairs that legitimacy. A person is locked up sixteen hours a day together with another detainee in a space of less than 10 m². Even when allowed out, they are under supervision. They are allowed visits for two hours per week. They are not allowed to work. They cannot decide for themselves when they want to go out. They are dependent on decisions taken by the supervisor and the director of the detention centre. They have no idea how long all of this will last. Ultimately a foreign national can be detained for as long as eighteen months and renewed periods of detention are by no means the exception. In a nutshell, this is the situation of the approximately 6,000 foreign nationals that the government keeps in immigration detention each year.

I find this a serious situation and question whether it is proper – humane – to lock up in this way people who have not been convicted of anything. I am not the only one to raise this critical question. Human rights organisations like Amnesty International, international bodies like the UN Human Rights Commission and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), academics and church authorities very regularly express criticism of how the Netherlands locks up foreign nationals who do not have the right of residence.

Over the years this criticism has had some effect. A few plans and measures in response to the criticism were mentioned during our talks with the governors of two detention centres and representatives of the Ministry of Security and Justice and the Ministry of the Interior and Kingdom Relations. Among other things some pilot projects have been started with a view to developing alternatives to immigration detention. Consideration is also being given to less far-reaching ways of restricting liberty during detention. The governors of the detention centres increasingly recognise that immigration detention may not constitute the imposition of a punishment.
There is great political pressure to control the inflow of immigrants and to make sure that foreign nationals leave the Netherlands if they are not in the country legally. This political pressure appears to have materialised in a heartless policy of disincentive that has been embodied in the mind-numbing nature of immigration detention. However, the pilot projects directed towards improving the position of foreign nationals in detention does merit some praise. Nevertheless, the National Ombudsman is seriously concerned about the sluggish pace of improvement and misses a sense of urgency among relevant authorities to put an end to the regime of immigration detention as such. The alternatives to immigration detention tried out in the pilots are very limited in terms of time and the group of eligible foreign nationals. Improvements to the current regime of immigration detention include an extra visiting hour each week, but so far there has been no departure from the basic principle of incarceration.

Through my report I want to emphasise that respect for the human rights of foreign nationals requires greater urgency than evidenced by the measures taken so far. Therefore, I have made a number of recommendations. I call upon the Minister of Security and Justice and the Minister of Immigration, Integration and Asylum to implement significant improvements and to report concrete results within six months.

Dr. A.F.M. Brenninkmeijer

National Ombudsman
Summary

The government wants people who are living in the Netherlands illegally to leave the country voluntarily. If they fail to do so, the government will take a number of steps. One of those steps is immigration detention. Detention is a measure that deprives people of their liberty. A foreign national will be locked up at a detention centre pending swift deportation. A total of 6,100 foreign nationals were kept in detention in 2010, for an average for 76 days.

The National Ombudsman has observed that foreign nationals are being detained under an inappropriate regime that seriously strains the respect of fundamental rights. To some extent this is because immigration detention acts insufficiently as the last resort. Moreover, the government wrongly assumes that foreign nationals spend only a relatively short period of time in detention. The current regime fails to reflect the nature of a measure taken under administrative law. The sole purpose of detention is to prevent a foreign national from avoiding deportation. This measure is not intended to be a punishment. Yet in several respects foreign nationals are detained under a more austere regime than that of convicted criminals. Unlike convicted criminals, foreign nationals are kept as standard in two-person cells, for example, while they are not allowed to work, they may not receive any education and they must remain in their cells from 17:00 to 08:00 hrs. What’s more, foreign nationals are subject to the same security measures (frisk searches, strip searches and restraints during transportation) and disciplinary punishments and measures (such as segregation and solitary confinement).

What is needed to bring about real improvements is the acknowledgement that immigration detention may be used only as a last resort. In the short term the Dutch government needs to develop less drastic alternatives to immigration detention. The National Ombudsman naturally welcomes as a positive step the government’s current elaboration of alternatives to immigration detention (such as the Reporting project and the Deposit project). In contrast, however, the pilot projects are being carried out only on a small scale, focus on specific target groups, and only last a short time.

Immigration detention is the step that remains when the government, after due consideration, concludes that a less severe remedy for preventing a foreign national from avoiding deportation does not exist. When this occurs, it is important for the regime to reflect the nature of immigration detention, namely a measure focused solely on deportation. There should be no elements of punishment in immigration detention. As the Custodial Institutions Act was written with a view to punishment, it is important to give
the regime of immigration detention its own dedicated embodiment. Another option is to develop an appropriate regime within the framework of the Custodial Institutions Act. The Act sets down only minimum standards and offers scope to adapt the different regimes. There are all kinds of different institutions for offenders based on the regime of the entire community, varying from closed to open prisons, and even a penitentiary programme that allow prisoners to stay outside the prison by means of electronic surveillance.

The National Ombudsman observed that governors of detention centres involved in this study exhibit a willingness to change the approach from pressure and coercion to one of brainstorming and facilitating. Consideration is also being given to more moderate forms of the regime. The National Ombudsman regards this as a first step towards developing a more appropriate regime.
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Komt een kind bij de buurvrouw

Immigration Detention: penal regime or step towards deportation?
Structure of report

This is not a traditional report by the National Ombudsman. A lot has already been written and investigated with regard to immigration detention. Therefore, the Ombudsman decided to build further on these existing reports. For the sake of readability this report contains the fewest possible footnotes and references. The appended list of references identifies the documents used in the production of this report.

The Ombudsman has a duty to examine whether the government acted properly in relation to members of the public. This makes the way people perceive government action an important consideration. Therefore, this report contains sidebars in which some foreign nationals describe their experiences while held in detention. By way of illustration there are three timelines of foreign nationals who were locked up in detention centres for prolonged periods of time and repeatedly so. Not all foreign nationals are kept in detention this long, although some certainly are: approximately one out of every six terms of detention of foreign nationals lasts longer than six months.

After introductory comments on this investigation, Chapter 2 provides an overview of the regulations and controls within which immigration detention takes place. Chapter 3 provides a diagrammatic representation of what a detention centre looks like, after which Chapter 4 looks at how detention is carried out. Chapter 5 contains the view of the National Ombudsman and Chapter 6 recommendations for improvements.
Immigration Detention: penal regime or step towards deportation?
1 Introduction

Hussein

"I come from Iraq and requested but did not get asylum. I’ve been in the Netherlands for 13 years so I speak Dutch well. This is my second time in detention and I’m afraid that this time will not solve anything either. Last time I was given back my freedom after thirteen months.

I believe it’s very important that the National Ombudsman is taking a look. There are very many complaints about this facility. To start with there is the problem of two people sharing one cell. People are so different that it’s very tough when you have to remain in the cell for so many hours. One person smokes, the other doesn’t. One person like spicy food, the other doesn’t. Everybody experiences stress and is not in top form. I’m now in a cell alone and I want to keep it that way.

In principle the staff is good. Only a few are unsuitable for this kind of work. They either lack patience or show no understanding for the people inside here.

The medical unit is the subject of many complaints. Somebody on this wing recently broke his arm. It took three days before it was examined seriously. He was finally allowed to go to the doctor and they found that he had broken his arm. There are only six part-time nurses and one GP for a total population of around 600; it’s not many. If you fill in a note saying that you want to see the doctor, it takes days before you are allowed to go. It’s very frustrating, especially when you have nothing to do the whole day but wait. I have back problems and I also had a bruised rib. I’ve not yet been allowed to visit the doctor.

The cruel uncertainty remains. I don't think any papers will come from the Iraqi embassy so that I can be sent back. But what's the point of waiting here for months on end? I don't understand why the courts always say that the Repatriation and Departure Service is doing everything possible. Nothing at all is happening.

I see lots of people who are dejected and depressed. They sometimes go to a different wing or even to a different place. None of it helps. How can a country like the Netherlands keep people they don’t want to punish locked up for such a long time?"

1.1 Measure under administrative law

Foreign nationals without a residence permit are not allowed to stay in the Netherlands. In practice, however, some of them stay for shorter or longer periods of time in the Netherlands for a variety of different reasons. One factor that plays a role is that they are better off here than they are in their country of origin; some have employment or family here, or are scared to go back. For some of them it is not possible to go back. If a foreign national does not leave, it is not a crime in itself. This report concerns the immigration detention as a measure under administrative law, i.e. the detention of foreign nationals to stop them avoiding deportation. The government wants people who are not legally entitled to stay in the Netherlands to leave the country of their own free will.
If that does not happen, the government uses a number of remedies. One of them is immigration detention. The detention of a foreign national is a measure that deprives a person of his or her freedom. The foreign national is locked up in a detention centre pending speedy deportation. However, it is unclear beforehand how long the detention will last. How does this square up in relation to the person’s fundamental rights, such as freedom of movement, the right to a family life and privacy?

