Becoming Vulnerable in Detention

Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union

(The DEVAS Project)

JRS
Jesuit Refugee Service-Europe

DEVAS

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EXECUTIVE SUMMARY

The objective of the DEVAS project was to investigate and analyse vulnerability in detained asylum seekers and irregular migrants: both the way in which pre-existing vulnerable groups cope with detention, and the way in which detention can enable vulnerability in persons who do not otherwise possess officially recognised vulnerabilities and special needs.

In partnership with NGOs in 23 EU Member States, JRS-Europe oversaw the collection of 685 one-on-one interviews with detainees. The size and scope of the sample reveals that, despite the diversity of personal circumstances of the detainees, detention does have a common negative effect upon the persons who experience it. In addition to detainees, project partners interviewed detention centre staff and other NGOs operating within the centres, and conducted a survey of asylum and immigration laws in their respective countries. This data is included within each of the 22 national reports that are published in the full DEVAS report.

This study builds on previous reports and projects that investigated vulnerability in detention. It analyses the situation of individuals and groups that possess officially recognised special needs, such as minors, young women with children, the elderly and persons with medical illness. But this study also analyses the situation of detainees who often go unnoticed: young single men, persons without stated physical and mental health needs, and persons in prolonged detention. Most importantly, this study pushes the discussion on vulnerability and detention one step further because its results are based exclusively on the voices of detainees. Thus the understanding of vulnerability that emerges from this study characterises the experiences of detainees as they told it themselves.

PART 1: DATA FINDINGS

BASIC INFORMATION

The average detainee in the sample is male, single, 30 years old and likely to be from West Africa, South Asia or the Middle East. But women do consist of almost one quarter of the sample, of which many come from not only West Africa but also Eastern Europe and Eastern Africa.

The data shows that, at an average of 3.56 months at the time of their interview, asylum seekers experience the most prolonged periods of detention in the sample. They were detained for one month longer than irregular migrants. Of those detained for five to six months, 78 percent are asylum seekers.

Taking the entire sample into account, the average duration of detention at the time of interview is 3.01 months. Detainees were kept for as little as one day, or for as long as 31 months.

POSSESSION OF INFORMATION

Asylum seekers are less informed about the reasons for their detention than irregular migrants are. One-third of female asylum seekers do not know why they are detained; and almost 40 percent of asylum seekers detained for more than three months contend to know little about why they are detained. Forty percent of asylum seekers are uninformed about the asylum procedure.

Awareness of detention increases with age: one-third of minors do know not why they are detained, and 76 percent of asylum-seeking minors are uninformed of the asylum procedure. Women, especially those aged 18 to 24, possess less information about detention, and their immigration/asylum status, than men do.

Persons kept for more than three months in detention know less about the circumstances of their detention, and the details of their respective cases, than persons detained for less than three months; 85 percent of persons detained for four to five months describe a need for more information on their situation.

SPACE WITHIN THE DETENTION CENTRE

Detainees overwhelmingly feel negative about the conditions of the detention centre. Many complain of unsanitary toilet and shower facilities, and unhygienic kitchens. A large number of detainees equate their detention centre to that of a prison.

Asylum seekers and long-term detainees more frequently complain of overcrowded conditions than others do. Moreover, detainees kept for more than three months say they have little access to private space within the detention centre.

RULES WITHIN THE DETENTION CENTRE

The strict regimes found in many detention centres have a profound negative impact on detainees' lives. The fixed eating times, recreation hours and mandatory nightly curfews lead detainees to feel as if they are in prison.

A great number of detainees describe rules that keep them isolated in their cells more than anything else. Consequently, many detainees report to sleep excessively during the daytime, leading to insomnia at night. Isolation and inactivity leaves other detainees feel degraded and undignified.

The "informal" rules are just as important as the "formal" rules. Detainees describe an atmosphere where certain persons receive more favour from the staff, and thus benefit from more relaxed rules. This creates an atmosphere of arbitrariness, uncertainty and mistrust. It also makes certain detainees more vulnerable to other, more socially dominant, detainees.

DETAINEES' INTERACTION WITH STAFF IN THE DETENTION CENTRE

Detainees are more frequently in contact with security staff than any other staff. The manner in which detainees interact with staff is good. But detainees are critical about the way the staff supports their daily needs in detention.

Language is an important factor in detainee-staff relations. Minors and women in the study especially report having experienced discrimination for not being able to speak the language of the staff.

SAFETY WITHIN THE DETENTION CENTRE

Detainees attribute their safety to the security guards, but their lack of safety to co-detainees. Nevertheless, incidents of physical and verbal abuse occur at the hands of staff as well as other detainees. Incidents of physical abuse were recorded in three quarters of the EU Member States; and incidents involving verbal abuse were recorded in 19 Member States. Minors, women aged 18 to 24 and asylum seekers frequently report being victims of both forms of abuse.

The living conditions have an impact on detainees' sense of safety. Excessive noise, unhygienic conditions and the prison-like atmosphere are widely reported factors that make detainees feel unsafe.

ACTIVITIES WITHIN THE DETENTION CENTRE

Prolonged inactivity is inherent within the situation of detention. Detainees have little to do unless the staff organises something for them to do. The resulting boredom increases levels of psychological stress. Most notably, detainees aged 18 to 24 – in particular women – report high levels of inactivity in the detention centre.

Detainees have greater access to sedentary and physical activities, rather than those that would engage their intellectual capacities. Television watching, rudimentary sports activities and general time spent outdoors is more widely available than educational and religious/spiritual activities. Even books are not available to a significant minority of detainees.

More than anything, detainees either want activities that enable them to connect to the 'outside world', or they want nothing at all. Asylum seekers and minors especially wish for greater access to the Internet and telephone.
When asked which activities they would like to have, a startlingly large minority of detainees said that they want "freedom" or "nothing".

MEDICAL CARE IN THE DETENTION CENTRE

Detention centres are generally only able to provide very basic medical care to detainees, irrespective of their needs. Medical specialists such as psychologists, gynaecologists and dentists are largely unavailable. In fact, 87 percent say psychological services are unavailable to them.

Language is a major factor here too. Detainees report an inability to speak with the medical staff because of language differences. Co-detainees are often turned to for help because other options do not exist. Minors frequently report experiencing difficulties in this regard.

Most detainees want improved medical care services. Over 90 percent of women aged 18 to 24 express a need for better medical care. Many detainees report receiving only pain-reducing medication for whatever medical need they express.

Persons kept for more than three months in detention are more frequently negative about the medical care than those who are kept for fewer months. In fact, detainees who are negative about the quality of medical care are detained on average for one and a half months longer than detainees who feel positive about the medical care.

PHYSICAL HEALTH IN DETENTION

The data shows that detention harms otherwise healthy people. While a number express having pre-existing conditions such as asthma, chronic pain or medical illnesses, most say they entered into detention in relatively good physical health.

The living conditions of the centre, such as the lack of fresh air or the mere confinement to one location, and the psychological stress associated with detention all bring harmful physical health consequences.

Physical health deteriorates as detention endures. Whereas one quarter of people detained for one month describe their physical health as being poor, 72 percent of people detained for four to five months say they have very poor physical health.

Younger detainees more frequently report poor physical health than older detainees do. Minors and women aged 18 to 24 frequently describe negative physical health impacts than when compared to others.

MENTAL HEALTH WITHIN THE DETENTION CENTRE

Detention brings very negative consequences for detainees' mental health. Almost half of the entire sample describes their mental health as being poor in detention.

The mere situation of detention itself is a primary determinant in the negative mental health consequences described by detainees. Many were unable to provide specific reasons for these impacts. Instead, they more frequently described being "shocked", "fearful" and "depressed" at their situation of confinement. Detainees' psychological stress is also a consequence of the poor living conditions, the self-uncertainty of their situations and their isolation from the 'outside world'. Their inability to establish a perspective of their future, due to a lack of information and disconnection from the outside world, places a great deal of psychological stress upon their shoulders. This stress often leads to deeper anxiety and depression.

Prolonged detention compounds the adverse mental health effects of detention: 71 percent of persons detained for four to five months blame their psychological problems on detention itself.

Age and legal status are two important factors for how detainees mentally cope with detention at a personal level. Minors and detainees aged 18 to 24 frequently report negative mental health impacts. Asylum seekers express shock at their detainment; it being far from what they would have expected by coming to Europe. Irregular migrants express anxiety and uncertainty about what may happen to them post-expulsion. Seventy-seven percent of "Dublin II" asylum seekers and 55 percent of 'rejected asylum seekers' report poor mental health in detention.

SOCIAL INTERACTION WITHIN THE DETENTION CENTRE

The environment of detention has a negative impact on the level and quality of social interaction among detainees and between detainees and staff. The mix of cultures, nationalities and languages within the detention centre makes conflict inevitable. Prolonged detainees more frequently report negative social interactions than others.

An absence of language skills makes certain detainees vulnerable to other, more dominant, social groups. Minors and detainees aged 18 to 24 are frequently witness to arguments and physical violence.

COMMUNICATION WITH THE 'OUTSIDE WORLD'

Almost half of the entire sample admits that they do not have networks of family or friends in the host Member State. Detainees are more likely to receive support from strangers than from familiar persons.

The telephone is the most widely used means of communication, and detainees' preferred method of communication. However many detainees say they are unable to use their personal mobile telephones – an important loss for detainees as their personal mobile telephones often contain important contact information.

Asylum seekers are particularly isolated from the outside world: approximately 80 percent do not receive any personal from family and friends, and over half do not have any family or friends in the host Member State.

The data shows that the young detainees in the sample are particularly isolated from the 'outside world'. Up to 80 percent of minors, and almost half of women aged 18 to 24, do not receive any personal visits. In other cases, people kept for more than three months in detention are shown to be particularly isolated.

THE IMPACT OF DETENTION ON THE INDIVIDUAL

A large majority of detainees express deep dissatisfaction over the quality of the food provided in the detention centre, and over half experience insomnia at night. Both conditions significantly contribute to the amount of psychological stress detainees feel. In particular, the quality of the food contributes to an overall sense of indignity among detainees. Appetite and weight loss are very common. Prolonged detention exacerbates these negative effects.

The situation of detention itself is the biggest difficulty detainees described coping with. The mere imposition of detention and all of its consequent effects are an insurmountable difficulty for many detainees. Everyone, regardless of age, sex, legal status and duration of detention, is affected.

The difficulties of detention are daily present in detainees' lives; any changes of these difficulties are usually for the worse. The inability to establish a future perspective is crippling; in fact, 79 percent of detainees do not know when they will be released from detention.

Remarkably, detainees hold positive perceptions of themselves despite the adversities they experience. But almost 70 percent say that detention steadily worsens their self-perception.

When asked directly, most detainees do not admit to having special needs – but they readily point out the needs and vulnerabilities that others possess. Those who do admit having special needs are more likely to describe needs that are not officially recognised: language capacity, connection to family, possession of information and the ability to communicate with the outside world. According to detainees, language capacity and familial connections are two of the more important factors of vulnerability they perceive in others.

