

From Deprivation to Liberty:

*Alternatives to detention in Belgium, Germany and
the United Kingdom*



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Front/back cover photograph: A residential unit in Tubize, Belgium, part of the country's alternative to detention for undocumented and asylum-seeking families. © JRS Europe

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EXECUTIVE SUMMARY

The negative effects of detention upon various categories of migrants – asylum seekers, the undocumented, families, minors – has been observed and well documented by medical researchers, non-governmental organisations and even policymakers and politicians. Our 2010 study found that detention systematically deteriorates the physical and mental condition of nearly everyone who experiences it. Symptoms related to depression, anxiety and post-traumatic stress disorder are common. Prolonged detention deepens the severity of these symptoms, but they are already noticeable in the first weeks of detainment.

The financial cost of detention, together with the severe damage it inflicts on migrants, begs a fundamental question: is detention truly worth implementing, considering all of its associated harms? Better yet is the question: are there not more cost-effective and *humane* ways for states to manage migration flows into their territories?

Examining the alternatives

The purpose of this study is to examine alternatives to detention in Belgium, Germany and the United Kingdom through the perspective of those who most closely experience it: migrants themselves. A good deal of research has been done on alternatives from an institutional perspective, namely that of NGOs and governments. The absence of migrant voices in these studies has had less to do with their purposeful exclusion than it has had with the difficulty of finding target samples. Far too few European Union member states implement alternatives; for those who do, migrants may be understandably reluctant to speak to researchers given their vulnerable situation. And compared with interviewing migrants in closed detention facilities, it is harder to interview migrants participating in alternatives because they are usually dispersed in communities.

Among the reasons we chose to conduct research in Belgium, Germany and the UK is because each has distinct and identifiable alternatives to detention. Belgium operates *lieux d'hébergement* for undocumented families who have been living in the country, for families who apply for asylum at the border and for families in Dublin Regulation procedures. Families are accommodated in government-designated private housing, and are attached to a case manager. Few restrictions are imposed on families, and they are provided with a range of social services, including food vouchers. We interviewed six families staying in three of the four towns where the houses are located.

In Germany we interviewed nine unaccompanied minors staying at a facility called *Alreju* – a name that derives from the German word for unaccompanied minors, “*Alleinreisende Jugendliche*”. It is operated by Diakonisches Werk, a charitable organisation of the Protestant churches in Germany. They accommodate asylum-seeking and undocumented minors in a relatively open setting, and provide a variety of age-appropriate services and support with asylum and immigration procedures. Located in Brandenburg state, Alreju is based on the model used for German unaccompanied youths. Similar projects may be found in other federal states, but this is the only one in Brandenburg. In the UK we interviewed 10 migrants, most of whom were refused asylum seekers. Each person was required to report regularly to the UK Border Agency (UKBA), for as little as once per month or as much as three times per week. Migrants go to a reporting centre to verify their presence and whereabouts, and to demonstrate that they have not

absconded. Out of this group, two had recently worn electronic tags in addition to having reporting requirements. These devices, worn on the ankle, transmit their whereabouts via an electronic signal to the reporting authority.

In total we interviewed 25 migrants in all three EU member states. Interviews were conducted with a set of open-ended, qualitative, questions, focusing on basic demographics, living conditions, individual perceptions and outcome expectations. The study comes with several limitations including the small and non-representative composition of the sample, and the lack of interpretation, to name a few.

Main findings

The differences between the alternatives that were researched, and the different situations of the migrants we interviewed, make it difficult to compare conditions. Nevertheless, we identify several common elements that strike us as being important for how the examined alternatives impact the lives of the migrants we spoke to.

Living conditions

The type and quality of living conditions are very important to the migrants we interviewed. This is a big factor because it is closely linked with a sense of self-security. People who feel safe, have a regular roof over their heads, a place to sleep and access to food – for themselves and their families – appear calmer and better prepared to handle the administrative complexities of asylum and immigration procedures. It is insufficient to merely provide for asylum and immigration procedures without ensuring migrants' basic needs are suitably and consistently met.

The unaccompanied youths in the German Alreju project were found to be good. Their basic needs are cared for, and the facility itself lends to a sense of safety. The family units in Belgium follow a similar example, in that they are well secured and in good physical condition. There are outdoor spaces for children to play. According to our observations there are not any markings or signage that would easily identify the units as belonging to the Belgian Immigration Office. This apparently contributes to a sense of normalcy, which seems to be important in lowering parents' stress. These conditions contrast with what we observed in the UK, where the people we interviewed are living in destitution. They had no guarantee of safe housing, and nor could they meet basic daily needs. The struggle to find a bed for the night, food to eat and money for public transportation appears to place a high amount of stress on individuals. While asylum seekers in the UK are eligible for social welfare benefits, refused asylum seekers are not. This fosters deep resentment and mistrust towards the UKBA.

Trust in the system is important

The principle of mutual trust between states and migrants appears to be a crucial element for community-based alternatives to work well. Certainly from migrants' perspectives trust seems to be an important factor in how they perceive and interact with the authorities.

Unaccompanied minors at Alreju expressed a good level of trust towards staff. While some were unhappy at the lengthiness of their asylum procedures, they did not let this get in the way of their perceptions of the staff. Their trustworthy attitude may have a basis in the good living conditions. Families in the Belgium also expressed trust

towards the case managers. The families we spoke to appreciate their helpful efforts, even if they do not always agree with what the case managers prescribe. Conversely, everyone we talked with in the UK expressed a deep distrust towards the UKBA. This seems to stem from the negative experiences people had, including prolonged detention and even imprisonment (for having illegal work and false documentation). Botched removal operations, inability to contact UKBA caseworkers and poor living conditions, among other conditions, seem to lower people's trust in the authorities.

Non-compliance as a survival strategy

Few of the people we interviewed had absconded from the authorities. Those who did had experienced negative consequences: prison terms, immigration detention and separation from family.

The choice to abscond is not linked to bad intentions, but rather to personal survival. Underpinning this seems to be elements of fear – fear of return, destitution, being unable to provide for oneself and the family and loss of personal dignity. In Belgium, one family who had absconded did so because they did not want to be deported. The few individuals who had admitted to absconding in the UK sample cited the need to work and earn money as a primary reason. The unaccompanied youths in Germany did not report concerns with absconding. Why they did not see it as an important issue for them is uncertain; but important to note is that, at the time of their interview, removal from Germany was not something they had yet to think about.

Regular, up-to-date information, is absolutely necessary

The people we spoke emphasised the importance of understanding their situation and having up-to-date information. This is an important factor because without good information they cannot make sound decisions. Without it people become vulnerable to anxiety, fear and as a consequence may decide to choose their own strategies for survival rather than following immigration procedures.

The youths in Germany and the families in Belgium reported to be well informed of their cases. In Belgium, the case managers are responsible for informing families about their asylum and immigration cases, as well as informing them of all possible outcomes. In some instances this information flow was disrupted due to the detainment of one family member while the rest stayed in the units, which led to considerable stress being placed on the family. Interviewees in the UK told us that they were very uninformed about their situations, a factor that does seem to generate mistrust towards the authorities. Migrants told us that it is very difficult for them to obtain information from staff at the reporting centres, and that communicating with their caseworkers is nearly impossible without the help of a lawyer.

Social welfare benefits are vital

An alternative to detention must not only provide for one's liberty, but also a minimum level of social support so people can meet their basic needs. Families in Belgium and the youths in Germany receive basic support from the state, which helps people to concentrate more on their asylum and immigration cases rather than on finding food and a bed for the night. The withholding of social benefits from people we spoke to in the UK appears to be one of the reasons for their animosity towards the UKBA. Here it is important to note that interviewees continue to comply with reporting conditions despite living in destitution. That said, there are obstacles that get in the way of compliance, namely the lack of funds to use public transportation, and their daily preoccupation with finding shelter and basic resources.

Legal assistance is necessary – but the quality must be good

In the more open environment of a community-based alternative to detention, individuals and families should be better able to choose a lawyer that would best suit their case. Yet the variety of choices people may encounter also means that they can face difficulty in determining which lawyer can best serve their interests.

Families in Belgium can be immediately connected to a state-appointed lawyer if they wish. Based on what we learned, many of these lawyers do not specialise in immigration and refugee law, meaning that they are not sufficiently competent to provide families with the best advice possible. Private lawyers are available, but costly. Some of the individuals in the UK found lawyers through free legal aid networks. Some had paid large sums of money for private lawyers with little in return. The youths in Germany did not touch on the issue of legal assistance. Generally migrants with low incomes can turn to a lawyer for one time only. The low repayment that these lawyers get from the local courts makes this system unattractive. Slightly higher fees can be paid to lawyers during actual court procedures, but to obtain these fees lawyers must demonstrate that their case will probably be successful. The insecurity of the system is a disincentive for ambitious and qualified lawyers to work with refugees and migrants.

Case resolution should be efficient

Community-based alternatives should be closely linked with effective, efficient and fair asylum and immigration procedures. Prolonged delays are counterproductive, as they diminish people's belief in the system.

In the Belgian alternative, cases are resolved in a little over four weeks due to accelerated procedures. A few families found this to be good, as it did not encourage them to establish roots in Belgium. On the other hand, accelerated procedures may happen too fast for families to follow. Another risk is that lawyers may be unaccustomed to accelerated procedures, especially as regards lodging appeals. In Germany, some of the unaccompanied youths have experienced long waits for a decision on their asylum application. This led to feelings of anxiety and uncertainty about whether they can establish a life in Germany. Interviewees in the UK have waited for years for a resolution to their case. Prolonged waiting times lead to a sense of despair because they must continue to cope with living in destitution. The inefficiency of the system, as our interviewees experience it, leave them feeling unprotected.

Conclusions & Recommendations

None of the measures we examined are inherently harmful. They pose few restrictions to physical movement, and allow migrants to live in the community and access local services. And even though detention is still used in all three countries, it is positive that there are at least some measures that remove people from the deteriorative environment of a detention centre into the open environment of a community. Each measure represents a step towards the normalisation of 'engagement' over 'enforcement'.

The biggest problems that we observed are related to the larger systems of asylum and immigration. These are systems that are based on assumptions about likely migrant behaviour rather than on empirical evidence. They are systems that assume the worst in people, rather than the best. This confrontational way of proceeding is underpinned

by the stresses and burdens of the entire system. Many asylum seekers and migrants have led difficult lives and experienced events that have caused deep physical and mental trauma. Thus they are keen to protect themselves against further adversity. Meanwhile, states regularly experience the dual legal pressures of safeguarding national sovereignty, versus respecting and upholding the fundamental human rights that everyone possesses.

Factors that contribute to the well functioning of alternatives

From the research we can infer particular factors that seem to be important for the functioning of the alternatives to detention we researched. These factors are borne out from the interviews done for this project. Important to note is that these factors are supported by the larger research projects undertaken by the International Detention Coalition and the UN Refugee Agency (UNHCR).

- Living conditions: Community-based measures must provide individuals and families with secure living conditions. In a way this factor sets the tone for other conditions, in that if a person does not have access to secure housing, then s/he may have difficulty with focusing on asylum and immigration procedures.
- Holistic support: Good strategies that were examined by this research show that the provision of holistic support is important for migrants. This includes social support, legal assistance, medical support, and child care (if necessary). Holistic support must also include social welfare benefits to meet people's most basic needs in the same way that good living conditions does.
- Regular, up-to-date, information: The only way that migrants can take proper decisions is if they are fully informed about all aspects of their asylum or immigration case. It is especially important for states to provide regular information, because it may enable more efficient procedures, fairer and quicker outcomes and higher rates of compliance.
- Qualified legal assistance: Migrants usually need the assistance of a qualified, and appropriately specialised, lawyer. States should finance lawyers so as to encourage them to work on asylum and refugee cases.
- Focus on all possible outcomes: Alternatives to detention that have a return-only focus tend to perform poorly as compared to measures that explore all possible outcomes for case conclusion. Even if in reality certain options are closed off, such as legal residence, it would still be important for migrants to have every option thoroughly explained and explored so they can be assured that every step has been taken. This is how states can be built between migrants and states
- Frontloading support: All of the above factors would work well if they were provided at the onset of a person's asylum or immigration case. There should be as little delay as possible. States that are upfront and honest with migrants, inform them of all conditions, procedures and opportunities, and offer holistic social and legal support, may find that rates of compliance increase as migrants feel more trust towards the authorities.

Recommendations to EU stakeholders

We urge the governments of Belgium, Germany and the United Kingdom to take seriously our **principal recommendation** that it is important to link alternatives to detention to larger systemic change. Alternatives to detention that protect migrants and meet the conditions of states are those that place greater resources on engagement rather than on enforcement.

Reducing immigration detention is an important and long-term commitment that must be taken by all actors in Europe: from the European Commission and Parliament, down to national and local governments, as well as civil society actors such as ourselves. All stakeholders need to do their part to ensure the transition from deprivation to liberty.

To the European Commission:

- 1) Closely monitor how member states implement Article 15(1) of the EU Returns Directive calling for “other sufficient but less coercive measures”. The transposition of this directive is an important opportunity for states to build – or strengthen – a legal presumption against detention into their national laws, as well as a legal basis for the implementation of non-custodial alternatives to detention.
- 2) Provide close practical and financial support to member states that demonstrate a willingness to decrease their immigration detention estate by instituting non-custodial alternatives. Practical support should include the provision of legal and technical advice on adopting alternatives into law, and ensuring their practical implementation. Financial support mechanisms, such as the European Refugee Fund and European Return Fund, must regularly include line items for actions related to alternatives to detention that states and NGOs can apply for.
- 3) Insist on the inclusion of a strong presumption against detention, and a legal obligation for alternatives to detention, for asylum seekers in a newly amended Reception Conditions Directive.

To the European Parliament:

- 4) Adopt a newly amended Reception Conditions Directive that contains a strong presumption against the detention of asylum seekers, with obligations for alternatives to detention. Currently the Parliament is at an ideal moment to implement this recommendation, as they are debating the Commission’s ‘recast’ proposal with the Council. Common EU legislation is a necessary condition for all EU member states to really implement alternatives.
- 5) Conduct MEP delegation visits to alternative to detention in Europe. In recent years delegations of MEPs have visited detention centres all around the EU, and have written reports that a range of stakeholders have used and cited. Delegation visits are a way for MEPs to not only take stock of asylum and immigration opportunities and challenges throughout the EU, but also to independently monitor member states’ use of detention and non-custodial alternatives. Such visits could also be a means for MEPs to build consensus on key issues relating to alternatives.
- 6) Engage constituents in discussions about the detention of asylum seekers and migrants in the EU, and on non-custodial alternatives. Since the good alternatives appear to be community-based models, it would make sense to encourage community leaders and citizens to think about how they could take part. In doing so, constituents would need to receive full briefings, to understand the harmful consequences of detention and to dispel negative myths about immigration, before they could participate in such discussions.

