



**ALTERNATIVES  
TO THE  
DETENTION  
OF ASYLUM-SEEKERS  
IN BELGIUM**



## ALTERNATIVES TO THE DETENTION OF ASYLUM-SEEKERS IN BELGIUM

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The right to liberty and the right to protection from arbitrary detention are fundamental human rights, which are enshrined in the Universal Declaration of Human Rights and a number of regional instruments. They apply to all human beings, whatever their legal status.<sup>1</sup> Freedom of movement is also a right granted to refugees under the Geneva Convention.<sup>2</sup>

However, in recent years, it appears that European countries have been relying more often on the detention of asylum-seekers. In the case of asylum-seekers at borders or those being transferred to another Member State as part of the process for implementing the “Dublin Regulation”<sup>3</sup>, for example, these measures are applied on an almost routine basis, thus apparently being used more as a deterrent, which contravenes the principles of international protection. It is wrong to rely on the detention of asylum-seekers, when these should be regarded as vulnerable persons.<sup>4</sup> In view of the hardship it involves, the detention of asylum-seekers should normally be avoided, reaffirms Conclusion N° 44 (XXXVII) adopted in 1986 by the Executive Committee of the High Commissioner’s Programme. This is especially true for asylum-seekers belonging to more specific categories of vulnerable persons, such as children, accompanied or otherwise, older people, people with specific healthcare or psychological needs, pregnant women and victims of human trafficking or smuggling.

Even though people seeking asylum in Belgium are generally accommodated in open centres while their asylum applications are being investigated, a number of them continue to be held in detention, with the notable exception of families with minor children, according to a recent decision. In 2009, 1,533 asylum-seekers were detained, or nearly 24% of the foreign nationals (6,439) held in closed centres, according to figures provided by the Aliens Office (AO). The number of asylum-seekers in confinement increased in 2010: 1,745 out of 6,553 confinements, including 471 asylum applications made at the border.<sup>5</sup>

Yet international human rights principles make it clear that asylum-seekers should be placed in detention exceptionally instead of routinely and that people cannot be held in detention for the sole reason that they are applying for asylum.

Moreover, detention should be used only when the law so requires and where there is a need to fulfil a legitimate purpose that is proportionate to the objectives to be achieved. It also has to be applied in a non-discriminatory way for a limited time and be subject to a judicial review.

Even when detention is allowed by law, this should always be a last resort, after less traumatic alternatives have proved to be unsuccessful.<sup>6</sup> In the light of the failure by governments to take steps to develop or mainstream alternatives to detention, their detention policies and practices may be in violation of international law.

Asylum-seekers should enjoy freedom of movement and not be held in detention. Admittance into an open system should be standard practice. When a check is required, alternatives to detention should be found.





## Asylum-seekers who may be detained include:

- people at the border applying for asylum (airports, ports): adults are routinely held in a closed centre<sup>7</sup> (except for families with one or more minor children);
- people the Belgian state is planning to transfer to another European Union Member State as part of the process for implementing the Dublin Regulation, i.e. prior to securing a transfer arrangement or in the countdown to its implementation; (published figures show detention is the rule and liberty the exception for adults (families with children are not held in detention at present);
- people deprived of their liberty (from the outset or during the process) pursuant to the 2007 reform procedure: for example, if individuals make an application more than eight days after entering the territory, if they have already applied for asylum or if they no longer have any documents by which they can be identified;<sup>8</sup>
- people whose asylum applications have been turned down and who have been ordered to leave the territory are likely to be held in a closed centre at any time, in common with other illegally staying non-nationals.

## DETENTION OF ASYLUM-SEEKERS: WHAT DOES THIS INVOLVE?

Foreign nationals may be held in a closed centre in Belgium in the light of their migratory status. Detention seeks to prevent foreign nationals from gaining access to Belgian territory when they arrive at the border and fail to meet the legal conditions for entry, or to expel foreign nationals from the territory when their asylum application procedures have been unsuccessful or when they are in an undocumented situation.