PART 2: ANALYSIS

WHAT DOES THIS STUDY SAY ABOUT 'VULNERABILITY'?

The data offers a story of detainees who not only have special needs such as medical problems, pre-existing traumatic histories and families to take care of, but also of detainees who *become vulnerable* to the negative effects of detention. Some detainees find that they can cope with the adversity posed by detention; others find that they are easily crippled. Some detainees find that detention does not negatively affect them until after one or two months; yet others find that detention harms them from the very first day.

The picture that emerges from the data is one of a detainee who is trapped and cannot escape, and is thus vulnerable to harm from the factors associated with detention. The detainee must therefore rely on their personal attributes, the people in their social network and the factors in their environment in order to free him or herself from that trap. Conversely, the same personal, social and environmental factors – or an absence of such factors – may actually hinder an individual's ability to reduce their level of vulnerability to detention.

A NEW OUTLOOK TOWARDS VULNERABILITY IN DETENTION

Within the context of detention and the data that was collected for DEVAS, 'vulnerability' can be conceptualised as a concentric circle of personal (internal), social and environment (external) factors that may strengthen or weaken an individual's personal condition. Put differently, the presence or absence of these factors may either empower a detainee to cope with the negative effects of detention, or they may expose the detainee to further harm.

Factors interact with each other in a variety of ways, both positively and negatively. For example, the data findings show that detention centre staff members are an important part of detainees' social network. Discriminatory attitudes and inappropriate behaviour on the part of staff can have a detrimental affect on detainees' well being. Thus it would be important that staff members are sufficiently trained so that they can meet the needs of detainees in a dignified and humane manner.

In another example, the study shows that the possession of information is important for detainees to understand their situation, to exercise their rights and also to organise plans for their future. The inability to receive understandable and clear information about their case, and to communicate with supportive networks in the 'outside world', may foster a deep sense of personal uncertainty, stress and despair within the detainee. All of these effects can lead to a deterioration of their mental and physical health.

Personal factors can be defined as the *sum of the individual's personal sense of agency*. It is a set of determinants that an individual personally carries with him or herself, all of which may hinder or improve the individual's ability to cope with the adversities of detention. Language capacity, level of awareness of the asylum/immigration procedure and state of physical and mental health are shown to have the most influence over an individual detainee's ability to cope in the environment of detention.

Social factors can be defined as the *sum of the individual's existing social network, and available means of communicating with that network*. It is made up of the persons, organisations or bodies in the detainee's life who may lessen or increase his or her level of vulnerability to the adversities of detention. These social factors may also be labelled as 'external factors', in the sense that they are situated outside of the personal self. Yet they do not necessitate existence in the 'outside world', *per se* – such factors may also exist in the detainees' social network within the detention centre. The factors that seem to most influence detainees' personal situations are family, relatives and/or friend in the 'outside world', the 'outside world' (means of contact to), co-detainees and detention centre staff.

Finally, environmental factors can be defined as *the sum of the determinants that exist in the individual's larger environment but that the individual cannot control nor influence, and which may still increase or lessen his or her level of vulnerability to detention*. Among those that seem to most influence detainees' level of vulnerability is the architecture of the detention centre, the terms and length of their detention and the living conditions in the detention centre.

ASSESSING VULNERABILITY IN PRACTICE

The data shows that detention has the potential to harm many types of people: those with pre-existing special needs and otherwise healthy persons. It is important to stress that a person becomes vulnerable from the first day of their detention, as the individual's personal condition is instantly affected due to their disadvantaged and weakened position. Detainees' level of vulnerability fluctuates in relation to the characteristics that they personally possess, the factors in their social network and the determinants in their wider environment.

This method of understanding attempts to acknowledge the variety of factors that foster vulnerability in detained asylum seekers and irregular migrants. In practice, it shows that every person must be individually assessed for vulnerabilities and special needs that may make it difficult for them to cope in the environment of detention. This is the only way to ensure that detention does not cause unnecessary harm to individuals and is not disproportionate to their actual situation.

PART 3: CONCLUSIONS & RECOMMENDATIONS

DEVAS RESEARCH IMPLICATIONS FOR THE ONGOING USE OF DETENTION

The data reveals that detention is implemented in a broad variety of cases and situations. Everyone, from asylum seekers to irregular migrants, minors to older persons, and from medically ill persons to the healthy, can be subject to detention irrespective of their special needs and vulnerabilities.

Detention, as observed from the research, is used in a mostly indiscriminate manner with little deference to personal choice and preferences. The cases that were recorded demonstrate a situation where detainees can do little to alter their circumstances within the detention centre. They must accept the state of living conditions within the detention centre, and cohabitation with persons of differing nationalities, cultures and even personalities and temperaments; and they must accept the restriction on their freedom to move about as they please, even within the confines of the detention centre. Although exceptions may exist in some Member States for persons with special needs, the 'average detainee' will find that he or she is unable to exercise a degree of personal choice and must therefore accept detention as one accepts a punishment, rather than an administrative procedure.

The results show that persons with officially recognised needs, such as minors, young women and the medically ill, are indeed negatively impacted by detention. The adult environment of detention immediately puts minors at a disadvantage, especially if they are unaccompanied, because they are vulnerable to the behaviour of the staff and to the prison-like atmosphere of detention, for example. The data findings show that women, especially between the age of 18 and 24, especially suffer from adverse mental health impacts. The medically ill may not be able to receive the treatment they need because the detention centre only provides for basic medical care.

In almost every case, the study shows that detention has a distinctively deteriorative effect upon the individual person. Only in very few cases do detainees describe their personal situation as having improved after detention; and just as few say that detention has not impacted them whatsoever. The vast majority of detainees describe a scenario in which the environment of detention weakens their personal condition. The prison-like environments existing in many detention centres, the isolation from the 'outside world', the unreliable flow of information and the disruption of a life plan lead to mental health impacts such as depression, self-uncertainty and psychological stress, as well as physical health impacts such as decreased appetite and varying degrees of insomnia. The manner in how detainees see themselves is significantly impacted by detention. In this context, self-perception becomes an important indicator of the effects of detention because as an administrative measure, it should not bring such detrimental personal consequences.

The biggest implication from the DEVAS research is the way in which detention – frequently implemented as a tool of asylum and immigration policymaking for the EU and its Member States – leads to high rates of vulnerability in people. It calls into question the proportionality and necessity of detention in relation to the ends it seeks to achieve: that is, to systematically manage migration flows so that States may enforce their asylum and immigration policies.

The research reveals that the human cost of detention is too high, regardless of the achievability of these ends because

- The negative consequences of detention and its harmful effects on individual persons are disproportionate to their actual situations, in that they have committed no crime and are only subject to administrative procedures, and;

- It is unnecessary to detain persons and thus make them vulnerable to the harmful effects of detention because non-custodial alternatives to detention do exist.

RECOMMENDATIONS FOR EU POLICYMAKING ON THE DETENTION OF ASYLUM SEEKERS

The institutions of the European Union and its Member States have an important role to play in the way asylum seekers are received and treated within the territory of the EU. But the legal minimum standards that have been established at the end of the first phase of the *Common European Asylum System*, such as in the Reception Conditions Directive and Dublin Regulation, provide very little guidance for the implementation of detention, and for the treatment of asylum seekers with special needs.

The DEVAS research findings allow us to put forth a series of recommendations that aim to further improve future *EU policymaking* on vulnerability within the context of detention for asylum seekers:

1. ***Asylum seekers should not be detained during the asylum procedure.***
   It is not appropriate for asylum seekers to be detained because there should neither be a presumption that they have committed a wrongdoing, nor a presumption of rejection or removal while they are in the asylum procedure. Furthermore, the legal complexity inherent within the asylum procedure means that asylum seekers should access all means of support at their own volition; the closed environment of detention cannot provide this. The negative impacts of detention, and the vulnerabilities it creates, make the asylum seeker less able to present his or her case in an appropriate way, calling into question the fairness of the asylum procedure.

2. ***Non-custodial alternatives to detention for asylum seekers that respect their human dignity and fundamental rights should always take precedence before detention.***
   Asylum seekers, due to the legal complexity of their situation and the asylum procedure, require a level of care and support that cannot be provided in a detention centre. In particular, detention cannot be implemented if there is no assessment of their special needs and vulnerabilities at the beginning, because it would then not be known how they might cope within the environment of detention. This is why non-custodial alternatives to detention should always take precedence.

3. ***A system of qualified identification of asylum seekers' special needs and vulnerabilities should be designed and implemented at ports of entry, be they land, sea or air, for the purpose of avoiding the use of detention.***
   This identification should be done as soon as possible after entry. It can help to ensure smoother procedures at later stages, a more efficient use of State resources and a higher degree of safety and care for asylum seekers' potential vulnerabilities. Most importantly, an appropriate assessment of special needs and vulnerabilities can ensure that detention is not used for persons who may be particularly harmed by it.

4. ***A qualified identification system should be individually based and holistic, taking into account the personal, social and environmental factors that are present within the asylum seeker's situation.***
   Factors such as legal status, country of origin, marital status, the possession of information, the presence of supportive social networks and the state of physical and mental health highly impact detainees' level of vulnerability to detention. These and other factors should be assessed in order to determine an individual asylum seeker's vulnerabilities, and the types of concrete special needs he or she may possess.

5. ***If the detention of asylum seekers cannot be avoided, and if all non-custodial alternatives have been exhausted, then detention should be subject to regular tests of necessity and proportionality; the duration of detention should be for as short a time period as possible.***
   Criteria for the necessity of asylum seeker detention should adhere to the 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers. Regular tests of necessity and proportionality should be conducted on a monthly basis by the relevant judicial authority.

6. ***If detention cannot be avoided, then asylum seekers should be given appropriate and effective legal aid and/or assistance from the very first day of their detainment.***
   The legal complexity of asylum procedures in the EU, mixed together with the precarious situation of asylum seekers, means that they may not be able to adequately fulfil all of the asylum procedures in a manner that serves their best interests – especially if they are in detention. Legal aid and/or representation are thus vitally necessary.

7. ***Detained asylum seekers should be given regular and transparent access to all information concerning their asylum case and the terms of their detention, in verbal and written form, and in a language they can understand.***
   The isolative environment of detention means that extra efforts should be made to inform asylum seekers as well as possible on all details that concern their situation. The regular provision of information is a key step in lowering asylum seekers' vulnerability to the adversities of detention.

8. ***Detained asylum seekers should be afforded all means of contact to the 'outside world'.***
   Detained asylum seekers should be able to contact family, relatives, friends and other supportive persons who are in the 'outside world'. The DEVAS research shows that it can reduce psychological stress, and it can help prepare detained asylum seekers for their eventual release from detention.

