

Limits to Immigration Detention

An investigation into
the current Dutch
immigration
detention regime

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Summary of an investigation into the current Dutch immigration detention regime.

Reasons and aim

The purpose of immigration detention is to ensure that people with no right to remain in the Netherlands are available for deportation. How this should be done has been a matter of debate for some years; people are kept in detention but are not criminals. In 2015 the Minister of Justice and Security put forward draft legislation proposing a new differentiated regime.¹ Some units would allow greater freedom and others less. In May 2017, the Rotterdam detention centre introduced this new regime in anticipation of the legislation. This prompted the National Ombudsman to investigate the way the new regime works in practice. Does it do justice to the principle that foreign nationals in immigration detention should enjoy the maximum possible freedom? After all, immigration detention is a measure under administrative law and not a punishment for crime. The Ombudsman's aim is to work with those concerned to examine the system constructively and to suggest improvements where necessary. To do this, visits were made to the Rotterdam detention centre and interviews conducted with its services, staff and inmates, as well as with relevant interest groups.

Quote from a detainee custody officer:

“Detainees punished by being locked in their cells for 23 hours a day are mainly people refusing to share a cell. If they continue to refuse, the punishment is imposed for another two weeks. The total period of punishment can be as much as six months.”

¹ By regime we mean the way in which the detention centre operates the immigration detention system. This determines the conditions in which inmates are held. Immigration detention is an administrative process and its aim is different from that of detention under criminal law (in other words, immigration detention is not intended as a punishment).

What did we see?

The way immigration detention is currently being operated at the Rotterdam detention centre makes it hard to minimize the restrictions on detainees' freedom. One reason is the prison-like nature of the accommodation. For instance, inmates occupy shared cells, there is little scope for relaxation, work is not allowed and there are no opportunities for education or training. In addition, the detention centre applies disciplinary measures like solitary confinement.

Given that new legislation is still under discussion, there is at present little probability of structural changes in immigration detention. But the Ombudsman feels it is necessary to address the following matters without delay:

- The absence of meaningful daytime activities
- The lack of privacy
- The use of solitary confinement as a punishment.

National Ombudsman Reinier van Zutphen says, “These changes are urgently required to radically improve conditions of detention for the inmates and to increase safety and security both for them and for the staff. In addition, such changes would help to give immigration detention the non-penal nature it ought to have. Modification of the regime in this direction should be undertaken immediately and it is surely possible to accomplish it within the foreseeable future.”

What is immigration detention?

Foreign nationals with no right to remain in the Netherlands must leave the country. If they do not do so voluntarily, there is a fear that they will evade deportation. When there is a prospect of deportation, they may be placed in immigration detention. Only a minority of immigration detainees have ever applied for asylum.

The media, politicians and public are sometimes confused about the exact meaning of immigration detention. When they talk about it, they may refer to troublemakers in centres for asylum seekers or separate provision for asylum seekers from safe countries – things that have nothing to do with immigration detention. When discussing subjects in this area – where emotions can run high and public support is so important – it is vital to keep a clear focus on the precise issue under discussion.

Recommendations

The National Ombudsman recommends the Minister of Justice and Security to proceed as quickly as possible to make a number of changes at the Rotterdam detention centre. These changes will help to give immigration detention the administrative nature it ought to have:

- Provide meaningful daytime activities for detainees. For example, give them the opportunity to work or to receive short-term education or training that will be of value to them following repatriation;
- Tailor accommodation to the administrative nature of immigration detention and give detainees the option of an individual cell;
- Exercise the greatest restraint concerning the use of solitary confinement;
- Stop using solitary confinement as a way of punishing detainees who refuse to share a cell;
- Ensure standard medical supervision whenever detainees are held in solitary confinement.

What next?

In the course of his investigation, the Ombudsman observed that the management of the Rotterdam detention centre is confronted by a category of inmates who cause trouble and thereby jeopardise the safety of other inmates and staff. Such detainees – about 15 to 20% of the total – require a different approach. Alongside the recommendations made in his report, the National Ombudsman would be glad to discuss the difficulties confronting the management of the Rotterdam detention centre in this respect. He invites relevant policymakers and implementing bodies in the field of immigration detention to join him in a consideration of this matter.

Quote from a spiritual counsellor:

“Detainees are in a stressful situation. They have absolutely no privacy and, on top of everything, they may have physical and/or mental problems. It would be better if they all had individual cells.”

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Introductory remarks

Foreign nationals with no right to remain in the Netherlands must leave the country. If they do not do so voluntarily, there is a fear that they will evade deportation. When a decision is taken to remove them, they may be placed in immigration detention to prevent this. Detaining them is a violation of the fundamental right to freedom. In itself, it is legitimate for government to restrict their freedom pending successful deportation. But the legitimacy of such action depends on the way it is done.

