



EMN FOCUSED STUDY 2014

The use of detention and alternatives to detention in the context of immigration policies in the Netherlands

Top-line "Factsheet" (National Contribution)

National contribution (one page only)

Overview of the National Contribution – introducing the study and drawing out key facts and figures from across all sections of the Focused Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.

This focused study on the use of detention and alternatives to detention was carried out on the instructions of the European Migration Network (EMN). Immigration detention is a much-discussed subject in the Netherlands, in particular if it concerns the "human dimension" thereof, the careful handling of information within the cooperating organisations and the medical and legal assistance in detention. After a third-country national who was detained in the Rotterdam Detention Centre had committed suicide in January of 2013, this gave rise to a discussion about this topic and a number of policy changes were implemented. For instance, the responsible State Secretary for Security and Justice presented, at the end of December 2013, the bill on a new Return and Detention Act [*Wet terugkeer en vreemdelingenbewaring*], which, among other things, provides for more liberties for detained third-country nationals, a statutory basis for alternatives to detention and extra attention to vulnerable groups.

The groups of third-country nationals who may be placed in detention in the Netherlands are discussed in Chapter 2 of this study. The grounds on which such a decision may be based will also be discussed.

Our country has, in fact, two types of detention, which are classified according to underlying grounds. On the one hand, there is *territorial detention* under Article 59 of the Aliens Act 2000 [*Vreemdelingenwet 2000*], for which the grounds could be a) that there is a risk that a third-country national will evade supervision, b) that a third-country national is guilty of avoiding or hampering the departure or removal procedure, or c) a combination of both. On the other hand, the Netherlands also has *border detention* under Article 6 of the Aliens Act 2000, for which the ground is to avoid that a third-country national enters the Schengen area illegally.

It is important for *all* categories that a return decision must have been made *at all times* before proceeding to detention. There can be no detention without a return decision.

Chapter 3 addresses the procedures and criteria. An important point of departure is that detention is regarded as an *ultimum remedium* (ultimate remedy). This means that it will first be assessed whether any lighter alternatives can be applied.

A check is performed on an *individual* basis and on the basis of the grounds referred to in Section 2. Here, a distinction is made between *serious* offences (such as evading supervision - as referred to above - and using false documents) and *minor* offences (such as having no permanent residence or having insufficient resources). The latter provide indications of *risks*, but these indications may be contested by a third-country

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national.

There is some degree of categorization, in the sense that certain vulnerable groups have been designated, such as persons with special needs and families with children, who will be assessed with even *more* caution than is already the standard with the principle of ultimate remedy.

The assessments are conducted by the National Police or by the Royal Netherlands Marechaussee (*Koninklijke Marechaussee*, KMar), the Repatriation & Departure Service (*Dienst Terugkeer & Vertrek*, DT&V) having a consulting function.

Chapter 4 contains factual information about detention facilities and the circumstances in these facilities. An important fact is that separate locations have been designated for immigration detention, which are separate from other, 'regular' detention centres or prisons – the immigration detention facilities are located in Zeist, Rotterdam and Schiphol.

The detention centres have special units for extra care or rest. Moreover, a special regime exists for families with children, at the Rotterdam Detention Centre. Unaccompanied minors who are placed in detention, finally, are currently placed in a young offenders institution specialised in the placement of young persons instead of in one of the aforementioned three detention centres.

Furthermore, this chapter contains more specific information about, for example, the activities offered and the available medical and legal care.

Chapter 5 pays attention to the availability and the practical organisation of alternatives to detention. Here, cooperating in a voluntary return is also considered to be an alternative - a basic principle that is also promoted by the Dutch government, which subsidises a number of voluntary return programmes of NGOs. Research has been conducted into the positive and negative results of a number of these programmes. Experiments have also been conducted with a duty to report and deposit in combination with a Repatriation & Departure Service (DT&V) return programme, be it on a very small scale.

Chapter 6 pays attention to the procedures and criteria with respect to the alternatives. As already discussed in Chapter 3, all third-country nationals with a return decision are, in principle, assessed on an *individual* basis, lighter alternatives being considered first before proceeding to aliens detention.

Chapter 7 focuses on the effectiveness of detention and alternatives thereto, attention being paid to international protection, return figures, costs and fundamental human rights. As, in the Netherlands, detention is inextricably linked to a return, and return decisions and voluntary return programmes play such a significant role when alternatives to aliens detention are concerned, the emphasis in recently published reports by third parties is on the "effectiveness" of return figures. A number of *pilot projects* with alternatives were initiated recently. For that reason, these alternatives have not yet been thoroughly evaluated. Therefore, it is not yet possible to make any far-reaching statements on the effectiveness of such measures.

Chapter 8 draws conclusions from the above.

Finally, Annex 1 supports this study with statistics, where possible.

[Executive Summary \(Synthesis Report\)](#)

Synthesis Report (up to three pages)

Executive Summary of Synthesis Report: this will form the basis of an EMN Inform, which will have EU and National policymakers as its main target audience.

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Section 1: Overview of EU acquis (Maximum 2 pages)

This section of the Synthesis Report will briefly outline the EU legal framework guiding national legislation in relation to detention and alternatives to detention. It will provide a mapping of the substantive and procedural provisions in the EU acquis that regulate immigration detention and apply to different migration situations. The section will also highlight how the EU acquis relates to the broader international legal framework on immigration detention.

This section will be developed by the EMN Service Provider and no input from the EMN NCPs is required.

Section 2: Categories of third-country nationals that can be detained, national provisions and grounds for detention (Maximum 3 pages)

The section also examines whether the possibility to detain each category of third-country national is enshrined in national legislation, the grounds for detention that apply and whether national legal frameworks include an exhaustive list of grounds. EMN NCPs are asked to provide their answers to these questions in the table provided overleaf. The section considers whether special provisions regarding detention are in place for persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs. Finally, the section examines national provisions on (release) of detention of persons who cannot be returned and/or are granted tolerated stay.

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Q1. Please complete the table below with regard to the categories of third-country nationals that can be detained in your Member State. Children and other vulnerable groups are not included in this table as they are a cross-cutting category; instead, they are dealt with in a separate question (Q2) after the table.

Categories of third-country nationals	Can third-country nationals under this category be detained? (Yes/No) ¹	If yes, is the possibility to detain laid down in legislation? (Yes/No)	If the possibility to detain third-country nationals exists in your (Member) State but is not laid out in national legislation, please explain whether it is outlined in 'soft law' or policy guidelines	Please list the <u>grounds</u> for detention ² for each category of migrant that can be detained in your (Member) State. Is there an <u>exhaustive list</u> of grounds outlined in your national framework?
Applicants for international protection in ordinary procedures	Yes	Yes		<p>In principle, asylum seekers are not placed in territorial detention (see note 2) (Chapter A5/6.1 of the Aliens Act Implementation Guidelines [Vreemdelingencirculaire]). However, sometimes third-country nationals only apply for asylum after they have been found during actions aimed at preventing illegal residence, or otherwise come into contact with the police. It is also possible that an asylum application is filed when a third-country national has been placed in detention (for some time). The grounds for placing an asylum seeker in detention are identical to the grounds set out in the Return Directive. However, in order to facilitate or continue with the detention of an asylum seeker, an additional individual balancing of interests must be performed on the basis of national case law.³</p> <p>If the asylum seeker has been placed in detention, the Immigration and Naturalisation Service (<i>Immigratie- en</i></p>

¹ In respect of all rejected applications filed by the above-mentioned categories of foreign nationals, a condition for detention is that the departure period must be denied. A departure period may be denied if there is a risk of absconding or for reasons of public order.

² The Netherlands has, in fact, two types of detention, which are classified according to the underlying grounds. On the one hand, there is territorial detention under Article 59 of the Aliens Act 2000 [Vreemdelingenwet 2000], for which the grounds could be a) that there is a risk that a third-country national will evade supervision, b) that a third-country national is guilty of avoiding or hampering the departure or removal procedure, or c) a combination of both. On the other hand, the Netherlands also has border detention under Article 6 of the Aliens Act 2000, for which the ground is to avoid that a third-country national enters the Schengen area illegally.

³ Council of State, 22 August 2012, JV 2012/14.

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				<p><i>Naturalisatiedienst</i>, IND) must, within six weeks after the wish for asylum has been expressed, decide on this application (Article 59(1)(b) of the Aliens Act).</p> <p>The exhaustive grounds based on which an asylum seeker whose procedure is still pending can be placed in territorial detention are the risk of evading supervision or avoiding or hampering the departure or removal procedure. The act contains a list of circumstances that form a rebuttable presumption that the third-country national will evade supervision. Even if there are several such grounds, a third-country national may state that, in his case, there is no risk of absconding. Moreover, detention must, in all cases, be proportional given the circumstances of the particular case.</p> <p>The statutory basis is formed by Article 59 of the Aliens Act, which is set out in more detail in the first paragraph of Article 5.1a of the Aliens Decree [<i>Vreemdelingenbesluit</i>].</p> <p>Asylum seekers that are issued a return decision are, in principle, placed in border detention. In this case, the actual ground for this form of detention is refusal of entry, in order to prevent illegal entry. Article 6 of the Aliens Act forms the statutory basis for this.</p>
Applicants for international protection in fast-track (accelerated) procedures⁴	N/A			
Applicants for international protection subject to Dublin procedures	Yes	Yes		In respect of asylum seekers subject to Dublin procedures, the exhaustive ground for territorial detention is that there is a significant risk that the third-country national will evade supervision. Article 28 of the Dublin Regulation forms the ground for the detention. This has been incorporated in Article 59a of the Aliens Act. Moreover, the fixed grounds of Article 59

