

Belgium Immigration Detention Profile

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INTRODUCTION

Belgium has long received scrutiny for its immigration control policies, in particular its controversial use of forced deportation flights.¹ The government has also been criticized for conflating anti-terrorism measures with migration law. In early 2017, for example, Parliament passed legislation expanding the government's powers to deport legally residing non-citizens who are suspected of terrorist activities or threaten national security despite warnings that the law fails to provide clear criteria to make these determinations and will lead to discriminatory practices.² "The Immigration Office can immediately, without interference of a judge, put someone out of the country based on indications that he or she could pose a threat to the public order," said one human rights expert.³

While Belgium has made the adoption of "readmission agreements" a key priority, the numbers of people placed in detention annually has declined substantially during the past 15 years, down by nearly 50 percent from the peak of almost 10,000 detainees in 2003—although the detention of asylum seekers at borders has increased.⁴ The country

¹ Cited in Anne T. Gallagher, and Fiona David, *The International Law of Migrant Smuggling*, Cambridge University Press, 2014; Centre pour l'égalité des chances et de la lutte contre le racisme, *Rapport parallèle sur le troisième rapport périodique soumis par la Belgique au Comité contre la torture*, August 2013.

² BELGA, "Les ressortissants étrangers nés en Belgique pourront bientôt être expulsés," *la Libre.be*, 10 February 2017, <http://www.lalibre.be/actu/politique-belge/les-ressortissants-etrangeurs-nés-en-belgique-pourront-bientot-etre-expulses-589d96b6cd702bc3191a804f>.

³ Milan Schreuer, "Belgium's New Deportation Law Raises Red Flag With Civil Rights Groups," *New York Times*, 11 March 2017.

⁴ European Migration Network, 2015 : Annual Report on Asylum and Migration Policy in Belgium, June 2016, https://emnbelgium.be/sites/default/files/publications/be_emn_ncp_annual_policy_report_2015_final.pdf.

has also helped lead the way on promoting “alternatives to detention” for families. However, this policy suffered an important setback in 2016 when the Secretary of State for Asylum and Migration announced that families would again be detained in closed centres starting in 2017 and that new “closed housing” would be built. Many public figures have denounced the move, including the Minister-President of Wallonie-Bruxelles.⁵

In 2015, 6,229 persons were placed in immigration detention, an 11 percent increase compared to 2014.⁶ Also during 2015, the country forcibly returned 4,245 persons and organised 25 return flights of unauthorized persons, mostly to Albania, the Democratic Republic of Congo, and Serbia.⁷

Belgium registered more than 18,000 asylum applications in 2016, considerably fewer than in 2015 (44,750). The top three countries of origin—Syria, Iraq and Afghanistan—accounted for 63 percentage of asylum claims in 2015 and 35 percent in 2016. During both years nearly 60 percent of applicants were granted protection through refugee status or subsidiary protection status, including 7,051 Syrians in 2016.⁸

LAWS, POLICIES, PRACTICES

Key norms. The key law relevant to immigration detention in Belgium is the Law of 15 December 1980 on Entry, Stay, Settlement and Removal of Foreign Nationals, hereinafter the Aliens Act (*Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*), which was last amended in September 2016.⁹ This law governs asylum procedures, reception conditions, and detention. The Royal Decree of 8 October 1981 Pertaining to Entry, Stay, Settlement and Removal of Foreign Nationals is the implementing legislation for the Aliens Act.¹⁰

⁵ Belga, “Demotte se dit « atterré » par le projet d'enfermer des enfants en centres fermés,” *Le Soir*, 30 November 2016, <http://www.lesoir.be/1380624/article/actualite/belgique/2016-11-30/demotte-se-dit-atterre-par-projet-d-enfermer-des-enfants-en-centres-fermes>

⁶ MYRIA, “La migration en chiffres et en droits,” May 2016, MYRIA, “La migration en chiffres et en droits”, *Chapter 9, Removal, Deportation and Detention*, Published in September 2015. <http://www.myria.be/files/Migration-rapport-2015-C9.pdf>.

⁷ MYRIA, “La migration en chiffres et en droits,” May 2016, MYRIA, “La migration en chiffres et en droits”, *Chapter 9, Removal, Deportation and Detention*, Published in September 2015.

<http://www.myria.be/files/Migration-rapport-2015-C9.pdf>; Note de Politique générale, Asile et Migration : Simplification administrative, Chambre des représentants de Belgique, 27 October 2016. <http://www.dekamer.be/doc/FLWB/pdf/54/2111/54K2111017.pdf>.

⁸ Office of the Commissioner General for Refugees and Stateless Persons, Asylum statistics – General Overview 2016, 6 January 2017, <http://www.cgra.be/en/news/asylum-statistics-general-overview-2016>.

⁹ 15 December 1980. - Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. as amended up to 13 September 2016.

¹⁰ 8 October 1981. - Arrêté royal sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1981100831&table_name=loi.

The Reception Act of 12 January 2007 details reception conditions for asylum seekers and other categories of non-citizens.¹¹ The Royal Decree on Closed Centres of 2 August 2002, last amended in 2014, regulates the regime to be applied at all premises on Belgian territory managed by the Immigration Department (*Office des Etrangers*) where people are detained.¹² The EU Recast Reception Conditions Directive 2013/33/EU, which was to be transposed in national legislations by 20 July 2015, gives broad discretion to member states for detaining asylum seekers. It had not been fully integrated into Belgian law as of May 2017.

Grounds for detention. Under the Aliens Acts foreign nationals can be detained for the purpose of removal as per the provisions of Article 7: “Unless other sufficient but less coercive measures can be applied effectively the foreigner may be held [*maintenu*] for the purpose of removal for the time strictly necessary for the implementation of the measure.” The removal order may be issued for foreign nationals who: are staying in the country irregularly; pose a threat to public order and security (Article 52/4); have been readmitted to Belgium or are about to be removed (Articles 7/9 and 7/10); present false information regarding their situation to authorities; or are awaiting the fulfilment of a removal order and are considered likely to impede the fulfilment of that order (Articles 27/3 and 74/6). Under Article 74/5, foreigners can also be placed in detention by border control officers for unauthorized entry at the border pending authorization (or expulsion) including if they have deposited an asylum claim.

