

Presentation International Congress on Law and Mental Health

Amsterdam 19 July 2013

Annemarie Busser



I work for the Dutch department of Amnesty International, the office here in Amsterdam. As all of you know, Amnesty International is a human rights organization. From 1961 my organization has been working for the release of prisoners of conscience, the abolition of torture and executions. Over the last years our work was expanded into all the provisions of the Universal Declaration of Human Rights, including the economic, social and cultural rights.

In this presentation I will talk about immigration and human rights

A very complicated issue that embraces many subjects. It is impossible to give all these subjects an exhaustive treatment. I will briefly cover a few topics.

Sheet 2

1. People on the move
2. Migration as a cross border issue
3. Asylum seekers
4. Criminalization of migration / detention
5. Final conclusions and wishes

1. People on the move: causes and numbers
2. Migration as a cross-border issue: Human Rights and the controlling and guarding of our external European borders.
3. Asylum-seekers. An important part of the migrants population are asylum-seekers. As all European countries have ratified the Refugee Convention, asylum seekers have the right to ask for asylum and to have their request seriously examined.

4. Criminalization migration.¹ The Dutch government is working on new law to penalize irregular migration. Even at present irregular migrants are often detained under circumstances worse than in criminal detention

People on the move

People are on the move all the time. The spread and mix of people of different cultures and ethnic origins has added to the diversity of every country in the world. Today more people are on the move than at any other point in human history. That is why migration is considered one of the defining global issues of the early twenty-first century.

I'll show you some facts and figures,

Sheet 3

- Migrants comprise **3.1 percent** of the global population.
- There are more than **214 million** international migrants in the world.
- More than 10 percent (roughly **20 to 30 million**) are **unauthorized migrants**.
- In 2010, **remittance flows** are estimated at \$ **440 billion** (USD) worldwide.
- In 2010, remittance flows to **developing countries** is estimated at \$ **325 billion**.

Irregular migrants are people with very different backgrounds and needs and very different reasons for leaving their home countries. They come to study or for better jobs, they fear persecution, war or poverty², they are victims of human trafficking, and so on. Most irregular migrants are workers. They tend to be less skilled than those who move legally, because legal migration is increasingly restricted to those with technical skills needed by developed economies.

¹ Illegal entry is often mentioned in relation to criminal aspects, like terrorism, trafficking in human beings, transnational crime, drugs and arms. The beginning of the twenty first century was marked by the attacks on the Twin Towers in New York (11 September 2001). Following this event, the 'war on terror' dominated everything, and migrants already no longer all that welcome, were viewed with even more suspicion. People who would previously have been called freedom fighters were now considered to be terrorists.

² In the past few years we saw a progress on poverty reduction in the world. But the gap between richer and poorer countries is still there and even within Europe, income differences are huge. Worldwide, an estimated 1.2 billion people live in extreme poverty (under \$1.25 a day).<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20040961~menuPK:435040~pagePK:148956~piPK:216618~theSitePK:430367~isCURL:Y,00.html>

Migrants and in particular irregular migrants are very vulnerable. The most important indicator for that is the fact that they are statistically invisible. They are a hidden population. There is an acute lack of information. One consequence of this is that human rights violations, abuse, forced labor and forced prostitution remain more often than not unrecorded and unrecognized.

Sheet 4

Irregular migrants are particularly at risk:

- During the journey: being trafficked by land or sea; excessive use of force by officials charged with border control.
- During illegal stay: discrimination; denial of access to basic human rights, exploitation by private employers.
- In detention: inhuman or degrading conditions; lack of access to legal means.
- During their return; especially the involuntary expulsion

All these risks and dangers can result in both physical and psychological trauma and increased vulnerability. In some cases this trauma is already experienced in the country of origin as a result of persecution, conflict or violence. For others it is experienced en route or during irregular stay, long term asylum procedures or immigration detention. I am not a doctor, so I will only give you some general information and speak about numbers and procedures. Mr Oomen and Laban will go into the health implications of these events.

Sheet 5



Migration as a cross-border issue. European Borders

It is a right of states to control their borders. In the Rome Treaty, European citizens were promised the abolishment of border checks and a free movement of people throughout the European Union. On the other hand, the European Union tries to close its external borders more than ever before. A special agency – named Frontex - was created to coordinate the external border security between member states.

So far, it has proven to be impossible to keep all irregular migrants away from Europe.