1.2 Numerous critical reports
A comprehensive literature study by the National Ombudsman revealed that numerous critical reports have already been written on the subject of immigration detention on account of the exceptional way in which foreign nationals are detained. The appendix lists the relevant reports and information. In the past various government ministers have given undertakings to make improvements in response to these reports.

But so far the promised review to align immigration detention more to its administrative law nature does not seem to have produced any fundamental changes. Amnesty International has repeatedly expressed its concern about this matter. The strike at the Rotterdam detention centre in August 2011 was a signal for the Ombudsman to investigate how far the restrictions imposed on detainees are compatible with respect for their fundamental and human rights.

1.3 Meeting with experts
To obtain an insight into the immigration detention problems that still exist, the National Ombudsman organised a meeting with experts1. It emerged at the expert meeting that the participants were of the opinion that insufficient attention was being given to alternative possibilities. They also took the view that laying down the regime of immigration detention in accordance with the Custodial Institutions Act cast the detention in the mould of criminal law. Unanimously, they expressed most concerns about the accessibility and quality of medical care, the use of forced remedies (in particular solitary confinement), the method of transport to hospitals, the limited contacts with the outside world (e-mail, Internet, telephone and visits) and the absence of a purposeful way of spending the day (work or education). A matter of general concern was the absence of an approach directed towards the individual. These insights were factored into the further investigation conducted by the Ombudsman.

1.4 Visits to detention centres
Staff of the Office of the National Ombudsman subsequently visited two detention centres. They interviewed foreign nationals, the governors, the medical staff, supervisors, spiritual counsellors, and representatives of the Repatriation and Departure Service. These talks revealed that on the whole the foreign nationals were satisfied with their treatment by detention centre staff and with the efforts being made to improve the accommodation. The fairly new governors at both centres were also looking at some innovations within the

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1 Aan de expertmeeting namen deel:
The participants in the expert meeting were:
• F.Wassenaar, member of the Meijers Committee
• A. Busser, Amnesty International
• F. Hofste, Security and Justice Inspectorate
• J. de Jonge, Justitia et Pax
• A. van Kalnhouw, expert in fields including immigration detention.
regime. There appears to be slightly more attention to ways of giving detainees greater freedom of movement. At the same time, we noticed considerable concern about the effects of immigration detention: the uncertainty of the length of detention wears people down and impacts on their mental wellbeing. At present the basic principle in immigration detention is to confine people pending their deportation. For the time being security seems to be the pivotal consideration during confinement.

1.5 Interviews

With a view to a provisional version of this report, staff from the Office of the National Ombudsman interviewed the director of the Special Facilities Unit of the Judicial Institutions Department of the Ministry of Security and Justice, the governors of the two visited detention centres, the Director of the Repatriation and Departure Service and the Director-General of the Aliens Affairs Department of the Ministry of the Interior and Kingdom Relations. During these talks they said that the situation concerning immigration detention had improved markedly in recent years and that the improvements were continuing. The first step was to improve the accommodation. This could be followed by directing attention towards the circumstances prevailing during detention. Ideas already being formulated may lead in due course to allowing greater freedom to and imposing fewer restrictions on people in immigration detention. Pilot projects are underway to examine alternatives to immigration detention for certain groups of people.

1.6 Respect for human rights

In this report the Ombudsman assesses how the government uses and carries out immigration detention. The Ombudsman’s assessment is predicated on the principles usually applied to gauge whether the government treats members of the public properly. The central requirement is for the government to show by its actions that it has sufficient respect for fundamental and human rights. The Ombudsman looked at immigration detention from the point of view of a foreign national residing in the Netherlands as a member of the public. That is why the experiences of foreign nationals have been given a place in this report. A number of accounts given by foreign nationals interviewed by staff during the investigation (or whose files they studied) were included in the report by way of illustration. These illustrations were published because they show how foreign nationals experience their detention. The National Ombudsman did not check the veracity of the matters cited in these personal accounts.
2 Immigration detention

John

"I'm from the EU and find it incomprehensible why I have to be locked up every time. This is my third time in immigration detention. I've been declared an undesirable alien because of a few minor offences. I've now started legal action at the European Court. After every deportation I quickly come back again by train or car. My life is here in Amsterdam.

Immigration detention has improved a lot compared with a number of years ago, but a big problem is still that you don't know how long you must stay here. Stress quickly hits you. It's unimaginable what waiting does to a person. You're not allowed to do anything useful here; there are no training courses and nothing with a computer or the like. You simply sit out your time. You're allowed outside for exercise one or two hours a day. Each week you get a one-hour visit, sometimes two hours. You eat in your cell. There's an hour of sport and an hour in the library, that's how you live from hour to hour.

I've got some physical health problems caused entirely by my confinement. I suffer from chronic bronchitis and being locked up makes it even worse. In here the medical staff deals with complaints differently than on the outside. They don't know when you'll be leaving so there's a tendency to wait and see. I'm not going to complain about it because it might cost me my single cell. Before this I always shared a cell with different people. I've been with a Chinese, a Moroccan, an Iraqi, a Surinamese and an Egyptian. Five different people, each with their own particular habits and odours. I'm glad I'm alone now and I want it to stay that way.

I do try to help people on my wing. I have a good command of the language and I know how things work. Some people arrive completely in despair. They don't know what's going to happen to them and have had bad experiences with prisons in their own country. People who really blow their top sometimes get solitary confinement for two or three days and that's really tough. You're the only one who suffers. Some people have no idea how everything is organised in here and get so frustrated that they have to let off steam."

2.1 Legal framework for immigration detention

The Aliens Act 2000 stipulates that any person who is not allowed or no longer allowed to be in the Netherlands must leave the country. After a rejected request for a residence permit or expiry of a temporary permit, a foreign national first gets an opportunity to leave the country voluntarily. Failure to do so may land him or her in immigration detention under the policy of requesting then acting. A foreign national who lives in the Netherlands but has never applied for a residence permit may also end up in immigration detention. This occurs with a view to deportation in the interests of public order or national security to prevent a person from avoiding supervision. In short, the goal of immigration detention is to stop a foreign national from avoiding deportation."
Immigration detention is an administrative measure that should be used only as a last resort in cases where the same goal cannot be achieved by less far-reaching means. Nor may immigration detention restrict the rights and freedoms of a foreign national to a greater extent that warranted by the purpose of the measure, namely deportation. This is how it is worded in the Constitution (Article 15, paragraph 4). This principle has also been set down in declarations and resolutions of the Council of Europe. Documents issued by the United Nations, the Council of Europe and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have repeatedly stated that foreign nationals illegally in the country should not be treated as criminals. If confinement is unavoidable, the CPT states that it must occur in accordance with the 20 guidelines of forced return of the Committee of Ministers of the Council of Europe in "centres specifically designed for that purpose."

Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals stipulates (in Article 13): "The use of coercive measures should be expressly subject to the principles of proportionality and effectiveness with regard to the means used and objectives pursued." It goes on to stipulate in Article 16 that: "The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient."

Ultimately, the courts examine whether immigration detention is permissible and/or may be extended. The first check is a complete one. The check for an extension is a marginal one only. The court examines whether there is still sufficient likelihood of deportation. Unlike other countries, the Netherlands did not have, until recently, a legally defined maximum term for the duration of immigration detention. Since the European Repatriation Directive came into force on 24 December 2010, the duration of immigration detention has been set at a period not exceeding six months. In certain cases this period may be extended by not more than twelve months to a total of eighteen months. It recently became clear how the system works in practice. The Administrative Law Division of the Council of State ruled that Iraqis held in immigration detention had no prospect of repatriation. This judgement resulted in a large group of Iraqis being released from immigration detention and no further Iraqis being put into immigration detention. Consequently, they reverted to an 'illegal status' at that time.
2.2 Responsible government agencies

Immigration detention under Section 59 of the Aliens Act takes place at detention centres. The State Secretary of Security and Justice is responsible for these centres. The Special Facilities Unit of the Judicial Institutions Department of the Ministry of Security and Justice is responsible for the detention of immigrants. The governors of the various centres are responsible for the day-to-day running of the centres. The Minister of Immigration, Integration and Asylum is responsible for implementing policy on foreign nationals with, ultimately, the deportation of those not legally in the Netherlands. The Aliens Police and the Royal Netherlands Military Constabulary have supervision and enforcement roles. The Repatriation and Departure Service, which falls under the Minister’s responsibility, is charged with overseeing the repatriation of foreign nationals to their country of origin or to another country where they are assured of admission. It must examine whether there is sufficient prospect of deportation. Another duty of the Repatriation and Departure Service is to prepare deportation speedily.