The average length of detention in the five closed centres was 28 days in 2010 but asylum-seekers are over-represented among people held in detention for longer periods. It is common for asylum-seekers to be detained for at least two months, which is the legal detention limit for asylum-seekers in Belgium.

The Belgian state is not legally obliged to resort to detention. Quite the opposite because according to international law detention should be a measure of last resort. In each case, detention is rather being used for reasons of administrative convenience. It is not being used to sanction the commission of a crime or offence.<sup>9</sup> Unfortunately, both the asylum-seeker and the general public experience and perceive this as a punishment.

*“Even when they take you to hospital, you have a police escort, as though you were a criminal. The people who see you think you are a criminal. That’s not right when you haven’t done anything wrong at all”.*<sup>10</sup>

*“I came here to apply for asylum and now I have ended up in prison.”*

Just like common criminals, asylum-seekers are kept in a prison environment (bars, electronic gates, security cameras, solitary confinement cells, etc.), which interferes with their autonomy and privacy. Some changes for the better have been made in recent years, including scope for using a mobile phone to allow access to the outside world.

According to the Federal Ombudsperson:

*“The scope of restrictions on the individual liberty of the inmates in the centres makes them places of detention rather than closed reception centres.”*<sup>11</sup>

The law does not yet cover categories of people whose detention would be prohibited or advised against but, in practice, unaccompanied children and families with minor children<sup>12</sup> are no longer kept in closed centres. Against this background, a law to prohibit children from being detained in closed centres was adopted by the Chamber of Representatives on 20 July 2011.<sup>13</sup>

Belgium does not have a vulnerable profile identification procedure. This means people with specific needs are not offered suitable treatments, hence the types of vulnerable people often sent to closed centres include older people, pregnant women, the disabled, victims of torture or trafficking and people with psychiatric disorders, such as war-traumatized persons. The stress of being confined exacerbates the mental suffering of these individuals, while the context of detention is not conducive to the right kind of care.



# DETRIMENTAL EFFECTS OF DETENTION FOR ASYLUM-SEEKERS AND THE GOVERNMENT

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## a) Particularly damaging consequences for asylum-seekers

Detention comes at a high cost in terms of human suffering. It affects asylum-seekers' dignity and can be both physically and mentally destructive. Detainees find it more difficult to assert their rights.

*"In view of the facilities and the current material conditions in the centres and regime applied, the Federal Ombudsperson takes the view that detention lasting over two months may affect human dignity in certain cases, and have effects that are out of proportion to the aim being sought by the confinement."*<sup>14</sup>

The administrative detention of asylum-seekers has a particularly serious impact at various levels.

*"When I arrived at the centre, I saw the bars, the gates shutting behind me which I couldn't open. It was then I started to understand just how important my freedom was and what it means to be able to realize your dreams."*

Detention has a serious impact on people's health, particularly for asylum-seekers who are often traumatized.

*"I feel ill. I relive all the dreadful things I had to run away from and even more intensely since I arrived in the centre. I don't know what's going to happen, I am frightened of losing my mind and doing stupid things, like hurting myself. Every day I think this is going to be a good day, but nothing has changed by the time night falls. I'm slowly dying here."*

These effects were highlighted recently by a qualitative research publication issued in June 2010 about the detention conditions of asylum-seekers in the European Union.<sup>15</sup> Even in the case of comparatively short periods of detention in centres where the material and supervisory conditions are satisfactory, the environment creates anxiety, depression and a loss of self-esteem. These negative feelings resulting from the confinement and uncertainty about what the future holds in store, can have a devastating impact on people who are already destabilized by their exile.

