



 GLOBALDETENTIONPROJECT

# COUNTRY REPORT

## IMMIGRATION DETENTION IN

**BELGIUM:** COVID-19 PUTS THE BRAKES  
ON AN EXPANDING DETENTION SYSTEM

*MARCH 2020*

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DETENTION SYSTEM

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## THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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**Front cover image:** Inside Merksplas Detention Centre © Getting the Voice Out

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## GLOSSARY

<b>CALL</b>	Council for Alien Law Litigation
<b>CGRS</b>	Commissioner General for Refugees and Statelessness
<b>EMN</b>	European Migration Network
<b>Fedasil</b>	Federal Agency for the Reception of Asylum Seekers
<b>Myria</b>	Belgian Federal Migration Centre
<b>NANSEN</b>	Belgian Refugee Council
<b>OOC</b>	Observations and Orientation Centres



## KEY ISSUES

- Before the onset of the Covid-19 crisis, Belgium’s immigration detention capacity was set to nearly double by 2022, to 1,120 beds; the pandemic, however, spurred a temporary reduction to some 300 beds in March 2020.
- Among the detainees that were released in the wake of the outbreak of the pandemic were vulnerable individuals, including people with diabetes or bronchitis, as well as people slated for removal under the Dublin Agreements because of the inability to return them to European countries that no longer accept transfers.
- Public attitudes and official policies concerning migrants and asylum seekers in Belgium have become increasingly belligerent and restrictive, as reflected in the bitter public debate in the country concerning the 2018 Global Compact for Migration.
- Backpedalling on a previous commitment to not detain families with children, in 2017 the government opened new “family units” in detention centres, prompting the child rights ombudsmen to lament that the country “was walking against the tide of history.”
- In 2018, authorities opened a new form of detention facility called the “National Administrative Centre for Transmigration,” which observers worry will restrict detainees’ access to procedural safeguards.
- Reports indicate that people have a significantly better chance of successfully appealing detention decisions if they lodge an appeal in a French-speaking court rather than a Dutch-speaking one.
- The Aliens Act provides for “detention at the border” (*maintien aux frontières*) for certain arriving asylum seekers, which presumes that they have not entered the country and thus are not afforded important procedural rights, despite the fact that this form of detention takes place at facilities located in the country’s interior.
- The Covid-19 crisis spurred the Immigration Office to temporarily halt the registration of new asylum seekers.



## 1. INTRODUCTION

As countries around the world prepared to ratify the Global Compact on Safe, Orderly and Regular Migration in December 2018, Belgium was wracked by a bitter public debate over the agreement, threatening the stability of the government. Although most members of the governing coalition were in favour of adopting the compact, the extreme nationalist New Flemish Alliance Party campaigned virulently against it, arguing that it would lead to more migration.<sup>1</sup> When the prime minister announced that he would sign the agreement, the party pulled out of the governing coalition, prompting the government's collapse and the prime minister's resignation.<sup>2</sup>

The bitter public debate over the Global Compact is part of a broader hardening of immigration-related policies and attitudes in Belgium.<sup>3</sup> In 2018, for instance, Belgium issued a Royal Decree allowing for the detention of families with children and re-opened a facility for this purpose located at Brussels airport. Although the Belgian Council of State ordered the suspension of the decree because of the harm it would cause,<sup>4</sup> the decree nevertheless spurred criticism nationally and internationally, in part because the country had previously been lauded for its humane treatment of families at "return houses" located in the community.

In recent years, the country's detention estate has grown considerably. In 2018, Belgium opened a new form of detention facility, called a "National Administrative Centre for Transmigration."<sup>5</sup> Located inside the existing 127bis "Repatriation Centre," the "transmigration" centre is intended to be used to detain people labelled "migrants in transit," who are presumably en route through Belgium to other countries, most notably the [United](#)

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<sup>1</sup> The N-VA's Theo Francken had previously argued that the country's asylum policy should resemble Australia's zero tolerance for unauthorised migration (Belga 2018a).

<sup>2</sup> L. Cerulus, and S. Wheaton, "Belgium Sets up Minority Government after Migration Dispute Breaks Coalition," *Politico*, 9 December 2018, <https://politi.co/2FmQF18>

<sup>3</sup> Amnesty International, "Les droits humains aujourd'hui – 2018: La situation des droits humains en Belgique en 2018," 2018, <https://bit.ly/2UAK5Om>

<sup>4</sup> European Database of Asylum Law, "Belgium: Council of State Rules to Suspend Royal Decree Permitting the Detention of Children," 2019, <https://bit.ly/2YEH68s>

<sup>5</sup> The term "transmigration" was at one time used by sociologists and anthropologists to describe circular migration and the movement of international migrants who maintain strong links with their country of origin. It is also widely used to refer to international migrants transiting through countries within which they do not want to settle, en route to a final destination in another country. Some experts have said that the term is meaningless and that it only serves to generate fear and dehumanise asylum seekers. (See: N. Glick Schiller, K. Basch, and C. Szanton Blanc, "From Immigrant to Transmigrant: Theorizing Transnational Migration," *Anthropological Quarterly*, 68 (1), 1995, <https://bit.ly/2XoOh10>; A. Tarrus, "Des transmigrants en France: un cosmopolitisme migratoire original," *Multitudes*, 49 (2), 2012, <https://bit.ly/2ttMAI6>; and S. Benkhelifa, "Transmigrant, un mot qui ne veut rien dire. Une réalité mortelle," *Le Vif*, 21 October 2018, <https://bit.ly/2V75R7D>

Kingdom. Some observers have expressed concern that non-citizens held in the new facility may have restricted access to procedural safeguards.<sup>6</sup>

In early 2019, the Immigration Department (*Office des étrangers*) announced that it had hired approximately 600 new staff members as part of its plan to nearly double the country's immigration detention capacity to some 1,100 beds, which would be enabled by the opening of new detention facilities.

However, faced with the Covid-19 crisis, Belgium took a number of measures to mitigate the risk of infection within immigration detention centres. The capacity of the centres was temporarily reduced by half and many detainees were released.<sup>7</sup> (For more on Belgium's response to Covid-19 in immigration detention centres, see below, section 3. Detention Infrastructure).

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<sup>6</sup> Myria, "*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*," 2018, <https://bit.ly/2FPAo6t>

<sup>7</sup> Ruben Bruynooghe (Jesuit Refugee Service – Belgium), Email correspondence with Mario Guido (Global Detention Project), 20 March 2020; Commissioner for Human Rights, "Commissioner Calls for Release of Immigration Detainees During Covid-19 Crisis," 26 March 2020, <https://bit.ly/39tCcw0>





## 2. LAWS, POLICIES, PRACTICES

**2.1 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 December 2018.<sup>8</sup> 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.<sup>9</sup>

The Reception Act for Asylum Seekers and Certain Other Categories of Foreigners of 12 January 2007 (hereinafter, the Reception Act) details reception conditions for asylum seekers and other categories of non-citizens.<sup>10</sup> It was amended in March 2018 to partly transpose the EU Recast Reception Conditions Directive (2013/33/EU), which gives broad discretion to member states for detaining asylum seekers.<sup>11</sup> The independent Belgian Federal Centre on Migration (Myria) welcomed the new law's introduction of a definition of the risk of absconding but warned that it was too broad to avoid arbitrary detention. Myria warned that it could pave the way for systematic detention of persons claiming asylum, a practice that is contrary to international and regional norms whereby detention should occur as a last resort.<sup>12</sup>

The Royal Decree on Closed Centres of 2 August 2002 regulates the regime for all premises managed by the Immigration Department and used to detain non-citizens on Belgian territory.<sup>13</sup> A 22 July 2018 Royal Decree sought to amend certain aspects of the 2002 decree, particularly with respect to the detention of children. However, in April 2019, the 2018 decree was suspended by the Belgian Council of State.<sup>14</sup>

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<sup>8</sup> Government of Belgium, "Arrêté royal modifiant l'arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des Etrangers, où un étranger est détenu, mis à la disposition du gouvernement ou maintenu, en application des dispositions citées dans 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 (updated on 1 August 2018)," 2002, <https://bit.ly/1Fx8sZ0>

<sup>9</sup> Government of Belgium, "Arrêté royal sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (updated up to 24 December 2018)," 1981, <https://bit.ly/2DEeakl>