To the EU member states:

- 7) Transpose Article 15(1) of the EU Returns Directive in the best manner possible, with a strong presumption against detention, and specific measures on alternatives to detention, built into national law.
- 8) Adopt a newly amended Reception Conditions Directive that presumes against the detention of asylum seekers, and encourages states to implement alternatives to detention in law and practice.
- 9) Implement alternatives to detention that are already built into national laws. This is an important first step that member states can take on the transition from detention to alternatives. Good examples in the EU and from around the world can guide member states in this initial phase.
- 10) Develop cross-institutional linkages to maximise national expertise. Immigration law and policy is often too strict and inflexible to appropriately deal with migrants in open community settings. Moreover, immigration law and policy cannot sufficiently address the social welfare needs of children, families and individuals. Successful community-based alternatives that provide holistic support will not only need the leadership of national immigration offices, but also the strong collaboration of social welfare and youth welfare offices. The Alreju example in Germany is a case in point, as it takes the same services offered to German youths and provides them to migrant youths.
- 11) Undertake national studies that analyse the costs, benefits and feasibility of non-custodial alternatives in comparison with detention. National-level studies can be used to explore multiple options and collect the viewpoints of numerous stakeholders, including migrants. The Dutch government, for example, has spent the last year studying the feasibility of alternatives; as a result, they will implement several pilot projects in 2012.
- 12) Organise national stakeholder roundtables to brainstorm ways for implementing alternatives. Participants can include refugee and immigration organisations as well as social service institutions, child welfare organisations, medical organisations and researchers, among others. A multi-stakeholder approach can lead to comprehensive and sophisticated ideas, and can serve to build trust between civil society and government. Migrants should actively take part in such roundtables.

INTRODUCTION

Challenging Detention

Immigration detention, as a state tool of migration management, inevitably harms nearly everyone who is subject to it. This is true regardless if the detainee is an asylum seeker, a recognised refugee, an undocumented migrant, a minor, a mother or a single young male. This is also true regardless if the detainee has a traumatic history or a healthy one.

The harmful consequences that detention poses for migrants have been widely documented, not only by concerned non-governmental actors but also by medical researchers. A decade ago researchers in Australia, for example, observed “psychological disturbances” in asylum seekers held in long-term detention. Psychological reactions were “characterised by stages of increasing depression” as a result of overwhelming feelings of “injustice”. The researchers concluded, “The prolonged detention of asylum seekers appears to cause serious psychological harm”.¹

Numerous other medical studies have concluded that detention seriously harms migrants’ psychological capacities. Clinical symptoms related to severe depression, anxiety, post-traumatic stress disorder and suicidal ideation are all significantly correlated to detention, and especially prolonged periods of detention.² A study in 2009 concluded that asylum seekers in detention are more susceptible to severe psychological distress than asylum seekers living in the community.³

Even political actors have observed time and again the harmful effects of detention. A 2008 study commissioned by the European Parliament concluded that asylum seekers and undocumented migrants possess determinants that increase their vulnerability in a detention centre, such as prior experiences of trauma and the difficulties associated with long migratory journeys.⁴ Delegations of European Parliamentarians who visited detention centres throughout Europe between 2005 and 2009 noted that in many places detainees were subject to sub-standard conditions, a crucial factor in the psychological and physical distress they experience as a consequence.

Non-governmental actors have typically led the way in systematically documenting the damaging effects of detention. Any Internet query would reveal a vast collection of reports and studies with such conclusions.⁵ Our own study in 2010 found that detention is significantly correlated to many of the clinical psychological symptoms described in medical studies. We found that detention has a distinctively deteriorative effect upon the individual person. The importance of this finding is based on the one-on-one interviews that we – and our partners – did with nearly 700 asylum seekers and undocumented migrants in 21 EU countries. This finding is one and the same despite the differences in how EU member states use detention.

Immigration detention also comes with a financial cost. Admittedly these costs are harder to quantify; not only is there the cost of maintaining the physical structure of a detention centre, but also paying salary to a 24-hour security staff, administrative personnel, cleaners – not to mention all the costs associated with maintaining a minimally decent standard of living such as food, proper sanitation, bedding, linens, showers, toilets and recreation. It may be that states are reluctant to reveal their spending on immigration detention in the public domain because the costs are exorbitant. Yet some governments have provided approximate estimates that we can refer to.

In response to Parliamentary questioning in 2010, the UK government admitted the cost of one bed per day in a detention centre to be around £120. Using these numbers, Oxford University projected the costs for operating one detention centre in the UK to be approximately £8.5 million per year (€9.7 million).⁶ Across the channel, a debate in the French *Assemblée Nationale* in July 2005 revealed the cost of detaining one person per day to be €355; and in 2008 France spent €533 million for the detention and expulsion of 20,000 people.⁷ In Belgium, the approximate cost of detaining one person per day is €180; in the Netherlands it's about €197.⁸

The financial cost of detention, not to mention the severe damage it inflicts upon people, begs a fundamental question: is detention truly worth implementing, considering all of its associated costs and harmful factors? Better yet is the question: are there not more cost-effective and *humane* ways for states to manage migration flows into their territories?

Moving towards alternatives

The evidence of the harmful effects of detention is nearly matched by the evidence that there are viable and sustainable non-custodial alternatives to detention. We say 'nearly' because the scope of research in this field is not as wide as it is for detention.⁹ Nevertheless, the research that has been done is significant enough to 1) improve our understanding of what alternatives are available, and 2) challenge states' assumptions that there is no better way than resorting to detention.

There is no one over-arching and legally tested definition of what constitutes an "alternative to detention". In practice, states use a variety of methods that vary restrictions on migrants' liberty.¹⁰ The spectrum in the EU ranges from full liberty on one end to automatic deprivation of liberty for nearly everyone on the other end. In between these two poles lie a series of measures that vary in how they deprive a migrant's liberty or not. Some EU states allow migrants to live in the community but oblige them to report weekly to the authorities, to verify their whereabouts and to ensure that they do not abscond. Other states permit migrants to be released from detention on bail, or on the provision of a guarantor or surety. In some cases states permit migrants to live in a restricted residence in the community, either meaning that they must live in one particular accommodation, or that they cannot leave a designated perimeter in the community. A smaller number of EU states use case managers to follow migrants who live in the community to ensure compliance with asylum or migration procedures.¹¹

Thus while there is not one common understanding of what constitutes an alternative to detention, for the purposes of this study we would like to highlight one established by the International Detention Coalition:

Any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country.¹²

This definition is useful for this study because it is broad enough to encompass the three different models we researched in Belgium, Germany and the United Kingdom. Each of these countries implements practices that permit certain categories of migrants to live in the community, albeit with particular restrictions.

While each practice carries risks as well as benefits – to be reviewed in this report – each one does show how states can shift migration management models from a basis of deprivation, to a basis of liberty.

Purpose & Objectives

The central aim of this study is to examine alternatives to detention in Belgium, Germany and the UK through the perspective of those who most closely experience its impacts: the migrants themselves.

The perspective of migrants has been left unaddressed in the existing research on alternatives to detention in favour of a focus on an institutional perspective, namely that of NGOs and governments. The absence of migrant perspectives has had less to do with their purposeful exclusion than it has had with the sheer difficulty of finding a target sample. Particularly in Europe it is difficult to find migrants to interview because a) their insecure situations may leave them understandably uncomfortable with giving interviews, and b) while many EU member states have alternatives to detention in law, far too few actually implement them. And compared with interviewing migrants detained in a closed facility, it is harder to interview migrants participating in alternatives because they are usually dispersed in communities.

The purpose for interviewing migrants who participate in alternatives to detention is to better understand how such practices impact their day-to-day lives. From previous research we know that detention harms migrants; but we know less about the effect that alternatives to detention have on migrants. Typically it is assumed that the mere act of situating migrants in non-custodial arrangements would improve their access to fundamental human rights. Yet, excluding small evaluations of individual projects, there have been few attempts to systematically interview a group of migrants to learn how they perceive so-called alternatives to detention, and how they would evaluate them on the basis of their own experiences.

Knowing how alternatives impact migrants themselves equips us to address the primary objectives of this study. Firstly, to evaluate the alternatives in the selected countries based on the quality of their respective conditions and practices. Secondly, to learn how the selected alternatives differ from detention in their impact on migrants. Thirdly, to promote recommendations to improve the selected alternatives, and to highlight conditions and elements that might make for successful alternatives.

Methods

We chose to conduct our research in Belgium, Germany and the UK for very practical reasons. In each one we have a country office that helped us find a target sample and organise the logistics of the interviews. Having a permanent presence in the country was a crucial factor, as the time span to do the research was short and we needed to maximise the existing networks and connections of each country office. These countries were also chosen because they have distinct and identifiable alternatives to detention.

Belgium operates *lieux d'hébergement* (accommodation units) for undocumented families living in Belgium, families who apply for asylum at the border, as well as asylum-seeking families that are in Dublin Regulation procedures. Families are accommodated in government-designated private housing in the community, and are attached to a case

manager. Families are free to move about, with some restrictions, and are provided with a range of social services and legal support. We interviewed six families staying at three of the four towns where the houses are located.

In Germany we interviewed nine unaccompanied minors staying at facility called *Alreju*, operated by Diakonisches Werk, a charitable organisation of Protestant churches in Germany. The facility accommodates asylum-seeking unaccompanied minors in a relatively open setting, and provides a variety of age-appropriate services as well as support with asylum procedures. Located in Brandenburg federal state, Alreju is based on the model used for German unaccompanied youths. While there are similar projects in other federal states, Alreju is unique within the state of Brandenburg.

In the UK we interviewed 10 migrants, most of whom were refused asylum seekers, at the premises of the JRS UK country office in London. Each person was required to regularly report to the UK Border Agency (UKBA), for as little as once per month or as much as three times per week. In this scenario migrants go to a UKBA reporting centre to verify their presence and whereabouts, and to demonstrate that they have not absconded. Out of this group, two interviewees had recently worn electronic tags in addition to having reporting requirements. For months they wore a device on their ankle that transmitted their whereabouts via an electronic signal to the reporting authority.

In total we interviewed 25 migrants in three EU member states. Each interview was conducted with a set of interview guidelines composed mostly of open-ended, qualitative, questions. The interview guidelines, which are available in the annex of this report, contained questions focusing on five major areas:

- 1) Basic information: age, sex, nationality, family composition, current legal status'
- 2) The journey up to the alternative to detention: length of time in the country, level of satisfaction in the country, events prior to placement in the alternative, prior experiences with detention, reasons for the persons legal situation;
- 3) Living conditions within the alternative: level of information and knowledge of asylum and migration procedures, linguistic barriers, ability to maintain contact with friends, family, relatives, NGOs and other sources of support, ability to meet personal and family needs, i.e. availability of medical care, public transport, educational facilities;
- 4) Individual perceptions of the alternative: feelings of their situation, of their level of trust towards the authorities, feelings of fairness, level of choice within the alternative and ideas for improvement;
- 5) Outcome expectations: exploration of personal plans for the future, intentions as regards potential return to the country of origin or stay within the host country, perception of the alternative's impact on personal plans and extent to which the host country is the preferred destination.

Each interviewee was informed about the research project and empowered to decide whether or not they would participate. The identities of each interviewee are kept confidential. At times the assistance of interpreters were needed: in Belgium, French and Dutch interpretation was done by JRS Belgium; in Germany, an external interpreter helped us speak to the Afghan unaccompanied minors. Interviews in the UK were digitally recorded, with the permission of each interviewee, but in Belgium and Germany they were not. This effects the style of the report: the UK chapter contains several quotes from interviewees, whereas in the Belgian and German chapters there are fewer direct quotes.

Interviews were analysed on the basis of their conditions and practices towards migrants, insofar as to their difference from conditions and practices in detention. For reasons of time and capacity, we did not interview a control group of detainees, instead basing our analyses on the findings of the detention study we did in 2010.

Aside from migrants we spoke with civil society actors to obtain contextual information. In the UK we interviewed: Eiri Ohteni, of the Detention Forum; Puck de Raadt of Bail Circle Network; Carina Crawford-Rolt of Citizens for Sanctuary. Several informal exchanges were had with JRS UK about this report. In Belgium we had regular exchanges with staff from the JRS country office, as they work closely with other Belgian NGOs on issues related to the *lieux d'hébergement*, and we held informal interviews with three of the four case managers. And we had regular exchanges with JRS Germany to learn about the context that Alreju operates within.

In order to interview families in the Belgian *lieux d'hébergement*, we had to seek the permission of the Belgian Immigration Office. Their permission was readily granted, allowing us to conduct interviews with no interference from the authorities. It was not necessary to obtain state permission to interview the youths in Germany and the individuals in the UK.

The interviews, conducted by two JRS Europe staff persons, were done during one-week research trips for each country from September to November 2011.

Limitations

A clear limitation of this study is its small sample size and that it was done in only three EU countries. Moreover, the sample in each country is not representative of the respective alternative to detention scheme. Our access to the sample was very dependent on linguistic factors, researchers' and migrants' availability, and the existing networks and connections of the respective JRS country offices.

In the UK interviewees were already familiar with JRS, and as a result felt comfortable in speaking about their experiences in great detail. Moreover, all interviews were held in the JRS office in London, a setting they were already familiar with, which may have contributed to their forthcoming participation. This was not true for Belgium because families come and go from the *lieux d'hébergement* quickly; even though JRS is one of the only NGOs to visit the houses, the frequency of their visits cannot keep up with the constant flux of families. In Germany JRS does not regularly meet with the unaccompanied minors at the Alreju facility. Thus in these two latter cases interviewers had little time to establish trust, which may have contributed to the less-detailed responses of migrants. Added to this, we could only interview migrants if there was a common language, usually English, or if an interpreter was available. This factor significantly narrowed our sample.

Geographic distance was a significant limitation in the research. We could only conduct interviews within the one-week time span of each country visit, as budgetary constraints prevented us from conducting multiple country visits. Belgium was the only exception because JRS Europe is based in Brussels, enabling us to visit the *lieux d'hébergement* on repeated occasions. That said, the houses are located in communities that are hard to access by public transport, which severely limited our ability to maintain a regular presence there.

Aside from the few interviews with NGO representatives in the UK, we did not expand our target sample beyond the migrant population. No interviews were conducted with government representatives, save for the informal discussions with the case managers in Belgium, who are employed by the immigration office. This means that the main findings in this report are strictly based on what migrants told us. While we identify this as a limitation, in the sense that it gives us a partial perspective, we would also argue that the perspectives of government and civil society have already been well-documented by others.

Finally, this research project was limited by time. Funding was only received in mid-summer 2011, and for reasons of funding we had to complete the project by the year's end.

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BELGIUM: Community case management for undocumented and asylum-seeking families

Background

In October 2008, the Belgian government decided to end the detention of families with children for immigration purposes. Their decision led to the development of an alternative to detention that is researched in this report. The road to this alternative, however, was not an easy one.

Prior to this alternative, it was customary for the Belgian authorities to detain asylum-seeking families at the border. Undocumented families and those in Dublin procedures were also detained, until a court judgement in 1999 ruled that the practice contravened the UN Convention of the Rights of the Child. Following this, only the head of the family was detained. In practice, this was usually the father. The rest of the family were accommodated in the community and asked to appear at the airport on the date of removal. However many families did not appear at the airport on the prescribed date. In response, the government issued a decision in May 2001 to detain entire families.¹³

In 2006, the authorities detained 960 children.¹⁴ This sparked a wave of severe criticism, as well as campaigning, petitions and advocacy initiatives by civil society organisations. The government commissioned a study on alternatives to detention, carried out between October 2006 and February 2007, which was presented to the Parliament on 25 April 2007.¹⁵ The results of this study led to another feasibility study for the purpose of reducing – and avoiding – detention for families who are in return procedures.

On this basis, the government invited undocumented families to report to the Immigration Office in Brussels to discuss possibilities of returning to their country of origin. Very few families came to these interviews, preventing the authorities from organising returns. As a result the initiative ended in July 2008.