Immigration detention is a radical measure that should be used only as a last resort. This means that it should be used only when alternatives, such as a bail deposit scheme or reporting requirement, are inapplicable in the individual case. Such detention is never punitive; it is a measure taken under administrative law for the sole purpose of ensuring that individuals are available for deportation.

In 2012² the National Ombudsman concluded that the regime under which foreign nationals were being held in immigration detention in the Netherlands was inappropriate because, despite the administrative nature of immigration detention, the regime was based on the Dutch Custodial Institutions Act (*Penitenciaire beginselenwet*). This legislation was drafted with a view to punishment and was intended to apply to detainees convicted under criminal law. The National Ombudsman observed that the current immigration detention regime was therefore at serious risk of breaching fundamental rights. He also observed that the current directors of the detention centres were prepared to consider alternative regimes involving less far-reaching restrictions on freedom.

In 2015 draft legislation was put forward proposing a new regime appropriate to the non-penal nature of immigration detention. In October 2019, the Minister of Justice and Security announced that a new – amended – draft was to be brought forward because the statutory proposals of 2015 were no longer appropriate in the current situation. This was a reference to changes that have occurred in the population of immigration detention centres. There is now a category of inmates who cause trouble and for whom a more relaxed regime is, in the Minister’s view, inappropriate.

The interviews conducted in the course of the Ombudsman’s 2019 investigation reveal that a category of foreign nationals now in immigration detention exhibit disruptive behaviour. According to the director of the Rotterdam immigration detention centre, such inmates constitute between 15 and 20 per cent of the centre’s total population. Their behaviour leads to incidents, the imposition of various sanctions and the (often temporary) transfer of those involved to units with a more restrictive regime. On several occasions, it has actually led to the entire centre being put on lockdown³. To restore order, all the detainees in the centre were locked in their cells for 24 hours a day.

2 [‘Immigration detention: penal regime or step towards deportation’ \(2012/105\).](#)

3 “All the detainees spent at least three days locked in their cells for 23 hours a day. During the first few days after that, the cells were kept locked for around 20 hours a day. The entire programme of activities was halted and it took more than two weeks for the daytime programme to return to normal.” Letter from Amnesty International, the Immigration Detention Hotline run by the LOS Foundation, Dokters van de Wereld and the Dutch Council for Refugees to members of the Dutch House of Representatives, 11 April 2019.

These disruptive individuals have a major impact on the safety and security both of other inmates and of detention centre staff. Their behaviour is currently impeding the introduction of a regime offering maximum freedom and devoid of punitive elements. It is also muddying the ongoing discussion on the shape that immigration detention should take in future.

Immigration detention in future

In the view of the Ombudsman, the basic principle of immigration detention should be that it places the least possible restraints on detainees. If this principle is being jeopardised by the absence of appropriate structural measures to deal with troublemakers, then urgent action should be taken to solve that problem. One possible solution might be to exclude such people from mainstream immigration detention centres. This would create the scope to reform the regime in such centres in line with the nature of immigration detention as a measure under administrative law. Ingredients of the new regime would be smallness of scale and less prison-like (albeit closed) detention centres.

Immigration detention at present

In view of the developments described above, no immediate and dramatic changes can be expected in conditions of immigration detention in the Netherlands. For this reason, the present report addresses three matters of concern that emerged from the investigation: the absence of meaningful daytime activities, lack of privacy and the use of solitary confinement as a disciplinary measure. These three issues are closely interrelated and impact on each other. The report outlines the Ombudsman's findings in these respects and includes a number of recommendations. The proposed changes could have a strong and immediate positive effect on the atmosphere at the Rotterdam immigration detention centre, benefiting both inmates and staff. The Ombudsman urges the Minister of Justice and Security to introduce the recommended improvements.

Exchange of views

The proposed changes have the potential to improve life for both inmates and staff within the current system but fail to do full justice to the fact that immigration detention is an administrative – rather than penal – measure. Are more repressive measures the answer or is it time for a completely different approach? The Ombudsman wishes to engage in an exchange of views with all parties involved on the possibility of creating a radically different regime of immigration imposing the least possible restrictions.



Reinier van Zutphen,
the National Ombudsman

1 Reasons for investigation

A spiritual counsellor said:

Detainees are in a stressful situation. Their position is uncertain, they have absolutely no privacy and, on top of everything, they may have physical and/or mental problems. (..) There is too much tension between inmates for people to unwind.

Immigration detention is a measure under administrative law. It is intended for foreign nationals who have no (further) right to remain in the Netherlands and must therefore leave the country. They are held in dedicated immigration detention centres. In his 2012 report⁴ the Ombudsman concluded that a penal regime was inappropriate because of the nature of immigration detention as a measure under administrative (not criminal) law. Immigration detention is not intended to punish detainees. It should therefore be used only as a last resort and the government should take action to develop genuine alternatives.