Detention during asylum proceedings is not mandatory under the Aliens Act¹³ but nor is there a legal provision stipulating that it be used as a last resort.¹⁴ Article 74/6 (1bis) includes a list of grounds allowing detention of persons who claim asylum. Some are based on administrative misdemeanours including for failing to apply for asylum within the requisite time-frame; failing to apply for asylum during the first interrogation by officials at the border; or being subject to a non-suspended re-entry ban. Grounds for detention of asylum seekers also include residence in third countries for up to three months prior to applying for asylum in Belgium or failing to mention a previous application for asylum in another country. Another set of grounds includes refusal to establish identity; destruction of ID or presentation of false documents; and lodging an asylum application to hamper a removal decision or obstructing fingerprinting.

Foreigners whose applications for international protection have been rejected or who have been issued a return decision and have not respected the period foreseen for

¹¹ Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens, amended as of August 2016,

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007011252&table_name=loi.

¹² Royal Decree of 2 August 2002 determining the regime and regulations to be applied in the places on the Belgian territory,

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002080275&table_name=loi; as amended on 8 June 2009 ; Royal Decree of 8 May 2014, http://www.etaamb.be/fr/arrete-royal-du-08-mai-2014_n2014000423.html.

¹³ Aliens Act Article 74/5 § 1 provides that unauthorized foreigners who introduce an asylum request “may be maintained” in a specific location.

¹⁴ Vluchtelingenwerk Vlaanderen, “Country Report: Belgium 2016 Update,” Aida Asylum Information Database, February 2017, <http://www.asylumineurope.org/reports/country/belgium>.

return on a voluntary basis may also be detained.¹⁵ The period provided for voluntary return in the return decision was extended for irregularly staying persons from five days to 30 days with the transposition of the Return Directive into Belgian law in 2012.¹⁶

Responsible authorities. Belgium has a complex state structure with multiple levels of government along federal, regional, and community (linguistic and cultural) lines. In general, immigration policies fall under the competence of federal government. The government authority overseeing implementation of migration and detention policies is the State Secretary for Asylum and Migration attached to the Minister of Security and the Interior. Under the State Secretary, the Immigration Department (*Office des étrangers*) is responsible for the entry, residence, establishment and removal of foreign nationals from Belgium.¹⁷ The Immigration Department is charged with the day-to-day administration of most immigration related policies, including the management of detention centres.

The granting of refugee status falls under the competence of the Federal Public Service Home Affairs (the Interior Ministry) and more specifically of the Commissioner-General for Refugees and Stateless Persons (CGRS, *Commissariat général aux réfugiés et aux apatrides*). This central administrative authority is exclusively responsible for the first instance examination, granting or refusing refugee and subsidiary protection status.¹⁸ Since 2007, the Council for Alien Law Litigation (CCE, *Conseil du Contentieux des Etrangers*) is the only administrative authority competent for handling appeals against all decisions by the Immigration Department concerning entry, removal, establishment or detention of foreigners.¹⁹

The Federal Agency for the Reception of Asylum Seekers (Fedasil) is in charge of the reception of asylum-seekers and coordinates the various voluntary return programmes. According to the Agency, the voluntary return programme “focuses on both asylum seekers (in procedure or turned down) and migrants without a resident permit who have never requested asylum in Belgium.” In 2016, 4,267 persons voluntarily returned to their country of origin, 50 percent of whom were assisted by Fedasil.²⁰ The government agency cooperates with the International Organisation for Migration (IOM) and NGOs to assist voluntary returns and coordinates the network of 60 (open) reception facilities for asylum seekers.²¹ Since 2016, in an apparent extra-territorial application of its return migration policies, Belgium has been working with IOM Tunisia to organise “voluntary

¹⁵ Article 27 and 29, Aliens Act.

¹⁶ Article 74/4 (1) Aliens Act.

¹⁷ EMN, “Annual Report on Asylum and Migration Policy in Belgium, 2014”, published in July 2015 and available at: <http://www.emnbelgium.be/publication/annual-report-asylum-and-migration-policy-belgium-2014-emn>.

¹⁸ AIDA, “National Country Report, Belgium”, December 2015, <http://www.asylumineurope.org/reports/country/belgium>.

¹⁹ Aliens Act, 1980, as amended by Law of 10 April 2014 containing several provisions concerning the procedures before the CCE and the Council of State, http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2014041068&table_name=loi.

²⁰ Fedasil, “Voluntary returns on the rise, “3 February 2017, <http://fedasil.be/en/news/retour-volontaire/voluntary-returns-rise>.

²¹ Fedasil, About the reception centres, <http://fedasil.be/en/content/about-reception-centres-0>.

returns” of migrants to Congo and West Africa who Belgian authorities claim are “stuck at the Tunisian coast without any other alternative.”²²

Asylum seekers. Many asylum seekers held in administrative detention have either lodged a claim after being detained or are rejected asylum seekers who asked for a second examination of their application. Asylum applications (including while in detention) have to be lodged within eight days after the foreigner’s arrival.²³ Asylum-seekers can initially be detained for up to two months, which can be extended up to five months. They can also be detained during the Dublin procedure if another State is responsible for handling the asylum claim (Article 51/5 Aliens Act). According to civil society reports, authorities tend to conclude that asylum-seekers who first applied for asylum in another EU member state present a risk of absconding. This allows them to be placed in detention prior to a Dublin transfer.²⁴ Detention may also be ordered if the Immigration Department considers that the asylum procedure has been overused, as per Article 74/6 of the Aliens Act.²⁵

UNHCR and NGOs report the systematic detention of asylum seekers “at the borders.” The issue was raised during a recent case at the European Court of Human Rights.²⁶ While the April 2017 decision in the case, *Thimothawes v. Belgium*, found that the five-month detention of an Egyptian asylum seeker did not violate the right to liberty and security under the European Convention on Human Rights, two dissenting judges denounced the “automatic” detention referrals (automaticité de la detention). Asylum seekers now represent a higher percentage of detainees than in the past, reports Flemish Refugee Action (Vluchtelingenwerk Vlaanderen): “We have noticed an increased use of detention [of asylum seekers] on grounds of protection of public order, on the basis of Article 54(2) of the Aliens Act. This has led to detention based on accusations that were later deemed untrue or which the judiciary decided not to prosecute. When courts later reviewed the legality of detention orders, they regularly ruled that they were illegal.” In 2015, the European Commissioner for Human Rights denounced Belgium’s practice of detaining asylum seekers at the border based on the ground that they may resist subsequent removal.²⁷

Use of the phrase “detention at the border” to characterize the confinement of asylum seekers is an example of opaque language used by many countries in their laws and policies concerning immigration-related detention.²⁸ While the Aliens Act specifically

²² Fedasil, “Voluntary returns on the rise,” 3 February 2017, <http://fedasil.be/en/news/retour-volontaire/voluntary-returns-rise>.

²³ Article 50 Aliens Act.

