



Newsletter november 2019

Meldpunt

Vreemdelingendetentie -

The Immigration Detention

Hotline

Collects reports about the circumstances in immigration detention.

The aim is to gain more insights into the conditions of detention and to disclose this information to politics and the media. In addition, we offer assistance with the follow-up of complaints.

Do you have a complaint? Call 010-7470156. From detention you can call toll-free at 0800-3388776.

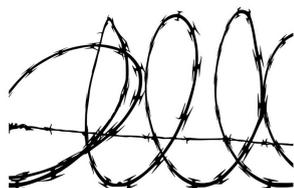
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The draft Bill and response of the Senate

What is the draft Bill about?

In December 2013 the government published a draft Bill “Return and Detention of Aliens”, shortly after the suicide of Mr. Dolmatoiv, who was detained in the Immigration Detention Centre in Rotterdam. Five years later, in June 2018, the draft Bill was finally accepted by the House of Representatives with a large majority[1]. Since then, the Dutch Senate has been deliberating on the Bill and have yet to approve or reject it.

The Bill introduces an administrative framework for immigration detention. At this moment, immigration detention falls under the scope of a criminal regime. The administrative regime, as proposed in the draft Bill, has already broadly been applied in the Immigration Detention Centre in Rotterdam since May 2017. For most detainees, there is a residence regime in place as suggested in the draft Bill, however some fall under the stricter ‘beheersregime’ because they supposedly need more structure and supervision[2].

How did the Senate respond to the draft bill?

On October 2nd 2019, the Senate received an additional legislative proposal by the State Secretary of Justice and Security[3]. In this proposal, amendments to the Bill are suggested that contradict the original purpose of the draft Bill. One of the amendments relates to establishing detailed rules regarding lock-downs.

A lockdown is a collective punishment. In January this year, a large group of people was punished due to aggression perpetrated by a few detainees. This is in conflict with art. 51(5) of the Penitentiare Beginselenwet. This article states that a detainee cannot be punished for something he did not do. But undocumented people in the Detention Centre Rotterdam were punished with isolation after the protests this July, although they were not involved and not responsible. The Hotline is still waiting for the final judgement in the case of this January lock-down by the Council for the Application of Criminal law and Youth Protection. We are also waiting for the final decision by the Oversight Committee (Commissie van Toezicht) in the case of the July-lockdown.

If the lockdown is included in the new Bill “Return and Aliens Detention of Aliens”, it will be easier to apply a lockdown.

How did Het Meldpunt respond to the reaction of the Senate?

All in all, it seems that the new Bill “Return and Detention of Aliens” will not change the conditions in detention much, compared to the Penitentiare Beginselen Wet, which is the current law that Detention Centres follow, and will not offer more freedom to undocumented people in the Netherlands. That is why we, The Immigration Detention Hotline, have asked questions about the draft Bill and the reaction of the

Senate. First of all, we asked why these amendments are being made by the Senate before the effects of the current policy (in practice since May 2017) in the Immigration Detention Centre in Rotterdam have been investigated. We believe it is vital that this current policy is first evaluated before amendments are approved. Additionally, we asked to what extent the policy measures will be applied proportionally. We want to prevent that undocumented people will be unfairly punished. We would like to know how this will be prevented in the future. We hope to get an answer to our questions so that we gain more insight into the problems in the Immigration Detention Centre.

The Bill is Suspended

The committee has postponed consideration of this draft Bill until the bill announced by the State Secretary has reached the Senate^[4]. This means that it will take a long time before a new law will be passed.

[1] <https://zoek.officielebekendmakingen.nl/kst-34309-H.html>

[2] https://www.eerstekamer.nl/wetsvoorstel/34309_wet_terugkeer_en

<https://www.amnesty.nl/actueel/nieuwe-wet-terugkeer-en-vreemdelingenbewaring-dreigt-gemiste-kans-te-worden>

[3]

https://www.eerstekamer.nl/behandeling/20191002/nadere_memorie_van_antwoord_2/document3/f=vl2fl6t126z1_opgemaakt.pdf

[4] https://www.eerstekamer.nl/korteaantekening/20191008_i_a_jbz?dossier=vjxtmykrkyb

UN's special racism reporter visits the Netherlands

Tendayi Achiume, the UN's Special Rapporteur on contemporary forms of racism and human rights, conducted research into tolerance in the Netherlands¹. From 30 September until 7 October 2019, Achiume visited the Netherlands and met government officials, civil society and representatives of racial, ethnic and religious minority communities. In a statement at the end of her visit she said that "The paradox in the Netherlands is that insistence that equality and tolerance already exist actually operates as a barrier to achieving this equality and tolerance in fact". Furthermore she said that "This insistence makes it difficult to mobilize the resources and action necessary to ensure equality, non-discrimination and inclusion for all."

¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25101&LangID=E>

Concluding observations Human Rights Committee

The Human Rights Committee (HRC) of the United Nations published a number of concluding observations and recommendations regarding the detention of undocumented migrants in the Netherlands.

The HRC is concerned about the increase of persons in immigration detention, including vulnerable people. Besides this, the duration of the detention is often extended and the maximum period that someone can be in detention, which is laid down by the European Return Directive, is sometimes exceeded. Little attention is paid to alternatives to detention by the authorities. Also, the HRC mentions the shortcomings of the Bill Return and Detention of Aliens (“Wet Terugkeer en Vreemdelingenbewaring”). This Bill does not meet the vulnerability test and also applies to children from twelve years of age. Besides this, the Bill allows isolation to be used as a disciplinary measure and it allows detainees to be isolated for a maximum of seventeen hours a day.

The HRC advises the Netherlands to only apply immigration detention as a last resort and for as short a period as possible. Furthermore, the Netherlands should promote alternatives to detention in a systematic manner and the use of isolation in the detention centers must be strictly limited. Finally, the HRC recommend revising the Bill.

Article magazine Asylum- and Migration law

The magazine for Asylum- and Migration law published two articles in September about immigration detention. These were written by the coördinator of the Immigration Detention Hotline, Revijara Oosterhuis, in collaboration with Annemarie Busser and Tineke Strik. The first article concerns the circumstances within immigration detention and are considered in regard to the draft Bill on Return that has been previously discussed. The article is available on our website [here](#).

The second article is about how immigration detention is guaranteed procedurally and about what the legal review of the measure looks like. This is contextualised through European and International law as well as through the draft Bill on Return.

One of the concerns is whether or not alternatives for detention are applied. In theory, alternatives are only being taken into consideration in the Netherlands, when personal circumstances require it. However, in practice it seems that lighter measures that can serve as a replacement for detention, are barely, if at all, developed. In order to effectively apply this ‘lighter measure’ principle, it is necessary that the government actually invests in alternatives. Research in other EU member states shows that

alternatives are more effective, cheaper and above all that they are more in line with universal human rights. An example of an alternative is a reporting obligation. It is extremely important to note however, that alternatives should really be used *instead of* detention, instead of in addition to it to increase pressure.

Another important concern raised in the article, is the repeated detaining of people. According to national law, detention can last up to six months with a maximum extension of another twelve months. This means that people can be detained for a maximum of 18 months consecutively. The effectiveness of detention greatly decreases after six months, since the chances of being deported after this amount of time are very small. An important side note is that people can be detained repeatedly: after they are released, they can be caught again and the circle of detention starts all over again. The question here is then whether this is in line with the return directive and above all, whether this infringes on human rights.^[1] It is often the case that there are no new developments in someone's circumstances, which results in hopeless situations and a limbo state of not being deported but also not being granted residency.

The full article can be read [here](#) on our website.

^[1] See for example: VN-Comité tegen Foltering, mei 2013 aanbevelingen aan de Nederlandse overheid.

Our 1000th caller

In October we had our 1000th caller! We have now had contact with over a thousand detainees, who have called us since the establishment of the Hotline in 2010.

Letter 'No child in a cell' to the House of Representatives

Currently, unaccompanied refugee children are being held in a police cell for approximately 20 days, according to the Coalition No Child in a Cell ('Coalitie Geen Kind in de Cel' van Amnesty International, Defence for Children, Stichting INLIA, Kerk in Actie, Kinderpostzegels, Stichting LOS, UNICEF Nederland en Vluchtelingenwerk Nederland).^[1] Some children are even held in detention for 82 days. In a letter to the House of Representatives on the 1st of November 2019, a response is given to the Secretary of States' amendment of this policy. This amendment means that single minors who are staying in the Netherlands without a residence permit, can be held in

detention for up to four weeks. This greatly troubles the Coalition, since the detention of vulnerable children can lead to severe damage of (mental) health and well being.