9. ***Detained asylum seekers should be given regular access to activities that engage their physical and intellectual capacities.***
   The monotony of detention that comes as a consequence of its isolative environment can have a negative impact upon the physical and mental health of detained asylum seekers. Time spent in detention should not be 'wasted time'; instead, detainees should be afforded activities that help them to pursue their goals.

10. ***Detained asylums seekers should be given regular access to appropriate and relevant medical care, including mental health care.***
    Medical care, as well as mental health care, should be made available everyone in the detention centre. In the case that such care only exists outside of the detention centre, the staff should ensure that access remains unhindered and facilitated.

RECOMMENDATIONS FOR MEMBER STATE POLICYMAKING ON THE DETENTION OF ASYLUM SEEKERS

Member States can take steps toward improving the immediate situation of asylum seekers in their territory. They can do this by implementing current EU asylum law in a manner that best serves the interests of asylum seekers, and in a manner that narrowly restricts the use of detention.

11. ***Article 18.1 of the Asylum Procedures Directive, "Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum", should be adhered to in all circumstances.***

Member States should make this principle applicable for reception conditions and for asylum seekers in the "Dublin system". It should be the one principle that applies to all circumstances. In this context, "detention" should be defined as confinement to a particular place and therefore also covering the situations at the port of entry.

12. ***If detention cannot be avoided, then Article 18.2 of the Asylum Procedures Directive stipulating, "Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review" should be strictly adhered to.***
    Access to regular judicial reviews is important in order to continually determine the necessity and proportionality of detention. This is especially necessary for detainees to know when they will be released from detention. The data findings show that not knowing the release date places a great deal of psychological stress upon detainees. Therefore, such judicial reviews should be effective, transparent and should occur at least once per month.

13. ***Detained asylum seekers should have regular access to visitors from the 'outside world', including the UNHCR, lawyers, civil society organisations and also family, relatives and friends.***
    Alongside this, detained asylum seekers should have access to persons in their social network that help them cope with the negative effects of detention, e.g. spiritual/faith counsellors, psychosocial care providers – all of which may greatly limit the level of vulnerability asylum seekers may experience in detention.

14. ***All guarantees and protections contained within the Reception Conditions Directive should be extended to asylum seekers in detention.***
    This should include rights to information, medical care, education and vocational training. In the case of Article 14.8 allowing Member States to "exceptionally set modalities for material reception conditions different from those provided … when the asylum seeker is in detention", such modalities should include strong safeguards that monitor the level of vulnerability of detained asylum seekers.

15. ***Health care provision – foreseen in Article 13 of the Reception Conditions Directive – should include sufficient resources to care for the mental health needs of detained asylum seekers.***
    Access to mental health professionals such as social workers, psychologists and psychiatrists, should be afforded to asylum seekers who need such services; these services should be available from the first day of their detention.

16. ***Detention centre staff persons should receive sufficient training in order to respond to the vulnerabilities and needs of detained asylum seekers.***
    Article 24 of the Reception Conditions Directive – ensuring the necessary training of staff – should be implemented so they can be able to respond appropriately to asylum seekers' concerns and needs. In particular, staff persons should be trained to identify signs of vulnerability within detainees.

17. ***Access to translators and interpreters should be ensured for asylum seekers who need it.***
    The inability to speak the same language as detention centre staff, the asylum authorities and even with co-detainees has a profound effect on one's ability to cope with being in detention. Translators and interpreters can help detained asylum seekers with understanding the information that is given to them, and they can also help to maintain good relations between staff and detainees.

RECOMMENDATIONS FOR MEMBER STATE POLICYMAKING ON THE DETENTION OF IRREGULAR MIGRANTS FOR THE PURPOSE OF REMOVAL

Taking into account the elements within the Return Directive that relate to the detention of irregular migrants, the DEVAS research allows us to propose a set of recommendations that aim to improve government policymaking in this area. As the deadline for national transposition has not yet passed, it may be too early to indicate in which specific way EU policy should be improved since the common standards contained within the Directive have not yet been sufficiently tested in the Member States. Thus the main target of the following recommendations will be Member States' efforts to transpose the Directive into their respective national legislation.

18. ***Detention for irregular migrants should only be used as a last resort.***
    The negative effects of detention are so great as to warrant its spare use. Detention should only be applied in cases of strict necessity, and in a manner that is directly proportionate to an individual person's situation.

19. ***Article 15.1 of the Return Directive stipulating "sufficient but less coercive measures" should lead to the establishment of non-custodial alternatives to detention that respect the fundamental rights and human dignity of individual persons and families.***
    The optimal way to reduce people's vulnerability to detention is to limit its use by instituting viable alternatives to detention. Only by removing persons from the closed and isolative environment of detention can they best prepare themselves for the possibility of return, but also for the possibility of legal residence within the Member State should the opportunity present itself.

20. ***The criteria foreseen in Article 15.1(a, b) for the purpose of determining whether an irregular migrant should be detained should go beyond the "risk of absconding" and the hampering of the "return or ... removal process" to include a holistic assessment of the person's level of vulnerability to detention.***
    The DEVAS research shows that all types of persons are vulnerable to the negative effects of detention, irrespective of whether or not they possess officially recognised special needs. Holistic individual assessment criteria should include a review of the personal, social and environmental factors that are present in an individual's situation, such as their legal status, the presence of supportive social networks and their level of physical and mental health.

21. ***If detention cannot be avoided, then it should be strictly set for "as short a time period as possible and only maintained as long as removal arrangements are in progress", as laid down in Article 15.1 of the Return Directive.***
    The DEVAS research shows that while detention carries negative consequences from the first days of its implementation, the personal circumstances of detainees deteriorates as the time period of their detainment endures. Alternatives should be immediately sought when detention is no longer necessary or proportional.

22. ***The situation of individual detainees and detained families should be reviewed at least once per month, using holistic assessment criteria to determine the personal impacts of detention.***
    Ongoing assessments are the only way to ensure that harmful effects of detention are minimised as much as possible. Detention centre staff, especially social workers or staff who have received sufficient inter-cultural or psychosocial training within the context of detention, may be among those who conduct these assessments.

23. ***The provision of information on "rules ... rights and obligations" in detention – as foreseen in Article 16.5 of the Directive – should be provided in a language the detainees can understand.***

Many of the persons interviewed for the DEVAS project have never before been in a situation of detention. The stress of detention and its isolative effects means that detention centre staff should make an effort to immediately inform detainees of all rules, rights and obligations. Language is a key factor of vulnerability because it facilitates communication and understanding. This is why it is important that such information be given in an understandable language.

24. ***The provision of "legal assistance and/or representation" – as foreseen in Article 13.4 of the Directive – should be provided to all detainees at no additional cost, and in a language that detainees can understand. Such legal assistance and/or representation should extend to detainees who challenge the lawfulness of their detention.***

    The DEVAS research shows that the legal complexities of detention can have an adverse affect on detainees because they are unsure of how to proceed and how to alleviate their situation. Legal assistance and/or representation is a key factor of vulnerability in detention; without it detainees are left disempowered and with further deteriorations in their mental health.

25. ***Detained irregular migrants should have the opportunity to establish immediate contact with supportive persons or bodies in the 'outside world', as foreseen in Article 16.2 of the Directive.***

    Detainees should be able to communicate by fixed-line and mobile telephone, especially since the latter often contains vital contact information that detainees need. Internet stations should be made available, as this would allow detainees to search for support if they lack a social network in the Member State.

INTRODUCTION

The Jesuit Refugee Service and its partners have observed that detention is being utilised ever more frequently for asylum seekers and irregular migrants arriving to the European Union. Despite the efforts made by EU policymakers to harmonise the manner in which Member States manage asylum and migration flows, the reality we observe is that these migrants are subject to conditions that are different from one Member State to the next.

In regards to detention, the differences are remarkable: some Member States indiscriminately detain anyone who arrives to their shores for an indeterminate length of time, while others provide for narrow legal conditions that except particular groups of persons from detention, such as those who are identified as 'vulnerable' or having 'special needs'. Safeguards and living conditions differ as well: some Member States offer psychosocial care, access to interpreters and adequate living space, for example; yet other Member States operate detention centres as if they are prisons, with barred windows and high-wire perimeter fencing. The best case scenario for an asylum seeker or irregular migrant who is detained in the EU is that they are given a private room with psychosocial support, and a fixed duration of detention with a foreseeable perspective of what will happen post-detention; the worse case scenario is overcrowded rooms, unhygienic conditions, an abusive environment and persistent isolation due to limited access to information and a prison-like environment. These are the parameters from which detention in Europe is configured upon.

The human impact of detention has been observed and documented by a number of organisations and bodies on all sides of the spectrum. Sadly, the documentation shows detention to have a mostly negative impact on persons. Members of European Parliament have undertaken inspections of detention centres throughout the EU between 2005 and 2009; and in 2008 the Parliament published a report detailing the sub-standard conditions found in many of the Member States, especially for persons with special needs.[1] In the United Kingdom, Her Majesty's Inspectorate of Prisons, Dame Anne Owners, has conducted several inspections of "immigration removal centres" and has repeatedly criticised the detention of children, describing it as neither "exceptional" nor "necessary".[2] The Council of Europe's Parliamentary Assembly in January 2010 published a resolution and report on the use of migrant administrative detention in Europe, which addresses the "long list of serious problems", including the use of detention as the "option of first resort and not last resort".[3] The Council of Europe's Commission for Human Rights, Mr. Thomas Hammarberg, has published several reports on the use of detention in Europe, notably on the conditions he found during his inspection of the detention of asylum seekers in Greece in December 2008.[4] Adding to this are the reports of the European Committee for the Prevention of Torture that have consistently documented the absence of procedural safeguards and inhumane conditions in European detention centres.[5]

The Jesuit Refugee Service, along with many other non-governmental organisations in Europe,[6] has documented the human impact of detention through research and day-to-day accompaniment of detainees. In 2005, JRS launched its first major report on detention, *Detention in Europe*; in 2007 this was followed up by the publication of report on

[1] 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*.
[2] Her Majesty's Inspector of Prisons report on an inspection of Yarl's Wood Immigration Removal Centre, 9-13 November 2009, p.5. For more information on the visits conducted by the HM Inspectorate of Prisons, go to http://www.justice.gov.uk/inspectorates/hmi-prisons/immigration-removal-centre-inspections.htm
[3] Council of Europe, Parliamentary Assembly, 11 January 2010, *The detention of asylum seekers and irregular migrants in Europe*, Committee on Migration, Refugees and Population, doc. 12105, Rapporteur: Mrs. Anna Catarina Mendonça
[4] Report by Thomas Hammarberg, Commission for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008, published in Strasbourg on 4 February 2009. Similar reports can be found on the Commissioner's website: http://www.coe.int/t/commissioner/Default_en.asp
[5] See the CPT website for copies of their reports, http://www.cpt.coe.int/en/
[6] The available documentation on the use of detention in Europe is too numerous to publish in this report. The websites cited in this report are merely a small representation of publicly available information, and are not intended to prioritise one source of information over another. The UNHCR, in partnership with Refworld, maintains a large database on many types of detention-related documentation: http://www.unhcr.org/refworld/detention.html.