²⁴ Vluchtelingenwerk Vlaanderen, “Country Report: Belgium 2016 Update,” Aida Asylum Information Database, February 2017, <http://www.asylumineurope.org/reports/country/belgium>.

²⁵ Article 51/5 Aliens Act.

²⁶ European Court of Human Rights, *Thimothawes v. Belgium*, (application no. 39061/11), 4 April 2017, [hudoc.echr.coe.int/eng#{"itemid":\["001-172464"\]}asylum](http://hudoc.echr.coe.int/eng#{)

²⁷ Cited in ²⁷ Myria, 2016 - La migration et chiffres et en droits, May 2016.

²⁸ Mariette Grange, “Smoke Screens: Is There a Correlation between Migration Euphemisms and the Language of Detention?” Global Detention Project Working Paper, September 2013, <https://www.globaldetentionproject.org/smoke-screens-is-there-a-correlation-between-migration-euphemisms-and-the-language-of-detention>.

mentions “detention at the border” (“maintien aux frontières”) it is arguably more accurate to describe this as detention “after entry” because most Belgian detention centres are not located at the border. The wording of the Aliens Act (Article 75/4 § 2), which stipulates that royal authority can determine specific places (“lieux) to hold foreigners, provides that these places can be located inside the kingdom and that foreigners held at those premises will not be considered as having been allowed to enter the kingdom.²⁹ In a 2015 report to the UN Human Rights Council, the government described the Caricole centre as “a closed centre which is located at the border.” The centre is located near the airport, on the outskirts of the capital city of Brussels, centrally located on Belgian territory.³⁰

A “vulnerability unit” was created at the Immigration Department to screen asylum applicants upon registration. However, there is no evidence of its impact on the procedure and assessment of the asylum application. In August 2015, Belgian authorities decided to exempt two categories from collective detention (see below): asylum applicants with a high chance of receiving a protection status (Syrians, for instance), who are immediately assigned to Local Reception Initiatives (LRI); and those with particular vulnerabilities, who are assigned to specialised NGO reception sites.³¹

In 2015, the Commissioner-General for Refugees and Stateless Persons reported that 1,492 asylum seekers were held at Belgian detention centres on a variety of grounds.³² This is a slight decrease compared to 2013 and 2014, when 1,884 and 1,868 applicants were placed in detention.³³ Although reception conditions for asylum seekers has improved since 2012, the systematic detention of asylum seekers arriving at the border and the lack of vulnerability identification and judicial review by an independent mechanism has continued to be a source of concern for the international community.³⁴

Length of detention. The initial length of detention for migrants awaiting removal is two months (Aliens Act – Art.25). Detainees can be held for additional time if they are subject to an enforceable deportation order or a refusal of stay.³⁵ The maximum period of detention is five months (Art.25). However, in exceptional cases relating to the

²⁹ Aliens Act, Article 74/5 “§ 1. Peut être maintenu dans un lieu déterminé, situé aux frontières, en attendant l'autorisation d'entrer dans le royaume ou son refoulement du territoire : 1° l'étranger qui, en application des dispositions de la présente loi, peut être refoulé par les autorités chargées du contrôle aux frontières;

[...] § 2. Le Roi peut déterminer d'autres lieux situés à l'intérieur du royaume, qui sont assimilés au lieu visé au § 1er.

³⁰ Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*- Belgium,” United Nations, A/HRC/WG.6/24/BEL/1, 9 November 2015.

³¹ AIDA, National Country Report – Belgium, December 2015, p.62, <http://www.asylumineurope.org/reports/country/belgium>.

³² CGRS, *Monthly Asylum Statistics*, October 2015.

³³ AIDA, National Country Report – Belgium, December 2015, p.62, <http://www.asylumineurope.org/reports/country/belgium>.

³⁴ Compilation of UN information, UNHCR submission for the universal periodic review of Belgium, A/HRC/WG.6/24/BEL/2, 23 November 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/267/00/PDF/G1526700.pdf?OpenElement>.

³⁵ Article 7, Aliens Act.

maintenance of public order or national security, detention can be extended to eight months.³⁶

In practice, most people are not kept in detention for the maximum allowable period.³⁷ However, NGOs have reported that some people face repeated instances of detention, or “re-detention,” which is allowed under the Aliens Act (Art.27). A new detention order can be issued each time a detainee refuses or resists removal, leading to total detention times that exceed maximum limits.³⁸ In 2014, the length of detention was approximately 44 days. Average detention periods per facility were: 12 days at the Caricole Transit Centre; 29 days at the 127bis Repatriation Centre; 30 days at the Bruges “centre for illegals”; 40 days at the Merksplas “centre for illegals”; and 40 days at the Vottem “centre for illegals.”³⁹

NGOs have reported recent cases of detention beyond legal limits. For instance, a Pakistani who lodged an asylum request at the border was detained for 270 days before being expelled; a Togolese was detained for 429 days before being released on health grounds.⁴⁰

Procedural safeguards. The Aliens Act provides procedural guarantees for foreigners detained on immigration-related grounds. Many safeguards are also provided in the Royal Decree of 2002, as amended in 2014.⁴¹ When detained, foreigners must be informed in a language they understand the reason for their detention, possible judicial remedies, and the rules of the detention facility.⁴² The Aliens Act also provides for free legal assistance.⁴³ In certain facilities (Bruges and Vottem), lawyers organize free legal consultations. Non-governmental organizations that visit facilities also provide free legal assistance (see below).

The 2007 Reception Act guarantees asylum seekers efficient access to legal aid during the first and second instance procedures, as envisaged by the Judicial Code.⁴⁴ Asylum

³⁶ Aliens Act, Art. 74/5, §3.

³⁷ Sylvie Sarolea and Pierre D’Huart in collaboration with Béatrice Chapaux, “Completed Questionnaire for the project Contention . National report – Belgium, Odysseus Network, 2014. <http://contention.eu/docs/country-reports/BelgiumFinal.pdf>.

³⁸ Sylvie Sarolea and Pierre D’Huart in collaboration with Béatrice Chapaux, “Completed Questionnaire for the project Contention . National report – Belgium, Odysseus Network, 2014. <http://contention.eu/docs/country-reports/BelgiumFinal.pdf>.

³⁹ Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux, ”December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-etrangers-un-mal-non-necessaire-communique-de-presse-23-janvier-2017>.

⁴⁰ Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux, ”December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-etrangers-un-mal-non-necessaire-communique-de-presse-23-janvier-2017>.