2.3 Supervisory bodies

The Council for the Administration of Criminal Justice and Protection of Juveniles has duties that cover jurisdiction and advising the minister (on request and on its own initiative) on the protection of young people and the implementation of punishments and measures. The Security and Justice Inspectorate, until 14 April 2012 the Inspectorate for Implementation of Sanctions, 'ensures that sanctions are implemented with a view to visible improvement of the effectiveness and quality of imposing sanctions'. The Health Care Inspectorate oversees the quality of health care at penitentiaries.

2.4 Pilot projects for alternatives to immigration detention

In a letter dated 22 December 2011, the Minister of Immigration, Integration and Asylum informed the Lower House of Parliament of the outcomes of an examination of alternatives to immigration detention. The minister was responding to a motion introduced by socialist MP Sharon Gesthuizen. Firstly, he stated that the following persons would be ineligible for inclusion in a pilot project: persons convicted under criminal law and others who pose a threat to public order, foreign nationals obstructing their repatriation, foreign nationals refused entry at the border, foreign nationals who had previously avoided supervision and foreign nationals not previously known to the authorities because they had never applied for admission to the country. The minister went on to outline four pilot projects. The first concerned the imposition of an obligation to notify the Aliens Police in combination with supervised repatriation by the Repatriation and Departure Service. This pilot project is for foreign nationals who reside with private individuals or organisations deemed to be reliable. The minister said he was thinking of foreign nationals who had applied on medical grounds but been rejected and of families with children. The pilot project will involve a
few dozen foreign nations. The second pilot project concerned a freedom-restricting measure at a limited freedom facility for single foreign nationals who were minors when allowed to stay in the country but were now required to leave. The third pilot project involved a deposit pre-payable by the foreign national but refundable after the person has demonstrably left the EU. This project will be carried out in a few dozen cases. The fourth pilot project concerned the co-financing of repatriation projects of NGOs and foundations. Two organisations have submitted proposals for projects that will be examined for eligibility for financing.

2.5 Regime

The Custodial Institutions Act applies to the regime within immigration detention centres. So although not incarcerated for a criminal act, these foreign nationals are subject to the same law as imprisoned criminals. Almost invariably foreign nationals fall under the regime of limited association. By consequence they have a limited possibility to participate in communal activities. Outside these times they remain in the accommodation assigned to them or stay on the wing. The limited association regime does offer a possibility to perform work or receive training or to be allowed out on leave under special conditions. Activities directed towards re-socialisation, such as work and training, are not offered during immigration detention. Article 4 of the Ministerial Order governing the temporary leaving of custodial institutions excludes foreign nationals who have been declared undesirable aliens or who are certain to be deported after detention. The Inspectorate for Security and Justice stated in its September 2010 inspection report, entitled 'Examination of three detention centres', that some institutions did allow occasional accompanied leave in exceptional humanitarian circumstances such as the death of a family member. The Inspectorate noted in its Supervision Report of 13 January 2012 that the Special Facilities Unit of the Judicial Institutions Department had agreed internal arrangements aimed at applying a consistent policy on leave. As standard, foreign nationals are housed in two-person cells. According to the human rights and social justice organisation Justitia et Pax, it was purposely decided to implement a regime more austere than the one applicable to convicted criminals, on the assumption that this would encourage foreign nationals to cooperate in their deportation. It has always been assumed that immigration detention was of a short duration. The internal rules of the detention centres amplify the sanctions and security rules.

1 Section 20 of the Custodial Institutions Act provides for this regime also to apply to people held on remand and who are thus incarcerated for a short period. Persons who have been convicted fall under the regime of complete association. Under this regime there are more opportunities for participation in activities.
Mo from Niger

2002
Applied for asylum at Amsterdam Schiphol Airport

2003
Application rejected.

2008
Meets his partner, with whom he has two children.

2009
All kinds of procedures until July 2008, resulting in refusal of entry.
First serving of notice to leave the Netherlands, cooperates in initial presentation at embassy.

2010
No travel documents obtained, living with his partner and children.

2011
Immigration detention not extended, is released after 16 months, still lacks documents.
Arrested on the street by the Aliens Police, placed in immigration detention.

2012
Rearrested on the street and placed in detention, this time at the Rotterdam detention centre. When visited by the National Ombudsman in March 2012 he had been in detention for five months. He was waiting for expiry of the six-month term in the hope that the detention would be lifted.
Immigration Detention: penal regime or step towards deportation?
3 Description of detention centres

Jamal

"I come from Morocco and have been in the Netherlands for 22 years. I speak Dutch well. This is my third time in immigration detention. This time I've been here nine months so far. I was once kept in detention for seven months and another time for nine months. I used to have a residence permit, but it could not be renewed.

You can't describe what it's like in here. There's a lot of stress and a lot of aggression. So people have a lot of physical and mental complaints. Some even die, and I personally have experienced a couple of suicides. The medical care is very poor. People need medication but don't get it. One time I had bruised ribs and they fobbed me off with a paracetamol (acetaminophen) tablet. The food is also bad and very minimal. I've got nobody and must do everything with the €10 a week that you get from the detention centre. There are not many activities, but that's fine by me, although I do understand that for other people it's not nearly enough and it would be good if there were to be more to do.

I have good contacts with the staff, but I do see that others have problems. It's sometimes down to the person himself, but there are also some nasty officers. In the building where I am now the quality of the air was very poor. Fortunately it's improved in the meantime, but it used to be very sticky. Normally you are let out for exercise a few hours a day, but if the weather is fine we are sometimes allowed out longer.

My contacts with my lawyer are good and in principle the contacts with the Repatriation and Departure Service are also good. It's only the Moroccan consul who won't cooperate. I can't get a passport because I can't provide a birth certificate. Nor can I provide a marriage certificate for my parents. I simply don't have it and both my parents are dead. I did try to obtain a birth certificate, but unsuccessfully. I've no longer got anybody in Morocco. I have only a sister and she lives outside Morocco."

3.1 Detention centres

Detention centres for immigrants are located in the Randstad, some of them close to the airport. They are large drab buildings surrounded by fencing and barbed wire. The older detention centres are very austere and dark on the inside. At one of the centres the air quality on a number of wings was poor until recently and there was insufficient daylight. During the day the lights had to be left switched on all the time. Members of staff were also bothered by it even though they do not spend all their time there. The situation recently improved. New ventilation grilles were fitted in the cells and there are now more windows in the wings. The new centres look slightly friendlier and have better facilities, but despite this it remains a prison with a fence around it and with cells with a locked steel door.
3.2 Arrival

Foreign nationals are taken in a white prison bus by the Transport & Support Unit from the police station where they were being held to the immigration detention centre. They first go to the 'BAD' department for the initial intake. The BAD departments at older detention centres look sombre and intimidating. One or more foreign nations are placed in a locked holding area behind steel doors with a small hatch and two benches fastened to the wall. They must wait here until it is their turn for the intake. The BAD department in one of the newest centres is far more modern and friendly. The holding area has been furnished as an ordinary waiting room with a flat screen monitor and coffee vending machine. The monitor provides all information about the centre and about immigration detention in general. During the actual intake foreign nations are photographed and have their fingerprints taken. Their personal details are checked on the computer. Valuables and other items that may not be taken on to the wing are all placed in a box or bag for storage. In return the detainees receive a receipt. They must then undergo a frisk search and a strip search. This is done by two officers and for security reasons a third officer is nearby.

3.3 Stay

On completion of this process the foreign national first spends fourteen days on the intake wing. This does not apply to women and children, however. They go straight to the women's wing or family wing. At the intake the staff assesses what kind of person they are dealing with. The background of a foreign national is not always known. They also decide with whom the person can best be placed in a two-person cell. There is an extra care wing within the detention centre for aliens who require extra attention. After fourteen days the persons moves to one of the general population wings. These are cellblocks that house approximately 40 people. There are two-person cells measuring roughly 2 x 5 metres. The cells contain a bunk, two upright chairs, a pigeonhole fitted to the wall, a toilet and a shower. This makes the cell fairly full. The detainees may together have a TV, radio and water boiler in their cell. In the newer detention centres there is also a telephone in the room that the detainees can use by means of a phone card.

Each wing has its own communal area where detainees can spend the day. Some detention centres have computers and a kitchenette in the communal area. Some wings also have their own exercise area. All detention centres have a medical unit, sports areas, library and recreation rooms. In the library there are few computers plus books and newspapers in various languages. Books may also be ordered from outside the centre. The computers are set to a restricted number of Internet websites. Detainees are allowed to use the Internet only for limited purposes. Internet usage is still under development. Detainees may request the addition of new websites. The sites are then screened and are sometimes added if deemed safe. More than 1,000 websites are accessible. The recreation room is an area with various materials used principally for creative activities. Films or music are sometimes put
on at some detention centres. There is a reception room for visitors, a prayer room, and a video link room for court hearings, a shop and some rooms for lawyers. In the visitors’ room the rules for visitors are affixed to the wall. The rules state, for example, that only children below the age of 4 may be placed on the lap. A detention centre shop people sells goods like food and cigarettes. 