<sup>10</sup> Government of Belgium, "Loi sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers (updated up to 12 March 2018)," 2007, <https://bit.ly/1MA7uDO>

<sup>11</sup> Myria, "Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression," 2018, <https://bit.ly/2FPAo6t>

<sup>12</sup> Myria, "Note à l'attention de la Commission de l'Intérieur, des Affaires générales et de la Fonction publique – Projet de loi (DOC 54–2549/001 et 2548/001) du 22 juin 2017 modifiant la loi du 15/12/1980, Modifications en matière d'éloignement et de détention," 2017, <https://bit.ly/2N6p2vJ>

<sup>13</sup> Government of Belgium, "Arrêté royal fixant la procédure devant le Commissariat général aux Réfugiés et aux Apatrides ainsi que son fonctionnement (updated up to 11 July 2018)," 2003, <https://bit.ly/2kDGZXh>

<sup>14</sup> European Database of Asylum Law, "Belgium: Council of State Rules to Suspend Royal Decree Permitting the Detention of Children," 2019, <https://bit.ly/2YEH68s>

**2.2 Grounds for detention.** Under the Aliens Acts, foreign nationals can be detained for the purpose of removal as per the provisions of Article 7(12): “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.”

A removal order may be issued for foreign nationals who: are staying in the country irregularly (Articles /1 and /2); pose a threat to public order and security (Article 7/3); have been readmitted to Belgium or are about to be removed (Articles 7/9 and 7/10); were returned or expelled from Belgium less than ten years ago (Article 7/11); have been served an entry ban (Article 7/12); or impede the fulfilment of a removal order (Article 27/3). Under Article 74/5, foreigners can also be placed in detention by border control officers for unauthorised entry at the border pending authorisation (or expulsion) including if they have submitted an asylum claim.

**2.3 Criminalisation.** A number of immigration-related violations can be penalised with fines or prison sentences. These include unauthorised entry and/or stay, failure to respect non-custodial measures, and failure to depart despite being ordered to do so (Aliens Act Article 75). According to Article 74/11 of the Aliens Act, authorities can impose a maximum three to five-year re-entry ban. Violation of such an entry-ban may be punished by imprisonment for up to one year or a fine of up to 1,000 EUR, and expelled non-citizens who re-enter Belgium less than 10 years after their removal from the country can receive a prison sentence of up to one year (Article 76). According to official information, in practice Belgian authorities have not issued an entry ban of more than 20 years.<sup>15</sup>

**2.4 Asylum seekers.** Belgium’s adherence to asylum and refugee norms has come under increasing pressure in recent years as nationalist political parties have sought to limit the ability of people to seek asylum<sup>16</sup> and the country has pursued stringent “detention at the border” policies.

Under Article 74/6 of the Aliens Act, asylum seekers may be detained when there is a need to verify their identity/nationality; to prevent an individual from absconding while determining the elements on which their request is based; when an asylum request is deemed to be made in order to purposefully delay or obstruct a return; and for national security or public order-related reasons.

Following the 2017 amendments to the Aliens Act, Article 1 §2 provides 11 “objective criteria” defining the risk of absconding. These include illegal entry or stay; failure to apply for international protection within a set time frame; supplying false information during a procedure for international protection, return, or refoulement; failure to collaborate with relevant immigration authorities; refusal to collaborate (i.e. during transfer, refoulement, or return; in relation to entry bans to the territory; or alternatives to detention); being subject to an entry ban to Belgium or the territory of another EU country; submitting a new request for protection following a refusal; submitting multiple requests for protection in other EU states, which have been rejected; failure to indicate the submission of a request for protection in another EU country; applying for protection while pursuing other objectives; concealing the registration of fingerprints in Eurodac; and having been fined for lodging a manifestly abusive appeal to the Council for Alien Law Litigation.

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<sup>15</sup> European Migration Network (EMN), “The Effectiveness of Return in EU Member States 2017. Synthesis Report for the EMN Focussed Study,” 2018, <https://bit.ly/2V9nNP5>

<sup>16</sup> See, for instance, New Flemish Party website, “N-VA Requests Tightening of Reception Rights,” 9 January 2020, <https://english.n-va.be/news/n-va-requests-tightening-of-reception-rights>

According to the Aliens Act, the risk of absconding must be “real,” and thus be based on an individual examination in which the individual is found to meet one or various criteria. Independent observers have voiced concern that one criterion alone would be sufficient to justify detention.<sup>17</sup> NGOs are also particularly concerned by the absence of a definition of “non-cooperation” with the authorities.<sup>18</sup>

Many asylum seekers held in administrative detention have either lodged a claim after being detained or are rejected asylum seekers who have requested a second examination of their application. Asylum applications (including those made by individuals in detention) have to be lodged within eight days of the foreigner’s arrival (Aliens Act, Article 50).

According to NGOs, asylum seekers without travel documents at the border are automatically detained. National civil society organisations and UNHCR have expressed concern that provisions regarding “detention at the border” (Article 74/5) contain less guarantees than those for detention on Belgian territory (Article 74/6)—including, for example, the requirement for an individual assessment and the consideration of whether less coercive measures can be effectively applied.<sup>19</sup> According to Myria, the failure to consider less coercive measures for asylum seekers contravenes Article 8 of the EU Reception Conditions Directive.<sup>20</sup>

The use of the phrase “detention at the border” in the Aliens Act is misleading.<sup>21</sup> It is arguably more accurate to describe the policy 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 the specific places (*lieux*) for holding foreigners, provides that these sites can be located inside the kingdom but that foreigners held there will not be considered as having been permitted entry to the kingdom. In a 2015 report to the UN Human Rights Council, the government described Caricole Transit Centre as “a closed centre which is located at the border.” However, the centre is actually located near the airport, on the outskirts of Brussels, which is geographically situated in the middle of Belgian territory.<sup>22</sup>

On 17 March 2020, the Belgian Immigration Office (“*Office des Etrangers*”), announced that it would temporarily halt the registration of new asylum seekers. Registrations usually take place at the arrival centre of the “Petit Château” in Brussels, which has now closed its doors. In effect, this means that new asylum seekers will no longer be accepted in Belgium from 17 March 2020.<sup>23</sup>

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<sup>17</sup> Myria, “*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*,” 2018, <https://bit.ly/2FPAo6t>

<sup>18</sup> Vluchtelingenwerk Vlaanderen (Flemish Refugee Action), “Country Report: Belgium,” *Asylum Information Database (AIDA) and European Council on Refugees and Exiles (ECRE)*, 2018, <https://bit.ly/2GnKVpJ>

<sup>19</sup> Vluchtelingenwerk Vlaanderen (Flemish Refugee Action), “Country Report: Belgium,” *Asylum Information Database (AIDA) and European Council on Refugees and Exiles (ECRE)*, 2018, <https://bit.ly/2GnKVpJ>

<sup>20</sup> Myria, “*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*,” 2018, <https://bit.ly/2FPAo6t>

<sup>21</sup> M. Grange, “Smoke Screens: Is there a Correlation Between Migration Euphemisms and the Language of Detention,” *Global Detention Project Working Paper No. 5*, 2013, <https://bit.ly/2ScfPCL>

<sup>22</sup> UN Human Rights Council (HRC), “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21\*- Belgium, A/HRC/WG.6/24/BEL/1,” 2015.

<sup>23</sup> Fedasil, “*Le centre d’arrivée ferme ses portes*,” 17 March 2020, <https://bit.ly/2wnqcyl>

**2.5 Children.** Belgium’s policies and practices with respect to the immigration detention of children and families have experienced a roller-coaster series of developments in recent years. This has included the adoption of one of Europe’s more forward-looking “alternatives to detention” programmes for families, which was subsequently abandoned in favour of a return to family detention. However, in early 2019, a Belgian Council of State ruling suspended a royal decree allowing for the detention of children.<sup>24</sup>

According to the Aliens Act, unaccompanied minors (UAMs) cannot be placed in detention. However, NGOs emphasise that according to the Reception Act (Article 41 §2), unaccompanied minors arriving at the border may still exceptionally be detained for up to nine days for the purposes of an age determination procedure if their age is in doubt.<sup>25</sup>

Since the Reception Act entered into force on 12 January 2007, unaccompanied minors arriving at the border are first brought to specific centres, called Observations and Orientation Centres (OOCs). UAMs are housed in these centres for seven days, under the authority of the Federal Agency for the Reception of Asylum Seekers (Fedasil). Here, they are identified, registered, and assigned a guardian, and the seven-day period here can be renewed once.<sup>26</sup> The OOCs, based in Neder-over-Hembeek and Steenokkerzeel, are legally regarded as being situated at the border so that unaccompanied minors housed within are not considered to have entered the country (Article 41 of the 2007 Reception Act). The facilities are not closed but are secured, and can hold any unaccompanied minor regardless of their administrative status. Following their stay at an OOC, Fedasil moves the UAMs to either a federal reception centre, a Red-Cross centre, or a local reception centre (*initiative locale d’accueil*).