Taking these experiences into account, and as a consequence of lobbying from civil society, on 1 October 2008 the government decided that families with children already in the Belgian territory would no longer be detained. Families arriving at the border would still be subject to detention.

Seven individual residence units (October 2008 to March 2009) were made available for undocumented families, and also for those in Dublin procedures, underpinned by the Royal Decree of 14 May 2009. Eventually the project was broadened in October that year to include families arriving at the border, principally those who've made an application for refugee protection.¹⁶ This phase of the project has given way to what is currently practised.

The current alternative

Undocumented families, as well as families who submit an asylum application at the border, are now accommodated in the *lieux d'hébergement*, also known as "Family Identification and Return Units".¹⁷ There are 15 individual family units currently in use, with seven more in preparation.¹⁸ The 15 units are clustered into four residences, located in four separate towns: Sint-Gillis-Waas, 25 km west of Antwerp; Tielt, 40 km west of Gent; Zulte, 32 km southwest of Gent; Tubize, 25 km south of Brussels.

The original aim of this project was to facilitate a family's return to their country of origin. While this may be the ideal endpoint the Belgian government seeks to achieve, in practice, not every family is returned, and nor is every family in a position to be returned.

Undocumented families who have been ordered by the authorities to leave Belgium are immediately taken to the return houses. These may be families who first entered the country with a legal visa that has since expired; families who have been living without a legal status and come to the attention of the authorities; or families who appear at a border point, such as Brussels Airport, and do not meet legal entry obligations. In the past, they would have been put into a detention centre while arrangements for removal were being made. Now, they are placed into one of 15 family return units, where they wait together until they return voluntarily or are enforced to return.

Families who apply for refugee protection at the border – in most cases, Brussels Airport – are accommodated in one of the family return units. If these families arrive late in the evening, or if there is no space in the family units, then they may be held overnight in the transit zone or in the detention centre at the airport, if that is where they arrive. But, as soon as possible, they are transferred to an individual housing unit.

The first person that a family meets upon arrival to the return unit is the 'coach'. Also known as *agents de soutien*, or, "support officers", these persons, in effect, serve as case managers and are employed by the Belgian Immigration Office. Each family is attached to one coach, whose job is to provide them with individual and holistic support.

For undocumented families in return procedures the coach mainly assists the family with preparing for return. They answer legal questions, provide access to a lawyer if requested, solve logistical issues and encourage the family to cooperate with voluntary return assistance provided by the International Organization of Migration (IOM). Aside from this, they spend time establishing personal rapport with families, from listening to their stories and even finding second-hand clothing for families who arrived unprepared for Belgium's climate.

It is important to note that the scope of the coaches' role is not solely limited to return. While it is true that their primary role is to encourage families to voluntarily return to their country of origin, they are also in a position to assist families with exploring all possible outcomes for the resolution of their case. In some instances, this may include exploring opportunities for legal stay in Belgium.

Asylum-seeking families who apply at the border, or those who are in procedures under the Dublin Regulation, are treated in the same way as described above. The key difference is that these families are in the refugee status determination procedure – return to their country of origin, therefore, is not emphasised to the extent that it is for undocumented families. In these cases, coaches help families with finding a lawyer, and answer their questions about the asylum procedures. But even at this point, however, coaches do raise the prospect of return so as to help the family understand all possible outcomes to their case.

During a family's stay at a return unit their asylum procedure is accelerated, as is the case for all people who apply for asylum at the border, to a time limit of two months with an extra 15 days if an appeal is lodged. Accelerated procedures come with costs and benefits – families do not have to wait long, but because everything happens much faster it is harder for families to follow what is happening to their case. Sometimes lawyers are not aware that the

families are in accelerated procedures, and consequently introduce the appeal too late.¹⁹ Coaches inform lawyers that they are dealing with accelerated procedures, and often contact them to remind them about approaching deadlines.²⁰

Conditions and rules of the family units

The family units were once used to house police officers and their families. They are owned and operated by the state, put at the Immigration Office's disposal by the Finance Ministry.

Viewed from the street, one would not notice anything about the houses that would reveal its true nature. They are located on ordinary streets in ordinary towns. In Sint-Gillis-Waas the units look like typical row houses, and in Tubize they are inside a typical apartment building. The units in Zulte are private homes lined up side-by-side, each with a small backyard space and front garden.

Physically the units are in good condition. There is no overt sign of disrepair. The surrounding neighbourhoods appear to be well kept. The interiors are in good condition as well. The living spaces are lightly furnished, and the kitchens are suitably equipped. Each unit is individually secured, meaning that families retain control over who can access their unit. Although each coach can access any unit, they claim to respect each family's privacy by announcing visits ahead of time, keeping distant from intra-family relations and by not entering individual units without prior consent.

The conditions at the family units are different to those found in the detention centres. There are neither bars nor barbed wire perimeters, nor 24-hour security guards. Basic supplies, such as cooking utensils, linens, towels and toiletries, are paid for by the Immigration Office and distributed through the coaches. Yet the units are far from luxurious. They are furnished in a manner that exudes impermanence. The message is clear: here you can stay and your basic needs will be met, but do not get comfortable. There are few forms of diversion. If parents do not have any toys or books for their children, then the coaches will provide a few if they can. Otherwise, it is a very non-stimulative setting.

Children of appropriate ages are permitted to attend local schools. This decision is left to the parents. If a family knows they are only staying for one week, then they may decide to not send their children to school. Children are only sent to schools with whom arrangements have been made and that have agreed to accept children in these situations. While this can place pressure on local schools, as one coach told us, it is a useful diversion for the children and a good way for parents to take a rest. And despite the obvious challenges, local teachers have come to appreciate the influx of diversity into their classrooms, which also benefit Belgian students, according to the coach.

Coaches provide families with vouchers to purchase food. These vouchers cannot be redeemed for cash. A doctor makes regular visits to the family units, and families can meet with a psychiatrist if necessary. Basic medical supplies are available in the coaches' offices, which are located within each block of units.

Families are expected to adhere to a set of rules that are enforced by the coaches. The most important – and perhaps most restrictive – rule is that units must always be occupied by at least one member of the family, and the

entire family has to stay in the unit overnight. If the children want to go to the local playground, for example, then the father or the mother must stay behind. The entire family cannot leave the premises. There are exceptions to the rule, and it is up to the coach to decide whether exceptions are allowed. For example, a single mother may leave the apartment to retrieve her children at the local school. Asylum seeking families can all go at once to their refugee determination interview in Brussels. Entire families are also permitted to attend religious services.

Families are not required to report to the coaches at specific times, since the coaches meet with them regularly as they go about their rounds. With exception to the rule that one family member always be present in the unit, there are no other physical restrictions – save for being required to live in the family unit and not anywhere else.

Running away from the premises, or absconding, is strictly prohibited. One family we spoke to left a family unit and fled to Dublin, Ireland with forged documents. Upon arrival they were immediately intercepted by Irish border guards who had found the family's fingerprints in the EURODAC electronic database.²¹ The family were removed to Belgium via Dublin Regulation procedures. The mother and two children were returned to a family unit, while the father was placed in a detention centre. The responsible coach said that this action was done because the family had absconded.

The numbers

According to the latest numbers from the Belgian Immigration Office,²² 249 families – among them 452 children – have been accommodated in the family units from October 2008 to November 2011. The average time that a family has resided in a unit is 23.7 days. The majority of families have come from Iraq and Afghanistan, with other larger groups from Brazil, Russia and Armenia.

The latest figures show that, of the total number of families who have come and gone through the units, 42.5% were removed from the Belgian territory. Within this group, one third were forcibly removed, one quarter removed via Dublin procedures, and approximately another quarter left voluntarily.

One quarter of the families who left the family units did so by absconding. Since the project's inception in 2008, the rate of absconding has hovered around 20% and 25%. This means that between 75-80% of families who have been accommodated in the family units have fully complied with Belgian law despite the low level of restriction.

Importantly, one third of the families who have left the units were allowed to legally stay in Belgium. Within this group, 47% was given an official protection status. Most became recognised refugees.

Migrant interviews

JRS Europe spoke with six families accommodated in the units at Tubize, Sint-Gillis-Waas and Zulte. Every family – save for a single mother and her child – was composed of a husband, wife and children. The average age of the parents was 30 years. A total of nine children were present in all of the interviews, varying in age from 5.5 years to eight months. The time length each family had been in Belgium varied from as little as one week to four years. Only one family were in the asylum procedure. Three were refused asylum seekers, and two undocumented; the latter five

were all in return procedures. The families came from Pakistan, Algeria, Iranian Kurdistan, Macedonia, Georgia and Armenia.

Only two families had been detained prior to their placement in the units. One, a single mother from Iranian Kurdistan, had spent one night in the transit zone at Brussels airport and another night at the detention centre on the same premises. An Algerian family with two children that we spoke with had the same experience.

Their detainment was brief, but left an indelible impression. The Algerian family could only describe it as “very bad”. The father was separated from the rest of the family. “I had no idea if he would be deported or not”, said the mother. The single mother from Iranian Kurdistan was placed in a large room with 8-10 other people. “My son was crying all night”, the mother told JRS Europe, “There were no facilities for children.” After one night, they were transferred to the detention centre at the airport where the facilities were “a bit better”, according to the mother. Nevertheless, the whole experience frightened her and her child – who happened to be ill – because they had no idea what would happen next. Both families were transferred to the units at Sint-Gillis-Waas and Tubize.

Good living conditions

Everyone was content with the living conditions in the family units. People were grateful for receiving vouchers to purchase food, and to have furnished and suitably equipped apartments. Some families expressed enjoying the open atmosphere, which encouraged socialisation with other families. Children are able to play with one another in the backyard spaces. One family sent their children to the local school, which they were happy about. Any criticisms that families expressed rested on wanting a few extra things: television, reading material or other types of diversion.²³ Most days are spent waiting. Even if the conditions are good, these long waiting spells give way to boredom and even anxiety as people worry about what might happen with their case.

Families did remark, however, that they would appreciate receiving money alongside, or instead of, vouchers. The problem with vouchers is that they can only be used for food, and not clothing (as some families come with little). One family wished that they could borrow books from the local library, which would help to pass the time and provide a form of distraction to the children.

Trustful rapport between staff and migrants

None of the families expressed any negative criticisms about their rapport with the coaches. In all cases they described the coaches as being helpful, friendly and respectful. The single mother from Iranian Kurdistan said that her coach was “smiling and friendly” upon her arrival. The coach explained to her all of the procedures, step by step, including the asylum application process, telling her about the interviews and what could happen if her case is successful or not. The coach even lent her child a few toys to play with. Asked what they liked best about their coach, a family from Macedonia said it was the “open and friendly attitude”.

Families are grateful for the holistic support given by the coaches.²⁴ They also appreciate the coaches’ clear explanations on what they can and cannot do. One family was in a particularly complex situation, for example, as they had received a few negative decisions on their asylum application and were awaiting a decision on a legal residency status at the time of the interview. They said that their coach had explained everything to them very accurately, and that they understood that their coach could not make key decisions on their case.

Every day the coaches must negotiate the dichotomy inherent to their job. On the one hand, they are providing a holistic social service. In order to do that effectively, they must establish a personal and trustworthy relationship with the families that can enable the two to work together. On the other hand, the coaches are employed by the Immigration Office and are working to implement the cold calculus of immigration law. The coaches are aided by not being required to take decisions on a family's case. Nevertheless, the work they do is difficult because they are working with families who are in very stressful and vulnerable situations.

Homes elsewhere

Two families had already been living independently elsewhere in Belgium for years. One had lived in social housing for a year, undocumented, while waiting for a decision on their application for regularisation. Meanwhile, they had taken Dutch language classes and could speak at a proficient level. Another family had been living independently in Belgium for four years. The couple married legally in Belgium and gave birth to their child. The husband had learned Dutch. They were receiving support from family and relatives still living in their home country, and not from any Belgian social support systems.

The two families were forcibly relocated to the return units. In both cases they were met with overwhelming police force. Neither family knew what would happen to them until after the police raid. Although both families think the conditions in the units are good, they would prefer living in their own homes. For them, living in the units is an unnecessary disruption to their lives. On the one hand they understand the governments intentions – to prevent absconding. But on the other hand, they expressed having no intention to do so because they would not know where to go, and they did not want to place their children under any further uncertainty or danger.

Short time spans

Three of the families interviewed had only been in Belgium for less than one month. They commented positively on the brevity of the entire procedure, expressing a preference for receiving a quick decision – albeit efficiently done – rather than a long wait.²⁵ One family that was interviewed had agreed to voluntarily return one week after their arrival. Their situation was exceptional: they arrived to Belgium with what they believed to be legally obtained visas, obtained from the Belgian embassy in Algeria, but upon arrival learned that the visas were invalid. They had received erroneous information from the Belgian embassy and had unknowingly left criteria unfulfilled. The mother was due to participate in a one-month career advancement internship, while her husband and two children joined her as tourists. They were happy to return as soon as possible, and had no intention of staying since they both had jobs in their home country.

They were especially happy to have stayed in the family houses and not in the detention centre. “If I had to stay in the detention centre, I would have had to go to the hospital”, said the mother, acknowledging that the stress of detention would have been too much to bear. Both parents agreed that the family units were much better for their children than the detention centre.

Legal assistance in question

Some families were very critical of the assistance they received from lawyers, who in most cases were provided for by the state. One family did not meet their state-appointed lawyer until mid-way through their asylum interview.

During the break, the lawyer tried to provide the family with some advice. “I could not trust her”, said the mother. “She was not my lawyer”. The lawyer made no attempt to meet with her before the asylum interview.

Another family had gone through three lawyers by the time of their interview with JRS Europe. They paid each lawyer around €500, but in the end the family does not believe that the lawyers provided them with the help they sought.

A coach who spoke to JRS Europe acknowledged the difficulty some families have with finding suitably qualified lawyers. Many of the state-appointed lawyers do not specialise in immigration or refugee law. Typically the lawyers are early in the careers and aspire to work in other, more lucrative, legal fields. The consequence for families is that they are given lawyers who cannot help them as needed. Families are permitted to hire private lawyers, but they must pay for it themselves. There are qualified immigration lawyers who are willing to offer *pro bono* services – the problem is that there are too few of them.

GERMANY: *Community care for migrant unaccompanied minors*

Background

German federal law does not contain any provisions specifically labelled as alternatives to detention. However, detention is not always ordered, meaning that a migrant may be able to live in the community. In general detention is ordered based on a person's risk of absconding. The longer a person has lived in Germany, and the more social relations s/he has, may indicate to the immigration authorities that the person has a low probability of absconding and that detention is not necessary. Residence documents, when they are given, may be limited to one week or even a few days. In these cases, persons would then be required to report to the immigration department or the local police station to ensure close contact with the authorities.

For the purposes of this project, JRS Europe interviewed a particular category of migrants: unaccompanied minors. Under German federal law, there is no provision that mandates a minimum age for detention. This means that minors, whether accompanied or not, are subject to detention. There is a conflict concerning responsibility for care for those aged 16 to 18 years old between residence law and youth welfare law. According to the latter, the youth welfare offices are responsible for anyone under age 18 who cannot be taken care of by his or her parents or other persons in charge. But according to residence law, a foreigner who is 16 years or older must take charge of his or her own case before the authorities without the help of a parent or legal guardian. Based on this, one could argue that 16 years is the minimum age for detention.