⁴ The Netherlands has no fast-track procedure

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				<p>of the Aliens Act apply.</p> <p>This category may also be placed in border detention, provided that the conditions of Article 28 of the Dublin Regulation are met.</p>
Rejected applicants for international protection	Yes	yes		<p>Rejected asylum seekers are, in principle, subject to the same exhaustive grounds as referred to in the Return Directive, namely: the risk of evading supervision or avoiding or hampering the departure or the removal procedure. As a rule, a departure period is set after the end of the asylum procedure, unless there are reasons of public order or indications that a third-country national will evade supervision. A third-country national cannot be detained within the departure period. Subsequently, third-country nationals are generally facilitated in their departure through a restrictive accommodation (see also under Chapter 5), unless it is immediately clear that they refuse to cooperate in this entirely.</p>
Rejected family reunification applicants				<p>Third-country nationals whose application for a residence permit within the context of family reunification has been rejected, are not subject to any grounds for territorial detention other than those that apply to rejected asylum seekers.</p>
Other rejected applicants for residence permits on basis other than family reunification (Please provide details)				<p>For the other categories of rejected third-country nationals, the risk of evading supervision or avoiding or hampering the departure of the removal procedure are also exhaustive grounds for territorial detention.</p>
Persons detained at the border to prevent illegal entry (e.g. airport transit zone)				<p>Refusal of entry at the border in order to prevent illegal entry is a ground for detention (border detention). This form of detention is possible under Article 6 of the Aliens Act with respect to foreign nationals who have been refused entry on the basis of the Schengen Borders Code (or in the cases in which this Code does</p>

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				not apply: on the basis of Article 3 of the Aliens Act). The Netherlands has applied the exception of the Return Directive of Article 2(2)(a) to this group.
<i>Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision</i>				Persons found to be illegally present in the Netherlands and who have not filed an asylum application may be placed in detention on the basis of the same grounds as rejected asylum seekers. The national court concluded from the case law of the European Court of Justice that the presence of a return decision is a necessary condition. In these cases, the return decision will have to be issued by the police no later than simultaneously with the placement in detention.
<i>Persons who have been issued a return decision</i>				Persons found to be illegally present in the Netherlands and who have not filed an asylum application may be placed in detention on the basis of the same grounds as rejected asylum seekers
<i>Other categories of third-country nationals (Please specify the categories in your answer)</i>				

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Q2. Is it possible, within the national legal framework of your (Member) State, to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances. If yes, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied.

Families with children can be placed in territorial detention for no more than 2 weeks and only if they have evaded supervision before. Border detention for families in case of an asylum application is possible; in most cases also for no more than 2 weeks (duration of the asylum procedure).

Unaccompanied minors can only be detained for the purpose of removal if they have repeatedly evaded supervision, if they have committed a minor or serious offence or if a removal is possible in the very near future. Compared with the total number of third-country nationals in detention, the numbers of unaccompanied minors are therefore very small. Unaccompanied minors are never placed in border detention and in territorial detention on very limited grounds only.⁵

Persons who belong to other vulnerable groups may be placed in detention as an ultimate remedy, after a careful assessment has been made. The assessment on whether or not to detain a person must also include any special, individual aspects, such as an illness. During the detention, third-country nationals are provided with the necessary care. Every institution has a medical service set up to facilitate medical care. Care professionals work within the medical service. The medical service at least employs a physician/general practitioner, dentist, nurses, a psychologist and administrative support staff. An emergency doctor is available on call outside office hours. A psychiatrist holds consulting hours.

Q3. Concerning persons, who cannot be removed and/or are granted tolerated stay, please provide information on any provisions in your (Member) State regulating the release from detention of this category of third-country nationals.⁶

If there is no prospect of removal, detention will no longer be lawful and the detention will be lifted. This has been regulated by an act of the Parliament (Article 59 of the Aliens Act in conjunction with Article 5.4(4) of the Aliens Decree), in accordance with Article 5 ECHR and European Directives (reception and return). In respect of persons who are granted stay, detention is also immediately lifted as the statutory basis, namely a foreign national's removal, is no longer complied with.

If detention ultimately fails to result in a removal and a third-country national is released, the third-country national will be offered support in working on his/her independent departure. No accommodation or other support is provided to a third-country national who must be released from aliens detention without the anticipated result, while he himself is to blame for the circumstance that he cannot be removed. It could be that a third-country national is again placed in detention at a later point in time based on new facts and circumstances, because new prospects of removal can be assumed. The court will independently assess whether there is sufficient justification for imposing a second detention measure. If the third-country national, in spite of his own efforts and the efforts of the government, is unable to depart for a considerable period of time, he may be granted residence status.

Section 3: Assessment procedures and criteria for the placement of third-country nationals in detention (Maximum 5 pages)

This section examines the assessment procedures and criteria/benchmarks that are used by (Member) States in order to decide whether detention is justified in individual cases. It begins with a series of questions which explore the extent to which individual assessment procedures (e.g. interviews) are used in all cases before placing third-country nationals in detention, or whether individual assessment procedures are only used in the case of certain categories of third-country national. Where individual assessments are used, EMN NCPs are asked to describe the procedures involved and whether they include an assessment of the vulnerability of the individual in question.

⁵ *Parliamentary Papers II*, 2010/11, 27 062, no. 68

⁶ According to Article 15(4) of the Return Directive, in situations when it appears that a reasonable prospect of removal no longer exists for legal or other considerations detention ceases to be justified and the person concerned shall be released immediately.

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Finally, EMN NCPs are asked to provide information on the challenges associated with the assessment procedures in their Member States and to identify any elements of good practice.

Q1. Please indicate whether an **individual assessment** procedure is used to determine the appropriateness of detention in the case of any of the categories of third-country nationals selected in Section 2 (Table Q1). Yes/No.

If yes, please list the categories of third-country nationals where individuals are subject to individual assessments.

If individual assessment procedures are not used, please indicate the mechanism used to determine the appropriateness of detention e.g. are all individuals within a particular category of third-country national automatically placed in detention?

Yes, a detention is preceded by an individual assessment for all categories. It is assessed case-by-case whether the necessary grounds for detention apply. Detention is an ultimate remedy. Therefore it is assessed, before any third-country national is placed in detention, whether other, lighter supervision measures could be applied. The ultimate remedy principle is used in accordance with international regulations and case law. A family with children may be placed in detention, but for a time period of no longer than two weeks before the date of their departure from the Netherlands, and only if the family has evaded supervision before. Here, too, an individual assessment is made. There are *no* groups that are placed in detention categorically.

Q2. Where individual assessment procedures are used, and specific criteria exist to help the competent authorities decide whether particular grounds for detention apply, please indicate the **legal basis** on which these individual assessment procedures are exercised (for example legislation, soft law/guidelines).

Article 59 of the Aliens Act in conjunction with Articles 5.1a and 5.1b of the Aliens Decree gives a list of indicators that give rise to the suspicion that a risk of absconding exists which could justify a detention. These grounds must be substantiated in more detail. On the other hand, a third-country national may put forward circumstances that refute the suspicion that he will evade supervision. The power to impose detention is a discretionary power. (see the word *may* in the legislative text of Article 59 of the Aliens Act) which means that the use of this power must always be accounted for.

Q3. Where individual assessments are used, does the third-country national receive detailed information on the consequences of the interview before the individual assessment procedure? If yes, is there an emphasis on all possible options/outcomes of the assessment?

Before a detention measure is imposed, it is explained to a foreign national that he will be placed in detention. In all cases, contact is made with the third-country national's lawyer, and, if he has no lawyer, a lawyer will be contacted through the *piketcentrale* (duty lawyer service)⁷. The third-country national is also informed of the fact that he may contact his diplomatic representation and, before the detention measure is imposed, he is also given the opportunity to make this contact.

Q4. Where individual assessments are used, please indicate whether the procedure includes an assessment of the **vulnerability** of the individual in question. (Yes/No) If yes, please describe the vulnerability assessment procedure used.

Vulnerable groups within the immigration process are persons with special needs (as defined in the European Return Directive and Reception Conditions Directive). In all cases in which third-country nationals are placed in detention, an individual balancing of interests is performed, the situation of an individual with special needs being carefully considered.

⁷ The *piketcentrale* is part of the Legal Aid Board (Raad voor de Rechtsbijstand). Lawyers are scheduled according to a rotation system, so that a lawyer will always be available (http://www.rvr.org/binaries/about-rvr/brochure-legalaid_juni2013_webversie.pdf).

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Q5. Please provide more detailed information on **the criteria /indicators** used to decide whether particular grounds for detention apply in individual cases. EMN NCPs are asked to answer this question by listing the criteria / indicators that are used to determine the circumstances in which the following grounds for detention, permitted in EU law, apply. However, if the grounds for detention are not applicable in your (Member) State, EMN NCPs may identify the criteria/indicators that are used to determine the circumstances in which other grounds for detention apply.

a) **Ground 1: If there is a risk of absconding**

In the detention measure, on the form M110-A, the acting prosecutor⁸ may tick a number of facts and circumstances showing that there is a risk that the third-country national will evade supervision or avoid or hamper the preparation of the departure or the removal procedure⁹

The facts or circumstances are subdivided into serious and minor offences. A detention order may be based on serious offences without any further substantiation. In respect of minor offences, the detaining authority (Acting Public Prosecutor of the Aliens Police or KMar (Royal Dutch Military Constabulary)) must substantiate why this ground involves a risk of absconding in this particular case. In general, a third-country national may, in case of serious grounds, also demonstrate that there is nevertheless no risk of absconding or avoiding or hampering return procedures. This will be the case especially if the third-country national demonstrates that he is working on his return.

Serious offences are the case when it appears that the third-country national:

- did not enter the Netherlands in the prescribed manner, or made an attempt to do so;
- for some time evaded supervision, contrary to the immigration legislation;
- received an earlier visa, decision, notification or notice showing that he has to leave the Netherlands and he did not comply with this of his own accord within the period decided or stated therein;
- does not cooperate or insufficiently cooperates in determining his identity and nationality;
- in connection with this application for admission, provided incorrect or contradictory data with respect to his identity, nationality or journey to the Netherlands or another Member State;
- disposed of his travel or identity documents without there being any need to do so;
- used false or falsified documents in Dutch legal transactions;
- was declared an undesirable third-country national as referred to in Article 67 of the Act or an entry ban was imposed against him with application of Article 66a(7) of the Act;
- has stated that he will not comply with his obligation to return or with his obligation to depart for the Member State that is responsible for the handling of his asylum application.