In 2008, Belgium established *maisons de retour* (“return houses”), an “alternative to detention” system aimed at helping prevent family detention. In 2009, the detention of families in the first instance was ended following repeated condemnation of this practice inside the country at the European Court of Human Rights (ECtHR).<sup>27</sup> However, the law authorising family detention did not change and in fact was later refined. In 2011, the Aliens Act incorporated a provision authorising detention for as short a period as possible on the condition that the premises are adapted to the needs of the children.<sup>28</sup>

In November 2016, the Secretary of State for Asylum and Migration announced that families would again be detained in closed centres, claiming that nearly all families abscond from the “semi-open” houses prior to removal.<sup>29</sup> He further added that new “closed housing” would be constructed at the [127bis Repatriation Centre](#), adjacent to Brussels International Airport. The

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<sup>24</sup> European Database of Asylum Law, “Belgium: Council of State Rules to Suspend Royal Decree Permitting the Detention of Children,” 2019, <https://bit.ly/2YEH68s>

<sup>25</sup> Plate-forme Mineurs en Exil, “*Détention*,” 2019, <https://bit.ly/2SRiLqI>

<sup>26</sup> Service Public Fédéral (SPF) Justice, “*Prise en charge d’un mineur étranger non accompagné*,” 2019, <https://bit.ly/2JehicB>

<sup>27</sup> European Court of Human Rights (ECtHR), “*Mubilanzila Mayeka and Kaniki Mitunga vs Belgium*, No 13178/03,” 2006, <https://bit.ly/37qC9QH>; European Court of Human Rights (ECtHR), “*Muskhadzhivaya and Others vs Belgium*, No 41442/07,” 2010, <https://bit.ly/2SNtp21>; European Court of Human Rights (ECtHR), “*Kanagaratnam and Others vs Belgium*, No 15297/09,” 2011, <https://bit.ly/2Oq0JNq>

<sup>28</sup> Myria, “*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*,” 2018, <https://bit.ly/2FPAo6t>

<sup>29</sup> La Ligue des Droits de l’Homme, “*La politique d’asile de Theo Francken, du cynisme à l’inhumanité*,” 2016, <http://www.liguedh.be/la-politique-dasile-de-francken-du-cynisme-a-linhumanite>; RTBF, “*Theo Francke: C’est nécessaire de pouvoir enfermer les familles quelques jours avant leur rapatriement*,” 30 November 2016, <https://bit.ly/2SM7haW>

announcement was followed in July 2018 by a royal decree permitting the detention of children.<sup>30</sup>

In response to the construction of the new detention units in 2018, the Council of Europe’s Commissioner for Human Rights reminded the Belgian government that children should never be detained because of their parents’ immigration status. She stressed that detention conflicts with the best interest of the child—the position that both the UN Committee on the Rights of the Child and the Committee on Migrant Workers take—and encouraged the government to continue investing in human rights compliant alternatives for which Belgium had become a positive reference.<sup>31</sup> (For more on the use of alternatives, see: 2.9 Non-custodial measures.)

Following the Royal Decree’s entry into force, which regulates conditions of detention for families, “family units” (*unités familiales*) for six to eight families were opened at the 127bis closed centre in August 2018. Families can be held there for up to one month (14 days, renewed once), outdoor playgrounds are available for children who should also be able to have access to education while removal is pending.<sup>32</sup>

Observers have warned that the one-month limit—in cramped and prison-like environments with high noise levels—is in fact only a theoretical limit since detention measures can be renewed if removal efforts fail. Concerns have also been expressed regarding the fact that minors over the age of 16 can be placed in disciplinary isolation premises for up to 24 hours.<sup>33</sup> These concerns have been further exacerbated by the fact that Belgium only ratified the Optional Protocol to the UN Convention against Torture in July 2018, and to date no system has been introduced for the independent monitoring of places where persons are deprived of liberty.<sup>34</sup>

In early 2019, with support from UNICEF Belgium, numerous Belgian civil society organisations, including many health professionals, called on the federal government to stop detaining refugees, asylum seekers, and migrant children.<sup>35</sup> They cited rulings against Belgium by the European Court of Human Rights, which “found that the family units in the 127Bis Centre exposed children of a detained family to significant noise pollution due to the location of the centre close to the runway of Brussels airport ... [and that] the exposure of the child to this noise pollution exceeded the severity threshold required for a violation of Article 3 of the [European Convention on of Human Rights].”<sup>36</sup>

In April 2019, following the NGO action, the Belgian Council of State ordered the suspension of the decree permitting child detention.<sup>37</sup> Nevertheless, observers underscore the fact that

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<sup>30</sup> European Database of Asylum Law, “Belgium: Council of State Rules to Suspend Royal Decree Permitting the Detention of Children,” 2019, <https://bit.ly/2YEH68s>

<sup>31</sup> Council of Europe Commissioner for Human Rights, “Letter to Mr Theo Francken, Secretary of State for Migration and Asylum,” 2018, <https://bit.ly/2DFYZXX>

<sup>32</sup> CIRÉ, “*Les centres fermés – édition 2019*,” 2019, <https://www.cire.be/les-centres-fermes/>

<sup>33</sup> Myria, “*Ouverture imminente des unités familiales dans le centre fermé 127bis*,” <https://bit.ly/2yqehOd>

<sup>34</sup> Association for the Prevention of Torture (APT), “Belgium – OPCAT Situation,” 2019, [https://apt.ch/en/opcat\\_pages/opcat-situation-6/](https://apt.ch/en/opcat_pages/opcat-situation-6/)

<sup>35</sup> UN Children’s Fund (UNICEF) and Plate-forme Mineurs en Exil, “*On n’infirmé pas un enfant. Point*,” 2019, <http://www.onnenfermepasunenfant.be/>

<sup>36</sup> European Database of Asylum Law, “Belgium: Council of State Rules to Suspend Royal Decree Permitting the Detention of Children,” 2019, <https://bit.ly/2YEH68s>

<sup>37</sup> European Database of Asylum Law, “Belgium: Council of State Rules to Suspend Royal Decree Permitting the Detention of Children,” 2019, <https://bit.ly/2YEH68s>



despite the suspension of this policy, the law permitting the detention of children remained in place (as of early 2020) and there was little to prevent a future government from publishing a new royal decree or building a facility further away from the airport.<sup>38</sup>

**2.6 Other vulnerable groups.** Although the Aliens Act (Article 1 (12)) defines vulnerable persons as accompanied and unaccompanied minors, disabled persons, elderly persons, pregnant women, isolated parents with minor children, victims of torture, rape, or other grave forms of psychological, physical, or sexual violence, it does not make any other reference to such persons—other than minors—in relation to provisions concerning immigration detention.

According to the Belgian Refugee Council (NANSEN), stateless persons have found themselves at an increased risk of arbitrary detention since the 2018 expansion of detention grounds in law and the shortening of some deadlines for procedural and appeal safeguards.<sup>39</sup> NANSEN and the European Network on Statelessness have promoted legislation aimed at legalising the situation of stateless persons.<sup>40</sup>

According to Myria, three legal texts relate to pregnant women in relation to detention.<sup>41</sup> Women who are more than 28 weeks pregnant cannot be forcibly removed,<sup>42</sup> pregnant rejected asylum seekers can be provided with material assistance at the end of pregnancy and for up to two months after delivery (Article 7 §2.2 of the 2007 Reception Act), and special provisions are required should a woman deliver her child in detention—including certain administrative steps following the birth. In practice however, Myria has not come across births in detention as pregnant women cannot be removed beyond 28 weeks (and therefore cannot be detained).