⁴¹ Royal Decree of 2 August 2002 determining the regime and regulations to be applied in the places on the Belgian territory managed by the Office des étrangers where an alien is detained, placed at the disposal of the government or withheld, in application of Article 74/8 §1 of the Aliens Act, [http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?sql=\(text%20contains%20\(%27%27\)\)&language=fr&rech=1&tri=dd%20AS%20RANK&value=&table_name=loi&F=&cn=2009060803&caller=image_a1&fromtab=loi&la=F](http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?sql=(text%20contains%20(%27%27))&language=fr&rech=1&tri=dd%20AS%20RANK&value=&table_name=loi&F=&cn=2009060803&caller=image_a1&fromtab=loi&la=F).

⁴² Article 17 of the Royal Decree on the Immigration Detention Facilities.

⁴³ Articles 25 and 90 Aliens Act.

⁴⁴ Article 508/1-508/25 Judicial Code.

seekers can request the assistance of an interpreter when introducing their asylum application with the Immigration Department.⁴⁵

Observers report that detainees are often not correctly informed about their rights and that only a minority of detainees have access to a lawyer. In some cases, lawyers are not informed of relevant administrative decisions pertaining to their clients' cases.⁴⁶

National legislation provides for judicial review of the legality of detention but this is not automatic and lawyers must lodge a request with the Council Chamber of the Criminal Court, which has to decide within five working days. The request does not have a suspensive effect so that detainees can be expelled during the procedure.⁴⁷ If the time-limit is not respected, the detainee has to be released from detention as stipulated in Article 72 of the Aliens Act. Moreover, a judicial appeal can be introduced before the Council for Alien Law Litigation against all decisions issued by the Immigration Department. These appeals have automatic suspensive effects and must be lodged within 30 days after the decision has been notified to the applicant.⁴⁸ Submission made during the UN Human Rights Council Universal Periodic Review of Belgium in 2015 reported that the judicial review of the administrative detention of foreign nationals was largely ineffective.⁴⁹ NGOs report very few cases when detention is challenged before the court. According to their findings, the complex linguistic, administrative and geographic context in Belgium often means that pro bono lawyers are unable to plead before the relevant jurisdiction.⁵⁰

In 2014, a new complaint procedure was included into the Royal Decree on Closed Centres of 2 August 2002. Detainees can file a complaint about detention conditions by mail directly to the director of the centre who must respond within ten working days. This complaint procedure is largely ineffective due to lack of clarity about how the modalities for the procedure and the high rate of complaints' inadmissibility.⁵¹

Unaccompanied Minors. According to the Aliens Act, unaccompanied minors may not be held in closed centres (art. 74/19). In principle, unaccompanied minors have not been placed in closed detention centres since 2004. With the entry into force of the Reception Act of 2007, unaccompanied minors arriving at the border are brought to specific

⁴⁵ Article 51/4 Aliens Act.

⁴⁶ Caritas international, CIRÉ, Ligue des droits de l'homme, MRAX, "Centres fermés pour étrangers – état des lieux," December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-etrangers-un-mal-non-necessaire-communique-de-presse-23-janvier-2017>.

⁴⁷ Caritas international, CIRÉ, Ligue des droits de l'homme, MRAX, "Centres fermés pour étrangers – état des lieux," December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-etrangers-un-mal-non-necessaire-communique-de-presse-23-janvier-2017>.

⁴⁸ Article 39/57(1) Aliens Act.

⁴⁹ Working group on the Universal Periodic Report, Summary prepared by the Office of the United Nations High Commissioner for Human Rights: Belgium, A/HRC/WG.6/24/BEL/3, 6 November 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/251/45/PDF/G1525145.pdf?OpenElement>.

⁵⁰ Caritas international, CIRÉ, Ligue des droits de l'homme, MRAX, "Centres fermés pour étrangers – état des lieux," December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-etrangers-un-mal-non-necessaire-communique-de-presse-23-janvier-2017>.

⁵¹ MYRIA, "La migration en chiffres et en droits", *Chapter 9, Removal, Deportation and Detention*, Published in September 2015. <http://www.myria.be/files/Migration-rapport-2015-C9.pdf>.

centres, called Observation and Orientation Centres (OOCs).⁵² They are held in these centres for a maximum of seven days, renewable once. These OOCs are legally considered to be at the border (see below), so that unaccompanied minors housed in them are *not* considered to have entered the territory. These are not closed but secured, and open to all unaccompanied minors regardless of their administrative status. However, NGOs emphasize that unaccompanied minors arriving at the border can still exceptionally be detained for up to nine days under the Reception Act for an age determination procedure (art. 41§2).⁵³ In 2016, the government reported that “Unaccompanied foreign minors who are pregnant or are new mothers are housed in a special reception centre equipped with crèche facilities so that they can continue their schooling and receive support adapted to their vulnerable situation.”⁵⁴

Family detention and “alternatives to detention.” In the early 2000s civil society reported an increase in the number of families detained in conditions deemed inappropriate. The European Court of Human Rights (ECHR) condemned Belgium in 2008, 2009, 2010 and 2011 for detaining minors in ill-suited closed centres.⁵⁵ The Aliens Act was subsequently amended in 2011. However, Article 74/9 stops short of prohibiting detention. It provides that families with minor children who irregularly enter or remain in the Kingdom are *in principle* not placed in detention centres unless these are suitable for the needs of families with minor children, and only for as short a time as possible. Several NGOs lodged a legal challenge to this provision in 2013 but the Belgian Constitutional Court concluded that the detention of families with children in dedicated facilities was compatible with the international and domestic law.⁵⁶

“Return houses” were created in 2009 as an “alternative to detention” for families with minor children who have been served with a detention order (“*décision de maintien*”). Return houses are individual houses or flats supported by case managers who inform families about legal procedures and assist them in preparing their return if their asylum claim is rejected.⁵⁷ All educational, medical, logistical, administrative and nutritional costs are borne by the Immigration Office based on a maximum weekly budget per

⁵² Royal Decree of 9 April 2007, Article 41, determining the regime and functioning rules of the Centres for Observation and Orientation of Unaccompanied Minors, available at: http://fedasil.be/sites/5042.fedimbo.belgium.be/files/05_arrete_royal_du_9_avril_2007_-_regime_et_regles_de_fonctionnement_applicables_aux_centres_dobservation_et_dorientation_pour_mena.pdf.

⁵³ Plate-forme mineurs en exil, “Détection », <http://www.mineursenexil.be/fr/dossiers-thematiques/mena/detention-1/>.

⁵⁴ Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*- Belgium,” United Nations, A/HRC/WG.6/24/BEL/1, 9 November 2015.