Minor offences, whereby the state will have to substantiate why this involves a risk of absconding, are the case if it appears that the foreign national:

- failed to comply with one or more of the obligations applicable to him as set out in Chapter 4 of the Aliens Decree;
- filed several applications for the granting of a residence permit which did not result in the

⁸ The 'acting prosecutor' (Dutch: *Hulpofficier van Justitie*) is a civil servant, usually from the Police or the Dutch Royal Military Constabulary, authorized with certain powers in the area of criminal law. He or she is not a member of the Public Prosecution Service, hence no *public* prosecutor.

⁹ Only in combination with category 59a of the Aliens Act

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granting of a residence permit;

- has no permanent or temporary address;
- does not have sufficient financial resources;
- is suspected or was convicted of any serious crime;
- performed work that is contrary to the Labour Act for Aliens [*Wet Arbeid Vreemdelingen*].

b) Ground 2: If the third-country national avoids or hampers the preparation of a return or removal process

This ground is, in principle, subject to the same criteria as the ground of a risk of absconding referred to under 1.

c) Ground 3: If required in order to protect national security or public order

This is the ground as referred to in Article 59 of the Aliens Act. This ground has been elaborated on in the above-mentioned ground 1 and ground 2. The national court's interpretation of the Kadzoev judgment¹⁰ is that detention cannot be based on public order/national security as such; grounds in the detention order, should a third-country national be suspected or convicted of any serious criminal offences (crimes), may only serve as a substantiation if these criminal offences also show that there is a risk of absconding. The concept of public order in the statutory provision of Article 59 of the Aliens Act refers to the prevention of illegal stay in general. If the detention measure is also motivated by national security, the Minister of Security and Justice must issue a special direction (A5/6.1 of the Aliens Act Implementation Guidelines).

d) Ground 4: Please indicate any other ground(s) and the respective criteria/indicators considered in the assessment

Pursuant to Article 6 of the Aliens Act, a decision may be made to place a foreign national in border detention on the ground of: refusal of entry.

Q6. Is the *possibility to provide alternatives to detention* systematically considered when assessing whether to place a person in detention in your (Member) State?

Yes, at all times, in principle. The lightest remedy is considered first, after which the other options are considered, detention being the ultimate remedy.

Q7. Please indicate which *national authorities* are responsible for (i) conducting individual assessment procedures (where these exist) and (ii) deciding on the placement of a third-country national in detention.

The police and KMar (Royal Dutch Military Constabulary). To an increasing extent, the DT&V (Repatriation & Departure Service) and IND (Immigration and Naturalisation Service) are also involved in this.

Q8. Please indicate whether *judicial authorities* are involved in the decision to place a third-country national in detention, and if so, at which stage(s) of the decision-making process and in what capacity? (e.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)

¹⁰ CJEU - C-357/09, PPU Said Shamilovich **Kadzoev** (Huchbarov)

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The detention measure is imposed by the Acting Prosecutor of the National Police or the Royal Dutch Military Constabulary (KMar), the DT&V (Repatriation & Departure Service) increasingly having a consulting function. The third-country national or his assigned lawyer may appeal to this. If the third-country national does not lodge an appeal, by operation of law such an appeal will be instituted automatically in order for the court to assess the measure. The court will then assess whether the detention is in accordance with the statutory regulations, and also whether the government made this decision in all reasonableness, given the facts and circumstances. The court will assess whether the government's interests in the continuation of the detention should outweigh the third-country national's interests in being released. It is possible to lodge an appeal against the court decision.

*Q9. Please identify any **challenges** associated with the implementation of existing assessment procedures in your (Member) State.*

There have been observations from the police and the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen*, DJI) that the implementation of the Return Directive in national legislation and the interpretation given to it by case law has formally made the detention process more complex from a legal point of view.¹¹ The process is now also more time-consuming, so that the existing period of six hours for the preparation of the detention may be too short. In accordance with Article 6(2) of Directive 2008/115, third-country nationals with a residence permit may (other than on grounds of asylum) be placed in detention in another Member State with a view to returning to their country of origin if they failed to comply with a previous order to return to the Member State where they have a residence permit. Public order may also be a reason to keep third-country nationals with a right of residence in another Member State in detention with a view to their return to the country of origin. Practice has shown that if the third-country national in question is unable to return to his country of origin (e.g. due to reasons for requesting asylum or other reasons), a return to the other Member State will often be problematic.

*Q10. Please identify any **good practices** in relation to the implementation of assessment procedures (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)*

In the Netherlands, tracing illegally staying third country nationals is part of the routine operations of the police and KMar (Royal Dutch Military Constabulary). However, the preparation of the removal of illegally staying third country nationals once they are apprehended is the responsibility of the DT&V (Repatriation & Departure Service). The DT&V and the police have agreed that the assessment procedure on whether to choose detention or an alternative to detention, as well as what specific alternative is applicable to the situation of the third country national involved, will be made together. The DT&V will, in the future, advise the police in all cases. It is expected that this cooperation will lead to a further improvement of assessments and motivations of decisions.

Section 4: Types of detention facilities and conditions of detention (Maximum 5 pages)

This section of the Synthesis Report will provide a factual, comparative overview of the types of immigration detention facilities that exist in the EU and the conditions of detention associated with these. It examines whether there are specialised immigration detention facilities and explores whether different types of detention facilities are available for different categories of third-country national. The section also reviews the conditions of third-country nationals in these detention facilities, including average surface per person, existence of separate facilities for families, visitation rights, access to medical care and legal assistance.

Q1. Are there specialised immigration detention facilities in your (Member) State, which are not prisons? (Yes/No) If yes, please indicate how many exist and how they are distributed across the territory of your (Member) State.

Yes, the Netherlands has three detention centres especially designated for the purpose of immigration detention. These detention centres only accommodate immigrants who are not granted a residence permit, so no criminal offenders. These are located in Zeist, in Rotterdam and at Schiphol International Airport (*Justitieel Complex*

¹¹ DJI 2013 *Vreemdelingenbewaring in getal 2008-2012* [Aliens Detention in Figures 2008-2012] The Hague: DJI

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Schiphol). These locations are concentrated in the *Randstad* (a metropolitan region in the western Netherlands) and can be found at <http://www.dji.nl/Organisatie/Locaties/Detentiecentra-en-uitzettingcentra/>. The detention facilities fall under the Penitentiary Principles Act [*Penitentiare beginselenwet*], which regulates the minimum standards set on (almost) all detention facilities in the Netherlands. So this includes both the institutions that accommodate prisoners and the institutions that accommodate third-country nationals.

See also the answer to Q2.

Q2. Are there different types of specialised immigration detention facilities for third-country nationals in different circumstances (e.g. persons in return proceedings, applicants for international protection, persons who represent a security risk, etc.)? (Yes/No). If yes, please provide a brief overview of the different types of immigration detention facilities.

Third-country nationals who enter the country via Schiphol International Airport (a Schengen external border) and apply for a residence permit may be placed in border detention. Persons who have been refused entry at the border are also detained here.

The border detention regime is somewhat broader than the territorial detention regime that is implemented at the other two locations. The difference comes down to more hours that may be spent outside the cell.

Men and women are separated in detention, but both groups are subject to the same kind of regime.

All detention centres have special units where extra care or rest can be offered to a third-country national. Here, third-country nationals in principle have the same regime rights as in the rest of territorial detention, except for the fact that the staff has additional skills and extra attention is paid to detainees. Detainees may, for example, stay in a single-person cell instead of in a two-person cell.

Moreover, a specialised regime applies to families/families with children, placed in a separate unit in the Rotterdam Detention Centre. This regime has the same features as the regime for border detention, with, however, additional facilities for children and support and facilities for families.

An IND (Immigration and Naturalisation Service) section is based at the Schiphol location, for the purpose of handling asylum applications filed by third-country nationals who have been refused entry at the border, were detained and then filed an asylum application. If third-country nationals are detained at another location and apply for asylum, they will, as a rule, be transferred to the Schiphol location so that their application can be handled efficiently. The difference in residence conditions among the various locations is limited.

Finally, unaccompanied minors take an exceptional position. If the decision is made that they will be detained, they will be placed in a juvenile detention center. This policy is being reconsidered at this moment, as well as the border detention of families with minor children.

There are also units in a penitentiary hospital and a psychiatric centre, where third-country nationals can be placed if the care they require gives cause to do so. They will then be separated from the other prisoners. Third-country nationals who cannot be kept under control at a location for immigration detention may for safety reasons be placed at a location with a regime that is also used for regular prisoners.

Q3. Which authorities/organisations are responsible for the day-to-day running of the specialised immigration detention facilities in your (Member) State?

The DJI (Custodial Institutions Agency) is responsible for the implementation of immigration detention. The powers and responsibilities of the DJI arise from the Penitentiary Principles Act (which for immigration detention, in the future, is expected to become: the Return and Aliens Detention Act [*Wet Terugkeer en vreemdelingenbewing*], an Act that has an administrative nature). The DJI has its own institutional staff. Depending on the number of

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detainees, external staff may be contracted (which was done until early 2014) - however always under the responsibility of the director of the institution.

Moreover, various services and interest groups are based within the walls of the detention centres. These are the Repatriation and Departure Service (DT&V), the International Organisation for Migration (IOM) and the Dutch Council for Refugees (Vluchtelingenwerk Nederland). Other NGOs may, through the director, apply for access and assist in the return. These organisations work under their own responsibility. They can play a facilitating role in the return process. The IND (Immigration and Naturalisation Service) is also represented within the walls of the detention facility at Schiphol International Airport.

Q4. Please describe any measures taken by your (Member) State to deal with situations where the number of third-country nationals to be placed in detention exceeds the number of places available in the detention facilities.

This has not been the case recently. In order to be able to cope with large fluctuations, the DJI (Custodial Institutions Agency) maintained a reserve capacity until 2013. This extra capacity could be made available within a short period of time, especially in the form of a back-up staff provision (financial reserve for a quick deployment of staff). This capacity has proved to be unnecessary over the past few years and has therefore been removed from the budget.

From a legal point of view, there are no objections to using part of a facility with regular detainees for immigration detention. However, it will then have to be ensured at all times that persons in immigration detention are separated from the regular detainees.

Q5. Are third-country nationals detained in prisons in your (Member) State? (Yes/No) If yes, under which circumstances?