In 2017, 59 pregnant women were detained in Belgium. There have also been cases of women being removed after the 31<sup>st</sup> week of pregnancy, which—according to the Aliens Office—concerned pregnant women who had been refused entry at the border (*refoulées*) and who had agreed to be removed. In practice, pregnant women receive special medical assistance, including from a gynaecologist, and they may benefit from a “Special Needs” programme for vulnerable persons.<sup>43</sup>

**2.7 Length of detention.** Migrants awaiting removal can be detained for up to five months. Non-citizens who fail to respect entry or residence rules can initially be detained for one month (Aliens Act, Article 8bis§1 and §4). This duration can be extended for another two months, renewable once (Aliens Act, Article 29). However, in exceptional cases relating to the maintenance of public order or national security, detention can be extended beyond five

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<sup>38</sup> Magma, “Interview with Rob Kaalen of Plate-forme Mineurs en exil (in French),” 9 January 2020, <http://www.mag-ma.org/nord-sud/detenir-des-enfants-en-centre-ferme-violation-des-droits-de-l'enfant/>

<sup>39</sup> J. Lejeune, “Statelessness in Belgium: A Blurred Landscape,” *European Network on Statelessness*, 2019, <https://bit.ly/2EIpl6E>

<sup>40</sup> European Network on Statelessness and Belgian Refugee Council (NANSEN), “*Avis conjoint du Réseau européen sur l'apatridie et de NANSEN sur la proposition de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en vue de régler le droit de séjour des apatrides*,” 2019, <https://bit.ly/2TsPm9O>

<sup>41</sup> Myria, “*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*,” 2018, <https://bit.ly/2FPAo6t>

<sup>42</sup> Government of Belgium, “*Circulaire du 29 mai 2009 relative à l'identification d'étrangers en séjour irrégulier, M.B.*,” 15 July 2009, <https://www.gisti.org/spip.php?article1605>

<sup>43</sup> Myria, “*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*,” 2018, <https://bit.ly/2FPAo6t>

months—in such circumstances, a person may be detained for up to eight months (renewed one month at a time) (Article 29). In practice, however, most people are not kept in detention for the maximum permissible period.

Following its most recent visit to places of immigration detention in 2009, the European Committee for the Prevention of Torture (CPT) noted that in practice, a new detention decision after authorities fail to remove a detainee initiates a new detention period.<sup>44</sup> A decade later, NGOs have reported that such “re-detention” continues, including in cases where a detainee lodges a new asylum request, leading to total detention times that exceed the country’s maximum limits.<sup>45</sup>

In 2017, non-citizens spent an average of 35 days in immigration detention. NGO research has however shown that in practice, this average includes data for the very short-term detention of 2,200 persons deemed “inadmissible” and who were refused entry at the border. For example, at the Vottem “Centre for Illegals” the average detention duration was 48.2 days but one-fourth of detainees that NGO representatives met there in 2017 spent over 120 days in detention.<sup>46</sup> Elsewhere, at the Caricole Transit Centre, non-citizens were detained for an average of 10.4 days; 39.3 days at the 127bis Repatriation Centre; 34.7 days at the Centre for Illegals in Bruges; and 40.3 days at the Centre for Illegals in Merksplas.

Under Article 74/6 (4) of the Aliens Act, asylum seekers can generally be held for up to two months. Asylum seekers in the Dublin procedure can be “held in a specific place” (*maintenus dans un lieu déterminé*) for up to six weeks if there is a risk of absconding while authorities determine which state is responsible for processing the asylum claim and in order to organise a transfer (Article 51/5). Another detention period of up to six weeks can be applied pending transfer (Article 51/5).<sup>47</sup>

**2.8 Procedural standards.** The Aliens Act provides procedural guarantees for foreigners detained on immigration-related grounds. Non-citizens can challenge their detention by submitting a request to the Council Chamber of the Criminal Court closest to the site of their apprehension (Article 71), and they may resubmit such an appeal “from month to month.”

According to official information, detainees challenging their detention may stand different chances of receiving positive outcomes depending on the linguistic region in which they apply. An official report from the EMN reads: “There is a substantial difference in the jurisprudence of the Dutch-speaking and the French-speaking Courts of first-instance (who are competent for appeals against detention). An irregularly staying third-country national has more than twice as much chance of being released from a detention centre if he appeals to a French-speaking Court than to a Dutch-speaking Court of first-instance.”<sup>48</sup> As most

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<sup>44</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 28 septembre au 7 octobre 2009, CPT/Inf(2010)24,” 2010, <https://bit.ly/2STCGbK>

<sup>45</sup> CIRÉ, “Les centres fermés – édition 2019,” 2019, <https://www.cire.be/les-centres-fermes/>

<sup>46</sup> CIRÉ, “Les centres fermés – édition 2019,” 2019, <https://www.cire.be/les-centres-fermes/>

<sup>47</sup> Vluchtelingenwerk Vlaanderen (Flemish Refugee Action), “Country Report: Belgium,” *Asylum Information Database (AIDA) and European Council on Refugees and Exiles (ECRE)*, 2018, <https://bit.ly/2GnKVpJ>

<sup>48</sup> Belgian National Contact Point of the European Migration Network, “The Effectiveness of Return in Belgium: Challenges and Good Practices Linked to EU Rules and Standards,” *European Migration Network*, 2018, <https://bit.ly/2Tew2w5>

detention centres are located in Dutch-speaking Flanders, this discrepancy in the delivery of justice has serious consequences for most detainees.

Many safeguards are also provided in the Royal Decree of 2002, as amended in 2018. However, according to Myria, the 2018 amendments also diminish some safeguards including: no longer requiring a systematic medical examination after a failed removal attempt (Article 61/1); a possible derogation to the rule that the detainee and his or her legal counsel should be informed 48 hours prior to a first removal attempt (Article 62); and a possibility to place detainees in isolation prior to transfer or removal (Article 84). Further, body searches over clothing will no longer need to be carried out by two officers of the same sex as the detainee, and such a search is no longer explicitly required to take place out of sight from other persons (Article 111/2).<sup>49</sup>

When detained, foreigners must be informed of the reason for their detention, possible judicial remedies, and the rules of the detention facility in a language they can understand (Aliens Act, Article 17). The Aliens Act also provides for free legal assistance (Articles 25 and 90). In Vottem, the bar association arranges limited free legal consultations, and NGOs that visit facilities also provide free legal assistance.

The Reception Act guarantees asylum seekers efficient access to legal aid during first and second instance procedures, as envisaged by the Judicial Code. Asylum seekers can request the assistance of an interpreter when introducing their asylum application with the Immigration Department (Aliens Act, Article 51/4 (2)).

In practice, NGOs observe 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 assigned to their cases do not even agree to challenging their detention. Judges only verify if detention is lawful and do not assess whether detention is justified.<sup>50</sup>

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 (Aliens Act, Article 71). The request does not have a suspensive effect, meaning that detainees can be expelled during the procedure.<sup>51</sup> 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 an automatic suspensive effect (Aliens Act, Article 39/70) and must be lodged within 30 days following the delivery of the decision to the applicant (Aliens Act, Article 39/57(1)).

In a 2015 joint submission to the Universal Periodic Review, the Belgian NGO CIRÉ (Coordination et Initiatives pour Réfugiés et Etrangers), reported that the judicial review of the administrative detention of foreign nationals was largely ineffective.<sup>52</sup> Indeed, very few cases in which detention has been challenged before a court have been reported by NGOs.