Detention Conditions in the Ten New Member States that Acceded to the European Union in 2005. Since 2007 JRS-Europe has maintained a website with specific country-by-country information, EU law and project-related materials focused on the use of detention in Europe.[7] The country offices of JRS in Europe presently accompany detainees by providing services such as social support, pastoral care and legal support.[8] All of the NGO partners involved in this study engage in work related to detention in their respective countries, from monitoring detention conditions, to training detention centre staff and to advocating for alternatives to detention. The international aspects of detention have been documented by the Australia-based International Detention Coalition[9] – of which JRS-Europe and many of its project partners are members – and the recently initiated Global Detention Project, based in Geneva.[10] The work of these organisations reveals that the adverse human impacts of detention are not confined to one country or one region, but to wherever detention is practised.

The literature also shows that certain types of people may be especially susceptible to harm in detention. These persons are thus regarded as being 'vulnerable', or possessing 'special needs'. Women, children, unaccompanied minors and person with medical or psychological needs are widely acknowledged by government and civil society stakeholders to be vulnerable; additional groups include victims of torture, rape and other kinds of mental, physical and sexual violence, the elderly and disabled persons.[11] The 2008 European Parliament study on detention defines 'vulnerability' according to risk, personal and environmental factors, arguing that asylum seekers and irregular migrants possess certain determinants that increase their level of vulnerability to detention, such as experiences obtained prior to and during their migratory journey.[12] Thus the former understanding conceives of vulnerability as a pre-determined set of factors which remain fixed irrespective of a person's situation, while the latter conceives vulnerability as consisting of a multitude of factors which may ebb and flow according to individual experience.

The scientific literature on vulnerability and migrant detention lends support to both of these conceptualisations, with a strong emphasis on medical health as a factor of vulnerability in detention. Studies of detained asylum seekers show that detention leads to the build-up of clinically significant symptoms such as severe depression, anxiety, post-traumatic stress disorder and even suicidal ideation – all of which are significantly correlated to the length of detention.[13] A 2009 study by Robjant, Robbins and Senior shows that asylum seekers in detention are more susceptible to severe psychological distress than asylum seekers living in the community.[14] A 2009 article in the *British Journal of Psychiatry* reviewing ten studies on the mental health impact of detained children, adolescents and adults concludes that the time spent in detention is positively associated with the severity of distress.[15] The literature reveals a troubling indication of developmental delay and emotional disturbance in detained children, including insomnia, poor appetite, emotional symptoms and behavioural difficulties.[16] Many studies show asylum seekers to be

[7] This website is accessible on www.detention-in-europe.org. All JRS-Europe reports and projects related to detention can be found on this website.
[8] The website of JRS-Europe, www.jrseurope.org, provides information and links to the work of the JRS country offices in Europe.
[9] The International Detention Coalition is currently undertaking research on good practices concerning alternatives to detention. For more information see http://idcoalition.org.
[10] More information on the Global Detention Project can be found on their website, http://www.globaldetentionproject.org
[11] This definition of 'vulnerable groups' is taken from the *1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, and also the EU Reception Conditions Directive and Return Directive. The definitions of 'vulnerability' and 'special needs', especially within the context of detention, continue to be debated by government and civil society actors. Nevertheless, the definition that emerges from these sources form the basis of most of the thinking, advocacy and decision-making on this topic.
[12] Ibid, 2008 STEPS Consulting Social Study for the European Parliament, p. 30
[13] Coffrey, G.J. et al. (2010). The meaning and mental health consequences of long-term immigration detention for people seeking asylum. *Social Science and Medicine* [E-publication ahead of print]; Keller A.S., et al. (2003). The mental health of detained asylum seekers. *Lancet, 22*(362), 1721-3; Keller, A.S. et al. (2003). The impact of detention on the health of asylum seekers. *The Journal of Ambulatory Care Management, 26*(4), 383-5; Steel, Z. et al. (2006). Impact of immigration detention and temporary protection on the mental health of refugees. *The British Journal of Psychiatry, (188)*, 58-64.
[14] Robjant, K., Robbins, I. & Senior, V. (2009). Psychological distress amongst immigration detainees: A cross-sectional questionnaire study. *The British Journal of Clinical Psychology, 48*(3), 275-86.
[15] Robjant, K., Hassan, R. & Katona, C. (2009). Mental health implications of detaining asylum seekers: A systematic review. *The British Journal of Psychiatry, 194*(4), 306-12.
[16] Mares, S. & Jureidini, J. (2004). Psychiatric assessment of children and families in immigration detention: Clinical, administrative and ethical issues. *Australian and New Zealand Journal of Public Health, 28*(6), 520-6; Lorek, A. et al. (2009). The mental and

a group that is particularly vulnerable to detention, given the traumatic nature of their flight and the persecution they may have had to endure in their home country.

THE DEVAS PROJECT

The Jesuit Refugee Service-Europe and its project partners implemented the DEVAS project on the basis of the examples cited above. Its objective was to investigate and analyse vulnerability in detained asylum seekers and irregular migrants: both the way in which pre-existing vulnerable groups cope with detention, and the way in which detention can enable vulnerability in persons who are otherwise healthy. The DEVAS project builds on previous reports and projects by focusing on the experiences of detainees themselves – in other words, by allowing detainees to articulate their own conceptualisations of vulnerability and special need. Each project partner undertook this task by recording detainees' voices in as detailed a manner as possible. In turn, detainees' responses were put together and amplified so that others may understand vulnerability in detention on as broad a level as possible. In doing so, JRS-Europe and its project partners have sought to determine the manner in which all people, not only those in specially recognised categories, could be made vulnerable in detention.

What follows is a presentation of the experiences of 685 asylum seekers and irregular migrants detained in 21 EU Member States. Using a mixed quantitative and qualitative questionnaire, each migrant was individually interviewed by a DEVAS project partner within the premises of a detention centre in their respective Member State.[17] The result is a sample consisting of persons from all continents of the world, except Australia and Antarctica, and representing a multitude of nationalities and cultures. This diversity is as striking as it is unintentional: it is merely a 'snapshot' of the broad array of persons who are detained in Europe at any given time. This diversity also means that the DEVAS project could not construct the profile of a 'average' detainee, especially since the way in which detention is implemented differs between the Member States; also because, as we shall see, people possess a number of factors that affect their level of vulnerability in detention in a variety of ways. Nevertheless, the DEVAS research does show us that detention does have a common negative effect upon people that echoes the conclusions found in the studies and reports mentioned above.

The following report is organised into three main sections: *data findings*, *analysis*, and *conclusions*. The first section is separated into 13 chapters, with each representing a section of the research questionnaire that was used to interview detainees. Each chapter (excepting the first), presents the "average" and "disaggregate" results from the research: the former looks at the DEVAS sample as a whole (all 685 detainees), while the latter examines the sample in more detail, selecting out particular groups of detainees such as minors, asylum seekers, prolonged detainees, etc. The purpose for doing so is to portray a dual perspective of detainees' levels of vulnerability, showing the way in which detainees are affected by common, but also disparate, factors. The content within this first section is an exclusive presentation of the research results, i.e. on the responses detainees made to the questionnaire. A summary is included at the end of each chapter.

The second section, *analysis*, uses the data findings to construct a framework for the assessment of vulnerability in detention. The concepts that make up the analytic tool is explained in detail, and is applied to three groups of detainees from the sample: minors, prolonged detainees and asylum seekers. The purpose of doing so is to demonstrate how such a tool may be used to individually assess vulnerability in practice. The third section, *conclusions*, examines the implications that the DEVAS project holds for the ongoing implementation of detention in Europe. This section ends with a list of research-based recommendations for EU and Member State policymaking on the detention of asylum seekers and irregular migrants.

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physical difficulties of children held within a British immigration detention centre: A pilot study. *Child Abuse and Neglect, 33*(9), 573-85.

[17] See the "Preliminary Methodological Remarks" for the exceptions to this.

Section IV is a presentation of 22 national reports written by the DEVAS project partners. Each national report mirrors the structure found within the larger European-wide report, reflecting the research done within each respective country. The analyses, conclusions and recommendations in each national report are country-specific and were designed by the project partners who wrote the report.

PRELIMINARY METHODOLIGICAL REMARKS

The DEVAS project was coordinated by JRS-Europe in partnership with NGOs in 23 EU Member States:

- *Caritas Austria*
- *JRS-Belgium*
- *Bulgarian Helsinki Committee*
- *Symfiliosi (Cyprus)*
- *Association for Integration and Migration (Czech Republic)*
- *Estonian Refugee Council*
- *JRS-Germany*
- *Greek Refugee Council*
- *Hungarian Helsinki Committee*
- *JRS-Italy (Centro Astalli)*
- *JRS-Ireland*
- *Caritas Latvia*
- *Caritas Vilnius (Lithuania)*
- *JRS-Malta*
- *Dutch Refugee Council*
- *Caritas Poland*
- *JRS-Portugal*
- *JRS-Romania*
- *JRS-Slovenia*
- *Caritas Slovakia*
- *Spanish Commission for Refugees (CEAR)*
- *JRS-Sweden*
- *JRS-United Kingdom*

The project, which commenced in November 2008, was co-financed by the European Commission under the 2007 European Refugee Fund Community Actions (JLS/2007/ERF/011). The first Steering Committee meeting was held in January 2009, and used to decide upon the project's methodological framework and research instruments. The data collection and analysis phase continued forth until the second Steering Committee meeting in December 2009; there JRS-Europe and its partners reviewed the research results and analyses, and agreed on a series of conclusions and recommendations to be used for the report. From this point, JRS-Europe and the project partners commenced the writing of the European-wide and national reports, respectively. The DEVAS project results were disseminated to the public at a conference on 8th June in Brussels.

RESEARCH INSTRUMENTS

Three mixed qualitative and quantitative questionnaires were created in consultation with Dr. Richard Haavisto, a professor of forced migration studies at the Refugee Studies Centre, University of Oxford. Each questionnaire was dedicated to a specific group: Detainees (asylum seekers and irregular migrants), NGOs that operate in the detention centres where interviews took place, and the Staff of the detention centres where interviews took place. All three instruments asked the same questions under the same headings. This triangulation was done in order to elicit the perspectives of three distinct groups on the same variables and headings. Due to the research and analytic constraints of JRS-Europe, and the sheer size of the detainee sample, the NGO and Staff questionnaires are not incorporated into the European-wide report. But the responses from all three instruments are included within each of the national reports. An additional questionnaire was developed by JRS-Europe in order to examine the legal environments concerning detention and vulnerability within each of the participating Member States. In most cases the project partners completed the legal questionnaire themselves, or they solicited the assistance of a lawyer known to them.

After each detainee interview partners were asked to complete a one-page Post-Interview Evaluation. This was intended to capture any elements or conditions which may have impacted the quality of the interview: the detainee's state of physical and mental health, the ambient temperature and available light in the room, the presence of guards and the conditions of the space used for the interview, for example.