*"I wasn't myself at that moment... I was frightened for myself. I couldn't stand being locked up any more. My thoughts were all out of control but the doctor refused to listen to me. Every day, I would burst into tears like a child. I would roll on the floor sobbing to myself. It was my birthday. The most agonizing day. I hadn't eaten anything for a week. Not because I was on hunger strike but because I just couldn't eat any more. I couldn't even drink any more. My thoughts were all messed up. I fainted and had to be carried off to hospital."*



An asylum-seeker confined prior to being transferred pursuant to the Dublin Regulation said: *“I’m a human being, aren’t I? Not a package to be sent from one destination to another...”*

The impact that detention has on the physical and mental health of foreign detainees, together with inadequate medical and psychological follow-up for people held in closed centres was confirmed by the Médecins Sans Frontières report of September 2007 called “The human cost of detention. Closed centres for foreign nationals in Belgium”.<sup>16</sup> Similarly, the Federal Ombudsperson reported in 2009 that due to their dependent status and an inadequate assessment of the medical staff, detainees are more vulnerable to abuse by care providers.<sup>17</sup>

Detention also makes it extremely complicated to gain access to legal aid, sources of information and means of communication. The latter are often required to gather evidence in support of an asylum application. Foreign detainees are constantly dependent on detention centre staff for handing on information and documents to the lawyers looking after their applications. There is often no relationship of trust with the social workers attached to detention centres because the foreign detainees regard them first of all as “repatriation officers”, according to Aliens Office terminology.

*“It goes from bad to worse. When you are a prisoner you have no idea what’s going to happen. It gets even worse. You have the feeling everyone is out to get you, that no-one, not even the social workers, are on your side. You no longer feel safe.”*

The anxiety caused by the detention and the prospect of being removed is exacerbated by a feeling of legal insecurity. The procedures are intricate while information is hard to obtain, although the Belgian Constitution guarantees the entitlement to the right kind of legal aid to anybody within the country’s territory.<sup>18</sup>

There is not always a guarantee that people held in detention centres will be able to invoke this fundamental right. Detainees have a hard time trying to get in touch with the outside world, including their lawyers, who often do not take the time to visit their clients. No automatic judicial review is available to check if the detention is lawful and there is the particularly strict application procedure to contend with. While an asylum procedure is underway, these items combined with the detention-related stress make it very difficult to make preparations for a hearing before the relevant asylum authorities, particularly when accelerated procedures, with very short deadlines, are involved.

## b) Equally damaging consequences for the authorities

The main reason countries put forward to justify detaining asylum-seekers is the need to guarantee that they are actually expelled should their applications for refugee status or other types of protection be refused. What is more, the detention and its alleged deterrent effect are cited as an appropriate reaction to the risks of the asylum procedures being abused but there is no concrete evidence to back up these arguments.



People looking for ways to survive or just to live a better life will continue to leave their home countries, whatever systems are applied to deter these individuals as soon as they arrive in Europe. The threats against the lives and freedom of people fleeing their countries are apparently more powerful than any immigration deterrent policies such as detention, adopted by the countries of destination.

### **Respect for fundamental rights**

Detention should be resorted to only when required by law and when it is necessary to attain a legitimate aim, in proportion to the objectives to be achieved, applied on a non-discriminatory basis for a limited time and subject to a periodical judicial review. Consequently, alternatives to detention should form part of any assessment of the necessity and proportionality of the detention. In the light of the almost routine detention approach adopted for certain asylum-seekers (those found at the border and so-called “Dublin cases”), the government could be violating international regulations, thereby tarnishing the country’s image and it could risk having to pay compensation to people who have been unduly or unlawfully detained, particularly in cases before the European Court of Human Rights.<sup>19</sup>

The Council of Europe Commissioner for Human Rights made a stand in 2008 against the routine detention of asylum-seekers at the border, saying that this is inconsistent with the requirement to consider the need for detention on a case-by-case basis, and stressing that asylum-seekers have not committed any offence.<sup>20</sup>

More specifically, a decision to detain asylum-seekers conflicts with article 31 of the 1951 Convention whereby states shall not impose penalties on refugees, on account of their illegal entry or presence, providing they arrive directly from a territory where their life or freedom is threatened. Indeed, everyone has the right to leave their country, seek and to enjoy in other countries asylum from persecution.<sup>21</sup> Having a well-founded fear of persecution is recognized in itself as “good cause” for illegal entry.<sup>22</sup>