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<sup>49</sup> Myria, “*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*,” 2018, <https://bit.ly/2FPAo6t>

<sup>50</sup> CIRÉ, “*Les centres fermés – édition 2019*,” 2019, <https://www.cire.be/les-centres-fermes/>

<sup>51</sup> CIRÉ, “*Les centres fermés – édition 2019*,” 2019, <https://www.cire.be/les-centres-fermes/>

<sup>52</sup> 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,” 2015, [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=25760](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=25760)



Reportedly, the complex linguistic, administrative, and geographic context in Belgium often means that pro bono lawyers are unable to plead before the relevant jurisdiction.<sup>53</sup> In other instances, NGOs have observed that lawyers assigned to detainees through free legal aid are not always willing to submit an appeal within the legal deadline or with the necessary diligence because their services are minimally remunerated.<sup>54</sup>

In 2014, a new complaints procedure was inserted into the Royal Decree on Closed Centres of 2 August 2002. Accordingly, detainees can file a complaint regarding detention conditions by mail within 24 hours and in any language to the director of the centre who must respond within ten working days (Article 129). This complaint procedure is largely ineffective due to a lack of clarity concerning the modalities for the procedure and the high rate of complaints that are inadmissible.<sup>55</sup> The 2002 Royal Decree also created a “*Commission des plaintes*” (complaints commission) for individual detainees’ complaints regarding the implementation of the decree (Article 130). In 2017, immigration detainees filed 23 complaints to the Complaints Commission, and these largely related to issues such as staff, health care, and transport. Most complaints came from detainees in Merksplas. Only 13 complaints were deemed admissible, and half of these were eventually dropped.<sup>56</sup>

**2.9 Non-custodial measures (“alternatives to detention”).** The Aliens Law provides for home arrest as a “less coercive measure” than detention (Article 74/6 §1 (4)). A further provision makes reference to “less coercive measures” specifically for asylum seekers (Article 51/5 § 6), and this similarly provides home arrest as an option while authorities determine which state is responsible for processing the asylum request and while awaiting a transfer to the responsible state. Article 44 also provides for the home arrest of EU citizens ordered to leave Belgium.

A form of house arrest was introduced in 2014, authorising families in a regular situation to remain in their own homes. According to Myria, 15 families signed an agreement (*convention*) allowing them to remain at home in 2017. Two of these families were eventually removed after being placed in a “return house,” but Myria obtained no information about the fate of the other families.<sup>57</sup>

Following condemnation from the ECtHR regarding the detention of minors in ill-suited closed centres, “return houses”<sup>58</sup> were created in 2008 as an “alternative to detention” for families with minor children who have been served with a detention order (*décision de maintien*).<sup>59</sup> From a Belgian legal point of view, families accommodated in these houses are considered “detained,” although in practice the families enjoy a degree of freedom of movement (the return houses, which can either be houses or flats, are open and families can leave them under specific rules). Jesuit Refugee Service Belgium (JRSB) is the only

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<sup>53</sup> Caritas International, CIRÉ, Jesuit Refugee Service (JRS), La Ligue des droits de l’Homme, le MRAX, and Vluchtelingenwerk Vlaanderen, “Centres fermés pour étrangers – état des lieux,” 2016, <https://bit.ly/2T1vWnf>

<sup>54</sup> CIRÉ, “Les centres fermés – édition 2019,” 2019, <https://www.cire.be/les-centres-fermes/>

<sup>55</sup> Myria, “La migration en chiffres et en droits, Chapitre 9: Retour, détention et éloignement,” 2015, <http://www.myria.be/files/Migration-rapport-2015-C9.pdf>

<sup>56</sup> Myria, “Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression,” 2018, <https://bit.ly/2FPAo6t>

<sup>57</sup> Myria, “Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression,” 2018, <https://bit.ly/2FPAo6t>

<sup>58</sup> Also called FITT-units. FITT stands for “Family Identification and Return Unit.”

<sup>59</sup> Government of Belgium, “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 (updated 30 April 2010),” 2009, <https://bit.ly/2TNFO5e>

NGO that regularly visits these facilities, but each house is supported by case managers (a coach and an assistant) who inform families about legal procedures and assist them in preparing for their return if their asylum claim is rejected.<sup>60</sup> JRSB points out that with case managers employed by the local authorities responsible for processing families' cases, their role can appear ambivalent. As of 2019, there were 27 units, with a total capacity of 169 beds in five locations: Tubize, Beauvechain, Sint-Gillis-Waas, Zulte, and Tielt.<sup>61</sup>

In 2017, 171 families were accommodated in return houses, including 327 children and 240 adults. According to Myria, these families' main nationalities were Turkish, Albanian, Russian, Serbian, Armenian, DRC Congolese, and Kosovar.<sup>62</sup> Most families were apprehended at the border (88), while 74 were apprehended inside Belgian territory, and nine families were Dublin cases.

Since 2015, return houses have also been used to accommodate 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 are not deemed to be in "alternatives to detention."<sup>63</sup>

Belgian law also provides several non-detention options in addition to return houses. The Immigration Department may order house arrest for families (Article 74/9 (3) of the Aliens Act), or require unauthorised non-citizens to lodge a financial guarantee (Article 110(1)(2) of the Royal Decree 1981). However, the only alternative that appears to be regularly used is the 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*).

**2.10 Detaining authorities and institutions.** 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 the federal government. The state secretary for asylum and migration, attached to the minister of security and the interior, oversees the implementation of migration and detention policies. Under the state secretary, the Immigration Department (*Office des étrangers*) is responsible for the entry, residence, establishment, and removal of foreign nationals from Belgium.<sup>64</sup> The Immigration Department is charged with the day-to-day administration of most immigration-related policies, including the management of detention centres.

Fedasil, meanwhile, is responsible for the reception of asylum-seekers and coordinates the various voluntary return programmes. The government agency cooperates with the

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<sup>60</sup> S. Sarolea, P. D'Huart, and B. Chapaux, "Completed Questionnaire: Belgium," *Odysseus Network, Contention*, 2014, <http://contention.eu/docs/country-reports/BelgiumFinal.pdf>

<sup>61</sup> CIRÉ, "*Les centres fermés – édition 2019*," 2019, <https://www.cire.be/les-centres-fermes/>; Jesuit Refugee Service Belgium (JRSB), "Le JRS en maisons de retour," 2019, <https://bit.ly/2GGThrL>

<sup>62</sup> Myria, "*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*," 2018, <https://bit.ly/2FPAo6t>

<sup>63</sup> Deborah Weinberg (Myria), email correspondence with Mariette Grange (Global Detention Project), 19 December 2016.

<sup>64</sup> Government of Belgium, "*Arrêté royal modifiant l'arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des Etrangers, où un étranger est détenu, mis à la disposition du gouvernement ou maintenu, en application des dispositions citées dans 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 (updated on 1 August 2018)*," 2002, <https://bit.ly/1Fx8sZ0>

International Organisation for Migration (IOM) and NGOs to assist voluntary returns and manages 20 federal reception centres as part of a network of 60 (open) reception facilities for asylum seekers.<sup>65</sup>

**2.11 Regulation of detention conditions and regimes.** Conditions in detention are regulated by the “Royal Decree of 2 August 2002 laying down the rules and regulations applicable to sites located in Belgium, operated by the Immigration Office, where a foreign national is detained, placed at the disposal of the Government or maintained, under the provisions cited in the Article 74/8, paragraph 1, of the Act of 15 December 1980 on the entry, residence, establishment and removal of foreigners.”<sup>66</sup>

The Royal Decree on closed centres characterises daily life in such facilities as collective during the daytime. Detention facilities—including those “at the border”—have separate rooms or wings for families and single women. Women and men have separate sleeping and sanitary facilities and are assisted by same-sex staff members (Article 83). Access to health care is legally determined by “what the state of health demands” and every centre has its own medical service with independent doctors (Article 53). However, detainees have had difficulties obtaining adequate medical care. In the case of *Yoh-Ekale Mwanje v Belgium*, the ECtHR found that the Cameroonian woman, suffering from HIV, had not been provided with sufficient treatment and authorities had not acted with due diligence in taking the necessary measures to prevent the disease’s deterioration during detention. As such, the ECtHR found that Belgium had violated Article 3 of the European Convention on Human Rights (ECHR).<sup>67</sup>

**2.12 Domestic monitoring.** Article 44 of the Royal Decree on Closed Centres provides various international, regional, and national institutions with the right to access facilities—amongst them, UNHCR, the Children’s Rights Commissioner (*Délégué general aux droits de l’enfants and Kinderrechtencommissaris*), the CPT, Myria, the Office of the Commissioner General for Refugees and Stateless Persons (CGRA), the Walloon and Flemish Offices of the Children’s Rights Commissioner, and the UN Committee against Torture (CAT). The country’s immigration minister may also grant visiting rights to other organisations (Article 45).