Third-country nationals who have been detained for criminal reasons (preventive custody/sentence) are placed in regular prisons. This group is, however, still subject to a special protocol, which enables cooperation with the other organisations involved so that, where relevant, it will be possible to work on a return already during the criminal detention. Third-country nationals who have been detained for criminal reasons will stay in units of prisons/remand prisons especially designated for this purpose. Here, the VRIS regime applies (VRIS is short for *Vreemdeling in de Strafrechtketen* or Third-Country National in the Criminal Justice System). There is possibility of work or leave in the VRIS regime. There are, however, still facilities that focus on return, such as supervision by the Repatriation and Departure Service (DT&V) and an activities programme.

Third-country nationals placed in immigration detention are not placed in ordinary prisons. In very exceptional situations, if a detainee poses a serious danger to the order and security in the immigration detention facility, a temporary placement in a (control unit in a) regular prison or in a penitentiary psychiatric centre may be in order. Here, an individual regime applies and the detainee is separated from ordinary prisoners. Unaccompanied minors are only detained in exceptional situations, and are then placed in an institution specialised in the care for and supervision of minor detainees. This concerns a so-called juvenile detention centre.

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Q6. If third-country nationals are detained in prisons in your (Member) State, are they held separately from general prisoners? If yes, please provide information on the mechanisms to separate third-country nationals under immigration detention from general prisoners?

Yes. See the answer to Q5.

Q7. Please provide the following information about the conditions of third-nationals who have been placed in an immigration detention facility in your (Member) State: (Please indicate if the facilities in question are prisons or specialised immigration detention facilities).

Conditions of detention	Statistics and/or comments
Please provide any statistics on the average available surface area per detainee (in square meters)	With a deviation margin of 10%, the accommodation has a minimum surface area of 10 square meters, a width of 2 meters and a free height of 2.5 meters. ¹²
Please provide any statistics on the average number of detainees placed in one room per detention facility	In principle, third-country nationals are detained in a two-person cell. The care unit, if needed, also has one-person cells.
Are families accommodated in separate facilities?	Families are placed in a separate unit in the Rotterdam Detention Centre. The regime applicable there has the same features as the regime for border detention, with, however, additional facilities for children and support and facilities for families.
Can children be placed separately from their parents? (e.g. in a childcare facility). Under what circumstances might this happen?	No, children are placed together with their parents in a family unit.
Are single women separated from single men?	Yes.
Are unaccompanied minors separated from adults?	Yes. Unaccompanied minors are placed at another location, namely in a juvenile detention centre. Unaccompanied minors are, however, sometimes placed in one of the three detention centres for a few days right before their removal, where they then reside in the separate family unit.
Do detainees have access to outdoor space? If yes, how often?	Yes. In some buildings detainees can freely walk to the courtyard that is available there. Sometimes, they do this in shifts. The right to be outdoors has been laid down in the Penitentiary Principles Act (for immigration detention soon: the Return and Aliens Detention Act, which will involve a relaxation of the detention regime). The act provides for at least 1 hour per day. In practice, the actual time that can be spent outdoors often exceeds the minimum of 1 hour.

¹² Ministerial Regulation on accommodation requirements in penal institutions [*Ministeriële Regeling eisen verblijfsruimte penitentiaire inrichtingen*], Article 3.

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<p>Are detainees allowed to have visitors? If yes, which visitors are allowed (for example, family members, legal representatives, etc.) and how often?</p>	<p>Yes, they are allowed to receive visitors at least 1 hour every week. In practice, this often exceeds the minimum of 1 hour. Detainees are also allowed to receive visitors in the weekends. In general, there are extra visiting hours in case of an imminent departure. Visitors are received under supervision.</p> <p>In addition to family visits, there are so-called <i>privileged</i> visits (e.g. by a lawyer, consul). Persons from this group are also allowed to visit detainees outside visiting hours.</p>
<p>Are detainees allowed contact with the outside world via telephone, mail, e-mail, internet? If yes, are in- and/or out-coming messages screened in any way?</p>	<p>There are telephone facilities in all units. Detainees are given a telephone card. In the future, the use of mobile telephones may be allowed as well. This is currently not allowed yet. Telephone calls are not screened.</p> <p>Internet facilities are available as well. There are limited possibilities for surfing the Internet; detainees can only visit so-called <i>white pages</i> (permitted websites).</p> <p>E-mail and videophone (e.g. Skype) are not allowed. This will, however, possibly be introduced in the future, within the context of the Return and Aliens Detention Act.</p>
<p>Are education programmes provided (e.g. school courses for minors and language classes for adults)?</p>	<p>Yes, day programmes and activities are available. Education programmes are available to a limited extent, in the form of e-learning via a computer or self-education via the library. No pedagogical or educational staff work in the institution and no schooling is offered. This would not appropriately relate to the purpose of the stay: a return. The aim is for the stay to be as short as possible,</p>
<p>Do detainees have access to leisure activities? If yes, which leisure activities are provided in the detention facility? And if yes, how often?</p>	<p>Yes. It is possible to exercise sports two times a week, to visit the library once a week, to go to a prayer service once a week, and to perform recreational activities once a week. A schedule is made for the various activities. If there are few participants, detainees who want to participate in extra activities may register for additional participation.</p> <p>The units have limited cooking facilities and recreational facilities (TV, games computer, table football, board and card games).</p> <p>On a non-structural basis, activities are offered in the unit (eating together, joint play activities). Extra creative activities and sports activities are offered, such as a football tournament. Sometimes, volunteers offer extra activities, such as cultural activities (singing or dancing).</p>

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<p>Can persons in detention leave the facility and if yes, under what conditions? Can persons move freely within facility or are their movements restricted to some parts/rooms of the facility?</p>	<p>In principle, the answer to the first question is 'no'; no regular leave provision is in place. In incidental situations, however, leave may be permitted on humanitarian grounds, e.g. in order to be present at the birth of a child or to attend a funeral, or to visit a doctor.</p> <p>Within the complex, the aim is for the detainee to have as much freedom as possible, within the existing possibilities. The DJI (Custodial Institutions Agency) is experimenting with free passage with the help of a system of passes. Detainees would then be able to go to the sports area or the creative activities area by themselves. If the complex has a recreation yard, there will be free access to this yard.</p> <p>Detainees are not allowed to access the office spaces etc. inside the building.</p>
<p>Are detainees entitled to legal advice / assistance? If yes, is it free of charge?</p>	<p>Detainees have their own lawyers. Moreover, the institution has a Legal Services Counter. The staff of this counter can give advice and a referral. This service is free of charge.</p>
<p>Are detainees entitled to language support (translation / interpretation services)? If yes, is it free of charge?</p>	<p>If necessary, an interpreter is called in, for example for a return interview, a consultation by the general practitioner, or a meeting with the lawyer. Detainees are not charged for this. Interpreting services are usually provided by telephone. Third-country nationals also have the possibility to ask for an interpreter themselves. There are also often other people nearby who speak other languages, see also the below answer under special arrangements for persons belonging to vulnerable groups.</p>
<p>Is medical care available to detainees inside the facilities? Is emergency care covered only or are other types of medical care included?</p>	<p>Yes, medical care is available. Upon arrival, all detainees are seen by a nurse (intake interview). The nurse gathers information about a detainee's health. Some third-country nationals arrive in poor health or have medical particulars. Necessary medical assistance will be provided in that case. Detainees are also screened for TB (tuberculosis) and are provided with health information. There are medical consulting hours, and medication is ordered and distributed at the expense of the institution.</p> <p>Secondary care may be provided where necessary. This could be an optician, physiotherapist or psychologist. If necessary, a third-country national may be referred to a hospital.</p> <p>Oral care is available in all institutions.</p> <p>In emergency cases, an ambulance is called and first aid is offered.</p>
<p>Are there special arrangements for persons belonging to</p>	<p>The director has a general duty of care. Where</p>

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vulnerable groups? Please describe	<p>necessary, customised care is provided, for example support in general daily life, support with medication, or modified nutrition or diets. Pregnant women and families receive additional facilities.</p> <p>The staff includes employees of various origins and cultures. They can recognise cultural-specific needs and may tailor to these needs, for example also in a detainee's own native language. Many matters can be taken into account, for example a match with a cellmate, or recognising that a person is lonely or in need of personal support. Spiritual care also plays a role here. NGOs may be called in where necessary, for example the International Red Cross for the check and trace programme, which is aimed at tracing any lost family members.</p>
Are there special arrangements for persons considered to be security risks for others and/or themselves? Please describe	<p>All detention centres have isolation units. Persons may be placed here for their own safety, but also for the safety of others (e.g. when a person has been aggressive or threatened another person). Camera monitoring is possible here, for example in case of a suicide threat. Cells in isolation units may be adjusted to specific circumstances - e.g. a more sober cell for someone who threatens to throw furniture or hurts him/herself, and a simply furnished cell for a person to be placed in medical quarantine, for example given the results of a TB screening or a person who is under increased supervision due to a hunger strike.</p> <p>A detainee may also be placed in an isolation unit for the reason of sanctioning his or her behaviour. Where possible, a lighter sanction is imposed, for example being confined to his or her room (temporarily not being allowed to leave it), or paying damage, for example in case of vandalism.</p>

Section 5: Availability and practical organisation of alternatives to detention**(Maximum 6 pages)**

It further explores the practical organisation of the alternatives to detention, including information on the authorities/organisations responsible for administering the alternatives; the conditions that must be met by the third-country national who has been provided an alternative to detention; and information on the mechanisms in place in order to monitor the third-country national's compliance with these conditions. EMN NCPs are further requested to provide information on the challenges associated with the implementation of the alternatives, and any examples of good practice in their (Member) State that they may wish to share.

Q1. Please indicate whether any alternatives to detention for third-country nationals are available in your (Member) State and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.