Draft legislation on repatriation and immigration detention (the *Wet terugkeer en vreemdelingenbewaring*) was laid before parliament on 30 September 2015. The bill was intended to do greater justice to the administrative nature of immigration detention. In expectation of the passage of the legislation, the Rotterdam detention centre went ahead in May 2017 and started applying differentiated regimes, as proposed in the bill. Since then, the centre has operated a more restrictive 'separation regime' and a more relaxed 'residential regime'. The change prompted the Ombudsman to launch an investigation on 8 April 2019 into the question of whether current practice at the centre properly reflects the non-penal nature of immigration detention. The investigation was also triggered by signals reaching the Ombudsman that conditions of immigration detention had actually deteriorated. The Netherlands has three dedicated immigration detention centres: the centre in Rotterdam, the Closed Family Facility (*Gesloten Gezinsvoorziening*) in Zeist and the Judicial Complex at Schiphol. The centre in Zeist is intended for families with children below the age of majority (18), for women and for unaccompanied minors. It consists of 12 bungalows and 10 rooms for unaccompanied minors. At Schiphol, the detention centre accommodates a varied population of asylum seekers awaiting initial processing, drug swallows, illegal immigrants and failed asylum seekers. It also acts as a remand centre for arrestees detained under criminal law for the maximum period of 8 weeks or awaiting the judgment of the courts. The Ombudsman's investigation focused on the Rotterdam detention centre, with its 320 two-person cells for adult male detainees.

Latest developments in legislation

The draft legislation (*Wet terugkeer en vreemdelingenbewaring*) was passed by the House of Representatives on 19 June 2018 and sent on for consideration by the Senate. On 12 February 2019, the Ombudsman attended the Senate's expert meeting on the bill and gave a further brief explanation of his current position on immigration detention. This largely matched the views expressed in his 2012 report.

4 ['Immigration detention: penal regime or step towards deportation' \(2012/105\)](#).

The Ombudsman's 2012 report: The National Ombudsman found that foreign nationals in immigration detention were subjected to an inappropriate regime, resulting in a severe risk of breaches of their fundamental rights. This was caused in part by a failure to use immigration detention as a remedy of last resort. Moreover, the government wrongly assumed that foreign nationals would spend only a relatively short time in immigration detention. The current regime was not in line with the nature of immigration detention as a measure under administrative law. The sole purpose of confinement was to prevent foreign nationals from evading deportation. The measure was not intended to be punitive. However, the regime in immigration detention centres was in some respects more austere than that in prisons. For example, immigration detainees – unlike convicted criminals – were normally held in two-person cells, were not allowed to work and were banned from education and training. (..). On the other hand, they were subject to the same security measures as convicted criminals, such as frisking, strip searches and disciplinary measures (including solitary confinement and placement in isolation cells).

Since then, the Minister informed the Senate on 15 October 2019 that the draft legislation required revision, having been superseded by recent events. New proposals were therefore to be brought forward to amend the current bill.

In the present report, the Ombudsman draws attention to several matters of serious concern identified in the course of the investigation into the regime at the Rotterdam immigration detention centre. These require immediate action and certainly cannot wait for the amended bill to complete its passage through parliament.

2 Immigration detention: what is it?

The current social discourse on immigration policy reveals a great deal of confusion about terms and definitions. Discussions of immigration detention in the media, by politicians or among members of the public tend to be confused by references to completely irrelevant issues such as troublemakers in centres for asylum seekers, the refusal of municipalities to agree to the opening of such centres, separate provision for asylum seekers from safe countries, etc. When discussing subjects like immigration policy, where emotions run high and where public support is so important, it is vital to keep a clear focus on the precise issue in hand.

Immigration detention centres accommodate foreign nationals who have no (further) right to remain in the Netherlands and must therefore leave the country. The population of such centres is highly varied. It includes both people who have never applied for a residence permit and people whose right to one has expired. Only a minority of people in immigration detention have ever applied for asylum in the Netherlands. A proportion of detainees find themselves repeatedly placed in immigration detention (sometimes for long periods) either because they refuse to cooperate in their repatriation or because the country of origin refuses to have them back.

3 Approach

De ombudsman heeft op 8 april 2019 een onderzoek geopend en in de brief aan de On 8 April 2019, the Ombudsman launched an investigation by sending a letter to the Minister of Justice and Security asking various questions about numbers of immigration detainees, length of stay and the duration of detention under different regimes. In the run-up to the investigation, a desk study had been made of the draft legislation, reports and literature on immigration detention.