Project partners were not permitted to alter the questionnaires in any way; but detainees were allowed to refuse a response to any question for any reason. In some cases national authorities and detention centre staff, and also NGOs, were permitted to review the questionnaires in advance; but they were not allowed to alter them in any way.

ACCESSING THE SAMPLE POPULATION

Project partners were asked to visit at least three detention centres and to interview a minimum of 30 detainees within each centre. Partners were permitted to interview any detained asylum seeker or irregular migrant who was available to them,[18] excepting third-country nationals detained at a transit zone for not possessing correct immigration documents or while undergoing a routine asylum pre-determination interview by the immigration authorities, and third-country nationals incarcerated by the national criminal justice authorities for committing a criminally recognised offence. All detainees who chose to take part in an interview provided their voluntary and informed consent, either verbally or in written form.

In some cases partners already had access to certain detention centres due to ongoing work, and as a result could speak freely with any detainee who agreed to participate. In other cases they had to specifically petition the national authorities for permission to implement DEVAS, which on particular occasions meant that partners could only enter the detention facility at certain times and had permission to interview a predetermined number and group of detainees.

Most partners were able to interview at least 30 detainees for each detention centre they visited. Exceptions are for partners who encountered logistical obstacles in implementing the study, such as the lack of linguistic interpretation and translation capacities, geographic distances between partners' offices and the detention centre(s) or slow approval times from national authorities. Out of the 23 partners only two were unable to interview any detainees:

- JRS-United Kingdom was officially refused permission by the Home Office, who deemed the DEVAS project to be unnecessary because other detention monitoring projects and programmes are already being implemented.

- JRS-Italy (Centro Astalli) was unable to visit the *Ponte Galeria* detention centre in Rome due to the expiration of their contract, which had previously permitted them to access the detention centre.

The Estonian Refugee Council was able to interview only one detainee during the data collection phase from January to August 2009. This is for the simple reason that only one migrant was actually detained in Estonia during this time period.

In addition to detainees, partners were asked to interview at least one NGO and one staff person in each detention centre they visited. NGOs were chosen on the criterion that they provide social services to detainees in the centre, either in an official or non-official capacity. In some cases the partners were the *only* NGO to operate within the centre: in these instances they were asked to interview a colleague in their organisation who was not involved with the DEVAS project. Detention centre staff persons were chosen on the basis that he or she had to maintain regular

[18] Random and snowball sampling were the most widely used methods of selecting detainees for interview. In practice, random sampling was implemented by the DEVAS partner entering the detention centre and approaching people without any preordained selection process, or, by being placed in a designated interview room within the detention centre and waiting for interested detainees to show.

contact with detainees as a part of their work, and that he or she should have been an employee of the detention centre for at least one year. Partners were encouraged to interview administrative and security staff, for example.

All interviews were conducted in full compliance with the national authorities and detention centre staff. In no case whatsoever did DEVAS project partners undertake research without their consent.

ANALYSING THE DATA

Partners submitted their completed interviews to JRS-Europe in either digital PDF or hardcopy format. In July 2009 a research team was assembled by JRS-Europe to establish an analytical coding structure to enable interpretation of the data. Ms. Julia Inthorn, who lectures on mathematics and philosophy at the Institute of Ethnics and Law at the University of Vienna, guided the team's work.

Categories of codes were created by evaluating all of the responses on each of the detainee questionnaires. This enabled the research team to establish a system of variables that could then permit a centralised analysis of the entire data set.[19]

Following this, a data map was constructed by using the SPSS statistical software package; the JRS-Europe research team entered each detainee interview was the central database. Members of the team communicated regularly by telephone and email, meeting again in October 2009 to ensure a uniform data entry process.

Using SPSS, the team conducted frequency analyses, cross-tabulation and correlation analyses of the detainee dataset. Each member of the research team assumed responsibility for a particular group of DEVAS partner countries; in turn they entered the data for their countries into SPSS, and communicated the analyses back to the respective DEVAS project partners. It was in this manner that JRS-Europe analysed the full 'European' dataset, which was as well disaggregated by age, sex, duration of detention and legal status.

The full European and national results were reviewed by the DEVAS Steering Committee in December 2009. From this point the Committee was able to begin to identify central themes in the data, to draw preliminary conclusions and advocacy recommendations for use in the final report. At this juncture most partners had contributed a first draft of their national report, which enabled comparison to the work of the other partners, and an evaluation by JRS-Europe to ensure a uniform structure in every national report.

NATIONAL REPORTS

Project partners wrote their national reports based on the data analyses provided by the JRS-Europe research team. In every case, partners frequently communicated with members of the research team in order to ensure that the data analyses reflected the actual situation partners encountered when they conducted the interviews.

Partners were encouraged to situate their national data analyses within the set of experiences their organisations have had as concerns detention monitoring; as well as to limit the use of numbers and percentages in order to retain a narrative format. Drafts have been revised, edited and finalised by a separate team within JRS-Europe.

The national reports for Estonia, Italy and the UK are included in an annex, due to difference in the methodology used (as reported on the preceding page). There is no national report for Poland because it was not submitted in time for this report's publication.

[19] Only responses on the detainee questionnaires were coded and entered into the central database. Limitations of capacity would not permit a similar coding process for the NGO and Staff questionnaires.

EUROPEAN REPORT

The content of the European-wide report consists of an examination of the full dataset (685 detainees). Conclusions and recommendations are strictly based on an analysis of the dataset, and on input provided by the Steering Committee.

Percentages and frequencies are used to describe data findings that are particularly strong; and tables and charts are used to illustrate many of these findings. However, JRS-Europe has endeavoured to retain a narrative format to facilitate easy reading and comprehension. This means that phrases such as “a great number”, or “the numbers indicate”, or “the research shows” are sometimes used instead of percentages in order portray majorities, or significant minorities, within the sample.

RESEARCH LIMITATIONS

Despite the size and scope of the sample, JRS-Europe does not regard it as being statistically significant or scientifically representative of the migrant detainee population in Europe, nor of the total number of detention centres in existence in Europe. The variance in sampling techniques utilised by the DEVAS project partners, as well as the differing situations of the detainees that were interviewed, prevented the obtainment of a scientifically sound sample. Assuredly, this result is not the fault of the project partners. Detention centres are not easily accessible by external third-party individuals or groups. If a partner did not already have regular access to a detention centre, then they would have needed to petition the national authorities for access; and in some cases even partners who already had such access needed to specifically petition the national authorities in order to conduct the research. Notwithstanding these limitations, the transitory nature of detainee populations in Europe would make any effort to obtain a scientifically representative sample difficult to achieve.

Detainees’ responses to the questionnaire represent what they were feeling, as well as the conditions they were subject to, on the particular day of the interview. JRS-Europe and its partners were not able to re-interview any of the detainees. The transitory nature of detainees’ situations would make this limitation difficult to overcome. In addition, detainees’ responses could not be systematically confirmed with other sources due to the technical limitations in the capacities of DEVAS partners to do so, and also to the sheer inability to find an impartial and independent source of confirmation. Unless the conditions of the interview led a DEVAS partner to conclude otherwise, it was assumed that all detainees responded honestly and without undue interference from any external source of pressure.[20]

The DEVAS project was not able to provide for translators and interpreters. This was left to the discretion of the DEVAS partners: in many cases they used their own resources to translate questionnaires into several languages, or to use the services of an interpreter; in other instances, partners were only able to interview detainees for whom they shared a common language. On a few occasions DEVAS partners had to rely on co-detainees for interpretation due to the lack of other resources. But in every one of these cases co-detainees voluntarily agreed to provide interpretation, and were thus not forced in any way to provide such services.

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[20] JRS-Europe is aware of only one situation, in Cyprus, where the detention centre staff handpicked detainees, and where interviews took place in the presence of such staff.

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Overview of relevant legal provisions

The purpose of this section is to give an overview of legal provisions in the national laws of several EU Member States that are relevant for the situation of vulnerable detainees. Details can be taken from the national reports. Here we will focus on five main aspects:

1. Are there any legal provisions with regard to the special situation of certain groups, such as (unaccompanied) minors, pregnant women, etc.?

2. Does the law regulate access to services such as interpreters, medical assistance, etc.?

3. Has a detainee the right of appeal against the detention order and/or the detention conditions?

4. What is the maximum duration of detention?

5. Are alternatives to detention envisaged in national law?

Regulations on certain groups

In Belgium, minors (younger than 18) must in principle not be detained. They are hosted in observation and orientation centres. Six days of detention is possible if the age is doubtful. Also in Czech Republic, Hungary, Ireland, Italy and Portugal, detention of minors under the age of 18 years is not allowed. In Germany the minimum age is 16, while in Latvia it is 14 years. In other countries there is no minimum age for detention but in some (like Austria or Sweden) a detention order against a minor must meet stricter conditions. In The Netherlands, for instance, 12 –16 years old children must be placed in youth custodial institutions.

Bulgaria does not apply detention in cases of asylum seekers from other vulnerable groups such as, pregnant women, or individuals with physical or mental disabilities who should be transferred to the premises of the State Agency for Refugees. In cases of health problems also the German *Laender* in their respective regulations provide for aliens not to be detained. The law in Latvia says that a detained third-country national who has a health disorder shall be accommodated in accordance with the instructions of medical personnel in premises specially equipped for such purposes.

Access to certain services

In all countries law provides for at least basic medical care being given to all detainees.

Seven Member States (Belgium, Czech Republic, Germany, The Netherlands, Portugal, Romania, and Spain) have laws where the provision of social services to detainees is regulated. Another three countries (Austria, Italy and Slovenia) have regulations by which associations providing social services can be granted access to detention facilities. From all other countries no similar provision is reported.

In most countries detainees have the right to use the services of an interpreter during detention. In three countries (Ireland, The Netherlands and Romania) access to interpretation is provided even if the law does not foresee it.

Right of appeal against detention order and/or detention conditions

In accordance to national laws, in all countries a detainee can lodge an appeal against a detention order. Also, in most countries (except Bulgaria, Italy and Romania) detention conditions can be contested, in form of either an appeal or of a request to the relevant authorities.

The maximum duration of detention

The maximum duration of detention as provided in the national laws very much differs across the EU. In some countries there are also different provisions regarding certain groups of detainees, be it Dublin cases, asylum seekers, failed asylum seekers, irregular migrants, etc. The range of the maximum period ranges from three weeks (in Ireland in the case of irregular migrants) to two years (in Romania). Some countries (Bulgaria, Estonia, Ireland in the case of asylum seekers, and Sweden) do not have legal limits of detention.