In 2018, the Children’s Rights Commissioner visited the new “family units” opened inside the 127bis Repatriation Centre. In a joint statement they wrote: “by confining children in exile, Belgium was walking against the tide of history and standing out as opting for the worst.”<sup>68</sup>

Belgian NGOs have been monitoring immigration detention centres for many years. Members of the Transit Platform, who visit detainees in the country’s detention centres, include JRSB, Caritas International, CIRÉ, the Ligue des droits de l’homme, the Vluchtelingenwerk Vlaanderen, the MRAX (Mouvement contre le Racisme, l’Antisémitisme et la Xénophobie), and the Myria.

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<sup>65</sup> Federal Agency for the Reception of Asylum Seekers (Fedasil), “Reception Centres,” 2019, <https://www.fedasil.be/en/reception-centres>

<sup>66</sup> Government of Belgium, “*Arrêté royal modifiant l’arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l’Office des Etrangers, où un étranger est détenu, mis à la disposition du gouvernement ou maintenu, en application des dispositions citées dans 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 (updated on 1 August 2018)*,” 2002, <https://bit.ly/1Fx8sZ0>

<sup>67</sup> European Court of Human Rights (ECtHR), “*Yoh-Ekale Mwanje vs Belgium, No 10486/10*,” 2011, <https://bit.ly/2URxpk0>

<sup>68</sup> B. De Vos, and B. Vanobbergen, “*On n’enferme pas un enfant. Point!*,” 2018, <https://bit.ly/2UzPqAZ>

Belgium only adopted a draft law for the ratification of the 2002 Optional Protocol to the UN Convention for the Prevention of Torture (OPCAT) on 19 July 2018.<sup>69</sup> OPCAT Article 3 provides for the creation of a national prevention mechanism (NPM) to carry out monitoring visits to places of deprivation of liberty, however as of mid-2019 this has not yet been established in Belgium (the NPM should be established within one year following OPCAT ratification (Article 17)).

**2.13 International monitoring.** International and regional human rights mechanisms have challenged the detention of asylum seekers in Belgium—amongst them, the Commissioner for Human Rights of the Council of Europe (2018)<sup>70</sup> and the UN Committee on the Elimination of Racial Discrimination. On 1 February 2019, the Committee on the Rights of the Child called on Belgium to end the detention of children in closed centres, and to use non-custodial solutions.<sup>71</sup>

Although the CPT has been an important source of information on immigration detention centres across Europe, it has not reported on detention facilities in Belgium since 2009—even though it has made numerous country visits since then.<sup>72</sup>

**2.14 Transparency and access to information.** When it comes to its detention and deportation practices, Belgium has at times struggled with transparency.

A case in point is the 2017 case of a group of Sudanese migrants who Belgium sought to deport, information about which later disappeared from public access: In September 2017, the state secretary for asylum and migration invited a Sudanese team to Belgium to interview some 60 migrants in detention to help identify them in order to deport them. Human rights organisations warned that this breached international law, in particular the principle of *non-refoulement*, and emphasised that persons coming from conflict-affected regions are at risk of persecution. The Belgian government temporarily halted the returns and asked the Belgian Commissioner General for Refugees and Statelessness (CGRS/CGRA) to carry out an investigation into these allegations. In July 2018, the CGRS denied that they would be exposed to any real risk of ill-treatment if returned to Khartoum.<sup>73</sup>

Earlier, in January 2018, Belgian immigration authorities made use of a public request procedure for information concerning Sudan through the EMN *ad hoc query* facility. The summary of responses to this request to other EU immigration services was made public and quoted in official government and academic publications.<sup>74</sup> However, when a GDP

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<sup>69</sup> Government of Belgium, “*Projet de loi du 21 juin 2018, portant assentiment du Protocole facultatif se rapportant à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, adopté à New York, le 18 décembre 2002, DOC 54–3192/001*,” 2018.

<sup>70</sup> Council of Europe Commissioner for Human Rights, “Letter to Mr Theo Francken, Secretary of State for Migration and Asylum,” 2018, <https://bit.ly/2DFYZXX>

<sup>71</sup> UN Committee on the Rights of the Child (CRC), “Concluding Observations on the Combined Fifth and Sixth Reports of Belgium, CRC/C/BEL/CO/5-6,” 2019, <https://bit.ly/2tajFCK>

<sup>72</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “The CPT and Belgium,” 2019, <https://www.coe.int/en/web/cpt/belgium>

<sup>73</sup> Commissariat général aux réfugiés et aux apatrides (CGRA), “*Critique injustifiée rapport Soudan*,” 2018, <https://www.cgra.be/fr/actualite/critique-injustifiee-rapport-soudan>

<sup>74</sup> UK Home Office, “Country Policy and Information Note: Sudan: Return of Unsuccessful Asylum Seekers,” 2018, <https://www.gov.uk/government/publications/sudan-country-policy-and-information-notes>; SOAS, IRRI, and Waging Peace, “Sudan’s Compliance with its Obligations Under the International Covenant on Civil and Political Rights in the Context of Mixed Migration From, and to Sudan-124th Session of the Human Rights Committee – Review of Sudan’s State Party Report,” 2018, [https://www.ecoi.net/en/file/local/1447525/1930\\_1540379428\\_int-ccpr-css-sdn-32358-e.pdf](https://www.ecoi.net/en/file/local/1447525/1930_1540379428_int-ccpr-css-sdn-32358-e.pdf)

researcher attempted to access the document in early 2019, it had been removed from the public EMN site, a rare occurrence. Following a GDP written freedom of information request to the European Commission, access to the formerly public document was denied on the grounds that it contained “sensitive information concerning Member States’ relationship with third countries and disclosure of the document requested would risk undermining the protection of international relations.”<sup>75</sup> This denial of transparency would appear to be in contradiction with the Belgian government’s stance that “no information was deliberately ignored during the CGRS investigation on Sudan.”<sup>76</sup>

In 2011, the Belgian government created a (temporary) commission responsible for evaluating Belgium’s policies and practices regarding voluntary and forced expulsion.<sup>77</sup> The Commission’s interim report published in January 2019 responds to numerous recommendations from NGOs, focusing mainly on Amnesty International’s, but fails to provide an actual evaluation of practices—including the return of Sudanese citizens from detention.<sup>78</sup> While welcoming the creation of the commission, various organisations, including Myria, have expressed concern that there seems to be no clear methodology and mandate for the body, and that the interim report “seems to be the result of a theoretical analysis of the legislation and jurisprudence and brings together only a few hearings. The Commission does not appear to have made any field visits to places of detention or to places of refoulement and removal.”<sup>79</sup>

**2.15 Trends and statistics.** In 2017, Belgium detained 7,105 non-citizens,<sup>80</sup> 6,311 in 2016, 6,229 in 2015, and 5,602 in 2014.<sup>81</sup>

The percentage of international migrants in Belgium grew to 11.1 percent of the population by 2017.<sup>82</sup> New asylum applications rose from 26,080 in 2010 to 44,660 in 2015, but decreased to 22,530 in 2018.<sup>83</sup> Most of these applicants were from Syria, Palestine, Afghanistan, and Iraq—all of which Belgian authorities acknowledge are areas with ongoing conflict.<sup>84</sup>

According to official statistics, there were 3,828 voluntary returns in 2017. That same year, the country forcibly returned 4,503 persons, 67 percent of whom were returned to countries

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<sup>75</sup> Letter from Paraskevi Michou, (European Commission, Secretary-General,) “Transparency, Document Management and Access to Documents,” to Mariette Grange (Global Detention Project), 4 April 2019.

