



ALTERNATIVES TO IMMIGRATION (AND BORDER) DETENTION

In this factsheet Justice and Peace Netherlands calls for the implementation of more human alternatives to immigration detention.

Overall, detention of asylum seekers and migrants can occur at two points during the asylum procedure. The first point is at the beginning of the asylum procedure and only applies to asylum seekers who arrive in the Netherlands at the external EU border (e.g. Schiphol airport or the port of Rotterdam). The motivation for this is the protection of the Schengen territory, which means those individuals are denied “further entrance”^A into the Netherlands. This first type of detention is referred to as **border detention**. Border detention does not apply to asylum seekers who arrive in the Netherlands over land, since these asylum seekers already entered the Schengen territory and can therefore be submitted to the open reception centres. The second instance when detention can occur is at the end of the asylum procedure when asylum has been denied and the migrant is awaiting return. The main motivation for the detention at this point is the possibility of absconding before (forced) return will take place. This form of detention is referred to as **immigration detention**.

The alternatives mentioned in this fact sheet are mainly used as alternatives to immigration detention, unless stated differently. The use of alternatives to border detention is (legally) complex since these people are actually prohibited to enter the Schengen territory. Alternatives to this type of detention are therefore rare and subject to special conditions seeing that providing an alternative to border detention would imply entrance into the Netherlands.

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A Dutch case law: 201300596/1/V4.

WHY ALTERNATIVES?

Different studies^B have shown that there are a variety of advantages that stem from implementing alternatives to detention. First of all, alternatives to detention are more in line with **human rights** and **limit the negative consequences** for mental and physical health that detention can have. Furthermore, alternatives have proven to be cheaper in implementation than detention is and lastly, alternatives have shown to be **more effective** in reaching the initial aim of detention (e.g. return) if given the right assistance.

LEGAL FRAMEWORK

Rules concerning the detention of asylum seekers in the Netherlands are arranged in the Dutch Aliens Act 2000 (Vreemdelingenwet 2000), in art. 6 (border detention) and art. 59 (immigration detention). These rules are based on European standards, implemented through multiple directives such as the reception, procedure and return directive . These directives are in line with the Refugee Convention of 1951 and have been established in order to develop a Common European Asylum System (CEAS), so that asylum seekers are ensured the same rights and treatments in any EU member state.

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B See De Bruycker, P. et al., *Alternatives to Immigration detention and asylum detention in the EU time for implementation*, January 2015. , *International Detention Coalition*, *There are alternatives, a handbook for preventing unnecessary immigration detention*, 2011. and UNHCR, *Options for governments on open reception and alternatives to detention*, 2015.

Since June 2015, each EU member state has the obligation to apply detention only as a last resort and only if proven necessary and proportional according to art. 8.2 and recital 15 of the recast reception conditions directive and art. 15 of the return directive^C. The recast reception conditions directive provides an open ended list of possible alternatives and thereby also enables states to develop new alternatives to detention. It is possible that an alternative to detention comes with a limitation of the freedom of movement, however, it may never be a deprivation of liberty. Although, detention will in certain situations still be necessary and can be applied (as a last resort) based on art. 15.1 of the return directive and art. 8.3 of the recast reception conditions directive.

TYPES OF ALTERNATIVES

Throughout the years, different alternatives to detention have been established and put in practice in different countries all over the world. Several studies have been conducted on the use of these alternatives and how to improve them^P. Below an overview is given of some of these alternatives to (mainly) immigration detention with suggestions for an **effective implementation**.

Reporting (used in the Netherlands)

Overall, this alternative to detention is most frequently used. Different reporting schemes show that reporting is possible in person and often also via phone. The latter is accepted when the person concerned is ill or lives far from the location of reporting. Reporting is often combined with other measures, such as a designated residence and/or surrendering documents. When implementing this alternative it is important to consider an appropriate location for reporting, decide on a suitable frequency for reporting and think about practicalities such as the reimbursement of travel expenses.

