Questionnaire UN Committee on Migrant Workers General Comment No. 5 on Migrants’ Human Right to Liberty and their Protection from Arbitrary Detention.

# Organization Information

Name of Organization Completing Form: The National Support Centre for Undocumented Migrants ('Stichting LOS') Department: Immigration Detention Hotline (Meldpunt Vreemdelingendetentie)

Country: The Netherlands

Date: 2019-04-01

# Part A: General Information

1. Please describe the process by which migrants are detained in your country. Which authorities are tasked with this responsibility? Who or what body oversees these authorities?

**Migrants are usually arrested by the police. After their arrest they stay in the police cell for a maximum of 6 days. Within these days the head officer of justice will decide whether the migrant shall be placed in immigration detention or not. Also the Repatriation and Departure Service (DT&V) can make the decision to detain an undocumented migrant. The Inspection of the Ministry of Justice and Security oversees these authorities. Also, all the police offices should have a supervision committee, however, it is not always clear what their function is and how their role is implemented.**

1. Where do arrests and detentions take place? Is force typically used during arrest or detention? Are there standards for treatment of migrants during an arrest? To what extent are migrants informed of what is going on during an arrest (why they are being detained, possible charges against them, etc.)?

**The arrests usually take place in the streets or in asylum seeker centers. Sometimes the arrest takes place at the border or nearby the harbor. Usually there is use of force and liberty restraining methods such as handcuffs. There are standards for treatment during an arrest but it is unclear if they are followed since there is not enough supervision on the arrests. It is up to the police office to provide the migrant with sufficient information. The provided information varies enormously depending on the police office the migrants are being detained in.**

1. Who are the personnel that staff facilities that hold people in detention (corrections officers, law enforcement, social workers, etc.)? What are the professional qualifications of staff at these detention facilities? Who oversees staff at detention facilities?

**Migrants are detained by the Ministry of Justice and Security. They have a special agency called the Custodial Institutions Agency (DJI) which is responsible for all the detention centers in the Netherlands. They have their own staff and trainings. Within the detention centers there is a body that is responsible for supervision and complaints. However, in practice this body doesn’t function well enough.**

1. Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?

**The facilities are owned by the government. The Ministry of Justice and Security operates them. It does not fall under private companies. This does not mean that access to the facilities are public. There are no possibilities for NGOs or visitors to come inside the detention center and see the departments, other than by requesting an official guided tour.**

1. Does your country monitor detention facilities? Who monitors detention facilities? What are the standards that detention facilities must adhere to?

**Detention facilities are not monitored. In detention centers there is a possibility to make a formal complaint, but only about decisions made by the director of the facility. The facilities of the detention center are not seen as a decision of the director which makes it unable to complain about detention facilities. This means that when the cell is cold, or when there is too much noise from the airplanes or the food provided in the shop is insufficient, there is no possibility to complain about it. There are standards that the facilities must adhere to, such as that cells should be 10 m2 and people need to be provided with food and clothing. But it is not possible to complain about it when the standards are followed.**

1. During detention, do detainees have access to communication with their families, legal counsel, and their own consular authorities? Are detainees provided with information on the process they are going through?

**Detainees get weekly pocket money with which they can buy credit to call with a phone provided by the facility. The facility could listen to the conversations. There is also a possibility of visits with a maximum of 2 hours per week. All detainees are provided a lawyer. Lawyers can come whenever they want and talk in a private setting with their clients. Detainees are not well enough informed about the process they are going through and often the pocket money is not sufficient to have a proper conversation with the lawyer and family on the phone. Calling costs are not cheap. There is also a language barrier which can cause longer conversations with lawyers.**

**Detainees who call the Immigration Detention Hotline often do not understand why there are kept in a prison-like detention center. Information is provided but due to language and culture barriers it is sometimes unclear to the detainees.**

1. Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of torture and trafficking, and other migrants who are particularly vulnerable?