<sup>76</sup> Commissariat général aux réfugiés et aux apatrides (CGRA), “*Critique injustifiée rapport Soudan*,” 2018, <https://www.cgra.be/fr/actualite/critique-injustifiee-rapport-soudan>

<sup>77</sup> Amnesty International, “*Les droits humains aujourd’hui – 2018: La situation des droits humains en Belgique en 2018*,” 2018, <https://bit.ly/2UAK5Om>

<sup>78</sup> M. Bossuyt, “*Rapport intérimaire de la Commission chargée de l’évaluation de la politique du retour volontaire et de l’éloignement forcé d’étrangers*.” Report presented to the Minister of Asylum and Migration,” <https://bit.ly/2TKdcwP>

<sup>79</sup> Myria, “*Retour et éloignement: rapport intermédiaire de la Commission Bossuyt*,” 2019, <https://bit.ly/2TOJbNp>

<sup>80</sup> Myria, “*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*,” 2018, <https://bit.ly/2FPAo6t>

<sup>81</sup> Myria, “Return, Detention and Removal of Foreigners: A Return, at What Costs?” 2017, [https://www.myria.be/files/171030\\_Myriadoc\\_5\\_Detentie\\_\\_terugkeer\\_en\\_verwijdering\\_NL.pdf](https://www.myria.be/files/171030_Myriadoc_5_Detentie__terugkeer_en_verwijdering_NL.pdf)

<sup>82</sup> UN Department of Economic and Social Affairs (UNDESA), “International Migration 2017, Wall Chart,” 2017, <http://www.un.org/en/development/desa/population/migration/publications/wallchart/docs/MigrationWallChart2017.pdf>

<sup>83</sup> Eurostat, “Database,” 2019, <https://ec.europa.eu/eurostat/data/database>

<sup>84</sup> Commissariat général aux réfugiés et aux apatrides (CGRA), “*Statistiques d’asile – Bilan 2018*,” 2019, <https://www.cgra.be/fr/actualite/statistiques-dasile-bilan-2018>



of origin (including 793 EU citizens), 24 percent were Dublin transfers (mostly Sudanese and Eritreans), and nine percent were through bilateral agreements with other EU countries (mostly Pakistanis and Afghans). Forced returns from prisons represented 36 percent of these: 54 percent took place directly from prisons and 41 percent of cases were held in immigration detention prior to expulsion.<sup>85</sup> On top of this, 283 persons were returned through “securitised flights” (*vols sécurisés*)—including flights jointly organised by additional EU countries (and [Switzerland](#))—most of which were to Albania (25 flights), Pakistan (nine flights), and Nigeria (six flights).<sup>86</sup>

Belgium uses a complex disaggregated system and publishes data on “returns” which includes “repatriation” (or forced returns—to the country of origin and through Dublin and bilateral transfers), “refoulement” (from the border through a closed centre), and voluntary returns. According to official statistics from the Aliens Office, 11,011 persons were “returned” in 2017, and a total of 5,741 persons (including cases of “repatriation” and other cases such as “refoulement”) were returned from detention centres.<sup>87</sup>

**2.16 Costs of detention.** Like most countries, Belgian authorities do not publish details of costs related to immigration detention. In 2017, a parliamentarian issued a written question to the government regarding this issue. She wrote that according to official figures in the *Moniteur Belge*, costs for “illegal persons” in closed centres had risen to 192 EUR (however she did not indicate the time frame for this figure). The cost for “ordinary prisoners” was reportedly 60 EUR above that, but covered more items including “sanitary, medical, telephones, gardening, meals, laundry etc.” Based on a 90 percent occupation rate of the Belgian detention estate’s 567 beds, she calculated that the annual total would be 3,792 million EUR.

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<sup>85</sup> Myria, “*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*,” 2018, <https://bit.ly/2FPAo6t>

<sup>86</sup> Myria, “*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*,” 2018, <https://bit.ly/2FPAo6t>

<sup>87</sup> Carolina Grafé (Myria), Email correspondence with Mariette Grange (Global Detention Project), 15 March 2019.



### 3. DETENTION INFRASTRUCTURE

**3.1 Summary.** As of 2020, Belgium operated six dedicated immigration detention facilities,<sup>88</sup> one of which was opened in May 2019.<sup>89</sup> The total detention capacity was increased in recent years—from 458 places in 2015 to 609 in 2017.<sup>90</sup> In 2018, the government announced plans to double its total detention capacity, increasing it to more than 1,100 by 2022.<sup>91</sup>

To implement this plan, the government not only opened a new facility in Holsbeek (with 50 beds) in 2019, but announced plans to open additional facilities in Zandvliet in 2020/21 (with 144 beds), and in Jumet in 2021 (with 200 beds). To construct Zandvliet centre, Belgium accepted units donated by the Dutch government in May 2018. These prefabricated containers, dubbed “carceral units,” had been used by the Dutch from 2010 to 2016 to detain Belgian prisoners at the Tilburg prison as part of an agreement to tackle prison overcrowding in Belgium. According to media reports, the carceral units will be adapted to Belgian norms, and the total budget for the construction of the facility is estimated at 20 million EUR (or 138,800 EUR per bed).<sup>92</sup> The Jumet facility, meanwhile, is expected to be constructed on a former federal police site near Charleroi, although local authorities are opposed to the project.<sup>93</sup> Once operational, it would be the largest in Belgium. In early 2019 the Immigration Department announced plans to hire some 600 new staff to work in the new housing units in the 127bis Repatriation Centre, as well as the closed centres in Zandvliet, Holsbeek, et Jumet.<sup>94</sup>

Nonetheless, faced with the Covid-19 crisis, and in an effort to mitigate the risks of infection, Belgium reduced the capacity of its six immigration detention centres from 609 to 315. In March 2020, it was reported that the number of detainees fell from 603 to 304<sup>95</sup> with detainees being released and left homeless. According to the Foreign Office, vulnerable groups, including people with diabetes or bronchitis, were released first. Subsequently individuals that were to be returned under the Dublin Agreements were released given that

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<sup>88</sup> Ruben Bruynooghe (Jesuit Refugee Service – Belgium), Email correspondence with Mario Guido (Global Detention Project), 20 March 2020.

<sup>89</sup> CIRÉ, “Les centres fermés – édition 2019,” <https://www.cire.be/les-centres-fermes/>; Myria, *Repatriation, detention and deportation*, 2019, <https://bit.ly/2HmtWTh>; Getting the Voice Out, <http://www.gettingthevoiceout.org/what-are-the-detention-centres-in-belgium/>

<sup>90</sup> Myria, “Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression,” 2018, <https://bit.ly/2FPAo6t>

<sup>91</sup> Getting the Voice Out, “Le masterplan centres fermés:: Centre fermé pour femmes à Holsbeek,” July 2019, <http://www.gettingthevoiceout.org/le-masterplan-centres-fermes-centre-ferme-pour-femmes-a-holsbeek/>

<sup>92</sup> Myria, “Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression,” 2018, <https://bit.ly/2FPAo6t>

<sup>93</sup> CIRÉ, “Les centres fermés – édition 2019,” 2019, <https://www.cire.be/les-centres-fermes/>

<sup>94</sup> Belgian Foreign Office, “Travailler à l’Office des étrangers,” 2019, <https://bit.ly/2FLQnIQ>

<sup>95</sup> B. Struys “Coronavirus zet vreemdelingenzaken onder druk: 300 mensen zonder papieren vrigelaten,” *De Morgen*, 19 March 2020, <https://bit.ly/2U7S8zC>

European countries no longer accept transfers because of the Covid-19 crisis. In addition, since 13 March 2020, visits from family members and NGOs have been suspended. Only lawyers and members of Parliament are allowed to enter the centres.<sup>96</sup>

**3.2 List of detention facilities.** Caricole Transit Centre, 127bis Repatriation Centre, Vottem Detention Centre, Merksplas Detention Centre, Bruges Detention Centre, and Holsbeek Detention Centre.

### 3.3 Conditions and regimes in detention centres.

**3.3a Overview.** In 2018, there were reports of hunger strikes, most of which took place at the Vottem centre. Reportedly, 17 persons embarked upon hunger strikes in May 2018 at the 127bis centre following reports that the centre's management had forbidden two external associations from delivering food during Ramadan. The hunger strikers called for greater respect for their religion and for access to the centre's kitchen to prepare their own meals, among other demands.<sup>97</sup>

**3.3b 127bis Repatriation Centre.** Opened in 1994 near Brussels Airport, the centre can accommodate 120 detainees. Capacity was temporarily reduced to 60 detainees due to the Covid-19 crisis.<sup>98</sup> Despite its name, most of those detained at 127bis are asylum seekers awaiting transfer to another EU member state under the Dublin Regulation.<sup>99</sup> New family units were opened in the facility in 2018 (see: 2.5 Children).