The Rotterdam detention centre has a family wing. It houses people with children, but also family members or partners together. There is a children’s recreation room with toys and materials for creative activities under the guidance of an activities supervisor. For older children there are games computers. On the family wing there is a permanently open exercise area with grass and playground apparatus. Three boys of primary school age were encountered during the visit to one of the detention centres. Children usually stay only a short time at a detention centre and do not attend school during that time.
Jamal from Morocco

- **1992**: Arrived in the Netherlands, a residence permit was not granted because he did not have a valid passport, although he did find work.
- **1995**: Obtained a residence permit under amnesty arrangements for illegal immigrants.
- **1997**: Got married.
- **1999**: Residence permit was not renewed because he was unable to provide a contract of employment; always worked in Westland. Had a fixed place of abode with his wife.
- **2009**: Arrested while at work, spent 9 months in immigration detention. Tried various embassies, but received no documents. Was subsequently released.
- **2010**: Arrested while at home. Immigration detention for seven months, did not result in any documents.
- **2011**: Rearrested, held in detention for 9 months by April 2012. Moroccan authorities failed to cooperate in issuing of documents. Has psychological complaints.
Detention

Soraya
"I come from Lebanon and requested asylum in the Netherlands but it was rejected. I've been in the Netherlands for three years now and this is my first time in immigration detention.

I know I'm in the prison and not a five-star hotel, but all in all it's very degrading. Personally I don't have any problems with the officers, but the way everybody is treated within the detention centre is not very respectful. It starts as soon as you arrive. You have to take off all your clothes and you are frisk searched and strip searched. It's all very embarrassing and painful.

I'm very dissatisfied with the health care at the centre, especially the general practitioner. Transport to the hospital is very humiliating and insulting. You are restrained with handcuffs attached to a belt and leg restraints, just like a criminal. I have problems with my thyroid gland and was referred to the hospital. But I refuse to be taken to the hospital like a criminal and in the end it didn't happen.

There are very few activities. Apart from the normal activities we are supposed to have something extra twice a month, like bingo or a barbecue. A while ago we had a barbecue and it was very pleasant, because for a short while you can forget that you're being held in detention.

I know I'm being detained, but we are all people and people need air, exercise and vitamins and we don't get any of that here. We get only microwave meals of very poor quality. Each day we get only a very small piece of fruit, like a mini-sized apple.

It is very hard being in here with all the uncertainty and obscurity we have to contend with and the long duration of detention. My husband is an EU citizen and has applied for family reunification in another EU country, but even that is unclear. I'm still waiting for an appointment that the Repatriation and Departure Service was supposed to make with my embassy. The heart of human rights is your right to family life, but that's exactly what I am being denied."

4.1 Confinement
Foreign nationals are kept locked in their cells from 4:30 pm until 8:00 am. At lunchtime they also remain in their cells for a half-an-hour for lunch. So on average the detainees spend 8 hours a day outside their cell and 16 hours a day in their cell. The time outside the cell is slightly longer for families, and they also have an evening programme and on average they spend 10 hours a day outside the cell. As standard the detainees are housed in two-person cells. Therefore, they must spend 16 hours a day in each other's company, without any privacy.
Even outside the cell there are still confined. For part of the day, however, the detainees may move around freely across their wing, but they are not allowed the same privilege outside their own wing.

**Air quality in Zeist**

One of the two buildings at the Zeist detention centre had insufficient ventilation. This caused problems on the wings, but particularly in the cells. The detainees are kept in their two-person cells from 4:30 pm until 8:00 am next morning. The cell measures less than 10 m². There was insufficient ventilation in this space, it was not possible to open the window and it was not permitted to open the hatch in the door for fire safety reasons. Detainees complained about headaches, breathing problems and skin rashes. The officers on the wings also reported being affected by the poor air quality and asked for the matter to be investigated. Improvements initiated in recent years did not have sufficient effect.

The air quality problems were twice reported by the Inspectorate for Implementation of Sanctions in a supervision report. In the second report (an interim supervision report dated 13 January 2012), the Inspectorate said matters had deteriorated rather than improved. In a letter dated 13 January 2012, the Inspectorate asked the governor of the Zeist detention centre to look into the quality of air. The television programme Zembla reported on the air quality problems in December 2011. This prompted questions in the Lower House of Parliament. In response to the questions, the State Secretary said that further improvements would be made before the end of February 2012 and that a thorough refurbishment of the building would be completed before July 2012.

At the time of the visit to the detention centre in early March 2012, ventilation grilles had been installed in the windows of the cells. This had greatly improved the situation. When questioned, the governor said that there had been no talks with the detainees because management had not received any complaints. Prior to the improvements there had been no talks with the detainees or any investigation into the extent to which the health problems were caused by the quality of air. The medical staff was of the opinion that there was no demonstrable link between the health problems and the quality of air.

**4.2 Day at the centre**

Under the rules of the Custodial Institutions Act, a foreign national in detention may participate in activities at least eighteen hours per week. Although a turnaround in thinking is noticeable among detention centre governors and in principle the staff is sympathetic, the way detainees spend their days is lacklustre. Ways of passing the day consist roughly of one or two hours of exercise per day (in Rotterdam 4 hours) and one extra activity a few times each week, such as:
one or two hours of sports;
one or two hours of creative activity;
one or two hours in the library;
visit from the spiritual counsellor;
one or two hours of visits.
The detainees spend the rest of their time in the corridor or in the communal area of their wing.

In some respects, therefore, they are being offered more than what is legally required for the regime of limited association. But the detainees are not offered an opportunity to perform work or to take training. These possibilities do exist under the regime of limited association for imprisoned criminals with a view to their reintegration. By definition the detained foreign nationals are not expected to re integrate into Dutch society and for that reason it is said that they do not need to be offered work or training. In actual fact, foreign nationals have only one or two hours of dedicated activity in any one day. This gives them very little diversion and there is no meaningful way for them to spend their day. So a stay at a detention centre continues to have a predominantly mind-numbing effect. This heightens the despair felt by detained foreign nationals. Spiritual counsellors in particular have expressed their concern about this matter.

4.3 Contacts with the outside world
Limited possibilities exist for contacts with the outside world. Detained foreign nationals are allowed to make landline calls but do not have the possibility to use their own telephone or to maintain e-mail contacts with family, friends or other persons. They are also subject to restrictions to information on the Internet. Detained foreign nationals did not used to be offered a possibility for accompanied leave for exceptional circumstances like the birth of a child or the death of immediate family members. Following a recommendation made by the Inspectorate of Security and Justice within the Special Facilities Unit, however, arrangements have now been made to establish a consistent policy on leave. The Special Facilities Unit says that accompanied leave will now be made possible in exceptional circumstances. In total family or friends can visit a detainee not more than two hours per week. Visits occur under supervision and are characterised by a lack of privacy. Most physical contact with visitors is impermissible.

4.4 Medical care
All detention centres have a medical unit. The unit is staffed by nurses, general practitioners and psychologists. A GP is present from 10 am to 5 pm during the week and there is a nurse until 10 pm. After this time any medical complaints are reported to an out-of-hours doctor via the duty officer. The medical unit is housed in its own department, but the nurses regularly go on to the wings where the detainees are kept. Each week they hold a surgery in each wing in a separate consulting room (equipped with an interpreter's
telephone) and they take medicines to the wing four times a day. Immediately on arrival at the centre the detained foreign nationals receive information about the medical care available at the centre. They can fill in a note to request to speak to the medical staff. For this purpose there is a posting box on the wing. An appointment is then made for them to see a nurse. The nurse decides whether the doctor needs to see the detainee. If a detained foreign national is already receiving psychological or other care, this care must continue.

Continuity of care is an important matter but sometimes proves difficult during immigration detention. This applies to the treatment of an infectious disease like hepatitis, for instance, which can take six months. Treatments are sometimes not started due to this situation, while it is questionable whether it is responsible to deport somebody who is in poor health.

There are many mental problems that are brought on by stress and depression. There are also several people suffering from serious mental problems who repeatedly come back to the immigration detention. Every time these people leave the centre it is clear that they are not in a fit state to leave the Netherlands. Nevertheless, the same people return time and again to immigration detention. When people are put back on to the streets after detention, the medical staffers do their best to provide information about organisations they can turn to for medical and other assistance. They also receive enough medication for two weeks. The prolonged uncertainty and lack of diversion are the main cause of the medical complaints, according to the medical staff. Generally speaking there is an increase in the number of requests for medical care after the weekend when there have been no activities.