**At this moment women are kept in the family detention center in Zeist. The family detention center does not have cells like the regular detention centers. In that sense, the facilities are better. The detention of women in Zeist is just a pilot, the women could be transferred back to the prison-like facility of Rotterdam. Unaccompanied minors and families with children are also detained in the family detention center of Zeist.**

**All other migrants are detained in the detention center of Rotterdam. A specific consideration for vulnerable persons is insufficient. For instance, the Immigration Detention Hotline received a call from a person who is diagnosed with a mental disability. He complained that he could not be with a cellmate in one cell and that the detention circumstances where hard for him. As a result he received punition by being placed in isolation. The Immigration Detention Hotline also knows migrants who are above 65 years old, persons with PTSS and other psychological and physical problems or disabilities. The screening of these persons seems insufficient and the alternatives given in detention are lacking. Many psychological problems are being punished by isolation or a more strict regime within the detention center.**

1. Does the detention process look any different if minors are involved?

**Yes, unaccompanied minors and families with children are also in the family detention center of Zeist.**

**Part B: Legal Treatment**

1. What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system and public policies? Please identify any relevant cases in your country’s court system.

**The purpose of immigration detention is to detain undocumented migrants until their deportation process if finalised. This is written down in articles 6 and 59 of the Dutch Alien Act 2000. Based on the law, the maximum of detention is 18 months. Also, if there is no ‘reasonable prospect on removal’, meaning there is not a likely possibility that they are able to travel to their country of origin or another European country based on the Dublin treaty, they must be released.**

**Beware, this does not make their stay in the Netherlands legal; their residency is still illegal. This means that they can be detained again for the same reason. This is an exception to the principle of ne bis in idem, which applies to criminal law, meaning that no one can be detained for the same act twice. Immigration detention can therefore result in a vicious circle of detainment and release.**

1. Is immigration governed by criminal law or administrative law?

**It is strictly called ‘administrative law’, but falls under the legal framework of the Dutch Penitentiary Principles Act. This law regulates several powers that the warden of the prison can exercise over the detainees. For instance, article 24 states that the warden can decide to put an inmate in isolation. Article 31 issues that the warden can obligate an inmate to cooperate with an internal body search if this is deemed necessary for security reasons. In article 36 inmates are given the right to receive letters but it also states that the warden is authorized to open them beforehand. So the act not only gives privileges to the warden, but also regulates the rights of inmates.**

**This framework for penal regulation thus also applies to immigration detention. Also the use of terms in the act such as ‘prisoners’ and ‘cells’, make it hard to distinguish immigration detention as a separate entity.**

1. Does the immigration detention proceed ex officio or there is an individualized analysis of its pertinence and proportionality?

**The fact that immigration detention is strictly of administrative nature means that people are detained without a trial prior to detention. This does not contain an individualised analysis of its pertinence or proportionality, as the inability to provide legal documents that prove someone’s identity, result almost standard in immigration detention. See also the answers in part D about not using alternatives.**

1. Does legislation establish a maximum amount of time for immigration detention? What is the maximum amount of time that someone can be detained? Are there any exceptions or extensions allowed by law?

**The maximum someone can spend in immigration detention is 18 months. However, like mentioned in the answer to question 1, can someone be detained over and over again if they continue to reside within the Netherlands illegally. Cumulatively this can be over 18 months.**

1. Does legislation provide any mechanism to challenge the legality of the detention?

**Detainees have the right to an attorney that can challenge the grounds of detention. In criminal detention the detainees will be presented in front of a judge within 3 days and 15 hours. The judge decides whether the detention is grounded or not. In immigration detention the detainee can appeal against his decision but when the detainee does not, the court will get a notification of the detention. This is registered as an appeal against the detention decision. Within 14 days there will be a court case. After the court case the judge will have to make a decision within 7 days. This means that the detention of migrants will be reviewed much later than criminal detention. Detainees do not have to see a judge until 28 days. The ECHR and Return Directive write that a fast juridical control should be done by a judge, preferably within 7 days.**

1. Is there any national legislation that guarantees legal representation or interpreters in immigration proceedings? Is there a guarantee of access to free legal representation?

**Legal representation is always given.**

1. Is there any legislation that establishes the right to consular assistance for migrants? Is this right guaranteed in practice?
2. Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens? If not, what are the differences?