The United Nations Working Group on Arbitrary Detention states that “criminalizing illegal entry into a country exceeds the legitimate interest of states to control and regulate illegal immigration and leads to unnecessary detention”.<sup>23</sup> Meanwhile, the UN Human Rights Committee has stressed that “illegal entry” cannot be the sole reason for detention. In order to avoid this being arbitrary, the authorities are required to check if there is any other evidence of a risk of absconding.<sup>24</sup>

As for the return of rejected asylum-seekers, the EU “return” Directive provides a gradation of the measures to be taken in order to enforce the return decision and the requirement to observe the principle of proportionality at each stage of the procedure.<sup>25</sup> Against this background, the UN Working Group on Arbitrary Detention stipulates that the principle of proportionality requires that detention always has a legitimate aim, which would not exist if there were no longer a real and tangible prospect of removal.<sup>26</sup> The different causes for return being impossible include statelessness, the risk of torture or the country of origin refusing to cooperate.

A detention decision should provide scope for an effective and automatic legal remedy. Against this background, it should be stressed that article 72, subparagraph 2 of the Law of 15 December 1980 prohibits the pre-trial chamber from deciding on the advisability of the detention and therefore checking the need for detention. The Council of Europe Commissioner for Human Rights has urged the Belgian authorities to provide for a routine review of the detention of foreign nationals both in terms of the legality and advisability of the decision, and to guarantee that this action is fully effective.<sup>27</sup>

## Cost

Detention is a costly business. The annual cost of closed centres in Belgium is in excess of €25 million.<sup>28</sup> Accordingly, every day a detainee was held in a closed centre in 2009 cost the state €185, compared with €90 for “detainees” in a so-called return house (specialized housing for families awaiting removal).<sup>29</sup> The cost of housing and assisting asylum-seekers held in an open centre is a lot less expensive: only €53 a day per person.<sup>30</sup> Australia’s use of alternatives to detention succeeded, in 2008, in cutting the cost from A\$125 to under A\$39 a day per person.<sup>31</sup>

The costs involved in building and running detention centres are exorbitant, as are the related removal activities. Added to this are the detention procedural costs, which often require considerable investments in terms of time and energy.

On top of these costs are the detrimental social and economic implications of detaining individuals. In

some cases this creates a real cost for the community, particularly where healthcare is concerned.

## Effectiveness

**Detention is used in the management of migration flows, as a supposed deterrent.** However, there is no empirical evidence to back up the theory that the threat of detention deters asylum-seekers.<sup>32</sup> People who leave their countries of origin because their lives, freedom or physical security are under threat do not do so out of choice but simply because there is no other option. Even supposing they know about the risk they run of being detained in the countries where they seek protection, the risk will not deter them from leaving home.

**Another objective of detention is said to be to facilitate rapid decision making.** The question arises whether such an objective and the availability of the asylum-seeker could not be achieved via less restrictive measures; e.g. the requirement to stay in an open centre and report regularly to the relevant authorities so as to be notified in due time about any recent procedural developments. Most asylum-seekers, including those covered by a Dublin procedure, have nothing to gain from avoiding any contact with the authorities, quite the contrary. The risk of them absconding is therefore insignificant, whereas detention is a system that makes it very difficult to build up the trust needed to make an effective investigation of the asylum application.

**Detention is also regarded as necessary to identify an individual or have them removed.** It is also said to be crucial to reduce the risk of someone

absconding while waiting to be removed, even though the alleged risk has not been assessed in practice.

When countries routinely resort to detention without any real individual review of each case, they cannot be certain that return will be possible. Detention is usually decided upon for expulsion purposes but many foreign nationals are not, in the end, removed and may never be. To continue detaining someone without the prospect of an actual expulsion is definitely not a measure that is proportional to the objective being pursued.

Aliens Office statistics reveal that 6,553 people were confined in Belgium in 2010, 4,461 of whom were expelled. 1,871 people were released for various reasons, including the fact that the authorities were unable to obtain any travel documents.