In December 2009, the Health Care Inspectorate issued a report entitled ‘Medical services in detention centres: care is responsible but not yet assured’. The Inspectorate concluded in its study that the care had been organised to allow the provision of responsible and safe care, but that this did not mean that there were no risks or no room for improvement in the care. The Inspectorate observed at all detention centres problems that may result in reduced access to expert care or reduced continuity of care. In response to this report, the detention centres jointly submitted a plan of action. An interim supervision report headed ‘Supervision of immigration detention centres' published by the Inspectorate of Security and Justice in January 2012 signalled that at the three visited detention centres the detainees spontaneously told the Inspectorate of their considerable dissatisfaction with the medical care. The medical staff were said to underestimate the health problems, while essential hospital treatments were not being provided or had been discontinued.

During interviews the detained foreign nationals voiced many complaints about the medical unit. They complained that they were not being treated (or not treated properly) for medical complaints or were not being helped quickly enough. People felt that they were being fobbed off with a paracetamol tablet or a referral to a psychologist, even though they had a complaint like back pain. The doctors and nurses say that they work according to
Dutch medical standards and do not lightly prescribe special medication or make a referral to a specialist. If a foreign national was already being treated for certain complaints prior to immigration detention, it is sometimes impossible to continue the treatment by the person’s own specialist during the period of detention.

Mr. Jones suffers from keloid, an overgrowth of scar tissue, with inflammations in his neck that bleed and cause him considerable pain. Before he found himself in immigration detention, Mr. Jones was being treated for this condition by a plastic surgeon. Due to immigration detention, however, it was not possible to continue the treatment. The governor of the detention centre where Mr. Jones is being held did not give permission for continuation of the treatment by the specialist. The plastic surgeon subsequently offered to come to a local hospital to provide the treatment, but this too was refused by the governor. Mr. Jones has now been referred by the general practitioner at the detention centre to a dermatologist at a local hospital. The specialist prescribed an ointment and painkillers. Further treatment was not considered necessary. Mr. Jones complained about this to the medical staff at the detention centre, to the Supervisory Committee and to the Council for the Administration of Criminal Justice and Protection of Juveniles. Ultimately the Council ruled that the treatment required by Mr. Jones constituted a cosmetic treatment, by a plastic surgeon, which was ineligible for reimbursement, especially if the condition predated immigration detention. Moreover, the Council said that this case concerned an experimental treatment that again did not qualify for reimbursement.

A frequently voiced grievance is that detained foreign nationals are taken to the hospital in handcuffs attached to a belt and sometimes in leg restraints. Some detainees experience this as though they are being treated as criminals and feel humiliated, so they sometimes decide not to go to hospital.

4.5 Solitary confinement

All detention centres have a wing for the solitary confinement of detainees. The cells in these wings are the same size as ordinary two-person cells, but by comparison they are very bare. They have a plasticised mattress for the night and a plasticised cube chair for during the day. There is a separate exercise cage for use by people in solitary confinement. The solitary confinement cell may be used to impose a disciplinary punishment on a detained foreign national who has misbehaved. The solitary confinement cell is also used as a measure for maintaining order if a detainee poses a threat to himself and it is deemed advisable to place him in segregation for observation.

A detained foreign national may also be placed in segregation at his own request, or the governor may decide to segregate a detainee in the interests of the security of the detention centre. Detainees who pose a health risk or are suicidal may be placed under camera surveillance. Each day the solitary confinement wing is visited by the general practitioner, a nurse or the psychologist. A stay in a solitary confinement cell for disciplinary reasons or as
an order measure can last as long as fourteen days. A tendency is observable of greater awareness of the harmful effects of a stay in a solitary confinement cell. There is a general endeavour to use solitary confinement for disciplinary reasons with slightly more reticence. In 2010 the Judicial Institutions Department reviewed the use of disciplinary sanctions and measures. The objective is to avoid imposition of disciplinary punishments and order measures by treating people properly and by entering into dialogue with the detained foreign national and/or the personnel. An effort is also being made to use preventive measures and, if a disciplinary sanction or measure nevertheless proves necessary, to opt for alternative or less radical punishments and measures. This basic principle was embodied in the 'Guidance for disciplinary punishments and order measures' of October 2010, which all institutions now apply as standard in relation to detained foreign nationals. An effort is also being made to offer detained foreign nationals slightly more incentives during their time on the solitary confinement wing, for example by allowing the use of a boxing punch bag or home trainer and letting them out for exercise more frequently. During the visit to the detention centres the solitary confinement cells were virtually bare. Until recently stays in solitary confinement cells were frequently not recorded. However, this is now being done, with details of the length and reason of the time spent in solitary confinement.

The Inspectorate for Implementation of Sanctions observed when inspecting detention centres in 2009 and 2010 that detained foreign nationals were repeatedly being segregated and recommended that an attempt should be made to reduce placing detainees in segregation. The Inspectorate noted in its Interim Supervision Report of January 2012 that all detention centres were now endeavouring to limit the number and duration of segregations. However, a matter requiring attention was that long-serving detention centre supervisors had to become accustomed to entering into a conversation when a conflict occurs instead of immediately issuing a reprimand and proceeding to segregation.

In June 2012, the Security and Justice Inspectorate published a report on the solitary confinement policy conducted by detention centres. The report confirmed that the Special Facilities Unit of the Judicial Institutions Department and the governors of the centres had devoted considerable attention to this subject in recent years. The Inspectorate had the impression that the governors were fairly moderate in imposing segregation measures and issuing punishments. The aforementioned national policy aimed at avoiding punishments and measures seems to be effective in practice. An evaluation of the new policy is planned.

4.6 Security measures
A detained foreign national who must go to a court, embassy or hospital is in principle handcuffed and leg restraints may sometimes be used to restrict freedom of movement. After a visit to a court or hospital and after being visited in the detention centre by family or friends, a detainee may be re-subjected to a frisk search and strip search. Detainees say that they feel humiliated and criminalised by these practices.
A strip search, the visual inspection of the naked body, including its intimate parts, is a violation of physical integrity and privacy, a concept that includes embarrassment. This kind of drastic measure needs to be used with extreme reserve. It is certainly not a measure that may be used as standard. A frisk search is another violation of physical integrity and for that reason needs to be kept to a minimum. A strip search should be conducted only if a frisk search is not sufficient. There must be an individual determination of whether the measure is proportionate and necessary. (AI Report, November 2010, ‘Immigration detention breaches human rights’).

The internal rules of detention centres stipulate that a person ‘may be subjected to a body or clothing search by a staff member designated by the governor on arrival or departure and before or after a visit’. In other words, a detained foreign national may be subjected to a frisk search and possibly a strip search after every visit and after every transport to a place like a court or embassy. Interviews and various reports create the impression that strip searching is fairly standard. For that reason foreign nationals sometimes refrain from putting their children on their laps in the knowledge that if they do they will subsequently be strip-searched. The Judicial Institutions Department has stated that frisk searches and strip searches are now being used with great reserve. A frisk search occurs only if a supervisor saw a detained foreign national being given items that he did not subsequently hand in, when asked to do so. During transport detained foreign nationals are not let out of the sight of their guards for one moment. Something is actually found only sporadically and it usually turns out to be a packet of cigarettes or a small amount of money. The Judicial Institutions Department reported that, in principle, detainees are no longer handcuffed during transport to embassies.

4.7 Repatriation and Departure Service

It is the task of the Repatriation and Departure Service to engage in dialogue with a foreign national and to ensure that the person cooperates voluntarily in deportation. If a foreign national has been placed in detention, however, the time for voluntary departure has in fact come and gone. Nevertheless, a detainee is still offered ways of leaving the country voluntarily via the International Organisation for Migration (IOM) or by the Repatriation and Departure Service, possibly with financial compensation.

The Repatriation and Departure Service assumes that if a person wants to go back, it will happen. It says that somewhere foreign nationals always have a document that makes their repatriation possible.

According to the Repatriation and Departure Service, a second period of detention constitutes a new opportunity to look for a possibility for repatriation. In its guidance the service says that the deputy public prosecutor is the one who decides whether a foreign
national must be placed in detention. He reaches this decision based on the available documents such as minutes of repatriation interviews and reports on a departure strategy. Subsequently, the Judicial Institutions Department examines whether a foreign national is suitable for detention. A basic consideration made by the service is whether the person will be able to obtain in detention the medical care that he needs.

The Repatriation and Departure Service explains to foreign nationals what their role is. After its initial interview with a foreign national, the service instructs the Laissez-Passer Unit to prepare an application for a laissez-passer travel document. As a rule there is an interview with a foreign national once every four weeks or more often if necessary. The Repatriation and Departure Service will attempt to ascertain the person’s country of origin. For this purpose it uses a linguistic analysis, but also tries to find out where the person comes from by asking questions to see whether he is sufficiently knowledgeable of the country or region he claims to come from.