In May and June 2019, investigators interviewed various parties involved in the immigration detention system, including the management of the Rotterdam detention centre, detainee custody officers from the Custodial Institutions Agency (Dienst Justitiële Inrichtingen, DJI), the medical service, spiritual care service, and other relevant government bodies such as the Repatriation and Departure Service (Dienst Terugkeer en Vertrek, DT&V) and the Transport and Support Service (Dienst Vervoer en Ondersteuning, DV&O). Investigators also spoke with foreign nationals in immigration detention, with those representing their interests (lawyers, Amnesty International, the Immigration Detention Hotline, the Dutch Refugee Council, Dokters van de Wereld and the Johannes Wier Foundation), and with the Supervisory Committee, the Justice and Security Inspectorate and the International Organization for Migration (IOM). Many of the interviews took place at the Rotterdam detention centre, where the investigators were also given a guided tour. They also paid a visit to the Closed Family Facility (GGv) in Zeist.

Matters discussed during the interviews included the various regimes, disciplinary and other measures, transport, and complaints. There was a special focus on problems/things that could be improved and possible solutions. Overall, the interviews and visits gave the research team a clear picture of the regime at the Rotterdam detention centre.

Following receipt of a letter from the Minister answering the questions raised in the Ombudsman's letter of 8 April, a further interview was held with DJI staff at the ministry in October 2019. On 3 December 2019, the findings of the investigation were discussed with the director of the Rotterdam detention centre.

Scope of investigation

The results of the interviews led the Ombudsman to focus on three major matters of concern:

- daytime activities;
- privacy, and
- the use of solitary confinement⁵.

The next section of the report contains the Ombudsman's views and recommendations. Section 5 outlines his findings.

5 In this report, the Ombudsman uses the term 'solitary confinement' (afzondering) to describe the situation in which a person is forced to spend 23 hours a day locked in a cell as a disciplinary measure or to maintain order. In the literature, in the field and in rules and regulations, many other terms and definitions are used to refer to equivalent situations. They include 'isolation' (isolatie) and segregation (eenzame opsluiting). The term 'solitary confinement' (afzondering) is used both in the Custodial Institutions Act and in the in-house rules of the Rotterdam detention centre. In practice, various types of cells are used for this form of disciplinary or order measure: isolation cells, punishment cells, observation cells and strip cells.

4 Views and recommendations

The Ombudsman's attitude to immigration detention

The Ombudsman's assessment is predicated on the criteria usually applied to gauge whether government is treating members of the public properly. The proper conduct criterion central to this particular investigation is that of respect for fundamental rights. The Ombudsman looks at immigration detention from the point of view of the detainee. This does not mean that the Ombudsman ignores the position of those who work at the Rotterdam detention centre.

One detainee custody officer said:

If it were possible, use should be made of individual cells. It is a political choice but it would solve 80 to 90 % of the problems. It would be much better both for the inmates and for the warders.

The Ombudsman's 2012 report is still almost entirely relevant to the situation today. It is true that inmates are generally spending less time in their cells and enjoy greater freedom of movement and longer visiting hours. But inmates of the Rotterdam immigration detention centre are still detained in a place designated as a remand centre under a regime built on criminal law, even though they are not incarcerated for committing any crime. The principal effects of the criminal law regime are the far-reaching restrictions on freedom and the use of disciplinary measures for security purposes.

The residential units are large. Each unit accommodates 64 detainees supervised by four custody officers. Inmates occupy two-person cells and have little privacy or opportunities for recreation. The situation is exacerbated by the stress from which many inmates are suffering. They may already have had traumatic experiences during their period of – often illegal – residence in the Netherlands and/or come from countries to which, for various reasons, they are reluctant to return. They are uncertain what the future will bring. There is regular unrest and inmates are punished by solitary confinement. On several occasions, serious incidents have resulted in a general lockdown of the detention centre. This means that all inmates are locked up in their cells, irrespective of whether they were responsible for the incident or not. The aim of the measure is to restore calm.

Detention is not always of short duration. Far from it. Figures supplied by DJI show that a proportion of inmates spend relatively long periods in detention.

Length of stay	Based on numbers exiting RDC	< 3 months	3-6 months	> 6 months	Total	Average length of stay in RDC
2017	Number	1,581	319	29	1,929	46 days
	Percentage	82.0%	16.5%	1.5%	100.0%	
2018	Number	2,061	374	90	2,525	47 days
	Percentage	81.6%	14.8%	3.6%	100.0%	
First half of 2019	Number	1,343	194	48	1,585	43 days
	Percentage	84.7%	12.2%	3.0%	100.0%	

Matters of concern

Daytime activities

- The range of activities on offer at the Rotterdam detention centre (RDC) is very limited. The National Ombudsman’s 2012 report concluded that the lack of any meaningful way of spending the day was a problem in immigration detention. The Ombudsman wrote that, from the point of view of the purpose of immigration detention, it was incomprehensible that detainees were forbidden to work or to receive education or training. He thought that meaningful daytime activities such as education or work were important and appropriate to the administrative nature of immigration detention. Although inmates are now being offered rather more opportunities for sport and creative activities, the conclusion remains the same as in the 2012 report. Offering work and education of value following repatriation would have the additional benefit of improving order and security within the detention centre. The Ombudsman continues to believe that opportunities for work and education should be added to the current range of daytime activities.