However, various more human rights-friendly alternatives to detention are available (requirement to report regularly to the authorities, open or semi-open centres, for example) and applied in certain countries, with impressive levels of return. In fact most people who are confined do not show any serious signs of actually being prepared to risk absconding, while alternatives to detention may be conducive to voluntary return, which is a more dignified, less expensive and often more durable solution. Examples of studies in Canada, Australia and the United States show that voluntary and independent returns are on the increase: 60% for unsuccessful asylum-seekers and 69% for illegal migrants.<sup>33</sup> In 2008, 82% of unsuccessful asylum-seekers in Sweden returned to their countries of origin on an independent basis.<sup>34</sup>



# ALTERNATIVES TO DETENTION

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Alternatives to detention cover all laws, policies and practices allowing asylum-seekers to reside freely in the community during their procedure or, in the case of unsuccessful applicants, pending their return. Various reports by the Working Group on Arbitrary Detention recommend using alternatives to detention. It proposes non-custodial alternatives to detention, such as always considering the requirement to report regularly to the authorities before resorting to detention. The authorities also have to decide if detention is absolutely necessary in the light of the personal background of each asylum-seeker.<sup>35</sup>

Many of the alternatives to detention involve some kind of restriction of movement or deprive people of their freedom to some extent and should therefore be governed by a judicial review system to ensure the observance of human rights. The terms of these alternatives to detention should not take forms where liberty, freedom of movement and the right to privacy and a family life are substantially curtailed.

Any alternatives to detention applied also have to comply with the principles of legality, necessity and proportionality and be applied without discrimination and with due regard to the dignity of each individual. Alternatives to detention used in a specific case have to be as non-intrusive and as unrestrictive as possible as regards their impact on the human rights of the person concerned.

An alternative to detention should result in less use of detention, otherwise it should actually be regarded as an alternative to liberty.

## Alternatives to detention for families with minors: “open return houses” in Belgium

*“We were put into a kind of van, which was a frightening experience for us! We wondered if we were really being taken to a house. Once we arrived we felt more comfortable. Our coach gave us a good reception and explained the various procedures. We applied for voluntary return with support from the International Organization for Migration. We remember how it really helped us out.”*

An alternative to the confinement of families with minors project was launched in October 2008.<sup>36</sup> Families required to leave Belgium or who, since October 2009, are not allowed to enter the territory and may be returned within 48 hours, are now housed in open, individual facilities so that families may continue to live in a more appropriate setting. This initiative is a worthwhile alternative to detention, even though the question arises whether the transfer to another location is necessary for their return and if families applying at the border for asylum would not be better off staying in an open centre.







The programme now applies to 15 accommodation units in Zulte, Tubize, Sint-Gillis-Waas and Tielt. The facilities are not closed and there are no security staff but Belgian law decrees that families staying in these units remain legally “detained”. The families may leave the premises for all kinds of reasons, such as attending school, visiting lawyers, doing some shopping or taking part in religious ceremonies. Under the scheme a family is issued weekly coupons to be used to buy food from a local supermarket and prepare a meal. Each family member is entitled to medical, social and legal assistance.

The families are supervised by Aliens Office “coaches”. They are required to sign a “contract” spelling out their rights and obligations and what would happen in the event of a “disappearance”. Coaches have the task of lending support to a family with a view to finding a lasting solution: either a right of residence or a return with dignity. A coach acts as an official intermediary between the Belgian authorities and all the other stakeholders involved in the supervision of the family members but is required to notify the authorities should a family disappear from the “return house”.

The system is based on the trust that families place in the existing procedures and the “coach”. Practical experience has shown families are more trusting when a coach gets together with them to look at all the options to stay and return, and help them reach a decision. People no longer entitled to stay choose to return not as a result of being pressurized by the government but more because they are preparing a better future for their children and themselves. Families whose asylum applications are rejected are

also reported to be prepared to consider the return option, provided they believe the asylum procedure has been a fair one and they have been in a position to put forward their reasons for fleeing their countries of origin. The right kind of support is a guarantee of a lasting solution.

Initiated as a pilot project, the programme now forms an integral part of Aliens Office policy. The preliminary outcomes of the programme are fairly good, demonstrating that there was no need to detain the people in question. An in-depth review should be made of the way the programme operates. The government welcomes the project’s satisfactory results.

