



Briefing to the European Committee for the Prevention of Torture: Alternatives to immigration detention of families with minor children in Belgium

2005 - 2008

In 2005 we saw a significant rise in the numbers of children detained. This was due to a policy decision to detain 'Dublin-cases' as a priority. Whereas in 2004 'only' 152 children were detained, the number in 2005 rose to **660**. The figures do not take into account the number of children who were held in the INAD Center: 109 children in 2005.

In 2006 family wings were opened in detention centers at Merksplas and Vottem. According to an official government ordered study (SumResearch), in 2006 152 children were detained in the center 127, 505 in the center 127bis, 203 in Merksplas and 38 in Vottem, to give a total of **898** children.¹ The figures do not take into account the number of children who were held in the INAD Center: 67 children in 2006.

During 2007 **398** children were detained. Until may 2007 non-accompanied minors arriving at the border were automatically detained. New legislation came into force in may 2007. **Non-accompanied minors who arrive at the border and whose minor age is beyond doubt, are no longer detained** but put in 'observation and orientation centers' managed by Fedasil, the federal government administration for the reception of asylum seekers. For non-accompanied minors whose minor age is put into doubt, the Tutor Service of the Ministry of Justice (that assigns a tutor to each non-accompanied minor) has 3 working days (once renewable with another 3 days) to determine the age. During the time of age determination, the 'minor' can still be detained.

During 2008 **270** children were detained. The majority was detained in the center 127bis. After years of pressure from NGOs and a broad part of civil society (unions, psychiatrists, journalists, educational institutions,...) 2008 was the first year in which the commitment to develop **alternatives to detention of families with children was implemented in a pilot project**. In October 2008 the minister of Migration and Asylum opened three residential open houses, designed to accommodate families pending their departure. During their stay they receive 'coaching' from return assistants of the Immigration Office, who prepare the return. These return assistants are responsible to convince the family to return. The project encompasses now 9 return houses or apartments in Zulte in the Flemish region, and in Tubize in the Walloon region. More houses might be opened in the future. Target group are the families subject to an expulsion order, but also families for which Belgium asked another EU Member State to take the responsibility for the asylum procedure (Dublin-cases).

¹ According to Immigration Office data (compiled on the basis of monthly statistics of the closed centers) during 2006 **746** children were detained. The Immigration Department (DVZ) does not keep coherent and precise information concerning the detention of children in detention centers with regards to recent years.

2009

Since October 2008, when the pilot started, much fewer families are in detention. NGOs have praised this a considerable step forward. It quickly became apparent though, that several concerns remained intact.

1. The alternative measure does not apply to all children

The alternative measure does not concern all children. **Families who arrive at the Belgian border and apply for asylum without the required documents to enter the territory** are still, during the entire duration of the procedure, detained in centre 127bis in Steenokkerzeel. Detention can legally take up to 7.5 months. Considering the impact of detention on the physical and mental health of children, on their development, future opportunities and well-being, we are convinced that it is urgent to end the detention of all children and their families, no matter what their statute is. Alternatives to detention should be made available **without discrimination** on the basis of immigration or other status.

Belgian Minister of Migration and Asylum Annemie Turtelboom said she excludes this group of children from the alternative to detention "for their own safety". The Minister says that the presence of children might be used as a new gateway to Belgium. "We have several cases where people use someone else's children for access to our territory to gain. Further research showed that they were cases of trafficking of children" she said, answering to a parliamentary question in the Senate.²

The **legal fiction that applies to non-accompanied minors** through Article 41 of the Belgian Reception Law of 12/01/2007 should also apply to families arriving at the border. Access should be given to alternative measures (in this case possible open houses located 'at the border'). If this fiction works for non-accompanied minors, if it is required to have their rights respected and if it does not pose any difficulty to the implementation of the Chicago Convention in this case, we don't see why it is not possible for minors accompanied by their parents. It is difficult to understand **why the detention of children is considered unacceptable and once again justified** by the same Minister. Neither the Chicago Convention nor the Schengen Border Code takes precedence over the Convention on the Rights of the Child, which states that a child may only be held in detention in case of extreme necessity and for the shortest possible period. European Directive 2003/9/EC on minimum standards for the reception of asylum seekers is also clear: no systematic detention without prior analysis of the specific situation of the person concerned. The European Commission has called Belgium and some other Member States to order because they do not apply this directive in the closed centres.