SHEET 6

- Some 5 million irregular immigrants in Europe. Other figures quote 8 million.
- In the Netherlands: estimates of irregular migrants vary from 75,000 to 125,000.
- In the last decade: an estimated 11,000 people have drowned attempting to cross the Mediterranean.
- In 2011 at least 1,500 people lost their lives attempting to cross the Mediterranean.
- Turkey is the main country of transit to Greece and is having to shoulder responsibility for over 150,000 Syrian refugees.
- In recent years, hundreds of thousands of people crossed the Greek land, river and sea borders with many travelling through Turkey.

Every year thousands of people embark on dangerous sea trips on unseaworthy vessels, without a proper crew or any safety equipment in an attempt to reach Europe. Many never make it to Europe. They die at sea from hunger, they drown or they are intercepted by patrol boats and returned to the country from which they departed.

Sheet 7



States have human rights obligations³ which are also relevant to maritime interception operations. But not only Human Rights Law, also maritime law has a legal framework to protect people in danger at sea.⁴

ASYLUM SEEKERS

In the context of border controls, states have different obligations towards asylum seekers and migrants. Yet measures taken by states to control their borders often affect both groups

³ Human Rights. (For example) States have to respect: The right to life. Freedom from torture, cruel, inhuman or degrading treatment. Non refoulement: the access to a fair and satisfactory asylum procedure, the right to exit any country, including one's own, the right to an effective remedy

⁴ Maritime Legal framework:

- 1982 United Nations Convention on the Law of the Sea (UNCLOS): Every State shall require the master of a ship flying its flag..to assist any person found at sea in danger of being lost..to rescue the persons in distress...
- 1974 International Convention for the Safety of Life at Sea (SOLAS):...The master of a ship...is bound to assist with all speed....
- 1979 International Convention on Maritime Search and Rescue (SAR): ...ensure that assistance be provided to any person in distress at sea ...regardless the nationality or status of such person...

in the same way. Tightening border security measures to prevent transnational crime, turn-arounds and practices like arbitrary detention make finding asylum something of a lottery.

SHEET 8

A right to ask for asylum.

Established by: The Universal Declaration of Human Rights

Included in: The Refugee Convention,
The European Convention on Human Rights and the
Convention Against Torture.

The most important is the principle of non-refoulement: the obligation not to forcibly return any individual to a situation where he or she is at risk of persecution or other serious human rights violations.

Some numbers of asylum requests.

SHEET 10

Worldwide 2012: **45.2 million people** were forcibly displaced worldwide as a result of persecution, conflict and human rights violations.

- 15.4 million refugees
- 28.8 million internally displaced persons
- Nearly **one million asylum seekers**

Europe 2012: 330.000 asylum requests

- Germany (24%), France (19%), Sweden (14%), UK (9%) Belgium (9%)
- The Netherlands 3% (= 9,800)
- Main countries of origin: Afghanistan (8%), Syria (7%), Russian Federation (7%), Pakistan (6%), Serbia (6%)
- 71,580 protection / 196,920 rejected asylum requests

The number of asylum applications in the Netherlands dropped over the past few years. In 2000 there were over 43,000 applications, in 2012 less than 10,000

At this moment: more people are refugees or internally displaced than at any time since 1994, with the crisis in Syria having emerged as a major new factor in global displacement

Sheet 9



Asylum procedure in the Netherlands

Like a number of other Western European countries, the Netherlands uses an accelerated screening procedure. Since 2010 this procedure takes 8 days. We call this procedure the General Asylum procedure.⁵

During this procedure the asylum seeker has to deal with many problems. He has to stay in the application-centre, (at Schiphol airport this is a prison⁶) he has to tell his asylum-story and to talk about traumatic experiences to different immigration officers, he has to prove his identity and asylum-story with documents, to meet his lawyer and to give his comments on the arguments for rejection.

On the other hand we must note that the Extended asylum procedures sometimes take many years. During this period asylum-seekers stay in reception centres. (AZC's). For their basic needs they completely depend on the government. The possibilities to work or to study are very limited and most of these asylum-seekers - often young men - are forced into inactivity.⁷ The longer people stay in these facilities, the more passive they get. The lack of opportunities undermines their health.

Sheet 11

⁵ This General Asylum procedure can be extended to at most 14 working days in exceptional cases. Approximately 50% of all asylum applications are handled within the General Asylum procedure. This means that the asylum seeker will receive a positive or negative decision on his application within that period. If the asylum application is rejected within the General Asylum procedure, the asylum seeker can file an appeal.