In cases of unknown identity, a search is made for relevant details in the files of the Immigration and Naturalisation Service. This is done in the following way. When the file arrives, the Repatriation and Departure Service gathers all information that may reveal a person's possible identity, after which staff interview the foreign national in the presence of an interpreter. The Repatriation and Departure Service does not cast itself in a Big Brother role, although it does sometimes get information from the BAD department about items found on the person that could provide an indication of his country of origin. They also sometimes hear from the personnel the persons with whom the foreign national associates.

According to the Repatriation and Departure Service, the reactions of foreign nationals to its staff are very different. This was also clear from the interviews that staff of the National Ombudsman conducted with foreign nationals held at detention centres. Some detainees said they felt intimidated by the Repatriation and Departure Service staff or that they were treated rudely, while others said that their contacts were fairly good. The Inspectorate for Implementation of Sanctions observed something different, however. In its supervision report of 13 January 2012, the Inspectorate wrote that during its visits to detention centres some foreign nationals expressed considerable criticism of their treatment by staff of the Repatriation and Departure Service. The detainees were dissatisfied with the attitude adopted by staff of the service, which in their opinion was rude and sometimes even intimidating. At two centres there were said to have been collective protests against this situation in 2011. The Inspectorate drew attention to these complaints only because the Repatriation and Departure Service falls outside the scope of its supervision. According to the Repatriation and Departure Service, it confronts the detained foreign nationals with their personal responsibility. The message that the Repatriation and Departure Service gives to detainees is that it will not force them to disclose information, but that their failure to cooperate will have consequences. If documents are deliberately missing, it may extend the duration of detention, according to the Repatriation and Departure Service.
When a foreign national is held in detention, the Repatriation and Departure Service will assess whether the detention will continue and, if so, for how long. Each month the service fills in an assessment form to weigh up the interests that are at stake. After six months of immigration detention, an explicit decision must be made regarding an extension. On reaching nine months the Repatriation and Departure Service notices a kind of turning point: at that juncture the interests of the foreign national start to carry more weight and there is less likely to be an interest in prolonging the detention. This stems from the jurisprudence in immigration detention cases.

Sadiq from Somalia

2006

- Held in detention 6 months at Schiphol.

2007

- Held in detention 3 months at Alphen aan den Rijn, went on hunger strike.
- Served with notice to leave country. Departs for Belgium, requests asylum there, but rejected.
- Held in detention 1 week in Belgium. Returned to the Netherlands. Spent 3 months in detention on boats in Dordrecht.

2008

- Released, makes new request for asylum, spends 9 months in asylum seekers centre. Fleas to Switzerland. Switzerland sends him back to the Netherlands, kept 45 days at detention centre at Alphen aan den Rijn.

2009

2010


2011

- Arrested before the date of the appointment, spent 6 months in Zaandam detention centre. Released after court ruling, received compensation for 29 days, filed fifth application for asylum. Application rejected, lodged objection, now awaiting decision and is worried about immigration detention.

2012
Immigration Detention:
penal regime or step towards deportation?
5 The Ombudsman’s view

Abdul

"I’m from Iraq and have lived a long time in the Netherlands so I speak Dutch well. The biggest problem here is how slow the medical care is. Somebody with epilepsy was only sent to the hospital after a few weeks.

Personally I hate the exercise yard with the barbed wire around it. I know an African man with a trauma because of imprisonment in his own country. The barbed wire here brings back all those memories to him.

The food here is really insufficient and buying food is far too expensive.

The guards are all right, but you constantly feel like you’re being treated as a prisoner, for example because they crush your medicines for you. But the worst thing is the uncertainty of having no idea how long you will be here.

I’m in the intake wing where I have a job as a cleaner. But that’s an exception. Doing this I earn €14 extra a week. I’m also the contact person for the wing.

Complaints were definitely made about the quality of the air. The guards said they had frequently raised the matter, but nothing was done about it."

5.1 Last resort

Immigration detention is a remedy that is used when a foreign national does not voluntarily leave the country. According to the Repatriation and Departure Service, the person has by then had an opportunity to leave, so the next step is immigration detention as a way of bringing about deportation. This approach is based on government policy introduced in 2006 to increase the number of deportations of illegal immigrants. This policy objective is being pursued with scant use of alternative methods of supervision, such as the imposition of a reporting obligation, the lodging of a deposit or accommodation in a freedom-restricting institution. Hardly any use is being made of the possibilities mentioned in Foreign Nationals Circular A6/5.3.3.3. The interviews conducted for this investigation with foreign nationals, their lawyers and staff of the Repatriation and Departure Service clearly revealed that alternatives are not being discussed. This impression is confirmed by the numerous studies conducted into the use of immigration detention.
Over the past few years approximately 8,000 people have been kept in detention each year for an average of 100 days. In 2011 there were 6,100 people who spent an average of 76 days in detention before they left the centre. Some people are kept in detention several times with intervals in between. These numbers are far higher than in most other European countries.

This prompts the question of whether immigration detention is being used in the intended way, namely as a last resort. Based in part on studies conducted by other authoritative organisations, the National Ombudsman takes the view that this is not always the case by a long way. Below, there are three examples from a series of studies into immigration detention.

In its November 2010 report entitled 'Immigration detention: a violation of human rights' and follow-up report of October 2011 headed 'Immigration detention in the Netherlands: it must and can be done differently', Amnesty International expressed renewed criticism of how immigration detention was being used, repeated its July 2008 recommendation to the Minister and put forward alternatives to detention. 'Immigration detention should be imposed only if it has been demonstrated, in a concrete case, that the measure is necessary and proportionate, in accordance with international law. Alternative measures, such as the reporting obligation, should always be considered when deciding whether a foreign national must be placed in detention.'

Justitia et Pax voiced concern about the use of immigration detention in its report published in May 2010 entitled 'Humanity in immigration detention'. It returned to the subject in its January 2012 report entitled 'Effect by respect'. Justitia et Pax is among those that have put forward alternatives. 'The interpretation that current immigration policy gives to 'last resort' gives rise to questions. Prison chaplains say it is difficult to explain why detainees include parents, children, sick people, pregnant women, people with a disability and other people for whom detention represents an extra burden'.

Mention should also be made of the Council for the Administration of Criminal Justice and Protection of Juveniles which made the following recommendations on 16 June 2008 concerning immigration detention: 'Use immigration detention for the purpose for which it is intended, namely as a last resort. Study and check the feasibility and effectiveness of different forms of assurances regarding foreign nationals who are still being put into detention on the grounds mentioned in the law. Try among other groups the measures used to restrict the freedom of families with children. Include in this study the experiences in this country regarding a foreign national’s cooperation in his deportation, in an alternative setting to detention (such as a deposit, reporting obligation or surrender of means of identity). Take advantage of the experience gained in other European countries.'
The Council noted with regard to the pilot projects into alternatives to immigration detention announced in December 2011 by Gerd Leers, Minister for Immigration, Integration and Asylum Policy, that the target groups and sizes of the pilot projects (a few dozen adults and not more than a few hundred single foreign nationals who were minors when allowed into the country) were small compared with the approximately 6,500 people put into immigration detention each year.

The National Ombudsman is of the opinion that these pilot projects insufficiently address the intention to use immigration detention as the last resort. First and foremost, this is because large groups of foreign nationals have been excluded from the pilot projects; 60% of those held in immigration detention belong to the group of foreign nationals who have never applied for permission to stay in the country. What’s more, the pilot projects offer foreign nationals merely a possibility to complete arrangements for their departure within 28 days. Such a short period of time means that the pilot projects are almost doomed to fail. Even for foreign nationals in detention, the Repatriation and Departure Service is unable in many cases to accomplish their departure within 28 days. When implementing the Aliens Act, the responsible authorities still work in the same way and still insufficiently ask themselves whether less drastic measures are possible.

5.2 Appropriate regime

The regime during immigration detention includes numerous restrictions of the rights and liberties of foreign nationals. The austere accommodation, the limitations in such matters as freedom of movement, contacts with the outside world and family life and the impossibility of engaging in meaningful activities produce a situation where immigration detention has a frustrating and mind-numbing effect. Given the goal of deportation, this raises the question of whether all of these restrictions are necessary and appropriate and whether they conflict with article 3 of the European Human Rights Convention that enshrines a prohibition of inhuman and degrading punishment. The same organisations that have expressed criticism of how immigration detention is being used have also expressed their concern about the austere detention conditions in which foreign nationals are kept. At the expert meeting the experts said they were convinced that the regime of immigration detention needed to be separated from the Custodial Institutions Act that is geared towards criminal law. According to the Council for the Administration of Criminal Justice and Protection of Juveniles, international guidelines prescribe that immigration detention must not occur in a prison, but in specially equipped facilities. The decision by the Dutch government to opt for an austere detention regime deviates from this practice. The Council is of the opinion that foreign nationals do not belong in a prison-like environment and advocates wider application of alternatives to immigration detention.
The regime can be organised differently. In its October 2011 report, Amnesty International described detention centres in Sweden, Australia and the United Kingdom, where there are more relaxed regimes and more facilities for detained foreign nationals. In the Swedish detention centres and most of the Australian ones, there are bedrooms instead of cells. Detainees are allowed to move freely through large parts of the detention building. In contrast with the Netherlands, the creative and sports areas are accessible throughout the day. The United Kingdom gives all detained foreign nationals the right to at least 25 hours of education each week. Detainees have access to the Internet and are allowed to continue using their mobile phones. Detainees in the United Kingdom and Australia are also allowed to receive visits each day, whereas in Netherlands visits are currently limited to two hours per week.