Alternatives to detention	Yes/ No (If yes, please provide a short description)
Reporting obligations (e.g. reporting to the	Yes. Third-country nationals subject to reporting obligations are

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policy or immigration authorities at regular intervals)	required to report regularly to the police. The reporting obligation can be daily, weekly, or monthly.
Obligation to surrender a passport or a travel document	Yes. (Executed by the Police).
Residence requirements (e.g. residing at a particular address)	<p>Yes. Within this alternative to detention, special attention should be paid to two types. The first type is a reception facility with restricted movement (Dutch abbreviation 'VBL', <i>vrijheidsbeperkende locatie</i>). Third-country nationals who have a legal obligation to leave the Netherlands because their right of residence and/or reception has lapsed may be transferred to a VBL. A condition is that there is a prospect of returning within 12 weeks, in principle. Third-country nationals must then actively cooperate in their departure.</p> <p>Third-country nationals staying at a VBL are imposed a freedom-restricting measure (under Article 56 of the Aliens Act 2000). This measure is imposed by the DT&V (Repatriation & Departure Service). Third-country nationals staying at a VBL are allowed to leave the location, but are obliged to stay within the municipal borders. In principle, third-country nationals stay at a VBL for no more than 12 weeks. When in this centre, they continue to work on their return.</p> <p>Emphasis on departure</p> <p>During their stay at a VBL, third-country nationals will continue to be responsible for their departure from the Netherlands. The DT&V (Repatriation & Departure Service) will support them in this, but does not take over responsibility. A DT&V supervisor will conduct interviews with a third-country national as soon as possible after his or her arrival in the VBL. The third-country national and the supervisor will discuss any obstacles and options the third-country national has in organising his or her departure from the Netherlands. Specific agreements are made on the actions to be taken by the third-country national in order to organise the departure.¹³</p> <p>The second type is a family centre. The accommodation of families with minor children may, as long as the departure from the Netherlands has not taken place, not be terminated if this would create a humanitarian emergency situation. Families with minor children are transferred to family centres that focus on the departure.</p> <p>If, in the asylum procedure, the careful assessment results in the decision that a family with minor children does not qualify for protection in the Netherlands, it will be the family's responsibility to return to their country of origin within the statutory departure period of a maximum of 28 days after the rejection of the asylum application. If the family has not left the</p>

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http://www.dienstterugkeerenvertrek.nl/Terugkeer_en_vertrek/Verblijfslocaties_voor_vreemdelingen/Vrijheidsbeperkende_locatie/

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	<p>Netherlands within this period, they may be transferred to a family centre on the instructions of the Repatriation and Departure Service (Dienst Terugkeer en Vertrek, DT&V).</p> <p>Personal responsibility</p> <p>At the family centre, the basic principle is that it is the family's own responsibility to comply with their obligation to leave the country, which starts the moment when the asylum application is rejected. For by rejecting the asylum application, the Dutch government states that the family has no future prospects in the Netherlands. By organising the departure from the Netherlands as soon as possible, these families may take control of their own fate.</p> <p>Duration of stay</p> <p>The accommodation of families with minor children will only be terminated upon departure from the Netherlands or when the youngest child has reached the age of eighteen. The basic principle continues to be an independent departure. So families with minor children can influence the duration of their stay at a family centre themselves.</p>
<p>Release on bail (with or without sureties)</p> <p><i>If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group)</i></p>	<p>The DT&V (Repatriation & Departure Service) supervisor who is working on the return of the third-country national can in an individual case decide to release on bail and determine the amount. In most cases where 'release on bail' was used as an alternative to detention so far, €500 was the amount. The amount can be paid by the third-country national or by a third person.</p>
<p>Electronic monitoring (e.g. tagging)</p>	<p>No</p>
<p>Guarantor requirements</p> <p><i>If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i></p>	<p>No</p>
<p>Release to care worker or under a care plan</p>	<p>No</p>
<p>Community management programme</p>	<p>No</p>
<p>Other alternative measure available in your (Member) State. Please specify.</p>	<p>The Dutch government, in particular the DT&V (Repatriation & Departure Service), subsidises several voluntary return programmes implemented by (local) NGOs and IGOs with the aim of providing an alternative to detention. Participation in these projects is available for all third-country nationals without legal stay, with the exception of persons who:</p> <ul style="list-style-type: none"> - have received a re-entry ban for a period of more than five years or have been convicted for sex crimes or

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	<p>human trafficking;</p> <ul style="list-style-type: none"> - have the nationality of a country excluded from the national voluntary scheme of the Return and Emigration of Aliens from the Netherlands (REAN) programme; - have already received similar support in the context of another programme. <p>For the specific purpose of providing alternatives to detention, the Dutch government has introduced a Ministerial Decree for the support of voluntary return mid-March 2014.</p> <p>Project proposals should include the support/cooperation of at least one local government as well as a concrete arrangement with the DT&V (Repatriation & Departure Service) concerning the exchange of information on the individual level. Subsidised organisations are required to present every participant in the programme to the DT&V for approval and to keep the DT&V up-to-date on the progress of the individual return processes (including actual voluntary return and the ending of support by the TCN or the NGO/IGO). The DT&V monitors the progress and has the right to either end the support and/or apply different measures.</p> <p>IOM Netherlands implements the most important return measures financed by the Dutch government. Apart from more general regulations, they pursue additional policy for various target groups, often on a project basis.¹⁴ The basic regulation is the "Return and Emigration of Aliens from the Netherlands (REAN)" programme.¹⁵</p> <p>For some years now, IOM Netherlands has offered assistance in the return of detained third-country nationals.</p> <p>The "Assisted Voluntary Return from Detention III" project started in May 2013. The aim of the project is to improve the approach to and implementation of a voluntary return of migrants from detention as part of an integrated return policy. Detained third-country nationals are given the possibility to leave the country with the help of IOM.¹⁶</p>
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Q2. For each of the alternatives to detention that are available in your (Member) State, please indicate the categories of third-country nationals that may be provided an alternative to detention, making use of the list provided below and adding any additional categories as applicable. If there are variations in the practical

¹⁴ European Migration Network (2009) *Programmes and Strategies in The Netherlands Fostering Assisted Return to and Re-integration in Third Countries*

¹⁵ <http://www.iom-nederland.nl/nl/vrijwillig-vertrek/terugkeer-naar-uw-land-van-herkomst-rean>

¹⁶ <http://www.iom-nederland.nl/nl/vrijwillig-vertrek/projecten-voor-migranten-in-vreemdelingenbewing>

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organisation of any of the alternatives to detention provided to different categories of third-country national, please indicate this is the case and briefly illustrate the variations.

- *Applicants for international protection in ordinary procedures;*
- *Applicants for international protection in fast-track (accelerated) procedures;*
- *Applicants for international protection subject to Dublin procedures;*
- *Rejected applicants for international protection;*
- *Rejected family reunification applicants;*
- *Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision)*
- *Persons who have been issued a return decision;*
- *Other categories of third-country nationals;*
- *Vulnerable persons (such as minors, families with very young children, pregnant women and persons with special needs.*

- *Applicants for international protection in ordinary procedures:* This category may include third-country nationals who file an asylum application at the border, who are found to be illegally present on the territory, or who are already detained and file an asylum application there. In respect of those who file an asylum application from territorial detention, there is a risk of evading supervision. In that case, an alternative cannot be offered quickly. Should the detention not be continued, a right of reception will follow from the asylum application pending the decision.
- *Applicants for international protection in fast-track (accelerated) procedures;* The Netherlands has no fast-track procedure.
- *Applicants for international protection subject to Dublin procedures:* This category is only placed in (border) detention if there is a significant risk that the third-country national will evade supervision. In principle, alternatives to detention are possible if they are effective.
- *Rejected applicants for international protection:* It is assessed whether an alternative measure is at issue. In principle, all alternatives are possible, provided that the third-country national is willing to work on his return and there is no risk of absconding that causes an alternative to be unable to be applied effectively.
- *Rejected family reunification applicants:* Idem.
- *Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision:* If a third-country national is illegally present, a return decision will be issued. After that, the procedure is, in principle, identical to the procedure of a rejected asylum seeker.
- *Persons who have been issued a return decision:* Persons who are found to be illegally present on the territory, who have already been issued a return decision, and whose period to leave voluntarily has expired, can still apply for an alternative to detention. However, the fact of not having left the country after having been issued a return decision will be a strong indication that there is a risk of absconding and may lead to the conclusion that no effective alternatives for detention are present.
- *Other categories of third-country nationals:* N/A
- *Vulnerable persons:* See above for the policy on detention of minor children. For the other categories, it is carefully assessed whether an alternative measure is at issue.

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Q3. For each of the alternatives to detention that are available in your (Member) State, please indicate the legal basis on which they may be granted to particular categories of third-country nationals (for example legislation, soft law/guidelines, other).

Within the current legal framework, the ultimate remedy principle follows from the system of the Aliens Act and the Aliens Decree (Articles 59, 94, 96 and Articles 5.1a, 5.1b and 5.4 of the Aliens Decree). The importance of public order or safety demands detention. The Aliens Decree provides that public order demands detention if there is a risk of evading supervision or a situation in which a foreign national avoids or hampers his or her return.

Moreover, an amendment to the Aliens Act is being prepared in respect of the provisions pertaining to stopping, bail, restriction of liberty and deprivation of liberty. This amendment legally enshrines alternatives to detention more explicitly and emphasises the ultimate remedy principle of detention.

Q4. For each of the alternatives to detention that are available in your (Member) State, please indicate the authorities/organisations responsible for (a) deciding and (b) administering the alternative. Please indicate in particular whether the responsible organisation is a non-governmental organisation.

As supervisory authorities, the police and KMar (Royal Dutch Military Constabulary) are charged with imposing and enforcing alternative detention measures. An exception is the freedom-restricting measure pursuant to Article 56 of the Aliens Act which may also be imposed by the DT&V (Repatriation & Departure Service). The act also includes a general duty to report to which a number of groups are subject by operation of law. This duty is enforced by the police and KMar where necessary. The deposit, which actually is not counted as a measure, is imposed by the DT&V.

Q5. For each of the alternatives to detention that are available in your (Member) State, please provide information on any consequences if the third-country national does not follow the conditions of the alternative to detention.

If a third-country national does not follow the conditions of the alternative to detention offered to him, a new assessment will be made in order to see whether detention is appropriate. If a third-country national signs an application for Assisted Voluntary return with IOM and subsequently absconds, the application is closed by IOM. Still, the third-country national can at any moment apply a new for assistance with voluntary return.

Q6. Please indicate any challenges associated with the implementation of the alternatives to detention in your (Member) State. (based on existing studies/evaluations or information received from competent authorities)

The first two years during which several alternatives to detention have been piloted have shown that the results of voluntary return programmes as an alternative to detention have varied greatly between the various programmes. A strong local involvement, as well as strict, concrete arrangements with the DT&V (Repatriation & Departure Service) concerning the exchange of information on the individual level, have proven to be important factors for success.