Furthermore, this amendment is contrary to universal human rights. The European Court of Human Rights states that the interest and well being of the child should be the main concern at all times. The Secretary of State counters that the stay in detention is indeed in the interest of the child, because it prevents possible exploitation and an illegal existence. Of course these issues also concern the Coalition, but still this does not detract from the fact that detaining a child means depriving them of their freedom. There is no situation in which deprivation of freedom and liberty is in the interest of the child, according to the United Nations Human Rights Committee.

Detention is now too readily used as the only possible option, while other countries demonstrate that valid alternatives do exist. The Netherlands could apply this knowledge and conduct a discussion about alternatives for detention.^[2] The concerns of the Coalition are confirmed by a statement of the court in The Hague in the case of a detained child. The Child Protection Council, the Nidos Foundation and/or the Legal Aid Council were not informed about the detention of this young boy and the fact that he did not have access to a lawyer or a legal guardian. It was found that his treatment was not in line with the rights of the child and the Court therefore stated that the rights of the fifteen year old boy were severely violated.

The Coalition pleads for the immediate end to the detention of children and for urgent implementation of alternatives to detention that are in the interest of the child while protecting their well being and their rights.

[1] Ministry of Justice and Security, Childrin in immigration detention / alternative surveillance measures, no: 2450835, 22th of February 2019, additional figures are requested by UNICEF the Neterlands and Defence for Children at the Ministry J&S.

[2] The authorities have an investigation obligation to see if less radical options than detention can be used to deport the migrant or transfer him or her (cf. the arrest of the court of Justice of the European Union in the case Mahdi against Bulgary at the 5th of june 2014 ECLI:EU:C:2014:1320). This research needs to be accessible and thus testable for the judge.

As also is emphasized in the report that UNICEF the Netherlands published in November 2019: "Child-sensitive return, Upholding the best interests of refugee and migrant children in return policies in the Netherlands".

Unicef about the wellbeing and interest of the child

On the 6th of November 2019, UNICEF published a report about children in asylum and deportation procedures.

There used to be a lot of uncertainty and unclarity about how the interest of the child was being taken into account in decisions about deportation. The report shows what is going well and what can be improved in these asylum and deportation procedures. In some cases, the Netherlands have a worse 'score' than other European countries (also Sweden, Germany and the United Kingdom participated in the research).^[1]

The Netherlands is for example the only country that puts as unaccompanied children as well as children in families in detention. In 2018 there were 210 children in immigration detention. According to Suzanne Laszlo (director of UNICEF), the Netherlands should see other countries as an example that they should follow. Immigration detention has particularly damaging and traumatic consequences for children. They are very much afraid and are living in an uncertain situation. This worries UNICEF, because there are clearly harmful effects of detention, and the positive effects of detention on deportation have not yet been proven.

UNICEF states a list of recommendations, which are: the interest of the child should be the primary concern, migrating children should not be put in cells anymore, and child friendly information should be provided. ^[2] These recommendations are primarily directed at the Ministry of Justice and Security.

^[1] You can download the four reports here:

The Netherlands: <https://www.unicef.nl/files/UNC%20Country%20Report%20NL%20FINAL%20web.pdf>

Germany: <https://www.unicef.nl/files/UNC%20Country%20Report%20Germany%20FINAL%20web.pdf>

Sweden: <https://www.unicef.nl/files/UNC%20Country%20Report%20Sweden%20FINAL%20web.pdf>

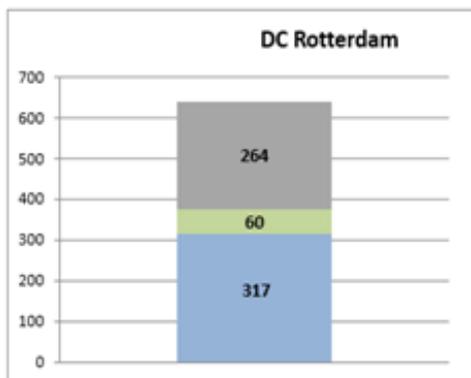
^[2] For more information: https://www.unicef.nl/files/Manifest_Child%20sensitive%20return_DEF.pdf