Alternatives to detention

In some EU Member States the law at least gives the responsible authority the possibility to consider whether in a certain case the purpose of ensuring the availability of the person for his/her forced return can be met by a less severe measure than detention. In Austria for instance the authority may refrain from ordering detention if in their opinion a more moderate measure can be sufficiently applied. Examples for those alternative measures are given in the law as well: Imposing of the obligation to reside at certain places or to report regularly to a certain police station. A regular report to the local police station or to the Aliens' authorities is also envisaged in Bulgaria (for cases in which the deportation cannot be immediately enforced) and Portugal. Designation of certain places of stay as an alternative to detention is mentioned for example in the Belgian and Hungarian laws. In Portugal, a person can be ordered to remain at home while awaiting deportation. The Portuguese law knows other alternatives as well, such as electronic surveillance or granting bail. In Sweden, an alien may be placed under supervision instead of being detained.

DATA FINDINGS

- Basic information
- Possession of information
- Space within the detention centre
- Rules within the detention centre
- Detainees' interaction with staff
- Safety within the detention centre
- Activities within the detention centre
- Medical care
- Physical health
- Mental health
- Social interaction
- Communication with the 'outside world'
- The impact of detention on the individual

1. BASIC INFORMATION

1.1. Age, sex, region of origin and marital status

The average detainee in the DEVAS sample is 30 years old, with the youngest being 10 and the oldest 64 years. Most detainees are between the ages of 25 and 34 years. Persons aged 18 to 24 years are also frequently found in the sample (see table 1).

Table 1: The DEVAS sample population, disaggregated by age

	Number of detainees interviewed	Cumulative percentage of the total sample
Age (in years)		
10-17	28	4.2
18-24	180	27.2
25-34	283	42.8
34-49	142	21.5
50-64	28	4.2
Total	661	100.0
Missing data	24	
Total	685	

A disaggregation of the sample reveals minimal differences in age between the various categories and groups of detainees. The average age of asylum seekers is 29 years, while the average age of irregular migrants is 31 years. Men and women are of the same average age as found in the total sample average. People detained for 31 to 60 and 91to 120 days are, on average, 31 years old, while those detained for 61 to 90 days are 29 years. The age of those detained for 0 to 30 days match the average age of the total sample average.

Looking at the total sample we find that West Africa, South Asia and Russia are the top three regions where detainees come from. Following this we also find that many in the sample come from the Middle East, East Africa, South-eastern Europe and East Asia. The majority of detainees within the sample are men who are from West African countries, notably Nigeria, but also from countries in South Asia such as Afghanistan, India and Pakistan. A sizable minority identify their country of origin as Iraq and Somalia. Women make up 22 percent of the entire sample, with most also coming from the West Africa region; and out of that group most are from Nigeria. A noteworthy difference between the men and women in the sample is that the latter more frequently come from Southeast and Eastern Europe, Central African and South American.

Most within the sample are single. One quarter say they are married, with seven percent being divorced and two percent widowed. In comparison with men, the women in the sample report slightly lower percentages of being single and married, but more women than men are divorced and widowed (see table 2).

Table 2: Marital status, disaggregated by sex and age

	Single	Married	Divorced	Widowed
Males	70%	24%	6%	1%
Females	62%	22%	11%	5%
Male asylum seekers	68%	26%	5%	0%
Female asylum seekers	67%	18%	9%	6%
Male irregular migrants	71%	22%	5%	1%
Female irregular migrants	58%	25%	13%	4%
Males aged 18-24	91%	9%	0%	0%
Females aged 18-24	72%	20%	2%	7%
Males aged 25-34	71%	26%	2%	0.4%
Females aged 25-34	66%	21%	13%	0%

1.2. Duration of detention

The average duration of detention in the entire sample is 3.01 months, or, 92.35 days. At the time of their interview, individuals may have been detained for as little as one day or as long as 31 months. When we disaggregate the sample we see that the data reveals three important findings:

- *Asylum seekers are detained longer than irregularly staying migrants*. On average they are detained for 3.56 months – 35.54 more days than irregular migrants, and 17.40 more days than the total sample average.

- *Men are detained longer than women*. This is especially true for male asylum seekers, who are on average detained for 3.77 months, or, 23.46 more days than the total sample average.

- *The duration of detention increases with age*. Minors are on average detained for 1.79 months, while persons over 45 years old are detained for 3.17 months. Between these two groups there is a steady upward progression in the duration of detention (see table 3).

Male asylum seekers are the one group in our sample that experiences the most prolonged duration of detention. Women aged 18 to 24 are the one exception to this finding. On average they are detained for 3.69 months – 17.76 more days than the total sample average, 62.76 more days than females aged 25 to 34 years and 27.57 more days than males aged 18 to 24. Asylum seekers with “rejected” applications are detained for an average of 3.60 months.

Table 3: Duration of detention, disaggregated by age

AGE	Months in detention
10-17	1.79
18-24	2.94
25-34	2.95
35-44	3.07
45-64	3.17

Although this data represents the average, it is important to note the individual EU Member States where asylum seekers and irregular migrants were detained the longest (see table 4). In general, Malta has the highest percentages of long-term detainees. There we find: 24 percent of all asylum seekers in our sample, 25 percent of male asylum seekers, 13 percent of the men in the sample and 26 percent of women aged 18 to 24. The exception to this is for older detainees: 13 percent of detainees over the age of 45 were interviewed in Slovakia. Other exceptions can be found when we disaggregate the sample by legal status: Spain has the highest percentage of irregular migrants detained for less than 90 days, while Bulgaria has the highest percentage of the same group detained for more than 90 days; Belgium has the highest percentage of asylum seekers detained for less than 90 days, while Malta has the highest percentage detained for more than 90 days.

Table 4: Duration of detention, disaggregated by DEVAS partner countries

Duration of detention (in days)	Top three countries where detainees were interviewed
0-30	• Spain, 16% • Belgium, Slovakia and Sweden, 10% • Germany and Poland, 8%
31-60	• Belgium, 16% • Czech Republic, 11% • Portugal and Sweden, 10%
61-90	• Czech Republic, 22% • Belgium and Greece, 13% • Sweden, 10%
91-120	• Czech Republic, 17% • Hungary, 15% • Netherlands and Slovenia, 10%
121-150	• Bulgaria and Slovenia, 19% • Slovakia and Czech Republic, 14% • Hungary and Sweden, 10%
151-180	• Malta, 53% • Slovakia, 16% • Czech Republic, 13%

1.3. Legal status

Irregular migrants barely outnumber asylum seekers in our sample, by 51.3 to 48.7 percent. Within the total sample we find that almost ten percent are persons whose asylum applications have been “rejected” and are now awaiting expulsion, and approximately five percent are asylum seekers awaiting a transfer to a Member State that is

responsible for examining their application.[21] One quarter of the asylum seekers in the sample were interviewed in Malta, while 15 percent of irregular migrants were interviewed in Spain. A notable exception is found in Portugal, where 15 percent of female irregular migrants were interviewed.

The percentages of asylum seekers and irregular migrants change as we disaggregate the data by age, sex and duration of detention (see table 5). The highest concentration of asylum seekers, 79 percent, is found in the category of persons detained for 121 to 150 days. Second to that, 78 percent of asylum seekers are in the category of persons detained for 151 to 180 days. These two findings are striking because it means that a disproportionate number of the asylum seekers in the sample have been detained for more than five months at the time of their interview. Elsewhere we find that a high percentage of asylum seekers are found in groups of males and females below the age of 24.

Table 5: Percentages of asylum seekers, disaggregated by duration of detention, age and sex

	Percentage of asylum seekers	Comparison to the total sample average (48.7%)
Detainee category		
121-150 days in detention	79%	+30%
151-180 days in detention	78%	+29%
Males aged 18-24	58%	+9%
Females aged 18-24	56%	+7%
Detainees aged 18-24	58%	+8%
Detainees aged 10-17	56%	+7%

In comparison to asylum seekers, the highest percentage of irregular migrants, 65 percent, are found in the category of persons detained for 0-30 days. Elsewhere we find that the irregular migrants in our sample are more frequently found in older age categories (see table 6).

Table 6: Percentages of irregular migrants, disaggregated by duration of detention, age and sex

	Percentage of illegally staying migrants	Comparison to the total sample average (51.3%)
Detainee category		
0-30 days in detention	65%	+14%
Males aged 25-34	56%	+5%
Females aged 25-34	54%	+3%
Detainees aged 25-34	55%	+4%
Detainees aged 35-44 and 45-64	54%	+3%

The data shows that the percentage of asylum seekers decreases as detainees become older, while the percentage of irregular migrants increases with age. Fifty four percent of minors are asylum seekers, for example, compared to 45 percent of detainees aged over 45 years. Alternatively, 46 percent of minors are irregular migrants in comparison to 55 percent aged over 45. In the same way, where the percentage of 'rejected' asylum seekers increases with age, the percentage of 'Dublin' asylum seekers decreases with age (see table 7).

[21] Otherwise known as a "Dublin transfer", based on the provisions contained within the so-called Dublin Regulation (COUNCIL REGULATION (EC) No 343/2003 of 18 February 2003 establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

Table 7: Age profile of legal status

	Asylum seeker	Illegal migrant	Rejected asylum seeker	Asylum seeker in "Dublin II" detention
Age (years)				
10-17	54%	46%	0%	11%
18-24	57%	43%	7%	3%
25-34	45%	55%	13%	7%
35-44	46%	54%	10%	5%
45-64	45%	55%	13%	7%

1.4. Chapter summary

The purpose of presenting this demographic data is to set the foundation for the following sections, all of which will present what detainees have said in response to the questions posed to them during their interviews. An examination of this basic examination reveals the context within which detainees have made their statements, and within which we base our forthcoming analyses. The data specifically informs us that:

- *The average detainee in our total sample is male, single, 30 years old and likely to be from West Africa, with a minority from South Asia or the Middle East*. But a significant minority of women are present within the sample, of which many are divorced and/or widowed, and come from not only West Africa but also Eastern Europe and Eastern Africa.

- *Asylum seekers, men and persons older than 45 years are detained longer than others within the sample; and Malta detains people for the longest period of time*. But we also see that females aged 18 to 24 years are detained for 3.69 months, and "rejected" asylum seekers for 3.60 months. Concerning Member States, alongside Malta we find that Bulgaria, Czech Republic, Hungary and Slovakia are among the countries that also detain people for a prolonged period of time.[22]

- *There are almost as many asylum seekers as there are irregular migrants in our sample, but the latter slightly outnumbers the former.* But we also find that asylum seekers are more frequently present in the sample as the duration of detention increases. Moreover, the asylum seekers in the sample are younger than the irregular migrants. In this the data demonstrates a clear pattern showing irregular migrants and 'rejected' asylum seekers to be older, while asylum seekers and those in "Dublin" detention are younger.