IOM in the country of origin assists returnees from all EU member states. According to IOM Netherlands it often happens that returnees from one member state receive a different package or reintegration grant than a returnee from another member state, depending on the running programme in the particular member state. IOM finds that difficult to explain to returnees. Moreover it could also lead to third country nationals travelling to the country with the best offer.

Q7. Please provide any examples of good practices regarding the implementation of the alternatives to detention in your (Member) State. Please specify the source (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

Two particular voluntary return programmes have shown what DT&V (Repatriation & Departure Service) considers good results:

- The Amsterdam-based Bridge to Better Foundation has its roots in the local care for illegal immigrants. Its

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programme follows a combined approach of empowerment, vocational training and help with small business set-up. This helps returnees to be more autonomous and have realistic plans and prospects for the future.

- SHIP Foundation in the cities of Amsterdam, Utrecht and Rotterdam relies on native counselling and an extensive network within and around the target group of North-African and Middle-Eastern immigrants. Its network includes relevant partners in countries of origin to help returnees with their durable reintegration. This approach has worked well with a target group that has always been very difficult to reach.

Section 6: Assessment procedures and criteria used for the placement of third-country nationals in alternatives to detention (Maximum 5 pages)

This section explores the type of assessments made by the competent authorities when considering whether to place a third-country national in an alternative to detention. It includes a number of questions which explore the timing of this assessment – in particular whether the assessment is conducted on all third-country nationals who are apprehended, or only on those third-country nationals who have completed a period in detention. It also includes questions about the practical implementation of the assessment procedure, in particular whether an individual assessment is conducted, what this involves and which organisations are involved in the assessment procedure.

In what circumstances can those grounds be displaced in favour of an alternative to detention in your (Member) State? Please provide answers in relation to each of the relevant categories of third-country national. If there is a separate set of grounds for providing third-country nationals an alternative to detention in your (Member) State, please indicate this is the case.

In practice, this highly depends on the circumstances of the case. The alternative to detention being considered, a deposit, duty to report, or territorial restriction for example, will have to be sufficient in order to reduce the risk of absconding. Here, the bigger the risk of absconding, the more cautious one will be in applying any alternatives, for an alternative will not be effective if there is a big risk of evading supervision.

Q2. Which other considerations are made before deciding whether to provide the third-country national concerned an alternative to detention, e.g. considerations regarding the availability of alternatives, the cost of alternatives, and vulnerabilities of the third-country national?

For categories which, in principle, qualify for an alternative measure (when there is no risk of evading supervision and no hampering the return), it is assessed for each situation which alternative measure will qualify best (e.g. does a person have any resources to pay a deposit, does he have family where he can stay subject to the condition of a regular duty to report to the aliens police?). In an absolute sense, alternatives to detention are almost always cheaper than the measure of detention.

Q3. Please indicate whether an individual assessment procedure is used to determine whether the grounds on which detention can be authorised can be displaced in favour an alternative to detention. Yes/No. If yes, please list the categories of third-country nationals where individuals are subject to individual assessments.

Yes, an individual assessment procedure is used for all categories. Here, the person concerned is interviewed, and, the Acting Prosecutor will assess whether an alternative to detention is at issue on the basis of the individual account of the facts. A third-country national who puts convincing arguments forward himself will have the possibility to take the initiative here. In respect of vulnerable groups, alternatives are more likely to be applied.

It has been agreed with the police that if a third-country national who unlawfully resides in the Netherlands is arrested, it will be checked if he or she has filed an application for voluntary departure with IOM. If this is the case, the police will take this into account when deciding whether or not to place the person in detention.

It is occasionally decided to release a migrant from detention shortly before his or her actual departure. The condition for release is set by the DT&V (Repatriation & Departure Service). In a number of cases, IOM took care of the supervision in detention and, after release, the supervision outside detention until the moment of departure

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from the Netherlands.

Q4. Where individual assessments are used, please indicate whether the procedure includes an assessment of the vulnerability of the individual in question. Yes/No. If yes, please describe the vulnerability assessment procedure used.

Yes. This question has been answered under question 2 of Chapter 2

Q5. Are assessment procedures for providing alternatives to detention conducted on all third-country nationals who are apprehended, or only on those third-country nationals who have already completed a period in detention?

Prior to detention, with the exception of the categories referred to in the answer to question Q2 (risk of evading supervision and hampering the return), a careful assessment is made on whether or not to apply alternative measures. If, after a period of detention, a person still wants to work on his or her return, it will be assessed for each situation whether there is still a risk of evading supervision.

Q6. Please indicate which national authorities are responsible for (i) conducting individual assessment procedures (where these exist) and (ii) deciding on alternatives to detention

The Acting Prosecutors of the National Police and the Royal Dutch Military Constabulary (KMar) are responsible for the assessment. In those cases in which a third-country national is already part of the caseload of the Repatriation and Departure Service (DT&V), this service will be contacted for information about the person's background in order to make an even more careful assessment. However, the decision to impose a detention measure or to impose a duty to report continues to be the responsibility of the Acting Public Prosecutor.

Q7. Please indicate whether judicial authorities are involved in the decision to provide an alternative to detention, and if so, at which stage(s) of the decision-making process and in what capacity? (e.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)

The decision is made by the authorities. All decisions made by the authorities can be appealed against via the regional court. If alternatives are not applied, the third-country national can state in court, in an procedure against the detention, that not applying an alternative is not justified. The court will then rule if the decision made by the authorities is reasonable or not.

With regard to the voluntary return programmes, the DT&V (Repatriation & Departure Service) decides on requests for subsidies or grants. A negative decision is applicable for review by the DT&V, as well as for judicial review by an administrative court.

Other alternatives to detention may be applicable for review to be filed at the decision-making organisation, also with the possibility of further appeal to an administrative court.

[Section 7: Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures \(Maximum 5 pages\)](#)

The questions are formulated as a comparison between the impact of detention and alternatives to detention; they do not attempt to compare the impact of detention (or alternatives to detention) on the effectiveness of return and international protection procedures in the case of third-country nationals whose freedom of movement is not restricted at all.

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Four specific aspects of effectiveness are considered: (i) effectiveness in reaching prompt and fair decisions on the immigration status of the individuals in question, and in executing these decisions; (ii) cost-effectiveness; (iii) respect for fundamental rights; and (iv) effectiveness in reducing the risk of absconding.

Whilst an attempt is made to compare the impact of detention and alternatives to detention on each of these dimensions of effectiveness, it is recognised that the type of individuals placed in detention and in alternatives to detention (and their corresponding circumstances) are likely to differ significantly and therefore the comparisons made need to be treated cautiously.

The alternatives to aliens detention have recently been initiated in the form of a number of pilot projects. This means that these alternatives have not yet been thoroughly evaluated. The data requested in this chapter with respect to alternatives to aliens detention are therefore not yet available.

7.1. Effectiveness in reaching prompt and fair decisions on the immigration status of the individuals in question, and in executing these decisions

7.1.1. Effectiveness in reaching decisions on applications for international protection

Q1. Have any evaluations or studies (including studies of the views of detainees of alternatives to detention) in your (Member) State considered the impact of detention and alternatives to detention on the efficiency of reaching decisions on applications for international protection? (for example, by affecting the time it takes to decide on international protection status). Yes/No.

If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

Recently, a number of studies have indeed been conducted in the Netherlands in order to measure the "effectiveness" of detention. However, these studies all show a strong focus on effectiveness in relation to return (see question 7.1.2). So based on these studies, no information is available about effectiveness in relation to reaching decisions on applications for international protection.

Q2. Please provide any statistics that might be available in your (Member) State on the average length of time needed to determine the status of applicants for international protection who are held in detention and who are in an alternative to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.

Where no information is available, please indicate "No information" and briefly state why no information is available.

Where it is not applicable, please indicate "Not applicable" and briefly state why.

Applicable year	Detention	Alternatives to detention			
		A1	A2	A3	A4
Average length of time in determining the status of an applicant for international protection	:	:	:	:	:

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The average length of time required in order to decide on asylum applications for persons who are placed in detention or who are subject to an alternative is not recorded separately. In a general sense, procedural guarantees apply. For instance, the government is obliged to decide on such applications within six weeks after the wish for asylum has been expressed (Article 59(1)(b) of the Aliens Act).

Q3. Please provide any other evidence that may be available in your (Member State) on the impact of detention and alternatives to detention on effectiveness in terms of reaching decisions on applications for international protection and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

Not available.

7.1.2 Effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and in executing returns

Q4. Have any evaluations or studies in your (Member) State considered the impact of detention and alternatives to detention on:

- The length of time from apprehending an irregular migrant to issuing a return decision? Yes/No
- The length of time that transpires from issuing a return decision to the execution of the return? Yes/No
- The share of voluntary returns out of the total number of returns? Yes/No
- The total number of removals completed? Yes/No

If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report

The 2013 report titled 'Van Bejegening tot Vertrek' (From Treatment to Departure), the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum*, WODC) reports, to a certain extent, on the 'effectiveness' of detention. Here, the basic principles are two key aspects of what is in the Netherlands regarded as the 'mission' of the party implementing detention: 'humane execution' on the one hand, and 'contributing to preparations of return' on the other hand. The respondents included both detained third-country nationals and staff employed at the detention centres. As regards willingness to return, this study shows that "the deprivations of detention experienced [...] are not significantly related [...] to the development of the willingness of third-country nationals to depart from the Netherlands" (p. 17). So it appears that the possible deterrent effect of detention is less than expected. On the other hand, the extent to which third-country nationals experience their detention as legitimate is positively connected with their willingness to cooperate in their departure (p. 18).¹⁷

The 2011 IOM report titled 'Leaving Detention' also attempts to assess the effectiveness of detention, again with a view to *return* specifically. This report also argues that the deterrent effect of detention is less convincing than expected. The report makes four recommendations to improve the effectiveness of detention, which are largely connected with working on the third-country national's willingness to return.¹⁸

Finally, there is the May 2013 advisory report titled "Vreemdelingenbewaring of een lichter middel?" [Aliens

¹⁷ Leerkes, Arjen, et. Al (2013). *Van bejegening tot vertrek. Een onderzoek naar de werking van vreemdelingenbewaring [From Treatment to Departure. A Study into the Effect of Aliens Detention]*.