⁵⁵ ECHR, *Mubilanzila Mayeka et Kaniki Mitunga c. Belgique*, 2006; *Muskhadzhiyeva et autres c. Belgique*, 2010; *Kanagaratnam and Others v. Belgium*, 15297/09, 2011.

⁵⁶ Cour constitutionnelle, Arrêt n° 166/2013, 19 December 2013, <http://www.const-court.be/public/f/2013/2013-166f.pdf>.

⁵⁷ Sylvie Sarolea and Pierre D’Huart in collaboration with Béatrice Chapaux, “Completed Questionnaire for the project Contention . National report – Belgium, Odysseus Network, 2014. <http://contention.eu/docs/country-reports/BelgiumFinal.pdf> <http://contention.eu/docs/country-reports/BelgiumFinal.pdf>.

family.⁵⁸ From a Belgian legal point of view, families accommodated at these houses are considered “detained” while staying at the houses. In practice, the families enjoy a degree of freedom of movement. Since these return houses are open, the families can leave the house under specific rules.⁵⁹ For instance, for families with two parents, both parents cannot leave at the same time.⁶⁰ However, some observers have expressed concern over cases where parents or adult children have been separated from their families at these houses.⁶¹ Jesuit Refugee Service- Belgium is the only NGO that regularly visits them.⁶²

From October 2008 to January 2014, 633 families with a total of 1224 minors were accommodated in return houses for an average length of 24.1 days.⁶³ Among these families, 18 were released after having reached the maximum detention length of four months. In 2014, 217 families were placed in return houses, with a total of 459 minor children.⁶⁴ In 2015, 161 families were hosted in the return houses (580 persons including 328 children), according to the Belgian Federal Migration Centre (MYRIA), an independent public body.

Since 2015, return houses have also been used for destitute irregular families who apply for social welfare assistance but who have not been served with a detention order. They are accommodated under reception legislation and not deemed to be in “alternatives to detention.”⁶⁵

Despite the use of these houses, families continue to be detained. In 2014, researchers⁶⁶ found that although the Court of Cassation stated in 2012 that less coercive measures than detention should be favoured⁶⁷ other Belgian jurisdictions have

⁵⁸ EUROPEAN MIGRATION NETWORK, *The use of detention and alternatives to detention in the context of immigration policies in Belgium*, June 2014, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/02a.belgium_detention_study_en_version_final_august2014.pdf.

⁵⁹ Sylvie Sarolea and Pierre D’Huart in collaboration with Béatrice Chapaux, “Completed Questionnaire for the project Contention . National report – Belgium, Odysseus Network, 2014. <http://contention.eu/docs/country-reports/BelgiumFinal.pdf> <http://contention.eu/docs/country-reports/BelgiumFinal.pdf>.

⁶⁰ Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux,” December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-étrangers-un-mal-non-nécessaire-communiqué-de-presse-23-janvier-2017>.

⁶¹ Working group on the Universal Periodic Report, Summary prepared by the Office of the United Nations High Commissioner for Human Rights: Belgium, A/HRC/WG.6/24/BEL/3, 6 November 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/251/45/PDF/G1525145.pdf?OpenElement>.

⁶² Jesuit Refugee Service Belgium, “Ou sont-elles implantées ? “ <http://www.jrsbelgium.org/Ou-sont-elles-implantées?lang=fr>.

⁶³ JESUIT REFUGEE SERVICE, Belgium Detention Information, Website, <http://www.jrsbelgium.org/De-quoi-s-agit-il?lang=fr>.

⁶⁴ MYRIA, “La migration en chiffres et en droits,” *Chapter 9, Removal, Deportation and Detention*, Published in September 2015. <http://www.myria.be/files/Migration-rapport-2015-C9.pdf>.

⁶⁵ Deborah Weinberg, MYRIA, email message to Mariette Grange of the Global Detention Project, 19 December 2016.

⁶⁶ Sylvie Sarolea and Pierre D’Huart in collaboration with Béatrice Chapaux, “Completed Questionnaire for the project Contention . National report – Belgium, Odysseus Network, 2014. <http://contention.eu/docs/country-reports/BelgiumFinal.pdf>.

⁶⁷ Court of Cassation, Judgment No P.12.1028.F, 27 June 2012.

continued to reject the necessity to consider alternatives to detention.”⁶⁸ Consequently, the choice between a detention placement and the use of alternatives to detention is left to the Immigration Department’s discretion. In 2014, two UN human rights treaty monitoring bodies recommended the use of the non-custodial measures for asylum seekers and that their detention at the border be used as a measure of last resort.⁶⁹

In 2015, 25 families with 34 minors were briefly detained at the Caricole Centre prior to removal. However, there is scant official data about this practice and an NGO platform conducting research on detention of families has asked the Immigration Office to publish full details on short duration detention of families with minor children both “at the border” and prior to airplane removals.⁷⁰

In November 2016 the Secretary of State for Asylum and Migration announced that families would again be detained in closed centres starting in 2017 and that new “closed housing” would be built next to the 127Bis Repatriation Centre. The State Secretary alleged that nearly all families abscond from the “semi-open” houses prior to removal.⁷¹ According to MYRIA, however, of the 149 families who left the “maisons de retour” in 2015, 21 families were granted refugee status or subsidiary protection; three families voluntarily returned; nine families were forcibly removed, including four with escort and two on “special flights”; 27 families were turned down and refused access; two families were transferred as part of the Dublin procedures; 29 families were released; and 58 families disappeared.⁷²

The law provides several non-detention options in addition to the return houses. The Immigration Department may order house arrest for families (Article 7 of the Aliens Act); or the obligation to lodge a financial guarantee or provide a copy of an identity document (Article 110, Royal Decree 1981). However the only alternative that appears to be regularly used is placement of families in return houses (Arrêté royal fixant le régime et les règles de fonctionnement applicables aux lieux d'hébergement au sens de l'article 74/8, § 1er, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, 14 May 2009).

Detention monitoring. The law does not provide for an independent monitoring system for detention centres in Belgium. The country is one of the few EU member states not to

⁶⁸ Court of Cassation (2nd ch.), Judgment No P.08.1787.F/1, 14 January 2009.

⁶⁹ Committee on the Elimination of Racial Discrimination, “Concluding observations on the sixteenth to nineteenth periodic reports of Belgium,” CERD/C/BEL/CO/16-19, 14 March 2014, <http://uhri.ohchr.org/document/index/3947c82d-0d20-4975-93ea-d0a8eacd948b?from=ru> ; Committee against Torture, Concluding observations of the third periodic report of Belgium, CAT/C/BEL/CO/3, 2 January 2014, <http://uhri.ohchr.org/document/index/f95e299b-29d9-4b76-8abd-b7d0c97ae6ad?from=ru>.