In response to a parliamentary request, the Federal Government revealed that between 2005 and 2007 at least 377 unaccompanied minors had been detained throughout the country. Almost half of these were detained in Berlin, where the youngest detainees were 12 and 14 years old.²⁶

Some of the federal states have regulations that put the minimum age of detention at 16 years.²⁷ These regulations do not, however, mean that federal states go without putting children under 16 into custodial facilities altogether. Children younger than 16 years of age can be accommodated in a special youth facility in the state of Brandenburg where JRS Europe conducted interviews for this report. And in the state of Schleswig-Holstein unaccompanied minors under 16 are not detained, but children as young as 10 years can be detained as long as they are with their mothers.²⁸

The issue becomes more complicated when the authorities cannot confirm a person's age. In some cases, age verification procedures – taken from medical estimates, X-rays of the hand bones, dental examination or examination of the genitals – put a person's age at 16 or 18 years, thus allowing for their detention even when in reality the person may be younger.²⁹

Alternatives for unaccompanied minors

JRS Europe conducted interviews at a special facility called *Alreju*.³⁰ Founded in 1993 as a pilot project in Brandenburg state, the purpose of Alreju is to provide in-house care to children and young people with a migration background, including migrant unaccompanied minors. The Alreju project is one of many run by the Protestant

church-based social service agency Diakonisches Werk.³¹ It is an open facility, comparable to facilities for German youths in need of protection.

The Alreju project consists of six housing units, located in apartments within a larger complex of former Red Army barracks, that can accommodate 40 persons altogether. In addition, there is another housing group for assisted living of young adults for up to four persons, and another apartment for up to nine persons. There are a variety of facilities available for minors, including a gymnasium, and outdoor and indoor recreational areas. Youths of different nationalities live together under the supervision and guidance of teachers and staff. There is a strong focus on personal development, the strengthening of social life and language skills acquisition. Minors are accepted into the project regardless of religion, cultural background, tradition and nationality.

Youths can take part in limited educational programmes on the Alreju premises, but as soon as possible they are sent to local schools. Staff and teachers working for the project provide inter-cultural education, lessons on conflict resolution, and help youths maintain contact with family networks. The Alreju project works closely with the local authorities, such as the health department, the youth offices, the immigration authorities, the police and the district and juvenile courts.³²

Migrant unaccompanied minors receive assistance from Alreju social service workers, who provide them with all necessary information and guide them through their administrative procedures. Minors who receive a negative decision on their asylum application will most likely receive a 'toleration' status until 18 years of age. If they can integrate into society by that age, which most do, then it is possible to find a humanitarian solution that would lead to legal residency, probably via a decision of the Brandenburg "hardship board". There are deportations of youths to Afghanistan, but there is an awareness of the poor living conditions there and the risk to personal safety.³³ But, as long as the youths stay in Germany, even with a toleration status, they are usually allowed to stay in Alreju, who continues to provide care so long as it is in the best interests of the minors.

However, as they reach legal age they might occasionally be transferred to another institution or get a flat of their own. Unaccompanied minors can come and go at their leisure, and many go to school in the local community. Alreju does apply a nightly curfew, set at 22h00 during the week and midnight during the weekends. Another restriction is one that is applied to asylum seekers in general: the interdiction to travel outside a designated geographic radius. As a result, youngsters staying at Alreju are not permitted to travel to Berlin as it lies outside of their designated geographic radius. Exceptions include the obtainment of a temporary pass from the local authorities, if they decide the reasons for the travel to be valid.

Technically, Alreju serves as an alternative to detention for unaccompanied minors, because in federal residence law anyone who is younger than 18 years of age may be subject to detention. However, Brandenburg state does not actually reduce detention spaces for unaccompanied minors because of the existence of Alreju. Moreover, the immigration office and border police have little control over the facility. The reason for Alreju's existence has more to do with the ongoing debate about the detention of minors that has taken place in several federal states for years. Alreju, then, is an example of how Brandenburg state responded to that debate by implementing improvements.³⁴

Migrant interviews

JRS Europe conducted interviews with nine migrant unaccompanied minors residing in Alreju. They were all boys, with the oldest being 19 years and the youngest 15. Taken together, the group of nine interviewees had been living in Germany for an average of one year and one month.³⁵ Two boys had been living in the country for two years at the time of their interview. With the exception of one recognised refugee, the rest were still in the asylum procedure. They were all from Afghanistan. Four of the boys had experienced detention for a short period of time – as little as one night, and as long as month – in the Eisenhüttenstadt and Stralsund detention centres.

This sample group is a very unique exception. Taking into account the broader context of immigration detention in Germany, and the varying rules and regulations between federal states, the responses of these interviewees cannot account for the larger reality of alternatives to detention in Germany. Instead, it is just one example of how a government – in this case, the government of one German federal state – provides for an alternative to detention for migrant unaccompanied minors within its state borders.

Difficult migratory journeys

One common aspect among all interviewees is that they have made arduous migratory journeys to Germany. Remarkably, they followed very similar routes: through Iran, Turkey, Greece, then to Italy or Poland, ending in Germany. A few boys were smuggled in lorries within Europe. One boy, aged 16, travelled from Iran to Turkey, then to Greece, Italy and France, from where he set out for Hamburg and finally Berlin. His initial plan was to join a relative in Sweden. The Berlin police advised him to stay in Germany, as they could not track the actual location of his relative. Another boy was smuggled on airplane from Greece to Germany. The difficult journeys have made these boys vulnerable to physical and mental harm, necessitating that they receive adequate care in a specialised environment.

Good living conditions and support

At Alreju, minors have access to recreation, education, medical and psychological care.³⁶ None of the boys spoke negatively about the conditions. Some made positive remarks about the staff. After their long and dangerous journeys, life at Alreju is somewhat of a safe haven. There they receive close holistic support and care, which is absolutely necessary for any youth in a vulnerable situation, let alone migrant unaccompanied minors who have made risky journeys.

Absconding was not an issue for the interviewees. First and foremost is their realisation that there is nowhere else for them to go. Alreju provides for their daily needs, a bed, socialisation, recreation and education. It is clear that the good living conditions are an incentive for the youngsters to stay with the project. Moreover many of these youngsters have little to no family connections in Europe.

Germany is the preferred destination

The boys JRS Europe spoke to possessed optimistic expectations and ambitions. Most wanted to finish their schooling in Germany, integrate into the society and improve their German language skills. Others are merely seeking a safer life. One boy told JRS Europe, "In Afghanistan I never enjoyed my life – I never actually had a life."

There was a youthful energy among the interviewees, who expressed wishes to take holidays in Germany and to tour the rest of Europe. Clearly, Germany is where they want to be now.

This youthful optimism gives way to anxiety and fear as they consider their reality: it is unsure whether or not they can stay in Germany. Those in the asylum procedure have waited several months for a decision. They are preparing themselves for a life in Germany, in the hope that their application will be accepted, or that they'll be permitted to stay under another solution. It would be better, according to some, to have more certainty as to when they will receive a decision, and what will happen with their lives.

Returning to Afghanistan is not an option for the boys that were interviewed. One boy said: "There [Afghanistan], every morning when I woke up and saw the sun rise, I wanted it to be dark again, so that I would close my eyes and sleep. Here [in Germany] it is not like that. I want to forget the past and focus on school."

UNITED KINGDOM: *Regular reporting and electronic tagging*

Background

In 2010, the Conservative-Liberal Democrat government coalition publicly expressed a commitment to end the detention of children for immigration purposes.³⁷ In his speech, Deputy Prime Minister Nick Clegg bemoaned the detention of children:

We are ending the shameful practice that last year alone saw over 1000 children – 1000 innocent children – imprisoned ... 7000 children during the last five years of Labour Government. Children literally taken from the homes, without warning, and placed behind bars. Locked up, sometimes for weeks, sometimes for months, in one case for 190 days; something no innocent child should ever have to endure.

Children were being detained throughout the UK, with most at Yarl's Wood Immigration Removal Centre. In 2009, 1,065 children were detained there for an average of 15 days.³⁸ Yet, the UK Children's Society unveiled in October 2011 that the UK Border Agency (UKBA) had detained 697 children between May and August of the same year at all Greater London and South East ports³⁹.

The UKBA has implemented pilot projects in recent years. In November 2007, for example, there was the Millbank alternative to detention for families with children, which ended after only ten months. According to an evaluation of the alternative, its design was "flawed" for two reasons: an insistence on coercing families to take part, rather than leaving it to their own volition; a confusion about whom to refer, which led to inappropriate referrals, and consequentially lower compliance rates.⁴⁰

A few years later the UKBA collaborated with local partners in Glasgow to implement the "Family Return Project". Targeted to asylum seeking families who exhausted their appeal rights, the project's aim was to encourage families to voluntarily return to their country of origin. At the project's end, only three families agreed to do so – although their return never actually occurred. According to the evaluation there were some improvements as compared to previous schemes: the introduction of outreach work and letting families stay in their homes were two. But there were a number of barriers to success. Many families did not feel that their asylum procedure was fair. People did not believe that the UKBA would actually remove them. Others did not want to expose their children to potential dangers associated with return. Some families had stayed in the UK for several years, developing a close link with their communities.⁴¹

Reporting and electronic tagging

The projects described above have been for a specific category of migrants: families with children. JRS Europe was not able to interview anyone in this category. The Family Return Project in Glasgow had just ended when research for this booklet commenced. Instead, JRS Europe conducted its research on alternative to detention schemes the UKBA implements for most other people: *reporting requirements*, and *electronic tagging*.

Reporting requirements oblige migrants to appear at a UKBA reporting centre at specified days and times. Migrants may have to report as little as once per month or as much as five times per week. This determination is made entirely

by the UKBA, and is based on their assessment of a person's likelihood to comply with procedures. Reporting procedures are uncomplicated: migrants appear at their designated reporting centre at the specified time, usually within a time frame of two hours; when they are called to a reporting officer they present a card, which the officer checks into the computer system. This process only takes a few minutes, though waiting times may be longer. According to those we interviewed, reporting officers do not provide any information to the migrant. Migrants can try to speak to officials working in the reporting centre in order to learn more about their case. But, according to migrants we interviewed, it is hard for them to get information from officials in the reporting centre.⁴²

Electronic tagging obliges migrants to wear a small device on their ankles that have built-in transmitters connected to the reporting authority. The G4S private security company provides, manages and maintains electronic tagging devices for the UKBA. Migrants with electronic tags are required to be in their accommodation at specified days and times.⁴³ The UKBA makes the decision to electronically tag a migrant, based on its assessment of a person's likelihood to comply with procedures. A migrant may be asked to simultaneously report and wear an electronic tag.

In both cases migrants are free to move around so long as they provide an address to the UKBA and follow the procedures as obliged.⁴⁴ But for many NGOs, the high degree of mobility masks a fundamental question: are these two measures truly used as alternatives to detention?

A primary point of concern is that reporting and electronic tagging does not actually reduce bed spaces in detention centres. In other words, the UKBA's capacity to detain is not diminished by the existence of these measures. In fact, the detention estate has expanded, and the number of spaces available to detain migrants continues to increase.⁴⁵ Given that the scope to detain migrants is wide, it would appear that migrants are asked to report or wear a tag when there are no beds available in detention centres.

As a consequence, any migrant who is reporting or wearing an electronic tag is vulnerable to detention at any given time. Migrants who go to the reporting centre may be intercepted and detained on the spot with no prior warning. The same is true for migrants who are tagged. On the same token, migrants who report and wear tags do not know for how long they are required to do so. As we reveal from our interviews, this uncertainty is a prominent factor in migrants' overall experiences with these measures.

Migrant interviews

JRS Europe interviewed 10 people in the office of JRS UK in London. All of them had reporting obligations, and two had recently worn electronic tags. Out of this group, eight were refused asylum seekers awaiting return to their country of origin, one was a refused asylum seeker with discretionary leave to remain, and another was still in the asylum procedure. With the exception of one person from Iraq, everyone else came from African countries: Eritrea, Zimbabwe, Ghana, Sierra Leone, Democratic Republic of Congo, Burkina Faso, Cameroon and Nigeria.

On average the group had been living in the UK for nine years. One person had been living in the UK for 22 months. Everyone was single, with one having been divorced. The average age of the group was 38 years. Most were obliged to report on a weekly basis. Prior to the interviews some had to report five times per week. Out of this group, two had recently worn electronic tags: one had worn it for four months, and the other for six months.

Six persons were placed in immigration detention prior to reporting or tagging. Three of these were placed in criminal prison prior to their detention. Discounting one person who was detained for 10 days, the average time period of detention was 17 months; for those criminally imprisoned, the average was seven months. One person had been detained for immigration purposes for two years and seven months. And yet another had first been criminally imprisoned for six months, and then put into two rounds of immigration detention: first for 19 months, and then again for four months.

Difficulty meeting basic needs

All of the interviewees expressed great difficulty in meeting their day-to-day basic needs. This is because most had stopped receiving social welfare benefits because of their refused status. As an asylum seeker, a person receives housing support, vouchers to purchase food and transportation assistance. As a refused asylum seeker they are left destitute, relying only on charitable organisations and individuals.

Finding money for public transportation to get to the reporting centre was a frequently expressed concern. In general, most experience great difficulty getting around London. Added to this, most had little access to meals, basic care products, clothing and housing. A few were sleeping in shelters, living on the streets, or dependent on living with family and friends. But a reliance on friends and family is not sustainable, as a Ghanaian man told JRS Europe: “Some of my friends turn away from me, because they see me as a problem, because I always need help with money, food, my daughter.”

The few homeless shelters accessible to migrants typically require people to leave during the daytime hours.⁴⁶ There is little to do during this time, according to interviewees. For those who reported to be taking medication, being on the streets becomes dangerous. A 34-year-old refused asylum seeker from Sierra Leone told us about his daily life and inability to meet his needs:

I'm living at a night shelter. I'm only allowed to go there at 9:00pm. They ask you to leave in the morning. I'm on medication, and when I take it I feel sleepy. Sometimes I collapse. I can't stand ... I black out. I have to go to park and sleep, before I can continue on. That's how I spend my days. When I sleep rough, I see drug dealers ... they exploit you, take advantage of your situation. Once a drug dealer gave me a £50 note, which I hadn't seen for many years. He tried to force me into drug dealing. I refused, so he and some others beat me up.

The biggest reason for their destitution is their inability to work – not for want of motivation, but because they are prohibited from working by the UKBA. Self-sufficiency ranks highly in interviewees' responses. “I want to work,” exclaimed a man from Zimbabwe, “I want to look after my family. I can't provide for them. Life shouldn't be like that. If I could work, I could contribute, pay taxes and provide for my family.”

The downsides of reporting

Reporting requirements do not pose any inherent harm. The manner in which it is implemented in the UK, however, negatively impacts migrants' state of well being. One of the most oft-repeated criticisms by interviewees was that UKBA personnel at reporting centres are not allowed to provide case information. “They just punch you into the computer,” said one interviewee from Ghana.

Refused asylum seekers who report are subject to detention, and even deportation, at any given time. A person who walks into the reporting centre may never come out. The uncertainty that comes with each visit to the reporting centre is crippling. Every interviewee expressed symptoms related to high levels of paranoia and anxiety, resulting from the uncertainty about their case and how long they would need to report. The letter that migrants receive from the UKBA detailing their reporting obligations does warn that they are liable to detention. But there is no indication about how long such procedures might last. One person told us:

It affects you psychologically. The way they [UKBA] design it, it's like your heart is in your mouth. You don't know what will happen at the next moment. They can arrest you and deport you. Every Wednesday you wake up, maybe in a happy mood, and then immediately you think about the reporting. Your mood changes when you arrive there.