From October 2008 to August 2011, 217 families, including 396 minors, were housed in temporary accommodation: 205 left the facilities for various reasons. Amongst this group, 88 families returned to their countries of origin or were expelled to a third country (including eight by means of a forced return), 48 families fled and 69 families were released. The average length of a stay in temporary accommodation is 24 days.

For the government, detention creates serious disadvantages which are underestimated. As a first step towards alternatives to detention, the programme involving “return houses” for families with children has shown promising results. It is of vital importance that the Belgian government continue adopting this more human-rights friendly approach.





# OUR RECOMMENDATIONS TO THE BELGIAN LEGISLATIVE AUTHORITY AND GOVERNMENT:

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1. the Law on entry, residence and the expulsion of foreign nationals should include a prohibition in principle of the administrative detention of asylum-seekers who are already in the territory or at the border;

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2. the Law should feature provisions to specify that detention is a measure of last resort that should be used only after less coercive measures have been considered and subsequent to an individual review leading to the conclusion that it is necessary and proportionate to the objective being pursued (identifying the person for detention at the border or having the person removed in other cases);

3

3. a legal basis should be developed for alternatives to the administrative detention of foreign nationals, in particular “return houses”, and the conditions governing the implementation, duration and review thereof should be specified;

4

4. the said Law should include the requirement for the administration in charge of border inspections and expulsions to proceed prior to the detention, or at least five days after this, to make an individual review of the foreign national’s circumstances in order to determine the person’s vulnerability and if there is a risk of the person absconding;



**AMNESTY  
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5. the Law on entry, residence and the expulsion of foreign nationals should include a prohibition on the detention of vulnerable people, in particular children, accompanied or otherwise, older people, people with specific psychological and healthcare needs, pregnant women and victims of human trafficking or smuggling;
6. the same Law should remove the administration's scope for detaining an asylum-seeker as part of the process for implementing the Dublin Regulation, during the phase for determining which Member State is responsible, and support should be given to the European Commission proposal for the Dublin Regulation II to include a new article 27 which restricts detention during a Dublin procedure and refers to alternatives to detention;<sup>37</sup>

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7. an automatic judicial review of detention should be undertaken, while the pre-trial chamber should be given express powers to verify the proportionality of the detention and assess if it is a measure of last resort and if less coercive measures could not have been taken to achieve the objective being pursued;
8. an assessment of the "return houses" should be made, on the basis of active consultations with the "coaches" in these return facilities and NGOs, and the assessment should form the background to subsequent policy stages in order to improve and extend the use of alternatives to detention.