⁷⁰ Laetitia Van der Vennet, “Détection des enfants en famille en Belgique : analyse de la théorie et de la pratique, “Plate-forme Mineurs en exil, Décembre 2015, <http://www.mineursenexil.be/fr/dossiers-thematiques/mineurs-en-famille/detention/> .

⁷¹ La Ligue des droits de l’homme, “La politique dasile de Theo Francken . du cynisme à l’inhumanité, “ 30 November 2016 ; RTBF, “Theo Francken : « C’est nécessaire de pouvoir enfermer les familles quelques jours avant leur rapatriement», “ 30 November 2016, https://www.rtb.be/info/belgique/detail_note-de-theo-francken-les-mineurs-bientot-de-retour-en-centres-fermes?id=9467859.

⁷² MYRIA, Alternative à la détention des étrangers, 30 November 2016, <http://www.myria.be/fr/droits-fondamentaux/evolutions/alternative-a-la-detention-des-etrangers>.

have ratified the Optional Protocol to the International Convention against Torture (OpCat), which stipulates the creation of a National Preventive Mechanism (NPM) to carry out visits to all places of deprivation of liberty.

However, the Royal Decree on Closed Centres provides the right to access for various entities, including UNHCR, the Children's Rights Commissioner, and the European Committee for the Prevention of Torture (Art.44). The immigration minister can also grant visiting rights to other organisations (Art.45).

Belgian NGOs have been monitoring immigration detention centres for many years. Members of the Transit Platform, who visit detainees in the five detention centres, include Jesuit Refugee Service, Caritas International, CIRÉ (Coordination et Initiatives pour Réfugiés et Etrangers), the Ligue des droits de l'homme, the Vluchtelingenwerk Vlaanderen, the MRAX (Mouvement contre le Racisme, l'Antisémitisme et la Xénophobie), and the Centre fédéral Migration (MYRIA).⁷³ On average they visit 10 percent of immigration detainees per year (around 600 persons).⁷⁴

The European Committee for the Prevention of Torture has been an important source of information on immigration detention centres across Europe. However, as of early 2017 the last time the CPT reported on immigration detention facilities in Belgium was in 2009, even though it had made numerous country visits since that time.⁷⁵

Criminalisation and re-entry ban. There are a number of immigration-related violations that can be penalized with fines or prison sentences. These include unauthorized entry and/or stay, failure to respect non-custodial measures, and failure to depart despite being ordered to do so.⁷⁶ Violation of a re-entry ban can be punishable by up to one-year imprisonment or a fine of up to 1,000 euros. Expelled foreigners who re-enter the country less than 10 years after their removal from Belgium can be sentenced for up to one year in prison.⁷⁷

Readmission and related bilateral agreements. Belgium is bound by 17 EU readmission agreements.⁷⁸ In addition, since the late 1990s, Belgium and the other Benelux countries have signed separate readmission agreements, some of which jointly with current EU member states as well as with Switzerland (2003) and Kazakhstan (2015). Benelux is currently negotiating readmission agreements with Mongolia, the Philippines and Vietnam.

⁷³ Jesuit Refugee Service Belgium, Operational Partners, <http://www.jrsbelgium.org/Operational-partners?lang=fr>

⁷⁴ Caritas international, CIRÉ, Ligue des droits de l'homme, MRAX, "Centres fermés pour étrangers – état des lieux," December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-étrangers-un-mal-non-nécessaire-communiqué-de-presse-23-janvier-2017>.

⁷⁵ European Committee for the Prevention of Torture, Belgium, <http://www.cpt.coe.int/en/states/bel.htm> (accessed on 18 January 2017); Email message from Claire Askin, CPT, to Mariette Grange of the Global Detention Project, 18 January 2017.

⁷⁶ Article 75, Aliens Act.

⁷⁷ Article 76, Aliens Act.

⁷⁸ With Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cape Verde, Georgia, Hong Kong, Macao, Macedonia, Moldavia, Montenegro, Pakistan, Russia, Serbia, Sri Lanka Ukraine and Turkey.

Belgium also participates in EU “mobility partnerships,” for instance with Morocco. As part of its Global Approach to Migration in 2005, the European Commission launched “mobility partnerships” as a flexible migration management tool involving non-binding joint declarations concluded with non-EU countries in the EU “neighbourhood.”⁷⁹ A 2014 evaluation warned that these partnerships “should not be exploited to apply pressure on partner countries to realize readmission agreements.”⁸⁰

Belgium has also concluded bilateral MOUs, which include “removals” and “voluntary returns,” with Nigeria (March 2015) and Togo (September 2015). According to the State Secretary for Asylum Policy and Migration, Belgium plans to conclude additional bilateral agreements with Tunisia, Algeria and Morocco. Belgium has also launched “information/dissuasion” activities and campaigns on the dangers of irregular migration in Georgia (2015/2016), Albania, Kosovo and Serbia (2015/2016) and announced plans for a “prevention campaign in Cameroon (2016).”⁸¹

Readmission agreements include the removals of unauthorized foreigners to their country of origin, but also to countries through which they have transited en route to Belgium. Belgian authorities report that 1,022 persons were effectively returned as part of readmission agreements in 2013. In 2015, a total of 4,245 persons were removed through forced returns (a 21 percent increase over 2014), including 828 transfers to first EU country of arrival under the “Dublin” regulation,⁸² and another 4,274 left Belgium through “assisted voluntary returns.”⁸³ The top ten nationalities of persons removed were Albanians (13 percent); Romanians (10 percent), and Moroccans (10 percent); Afghans (4 percent); Kosovars (3 percent), Pakistanis (3 percent), Serbians (3 percent), Ukrainians (3 percent) and Brazilians (3 percent), and Algerians (2 percent).⁸⁴

Return flights. Participating in “secured flights” to “return” unauthorised persons is a key Belgian government priority. According to official information, in 2015 Belgium “organized or participated in 25 return flights, for a total of 154 returnees,” mostly to

⁷⁹ “They are based on a three-fold approach to migration: 1) the management of legal migration, 2) the link between migration and development and 3) the fight against irregular migration (including cooperation on readmission).” Jean-Pierre Cassarino, “A reappraisal of the EU’s Expanding Readmission System,” in *The International Spectator*, Italian Journal of International Affairs, Volume 49, 2014 – Issue 4.