Absconding isn't preferable – but sometimes necessary

Some of the interviewees had absconded from the authorities, primarily to find employment in the informal labour market. "People do it because they feel that if they are deported, they have to at least get some money", one interviewee told us. Another person had a legal work permit that eventually expired, forcing him to consider more risky options: "When my permit ended, I couldn't get another job. I couldn't get any benefits to feed myself. I was destitute. It was then that I decided not to report to immigration [UKBA], because there was no point. For what?"

Everyone who had absconded were eventually apprehended, arrested and imprisoned in a criminal penitentiary for illegal employment and the possession of false documentation. They were transferred to an immigration removal centre immediately following their release from detention. In total, this led to several months of confinement. Imprisonment in criminal penitentiaries had left deep psychological wounds on the interviewees who experienced it.

The threat of repeated imprisonment encouraged those who had absconded not to do it again. "I wouldn't do that again", said the Iraqi man who had previously absconded. "Maybe they would put me in prison again, or another one year in detention. I can't cope anymore, doing these kinds of things. It would bring more trouble." Having particular familial or social ties is another reason why interviewees said they would not abscond. A man from Ghana pointed to his daughter as a reason not to abscond: "Someone like me, who has a child, there is no way I would abscond, because my child is precious to me."

In all cases, even for those who had done it, absconding was not thought of as an ideal strategy, but a necessary one. Necessary, because it was the only way to find work and achieve self-sufficiency. Employment is a primary motivator for absconding, according to interviewees. Secondary motivations included the perceived unfairness of UKBA reporting procedures, i.e. not receiving social welfare support, and fear of imminent and unannounced detention or deportation.

Lack of trust towards the UKBA

Nine out of ten interviewees expressed a deep mistrust towards the UKBA. Above all they feel like they are being treated unfairly. Their mistrust is based on several factors. First is the long period of time they have had to wait for their case to be resolved. Most have lived in the UK for several years with little to no indication as to when they might

be removed from the UK. An Eritrean woman echoed this sentiment to us, even while having a fairly positive attitude toward the UKBA: “These people [UKBA] want to serve so many people. They’re so kind. But it’s not fair to deport someone who stays long.”

This leads to the second reason, the inability to work, leaving people in a state of destitution and forcing them to rely on charity. Thirdly, people are unhappy with the little information they receive from the UKBA, and the difficulty they have with contacting their case owners. “You write to them and they don’t respond”, said one about UKBA personnel. “I’ve got a Home Office caseworker. I can’t even talk to her,” said another interviewee. “I don’t have her phone number. I’ve got a fax number, but I don’t get a response.”

Fourthly, there is a widespread feeling that asylum and immigration procedures are unfair, leaving many with the feeling that their case has not been appropriately heard. People feel as if their lives are not being taken seriously. One woman told us about a harrowing deportation experience. Upon arrival at the reporting centre she was apprehended and put on a deportation flight to Morocco (despite not being from that country). Three security officers escorted her. In Morocco, the local authorities refused to let her disembark the aircraft. She went back to the UK. The entire experience has left a deep scar on her mental health. Prior to this she had been detained for two years and two months. “Why do they treat me like this?” she asks. “I am a human being.”

Negative experiences with reporting and tagging, as well as any prior experience with imprisonment and detention, have left other interviewees very distrustful of the UKBA. One interviewee said: “After prison I was put into a detention centre. They kept me there for 19 months. I don’t know the reason why.” Another man who had been detained explained his struggle to be released:

During the first time [the first petition for release], I didn’t have a lawyer. I didn’t know how to do it. I was so worried that I panicked. I went by myself, so they [the court] refused. They said I wouldn’t cooperate with the UKBA. I didn’t have any chance to prove my cooperation. This is my life. If they want to send me back, they can. So I have to cooperate with their rules. On the second time, I had a lawyer and he advocated for me. I was then released.

Electronic tagging a negative measure

JRS Europe only interviewed two people who were recently tagged. While their experiences cannot represent the majority of people who have been tagged, they are nonetheless important to consider.

Both interviewees expressed deep-seated resentment at having been tagged. This feeling was compounded by the reporting requirements they had to simultaneously fulfil. One of the interviewees had physical scarring on his left ankle, caused by the placement of the tag. He told us,

When I was released, I had to wear a tag. I was supposed to be indoors from 6:00pm to 6:00am – twelve hours. The tag really hurt. You can see the black spot here [he shows the interviewer evidence of skin rash on his left ankle as a result of the tag]. That’s from the tag. It wasn’t tight, but if you’re walking it causes friction. It rubs against the skin from the sweat. Most of the time I had to

wear something to keep it up high on my ankle, but it still affected my blood circulation. It's just like you're in prison, with the tag. A prisoner.

Both persons felt criminalised, as electronic tagging is also used for criminal offenders.⁴⁷ The tag forced both interviewees to be home at certain times of the day and fixed to a particular location. Within the tag is a transmitter that sends signals to a sensor plugged into the wall via wireless connection. Whenever a person leaves the designated premises at the designated time, UKBA staff are made aware and take action. "If I went out of the radius", explained one person who was tagged, "it would've been reported to them [UKBA], and they would've come running – like I'm a crook."

The two persons we interviewed were deeply saddened, and even depressed, from wearing the tag. It discouraged social activity. They were reluctant to leave the house because of the negative social implications that come with wearing a tag, as one interviewee explained:

The tag is very irritating. It wakes you up at night. I had to see my general practitioner for anti-depressants and sleeping tablets. It isn't comfortable when you are walking. You have to be home at certain times. For me it was between 8:00pm and 12:00am. If I wanted to go out, or buy anything, I had to make sure that whatever I needed I bought before 8:00pm. If I went out, they would say I broke the rules, and they would put me back in detention. I don't understand the purpose of being tagged, while I was going to report every day. Why the four hours? They are punishing me and other refugees. The tag is discomforting while sleeping, and embarrassing as well. You don't want to show your legs. People think you're a criminal. I couldn't go swimming or go out because of the tag. It was really embarrassing.

Electronic tagging devices are provided for and monitored by the private security company G4S. In the UK they monitor 14,000 persons, including those within the immigration system. According to G4S, "electronic tagging is a cost effective compliance solution for subjects at home or in the community using a variety of proven technologies and applications".⁴⁸ Their assessment, however, provides no indication of how electronic tagging impacts migrants' daily lives.

Lawyers and legal assistance needs to be reliable

It is evident that lawyers are needed at all stages of asylum and immigration procedures. In the case of those interviewed, lawyers were needed to reduce restrictions. The two men who were had been tagged needed lawyers to have the tags removed. Others who had to report frequently at first – as much as five times per week – needed lawyers to reduce their reporting times. The six persons who had been detained needed a lawyer's help to challenge their detention and to be released on bail.⁴⁹ Nearly all interviewees needed their lawyers to communicate with UKBA staff.

Some reported to have poor quality legal help, which made it difficult for them to challenge restrictive reporting conditions, or appeal negative asylum application decisions. "I had a lawyer before, when I was working", said one interviewee. "She messed everything up for me. I paid her £2,000 – so much money! I had saved it from my work, but the lawyer didn't do anything." A few others expressed an inability to get good legal help due to its prohibitive cost.

It is clear that without reliable and suitably qualified legal assistance, people become vulnerable to prolonged detention, poor bail conditions, as well as poor monitoring conditions in the community. "When I was in detention, the solicitors I had didn't put any evidence forward for my release", explained one interviewee. "When I went for the appeal, I discovered that they weren't doing anything. They didn't know anything. I ended up being accused of lying."

Staying in the UK is the better option

Only one interviewee expressed voluntary return to be an option for himself. But in this case, his willingness to consider returning comes only after a long and arduous experience with the UKBA. He was convicted for illegal work and false documentation, and imprisoned for six months. Right after he was detained for 19 months. He was released on bail and required to report three times per week. He was detained again for four months. This time he was released because of poor health. During his second detainment he had agreed to be returned, but the charter flight never departed. He had no idea why he was in detention for so long.

I tried to find out. I told them I wanted to go, to let me go back home. They kept on delaying, telling me that I had to wait for some papers. I said to them, 'These papers, you couldn't get them in 19 months, and you won't get them now. So why do you keep me here for nothing?'

While this person considers voluntary return to be an option, it is only because of the deeply negative experiences he has had with the UKBA. "There is nothing for me here", he says.

Other interviewees told JRS Europe that they have received constant pressure from the UKBA to consider voluntary return. Interviewees told us that they still fear for their lives, and that they are uncertain they could support themselves and their families in their country of origin. People who have been in the UK for years, which is most in our sample, feel a sense of entitlement to stay in the UK. They have made relationships, learned English, and became familiar with the culture and society. In addition, most have little to no family or relatives in their home countries. Others feel that their asylum procedure was not fair and that they should not be expected to return home until they get a better hearing.

Even people who have had the most negative experiences – imprisonment, detention and tagging – would prefer to stay in the UK. For some, there seemed to be a sense of shame that comes with the possibility of being returned to one's country of origin.

Reporting and tagging are better than detention – but only slightly

Interviewees were glad that they were no longer in a detention centre. Even the few who had not experienced detention knew that it was a negative measure. Above all, people appreciate the freedom that comes with reporting and tagging. "I'm relieved that I can go out", one said. Another told us: "A difference I can think of is that I feel just a little bit freer. Detention ... that was prison. There is a bit of freedom here."

But the poor reception conditions that people experienced upon release – the restrictive tagging and reporting requirements, the inability to work – does not lead to much improvement in people's lives. Despite being free to move around, most are unable to afford many commodities or public transportation costs. The difficulty they face with travelling leads to boredom. The lack of social support leads to homelessness and forces them into a downward

spiral of poverty and destitution. Based on the interviewees' experiences, the 'freedom' that comes with tagging or reporting is attractive at first, but its glimmer is soon dulled as they are left to their own devices, without any possibility to work, or even to receive schooling.

You may think that detention is good because things are provided. But detention is more stressful. You could be, tomorrow, deported. You could be staying in detention for as long as they want. They make you feel bad about yourself. When you come out, it's a different story. You're going through procedures ... but you're getting mentally destroyed. I wouldn't say it is better to go back to detention. At least you're outside. But you have other problems that aren't solved. It's hard to concentrate on things ... because you're thinking about what will happen when you report. And there is not much to do outside. You don't have money.

Suggestions for improvement

First and foremost, people wished for the UKBA to speed up immigration procedures and case closure. Their sentiments primarily lie with the prolonged length of asylum procedures, and the uncertainty of how their case will be resolved due to an overall lack of information and contact with the UKBA. In general, interviewees feel that the long delays in case resolution diminishes their trust towards the UKBA and immigration procedures. According to them, cases should be resolved more quickly – albeit efficiently and fairly – rather than be allowed to drag on. In situations where deportation is difficult or unlikely, as it appears to be for most of the people we interviewed, then our interviewees argue that they should obtain a legal permission to stay rather than to wait in limbo. One interviewee said, "If they [UKBA] sit on one file, and another comes, the pile gets higher. By the time they look at your file, they have a big pile".

Secondly, people want to be able to work. Their main argument for working is that they would be less of a burden to the state. Everyone expressed wanting to be more self-sufficient. No one is asking the UKBA for handouts or more support than what is needed as a basic minimum. People want to have their own housing, to purchase their own food and even pay taxes. "Whatever a person's situation is, once they're in the country, if they [UKBA] haven't made a decision yet, then they should allow them [refugees] to work – so they can look after themselves", said one interviewee.

Allowing people to work, according to interviewees, would bring several benefits to migrants and the state alike. For the former, it would enable self-sufficiency, decrease boredom and encourage compliance with the UKBA's procedures, because they would feel like they are being treated fairly. For the latter, allowing people to work means more tax revenue, and less encouragement and opportunities for people to engage in criminal activity.

COMMON ELEMENTS FROM THE RESEARCH

There are many differences between the alternatives we researched in Belgium, Germany and the UK. Moreover, the different situations of the migrants we interviewed – asylum-seeking families, undocumented families, refused asylum seekers, people in asylum procedures, unaccompanied minors – make it difficult to compare conditions. Nevertheless we can identify several common elements that arose from our interviews with migrants. As such, these elements strike us as being important for the functioning of the alternatives to detention we examined.

Living conditions

The type and quality of the living conditions are very important to the migrants we interviewed. This is a big factor because it is closely linked with a sense of self-security. People who feel safe, have a regular roof over their heads, a place to sleep and access to food – for themselves and their families – appear calmer and better prepared to handle the administrative complexities of asylum and immigration procedures. It is insufficient to merely provide for an administrative asylum or immigration procedure without ensuring migrants' basic needs are met in a suitable and consistent manner.

Living conditions in the German Alreju project, for example, are quite good. The staff deal with unaccompanied minors who may have endured dangerous journeys from a countries of conflict, who have travelled without any family or relatives, and are without any familial support in Germany. It would be bad practice to leave unaccompanied minors unattended and uncared for. It would also be bad practice to place them in a detention centre. Instead, Alreju provides a wide range of support to meet as many of their needs as possible. The safe environment discourages the youths from leaving, as they probably would not be able to have access to similar living conditions on their own.

The family units in Belgium follow a similar example. The units seem well secured, with families being able to lock their doors, and they are located in apparently safe neighbourhoods. The units themselves are in good physical condition. While the units convey a strong message of temporariness, they are each suitably equipped and spacious enough for one family. There are outdoor spaces where children can play and parents can socialise. The units themselves do not have any markings or signage that would easily identify it as belonging to the Belgian Immigration Office. This contributes to a sense of normalcy, which is important in reducing levels of stress for parents and their children.

There are ways to improve the living conditions in the Belgian family units. For example, families might benefit from having access to more structured activities. This would not only help to pass the time, but it would provide a diversion for children so that parents can take a rest, or talk with each other about the important decisions they will need to make about their asylum or immigration case. Families might also benefit by receiving permission to borrow books from local libraries. Some families may even benefit from having opportunities to take part in small volunteer projects. To this end, collaboration from civil society organisations would be helpful, as they could find ways to better engage families staying in the units.

The conditions described above are in stark contrast to the conditions reported by people we interviewed in the UK, who live in precarious situations. We interviewed refused asylum seekers, persons who are no longer able to receive

state support as they did while their asylum application was still under review. Most interviewees did not have guaranteed access to safe accommodation, or a means to meet their basic needs. They were forced to rely on the goodwill of individuals and on charities for almost every aspect of their lives. In other words, they were living destitute. The daily struggle to find a bed for the night, food to eat and money for public transportation placed a stressful burden on their shoulders. Being unable to meet their basic human needs leaves them with a deep distrust of the UKBA. Some do not see why they must report every week if they are left with nothing. Poor living conditions reduce the incentive to comply with procedures, and disrupt any chance at trust – an element that is sorely needed for an immigration policy to really work.

Trust in the system is an important factor

From our research we see that trust appears to be an important factor in how migrants experience community-based alternatives. Perceptions of distrust may discourage people from complying, and it may lead the authorities to impose stricter measures. The principle of *mutual trust* between states and migrants appears to be a crucial element for community-based alternatives to detention to work well.