¹⁸ Kox, Mieke (2011). *Leaving Detention... A study on the influence of immigration detention on migrants' decision-making processes regarding return.*

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Detention or a Lighter Means?]) by the Advisory Committee on Migration Affairs (*Adviescommissie voor Vreemdelingenzaken*, ACVZ).¹⁹ This report states that the personal circumstances of a third-country national are decisive in determining the effectiveness of detention or an alternative thereto, because “the target groups of the various measures and alternatives differ” (p. 53).

In respect of detention, the ACVZ states that the return figures are demonstrably highest for those who were detained for less than three months (81% in 2012). Among other things, centres with restricted movement (Dutch *vrijheidsbeperkende locatie*, VBL) and departure with the help of the IOM are referred to as “alternatives”. Based on this, the ACVZ concludes that “in many cases, a placement in a VBL appears to be sufficient in order to achieve the desired result” (p. 54), but notes that, in the current situation, a centre with restricted movement is not aimed at the same target group as detention, so that, formally, they are not entirely comparable.

In 2012, the DT&V also initiated small-scale *pilot projects* with alternatives, for example a combination of a duty to report or deposit and departure facilitation by DT&V. The aim is for the alternatives that have been subject to *pilot projects* to be given a statutory basis in the future new Return and Aliens Detention Act. The ACVZ believes that so far, the pilot projects are too small to attach major conclusions to them.

Q5. Please provide any statistics that might be available in your (Member) State on (i) the average length of time that transpires from the decision to return a person in detention, and in (different) alternatives to detention, to the execution of the return procedure; (ii) the proportion of voluntary returns and (iii) the success rate in the number of departures among persons that were placed in detention and in alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State. (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.

Where no information is available, please indicate “No information” and briefly state why no information is available.

Where it is not applicable, please indicate “Not applicable” and briefly state why.

Statistics on the success rate in the number of departures should be provided as the number of persons who were issued a return decision and who have returned to their country of origin, and the number of persons who were issued a return decision and who have not returned to their country of origin. Please provide both the numbers and the share they represent out of the total number of persons issued a return decision.

Applicable year 2013	Detention	Alternatives to detention			
		A1	A2	A3	A4
Average length of time from apprehending an irregular migrant to issuing a return decision ²⁰	:	:	:	:	:

¹⁹ Advisory Committee on Migration Affairs (2013) *Vreemdelingenbewaring of een lichter middel? Advies over de besluitvorming bij inbewaringstelling van vreemdelingen [Aliens Detention or a Lighter Means? Advice on Decisions on Aliens Detention]*.

²⁰ The passage of time is not recorded. According to national case law, however, detention is not possible without a return decision. The return decision is therefore always made before the measure is imposed. The law allows for six hours for the preparation of the measure.

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<i>Average length of time from issuing a return decision to the execution of the return</i>	:	:	:	:	:
<i>Number of voluntary returns (persons who opted to return voluntarily)²¹</i>	2,489	:	:	:	:
<i>Success rate in number of departures</i>	:	:	:	:	:

It is not possible to provide the requested data within the short time frame of this focussed study,

Q6. Please provide any other evidence that may be available on the effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and executing the return, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

Not available.

7.2. Costs

Q7. Have any evaluations or studies on the costs of detention and alternatives to detention been undertaken in your (Member) State?

No

Q8. Please provide any statistics available on the costs of detention and alternatives to detention in the table below. Please provide the statistics for the latest year(s) available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where costs can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection to measure the costs.

Where no information is available, please indicate "No information" and briefly state why no information is available.

Where it is not applicable, please indicate "not applicable" and briefly state why

<i>Applicable year</i>	<i>Detention</i>	<i>Alternatives to detention</i>			
		<i>A1</i>	<i>A2</i>	<i>A3</i>	<i>A4</i>
<i>Total costs</i>	139.1	:	:	:	:
<i>Staffing costs</i>	81.0	:	:	:	:

²¹ Source: IOM annual figures

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<i>Medical costs</i>	7.2	:	:	:	:
<i>Food and accommodation costs</i>	44.7	:	:	:	:
<i>Legal assistance</i>	Not available	:	:	:	:
<i>Other costs (This could include any additional costs that do not fall into the categories above e.g. costs of technical tools for administering alternatives to detention, such as electronic tagging). Please specify</i>	6.2	:	:	:	:

Q9. Please provide any other evidence that may be available in your (Member) State on the cost-effectiveness of detention and alternatives to detention, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

N/A

7.3. Respect for fundamental rights

Q10 Have evaluations or studies been conducted in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention)?

Over the past few years, many reports have been published in the Netherlands regarding the question of to what extent legislation and implementation practice in the area of detention correspond with the fundamental rights of third-country nationals. Countless organisations have considered this question. Within the multitude of publications, an attempt was made here to find a common thread. The following subjects are discussed in many reports:

- the ultimate remedy principle in combination with (insufficient) use of alternatives
- vulnerable groups
- the regime within detention centres

Ultimate remedy

Both national and international legislation prescribe that detention is only to be applied as an ultimate remedy if less far-reaching means cannot be used to achieve the same goal. The social debate on detention has, over the past few years, mostly focussed on the question whether detention is actually applied as an ultimate remedy in practice.²² Various organisations argue that, in the current situation, asylum seekers and undocumented migrants hardly qualify for any of the possible alternatives to detention.²³

²² ACVZ (2013), *Vreemdelingenbewaring of een lichter middel? Advies over de besluitvorming bij inbewaringstelling van vreemdelingen [Aliens Detention or a Lighter Means? Advice on Decisions on Aliens Detention]*.

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As already noted above, alternatives to detention were applied in 2012 in the form of a number of pilot projects. The bill relating to the Return and Aliens Detention Act provides for a broader statutory basis for alternatives to detention.

Vulnerable groups

In the discussion on fundamental rights and detention, a lot of attention is paid to vulnerable groups. In particular, the detention of minor children is a recurring issue in the political and social debates.

Amnesty International states that the duration of detention of families with children was reduced to fourteen days, but notes that 'the period may still be extended if, through the actions of the third-country nationals themselves (the parents), it was not possible to proceed with a removal that was arranged within the period'.²⁴ An earlier study conducted by the Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) mentioned several files of families who had been detained for more than fourteen days.²⁵

The No Child in Detention Coalition [*Coalitie Geen Kind in de Cel*] was set up in 2006 and is formed by a large number of interest groups. This Coalition argues for a statutory prohibition of applying detention to children.²⁶

Amnesty International also requests attention for people with health problems. 'People with physical or mental health problems continue to be highly represented among the population placed in detention', says Amnesty.²⁷

The regime within detention centres

The regime within detention centres is the third issue highlighted here. The *criminal-law substantiation*²⁸ of detention is often a subject of debate.

The National Ombudsman expressed its criticism regarding the regime of detention and the long duration thereof. The detention regime is governed by the Penitentiary Principles Act. The Ombudsman judged that third-country nationals are therefore, in fact, subject to the same laws as prisoners, while they are not detained for having committed any criminal offence. The National Ombudsman believes that the administrative measure of detention should have its own regime.²⁹

The bill on the Return and Aliens Detention Act addresses the above-mentioned topics. For instance, the bill provides that detention be placed in an administrative-law framework and that detention no longer be subject to the regime of the Penitentiary Principles Act. The regime will also be relaxed. Another aim of the bill is that more attention be paid to the position of vulnerable groups in imposing a detention measure and in the regime.³⁰

Careful handling of information and medical and legal assistance

Following the suicide of a Russian asylum seeker in the Rotterdam Detention Centre in January 2013, the Security

²³ Justitia et Pax (2012), *Effect door Respect. Alternatieven voor vreemdelingenbewaring in Nederland* [Effect through Respect. Alternatives to Aliens Detention in the Netherlands]

²⁴ Amnesty International (2013), *Vreemdelingendetentie in Nederland: Mensenrechten als maatstaf* [Aliens Detention in the Netherlands: Human Rights as a Standard] p.12

²⁵ Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 October 2011, Strasbourg 9 August 2012, CPT/Inf (2012)21, p.31.

²⁶ <http://www.geenkindindecel.nl/>

²⁷ Amnesty International (2013), *Vreemdelingendetentie in Nederland: Mensenrechten als maatstaf* [Aliens Detention in the Netherlands: Human Rights as a Standard] p.12

²⁸ Farewell address by Prof. Dr. A.M. van Kalmthout, University of Tilburg, 1 July 2010

²⁹ The National Ombudsman (2012) *Vreemdelingenbewaring, strafregime of maatregel om uit te zetten* [Aliens Detention, Punishment Regime or Measure for Removal]

³⁰ Netherlands Institute for Human Rights (2014), *Advies aan staatssecretaris Teeven over de Wet terugkeer en vreemdelingenbewaring* [Advice to State Secretary Teeven on the Return and Aliens Detention Act]

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and Justice Inspectorate (*Inspectie Veiligheid en Justitie, IV&J*) conducted an investigation concerning the question whether the government acted negligently when remanding the Russian asylum seeker in custody and during the period in which he was detained.³¹ The Inspectorate gave a critical judgment, stating that the government had indeed acted negligently as far as the handling of information and medical and legal assistance were concerned. The State Secretary for Security and Justice stated that he takes the fate of people who are left to the government's care very seriously and followed the recommendations for improvement measures from the Inspectorate's report.³² On 24 April 2014, shortly before this EMN focussed study was published, another report on this case was published by the Dutch Safety Board at the request of the State Secretary.³³

Figures

In 2013, the State Secretary for Security and Justice provided a table with complaints figures in response to Parliamentary Questions about this topic.³⁴ This is a public document. When studying these figures, it should be noted that they concern a period in which the Netherlands still had four aliens detention centres, and that any possible complaints within the context of *fundamental rights* are not specified. The figures concern, among other things, complaints regarding arrangements on contact with the outside world and regarding pocket and clothing money. The most up-to-date information from these figures shows that, in 2012, a total of 702 complaints were filed at all (then four) aliens detention centres, 13 of which were declared to be well-founded.