Privacy

- Inmates of the Rotterdam detention centre occupy two-person cells in large units. The Ombudsman feels that the need of many detainees for calm and privacy should be taken seriously and, so far as possible, met. Given the non-penal nature of immigration detention, privacy should be respected wherever possible. After all, foreign nationals are detained only to ensure that they do not evade expulsion; they are not being punished for any crime. The violation of the fundamental right to freedom is permissible but should be as limited as possible. The Ombudsman takes the view that, wherever possible, immigration detainees should be offered individual cells. Many detainees are in great uncertainty about their future and about the duration of their detention. This sometimes creates tension. The opportunity to spend time alone would be beneficial not only to the individual detainee, but in terms of calm within the detention centre as a whole. It would make the detention centre more governable and easier to run. In addition, smaller units (accommodating, say, 20 inmates) would be more conducive to order and security for both inmates and officers. The more human scale would make it easier to spot, and perhaps resolve, emerging tensions or problems.

Use of solitary confinement

- Detainees at the Rotterdam detention centre are routinely placed in solitary confinement. The Ombudsman finds this disturbing. Solitary confinement is a radical measure and is known to present a threat to health⁶. In closed penal institutions, the aim is therefore to minimize its use. This should also be the aim in immigration detention.
- At the Rotterdam detention centre, solitary confinement is frequently used to punish refusals to share a two-person cell. The punishment is carried out in a cell in the separation unit and regularly re-imposed. In this form of solitary confinement, the medical service plays no supervisory role⁷. In the view of the Ombudsman, the harshness of the punishment is out of proportion to the 'offence' (i.e. the refusal to share a cell). The Ombudsman feels that solitary confinement is a major violation of the fundamental right to freedom.
- In the view of the Ombudsman, solitary confinement should be imposed as a punishment only in extremely exceptional cases. When it is used, even if the solitary confinement takes place in the detainee's own cell, there should be standard medical supervision and the case should be reported to a lawyer and to the Supervisory Committee.

Alternatives

The sole purpose of immigration detention is to ensure that foreign nationals are available for deportation. Because such detention is a measure taken under administrative law, the least possible restriction should be placed on the freedom of detainees. Restrictions other than the deprivation of liberty are not appropriate. The Ombudsman regards the regime in Zeist as a good example. The facility in Zeist is used to accommodate families with children under the age of majority, women and unaccompanied minors. It is a small-scale centre where inmates enjoy considerable freedom of movement and are housed in bungalows situated in spacious surroundings enclosed by a fence. This contrasts sharply with the atmosphere and appearance of the Rotterdam detention centre, where adult males are held. The building, the size of the centre and the facilities it offers make it virtually indistinguishable from an ordinary prison.

The investigation reveals that the matters of concern discussed above – daytime activities, privacy and the use of solitary confinement – are the most pressing issues. The frequent and prolonged use of solitary confinement is particularly harmful and disquieting. In the view of the Ombudsman, it should end immediately.

Since the Ombudsman sees the problems relating to these matters of concern as capable of resolution, he makes a number of recommendations (to some extent suggested by staff and inmates of the detention centre).

6 For this reason, the use of solitary confinement is restricted under international law, for example through the prohibition on torture and inhuman or degrading treatment or punishment. This prohibition is enshrined in the European Convention on Human Rights (ECHR), the EU Charter of Fundamental Rights, the International Covenant on Civil and Political Rights (ICCPR), the UN Convention against Torture, and elsewhere. The greatest restraint should therefore be exercised in the use of solitary confinement. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has established standards in order to prevent unnecessary use of solitary confinement and to prevent consequent damage to health. The UN's Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules likewise prescribe restraint in the use of solitary confinement. See also Amnesty's Dutch-language report of February 2018 'GEEN CELLEN EN HANDBOEIEN!'

7 By contrast, inmates held in solitary confinement in observation or isolation cells receive daily visits from the medical service.

Recommendations

- Provide meaningful daytime activities for detainees. For example, give them the opportunity to work or to receive short-term education or training that will be of value to them following repatriation;
- Tailor accommodation to the administrative nature of immigration detention and give detainees the option of an individual cell;
- Exercise the greatest restraint concerning the use of solitary confinement;
- Stop using solitary confinement as a way of punishing detainees who refuse to share a cell;
- Ensure standard medical supervision whenever detainees are held in solitary confinement.

In December 2019, it was announced that planned building work at the Rotterdam detention centre will eventually make it possible to offer an expanded programme of daytime activities. There are also plans to expand access to digital facilities. The Ombudsman will follow these developments with interest.