If the case cannot be completed on time or it is impossible to render a decision, the case will then be referred to the so called Extended Procedure.

⁶ Border detention 2012

- 850 asylum requests at Schiphol (620 new arrivals) detention during the waiting time and General Asylum procedure.
- 50 people detained in the Prolonged Closed Border procedure

⁷ Advisory Committee on Migration Affairs, lost time, march 2013



Criminalizing migration and detention of irregular migrants and rejected asylum-seekers

In countries all over the world, migrants and especially irregular migrants are viewed unfavorably and in times of economic crisis, migrants are frequently used as easy scapegoats for economic and social problems. See for example at the moment Greece with the Golden dawn – Gouden dageraad).

Each year around 6.000 migrants are detained in the Netherlands. This is not done because they have committed any criminal offence, but because they are awaiting deportation or the outcome of their asylum application.

This kind of administrative detention is permitted under international law. It is also allowed under Dutch law, but only as a last resort. In other words: if less restrictive alternatives are available they take precedence over detention. There are plenty of other forms of supervision, but these are rarely used.

In the Netherlands we saw in the past decades a, increasingly tougher stance against irregular migration. This has been followed by a significant increase in the number of detention facilities and cells.

Sheet 12: Detention capacity

1980:	45 beds.
2006:	4.000
2012:	2000
2014:	1000

Fortunately in the last few years the detention capacity decreased and the number of detainees went from around 13.000 in 2006 to 8.000 in 2010 and 6.000 in 2012.⁸

Sheet 13



In 2005 a fire broke out in the cells of one of the detention centers. This Schiphol fire killed 11 persons and wounded 15 other people. Most of the survivors – some of them were severely traumatized – continued to be detained after the fire in order to be expelled. It was the first time ever that immigration detention got media attention in the Netherlands. And it was the beginning of Amnesty’s work on this issue in the Netherlands. In June 2008 the Dutch section of Amnesty International published its first report about immigration detention. This year we started a campaign against immigration detention. *I am deeply ashamed*. Amnesty International says that alternatives to detention are possible and should be used.

Sheet 14



Sheet 15

The main concerns of Amnesty International about immigration detention in the Netherlands are:

⁸ In the Netherlands there is a difference between border detention (based on the grounds of article 6 of the Aliens Act, mostly asylum seekers) and the detention of irregular migrants and rejected asylum seekers with a view to their deportation (based on article 59 of the Aliens Act).

Asylum seekers arriving at the Dutch airport can be detained. The Dutch government is of the opinion that the European Regulation (the Schengen Borders Code) obliges the Netherlands to refuse aliens access to its (or better to the European) territory if they do not fulfill the necessary visa requirements. As a result, the asylum procedure at the border (or the airport) is a closed procedure lasting a maximum of 8 days.

Before the procedure starts, asylum seekers get 6 days to rest and prepare. During this period they also stay in a detention centre and during the night in cells with bunk beds. This procedure can be prolonged with six weeks to take a decision plus, in case of an appeal, the time the court needs to review the case. As a result, asylum seekers can be detained at the border for a long time. Currently, the average period is around 44 days.

During the Dublin procedure, the asylum application is not investigated. Amnesty International is concerned about the detention and the possible traumatic experiences that remain unnoticed during this period of time.

- The number of people in detention, the duration of their detention and the fact that vulnerable groups such as minors and the elderly, torture victims and pregnant women continue to be detained. Shortly: the detention policy in the Netherlands is not in accordance with the principle of *ultimum remedium*. Detention should be the last resort.
- The prison-like regime with its unnecessary restrictions.
- The negative consequences on mental health.

Each year around 6,000 migrants are detained in the Netherlands, around 40% of whom are rejected asylum-seekers. Among the others are people whose previous residence permit or visa has expired, and people who never reported to the authorities. The average duration of detention is almost 3 months but detention is possible to up to 18 months, in accordance with the European Return Directive.⁹

Sheet 16

Immigration detention

- 2012: 5740 people in immigration detention
- 2012: Average duration: 3 months
- 2010: around 27% stayed in immigration detention more than once
- 2010: almost 900 asylum seekers were repeatedly detained.