The unaccompanied minors living at Alreju expressed a good level of trust towards the staff, and importantly, to the project itself. It seems that they felt the staff were looking out for the best interests. Some of the minors expressed some discontent at the length of asylum procedures. Yet it does not seem that the prolonged length of the asylum procedure had a negative impact on their ability to trust the staff. Obviously, being unaccompanied minors, their needs are great, and it is not surprising that they feel comfortable at Alreju because their basic needs are being met. Their generally positive experience at Alreju does seem to have a relation with the staff's ability to foster a trustworthy rapport.

There also seems to be a good level of trust between the families and coaches in the Belgian alternative to detention. In this scenario, the presence of a trustworthy environment is even more important because the coaches are dealing with adults who arguably have a higher level of agency than the unaccompanied minors in Alreju. Adding to this is the fact that the adults are *parents* who want to protect their family's interests. The families we spoke with appreciate the efforts the coaches make towards ensuring a comfortable and safe environment. While the families may not always agree with what the coaches prescribe, especially on issues related to return, they do appreciate being treated fairly and with dignity. The good level of trust between families and coaches may be one reason why 70% to 75% have complied with procedures since the project's inception in 2008. Aside from the trustworthy rapport between coaches and family, is the trust families have towards the process itself. Certainly there are challenges to address with how the Immigration Office handles families' asylum and immigration cases. Yet the procedures appear to be done in a relatively open manner, and families are afforded a range of assistance and services.

Conversely, all of the people we interviewed in the UK expressed distrust towards the UKBA. The distrust stems from their negative experiences with the asylum and immigration system, and for some, the criminal incarceration system. Some of these negative experiences include: long waiting times; inability to establish contact with UKBA case workers; prolonged periods of detention; prolonged periods of imprisonment; botched removal operations; poor living conditions that force people into destitution. Their lack of trust is based on real experiences they have had.

It the end, how migrants experience community-based alternatives seems to relate to how well they feel they are being treated by staff administering these aspects of control. From the perspective of a state seeking to control immigration, it would seem a worthwhile investment to investigate how states could build trustworthy relationships and mutual respect.

Non-compliance as a survival strategy

Few of the persons we interviewed had absconded from the authorities. But for those who did, each had experienced negative consequences as a result: prison terms, immigration detention and separation of the family. Each one had expressed regret at having absconded, and knew that they were taking a risk that would lead to further restriction.

But they all had felt that there was no other choice. In Belgium, the one family who had absconded did so out of fear of return. The mother of this family admitted to JRS Europe that absconding “was a bad idea ... we didn't know what to do. We were afraid of being deported.”

The latest statistics show that 20% to 25% of families have absconded from the Belgian return units since the project's inception in 2008.⁵⁰ The Belgian Immigration Office has not yet published any details on why families may have absconded. Yet it is known that most families abscond soon after they arrive to the houses, and when removal is imminent.⁵¹ Asylum seeking families tend not to abscond, perhaps because they would rather wait for a decision on their asylum application. Another theory is that families abscond because they hear rumours that certain nationalities are being removed; or they see for themselves particular families that are removed from the houses. A few families expressed these attitudes to JRS Europe during the interviews. According to the Immigration Office, certain nationalities abscond more than others due to the presence of large diasporas in Belgium where families can receive support.⁵²

In the UK, people who admitted at having absconded said they did so because they needed to work in order to meet their day-to-day needs. Many refused asylum seekers who are obliged to report regularly, or wear an electronic tag, do not receive any state support. As a result they struggle to meet the simplest of needs. The lack of support may force people to consider alternative strategies for survival. For some of those that we interviewed, the chosen strategy had been to work in the informal labour market, with false documentation, and not to continue reporting to the UKBA. Interviewees who did this appear regretful, but none felt that they did was inherently wrong, for they claimed to have had no other choice. They may have chosen not to do so had they been allowed to work or provided with basic support.

The unaccompanied minors we interviewed in Germany did not report any concern with absconding. For them it appears not to be an issue. Their daily needs are being met at the Alreju project and they trust the staff. It appears they would have few other places to go. And, at the time they were interviewed, removal from Germany was not an issue they had yet to think about.

The choice to abscond is not linked to bad intentions. Rather it seems linked to personal survival. It is a strategy that one pursues if they think that their present course – adhering to immigration authority obligations – will bring more harm than good. Underpinning this seems to be the element of fear – fear of return, fear of destitution, fear of being

unable to provide for a family, fear of being unable to save money, fear of being separated from family and fear of losing personal dignity. Governments can exert their influence on fears related to destitution by ensuring that basic social welfare needs are met. In turn, doing so may increase migrants' trust in the authorities and encourage a closer cooperation between the two.

Poor reception and living conditions, inadequate provision of information, infrequent contact with the authorities, onerous measures, and distrust of asylum and immigration procedures all seem to be factors that negatively impact migrants' experiences with community-based alternatives, making it harder for them to comply with procedures.

Regular, up-to-date information, is absolutely necessary

For the individuals and families we spoke with, it seems essential for them to understand their current situation and to plot out their next steps. To do this they must have the latest information about their case and be aware of all of the options so they can take sound decisions. Otherwise, families and individuals become vulnerable to anxiety, fear, and as a consequence might decide to choose their own strategies for survival rather than following immigration procedures.

The families we interviewed in the Belgium return units appear to be suitably informed. The coaches are primarily responsible for this, as they are the ones to provide the families with the information they need about Belgian asylum and immigration procedures. By providing information, the coaches built a trustworthy rapport with the families. For the families, this means that they are enabled to take tough decisions on their cases.

In some instances the flow of information is disrupted, for example, when one member of the family is detained while the rest live in the family units. We encountered one such case, where the father was in detention as a consequence of absconding. Separating the family in this way prevents them from accessing the facts of their case, and taking decisions, as one family unit.

We briefly spoke to another family, whom we did not formally interview, that was separated in a similar way. In that example the mother was in detention, leaving the father with their two children in the family unit. It was clear that the father was very stressed, as he could not speak with his wife regularly enough to take the tough decisions necessary for their case. This separation of families should ultimately be avoided, as it disrupts a family's ability to stay well informed.

One piece of information that families typically do not get relates to the bigger picture: why they are in the family units. One family, for example, asked us many questions about the family units themselves, why the Belgian authorities place families there, and what happens to families. This family did not know the history of the project, and that families with children were once detained in Belgium. Moreover, this family became fearful whenever they saw another one being removed, because they were not sure if the same would happen to them. While it may not be necessary to tell each family about the history of the project, it might be of benefit to families if they knew more about its *raison d'être*. Having this information may help them to reduce stress and fears from what they see happen to other families, e.g. those who are removed. Families should also be made aware, as soon as they come into contact

with the authorities at the border, that they will be transferred to the family units. Based on what we know from current practice, it does not appear that families know where they are going to until they actually arrive to the units.⁵³

The youths we interviewed at the Alreju project seem comfortable with the information they had. The exception is that most were not sure when their case would be resolved. Otherwise, they were receiving information from the staff about asylum and immigration procedures. Overall, the Alreju staff is able to develop close relationships with the unaccompanied minors. This may help the youths to trust the information that they receive.

In contrast, the interviewees in the UK told us that they were very uninformed about their situations. It seems that the resulting uncertainty leads to fear and feelings of distrust as well, since every interviewee said that it was very difficult to get information from UKBA staff. One person told us: "I haven't met them [UKBA staff] face-to-face, as I am talking to you. I've never met with them ... only [with] letters."

Having information is a necessary element of control. Without it, a person cannot know what will happen to them and what options they should pursue. The people we interviewed in the UK seem lost, unsure of what to do other than to report as they are told. They want to know how long they will report for, and when the UKBA might remove them. Being without this information appears to leave them in a state of inertia, which is worsened by their inability to work and receive state support.

Social welfare benefits are vital

For an alternative to detention to be successful, it must not only provide for one's liberty. It must also provide a minimum level of social support so that an individual can meet their most basic needs.

Families in the Belgian return units are supported by the state. In addition to living in equipped units, families are given support, through vouchers, to purchase their own food and to take public transportation. Having such support means that families can worry more about resolving their cases than finding shelter for the night, or food for their children. Social benefits also serve to build trust with the authorities, as it is a concrete example of the state's willingness to care for the families.

The same is true for the unaccompanied minors at Alreju. They are in a particular vulnerable situation because they have no other family or relatives to rely on for support. Having all of their needs met means that the youths can concentrate on their schooling, on socialising with others and on the details of their asylum and immigration cases.

The withholding of social benefits from the people we spoke with in the UK appears to be one of the reasons for their animosity towards the UKBA. It is true that we did not speak to asylum seekers in the procedure who do have access to social welfare benefits. This, however, should not diminish the basic needs that refused asylum seekers have. In their case, social welfare benefits appears to be an important factor in establishing trust and reducing the difficulties of complying with procedures.

Legal assistance is necessary – but the quality must be good

The inability to access frequent and qualified legal assistance is one of the most negative elements of detention.⁵⁴ In the more open environment of an alternative to detention, individuals and families should be better able to choose a lawyer that would best suit their case. Indeed this may be true: if a person is unhappy with their lawyer, they can simply find another. The open environment, and the variety of choices that come with it, also means that individuals and families may face difficulty in determining which lawyers can serve their interests in the best way possible.

Families that arrive to the Belgian units can be immediately connected to a state-appointed lawyer if they request. Based on what we learned, many of these lawyers do not specialise in immigration and refugee law, meaning that they are not sufficiently competent to provide families with the best advice possible. Private lawyers are available but costly. There is a clear value at having good legal assistance, as it can help families navigate the maze of legal asylum and immigration procedures, which without a lawyer they might have difficulty understanding. Qualified legal assistance, depending on one's case, may mean the difference between legal residency and deportation. The coaches appear to provide a lot of information to families. But only good, qualified lawyers can really assist families with successfully navigating these asylum and immigration procedures.

Some of the individuals we spoke with in the UK have found lawyers from free legal aid networks. Nearly all interviewees experienced direct benefits from good legal advice, from decreasing the frequency of reporting, to being released from detention on bail, to removing electronic tags and to communicating with UKBA caseworkers. Some were very pleased with their lawyers, feeling that they were doing all they could for their cases. Others had paid lawyers large sums of money with no result.

Our interviews with the Alreju youths did not touch on the issue of legal assistance. In general, people with low income can rely on the system of *Beratungshilfe*, which gives them the opportunity to turn to a lawyer for advice for one time only for as little as €20. The lawyer then sends the invoice to the local court, which will pay the lawyer a standardised fee. This fee is, however, fairly low, making the *Beratungshilfe* scheme unattractive for lawyers. Once a court procedure is under way, the *Prozesskostenhilfe* scheme applies, which grants a poor person's lawyer a slightly higher, but still reduced, fee (when compared to the standard table of fees). This fee is only granted to parties who can establish that their case will probably be successful. In sum, there is a lot of insecurity in the system, making it much less attractive for qualified and ambitious lawyers to work for refugees.⁵⁵

Case resolution should be efficient

Community-based alternatives to detention should be closely linked with effective, efficient and fair asylum and immigration procedures. Prolonged delays are counterproductive, as they diminish people's belief in the effectiveness of the system, while leaving them in a state of limbo.

A result of the Belgian alternative is that, on average, case resolution happens in a little over four weeks. People do not get a chance to establish roots, and for some this is good. The risk that runs with accelerated procedures, especially for asylum seeking families, is that it may happen too fast for families to follow. Another risk is that lawyers may be unaccustomed to the accelerated procedures, and as a consequence might not be aware of the accelerated

timelines for submitting evidence or lodging appeals. Moreover, within an accelerated timeline the authorities may be unable to gather all of the information that would be required, or commission expert opinions, for example.

Many of the youths we spoke with at Alreju have experienced long waits for a decision on their asylum application. This seems to lead to their feelings of uncertainty and anxiety about whether they can establish a life in Germany, as they hope to do. The good living conditions and social benefits of Alreju do seem to allay their anxieties to some degree. But their situation would be better served if the efficiency of the asylum procedures matched the good quality of the living conditions.

The people we spoke with in the UK have waited for years for a resolution to their case. Prolonged waiting times lead to a sense of despair, because they must continue to cope with living in destitute conditions. As a consequence, people feel distrust towards the authorities. It appears that this sentiment lies primarily with the lengthiness of asylum procedures, and interviewees' perceptions that asylum procedures are neither efficient nor effective. The inefficiency of the system, coupled with the poor living conditions and lack of basic support, leave the people we spoke to with little sense of protection.

CONCLUSIONS

Looking at the larger system

This report has examined alternatives to detention in Belgium, Germany and the UK. The alternatives we researched in each country are very different from each other: Belgium, community case management for families; Germany, community-based care for unaccompanied minors, modelled on care programmes for German youths; UK, regular reporting requirements and electronic tagging.

It is clear that none of the measures are inherently harmful. They pose few restrictions to physical movement, and allow migrants to live in the community and access local services. And even though detention is still used in all three countries, it is positive that there are at least some measures that remove people from the deteriorative environment of a detention centre into the open environment of a community. Each measure represents a step towards the normalisation of 'engagement' over 'enforcement'.

The biggest problems that we observed during our research, and which were expressed to us by migrants, are related to the larger systems of asylum and immigration. These are systems that are based on "assumptions about likely migrant behaviour" rather than on "empirical evidence".⁵⁶ They are systems that assume the worst in people, rather than the best. This confrontational way of proceeding is certainly underpinned by the stresses and burdens of the entire system. Many asylum seekers and migrants have led difficult lives and experienced events that have caused deep physical and mental trauma. Thus they are keen to protect themselves against further adversity. Meanwhile, states regularly experience the dual legal pressures of safeguarding national sovereignty, versus respecting and upholding the fundamental human rights that everyone possesses.

Most migrants are not intent on inflicting harm upon their host countries. Doing so would run counter to their fundamental interests: to seek safety for themselves and their loved ones, security and stability of resources, a means for self-sufficiency and opportunities for growth. Their interest is to respect the laws and policies of their host country, for in doing so they can reap the rewards.

But there are conditions that they ask states to respect: fair, efficient and transparent procedures based on mutual trust, protection, independence and access to justice. Migrants must have faith that their basic needs can be met, either through state support or self-sufficiency, while they go through the asylum and immigration process. They must be able to understand all aspects of the process in order to make the decisions that are asked of them. To do this they may need the help of lawyers. They need to know that, for better or worse, there is an endpoint to the process, and that in getting to this endpoint they will have had access to all means of support. Migrants understand the prerogatives of state immigration policy – and in general support such prerogatives – so long as they are treated fairly, humanely and with dignity. These are the fundamental conditions that should underlie asylum and immigration policies.