5 Outline of findings

Daytime activities

Most inmates at the Rotterdam detention centre occupy two-person cells in residential units. They are locked in their cells between 12 noon and 1 p.m., from 5 p.m. to 6 p.m. and overnight from 10.30 p.m. to 7.15 a.m. At other times, they are free to move around the unit at will. On weekdays, recreational activities are on offer. These include sports such as football, volleyball and fitness and creative activities like making toys or T-shirts. At the weekend, there are no such organized activities and no relevant staff are present. In addition to these weekday activities, there is some limited access to the internet and inmates can phone as much as they like (provided they can pay for the calls). There are also facilities for inmates to cook together and they can visit the prayer room and /or a spiritual counsellor. In a recent change, inmates are now allowed to exercise outdoors for two hours every evening.

In addition to the residential units, the detention centre has a separation unit. This is used to accommodate inmates who exhibit unacceptable behaviour and pose a threat to order, peace and security. They remain there for as long as the director thinks necessary in the interests of maintaining order and ensuring the security of the institution. The regime is more restricted than in the residential units. Inmates spend longer in their cells: from 5 p.m. to 8 a.m. and from noon to 1 p.m. This means that they are confined to their cells for at least 16 hours a day. There is also a more limited programme of daytime activities.

Each unit has two cleaners, who are paid for their work. This is the only opportunity for paid employment. The detention centre offers no daytime activities to prepare inmates for the future.

Interviews with inmates and relevant bodies

According to custody officers, there should be greater scope for creativity and a wider range of activities would benefit both inmates and staff. The director agrees. He feels it would be better for the inmates if there were more activities and things like educational courses. Detainees would then have a better daily rhythm and a meaningful way of spending their time. He says that allowing them to work would undoubtedly reduce disciplinary pressures. On the other hand, he emphasizes that the goal of immigration detention is deportation: 'It mustn't get so comfortable here in the Rotterdam detention centre that activities at the centre become an obstacle to the primary goal of deportation.'

In January 2019, disturbances at the detention centre led to action by the director. The programmes of daytime and evening activities were halted and inmates exhibiting unacceptable behaviour were transferred to the separation unit or to cells in nearby penitentiary institutions. The Immigration Detention Hotline says that the situation in the detention centre has changed since that crisis point. Cell doors are more frequently locked, units are closed and freedom of movement is now more restricted. Also, two residential units have been turned into separation units. Not just that, but the library has disappeared. Instead, each unit now has its own bookcase. The Hotline reports that, until the end of 2018, the units were completely open and inmates could circulate freely within the whole centre, but this is no longer the case. Inmates are now confined to their own units and sporting activities are available only at set times.

An inmate of the separation unit said:

You can't go to those activities on your own; you have to be accompanied. If a group of people are going to the gym and you don't want to go, you're locked up in your cell. I didn't want to go because I was making soup for everyone. I wasn't allowed to stay in the kitchen but was locked up in my cell.

Before, there was a choice of outdoor exercise areas. Now, one area is shared between two units and there is no access to other areas. This restricts contact with other inmates. The Hotline is also receiving complaints about the lack of opportunities for inmates to cook for themselves. Each unit has only two gas rings to serve its 60 to 64 inmates.

The Immigration Detention Hotline says:

It is striking, too, that recreation seems to mean simply unlocking cells.

During the interviews that the investigators conducted with other people involved in immigration detention, freedom was a frequent topic of discussion. They too reported greater restrictions on freedom of movement. As evidence of this, they said that, until early 2019, it used to take staff a while to locate detainees and bring them to the visitors' room. Now, inmates are spending more time in their cells and therefore arrive more quickly to see visitors.

Privacy

As already pointed out, immigration detention is a measure taken under administrative, rather than criminal, law. Despite the radical difference in the statutory basis, there are many similarities between the regimes in the Rotterdam detention centre and those in penal institutions. In practice, the majority of foreign nationals in immigration detention are treated in accordance with the Custodial Institutions Act and the regime prescribed in it.⁸ The detention centre looks and feels like a prison and many of the staff have a background of working in penal institutions. And, as in a prison, people in immigration detention occupy cells. These are almost always shared by two inmates. Requests for individual cells are hardly ever granted.

Interviews with detainees and bodies involved

The interviews revealed that many immigration detainees dislike sharing a cell. Although an effort is made to match potential cellmates, for example on the basis of national origin, religious practice and whether they smoke, it remains the case that sharing a cell is a deprivation of privacy. Privacy is a fundamental right. Lack of it is a particular problem for immigration detainees.

⁸ In theory, foreign nationals placed in immigration detention under Section 6 of the Aliens Act (Vreemdelingenwet) do not fall under the Custodial Institutions Act, but under the Border Accommodation Regime Regulations (Reglement regime grenslogies).

One spiritual counsellor said:

It would be better if everyone had an individual cell. People placed in shared cells should have the same religion and habits. They do try to achieve this but don't always succeed.