The foreign nationals themselves said that they experienced their detention as a punishment. They regarded it as being punished without having committed a crime and said it was all the more difficult because they did not know beforehand how long it would last and because there was always a possibility of repetition of the punishment. This despairing situation combined with the absence of a purposeful way of spending the day makes the impact of detention exceptionally big. This was confirmed in this investigation notably by the spiritual counsellors and by the medical staff (psychologists).

5.3 Short detention

This kind of deprivation of liberty is all the more pressing because some people are detained for a long time or several times in succession. Figures issued by the Judicial Institutions Department reveal that the expectation of detention being of short duration is not fulfilled in many cases. Detention has lasted around 100 days on average in recent years. In 2011 it averaged 76 days. More than 20% of the foreign nationals were found to have spent longer than six months in detention in 2010 and 18.4% in 2011. At least one out of every six foreign nationals had been confined for longer than six months. Increasingly, foreign nationals are being placed repeatedly in detention with short intervals in between.

It is noticeable that the population of detained foreign nationals is highly diverse. The population includes both men and women, with single males representing the largest group. But some families with children were also encountered during the visit to the detention centres. Elderly people, pregnant women and foreigners with mental problem were also kept in detention, according to a report published by Justitia et Pax. There is no general rule to ensure that vulnerable groups are not put into detention. Insufficient individual checks are made on whether immigration detention is an appropriate measure for the specific foreign national concerned or whether, in view of exceptional circumstances, this can be required of somebody. One example is a foreign national with a traumatic experience in prison in his country of origin.
5.4  Children in detention
On 15 May 2012, the Children's Ombudsman presented the first Dutch Child Law Monitor, which devoted attention to minors held in immigration detention. He concluded that foreign minors were entitled to protection against deprivation of liberty and that if applied it should be for the shortest possible time. The Children's Ombudsman asked the responsible authorities to monitor whether deprivation of liberty was appropriate in all cases since special circumstances had to be demonstrable.

5.5  Confinement leads to deportation
Studies have revealed that the austere nature of the regime is not conducive to the successful repatriation of a higher percentage of foreign nationals to their country of origin. Estimates of cases where detention of foreign nationals leads to deportation to their country of origin vary from 50% to just one-third. The Repatriation and Departure Service says that 60% of detained foreign nationals exit the Netherlands. This includes foreign nationals transferred to a third country under the Dublin Convention. Figures for 2011 reveal that 2,940 foreign nationals left immigration detention in the second half of that year. Of these, 1,530 had demonstrably left the Netherlands (52%). In the other cases, foreign nationals are simply put back on to the streets because their detention is lifted or not extended. They are released and told to leave the Netherlands within 24 hours. If they fail to do so, they run the risk of ending up in immigration detention again. A salient point is that the Repatriation and Departure Service applies as an unwavering principle that somebody who wants to leave will always be able to obtain the papers necessary to be allowed into his country of origin. Many organisations dispute the veracity of this assertion.

5.6  Rights and restrictions
If immigration detention is chosen after weighing up the interests of deportation against those of the foreign national, the basic principle must be that the restrictions must not go beyond what is necessary to achieve the goal, i.e. to keep a foreign national available for deportation. However, immigration detention in the Netherlands occurs in detention centres designated as remand centres under a regime built on criminal law, even though a group of people are being locked up who have not committed any criminal act. The effects of the criminal law regime are notably the far-reaching restrictions of freedom and the use of disciplinary measures for security purposes. They are measures that in some respects go even further than the regime in an ordinary prison in respect of such matters as working or education. The Ombudsman is alarmed by the adoption of an approach that is so drastic for people. Human rights and immigration law experts say that this alignment to criminal law produces an embodiment of immigration detention in which security and restrictions are the prime consideration rather than deportation. Therefore, the experts advocate breaking away from the Custodial Institutions Act to find a way of implementing immigration detention with the least possible restrictions and with a primary focus on the actual deportation.
The Inspectorate for Implementation of Sanctions has already examined several times the way that immigration detention is carried out in the Netherlands. In September 2010, it published an Inspection Report on an examination of three detention centres (Zeist, Zaandam and Oude Meert). In its overall opinion the Inspectorate noted that while the government endorsed the principle of setting the nature of immigration detention apart from criminal law detention, this reorientation had occurred only to a limited extent. The Inspectorate said that in several respects there was not even adherence to the principle that detention conditions under administrative law should not be worse than those under criminal law. Points of concern include the limited programme of activities, the use of multi-person cells, the absence of national guidance for humanitarian leave, the repeated placing of people in segregation and the absence of bespoke security measures during transport. Therefore, the Inspectorate considers it necessary to make several improvements for which it has put forward 13 recommendations. The Inspectorate is positive about the active commitment of the governors of the centres and the Special Facilities Unit to achieve those improvements and the way foreign nationals are treated by detention centre staff. On 13 January 2012, the Inspectorate published a supervision report headed 'Interim supervision of immigration detention centres' in which it observed that substantial improvements had been made and that many recommendations had been acted upon. As regards the way detainees spend their day, the Inspectorate noted that it differed markedly from centre to centre. Zeist and Zaandam still had a limited programme of activities. At Zeist the number of hours of activities had decreased compared with 2010. No action had yet been taken on the Inspectorate recommendation to modify security procedures for transport to hospitals, and strip searches were another matter still requiring attention. The Inspectorate also reported that many foreign nationals had expressed their dissatisfaction with medical care. As this matter falls under the domain of the Health Care Inspectorate the report gave no opinion on it. The Inspectorate also mentioned the considerable criticism voiced by foreign nationals about how they were treated by staff of Repatriation and Departure Service.

In January 2012, the Inspectorate published a largely positive report about the Rotterdam detention centre. The management of the centre and the new accommodation were important factors. The turnaround in the vision from ‘no, unless’ to ‘yes, unless’ advocated by the management was noticeable in the relationship between the supervisors and foreign nationals. The Inspectorate made 21 recommendations on such matters as enlarging the programme of activities, putting two television sets in multi-person cells, using leg restraints and handcuffs attached to a belt during transport, providing information to foreign nationals about the detention centre rules, the tasks of Repatriation and Departure Service, the International Organization for Migration and the Legal Helpline.

The Ombudsman takes the view that the current embodiment of immigration detention imposes restrictions for which there is no clear need based on the purpose of the detention.
For example, it is incomprehensible why foreign nationals are locked up for the larger part of the day, are not given any work or education possibilities, are required to occupy two-person cells, lack free access to the Internet and use of a mobile phone, have no opportunity to receive private visits and are faced with frisk searches, strip searches and handcuffs during transport. In the opinion of the National Ombudsman, the standard practice of frisk-searching followed fairly quickly by strip-searching constitutes an excessive security measure.

Placement in a solitary confinement cell as punishment at the detention centres is inappropriate, in the view of the National Ombudsman, given the reason why immigrants are being detained. Leaving aside the fact that the frequency and duration of solitary confinement gives rise to questions about the ease with which this remedy is used, solitary confinement is out of keeping with the object of immigration detention, namely deportation.

The Ombudsman is also concerned by the insufficient attention at the detention centres to the situation of the individual detainee. When it emerged that foreign nationals had serious complaints about the poor quality of air at the Zeist detention centre, the governor did not talk to the detainees to obtain a realistic impression of the situation. In contrast, the supervisors did their best to make a small contribution to air quality by sometimes opening the small window in the cell door during the night.