Q11. Please provide any statistics that might be available in your (Member) State on the number of complaints regarding violations of human rights and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table). Please do the same with any statistics that may be available in your (Member) State on the number of voluntary returns.

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.

Where no information is available, please indicate "No information" and briefly state why no information is available.

NB: some information is available; see the heading *Figures* for the above question 7.3 Q10. . The most up-to-date information shows that, in 2012, a total of 702 complaints were filed at all (then four) aliens detention centres, 13 of which were declared to be unfounded. However, these figures are not specified according to *fundamental rights*, and concerned topics varying from arrangements on contact with the outside world to pocket and clothing money.

Where it is not applicable, please indicate "Not applicable" and briefly state why.

<i>Applicable year</i>	<i>Detention</i>	<i>Alternatives to detention</i>			
		<i>A1</i>	<i>A2</i>	<i>A3</i>	<i>A4</i>
<i>Number of complaints of violations of fundamental rights lodged with non-judicial bodies (e.g. Human Rights)</i>					

³¹ Security and Justice Inspectorate (2013), *Het overlijden van Alexander Dolmatov* [The Death of Alexander Dolmatov].

³² *Parliamentary Papers II*, 2013-2014, 19637 no. 1648.

³³ Dutch Safety Board (2014), *Veiligheid van vreemdelingen* [Safety of Foreign Nationals].

³⁴ *Parliamentary Papers II*, 2012-2013, appendix number 2914.

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Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals).	:	:	:	:	:
Number of complaints of violations of fundamental rights upheld by non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals).	:	:	:	:	:
Number of court cases in which there have been challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights (where possible, please disaggregate by types of violation and by categories of third-country national)	:	:	:	:	:
Number of court cases in which challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights have been upheld (where possible, please disaggregate by types of violation and by categories of third-country national)	:	:	:	:	:

Q12. Please indicate if studies exist in your (Member) States which show negative effects of the alternatives to detention in practice. (For example, ankle bracelets can be socially stigmatising and cause physical and emotional distress.)

No

Q13. Please provide any other evidence that may be available in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

N/A

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Rate of absconding is the share of persons who have absconded from all third-country nationals placed in detention or provided an alternative to detention.

Compliance rate is the share of persons who have complied with the alternative to detention.

Q14. Have evaluations or studies on the compliance rate and rate of absconding of third-country nationals in detention and in alternatives to detention been undertaken in your (Member) State? Please provide details.

Not available

Q15. Please provide any statistics that might be available in your (Member) State on the rate of absconding and the compliance rate of third-country nationals in detention as opposed to alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.

Where no information is available, please indicate "No information" and briefly state why no information is available.

See availability of data at the beginning of this chapter.

Where it is no applicable, please indicate "Not applicable and briefly state why."

Applicable year 2012	Detention	Alternatives to detention			
		A1	A2	A3	A4
Rate of absconding	0	:	:	:	:
Compliance rate		:	:	:	:

Q16. Please provide any other evidence that may be available of the impact of detention and alternatives to detention on the rate of absconding and compliance rate of third-country nationals in detention and in alternatives to detention.

N/A

Section 8: Conclusions

The detention of third-country nationals and related topics are recurring issues in the Dutch political and social debates. The number of people placed in detention has gradually decreased over the past few years (See Annexes). This could partly be explained by the increased realization that detention should only be applied as an ultimate remedy, in combination with the increased attention for alternatives to detention. It is said, however, that the implementation of the Return Directive in national legislation and the interpretation given to it by case law has formally made the detention process more complex from a legal point of view.

Both border detention and territorial detention are applied in the Netherlands. Asylum seekers are, in principle, not placed in territorial detention. In rare cases, however, it happens that third-country nationals who are found to be illegally present on the territory or have already been placed in detention as yet file an asylum application. In most cases, detention is applied to third-country nationals who are refused entry at the border and then file an asylum application. The majority (approx. 80%) of detention cases is based on Article 59 of the Aliens Act (territorial detention). Most of the detained third-country nationals have exhausted all legal means. Only a small part, usually third-country nationals in border detention, is awaiting the results of their application for admission.

The decision to apply detention is always preceded by an individual assessment. Special attention is paid to vulnerable groups. Unaccompanied minors are not placed in border detention, and in territorial detention only on very limited grounds. Compared with the total number of third-country nationals in detention, the numbers are therefore very small. In principle, third-country nationals are detained in special detention centres, not in ordinary prisons. An important legal aspect is that a return decision must have been made at all times before a detention measure may be imposed.

The official grounds for detention are a) a risk that a third-country national will evade supervision and/or b) a third-country national's avoidance or hampering of the preparation of the departure or the removal procedure. A third ground can be the reason for border detention, namely a refusal of entering the Schengen area.

As far as the effectiveness of detention is concerned, the effectiveness in relation to the return of third-country nationals is assessed first. Effectiveness in relation to arriving at a decision on an application for admission is not at issue in the Netherlands. An explanation for this could be that detainees whose admission procedure is still pending are subject to statutory provisions that should guarantee that the decision on the application for admission is made within the statutory periods. For instance, the Dutch government is obliged to decide on such application within six weeks after the wish for asylum has been expressed.

Earlier research has shown that detention could be an effective means within the first three months. The return figures are demonstrably highest for those who were detained for less than three months (81% in 2012). As the detention continues, the chances of success will be smaller. The average duration of aliens detention varies between 97 (2008) and 110 (2012) days.

In 2012, a number of pilot projects were initiated in which alternatives to detention were tested. These pilots were only for a small number of people, little can be said on their basis about the effectiveness of such measures in a broader sense. The alternatives are expected to be given a statutory basis when the new Return and Aliens Detention Act is turned into force.

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Annex 1

Statistics from EU-harmonised sources, such as Eurostat and the EMN Annual Policy Report, on inter alia the outcome of international protection applications and return, including voluntary return will be used in the Synthesis Report to contextualise the statistics provided in this annex.

Table 1: Statistics on number of third-country nationals in detention and provided alternatives to detention per category

Please provide the cumulative figures (the number of all third-country nationals that have been detained during the year).

	2009	2010	2011	2012	2013	Source / further information
Statistics on number of third-country nationals in detention per category						
Total number of third-country nationals in detention	7,870	7,810	6,100	5,420	3,670	Immigration Process Report (<i>Rapportage Vreemdelingenketen, RVK</i>), a publication of the Ministry of Security and Justice, concerns influx in aliens detention
Number of third-country national applicants for international protection in ordinary procedures in detention	840	900	820	630	780	RVK Persons being denied entry and filing an asylum application
Number of third-country national fast-track international protection applicants (accelerated international protection procedures) in detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of applicants for international protection subject to Dublin procedures in detention	:	:	:	:	:	
Number of rejected applicants for international protection in detention	:	:	:	:	:	
Number of rejected family reunification applicants in detention	:	:	:	:	:	
Number of other rejected applicants for residence permits on basis other than family reunification (Please specify)	:	:	:	:	:	
Number of persons detained to prevent illegal entry at borders in detention	3,360	3,780	4,250	3,030	3,040	RVK: persons being denied entry
Number of persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) issued a return decision in detention	:	:	:	:	:	

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Number of persons who have been issued a return decision in detention						
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category						
Total number of third-country national unaccompanied minors in detention	300*	220*	90*	50*	30*	
Total number of third-country national accompanied minors in detention	:	227	324	352	165	
Exclusive third-country national in border detention.						
Number of other third-country nationals placed in immigration detention						
Statistics on number of third-country nationals provided alternatives to detention						
Total number of third-country nationals provided alternatives to detention	:	:	:	:	:	
Number of third-country nationals applicants for international protection in ordinary procedures provided alternatives to detention	:	:	:	:	:	
Number of third-country nationals fast-track international protection applicants (accelerated international protection procedures) provided alternatives to detention	N/A	N/A	N/A	N/A	N/A	
Number of international protection applicants subject to Dublin procedures provided alternatives to detention	:	:	:	:	:	
Number of rejected applicants for international protection provided alternatives to detention	:	:	:	:	:	
Number of rejected applicants for family reunification provided alternatives to detention	:	:	:	:	:	
Number of other rejected applicants for residence permits on basis other than family reunification (Please specify)	:	:	:	:	:	
Number of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision) provided alternatives to detention	:	:	:	:	:	

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Number of persons issued a return decision provided alternatives to detention	:	:	:	:	:	
and by category provided alternatives to detention	:	:	:	:	:	
Number of other third-country nationals provided alternatives to detention (Please specify the category(ies))	:	:	:	:	:	

* rounded to tens

Table 2: Average length of time in detention

Please provide information on the methodology used to calculate the average length of time in detention, including whether the mean or the median was used to calculate the average.

Average length of time in detention	2009	2010	2011	2012	2013	Source / further information
Average length of time in detention of all categories of third-country nationals in detention	97.1	102.7	99.3	110.5	:	<i>Vreemdelingenbewaring in getal 2008-2012 [Aliens Detention in Figures 2008-2012], a publication of DJI</i>
Average length of time in detention of applicants for international protection in ordinary procedures	:	:	:	:	:	
Average length of time in detention of fast-track (accelerated) international protection applicants (accelerated international protection procedures)	N/A	N/A	N/A	N/A	N/A	
Average length of time in detention of applicants for international protection subject to Dublin procedures	:	:	:	:	:	
Average length of time in detention of rejected applicants for international protection	:	:	:	:	:	
Average length of time in detention of rejected family reunification applicants	:	:	:	:	:	
Average length of time in detention of other rejected applicants for residence permits on basis other than family reunification (Please specify)	:	:	:	:	:	

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Average length of time in detention of persons detained to prevent illegal entry	:	:	:	:	:	
Average length of time in detention of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision)	:	:	:	:	:	
Average length of time in detention of persons who have been issued a return decision	:	:	:	:	:	
Average length of time in detention of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category						
Third-country national unaccompanied minors in detention	40 days	50 days	40 days	43 days	38 days	Aliens Detention in Figures 2008-2012 (DJI)
Third-country national accompanied minors in detention	-	8 days	8 days	8 days	5 days	
Average length of time in detention of other third-country nationals placed in immigration detention	:	:	:	:	:	