2. POSSESSION OF INFORMATION

Detainees were asked a series of questions relating to their possession of information. The purpose of this questioning was to assess the level of awareness and knowledge they have about a variety of factors that would concern their situation: duration of detention, awareness of the reasons for detention and knowledge of the asylum procedure. Detainees were subsequently asked if they would need more information, and if so, to elaborate upon the reasons for wanting more of it. The possession of information is an important factor of vulnerability within the context of detention. The closed environment of detention and the resulting restriction on detainees' freedom of movement means that the potential ways in which they can obtain information becomes limited. They must have either a

[22] The DEVAS methodology is not equipped to establish a definition of "prolonged detention"; hence this concept shall not be defined within this report. However, as we shall observe in later chapters, the data does reflect a difference in the responses between persons detained for +/- 90 days. Therefore for the purposes of this report, any period of detention that is longer than 90 days will be considered as "prolonged".

connection to external support, depend on whatever is told to them by detention centre staff or seek information from co-detainees. Without adequate information, then detainees may literally be kept 'in the dark' on the circumstances of their situations.

2.1. Awareness of the reasons for detention

2.1.1. Average data findings

On average the detainees in the sample maintain that they are aware of the reasons for their detention. But almost one quarter say that they are unaware. Those who do know are most likely to have been informed by the police, or to a lesser extent, by national administrative authorities. A minority of detainees say that they did not learn about the reasons for their detention until they spoke with the detention centre staff. Up to ten percent of the detainees that were interviewed say that "persons not in charge" informed them, i.e. persons who are not legally obligated by the State to provide such information, such as private lawyers, non-governmental organisations and social and familial networks. Only five percent of detainees profess to have been aware of the reasons for detention before anyone informed them. Most detainees report to have been informed of the reasons for their detention either during their arrest or interception for detention, or during official asylum or immigration administrative procedures. Fifteen percent admit that they knew they were at risk of detention while living under an irregular status in the host EU Member State.

2.1.2. Disaggregated data findings

The data portrays a different scenario after it is disaggregated by age, sex, legal status and duration of detention. At 86 percent, irregular migrants are 15 percent more aware of the reasons for their detention than asylum seekers purport to be. Only 66 percent of female asylum seekers report to be aware of detention – six percent less than male asylum seekers, and twelve percent less than the total sample average. In fact, the data findings show that asylum seekers across categories frequently report to know less about the reasons for their detention than irregular migrants do, and less than the total sample average (see table 8).

Table 8: Awareness of the reasons for detention, disaggregated by age, sex, legal status and duration of detention

Are detainees aware of the reasons for their detention?		
Detainee category	**Yes**	**No**
Asylum seekers	71%	29%
Illegally staying migrants	86%	14%
Male asylum seekers	72%	28%
Female asylum seekers	66%	34%
Male irregular migrants	86%	14%
Female irregular migrants	86%	14%
Asylum seekers detained for <90 days	77%	23%
Asylum seekers detained for >90 days	61%	39%
Irregular migrants detained for <90 days	87%	13%
Irregular migrants detained for >90 days	78%	22%

Other groups contain significant minorities of detainees who report that they are unaware of the reasons for their detention. From those who are younger than 18 years, 32 percent report to be unaware, or ten percent more than found in the total sample average. In comparison to other age categories, this makes minors the least aware of the reasons for their detention. Thirty seven percent of women aged 18 to 24 say they are unaware, more than men of

the same age, than women aged 25 to 34 and 15 percent more than the total sample average. Notably, the data shows that awareness of the reasons for detention increases with age (see table 9).

Table 9: Awareness of the reasons for detention, disaggregated by age group

	Percentage of detainees who are aware of the reasons for their detention
AGE	
10-17	68%
18-24	71%
25-34	80%
35-44	80%
45-64	90%

As detention endures asylum seekers and irregular migrants more frequently speculate about the rationale for their detention. In particular, persons detained for 121 to 150 days at the time of their interview report are less frequently aware of the reasons for their detention than when compared to other detainees on the basis of duration of detention. One third of detainees from this group say they do not know why they are still in detention, which is among the highest even when compared to all other detainee groups in the total sample.

2.2. Level of knowledge about the asylum procedure

2.2.1. Average data findings

Asylum seekers were asked to rate their knowledge of the host Member State's asylum procedure on a Likert scale of 1 to 10, from 'poorly informed' to 'well informed'. After the interviews were collected and the data entered into the central DEVAS database, the scale was adjusted to reflect a score of 1 to 5. On average, asylum seekers scored 2.95 out of 5.00. More specifically, 40 percent say they are 'uninformed', while 37 percent say they are 'informed'. Twenty four percent claim to be 'moderately informed' of the asylum procedure. Asylum seekers' level of knowledge about the asylum procedure does not follow a clear trend as the duration of detention endures.

2.2.2. Disaggregated data findings

The data indicates that knowledge of the asylum procedure increases with age. Asylum seekers between 10 and 17 years score 2.12 out of 5.00, or just slightly less than one point from the total sample average. Added to this, 76 percent profess to be 'uninformed' of the asylum procedure – 36 percent more than the total sample average. Within this group only 18 percent say they are 'informed'. As shown in table 10, the percentage of detainees who are informed of the asylum procedure increases to 50 percent for detainees older than 45 years.

Table 10: Level of knowledge of the asylum procedure, disaggregated by age

	Level of knowledge based on a 5.0 scale	Percentage who are *informed* of the asylum procedure	Percentage who are *uninformed* of the asylum procedure
AGE (in years)			
10-17	2.12	18%	76%
18-24	2.84	32%	43%
25-34	2.97	39%	39%
35-44	3.10	45%	37%
45-64	3.28	50%	33%

Female asylum seekers aged 18 to 24 also report a lack of information about the asylum procedure: 60 percent report to be 'uninformed' while only one quarter report to be 'informed'. Based on these findings, this group of detainees is 22 percent more uninformed than men of the same age, and 20 percent more uninformed than the total sample average. As a whole, the female asylum seekers within the sample are more uninformed about the asylum procedure than male asylum seekers are.

2.3. Detainees' expressed need for more information

2.3.1. Average data findings

A majority of detainees express a strong desire to obtain more information about their situation. Above all they want to know more about the host Member State's asylum and immigration procedures. Following that, detainees want to learn more about the duration of their detention and the reasons for their detention. In many of their statements detainees express a profound concern about the course of their asylum applications, or the impending removal to their country of origin. Others express a need to simply know "everything".

> "I filed an application to the State agency for refugees, and I want to know what is going on and why I am still here in the detention centre."
> *Male, 30-years-old, asylum seeker detained in Bulgaria for 136 days*

> "I want to know whether I will go back to Albania. They keep telling me that 'you will go tomorrow' but I never end up leaving. I want to know what is going to happen."
> *Male, 16-years-old, illegally staying migrant detained in Greece*

> "Actually, I don't know what this centre here is meant for."
> *Female, 24-years-old, asylum seeker detained in Belgium*

> "I don't know why they keep me here. My embassy doesn't cooperate so why do they keep me here? It is the second time they detain me in this country. Every time I am here they advise me to ask for asylum, and then they put me in a detention centre. I go to court, they give me a lawyer … they just want to make money."
> *Male, 24-years-old, illegally staying migrant detained in The Netherlands*

A slight majority of detainees say that they need more information so they can better prepare for what lies ahead of them. The need to retrieve a sense of a 'life perspective' is persistently present in their responses. Placement in a closed detention centre cultivates within detainees a sense of isolation from the outside world. Many express frustration at having their life plans interrupted with little to no indication of how they would resume their lives after release.

Second to that sentiment, detainees express a need to better adapt to their current situation in detention. The negative atmosphere of detention and the uncertainty of their asylum or immigration status have placed detainees in a situation in which they are unfamiliar of how to proceed. "To me this information is important," states a 46-year-old man detained in Bulgaria, "because here my life is ruined. There are no legal terms for detention here. I do not know when I will be released. I want to start my life again because here I am in prison." A 17-year-old female asylum

seeker detained in Malta says she needs more information "because I was expecting after all [of the] suffering to get protection and to live a normal life." Others express no other reason than simply their general right to know. "I'm a human being, and human beings need information", declares a 22-year-old Somali asylum seeker detained in Malta. "I come from Africa, so I need information about the country where I live now." And yet others have only very personal and practical reasons for wanting more information: "How will I get in touch with my family?" asks a 48-year-old man detained in the Czech Republic.

2.3.2. Disaggregated data findings

The demands detainees have for more information decrease as they become older (see table 11). Seventy nine percent of minors, for example, articulate a need for more information compared to 52 percent of detainees older than 45 years. Detainees under the age of 24 frequently say they want to know more about the duration of their detention. "When will I be released?" is the most common question posed by detainees of this age. Looking at minors, over half express a need to know more information so that they can adequately prepare for their future. "I want to make a plan for my life", asserts a 17-year-old Afghani boy detained in Greece. Interestingly, just as the need for more information decreases with age, so does needing it to prepare for the future.

Table 11: The need for more information, disaggregated by age

AGE	Percentage of detainees who need more information about their situation
10-17	79%
18-24	70%
25-34	71%
35-44	72%
45-64	52%

Persons detained for 121 to 150 days at the time of their interview stand out in their need for more information. Within this group, 85 percent express a wish for more information, with almost one third saying they want to know the expected duration of their detention – six percent more than the total sample average and more than any other age category. A number of these detainees also want to know more details about the asylum and immigration procedures in the host Member State.

Three quarters of women aged 18 to 24 express a need for more information about their situation, in particular about the existing asylum and immigration procedures. But many convey individual concerns and questions about their specific circumstances, such as their families, for example. When asked for what reasons they would like more information, many within this age bracket assert that the information should simply be made available to them. A 21-year-old Congolese woman detained in Belgium, for example, wants to "at least understand what they tell me." Over one third of women aged 18 to 24 in the sample express similar sentiments.

2.4. Chapter summary

Immigration detention in the EU is fraught with legal complexity. Foreigners that arrive on Europe's shores, land borders and airports are unlikely to be familiar with such complexity, and unprepared to absorb the multitude of information that may or may not be officially presented to them. Thus the 'possession of information', *per se*, regarding asylum and immigration procedures, duration and reasons for detention and expected release dates serves as a critical indicator of detainees' ability to cope with their time in detention. On average, the asylum seekers and irregular migrants in the sample report to be well aware of the reasons for their detention. But there nevertheless exists almost one quarter of detainees who say they are not aware of such reasons. The findings inform us of several points after taking together the average data findings with what was found after disaggregating the sample for age, sex, legal status and duration of detention:

- *Asylum seekers report to know less about the reasons for detention than irregular migrants do*. Male and female asylum seekers, and also those detained for more than 90 days, report higher percentages of being unaware of the reasons for their detention than when compared to irregular migrants and also to the total sample average.

- *Younger detainees report to possess less information than when compared to older detainees*. Minors are less aware of the reasons for their detention than every other age category. As detainees become older, the more frequently they admit being aware of the reasons for their detention. On the other hand, younger detainees express a more frequent need for more information. Minors are particularly uninformed, not only about the terms of their detention but also about the asylum procedure. Women aged 18 to 24 are more unaware of the reasons for detention than men of the same age, and more than men and women who are above the age of 25.