Capacity and occupancy rates detention center Rotterdam

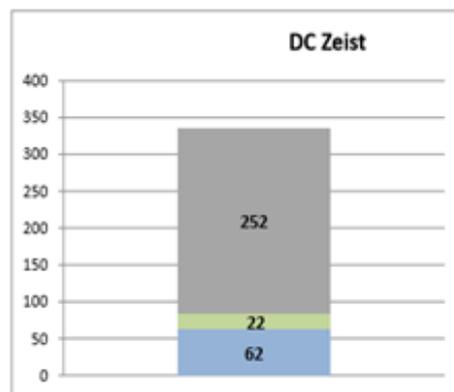
In the detention centre in Rotterdam, in the first quarter of 2019 there were 349 of the 640 beds occupied, while the months before this period only 317 beds were occupied. Unlike the detention centre in Rotterdam, there is a decrease in the occupancy rates in the detention centre in Zeist. An average of only 35 of the 336 beds are occupied in Zeist from January until April 2019, while the months before this period an average of 62 beds were occupied.

The average capacity and occupancy rates from January until April 2019 are

illustrated in the graphs below.

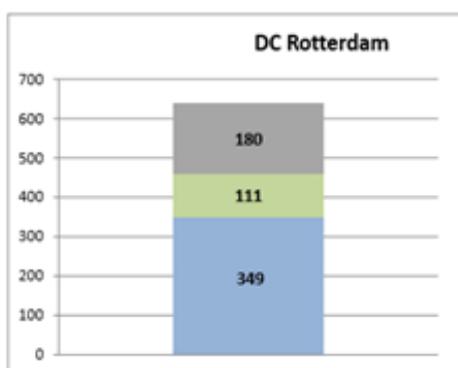


Grey = out of use
Green = empty, directly useable
Blue = in use

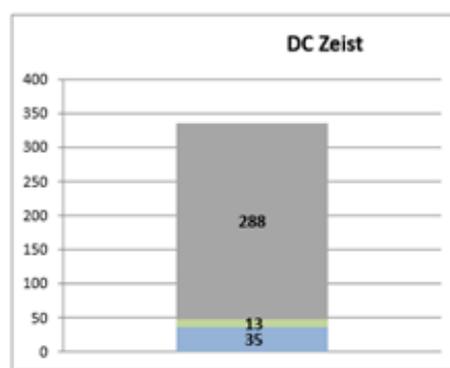


Grey = out of use
Green = empty, directly useable
Blue = in use

The average capacity - and occupancy rates from the months October until December 2018 are shown in the graphs below as well.



Grey = out of use
Green = empty, directly useable
Blue = in use



Grey = out of use
Green = empty, directly useable
Blue = in use

Italy immigration detention report

In 2018, Italy amended their immigration legislation. According to a report by the Global Detention Project about detention in Italy, the maximum length of detention in pre-removal centres was doubled and a new legal ground was created for detention for identification purposes. The latter happens regularly with unaccompanied minors at so called 'hotspots'. These hotspots are places where identification is the main goal, and aggression and coercion are regularly used when fingerprints have to be taken.

Furthermore, Italy uses misleading language to denote migration detention, for example by calling it 'administrative holding', so that detainees are prevented from accessing protections and rights. There is also no legal ground for protection of vulnerable people (for example victims of violence and torture). According to the report, Italy appears to be violating human rights by deporting people before they even had the opportunity to apply for asylum.

For more information about the report, see: <https://www.globaldetentionproject.org/countries/europe/italy>

Turkey immigration detention report

According to a report of the Global Detention Project, Turkey has for some time now been the transit country for refugees and migrants who come from Asia to Europe. The Turkish refugee and migration procedure, came under great scrutiny particularly during the refugee crisis in 2015. 80% of the more than one million people who came to Europe at the time, crossed through Turkey. In 2016 a deal was made between Europe and Turkey where, among other things, it was agreed that for every refugee that returned from Europe to Turkey, Europe would take in a Syrian refugee from Turkey. However, the safety of refugees in Turkey was called into question. [1]

Turkey has one of the largest immigration detention systems of the world, with more than 24 'deportation centres'[2]. Since the outbreak of war in Syria, Turkey has welcomed about 3,5 million Syrian refugees. The total number of refugees that fled to Turkey is close to 4 million. Since 2015 and 2016, the Turkish immigration detention system has been under great pressure. The Turkish government responded to this with a series of severe and inhumane measures.