2. The alternative to detention does not have a legal framework

Today the legal basis for placement of a family in one of the return houses is the same as that of detention in a closed centre: article 74 / 8 § 1 of the Aliens Act. The alternative measures do not have a legal framework. They are still subject to being suspended when the government would consider them to have failed. The rules governing the daily practice of the pilot are put in a Royal Decree.³ But even then the **alternative measure would not be guaranteed by law as a duty for the authorities to no longer detain children and as a right of children not to be detained**. The only way to be in line with the principles of the Convention on the Rights of the Child, is to include these principles in Belgian law. An alternative to detention should involve a legal restriction to ensure that detention is in fact used as a last resort. Both the alternative measures as such and the appeals against placement in one of the houses should be clearly outlined and defined in the Aliens Act. The **law should clearly state what steps should precede detention**. It should provide and define clear steps that must be followed before the authorities can resort to detention. The authorities should motivate in its decisions that these steps have been followed and respected.

² <http://www.vluchtelingenwerk.be/bestanden/pp-opsluitingkinderen-090205.pdf>

³ On several occasions we have tried to obtain a draft copy of this Royal Decree, with no success. There is no consultation with civil society. The Royal Decree, drafted by the minister of Migration and Asylum who is responsible for the detention and alternatives, was not discussed in the government, even though it has clear implications on the functioning of the open reception centers who are under the responsibility of the minister of social integration.

3. The role and statute of the return officers or 'coaches' is limited and ambiguous / lack of a coordinated approach

The role of the "coach" or "return officer" is limited and ambiguous. They do not offer a full coaching into enabling the client to cope with all possible immigration outcomes, but they are mandated to ensure that the family accepts more easily the return decision and to **push solely a return outcome**. The Immigration Office considers the tasks of the return officers to be similar to those of return officers working in the closed centres. This increases the chances of absconding. To minimize the chances of absconding when families are put into a return procedure, the return issue should be addressed simultaneously with the residence or asylum issue: the **necessity of ensuring the coaching model is aimed at an early intervention approach on the preparation of individuals for all possible immigration outcomes**, either return or integration in the host country, thus ensuring the role of the coach is not aimed solely at focusing on achieving a return outcome, but on preparing an individual for all possible scenarios. It is **unclear to which extent the return officers focus on the broader psychosocial wellbeing, not just their immigration outcome**. This is necessary though, to reduce anxiety with the family and to build trust. This is therefore vital for the success of alternatives to detention.

The Minister of Migration and Asylum and the Minister of Social Integration should work together to ensure the coaching model utilises social work principles of supporting and empowering individuals through their immigration process and unique circumstances. Unfortunately, there is **no comprehensive approach to the situation of the family upon arrival in Belgium**. Both ministers in charge, one of expulsions and detention, the other of reception and voluntary return, have a completely separated way of thinking, while they should be shaping the policy of return together. An illustration of the consequences of this in daily practice is that return officers active in the return houses of the Minister of Migration and Asylum do not coordinate with the social workers active in the reception centres of the Minister of Social Integration. Families are taken from their familiar social worker and are abruptly assigned another 'coach' under another administration (the Immigration Office), without any coordination between the two. This obviously has an impact on the anxiety of the family.

4. Arrest and transfer methods are still possibly traumatic for children and families

The manner in which families are transferred to and placed in the return houses is another area of concern. It is another illustration of how the lack of a coordinated approach increases anxiety with the families and increases also the likelihood of absconding.

- **Families without a residence permit** ('clandestine' families) are frequently arrested by the police. The police contacts the Office 'C' (clandestine) of the Immigration Office and transfers the family to one of the return houses. It happens that the Immigration Office instructs the police to arrest a family in their own home right after a regularisation request was rejected ('last in, first out'). Most families are in shock and completely upset when they are transferred and arrive in the return house.
- **Families in the Dublin procedure** are transferred by a transfer service of the Immigration Office. In some cases the family receives a letter in which they are asked to report at the Immigration Office to collect an official decision concerning their case. The letters state that all family members should present themselves. As the family presents itself they are brought to the return homes. They don't get the opportunity to collect their possessions, to contact their social worker or to discuss the situation.