**Brussels  
October 2011**



# ENDNOTES

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- <sup>1</sup> See Article 9 of the International Covenant on Civil and Political Rights at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>. See also Article 5 of the European Convention on Human Rights, available at: [http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG\\_CONV.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf). See in particular: Article 3 (right to life, liberty and security), Article 9 (ban on arbitrary arrest, detention or exile), Article 13 (the right to freedom of movement and residence) in the Universal Declaration of Human Rights, available at: <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>.
- <sup>2</sup> Convention of 28 July 1951 relating to the Status of Refugees: Article 26 (freedom of movement), available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.
- <sup>3</sup> Asylum-seekers are in particular detained throughout the “Dublin” procedure, even when it has not yet been decided whether a transfer to a “Dublin” country should actually take place.
- <sup>4</sup> European Court of Human Rights, Judgment N° 30696/09 *M.S.S. v. Belgium and Greece*, 21 January 2011, para. 251: “The Court attaches considerable importance to the applicant’s status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection”.
- <sup>5</sup> In 2010, 304 asylum-seekers made an application in a detention centre, while 970 asylum-seekers were confined under a “Dublin” procedure.
- <sup>6</sup> The options suggested in the UNHCR guidelines include the requirement to report to and reside in a specific place, release on bail, guarantees and authorizations provided to asylum-seekers to live in open centres where their presence can be monitored.
- <sup>7</sup> When a person makes an application at the border for asylum, the Aliens Office refuses to allow that person to enter the territory and takes a decision to have the party detained in transit centre 127, while the asylum application made at the border is investigated. This applied to 443 people in 2010. No account is taken of special circumstances and, in particular, any vulnerability. Starting from June 2007, unaccompanied children are no longer confined and the same applies to families with minor children since October 2009.
- <sup>8</sup> These provisions have so far had quite a marginal impact, except for people making an application when they are already in a closed centre (337 in 2009, 303 in 2010).
- <sup>9</sup> See one of the key messages in the summary of the conclusions reached during the international round table on alternatives to detention for asylum-seekers, refugees, migrants and stateless persons, convened by UNHCR, “States should avoid criminalizing persons moving irregularly through imposing penal sanctions or conditions of treatment that are not suitable to persons who have not committed a crime”, Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, July 2011, available at: <http://www.unhcr.org/refworld/docid/4e315b882.html>.
- <sup>10</sup> The testimonies published in the text were collected by various associations during their visits to the various closed centres in Belgium.
- <sup>11</sup> Extracts from the Federal Ombudsperson’s report, Investigation on the operations of closed centres run by the Aliens Office, June 2009, available in French at: <http://www.eoi.at/d/Jahresberichte/Belgien/IR%20Closedcenters%20summary%20Fran%C3%A7ais.pdf>
- <sup>12</sup> People at the border stating they are minors, to which the Aliens Office expresses doubt about their minority age status, are detained until the findings of the age assessment test are available (which should take six days but may sometimes take 15 days in practice).
- <sup>13</sup> See the Bill providing an article 74/9 in the Law of 15 December 1980 on access to Belgian territory, residence, establishment and expulsion of foreign nationals, in relation to the prohibition on the detention of children in closed centres, Doc 53 0326/009, available in French at: <http://www.lachambre.be/FLWB/PDF/53/0326/53K0326009.pdf>.
- <sup>14</sup> See footnote 11.
- <sup>15</sup> Jesuit Refugee Service Europe, “Becoming Vulnerable in Detention, Civil Society Report on the Detention of Vulnerable Asylum-seekers and Irregular Migrants in the European Union (The DEVAS Project)”, June 2010, available at: [http://www.jrseurope.org/publications/JRS-Europe\\_Becoming%20Vulnerable%20In%20Detention\\_June%202010\\_PUBLIC\\_updated%20on%2012July10.pdf](http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_updated%20on%2012July10.pdf).
- <sup>16</sup> The report is available at: <http://idcoalition.org/belgium-msf-le-cout-humain-de-la-detention/>.
- <sup>17</sup> See footnote 11.
- <sup>18</sup> This is featured in articles 62 and 63 of the Royal Decree on closed centres stating that “The inmate is entitled to legal aid” and the “inmates are entitled to make telephone calls free of charge to their lawyers on a daily basis, between eight in the morning and 10 in the evening”.
- <sup>19</sup> According to the Court’s case-law, it is a fundamental principle that no arbitrary detention can be compatible with article 5§1 ECHR.
- <sup>20</sup> Report by the Council of Europe Commissioner for Human Rights, on his visit to Belgium from 15 to 19 December 2008, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH\(2009\)14&Language=lanEnglish&Ver=original&Site=COE](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2009)14&Language=lanEnglish&Ver=original&Site=COE).