One of the concerns raised in the report by Global Detention Project, is for example the length of time of detention. According to the 'Law No. 6468 on Foreigners and International Protection' (LFIP)[3] of 2013, people can be detained for up to one year before they are deported. The average length of detention also increased in 2018.[4] Furthermore, vulnerable people like victims of human trafficking, were also found to be detained.[5] On the other hand, the report found that Turkey does not detain unaccompanied minors. Those under the age of 16 are being placed in so-called government-run shelters.

For more information about the report, see: <https://www.globaldetentionproject.org/countries/europe/turkey>

- [1] Amnesty International, "The EU-Turkey Deal: Europe's Year of Shame," March 2017, <https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/>; I. Majcher, "Border Securitization and Containment vs. Fundamental Rights: The European Union's 'Refugee Crisis'," *Georgetown Journal of International Affairs*, March 2017, <https://www.georgetownjournalofinternationalaffairs.org/online-edition/border-securitization-and-containment-vs-fundamental-rights-the-european-unions-refugee-crisis>
- [2] U.S. State Department, "Turkey 2018 Human Rights Report," 2018 Country Reports on Human Rights Practices, 20 March 2019, <https://tr.usembassy.gov/country-reports-on-human-rights-practices-for-2018-turkey-summary/>; UN High Commissioner for Refugees (UNHCR), "Turkey: Operational Update 2018 Highlights," March 2019, <https://bit.ly/2IRWBvrv>; K. Kirisci, "Turkey: A Transformation from Emigration to Immigration," *Migration Policy Institute (MPI)*, 1 November
- [3] Voor meer informatie, zie: <https://www.refworld.org/docid/5167fbb20.html>
- [4] Asylum Information Database (AIDA), "Turkey: Country Report," 16 March 2019, <https://www.asylumineurope.org/reports/country/turkey>
- [5] Helsinki Citizens' Assembly Turkey (HCA), "Global Detention Project Questionnaire," *Global Detention Project*, 29 July 2011; U.S. State Department, "Trafficking in Persons Report 2012," 2012, www.state.gov/j/tip/rls/tiprpt/2012/index.htm
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Deportations United Kingdom

According to a report by the Independent Monitoring Board (IMB) from 2018, less than half of the 25.487 people who were released from detention in that year left the UK back to their own country. Additionally, it was found that there are too many vulnerable people in detention in the UK. Concerns were also raised about the frequent use of coercion. At any given point, more than 90% of the detainees was handcuffed when they had an appointment outside of the detention centre. After the IMB brought this to light, this percentage suddenly decreased. The report also says that waist restraint belts are sometimes inappropriately used during deportation charter flights.

The report finds that, in the UK, people are often being held in detention for a long time. The longest-detained man was held for 763 days. At Gatwick Airport a man was detained for 11 months, despite his health issues and risks and the fact that he is a possible victim of torture, according to a doctor. In Detention Centre Morton Hall in Lincolnshire, there were 217 instances of people hurting themselves intentionally.

Rudy Schulkind (from Bail for Immigration Detainees) accuses the Home Office of repeatedly failing to give good reasons to put someone in detention. According to Schulkind, the system fails in accomplishing what it aims to do, namely a last resort to effect enforced removal from the UK. On the contrary, in practice it seems that

detention is often used to force people to leave the UK voluntarily, which is something that the Home Office is by no means allowed to do. Schulkind says that the UK's use of detention essentially constitutes pointless cruel treatment of individuals who did not commit a crime.

James Wilson (acting director of Detention Action) says that politicians are in favor of a 28-day limit to the length of time that someone can be detained. He hopes that this can become reality with the support of the report of the IMB. Although there are already some improvements to be seen, there are still concerns about the use, transparency and point of detention as well as whether vulnerable people are receiving the appropriate support. The IMB will not stop monitoring the detention circumstances the coming year and will strive towards a new and better way of improving and protecting the dignity of detainees.

Long waiting list for psychologist

The Immigration Detention Hotline heard from different detainees in the immigration detention centre in Rotterdam that they have to wait for a long period before they can see the psychologist. This can be a big issue when seeing a psychologist is necessary to make the conditions in the detention centre less heavy. Mister L. is one of the detainees who is waiting for his appointment with the psychologist. He has been in isolation for fourteen days because he refused to be in a cell with someone else. He wants a cell for himself, because of his mental health. Mister L. feels misunderstood and he thinks an appointment with the psychologist will help him improve his situation.