Detainees have often had a difficult time. Some have been homeless for a long time. Medication levels tend to be high, for example because of mental illness or problems of addiction. Added to this, their future is frequently uncertain: they don't know how long their detention will last or what will happen after that. Will they actually be returned to their country of origin? If so, what will life be like there? Some inmates have left their home countries at an early age. Others fear for their safety if they are repatriated. All these uncertainties mean that many people in immigration detention need peace and privacy. Sharing a cell does nothing to help: quite the opposite. Nor does the scale of the units, which generally accommodate around 60 inmates.

Asked what would improve life at the detention centre, detainees and a number of custody officers replied that the use of individual cells would help. Other staff, Supervisory Committee members and a spiritual counsellor took the same view. They felt that giving inmates greater privacy would considerably reduce unrest within the units.

One member of staff said:

Some of the quiet ones say they find life in the detention centre difficult because there's often unrest and it sometimes feel unsafe. There's a lot of yelling and screeching at night. Some inmates say, 'I'd rather be locked up alone for 23 hours a day than have to be in with other men'.

An inmate said:

I shared a cell with someone who wanted to commit suicide. He'd already made preparations. When I saw that, I warned the officers and they took action to prevent it. Nobody talked to me about it afterwards. I still feel very upset about it. I'd much rather have a cell to myself.

Punishment by solitary confinement

Solitary confinement is a particularly drastic measure, which can have far-reaching consequences for an individual's physical and – more especially – mental health. It can lead to human rights violations and result in (sometimes serious) damage to health. Use of solitary confinement should be proportionate, lawful, necessary and non-discriminatory, and decisions should be meticulously recorded to ensure accountability. It is partly in recognition of this that the aim in Dutch mental health, child protection and penitentiary institutions is now to minimize both the use and the duration of solitary confinement.

The investigation into the situation at the Rotterdam detention centre revealed that inmates are frequently placed in solitary confinement. This is often done because of the detainee's refusal to share a cell. In these cases, solitary confinement is a disciplinary measure and is usually imposed for a period of two weeks. The punishment is usually administered in the person's own cell in the separation unit. In practice, therefore, the detainee has to spend 23 hours a day alone in a cell without radio or television as a punishment for simply refusing to share a cell. The punishment ceases if the detainee changes his mind and agrees to share a two-person cell. So long as he continues to refuse, the punishment is constantly re-imposed.

This punitive use of solitary confinement was a frequent topic of discussion in the course of the investigation. The severity of the punishment and the possibility of serious consequences were repeatedly pointed out. Interviewees also raised the lack of medical supervision, the fact that legal representatives are not informed, and the apparent absence of an adequate legal or other defence against the sanction.

Interviews with detainees and bodies involved

One detainee custody officer said:

Detainees punished by being locked in their cells for 23 hours a day are mainly people refusing to share a cell. To punish them, they are made to spend two weeks in a cell with no TV. If they continue to refuse, the punishment is imposed for another two weeks. The total period of punishment can be as much as six months.

From the response to questions put to DJI about the actual duration of such punishment and the number of times it is imposed, it is clear that solitary confinement is routinely re-imposed time after time on the same individual. In 2018, for example, the sanction was imposed a total of 523 times, with at least 48 individuals receiving it more than twice. One person had the sanction imposed 18 times. In January 2019, detainees were punished by placement in solitary confinement on 75 occasions. The reason for the sanction is not always a refusal to share a cell, but very often it is.

Number of cases of punishment by solitary confinement						
	2017 (July - end Dec)		2018		2019	
Number of cases per person	Number of people	Total number of cases	Number of people	Total number of cases	Number of people	Total number of cases
1	83	83	179	179	47	47
2	18	36	55	110	11	22
3	3	9	19	57	2	6
4	2	8	13	52		
5	1	5	4	20		
6	1	6	4	24		
7			2	14		
8			1	8		
9			0	0		
10			3	30		
11			1	11		
18			1	18		
Total	108	147	282	523	60	75

At the time when we visited the detention centre, five detainees were in solitary confinement in the separation unit as a punishment for refusing to share cells. Custody officers explained that they talked to the detainees every day about their refusals. If an individual said he was willing to share a cell after all, the door of his cell was immediately unlocked and TV was supplied. A suitable cellmate was then sought, so that the detainee could return to the residential unit.

As pointed out above, solitary confinement is regarded as a particularly drastic measure. Psychologists, spiritual counsellors, lawyers and other staff confirm that it is extremely hard on detainees. The uncertainty about their futures and the duration of solitary confinement make it even harder.

One detainee custody officer said:

Locking people up in their cells for long periods has caused major problems. If people continue to refuse to share a cell, the punishment of spending two weeks locked up for 23 hours a day is constantly re-imposed. This can result in people spending as much as four months on end locked up for 23 hours a day. That amount of solitary confinement affects people (badly) and has led to really distressing incidents like people throwing faeces about.