There must be a view to deportation, and the government has to work actively on the deportation.¹⁰ In daily practice, the deportation of around 40-50% of the migrants is not successful, and around 27% of all people in detention stayed in immigration detention more than once, some of them even 4 times or more.^{11, 12, 13}

Our second concern is the regime of detention. The detention regime is very similar to a criminal penitentiary regime (and in some ways it is even more severe).

⁹ Art. 59 first half 2012: < 3 months: 2.350 (70%); 3-6 months: 400; > 6 months: 520

¹⁰ The Iraqi government doesn't accept forced return of rejected asylum seekers. For that reason detention is at the moment not possible. <http://www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2012/05/11/nog-geen-oplossing-voor-irakezen-in-tentenkamp.html>. Last 14 December the Secretary of state announced that Mogadishu is no longer considered as an area falling under article 15 c of the Return Directive (serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict). Up to now the Dutch authorities had been forbidden by the Council of State to forcibly remove Somali rejected asylum seekers to Mogadishu because the judges ruled that there was a situation of article 15c.

Last 30 November the Ministry of Foreign affairs published a country report on Somalia stating that the situation has improved (since February 2012 Al Shabaab is not present any more in most parts of the city; violence is more targeted towards specific groups; townspeople, also women, can move freely in town, unless they are not involved in politics or NGOs). Detention is possible again.

¹¹ Repeated detention in 2010: rejected asylum seekers: 889; others: 1.347, 1 previous detention: 1.381, 2 -3 previous detentions: 661, 4 or more previous detentions: 213.

¹² Four times or more detained in 2010: in total 213 persons: Algeria (47 = 22%), Morocco (23 = 11%), Surinam (15 = 7%), Sierra Leone (10 = 5%) Iraq (8 = 4%), nationality unknown (6 = 3%).

¹³ A Dutch court has ruled that the maximum length of 18 months starts anew every time the person is put in detention. We have questions about this interpretation of European Law.

People are detained in heavily guarded buildings with high walls and cells, not allowed to work or to participate in educational programs.

- The regime of immigration detention pending deportation is based on the Penitentiary Principles Act. This act was developed for criminal detention, which means that irregular migrants and rejected asylum seekers are subject to the same rules and regulations as remand prisoners or sentenced prisoners. This includes for example:
 - **Sheet 17 Detention regime**
 - being locked up in a cell for 16 hours a day;
 - the use of handcuffs during transports;
 - the use of isolation cells in situations of aggression or resistance to deportation, but also in case of a hunger strike or medical observation;
 - strip searches. Strip searches are standard practice after arrival in a detention centre. This means that detainees must take off all of their clothes, do 3 deep-knee bends and allow guards to examine their clothing and body to see if they have brought objects with them which may not be kept in the cell.

Many detainees tell us they feel humiliated by the system and we see damages to their health and wellbeing.

To conclude:

The central issue here is: do the rights given by the international conventions also apply to irregular migrants and rejected asylum seekers? Don't they have any rights because they are not seen as citizens of a country? In the Netherlands, social facilities are stopped when asylum seekers have exhausted all procedures and people can be detained for long periods of time. This means: living on the streets, no right to work, no right to food or shelter and always being afraid to be arrested and put in jail again.

The question is: how far can states go in excluding people from basic human rights?

After the suicide in detention of the Russian asylum seeker mr Dolmatov the State Secretary promised the parliament to give more attention to the Human Dimension during the process

of migration, asylum and return. He promised to present before this summer, a vision/policy paper with new rules regarding immigration detention. Unfortunately this document is not yet released so today I cannot inform you about it and in the meantime the process of penalizing irregular stay is going further.

But we have seen some positive changes already, so I can end my story with a little hope:

Sheet 18 Positive Changes

- The number of detainees decreased from around 13,000 in 2006 to 5,740 in 2012.¹⁴
- The government is willing to start, and follow-up on, alternatives to detention.
- Much more than ever before there is attention from media, civil society and political parties for the human rights aspects of migration and immigration detention.
- For the first time irregular migrants show themselves in demonstrations, action

camps and tell their stories to the media.



We very much hope that this attention leads to a migration policy that is more in line with human rights standards than it is now. Governments have to realize that leaving people on the street, or putting them in detention can cause psychological trauma, especially when these people are already traumatized in their home-countries or during their journey to Europe.

¹⁴ One important cause for this was the expansion of the European Union; persons from eastern Europe entitled to legal stay resulted in a drop of the number of irregular migrants.