⁸⁰ Migration Strategy Group on Global Competitiveness, “EU Mobility Partnerships : the « Most Innovative and Sophisticated Tool » of European Migration Policy? “ The German Marshall Fund of the United States and Robert Bosch Stiftung, June 2014. <http://www.gmfus.org/publications/eu-mobility-partnerships-most-innovative-and-sophisticated-tool%E2%80%9D-european-migration>.

⁸¹ European Migration Network, 2015 Annual Report on Asylum and Migration Policy in Belgium, Belgian National Contact Point, <https://emnbelgium.be/publication/annual-report-asylum-and-migration-policy-belgium-and-eu-2015-emn>.

⁸² Direction générale Office des étrangers, “Rapport Statistiques 2015,” 29 August 2016, <https://dofi.ibz.be/sites/dvzoe/FR/Documents/Rapport%20statistiques%202015%20FR.pdf>.

⁸³ MYRIA, “La migration en chiffres et en droits,” May 2016, MYRIA, “La migration en chiffres et en droits”, Chapter 9, *Removal, Deportation and Detention*, Published in September 2015. <http://www.myria.be/files/Migration-rapport-2015-C9.pdf>.

⁸⁴ MYRIA, “La migration en chiffres et en droits,” May 2016, MYRIA, “La migration en chiffres et en droits”, Chapter 9, *Removal, Deportation and Detention*, Published in September 2015. <http://www.myria.be/files/Migration-rapport-2015-C9.pdf>.

Albania, DRC and Serbia.⁸⁵ Belgium organised 13 flights to Albania, Kosovo, Serbia, DRC, Macedonia, Bulgaria and Georgia. It participated in 12 joint flights with Frontex (the EU agency for border controls) and other member states including to Nigeria. According to the State Secretary for Asylum and Migration, a record 33 “special flights” were organised during the first nine months of 2016, with financial assistance provided by European funds made available through Frontex.⁸⁶

Detention costs. According to a joint UNHCR-NGO report, the annual cost of running Belgium’s closed centres was more than 25 million euros in 2011.⁸⁷ Spending on forced returns totalled to 7.4 million euros in 2014 and less than 6 million in 2015.⁸⁸ According to a non-governmental compilation of official statistics, spending during 2016 included approximately 8 million euros for removals (rapatriements et éloignements); 11 million for staff from the Office des étrangers in charge of removals; 43 million for closed centres staff; and 9 million for maintenance and investment costs in closed centres. This amounted to a total of 72 million in 2016.⁸⁹

DETENTION INFRASTRUCTURE

As of early 2017, Belgium operated five dedicated immigration detention centres.⁹⁰ The capacity of these facilities totalled 458 in 2015. The Minister of Asylum and Migration Policy intended to increase this capacity to 605 in 2016.⁹¹ However, according to observers, the capacity was 583 as of December 2016.⁹²

Belgium’s first dedicated detention centre was opened in 1988 following amendments to the 1980 Aliens Act that removed the right of asylum seekers to automatically access

⁸⁵ European Migration Network, 2015 Annual Report on Asylum and Migration Policy in Belgium, Belgian National Contact Point, <https://emnbelgium.be/publication/annual-report-asylum-and-migration-policy-belgium-and-eu-2015-emn>.

⁸⁶ Note de Politique générale, Asile et Migration : Simplification administrative, Chambre des représentants de Belgique, 27 October 2016.

<http://www.dekamer.be/doc/FLWB/pdf/54/2111/54K2111017.pdf>.

⁸⁷ UNHCR, Amnesty-International, BCHV-CBAR, Ciré, JRS, Vluchtelingenwerk, Pour des alternatives à la détention des demandeurs d’asile en Belgique, November 2011.

⁸⁸ Robert Chigoho Mitima, Thomas Mottet, Pegah Najm-Sadri, “Maggie de Block, Theo Francken, statu quo pour les centres fermés ?” 11 May 2015, Alter Echos, <http://www.alterechos.be/maggie-de-block-theo-francken-statu-quo-pour-les-centres-fermes/>.

⁸⁹ François Corbiau, “Vol spécial : la machine à expulser,” MicMag, 19 December 2016, <https://www.micmag.be/vol-special-la-machine-a-expulser/vol-special-la-machine-a-expulser-2>.

⁹⁰ EUROPEAN MIGRATION NETWORK, The use of detention and alternatives to detention in the context of immigration policies in Belgium, June 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/02a.belgium_detention_study_en_version_final_august2014.pdf.

⁹¹ BELGIUM REPRESENTATIVE CHAMBER, General Policy Note on Asylum and Migration of the State Secretary for Asylum Policy and Migration, November 3rd, 2015, http://www.emnbelgium.be/sites/default/files/attachments/note_politique_generale_asile_et_migration_2015.pdf.

⁹² Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux,” December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-étrangers-un-mal-non-nécessaire-communiqué-de-presse-23-janvier-2017>.

national territory. This first “centre fermé” (or close centre), opened without parliamentary debate, was housed in former military barracks known as “zone 127” and located near the runway of Brussels’ airport.⁹³ Centre 127 was closed in 2012 due to the derelict state of its prefabricated modules.⁹⁴

The 127Bis Repatriation Centre was opened in 1994 near Brussels airport. It can accommodate 120 detainees. Despite its name, most people detained at 127Bis are asylum seekers awaiting transfer to another EU member state under the Dublin Regulation.⁹⁵ According to the Belgian Federal Migration Centre (MYRIA), an independent public body, there were plans to build new family units at 127Bis in 2015 but construction was delayed until 2017.

The Caricole Transit Centre was built under public pressure and opened in 2012 to replace the dilapidated Centre 127 and a neighbouring INAD (“inadmissibles”) centre to provide improved detention conditions. It mainly detains people denied entry at Brussels National airport and derives its name from the snail shape of the building. Detainees have no outside view and the centre has direct access from the airport to avoid transfers by external roads. The Caricole building belongs to the Brussels International Airport Company, which rents it to the Belgian authorities for 1.2 million euros a year. Detainees can move about designated parts of the facility during daytime. The facility includes three disciplinary isolation cells.⁹⁶

The Centre for Illegals in Bruges was opened in 1995 in a former women’s prison and includes 112 beds. It is the country’s sole immigration detention facility used to hold women. In this former prison for women detainees are forced to move around in groups and have to share dormitories of 16 beds (for women) and 20 beds (for men).⁹⁷

The Centre for Illegals in Merksplas was initially built in 1875 to house vagrants. It began detaining migrants in 1994. According to NGOs, conditions at Merksplas are particularly severe. Although it now only hosts men, the facility hosted families with children from 2006 to 2008. Dormitories were replaced in 2015 with 16 cells accommodating five people and equipped with television sets. The centre currently has a 142-bed capacity and includes isolation cells and individual rooms for people who

⁹³ Ligue des droits de l’homme, “Historique juridique de la détention administrative des étrangers en Belgique,” 2010,

<http://www.liguedh.be/component/search/?searchword=historique+juridique&ordering=&searchphrase=all>.