Psychological complaints often arise from tension and depression. Besides that, there are a few detainees with serious psychological complaints, who keep coming back to the immigration detention centre. The Ombudsman wrote about this situation as early as 2012, but it has not demonstrably improved since then.¹

¹ <https://www.nationaleombudsman.nl/uploads/2012-105 - vreemdelingenbewaring.pdf>

Complaint hearings

On the third of October, a few complaint hearings took place about the protest in the detention center at the 22th of July, where more than 60 detainees protested against

their stay in the detention center in Rotterdam. The protest took place on two of the fresh air places simultaneously and caused a lot of chaos.

The detention center didn't really respond to the banner that was presented with the text 'freedom now'. Detainees of all four departments were punished. This means they were locked down for a longer period of time, despite the fact that during the protest the detainees went inside voluntarily and no coercion was needed. The detainees received a small letter, written in Dutch, that said that the programme of the day was shut down for indefinite time. This caused agitation and concern with the detainees.

Multiple detainees made complaints about the aforementioned course of events. Mr. D. complained about the fact that he suffered from hyperventilation and needed multiple showers to cool off. Mr. A. was ill during the protest, which made it impossible for him to participate in the protest anyway. Besides that, Mr. A. does not speak Dutch and so he could not understand the small letter in Dutch that was given to him. Mr. T. was put in solitary confinement because he appeared to be 'a psychic threat' during the protest. The detention center didn't specify what the actual meaning of this threat was.

During the hearing at the third of October, it became clear that the detention center hadn't paid attention to every individual during the aftermath of the protest. They claimed that they acted the way they did, only to secure public security and the safety of every individual. Questions can be asked about how the involved detainees then contributed to this so-called unsafe atmosphere. The detention center could not give a clear answer to this. After a while they argued that the reason the protest was handled this way, is that it looked a lot like the protest in January 2019. However, fact is that during this protest other detainees were involved and the circumstances and reasons differed from the ones in January 2019. We are also still awaiting the final ruling on the January 2019 protest. Hopefully, the ruling in the July 2019 case will give some satisfaction to the people involved.

Memories of the fire in Schiphol

On the 27th October it has been 14 years since eleven people died in the detention center at Schiphol during a fire. Unfortunately there was no commemoration this year in the detention centre in Rotterdam for this tragic event.

The men and woman who passed away during the fire were locked down in cell complex K, waiting for their release or for their deportation. This cell complex was

relatively new in times of the fire, it was only build two years before. However, it seems it was not checked for fire safety.

In our last newsletter we wrote about a lockdown in detention center Rotterdam during the heat wave last summer. During this lock down, all detainees were locked in their cells for three days. We received many phone calls according this incident. Because of the extreme heat, it reminded many detainees of the fire at Schiphol. One of the detainees even lost a family member because of this fire. He experienced the three day lock down as extremely traumatic.

At the 25th of October 2019 the management of the detention center organised an information market in the gym, also some detainees were invited. One of the stalls at the market was of the fire brigade. Unfortunately there was no attention for the Schiphol fire during this gathering.

Sending a postcard

Do you ever think about the people in immigration detention? Do you want to support them? Write them a postcard! The people in immigration detention are very appreciative of such thoughtful gestures. Especially with the holidays coming up, it is nice to send them a message of kindness.

You do not have to personally address your card. Just send them to us and we will send them to the detention center on your behalf. Tip: Choose cheerful cards with supportive messages.

You can send your post card to the following address:

Stichting LOS
TAV Meldpunt Vreemdelingendetentie
Hang 16
3011 GG Rotterdam

Vigils

Vigils are organised regularly for detained migrants at the detention centres.

Volunteers think about the people who are locked up and without documents. Do you want to attend a vigil? You can contact the organisers:

Beware! Dates may differ due to public holidays.

Rotterdam detention center
Every first Sunday of the month there is a vigil by [Stichting Mara](#) at 16:00 - 17:00 at detention center Rotterdam. For more information click [here](#).

Zeist detention center
Every first Sunday of the month there is a vigil from the [Raad van Kerken](#) at detention center Zeist at 4.30 p.m. For more information click [here](#).

Schiphol detention center
There is no long stay immigration

detention center at Schiphol anymore.

Almost all detainees have been transferred to Rotterdam. Since 2018 migrants are kept for a maximum of two weeks at Schiphol detention center.



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