**Like mentioned before, the important principle of ne bis in idem is not guaranteed to non-citizens. Also, detention without prior trial is something that is only applied to non-citizens. Furthermore, people in immigration detention do not know until when their sentence will last. After six months the court can order that it will be extended. The detainees do not know beforehand how long the sentence will last. This is in contrast to citizens that are detained in ‘regular’ prisons.**

1. Is information available to detainees regarding the processes of requesting asylum or applying for refugee status?
2. What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? What are the qualifications of the decision-makers? Are they appointed or elected?
3. Is there a duty to ensure that decisions are duly motivated by legal reasoning? How is that ensured in practice?
4. How much time elapses after arrest before a determination of migration status is made? How long does the initial determination of status process take?
5. If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?

**Families are beings placed in a special detention facility for families. There is consideration given to the special circumstances of children.**

1. What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?

**Persons who have entered the country irregular are being placed in detention. There is no possibility to be released on bail.**

1. Is there a right to appeal of finding of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantees are given during the appeal process of a finding of irregular migration status? Does the appeal process have suspensive effect regarding deportations?

**Part C: Impact on Detainees**

1. Please describe the impact that detention has on detainees’ physical and mental health.

**In general there can be said that it is likely that detention has a negative health impact on detainees. Physically in the sense that adequate health care is often not available. For instance, at the Immigration Detention Hotline, we have filed a complaint for a diabetic detainee. While detainees in the immigration detention centre in Rotterdam are able to do some grocery shopping, many of these products have high levels of sugar and are not varied. For example the only type of rice that is available contains 250 grams of sugar. As a ‘special diet’ he is allowed to have two extra slices of cheese per week. These extra’s are so deficient that hardly it counts as a ‘diet’. The consequence of this poor food is that the detainee suffers a lot from his diabetes. His blood pressure is also extremely high. The doctor tells him to remain calm and rest but this is of course incredibly difficult within detention.**

**Another example of inadequate health care comes from the fact that detainees are often times handcuffed when visiting a hospital. While it is against the law, it has become a standard procedure to cuff detainees during the transport but also in the hospital. Sometimes the handcuffs even stay on during the consultation with the doctor and the guards are then present as well.[[1]](#footnote-1) This causes the detainees to feel uncomfortable with the doctor and they feel as though they are not able to speak freely to their doctor. This is of course a major breach of privacy rights. While we are able to file complaints for this situation on behalf of the detainees, on the long term this can result into them not wanting to visit the hospital anymore. They do not see the point of hospital visits anymore as they feel that they do not have any privacy; while this is so essential in a doctor-client relationship.**

**Also the mental impact on detainees is very severe. Often they are not able to speak English or Dutch and therefore do not understand where they are and why they are locked up. Sometimes the other detainees also do not speak the same language. This causes a lot of stress. Also considering that the enddate of detention is not fixed, they do not know how long they have to stay in detention. Again, this results in a lot of stress.**

**An important point in existing mental problems are in relation to isolation. Unfortunately, this is a measure that is used quite frequently in immigration detention. This reasoning comes from the multiple complaints that we have filed for this matter. In 2019 we have already filed 39 complaints for placement in isolation. Sometimes this is even with camera surveillance. In three of these instances, isolation is already exceeding four months.[[2]](#footnote-2)**

**There is a lot of existing medical and scientifically grounded evidence that isolation is damaging for an individual.[[3]](#footnote-3) The Immigration Detention Hotline has also written a report about this in 2015, together with Amnesty International, Doctors of the World Netherlands.[[4]](#footnote-4) In this report, concerns are expressed about the number of isolated detainees that for many years has not decreased.**

**Due to the fact that isolation can be so damaging to an individual, it is crucial that adequate medical care is provided. This if however often not the case; while the law states that isolated detainees need to be visited by a doctor or psychologist regularly, this is neglected. If a doctor does visit, in many cases this is not for a consultation, but rather to give medication. However, simply giving medication does not suffice as effective medical care.**

**To conclude, there are major concerns about the impact that detention has on detainees; physical and mental.**

1. Please describe the varying impacts on particularly vulnerable groups, including racial and ethnic minorities. What systems or practices are in place to prevent discrimination in both proceedings and detention?
2. Please describe the way in which detention of migrants in your country particularly affects children who are detained. How does the detention affect education? Are educational resources available in the facilities in which they are held? Please describe any of these programs.
3. Is consideration given to keeping families together?
4. Are children typically kept in detention? How long?
5. How does the detention of migrants in your country particularly affect women? Are health resources for women made available to women in detention? How can women in detention access health resources? Are resources available for pregnant women in detention? How are pregnant women accommodated with respect to the conditions of detention?