**3.3c The National Administrative Centre for Transmigration.** The facility was opened in September 2018 inside the 127bis facility and has some 40 beds. It is exclusively managed by the police and operates like a police station.<sup>100</sup> According to the government, the centre was also opened with the aim of better collecting information about smuggling rings. The Federal Police are responsible for the administrative processing of "transmigrants" files, and they take fingerprints as well as carry out searches in relevant databases. "Transmigrants" may remain confined within the centre pending a decision from the Aliens Office.<sup>101</sup>

**3.3d Caricole Transit Centre.** The centre, whose name is derived from the snail-shape of the building,<sup>102</sup> was built in 2012 under public pressure to provide improved detention conditions and replace the dilapidated Centre 127 and a neighbouring INAD ("*inadmissibles*") centre. Like the 127bis centre, the Caricole Transit Centre is located alongside one of Brussels Airport's runways and mainly holds non-citizens denied entry at the airport. Detainees have no views of the outdoors, they can move about in designated areas of the facility during the day, and there are three disciplinary isolation cells.<sup>103</sup> The

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<sup>96</sup> Ruben Bruynooghe (Jesuit Refugee Service – Belgium), Email correspondence with Mario Guido (Global Detention Project), 20 March 2020.

<sup>97</sup> Getting the Voice Out, "Hunger Strike in Closed Centre in Vottem," 2018, <https://bit.ly/2FnUfbm>; Getting the Voice Out, "Epileptic Crisis and Hunger Strike at the 127bis Closed Centre," 2018, <https://bit.ly/2WclYBA>

<sup>98</sup> Ruben Bruynooghe (Jesuit Refugee Service – Belgium), Email correspondence with Mario Guido (Global Detention Project), 20 March 2020.

<sup>99</sup> CIRÉ, "*Les centres fermés – édition 2019*," 2019, <https://www.cire.be/les-centres-fermes/>

<sup>100</sup> Myria, "*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*," 2018, <https://bit.ly/2FPAo6t>

<sup>101</sup> Belga, "*127 bis: le centre administratif pour transmigrants a ouvert à Steenokkerzeel*," *Le Soir*, 13 September 2018, <https://bit.ly/2Nf7Q7d>

<sup>102</sup> Street vendors in Brussels sell a traditional fare of "*caricoles*," a name for sea snails.

<sup>103</sup> Caritas International, CIRÉ, Jesuit Refugee Service (JRS), La Ligue des droits de l'Homme, le MRAX, and Vluchtelingenwerk Vlaanderen, "*Centres fermés pour étrangers – état des lieux*," 2016, <https://bit.ly/2T1vWnf>



centre is accessed directly from the airport to avoid using external roads for transfers. The Caricole building belongs to the Brussels International Airport Company, which rents it to the Belgian authorities for 1.2 million EUR a year. According to NGOs, a substantial number of detainees here are asylum seekers.<sup>104</sup> The capacity of the centre was temporarily reduced to 50 due to the Covid-19 crisis.<sup>105</sup>

**3.3e Bruges Detention Centre (“Centre for Illegals”).** The facility was opened in 1995 in a former women’s prison and contains 112 beds. Detainees are placed in dormitories—rooms of 16 beds for women, and rooms of 20 beds for men.<sup>106</sup> Faced with the Covid-19 crisis, capacity of the centre was temporarily reduced to a maximum of 60. In March 2020, reports indicated that 44 people were in the centre.<sup>107</sup>

**3.3f Merksplas Detention Centre (“Centre for Illegals”).** The centre was initially built in 1875 to house vagrants, and it began detaining migrants in 1994. The official name for the centre uses the derogatory “illegals” terminology, which was denounced by the UN General Assembly as early as 1975 and by the Council of Europe in 2011.<sup>108</sup> 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, each of which is equipped with a television set. The centre has a 146-bed capacity and includes isolation cells and individual rooms for people who cannot be accommodated in shared rooms (*régime adapté*).<sup>109</sup> Yet, the Covid-19 crisis led the government to temporarily reduce capacity to 71 beds.<sup>110</sup> In addition to undocumented migrants, the facility also holds asylum seekers who filed their application with the Immigration Office from inside the detention centre.

**3.3g Vottem Detention Centre (“Centre for Illegals”).** The centre was opened in 1999 and is the only facility in the French speaking Wallonia region (near Liège). With 160 beds, this facility is male only.<sup>111</sup> The Covid-19 crisis spurred a temporary reduction in capacity to 60 beds.<sup>112</sup> The centre has four wings and detainees are placed in four-person cells.<sup>113</sup> According to NGOs, when the Aliens Office (*Office des étrangers*) deems certain detainees

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<sup>104</sup> CIRÉ, “*Les centres fermés – édition 2019*,” 2019, <https://www.cire.be/les-centres-fermes/>

<sup>105</sup> Ruben Bruynooghe (Jesuit Refugee Service – Belgium), Email correspondence with Mario Guido (Global Detention Project), 20 March 2020.

<sup>106</sup> Getting the Voice Out, “What are the Detention Centres in Belgium,” 2015, <http://www.gettingthevoiceout.org/what-are-the-detention-centres-in-belgium/>; CIRÉ, “*Les centres fermés – édition 2019*,” 2019, <https://www.cire.be/les-centres-fermes/>

<sup>107</sup> Ruben Bruynooghe (Jesuit Refugee Service – Belgium), Email correspondence with Mario Guido (Global Detention Project), 20 March 2020.

<sup>108</sup> M. Grange, “Smoke Screens: Is There a Correlation Between Migration Euphemisms and the Language of Detention,” *Global Detention Project Working Paper No. 5*, 2013, <https://bit.ly/2ScfPCL>

<sup>109</sup> Caritas International, CIRÉ, Jesuit Refugee Service (JRS), La Ligue des droits de l’Homme, le MRAX, and Vluchtelingenwerk Vlaanderen, “*Centres fermés pour étrangers – état des lieux*,” 2016, <https://bit.ly/2T1vWnf>; CIRÉ, “*Les centres fermés – édition 2019*,” 2019, <https://www.cire.be/les-centres-fermes/>

<sup>110</sup> Ruben Bruynooghe (Jesuit Refugee Service – Belgium), Email correspondence with Mario Guido (Global Detention Project), 20 March 2020.

<sup>111</sup> Myria, “*Retour, détention et éloignement des étrangers en Belgique: Droit de vivre en famille sous pression*,” 2018, <https://bit.ly/2FPAo6t>

<sup>112</sup> Ruben Bruynooghe (Jesuit Refugee Service – Belgium), Email correspondence with Mario Guido (Global Detention Project), 20 March 2020.

<sup>113</sup> Getting the Voice Out, “What are the Detention Centres in Belgium?” <http://www.gettingthevoiceout.org/what-are-the-detention-centres-in-belgium/>

unable to adapt to the collective nature of immigration detention, they are placed in separate rooms where they remain locked for 22 hours of the day.<sup>114</sup>

**3.3h Holsbeek Detention Centre.** The 60-bed facility in Holsbeek was opened in May 2019 and exclusively confines women.<sup>115</sup> Due to the Covid-19 outbreak, capacity was temporarily reduced to 14 beds, housing one detainee per room.<sup>116</sup>

**3.3i Previously used facilities.** Belgium's first dedicated detention centre was opened in 1988 following amendments to the 1980 Aliens Act, which removed asylum seekers' rights to automatically access national territory. This first "transit centre," opened without parliamentary debate, was housed in former military barracks known as "Zone 127" and was located near the runway of Brussels Airport. With derelict prefabricated modules, Centre 127 was closed in 2012.<sup>117</sup>

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<sup>114</sup> CIRÉ, "Les centres fermés – édition 2019," 2019, <https://www.cire.be/les-centres-fermes/>

<sup>115</sup> Getting the Voice Out, "Le masterplan centres fermés: Centre fermé pour femmes à Holsbeek," July 2019, <http://www.gettingthevoiceout.org/le-masterplan-centres-fermes-centre-ferme-pour-femmes-a-holsbeek/>

<sup>116</sup> Ruben Bruynooghe (Jesuit Refugee Service – Belgium), Email correspondence with Mario Guido (Global Detention Project), 20 March 2020.

<sup>117</sup> Caritas International, CIRÉ, Jesuit Refugee Service (JRS), La Ligue des droits de l'Homme, le MRAX, and Vluchtelingenwerk Vlaanderen, "Centres fermés pour étrangers – état des lieux," 2016, <https://bit.ly/2T1vWnf>



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