- <sup>21</sup> Article 14 of the Universal Declaration of Human Rights.
- <sup>22</sup> Global consultations on international protection, expert round table convened by UNHCR and the Institut universitaire des hautes études internationales, Geneva, Switzerland, November 2001, Summary of Conclusions: Article 31 of the 1951 Convention, available at: [http://www.unhcr.org/refworld/docid/470a33b20.html para. 10\(e\)](http://www.unhcr.org/refworld/docid/470a33b20.html para. 10(e)).
- <sup>23</sup> See, Opinion adopted by the Working Group on Arbitrary Detention, 7th session of the Human Rights Council, UN Doc. A/HRC/7/4/Add.1, 16 January 2008, para. 53, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/101/75/PDF/G0810175.pdf?OpenElement>.
- <sup>24</sup> Human Rights Committee on Communication No. 560/1993: Australia, 04/30/1997, 59th session, CCPR/C/D/560/1993 \$9.4, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/30c417539ddd944380256713005e80d3?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/30c417539ddd944380256713005e80d3?OpenDocument).
- <sup>25</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals states in recital 16 that “the use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient”. This principle is repeated in articles 15, 16 and 17 of the same Directive, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>. According to the judgment handed down on 28 April 2011 by the Court of Justice of the European Union: *Case C-61/11 PPU El-Dridi v Italy*: that “gradation (...) goes from the measure which allows the person concerned the most liberty, namely granting a period for his voluntary departure, to measures which restrict that liberty the most, namely detention in a specialised facility. The Directive therefore pursues the objective of limiting the maximum duration of detention in the context of the return procedure and of ensuring the observance of illegally staying third-country nationals’ fundamental rights”, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:186:0008:0009:EN:PDF>.
- <sup>26</sup> See, Report by the Working Group on Arbitrary Detention, 13th session of the Human Rights Council, UN Doc. A/HRC/13/30, 15 January 2010, para. 64.
- <sup>27</sup> See footnote 20.
- <sup>28</sup> Mathieu Bietlot, “La mise à l’écart de l’étranger, centre fermé et expulsions”, Editions Labors, 2004, pp. 23–26.
- <sup>29</sup> “Kinderen weer opsluiten?”, 28 April 2011, available at: <http://www.vluchtelingenwerk.be/actueel/nieuwsitem.php?n=888>.
- <sup>30</sup> Mieke Candaele, spokesperson for Fedasil, 22 May 2010, available at: <http://www.demorgen.be/dm/nl/989/Binnenland/article/detail/1108873/2010/05/22/Asielzoeker-op-hotel-kost-minder-dan-in-opvangcentrum.dhtml>.
- <sup>31</sup> In a communication to the Senate, on 24 February 2009, Australia’s Immigration Minister declared: “...This approach is more cost effective than the conventional ‘locate, detain and remove’ model. For example, non-common costs of an assisted voluntary return from the community under the AVR service (non-common costs of about \$1500) are about one third of those under the ‘locate, detain and remove’ model (approx \$5000)”, available at: [http://www.aph.gov.au/senate/committee/legcon\\_ctte/estimates/add\\_0809/diac/38.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_0809/diac/38.pdf).
- <sup>32</sup> This theory was confirmed in the summary of conclusions reached during the international round table on alternatives to detention for asylum-seekers, refugees, migrants and stateless persons, convened by UNHCR, see footnote 9.
- <sup>33</sup> R. Sampson, G. Mitchell and L. Bowring, *There are Alternatives: Handbook for Preventing Unnecessary Immigration Detention*, IDC, 2011, p. 39 (USA), p. 40 (Australia), p. 44 (Canada).
- <sup>34</sup> *Ibid.*, p. 35.
- <sup>35</sup> See for example the Report of the Working Group on Arbitrary Detention Addendum, 18 December 1998, E/CN.4/1999/63/Add.3, para. 34, available at: <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/052/06/pdf/G9805206.pdf?OpenElement>.
- <sup>36</sup> 14 May 2009, Royal Decree establishing the arrangements and operating rules applicable to housing facilities, pursuant to article 74/8, §1, of the Law of 15 December 1980 on access to Belgian territory, residence, establishment and expulsion of foreign nationals, available in French at: [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2009051406&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2009051406&table_name=loi).
- <sup>37</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), COM(2008) 820 final. Article 27 specifies: “when it proves necessary, on the basis of an individual assessment of each case, and if other less coercive measures cannot be applied effectively, Member States may detain an asylum-seeker (...) to a particular place only if there is a significant risk of him/her absconding. (...). Member States shall take into consideration alternatives to detention such as regular reporting to the authorities, the deposit of a financial guarantee, an obligation to stay at a designated place or other measures to prevent the risk of absconding”, available at: <http://www.unhcr.org/refworld/docid/493e8e3a2.html>.