Financial guarantee/Bail (used in the Netherlands)

In a few countries (amongst others in the UK and the Netherlands) a financial guarantee can be used as an alternative to detention. What is important to consider with this alternative is the amount of the financial guarantee. Since most persons do not own a lot of money, it is important to be flexible with the amount of money required to pay. This should be determined on an individual basis to avoid discrimination between those who may and may not be able to afford this alternative to detention. Lastly, it is important that the person concerned understands the conditions of this arrangement. The involvement of an NGO can therefore be valuable to ensure transparency and clarity for all parties involved.

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C Respectively 2013/33/EU, 2013/32/EU and 2008/115/EC.

D See De Bruycker, P. et al, January 2015. , *International Detention Coalition, 2011. and UNHCR, 2015.*

Designated residence^E (used in the Netherlands)

The designated residence is an alternative whereby the asylum seeker or migrant is assigned a place to live during the asylum procedure or before returning or transferring to a different country. The type of residence can differ per case and/or country and can for instance be a (reception) centre, funded accommodation or private housing. The presence of casemanagers on location can make the alternative more effective since each person/family will have a contact person who follows their case and can help them out with practical issues. It is important that, whether placed in detention or not, persons/families who are placed in these residences (especially private housing) do keep their right to certain facilities and services (e.g. legal assistance).

Casemanagement^F

This alternatives is used, amongst others, in Sweden, Belgium, Australia and the UK. This measure can be combined with other alternatives, such as the designated residence, as is done in Belgium where all families are assigned a so called "coach". In order for casemanagement to be effective, the casemanager should be assigned as early as possible, so that s/he is present throughout the whole procedure. Next to that, it is important that the casemanager is not involved in the final decision of the procedure, is well trained and finds the right balance between involvement and professional distance^G.

Guardianship

Guardianship is an alternative used in Lithuania, whereby one can be released when a national citizen, legally residing relative or organization is willing to take care of and support the person concerned. In order for this scheme not to be discriminatory, it is important that an organisation or institution can assign a guarantor if one does not have contacts in that country him/herself.

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E This alternative is in the Belgian Family Units also used as an alternative to border detention, to accommodate families who arrived at external borders and apply for asylum (for example at the airport).

F The casemanagement system in Sweden also covers the beginning of the asylum procedure and can therefore also be considered an alternative to border detention.

G For more suggestions on proper implementation see WODC, *Onafhankelijke Casemanager in de vreemdelingenketen, perspectieven vanuit het buitenland-summary, March 2015, p. XIII-XIV.*

RECOMMENDATIONS

TO GOVERNMENTS

- Ensure that the alternatives used are alternatives to detention and not an alternative form of detention.
- Consult asylum seekers and migrants in the evaluation of alternatives, to find out how they can be improved.
- Train national administration, lawyers and judges so that it is well known when and how to use alternatives to detention.
- Involve NGO's in the implementation of alternatives to ensure clarity and transparency for all parties involved.
- Develop a common procedure through which government officials can determine whether an alternative to detention is sufficient or whether detention has to be applied.

TO NGO's

- Contribute to the development and implementation of alternatives to detention to ensure transparency and clarity for all parties involved.
- Assist governments with the development of alternatives to immigration detention.

MORE INFORMATION

ACVZ, [Vreemdelingenbewaring of een lichter middel](#), 2013.

De Bruycker, P. et al., [Alternatives to Immigration detention and asylum detention in the EU time for implementation](#), 2015.

International Detention Coalition, [There are alternatives, a handbook for preventing unnecessary immigration detention](#), 2011.

Justice and Peace, [Humaniteit in Vreemdelingenbewaring](#), 2010.

Justice and Peace, [Alternatieven voor Vreemdelingenbewaring in Nederland](#), 2012.

UNHCR, [Options for governments on open reception and alternatives to detention](#), 2015.

JUSTICE AND PEACE Netherlands

P PO Box 508, 2501 CM The Hague, The Netherlands

T +31 (070) 763 1499

E info@justiceandpeace.nl

www www.justiceandpeace.nl