**Part D: Alternatives to Detention**

1. What alternatives to detention exist in your country? Please describe these alternatives to detention and how they are generally perceived and implemented in your country.

**While alternatives exist, like a periodic reporting obligation, electronic surveillance, a party guarantee, bail or accommodation at a reliable address, they are hardly every used (Amnesty International, 2010). Immigration detention is strictly an ultimum remedium, meaning ‘a last resort’, but in practice it seems as though its standardised.**

**The criterium for immigration detention, which is the risk that a person will disappear from surveillance ex art. 6 jo. 59 Dutch Alien Act 2000 and the EU Return Directive 2008/115/EC, is quite easily met. This is because undocumented migrants do not have the right to social security measures, like housing or a job. Therefore, it is quite difficult for them to get stable housing. This in turn results into the risk of disappearance, according to the government.**

1. Have all detainees access to alternatives to detention? How many persons get an alternative to detention in comparison with the number of detainees?

**See answer to previous question. In theory alternative measures to detention exist, however they are hardly used. There are no known figures or other data of how many people receive alternatives to detention.**

1. Have there been any policies proposed in your country that could achieve the same objectives as detention? How have these proposals for alternatives to detention been received in your country? Are proposals for alternatives to detention generally met with favor or have they been rejected? Please describe the criticisms of the policies for alternatives to detention by the general public. If these proposals have been rejected, what was the rationale for rejecting them?

**No other proposals then the measures mentioned in question 1.**

**Part E. Additional information**

Please add any other information that you consider to be relevant for the CMW to take into account in the elaboration of this general comments.

**In general, one of the concerns with regard to immigration detention is the complaint procedure. While it is possible for detainees to complain about situations they encounter in prison, they can only complain about decisions of the warden.[[5]](#footnote-5) This already excludes a lot of situations and problems. Furthermore, complaints must be filed within seven days after the fact has happened. This leaves the solicitors with a very small window of opportunity, resulting into many cases being declared inadmissible.**

**Even more important, though, is that before such a decision has been made numerous weeks go by. With the complaints we filed in 2018, on average it took two to three months before a supervision committee reached a decision. This is extremely inefficient because isolation as a punishment can, in principle, not exceed the limit of 14 days. Therefore, by the time a decision has been reached, its outcome is not as relevant anymore. Sometimes the detainees have already been released from detention. The amount of compensation that is sometimes paid to them, is usually around twenty Euros. This small amount cannot does not effectively compensate the trauma that a detainee can have from long isolation, for instance. Also, considering that these people are undocumented, their housing situation is not registered, which makes it impossible to receive the compensation.**

1. See also the infographic from the Immigration Detention Hotline at <http://meldpuntvreemdelingendetentie.nl/geboeid-vervoer-infographic/>. [↑](#footnote-ref-1)
2. See e.g. the newsarticles written by the Immigration Detention Hotline at <http://meldpuntvreemdelingendetentie.nl/wp-content/uploads/Nieuwsbrief-februari-2019-webversie.pdf>. and doctors organisation Doctors of the World Netherlands at <https://doktersvandewereld.org/repressie-in-vreemdelingendetentie-is-geen-oplossing/>. [↑](#footnote-ref-2)
3. Haney, C. (2003). *‘Mental Health Issues in Long-Term Solitary and “Supermax” Confinement.’ Crime en*

   Delinquency 49: 124-156; Shalev, S. (2008) A Sourcebook on solitary confinement. London: Mannheim Centre for Criminology, London School of Economics 2008, available at http://www.solitaryconfinement.org/sourcebook. [↑](#footnote-ref-3)
4. See the report from April 16th 2015 at <https://doktersvandewereld.org/wp-content/uploads/2018/06/201604_Samenvatting_Opsluiten_of_beschermen.pdf>. [↑](#footnote-ref-4)
5. Article 60 of the Penitentiary Principles Act. [↑](#footnote-ref-5)