The notion that addressing the larger systems of asylum and immigration might improve the way alternatives to detention are implemented is gaining traction. In a recent speech, the director of the UK-based NGO Detention Action said that the "best examples of alternatives to detention are those that lead to systemic change". Thorough overhaul

of state asylum and immigration systems, rather than the use of small bandages, is what is needed to move “beyond alternatives to detention” towards models that really work.⁵⁷ A major study recently published by the International Detention Coalition (IDC) reaches similar conclusions. They find that well-functioning alternatives to detention are less about how the smaller parts work, and more about how the overall system interacts with migrants. Their five-step “community assessment and placement” model is indeed a blueprint for states to renegotiate how they manage asylum and migration flows. And the IDC shows in their research that rather than being far-fetched, their proposals are practical and feasible enough for governments to implement, since many around the world already do so to varying degrees.⁵⁸

At about the same time that the IDC published their report, UNHCR released a study they had commissioned showing very similar results.⁵⁹ The title of study, *Back to Basics*, is itself an expression of the notion that states need to rethink their entire asylum and immigration systems in order to bring it back to the “basics”; that is, the “right to liberty and security of person”. The reports emphasises, “Alternatives to detention are only one part of larger asylum and migration systems. Such systems must be compliant with international rights relating to liberty and incorporate safeguards against unlawfulness and arbitrariness.”⁶⁰

Moving towards systemic change

The experiences of interviewees from the UK portray its system in a particularly negative light. Yet the UKBA has undertaken other measures that attempt to improve the system. In 2010 the UKBA initiated an ‘Early Legal Advice Project’, aimed to provide legal advice and representation to asylum seekers at the earliest stages. By doing so they hope to improve the quality of initial decisions. An early pilot project based on these ideas showed potential: higher rates of case conclusion, faster recognition and integration of refugees, and cost savings that came as a result of fewer appeals due to the improved quality of first instance procedures.⁶¹ The UKBA launched a continuation of this project in November 2010.⁶² Another project known as the ‘Key Worker Pilot’, implemented by the NGO Refugee Action in the Liverpool area, supported asylum seekers throughout the entire asylum process, and explored all potential outcomes for case conclusion at the earliest stages.⁶³

Alongside these measures, the UKBA rolled out a new programme for families in return procedures. The “family returns process” emphasises the development of positive rapport with families in order to build trust, explain their responsibilities and to allow families to make independent choices about their return. Families are to be assigned specialist case owners whose task is to assist their decision-making on return. A ‘family returns panel’, which includes the participation of social service experts, will advise the UKBA on the best ways to undertake return from the perspective of the welfare of the family and children. A pre-departure accommodation area will be available for families just prior to the return. It is located near Gatwick airport and is situated in a suburban-like community setting, offering private housing and plenty of outdoor space.⁶⁴

There are, of course, plenty of concerns about the “family returns process”. Its strict focus on return may be hard to accept for families who feel that their asylum process was conducted in an unfair manner. The ‘family returns panel’ can only advise the UKBA how to carry out return, and not review the merits of the return order itself. The pre-departure accommodation, while offering the best of conditions and services, is surrounded by a “low-key” but nonetheless “secure” perimeter. The intention is to keep families there for as little time as possible, from as little as 72

hours to seven days. Nevertheless, families cannot leave the perimeter, making it all look very much like a situation of detention.⁶⁵

The Belgian alternative for families with children does represent a solid step towards systemic change: prior to it families were detained, and now they are not. The project, now an embedded part of return procedures, is evidence of the government's attempt to deal with undocumented and asylum-seeking families in an entirely new way – a way that is based on mutual trust, respect for dignity, transparency, holistic support and the exploration of all possible outcomes. None of these conditions are possible within a detention centre. At a recent conference, a representative from the Belgian Office of the Secretary of State for Immigration and Asylum explained how the government hopes to apply the underlying principles of the family units to refused asylum seekers in general. Although the proposal is still in the planning stages, the idea is to accommodate refused asylum seekers – individuals and not only families – in “open return centres”, where they would enjoy many of the same conditions presently afforded to families.⁶⁶

The steps for systemic change are mitigated by the Belgian government's intention to resume the detention of children and families in specialised facilities. This stems from a January 2010 ruling of the European Court of Human Rights on the detention of a Chechen mother and her four children. While the Court found the detention of the mother to be lawful, it found the detention of the children to be unlawful because the detention facility was not designed to hold children.⁶⁷ The plans to construct a specialised detention facility, to be located at Brussels National Airport, is a response to the Court's decision, and intended as a means to detain particular border cases and families who do not comply with the rules of the family return units. Detention in these cases will be for as short a period as possible and as soon as return can be effectively organised.⁶⁸

Unfortunately this marks a step backward in the otherwise forward progress described in this report. Children should never be detained because the potential for harm is too great. Several negative consequences were identified in our 2010 detention study, where we pointed out that the mere fact that they are children, mixed with the conditions of a detention centre, led to a series of factors that increase their vulnerability to harm.⁶⁹

The Alreju project stands alone in this research in that it does not represent systemic change in Germany. As noted earlier in this report, Alreju, like similar projects in other federal states, is unique in that groups other than unaccompanied minors continue to be liable to detention; but even in some cases minors remain liable. But the conditions in Alreju can serve as a good example for other states to follow, especially Belgium and the UK, who plan to continue detaining children in some form despite expressed political commitments not to. The Alreju project demonstrates that it is possible to care for asylum-seeking children by providing holistic care, access to local services and schools, and intensive assistance with asylum procedures in an open environment with a high rate of compliance.

Factors that contribute to the well-functioning of alternatives

This research is limited in that it only investigated three alternatives to detention in Europe, and even within these programmes we interviewed small groups of people. Nevertheless we can infer particular factors that seem to be important for the functioning of the alternatives to detention we researched. These factors are borne out from the

interviews done for this project. Important to note is that these factors are supported by the larger research projects undertaken by the IDC and UNHCR.

- Living conditions: Community-based measures must provide individuals and families with secure living conditions. In a way this factor sets the tone for other conditions, in that if a person does not have access to secure housing, then s/he may have difficulty with focusing on asylum and immigration procedures. Migrants who are not permitted to work, in particular, cannot be expected to secure good living conditions for themselves, with exception perhaps for those that have familial support networks in the country. People must feel that they have a safe and secure accommodation.
- Holistic support: Good strategies that were examined by this research, and by others from around the world, show that the provision of holistic support is important for migrants. This support is often some type of case management that provides migrants a range of services – such as social support, legal assistance, medical support, and child care (if necessary) – that focus on one-to-one guidance, advice and assistance. Holistic support must also include social welfare benefits to meet people's most basic needs in the same way that good living conditions does. Migrants that can stop worrying about basic needs – such as food, clothing, public transport, medical care – can better focus on taking decisions on their asylum and immigration case.
- Regular, up-to-date, information: The only way that migrants can take proper decisions is if they are fully informed about all aspects of their asylum or immigration case. The lack of information – or even misinformation – may lead to feelings of distrust. It is especially important for states to provide regular information, because it can enable more efficient procedures, fairer and quicker outcomes and higher rates of compliance.
- Qualified legal assistance: Aside from being fully informed, the complexity of asylum and immigration procedures means that migrants usually need the assistance of a qualified, and appropriately specialised, lawyer. States should finance lawyers so as to encourage them to work on asylum and refugee cases. This could be done in collaboration with civil society organisations. Good legal assistance is a crucial element missing in a detention centre,⁷⁰ making it very important that it's provided in a community-based alternative.
- Focus on all possible outcomes: Alternatives to detention that have a return-only focus tend to perform poorly as compared to measures that explore all possible outcomes for case conclusion.⁷¹ Even if in reality certain options are closed off, such as legal residence, it would still be important for migrants to have every option thoroughly explained and explored so they can be assured that every step has been taken. This is how trust can be built between migrants and states. In some cases states may learn that certain individuals or families can stay, which can work well for states since the costs of enforcing return are exorbitant.⁷²
- Frontloading support: All of the above factors would work well if they were provided at the onset of a person's asylum or immigration case. There should be as little delay as possible. States that are upfront and honest with migrants, inform them of all conditions, procedures and opportunities, and offer holistic social and legal support, may find that rates of compliance increase as migrants feel more trust towards the authorities. Frontloading support, however, must not consist only of accelerating procedures. Rather all necessary safeguards must be in place at the very start.⁷³

Underpinning all of these factors is the need to establish mutual trust. This value is of paramount importance for states and migrants. Certainly it is not a value that can be easily established, given the confrontational nature of

immigration systems, and the adversity many asylum seekers and migrants have experienced in their lives. But without it, any alternative to detention becomes vulnerable to failure.

RECOMMENDATIONS

Overall we are encouraged that, at a time when detaining asylum seekers and undocumented migrants is at the forefront of EU member states' agenda, there are some states that implement non-custodial alternatives.⁷⁴

We urge the governments of Belgium, Germany and the United Kingdom to take seriously our **principal recommendation** – shared by the International Detention Coalition, UNHCR and others – that it is important to link alternatives to detention to larger systemic change. Alternatives to detention that protect migrants and meet the conditions of states are those that place greater resources towards engagement than enforcement.

Ultimately this research is too small in scope to recommend specific proposals that would lead to systemic change. Nevertheless, from the alternatives that were examined we can identify six conditions that, to our estimation, would seem to be important for alternatives to work well:

- 1) Suitable living conditions;
- 2) Holistic support with an emphasis on community-based case management;
- 3) Regular, up-to-date information;
- 4) Qualified and specialised legal assistance;
- 5) A focus on all possible outcomes;
- 6) All support as early in the process as possible.

Our research in Belgium shows a willingness on the part of the authorities to implement systemic change, even though detention still remains a real prospect for many migrants. We encourage the German government to take the example of the Alreju project and implement it throughout the country, and especially to extend similar opportunities to migrants other than unaccompanied minors, who are generally in a much worse situation. Similarly, we encourage the authorities and government in the UK to take into account the recommendations made by evaluations for previous alternative to detention projects, and to use them towards implementing further community-based alternatives.

Since we are the European regional office of the Jesuit Refugee Service, with a focus on the EU institutions, our recommendations below are primarily targeted to EU actors.

Reducing immigration detention is an important and long-term commitment that must be taken by all actors in Europe: from the European Commission and Parliament, down to national and local governments, as well as civil society actors such as ourselves. All stakeholders need to do their part to ensure the transition from deprivation to liberty.

To the European Commission:

- 1) Closely monitor how member states implement Article 15(1) of the EU Returns Directive calling for “other sufficient but less coercive measures”. The transposition of this directive is an important opportunity for states to build – or strengthen – a legal presumption against detention into their national laws, as well as a legal basis for the implementation of non-custodial alternatives to detention.

- 2) Provide close practical and financial support to member states that demonstrate a willingness to decrease their immigration detention estate by instituting non-custodial alternatives. Practical support should include the provision of legal and technical advice on adopting alternatives into law, and ensuring their practical implementation. Financial support mechanisms, such as the European Refugee Fund and European Return Fund, must regularly include line items for actions related to alternatives to detention that states and NGOs can apply for.
- 3) Insist on the inclusion of a strong presumption against detention, and a legal obligation for alternatives to detention, for asylum seekers in a newly amended Reception Conditions Directive.

To the European Parliament:

- 4) Adopt a newly amended Reception Conditions Directive that contains a strong presumption against the detention of asylum seekers, with obligations for alternatives to detention. Currently the Parliament is at an ideal moment to implement this recommendation, as they are debating the Commission's 'recast' proposal with the Council. Common EU legislation is a necessary condition for all EU member states to really implement alternatives.
- 5) Conduct MEP delegation visits to alternative to detention in Europe. In recent years delegations of MEPs have visited detention centres all around the EU, and have written reports that a range of stakeholders have used and cited. Delegation visits are a way for MEPs to not only take stock of asylum and immigration opportunities and challenges throughout the EU, but also to independently monitor member states' use of detention and non-custodial alternatives. Such visits could also be a means for MEPs to build consensus on key issues relating to alternatives.
- 6) Engage constituents in discussions about the detention of asylum seekers and migrants in the EU, and on non-custodial alternatives. Since the good alternatives appear to be community-based models, it would make sense to encourage community leaders and citizens to think about how they could take part. In doing so, constituents would need to receive full briefings, to understand the harmful consequences of detention and to dispel negative myths about immigration, before they could participate in such discussions.

To the EU member states:

- 7) Transpose Article 15(1) of the EU Returns Directive in the best manner possible, with a strong presumption against detention, and specific measures on alternatives to detention, built into national law.
- 8) Adopt a newly amended Reception Conditions Directive that presumes against the detention of asylum seekers, and encourages states to implement alternatives to detention in law and practice.
- 9) Implement alternatives to detention that are already built into national laws. This is an important first step that member states can take on the transition from detention to alternatives. Good examples in the EU and from around the world can guide member states in this initial phase.
- 10) Develop cross-institutional linkages to maximise national expertise. Immigration law and policy is often too strict and inflexible to appropriately deal with migrants in open community settings. Moreover, immigration law and policy cannot sufficiently address the social welfare needs of children, families and individuals. Successful community-based alternatives that provide holistic support will not only need the leadership of national immigration offices, but also the strong collaboration of social welfare and youth welfare offices. The Alreju

example in Germany is a case in point, as it takes the same services offered to German youths and provides them to migrant youths.

- 11) Undertake national studies that analyse the costs, benefits and feasibility of non-custodial alternatives in comparison with detention. National-level studies can be used to explore multiple options and collect the viewpoints of numerous stakeholders, including migrants. The Dutch government, for example, has spent the last year studying the feasibility of alternatives; as a result, they will implement several pilot projects in 2012.⁷⁵
- 12) Organise national stakeholder roundtables to brainstorm ways for implementing alternatives. Participants can include refugee and immigration organisations as well as social service institutions, child welfare organisations, medical organisations and researchers, among others. A multi-stakeholder approach can lead to comprehensive and sophisticated ideas, and can serve to build trust between civil society and government. Migrants should actively take part in such roundtables.

ANNEX – Migrant interview guidelines

Basic information

- Age
- Sex
- Nationality
- Family composition, number/age of children (if applicable)
- Current legal status (asylum seeker in RSD procedure; refused asylum seeker; irregular status)
If the person is in RSD procedures, clarify if person applied for asylum within the territory, or at the border.
Record the legal status at the time of entry to the alternative to detention.
Record the length of time they've been in their current legal status.

The journey up to the alternative

- Length of time in the country
- Thoughts about living in the country/level of satisfaction of being in the country
- Events that happened before entry into the alternative
Was the person detained, living in the community without restrictions, etc.
- Reasons for current legal situation
Reasons for being an asylum seeker, or why they've lived in the territory without a status
- How the person got to the alternative

Living conditions in the A2D

- Possession of information on alternative
Explore how much they know about the alternative, who informs them (authorities, NGOs, other migrants, etc.)
Explore the extent the person knows which procedures to follow, e.g. reporting requirements, meeting with the case manager, etc.
Explore whether there are any linguistic barriers. Does the person get information in his/her language? Is interpretation/translation available?
- Ability to maintain contact with others
Explore the extent to which the person can maintain contact with family, friends, lawyers, NGOs; explore if there are any obstacles to maintaining contact
- Ability to meet personal and family needs
Opportunities for children to go to school
Availability of medical care, psychosocial care
Access/quality of basic living conditions (food, shelter, etc.)
Mobility, i.e. nearness to public transport, proximity to town/city
What the person does to pass the time during the day? Do they work?

Individual perceptions of A2D

- Feelings about their situation, i.e. living conditions as well as the alternative itself
Explore if the person knows they're in an alternative to detention; if they know about detention, people who've been detained, their perceptions of detention
- Feelings of fairness and trust
Examine their level of trust and compliance towards the process
Examine perceptions their perceptions of the national authorities and/or staff working in the alternative; ask about negative/positive experiences and examples, their helpfulness, etc.
Explore any examples of gaps in trust, or examples that show a high level of trust with the authorities
- Knowledge about other people in the alternative
Explore whether other migrants have affected the person's perceptions/feelings of the alternative, for better or worse
- Level of choice
Explore the person's level of choice within the alternative. Is there any flexibility for them within the alternative? Do they feel like they have any control?
- Ideas for improvement
Explore the person's thoughts/ideas for improving the alternative, i.e. how it could be adjusted to improve their situation, or, how it could be adjusted to improve the outcome they want
Explore if there is anything they would want to the staff/authorities to do.