⁹⁴ Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux,” December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-étrangers-un-mal-non-nécessaire-communiqué-de-presse-23-janvier-2017>.

⁹⁵ MYRIA, “La migration en chiffres et en droits,” May 2016, MYRIA, “La migration en chiffres et en droits”, *Chapter 9, Removal, Deportation and Detention*, Published in September 2015.

<http://www.myria.be/files/Migration-rapport-2015-C9.pdf>.

⁹⁶ Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux,” December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-étrangers-un-mal-non-nécessaire-communiqué-de-presse-23-janvier-2017>.

⁹⁷ Getting the Voice Out, “What are the detention centres in Belgium”, 2015.

<http://www.gettingthevoiceout.org/what-are-the-detention-centres-in-belgium/>

cannot be accommodated in shared rooms (*régime adapté*) (see below under Conditions of detention).⁹⁸

The Centre for Illegals in Vottem, near Liège, was opened in 1999. Detainees whom the Office des étrangers also considers to be unable to adapt to the collective nature of immigration detention are placed in separate rooms where they remain locked for 21 hours out of 24 in their cells according to NGOs.⁹⁹

INAD centres. In addition to the five main dedicated immigration detention centres, Belgium also operates smaller “INAD” facilities at regional and local airports to briefly detain people denied entry.¹⁰⁰ The first INAD was created in March 1995 at Brussels National airport.¹⁰¹ These centres, operated by police and airport staff, provide very basic accommodations and are generally not used to confine people for longer than 48 hours. According to recent reports, these facilities are now rarely used.¹⁰²

Conditions in detention facilities. The Royal Decree of 2 August 2002 on Closed Centres and internal regulations specific to each detention centre stipulate the rights and obligations of third-country nationals placed in detention.¹⁰³ In addition, the Reception Act provides for the minimal material reception rights for the asylum seekers held in detention. These conditions are divided into four categories of aid: bed, bath, bread; guidance and assistance; daily life; and neighbourhood associations.¹⁰⁴

While immigration detention is characterized as non-punitive in nature, observers have noted that internal operations often exhibit prison-like qualities, including detention in isolation and body searches. Many Belgian NGOs have raised concerns about detention conditions.¹⁰⁵ Public pressure has led to reforms, including the opening of the Caricole Centre to replace Centre 127 and the creation of “return houses” for families with

⁹⁸ Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux,” December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-etrangers-un-mal-non-necessaire-communique-de-presse-23-janvier-2017>.

⁹⁹ Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux,” December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-etrangers-un-mal-non-necessaire-communique-de-presse-23-janvier-2017>.

¹⁰⁰ Getting the Voice Out, “What are the detention centres in Belgium”, 2015.

<http://www.gettingthevoiceout.org/what-are-the-detention-centres-in-belgium/>

¹⁰¹ Section de Bruxelles, Ligue des droits de l’homme, “Centres fermés, l’intolérable,” Deux Droits d’Info, D.D.I, June 2002.

¹⁰² Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux,” December 2016, <https://www.cire.be/presse/communiqués-de-presse/les-centres-fermes-pour-etrangers-un-mal-non-necessaire-communique-de-presse-23-janvier-2017>; MYRIA, “La migration en chiffres et en droits,” May 2016, MYRIA, “La migration en chiffres et en droits”, *Chapter 9, Removal, Deportation and Detention*, Published in September 2015. <http://www.myria.be/files/Migration-rapport-2015-C9.pdf>.

¹⁰³ Royal Decree on Closed Centres, as amended by the Royal Decree of 7 October 2014, http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&pub_date=2014-10-21&numac=2014000807&caller=summary.

¹⁰⁴ FEDASIL, *About the Reception Centres*, available at: <http://bit.ly/1luvC6u>.

¹⁰⁵ United States Department of State, *2014 Country Reports on Human Rights Practices - Belgium*, 25 June 2015, available at: <http://www.refworld.org/docid/559bd5803a.html>.

minors. Living conditions at detention centres also were “considerably improved” by 2015.¹⁰⁶

The Royal Decree on Closed Centres characterises daily life in the closed centres as being collective during daytime. Detention facilities have separate rooms or wings for families and single women, including “at the border.” Women and men have separate sleeping and sanitary facilities and are assisted by staff members from the same sex only.¹⁰⁷ Access to health care is legally determined to “what the state of health demands” and every centre has its own medical service with independent doctors.¹⁰⁸ Detainees have had difficulties obtaining adequate medical care. In the case of *Yoh-Ekale Mwanje v Belgium*, the ECtHR found that Belgium violated Article 3 ECHR by not providing necessary medical care.¹⁰⁹

An amendment to the Royal Decree in 2014 created an “adapted regime” (*regime adapté*) for persons who cannot join the collective regime and are placed in isolation or detained in individual rooms and are deemed to be likely to disturb the security and general atmosphere among the group of detainees.¹¹⁰

There were 114 reported hunger strikes during 2014, mostly at the Vottem and Merksplas closed centres. These facilities often confine people who have been living in Belgium for many years and held for longer periods than those at Caricole or 127bis.¹¹¹

¹⁰⁶ HUMAN RIGHTS COUNCIL, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, 6th November 2015.

¹⁰⁷ Article 83 Royal Decree on Closed Centres.

¹⁰⁸ Article 53 Royal Decree on Closed Centres.

¹⁰⁹ ECtHR, *Yoh-Ekale Mwanje v Belgium*, Application No 10486/10, Judgment of 20 December 2011. Not the threatened deportation at an advanced stage of her HIV infection to Cameroon, her country of origin, without certainty that the appropriate medical treatment would be available was considered in itself to constitute a violation of Article 3 ECHR, but the delay in determining the appropriate treatment for the detainee at that advanced stage of her HIV infection.

¹¹⁰ Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux,” December 2016, <https://www.cire.be/presse/communiques-de-presse/les-centres-fermes-pour-etrangers-un-mal-non-necessaire-communique-de-presse-23-janvier-2017>.

¹¹¹ Caritas international, CIRÉ, Ligue des droits de l’homme, MRAX, “Centres fermés pour étrangers – état des lieux,” December 2016, <https://www.cire.be/presse/communiques-de-presse/les-centres-fermes-pour-etrangers-un-mal-non-necessaire-communique-de-presse-23-janvier-2017>.

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