The abrupt transition to the return home hinders the building of a trust relation with the coaches. This illustrates the need for an integrated approach, where, after an order to leave the territory is given, **continuity in the counselling and in the place of residence is guaranteed**. A truly voluntary return in dignity and a sustainable alternative to detention can only be guaranteed by cooperation between the two responsible Ministers.⁴

⁴ Vluchtelingenwerk Vlaanderen published a paper on with recommendations for «an integrated approach to reception and return». <http://www.vluchtelingenwerk.be/actueel/nieuwsitem.php?n=431>

The abrupt transition has an **impact on the education and wellbeing of the child**. Officially the children can continue to "go to school in their neighbourhood", since the return homes are open. But this is a purely theoretical possibility. The return homes are possibly far away from the neighbourhood the children used to live and go to school in. Children can go to school in the town of the return homes (even though it is not self-evident, neither for the child nor for the school, to take in children in the middle of the school year), but the **abrupt breach in the children's lives remains the same as to when they would've been brought to a closed centre**.

The Immigration Office states they do not transfer families to the return homes if the family is not found complete when police arrest them, unless it is clear that the family uses absence of family members as a means to refuse cooperation. Nevertheless, we know of at least one case of a Brazilian family, of which only the mother and the two small children were transferred to the return homes alone, despite the fact the father was not present at the time of the arrest and even though it was not yet established the family would refuse cooperation. The return officer then explains to the mother that it is up to the father to eventually join them in the return home. Obviously anxiety increases with the mother since she is scared to be expelled without her husband. The Immigration Office puts half a family in the return homes, knowing well they cannot expulse the family as long as it is not complete, but uses this tactic as a means of psychological pressure on the father. This was recognised as such by the return officer.

5. There is a lack of transparency towards civil society on the daily functioning of the return homes

The information we dispose of concerns mostly **quantitative data**: the number of homes, the number of families who have been housed there, their nationality, the end result (expulsion, absconding,...), the number and age of the children en the duration of stay in the houses. Limited statistics were published in the press, while official parliamentary children's rights organisations were never notified of these figures, despite numerous requests.

Qualitative data on the families (their administrative statute, their migration history, other pending requests or appeals, their broader psychosocial and medical needs and wellbeing, their fear of return,...) are harder to come across. Such data are essential to allow a transparent evaluation of the pilot project.

6. There are concerns about the evaluation of the pilot and external monitoring by NGOs

It is not clear **when and how the pilot will be evaluated and what methodology will be used**. Neither is it clear to what extent it will be an auto-evaluation by the Immigration Office, or an evaluation in which external stakeholders will be included (lawyers, civil society organisations for the defence of children's, refugee's and migrant's rights, former social workers of the family, the family itself).

We have been trying to come to a **structural arrangement on external monitoring** and visits to the return houses with the Immigration Office since the pilot was launched in October 2008. NGOs regret the lack of information or conflicting information from the Immigration Office and the cabinet of the Minister of Migration and Asylum. All proposals of NGOs were so far rejected or delayed. Currently, one NGO is visiting the return homes, by simply making appointments with the return officers, relying on their goodwill. Access is therefore not guaranteed. We think NGO involvement as part of the alternative model is crucial in ensuring a transparent and open approach to the implementation and eventually success of the model.

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Statistics as of February 2009

17 families with 32 children (average 6 years old) were housed temporarily in the houses since October 2008. 9 children went to school during their stay.

- **3 families are present in the return homes**
- **4 families absconded**
- **2 families could remain in Belgium**
- **8 families were deported**
 - 3 returned 'voluntarily'
 - 2 under the Dublin Convention to another European country
 - 2 others were put on the airplane without resistance
 - 1 family got a police escort to the airport

The families came from Brazil (4), Kosovo (4), Afghanistan (2), Russia (2), Nepal (1), Mauritius (1), Morocco (1), Bolivia (1) and Serbia (1). There is no transparency on the profile of the families. Were they illegal or rejected asylum seekers? Did they have other regularisation procedures pending? We know the nationalities, but not the specific migration history and the broader psychosocial and medical needs of the families.

Statistics as of May 2009

33 families were housed temporarily in the houses since October 2008

- **2 families are present in the return homes**
- **9 families absconded**
 - Nepali family (fear for safety in Nepal)
 - Chechen family (Dublin-Poland, fear for safety in Poland, two brothers disappeared in Poland)
 - Azeri single mother (single woman with child, fear for safety in Azerbeidzjan, honour killings against single women with children)
 - 6 others
- **6 families were released**
- **16 families were deported**
 - 7 returned 'voluntarily'
 - 9 under the Dublin Convention to another European country