Outcome expectations

- Personal plans

Explore what plans the person has for him/herself, or their family, for the immediate present as well as their future. Do they intend to stay in the country? Go elsewhere? Get refugee status? Return home? Find work in the country? Go to school?

Explore options the person has considered, including (if possible) return home. If the person has a family, explore what options they've considered for their children.

- Impact of alternative on personal plans

Explore what outcomes they know the authorities to have, i.e. do the authorities expect them to return? Or are there expectations for stay?

Explore personal feelings of the alternative impact on personal plans, e.g. see where the alternative conflicts/supports their personal plans

Explore whether the alternative is supporting or blocking the person's individual/family plans? Are expectations being met?

- Preferred place to be

Explore whether the country is their preferred destination, or if they're rather be somewhere else in Europe.

ENDNOTES

- ¹ Sultan A, O'Sullivan K. (2001). Psychological disturbances in asylum seekers held in long term detention: a participant-observer account. *Medical Journal of Australia*, 175, 593-596.
- ² See JRS Europe, *Becoming Vulnerable in Detention*, p. 20, for references to such medical studies.
- ³ Robjant K, Hassan R & Katona C. Psychological distress amongst immigration detainees: A cross-sectional questionnaire study. *The British Journal of Clinical Psychology*, 48(3), 275-86.
- ⁴ 2008 STEPS Consulting Social Study for the European Parliament, *The conditions in centres for third-country nationals (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states*.
- ⁵ For more, see JRS Europe's website www.detention-in-europe.org. The UK-based Detention Action, for example, has published reports on the negative impact of indefinite detention, www.detentionaction.org.uk.
- ⁶ Silverman S. (2011). *Immigration detention in the UK*. Migration Observatory Briefing, COMPAS, University of Oxford, <http://migrationobservatory.ox.ac.uk/sites/files/migobs/Immigration%20Detention%20Briefing.pdf>.
- ⁷ JRS Europe. (2010). *Public free legal assistance in the Dublin Regulation*. Working paper.
- ⁸ Email from Geert Verbauwheide, Belgian Immigration Office, on 10 Nov 2011; PowerPoint presentation by Remco Terpstra, Dutch Migration Policy Department, 16 Nov 2011.
- ⁹ Some of these sources are available on JRS Europe's website www.detention-in-europe.org, under the heading "alternatives to detention".
- ¹⁰ JRS Europe defines "immigration detention" as essentially being a *deprivation* of liberty. This definition is widely used by other actors, including NGOs and governments. The European Convention on Human Rights also defines detention in this law under Article 5.
- ¹¹ The EU Fundamental Rights Agency has analysed alternatives to detention laid down in EU member states' national law. See, *Detention of third-country nationals in return procedures*, 2011.
- ¹² Sampson R, Mitchell G & Bowring L. (2011). *There are alternatives: A handbook for preventing unnecessary detention*. Melbourne: The International Detention Coalition, p. 12.
- ¹³ Taken from a PowerPoint presentation by Geert Verbauwheide, attaché, Belgian Immigration Office, made at an alternatives to detention conference held in Brussels by UNHCR on 16 November 2011.
- ¹⁴ Vluchtelingenwerk Vlaanderen, "Alternatives to detention of minors in Belgium", PowerPoint presentation made at a European Commission meeting in Brussels on 26 November 2010.
- ¹⁵ SumResearch NV, *Study for alternatives to detention of families with children in the closed centres*. http://corporate.skynet.be/mensruimte/SumResearch/downloads/News/CentreAlternative/deel_2_visie_FR.pdf
- ¹⁶ Vluchtelingenwerk Vlaanderen 2010
- ¹⁷ Legally speaking, this measure is actually detention, in that the same laws that apply to detention in closed facilities are applied to this measure. This also means that families can appeal against their placement in a family unit in the same way that they can appeal against a detention order. In practice, only few families have done so. Source: Geert Verbauwheide, presentation at UNHCR conference, 16 November 2011.
- ¹⁸ Geert Verbauwheide, 16 November 2011.
- ¹⁹ Interview with Stefanie Duysens, JRS Belgium social worker, 13 October 2011.
- ²⁰ Email from Geert Verbauwheide, 6 December 2011.
- ²¹ The EURODAC system enables EU countries to identify asylum seekers and persons who have been apprehended in connection with the irregular crossing of an external border. By collecting and comparing fingerprints, EU countries can determine if a person is illegally staying in the EU, and if the person has claimed asylum in other EU countries.
- ²² Email to JRS Europe on 10 November 2011 from Geert Verbauwheide, attaché, Belgian Immigration Office.
- ²³ Televisions will be purchased in 2012 (this could not be done in 2011 due to budgetary restrictions). Email from Geert Verbauwheide, 6 December 2011.
- ²⁴ In this context, "holistic" may be understood as addressing personal needs in relation to the whole environment the person is in. Coaches do not only provide families assistance with asylum procedures, but they also help to enrol their children in local schools, obtain clothing donations and access medical care, among other things. According to the International Federation of Social Work, "holism" is a "focus on persons and their environments". See, <http://www.ifsw.org/f38000138.html> (accessed on 06 Dec 2011).
- ²⁵ The average time length to process an asylum application is nine months. If an appeal is introduced, one can expect to wait for at least six more months before a decision is made. Accelerated procedures at the border must be resolved within two months – if there is an appeal, then 2.5 months. Source: JRS Belgium.
- ²⁶ Situation in *deutschen Abschiebehaftanstalten* – Reply of the Federal Government to a request from the Greens' faction in the Bundestag of Dec 16th, 2008, BT-Drs. 16/11384, p. 23.
- ²⁷ See, e. g. *Richtlinien für den Abschiebungsgewahrsam in Nordrhein-Westfalen*, Decree by the Ministry of Interior for Northrhine-Westphalia of Jan 19th, 2009, no. 15-39.21.01-5-AHaftRL.
- ²⁸ Decree of the Ministry of Interior of Schleswig-Holstein, Dec 20th, 2002, as cited in Heinhold, Hubert, *Abschiebungshaft in Deutschland*. Karlsruhe 2004.
- ²⁹ Taken from the German national report in *Becoming Vulnerable in Detention* (2010), p.186
- ³⁰ Derived from the German term for unaccompanied minors, "AlleinREisende JUgendliche".
- ³¹ Diakonie, <http://www.diakonie-ols.de/alreju.69.html>; accessed on 15 November 2011
- ³² Ibid; accessed on 15 November 2011
- ³³ Email to JRS Europe from Heiko Habbe, JRS Germany policy officer, 6 October 2011.
- ³⁴ Habbe, 6 October 2011.
- ³⁵ Discounting one interviewee who had been in Germany for only three weeks at the time of his interview.

³⁶ Actually there are no televisions, and only one computer with Internet access. None of the interviewed youths complained about this.

³⁷ Deputy Prime Minister Nick Clegg, 16 December 2010, [http://www.libdems.org.uk/speeches_detail.aspx?title=Nick_Clegg_confirms_end_to_child_detention_\(full_speech\)&pPK=d73b587e-f837-4b16-b7d5-a14b1bfa8a9b](http://www.libdems.org.uk/speeches_detail.aspx?title=Nick_Clegg_confirms_end_to_child_detention_(full_speech)&pPK=d73b587e-f837-4b16-b7d5-a14b1bfa8a9b)

³⁸ PowerPoint presentation by Mr Andrew Elliot, Head of Enforcement Policy, UK Border Agency, entitled, *Ending the Detention of Children for Immigration Purposes in the UK*, for a European Commission meeting in Brussels on alternatives to detention, 26 November 2010.

³⁹ Children's Society, 17 October 2011, "Almost 700 children detained in three months", <http://www.childrenssociety.org.uk/news-views/press-release/almost-700-children-detained-three-months>. UKBA guidelines state: "unaccompanied children/young persons under the age of 18 must only ever be detained in the most exceptional of circumstances and then only normally overnight, with appropriate care, whilst alternative arrangements for their care and safety are made". See, UKBA, *Immigration Directorates' Instructions*, chapter 31 section 1, detention and detention policy in port cases, line 10A.2, "young persons". <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idichapter31detention/section1/sec1-detention-policy-port.pdf?view=Binary> (accessed on 23 Nov 2011).

⁴⁰ Children's Society, The Diana Princess of Wales Memorial Fund, Bail for Immigration Detainees (May 2009), *An evaluative report on the Millbank Alternative to Detention Pilot*

⁴¹ ODS Consulting, (May 2011), *Evaluation of the Family Return Project*

⁴² For more information on reporting, see the UKBA guidelines on "First Reporting Event (FRE)", <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/reporting/guidance/firstreportingevent.pdf?view=Binary> (accessed on 23 Nov 2011).

⁴³ Case owners are responsible for checking 'case information databases' to ensure that that a person is complying with reporting restrictions, and to take action if a breach takes place. See, UKBA *Enforcement Instructions and Guidance*, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary> (accessed on 23 Nov 2011).

⁴⁴ *Ibid*, for more information on UKBA reporting restrictions.

⁴⁵ See, "Detention centres to be expanded", *The Independent*, 20 May 2008, by Emily Dugan <http://www.independent.co.uk/news/uk/home-news/detention-centres-to-be-expanded-831022.html> (accessed on 23 Nov 2011). The primary source from the UK Border Agency could not be located online.

⁴⁶ Most homeless shelters do not take migrants as they are too costly – costs that can usually be met through state benefits that migrants do not qualify for.

⁴⁷ See, "Ministers plan big rise in use of electronic tags on offenders", <http://www.guardian.co.uk/society/2011/sep/30/electronic-tags-offenders>, (30 September 2011), *The Guardian*. Accessed on 15 November 2011.

⁴⁸ G4S, "Electronic Tagging" webpage, <http://www.g4s.uk.com/en-gb/What%20we%20do/Services/Care%20and%20justice%20services/Electronic%20monitoring/>. Accessed on 15 November 2011.

⁴⁹ For more on bail procedures, see Bail for Immigration Detainees, *Facts & Figures: What is immigration bail*, <http://www.biduk.org/307/what-is-immigration-bail/what-is-immigration-bail.html> (accessed on 23 Nov 2011)

⁵⁰ Statistics by Geert Verbauwheede, Belgian Immigration Office, as of 03 Nov 2011.

⁵¹ *Ibid*, presentation made on 16 November 2011. In the same presentation it was asserted that 53% of families who have absconded were in Dublin procedures.

⁵² *Ibid*

⁵³ This was expressed by all of the families that were interviewed. It was also confirmed by Geert Verbauwheede, Belgian Immigration Office, when JRS Europe asked if families are told about the return units, and if they know where they are going to when they are intercepted.

⁵⁴ See, JRS Europe, *Becoming Vulnerable in Detention*, 2010.

⁵⁵ Email by Heiko Habbe, JRS Germany policy officer, on 28 November 2011.

⁵⁶ Edwards A. (2011) *Back to basics: The right to liberty and security of person and 'alternatives to detention' of refugees, asylum-seekers, stateless persons and other migrants*. Division of International Protection, UN High Commissioner for Refugees, p.88

⁵⁷ Jerome Phelps, director of Detention Action, in a presentation made at a conference organised by UNHCR on alternatives to detention, 16 November 2011, Brussels.

⁵⁸ Sampson, R., Mitchell, G. and Bowring, L. (2011) *There are alternatives: A handbook for preventing unnecessary immigration detention*. Melbourne: The International Detention Coalition

⁵⁹ Edwards A. (2011)

⁶⁰ *Ibid*, p.86

⁶¹ Asylum Aid, *Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission*, October 2008, <http://www.unhcr.org/refworld/docid/4c62615e2.html> (accessed on 23 Nov 2011).

⁶² UKBA, *Early Legal Advice Project*, <http://www.ukba.homeoffice.gov.uk/aboutus/your-region/midlands-east/controlling-migration/early-legal-advice-project/> (accessed on 23 Nov 2011).

⁶³ See Refugee Action, *Key Worker Pilot*, <http://www.refugee-action.org.uk/liverpool/advice.aspx>, (accessed on 23 Nov 2011).

⁶⁴ PowerPoint presentation by Caroline Rowe, UKBA, *Ending the detention of children: A fresh approach to managing family returns in the UK*, made at a UNHCR conference on alternatives to detention, 16 November 2011.

⁶⁵ *Ibid*

⁶⁶ Panel presentation at the UNHCR alternatives to detention conference of 16 November 2011 by Juan Cortes Leclou, *conseiller* on migration and asylum, for the office of Melchior Wathelet, Belgian State Secretary for Budget, Migration and Asylum Policy, Family Policy and Federal Cultural Institutions

⁶⁷ *Muskhadzhiyeva et autres c. Belgique*, Requête n°41442/07, Council of Europe: European Court of Human Rights, 19 January 2010, available at: <http://www.unhcr.org/refworld/docid/4bd55f202.html> (accessed on 24 Nov 2011).

⁶⁸ Geert Verbauwheede, 16 November 2011; *Ibid*, email on 6 December 2011.

⁶⁹ JRS Europe, *Becoming Vulnerable in Detention*, pp.98-99.

⁷⁰ Ibid. The inability to meet with lawyers, and to receive legal advice, was one of the more negative conditions detainees experienced according to JRS Europe research.

⁷¹ This point is a key finding of the IDC and UNHCR research, and also of project evaluations of the Glasgow and Millbank pilots implemented in the UK. A key indicator of poor performance, in their estimation, are migrants' feelings that asylum procedures were not fair, and as a consequence they do not only want to discuss return, but want to ensure that they receive a fairer procedure.

⁷² In 2005 the National Audit Office estimated that the UK spends up to £11.000 for the removal of one refused asylum seeker. See, Blinder, Scott. "Deportations, Removals and Voluntary Departures from the UK," Migration Observatory briefing, COMPAS, Oxford University, September 2011.

⁷³ Frontloaded asylum procedures with all necessary safeguards is a point that has been strongly put forward by the European Council of Refugees and Exiles (ECRE). See, *ECRE Comments and Recommendations on the Amended Commission Proposal to Recast the Asylum Procedures Directive*, <http://www.ecre.org/component/content/article/57-policy-papers/248-ecrecommentsrecastapd2011.html>

⁷⁴ At the time this report was published, member states were expressing deep reluctance to adopt new legislative measures that would narrowly define the grounds for detaining asylum seekers. Also, member states were required to have transposed the EU Return Directive, which among other things, contains an entire article on detention. As a result, some member states – such as France and Italy, for example – increased time limits for detention in the context of return.

⁷⁵ PowerPoint presentation by Remco Terpstra, policy advisor and senior project manager for the Migration Policy Department of the Netherlands, at a UNHCR conference on alternatives held on 16 November 2011. This initiative comes from a resolution adopted by the Dutch Parliament to explore alternatives that are less restrictive and costly than detention, while maintaining the effectiveness of return policy and safeguarding national security. Pilot projects will take measures that are applied to asylum seekers, and apply them with undocumented migrants. Also, the Dutch Minister for Immigration and Asylum, G.B.M. Leers, announced on 10 March 2011 that unaccompanied migrant children would no longer be detained.