

Justitia et Pax Netherlands:

‘Netherlands violate elementary human rights through the current practice of migrant detention’

‘Humanity in Migrant Detention’ – Report by Justitia et Pax Netherlands

Translated from the Press release – 26 May 2010 – see <http://justitiaetpax.nl/nieuwsbericht/50>

Practices in Dutch migration detention centers are unacceptable

Justitia et Pax Netherlands has published the report ‘Humanity in migrant detention’. In this report Roman Catholic prison-chaplains express their concerns about the way refugees and undocumented migrants are being held in custody. The inquiry was made by Justitia et Pax in 2009 among the Roman Catholic chaplains who work in Dutch migrant detention centers.

In the Netherlands annually some ten thousand refugees and undocumented persons are detained in migrant detention centers.

[from the Summary: Migrant detention refers to the forcible restraint of people who are in the Netherlands without a residence permit. In migrant detention there are two groups: those who were refused entry at the border and those who were arrested in the Netherlands for illegal stay.]

Detainees can ask for pastoral care from pastors, who are available from almost every religion and view of life. Eight Roman Catholic pastors are employed in the six migrant detention centers.

From the daily experiences of these pastors Justitia et Pax infers that parts of the current policy for migrant detention are unacceptable.

People who are mostly not suspected of nor convicted for any crime can be detained for months under circumstances that are much more severe than in normal prisons.

Officially migrant detention is an administrative measure, not a penal one, but in practice it is the equivalent of imprisonment.

Justitia et Pax co-operates with the Roman Catholic prison-chaplains and wants to draw political attention to the alternatives to migrant detention. There are alternatives that have less impact on the freedom, the rights and well-being of undocumented migrants. The government however shows no interest in such alternatives.

Justitia et Pax Netherlands works for the improvement of the human rights situation in the Netherlands and worldwide. It is founded by the Roman Catholic Bishop’s Conference. Justitia et Pax is part of an international network, started in 1967 and is active in 130 countries.

The Summary

(4 pages) lists several areas of concern, like:

- the duration (unknown to the detainee, and possibly repeated several times, can be up to four or five years)
- vulnerable groups, such as mentally or physically ill people, pregnant women, children, victims of human trafficking; men who are indispensable for their family
- attitude and behaviour of personnel, requires improvement in treating detainees with respect
- the regime, which is quite sober and has an atmosphere of punishment, which is not appropriate for people who are not sentenced for a crime
- a comparison shows that detainees face many more restrictions than people who are criminally convicted to imprisonment
- contact with the world outside is very limited and inadequate
- medical provisions, and others like food and phone, demand improvements
- effects of detention are detrimental to the mental and physical well-being of detained migrants: not knowing the duration of detention, the separation from family, the experience of detention as injustice – after half a year even the mentally strong ones break under such a strain. Detention puts an extra pressure on those who were traumatised in their own country. Lack of any useful daily activities (no work, no study) makes people frustrated, apathetic and depressed.

Recommendations to the Dutch government:

1. Use migrant detention only as an ultimatum remedium; do not detain vulnerable groups.
2. Pay serious attention to alternatives that have less detrimental effects on undocumented migrants.
3. In case of detention take away the punishing elements, by holding to these criteria:
[summary of 17 detailed criteria]
 - less sober regime, no cellular lock-up, no disciplinary measures, no uniformed guards, unrestricted access to open air; contact with family, friends, lawyer should be facilitated by access to the internet, to mobile phones, more visiting hours and compassionate leave at birth or death in the family.
 - there must be at least the same kind of investment in people in migrant detention as in penitentiaries/prisons; migrants in detention should have the right to paid labor, to compassionate leave and to education.
 - an extensive and meaningful supply of activities can help migrants to prepare for their future and precludes apathy and depression.

[The report (p.46) has a fourth section of recommendations:]

4. As to migration policy in general:
 - expulsion should never cause families to become separated.
 - illegal migration should not be countered with repression; instead migrants (not refugees) should be persuaded to return with jobs and money.
 - undocumented migrants should get some sort of legal status, so that they can take insurance and can avoid the risks of the undocumented life, like exploitation in the areas of housing and labor.

Some passages

from the 50-page report:

[p. 4] “Although the law offers alternatives to detention, like a duty to report or temporary stay at a reliable address, such alternatives are hardly ever used.”

[p. 4] “The point of departure for a just policy should not be the protection of ourselves against so-called ‘waves of migrants’, but to do justice to those who make an appeal to us.” Hence the guiding principle should be the human dignity and the human rights of migrants.

[p. 5] “People must never be reduced to ‘illegal immigrants’ or even ‘illegals’. Such words already start off their dehumanization, which makes their treatment accordingly seem self-evident.”

[p. 44] “Lack of political will –

This inquiry is not the first. The [European] Commission on the Prevention of Torture, Amnesty International and the [Dutch] Council for the Application of Criminal Law all indicated that drastic measures should be taken to improve the situation in the Netherlands. Some parts have seen improvements, but policy has not changed in principle. The government shows no intention to put an end to migrant detention as such, in spite of the well-known objections. On the contrary, new detention centers are being developed.”

[p. 44] “Fundamentally wrong approach –

The conclusion to be drawn from all this is that according to the chaplains the Netherlands violate elementary human rights through the current practice of migrant detention. By maintaining this kind of detention the government punishes people who should not be punished.

Dutch migration policy lacks a vision which guarantees fundamental rights for every person. The government offers access to essential human rights only on the condition of having the Dutch nationality. This is a violation of article 2 of the Universal Declaration of Human Rights. This paves the way to violation of other rights, such as civil-political rights, like protection from inhumane treatment and arbitrary detention (art. 5, 9 UDHR and art 3 European Decl. of Human Rights) as well as socio-economic rights, like the right to work, to education and to family life (art. 16, 23, 26 UDHR and art. 8 EDHR).”

Please note that these last passages from the report use strong words like the ‘violation of human rights’. These words are not found in the Summary or the Press release.

In a first response to the report the Department of Justice denied all allegations and asserted that the government organizations involved show a humane and respectful attitude.

The translation above is unauthorized; an official translation of the report and related documents is not available yet. You may ask for it at Justitia et Pax:

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