Officers at the detention centre came up with the idea of giving this group of detainees a twice-weekly ‘time-out’: a day when they would be allowed to move around freely in the unit, spend longer outside and take part in activities. With the backing of the medical service, they put this proposal to the management of the centre. As a result, ‘time-outs’ of this kind have now been introduced. Custody officers and other members of staff say that the measure seems to have reduced the stress/ pressure caused by solitary confinement.⁹

One detainee in solitary confinement said:

Because of traumatic experiences in the past, I can’t share a cell with someone else. When I arrived, I told the doctor about it. So now I’m now being punished by solitary confinement. I knew that the consequence of refusing a two-person cell would be placement in solitary confinement. Better that than having to share a cell with someone else. I can’t do that, because I couldn’t sleep.

Amnesty International, the Immigration Detention Hotline, Dokters van de Wereld and the Johannes Wier Foundation all express serious concern about the lengthy incarceration of detainees for refusing to share a cell. They point out that this form of prolonged solitary confinement is without medical supervision. They also say that too little attention is paid to the reasons for individuals’ flat refusal to share a cell and explain that the cause is often psychological problems and long-term uncertainty about the future. According to them, no account is taken of this.

The medical service is not informed when detainees are punished by solitary confinement in their ‘own cells’ in the separation unit. Consequently, inmates in this situation receive no visits from the medical service. Custody officers keep an eye on them and alert the medical service or spiritual counsellors if they think it is necessary. Inmates can themselves ask to visit the medical service. The situation is different for detainees held in solitary confinement in isolation cells or observation cells (OBS); they are visited by the medical service on a daily basis.

One lawyer felt that immigration detention centres resort more easily to such coercive measures than ‘ordinary penitentiary institutions’. She said she was not notified when a client was placed in solitary.

Detainees placed in solitary confinement can complain to the Supervisory Committee. However, the complaints procedure seems to be ineffective as a legal remedy, since lodging a complaint has no practical effect on the punishment. It will not be suspended. In any case, many detainees are unaware of the existence of the complaints procedure, while lawyers and other legal advisers receive no notification that their clients have been placed in solitary confinement. Detainees have only seven days to lodge a complaint, whereas the official decision period for the complaints committee is four weeks and that deadline is regularly exceeded.

9 A note from DJI on the table used above shows that the use of this “time-out” system has been extended.

One detainee said:

When I arrived at the detention centre, I told them I couldn't get on with the man I had to share a cell with. As a result, I spent two weeks locked in a cell for 23 hours a day. The doctor said there were lots of people with the same problem. He said I should discuss it with the director, but I've never had a chance to tell the director about it. I've lodged a complaint about the way things have gone. The complaint was accepted for consideration. But in the end making a complaint won't get me anywhere. If they say the complaint is justified, I'll get 7 euros a day in compensation. But that's not what I want; I want an individual cell.

Staff at the detention centre, including spiritual counsellors and custody officers, say that the use of two-person cells gives rise to tensions and causes problems. They think it would be good if detainees could have the option of an individual cell. That would be better not just for the inmates involved, but also for the staff. It would make the work much less stressful and demanding.

One custody officer said:

The ideal would be to put all immigration detainees in individual cells. You'd need extra space to do it, but it would solve a lot of problems.

The director says that two-person cells are the norm and explains that there are management reasons for this. According to him, it is not really an issue in practice and hardly features in complaints.

The director:

To my mind, it's better for people to share cells than to be alone. Most people have no problem with it. In 90% of cases, there's a good match.

According to detention centre staff, it is a problem that detainees locked up for 23 hours a day are held in the same unit as people whose cell doors are open between 8 a.m. and 5 p.m. They think it would allay tensions if punishment by solitary confinement were not administered in the separation unit.

One custody officer said:

There was an example just yesterday. Now that it's Ramadan, some inmates in the separation unit would like to prepare food for the whole group. They would also like to share it with people in the unit who are being punished by solitary confinement 23/7. They asked permission to pass food through the hatches in the cell doors to inmates in solitary confinement. Some officers turn a blind eye to that kind of thing. Others are stricter and forbid it.

To sum up, there seems to be no reluctance to use solitary confinement as a disciplinary measure at the detention centre. Detainees are routinely placed in solitary as a punishment for refusing to share cells. The punishment may be initially imposed for fourteen days but then constantly re-imposed. When inmates are placed in solitary confinement in this way, the medical service is not informed, nor is a notification sent to the detainee's lawyer. Inmates placed in solitary confinement can complain to the Supervisory Committee but the complaints procedure is ineffective as a legal remedy. First and foremost, the complaint has no suspensive effect and will therefore not prevent the detainee from being placed in solitary confinement. Secondly, the complaints committee has a lengthy decision period and the official four-week deadline is frequently exceeded. By contrast, the deadline for lodging a complaint in such cases is extremely short (seven days). Detainees are often unaware of the possibility of making a complaint, are far from always in regular touch with their lawyer, and often do not inform their lawyer of the punishment imposed on them.

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