The Ombudsman also heard too many complaints about medical care. Regardless of whether the policy of the doctors and nurses is medically correct, the complaints provide a clear signal. Providing medical care is also a question of providing information, ensuring the participation of and respect for patients and adopting an unprejudiced stance. If insufficient attention is paid to these matters, it results in the absence of the fundamental elements necessary for acting properly towards this group of dependent people. Interviews with the medical staff and with the management of the Special Facilities Unit did not bear witness to considerable attention to these matters. They appear to regard the existing dissatisfaction as a normal phenomenon that does not present any reason to look for causes and improvements. The circumstance that there are cultural differences and different expectations about medical care and that detainees may possibly be hospitalised due to detention may not be used as an excuse to brush aside the dissatisfaction that exists. There is still a responsibility to act properly towards people.
6 Recommended changes

6.1 Criticism
The National Ombudsman has concluded that foreign nationals are being held in immigration detention under an inappropriate regime that seriously jeopardises respect for their fundamental rights. To some extent this is because immigration detention is used insufficiently as a last resort and the government clings to the incorrect assumption that foreign nationals remain in immigration detention only a relatively short period of time. Another important observation is that the current regime fails to reflect the circumstance that immigration detention is a measure taken under administrative law for the sole purpose of preventing a foreign national from avoiding deportation and that is not intended as a punishment. In several respects, immigration detention is carried out even more austerely than for persons incarcerated under criminal law. Some examples are the use of multi-person cells, the absence of possibilities to perform work and the long period of time spent in the cell, namely from 4:30 pm until 8:00 am the next morning.

Many authoritative bodies, including the Inspectorate for Implementation of Sanctions, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Amnesty International and the International Organization for Migration, have taken a close look at the current regime, criticised it and made numerous recommendations. On several occasions it has been pointed out that the way detention currently occurs is a violation of human rights. Although this criticism has resulted in a few adjustments to the daytime programme, it has not produced a fundamentally different embodiment of the regime, despite undertakings given in respect of a number of matters.

One of the causes of this situation is that the Custodial Institutions Act is being applied a basic principle. What's more, there are hardly any alternatives to immigration detention, apart from the so-called ‘family locations’.

It should also be noted that the current practice does not lead to more deportations and, economically, immigration detention is an expensive remedy.

6.2 Alternatives
To bring about real improvements, there is a need to recognise that immigration detention may be used only as a last resort. The European Repatriation Directive also requires that detention should be used only in the last instance: "The use of coercive measures should be expressly subject to the principles of proportionality and effectiveness with regard to the means used and objectives pursued" and “Detention is justified only (...) if the application of less coercive measures would not be sufficient.” Third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Also refer to the judgement of the European Court of Justice on 28 April 2011, number C-61/11P PU (Hassan El Dridi). It means that the Dutch government must develop in the short term less far-reaching
alternatives to immigration detention. It is obviously a positive step that the government is now working on alternatives to immigration detention. On the other hand, the pilot projects are being carried out only on a small scale, are confined to specific target groups and, what’s more, they are of a short duration. The National Ombudsman is convinced only a small number of foreign nationals actually qualify for alternatives to detention. Unfortunately, there are no figures from the pilot projects that might prove otherwise.

The conclusion is justified that the largest group of foreign nationals currently held in detention, namely single men who in many cases were not previously known to the authorities because they had never applied for a residence permit, are ineligible for an alternative to immigration detention. So for a large proportion of foreign nationals there is no alternative at present and immigration detention will be regarded as the only suitable way of keeping them available for deportation.

Immigration detention studies already conducted by organisations such as Amnesty International, Justitia et Pax and The Detention Coalition provide a raft of alternatives and ample inspiration for bringing about changes that respect the fundamental rights of foreign nationals.

6.3 Regime with minimal restrictions

If after careful deliberation the authorities conclude that there is no less severe way of preventing a foreign national from avoiding impending deportation, the only remedy remaining is the use of the coercive measure of immigration detention under administrative law. It is then important for the regime to reflect the nature of immigration detention, i.e. for the purpose of deportation. Therefore, there must be no question of elements of punishment during immigration detention. As the Custodial Institutions Act was predicated on the principle of punishment, it is important to give a dedicated embodiment to the immigration detention regime. The Custodial Institutions Act currently has an unnecessarily restrictive effect and makes it difficult to implement an appropriate regime for this form of detention. Another option is to develop an appropriate regime within the Custodial Institutions Act. After all, the law stipulates only minimum standards for the embodiment of a regime and does not impose any limitation on the possibilities under a certain regime. For convicted persons, for example, there are all kinds of different institutions based on the regime for the entire population, varying from closed to open institutions or even a penitentiary programme that allows detainees to stay outside the prison under electronic surveillance. The National Ombudsman also observed among governors of the examined detention centres a willingness to turn around the approach from pressure and coercion to one of brainstorming and facilitating. Consideration is also being given to milder embodiments of the regime. The National Ombudsman regards this as a first step towards developing a more appropriate regime.
Important ingredients for an appropriate regime are in any event:
- optimum freedom of movement, possibly outside the detention centre as well, subject to assurances;
- a meaningful way of spending the day, such as education/work
- assurance of privacy (one-person cells);
- access to the Internet and telephone;
- ample visiting and special leave arrangements;
- reduction of the use of solitary confinement;
- appropriate medical care.

The point of departure for a proper embodiment of detention should be the fewest possible restrictions for foreign nationals being held pending their deportation. It is also important to recognise that the assumption that detained foreign nationals usually have a criminal background is not based on facts. The deliberations must obviously factor in the safety of personnel. But even in the prison system ample experience has been gained with – limited – use of coercive measures, whether or not to grant less or more freedom of movement and the way of spending the day. Experience in the prison system indicates that a meaningful way of spending the day and the least possible use of coercive measures has a de-escalating effect and benefits the security of everybody in a detention centre. In immigration detention it is particularly the absence of a meaningful way of spending the day that represents a major problem.

To bring about substantial changes, there must first be an awareness that these changes are necessary and the will must exist actually to make the required improvements.

### 6.4 Recommendations

The National Ombudsman makes the following recommendations:
- ensure that immigration detention is used solely as a last resort. It should be used only to keep foreign nationals available for immediate deportation if no alternatives whatsoever are available. In the short term it is necessary to put in place fully-fledged alternatives to detention and those alternatives must not be confined to just a small part of the population or to merely a few pilot projects or reviews;
- develop a dedicated, bespoke regime for the administrative law measure of immigration detention, with only the essential minimal restrictions and an eye for the specific needs of people held in immigration detention.
Appendices

Appendix 1: Consulted information

Publications in 2012

- Justitia et Pax, Effect by respect, Alternatives to immigration detention in the Netherlands, January 2012.
- European Council on Refugees and Exiles and Amnesty International are preparing a list of minimum human rights standards that must be met for the detention of asylum seekers in Europe. Read “Not Crossing Red Lines – A Negotiator’s checklist on minimum detention safeguards”.
- Letter sent by Amnesty International to the members of the Parliamentary Committee for Immigration and Asylum, 27 February 2012.

Publications in 2011

- Amnesty International, Immigration detention in the Netherlands: it must and can be done differently, October 2011.
- Galina Cornelisse, Handcuffs and solitary confinement cells, May 2011.
- Security and Justice Inspectorate, Use of multi-person cells, April 2011.
- International Detention Coalition: There are alternatives, April 2011.
- Medisch contact: Hunger strikes in solitary confinement cells, 15 April 2011.
Immigration Detention: penal regime or step towards deportation?


Guidance for Repatriation & Departure, 1 October 2011, Repatriation and Departure Service.


Publications in 2010


Amnesty International (November 2010), Immigration detention: violation of human rights.

Humanistisch Verbond (November 2010), Non-deportable: Moral questions about immigration policy.

NJCM-Comments of the Dutch Section of the International Commission of Jurists (November 2010), Application and implementation of the deprivation of liberty of foreign nationals. Problems and recommendations.

Fundamental Rights Agency (November 2010), Detention of third country nationals in return procedures.

United Nations (November 2010), Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant.

Inspectorate for Implementation of Sanctions (September 2010), Implementation of immigration detention – Examination of thee detention centres. Inspection report.

Council for the Administration of Criminal Justice and Protection of Juveniles (July 2010), Advisory document: Developing the regime in institutions for foreign nationals detained under criminal law.

Judicial Institutions Department (June 2010), Immigration detention in figures, 2005-2009.

Jesuit Refugee Service-Europe (June 2010), Becoming vulnerable in detention.


Justitia et Pax (May 2010), Humanity in immigration detention: Experiences of Roman Catholic prison chaplains.

A.C. Soetens (March 2010), Detention conditions in immigration detention.

Inspectorate for Implementation of Sanctions (February 2010), Inspection report on North Holland Detention Centre at Zaandam.

Health Care Inspectorate (February 2010), Medical services in detention centres.

Council of Europe (January 2010), Detention of asylum seekers and irregular migrants in Europe.
Disciplinary punishments & order measures, September 2010, Judicial Institutions Department.

Letter from the State Secretary of Justice to the Speaker of the Lower House of Parliament, 29 January 2010.

Publications in 2009


Publications in 2008


Appendix 2: Diagrams of the ‘Deposit and ‘Obligation to report’ pilot projects

These (draft) flowcharts were sent in by the Repatriation and Departure Service on 27 June 2012. They show the pilot projects for 'Obligation to report' and 'Deposit' as part of the overall development of alternatives to immigration detention.
2012/105 Immigration Detention: penal regime or step towards deportation?