- *Women report to possess less information than men do*. Almost one quarter of female asylum seekers are more 'uninformed' than male asylum seekers about the asylum procedure in the host Member State.

- *Long-term detainees report to possess less information than recently detained persons*. Asylum seekers and irregular migrants who were detained for more than 90 days at the time of their interview are more frequently unaware of the reasons for their detention than those detained for less than 90 days. In particular, one third of the persons detained for 121 to 150 days say they are unaware of the reasons for their detention – ten percent more than the total sample average. A starting 85 percent of persons detained for 121-150 days express a need for more information.

3. SPACE WITHIN THE DETENTION CENTRE

Detainees were assessed for their personal perceptions of the space within the detention centre. The architectural plan of the detention centre, the conditions of the cells and of the facilities within the detention centre has important links to vulnerability. Detainees who are kept in clean, well maintained and spacious facilities may feel less negative about their situation, at least in the short term. The number of windows, the presence of sun light and the availability of exterior grounds may hold a great impact on detainees' physical and mental well being. Conversely, cramped spaces, unclean facilities, barred windows and restricted movement within the centre can foster within detainees a sense of imprisonment. Worse still, is that detainees who are kept for a prolonged period of time may physically and mentally suffer if the conditions of the space within the centre are inhospitable.

3.1. The conditions of the cells and the rest of the centre's space

3.1.1. Average data findings

Only 18 percent of the detainees in the sample feel positively about their cell[23]. Instead more feel negative, or to slightly lesser extent, simply neutral about the condition of their cell. Detainees who feel negative make strong statements that compare the conditions of their cell to that of a prison. A 34-year-old Tunisian man detained in Belgium said his cell is like a "prison room", saying, "It is not OK for more than a few days. People stay here for

[23] For the purpose of this report, a "cell" shall be defined, without carrying a negative or positive connotation, as the room within the detention centre where the detainee is principally kept. Some of the detention centres in Europe contain "cells" that bear a strong resemblance to those found in prisons in that the windows are barred and the rooms sparsely furnished, with thick doors adorned only with a small window. In some Member States detainees are kept in their cells for most of the day, while in others detainees are free to use the rest of the space within the detention centre. Some detention centres provide for one-person cells, while other centres keep two, three or more in one cell. Yet in a few other Member States, such as in Malta and in Greece, detention centres bear more resemblance to large dormitories where many detainees are kept.

months." A 27-year-old Nigerian man detained in Spain describes his cell in equally stark terms: "[It is] very bad. It is bad for everybody. Hygiene and sanitation are really bad. Water leaks from the toilets and goes into the bedrooms. It smells awful." Although many detainees identify specific issues such as the level of cleanliness, or the condition of the facilities within the cell, most others who felt negative simply cited the general atmosphere, or climate, of the cell: The lack of comfort, the poor air quality, the lack of windows and the varying temperatures within the room all contribute to this sense of negativity. Detainees who positively describe their cell do not elaborate their answers in the same way that detainees who respond negatively do. In these cases, detainees simply describe their dormitories as "good", "clean" or "big".

As to their opinions regarding the rest of the centre's space, an even percentage of detainees – 43 percent – feel both negative and neutral, but only 15 percent report feeling positively. Most detainees base their opinions on the condition of the centre's facilities, such as the lack of kitchen equipment or the lack of outdoor space. Many also point to the small size of their detention centre, and how there is simply too little space to move within. Others protest the lack of hot water. Detainees base more of their statements on the state of cleanliness of the centre space than they did when reporting on the condition of their cells. A detainee in Greece echoes many others when he describes the centre as "dirty and disgusting", with "cockroaches in the toilets and sometimes where the food is stored."

3.1.2. Disaggregated data findings

Asylum seekers are more negative about the condition of their cells and of the entire detention centre space than irregular migrants are; and they are more frequently negative than the total sample average. Approximately one quarter of asylum seekers base their opinion of the detention centre's space on 'cleanliness' – seven percent more than the total sample average, and thirteen percent more than irregular migrants. In regards to the duration of detention, while there is no clear linear trend, people detained for 121 to 150 days and 61 to 90 days during the time of their interview feel more negatively than others about the conditions of the cells, and the rest of the detention centre's space.

The data does indicate that younger detainees feel more positively about the detention centre space. Minors, however, feel more negatively than other age groups as concerns the specific condition of their cells. They also find the level of cohabitation to be problematic, especially in situations where they are isolated from the rest. A 17-year-old Vietnamese boy detained in the Czech Republic says, "I'm separated from all the other people. I can meet other people only at breakfast, lunch and dinner time." Looking to other younger detainees, over half of women aged 18 to 24 report feel negatively about their cell, while most feel better about the rest of the centre's space.

3.2. Personal space within the centre

3.2.1. Average data findings

Detainees were asked if they found their centre to be "overcrowded", i.e. if they think that there are too many people in each cell, or if in general they think that the centre is beyond its capacity to hold people. A majority of detainees say that their centre is not overcrowded. Nevertheless, just over one third state the contrary. Up to 61 percent of those who describe feeling overcrowded base their statement on the size of their cell and the limits of its capacity. "There is no space; there are around 42 detainees in my room!" exclaimed a detainee in Malta. For some, the large numbers of migrants confined to one small space made the climate feel 'prison-like': "There are a lot of people in here. This makes me feel bad because I think I am in prison without being guilty", says one man detained in Bulgaria. A smaller, but still significant, percentage of detainees attribute their response not to the size of the cells, but to problems related to cohabitation. A 27-year-old female detained in Belgium says

> Everyone comes to live in Belgium. Some listen to CDs, some put the TV loud or want another programme. Some argue over the telephone because there are not enough [for all detainees to use]. Where could we go to be in peace?

Detainees who feel overcrowded continue to compare their situation to that of prisoners. Some also point to flows of migrants that arrive and depart from the centre, leading to a transitory effect that builds upon the stress caused by overcrowding. "Everyday people come in and out," says a person detained in Spain, "even mad people come in here. It is like a prison." A very small percentage of detainees base their perception of "over-crowdedness" on the conditions of sanitation.

Detainees were additionally asked if they had access to any space where "they could be alone". Just over one third answered negatively, while 65 percent said they do have access to such space. In Portugal, for example, each detainee has their own cell where they can go and come from when they wish. In countries where detention centres may house two detainees per cell, detainees' sense of privacy is not altogether affected. But it is in those detention centres where more than two people are kept to each cell where detainees report having difficulty finding personal space for themselves.

3.2.2. Disaggregated data findings

Perceptions of overcrowded conditions differ between the EU Member States where the DEVAS project was implemented. The Czech Republic, Romania and Hungary, for instance, have high percentages of detainees who feel that the conditions are not overcrowded. In contrast, 75 percent of the detainees interviewed in Malta and in Bulgaria feel that the conditions are overcrowded, saying that there is simply not enough space for all detainees to live in. Differences are also found when the data is disaggregated by legal status, sex, age and duration of detention (see table 12).

Table 12 shows that, asylum seekers feel more overcrowded than irregular migrants do. The biggest departure from the total sample average lies with asylum seekers detained for more than 90 days, and for women aged 18 to 24. As with the findings in the total sample average, these findings are also dependent on where detainees were interviewed.

The ability to find space to "be alone" differs among the various groups in the sample. On the whole, asylum seekers less frequently claim to have private space than irregular migrants do. Female asylum seekers more frequently report having private space than male asylum seekers do. The opposite is true for irregular migrants, where more males than females report having access to such space. But if we remove 'legal status' from this comparison, then we find that women have more access to private space than men do. Looking at duration of detention, almost three quarters of asylum seekers detained for more than 90 days report not having space to be alone – seven percent more than irregular migrants detained for the same time, and eight percent more than the total sample average. Detainees aged 18 to 24 report having the least access to private space when compared to the other age groups.

Table 12: Detainee perceptions of over-crowded conditions, disaggregated by legal status, sex, age and duration of detention

	"Do you feel that the detention centre you are in is overcrowded?"	
	Yes (Master average: 39%)	**No** (Master average: 61%)
Asylum seekers	42%	58%
Irregular migrants	36%	64%
Female asylum seekers	38%	62%
Male asylum seekers	43%	57%
Female irregular migrants	27%	73%
Male irregular migrants	39%	61%
Irregular migrants detained for <90 days	32%	68%
Irregular migrants detained for >90 days	49%	51%
Asylum seekers detained for <90 days	36%	64%
Asylum seekers detained for >90 days	51%	49%
Ages 10-17	24%	76%
Ages 18-24	48%	52%
Ages 25-34	41%	60%
Ages 35-44	32%	69%
Ages 45-64	26%	75%
Women aged 18-24	50%	50%
Men aged 18-24	47%	53%

3.3. Chapter summary

The varying legal environments on asylum and immigration between the EU Member States are matched by the variance found in the standard of conditions found within detention centres across the EU. In this chapter we presented detainees' responses to questions about the space within their detention centre, such as the conditions of the cells, and other interior and exterior spaces. We also presented detainees' perceptions of "over-crowdedness" in their centres, and their access to private space, i.e. a "space to be alone". The indicates that

- *Detainees feel negatively about the living space within their detention centre*. In general most detainees point to the "general climate" within both their cells and the rest of the centre's space as a factor of their negative responses. Detainees do feel strongly about the level of cleanliness and the condition of the facilities. Many, for example, complain of unsanitary toilet facilities and insect infestations in the kitchen facilities. Others equate the living space within their centre to the atmosphere found in prisons. In particular, detainees under 24 years of age in feel very negative about the conditions in their cells.

- *Perceptions of "over-crowdedness" depend on the country of detention, but differences do exist based on legal status, duration of detention, sex and age*. Detainees that were interviewed in Malta and Bulgaria more frequently report feeling overcrowded than do detainees in Belgium, Sweden, the Czech Republic and Romania, for example. But if we remove the 'country of detention' from comparison, we observe that asylum seekers feel more overcrowded than irregular migrants, and that detainees aged 18 to 24 feel more overcrowded than all other age groups. Asylum seekers and irregular migrants detained for more than 90 days at the time of their interview more frequently report feeling overcrowded then those detained for less than 90 days.

- *Males and asylum seekers detained for more than 90 days least report having access top private space.* Irregular migrants more frequently report having access to private space than asylum seekers do. Compared to other age groups, detainees aged 18 to 24 report having little access to such space.

4. RULES WITHIN THE DETENTION CENTRE

Detainees were asked about their knowledge of the *rules* within their detention centre. The purpose of this questioning was to assess the extent to which detainees are aware of the boundaries within the detention centre, i.e. what they can or cannot do. Rules on behaviour, daily routine, access to recreational material and communication devices may all have an impact on the way detainees perceive their situation to be. Restrictive rules may lend to a prison-like atmosphere, while more lax rules might allow detainees a level of flexibility to manage their lives in whichever way suits them. Awareness of the rules can also say something about the relations between detainees and staff, since it is the latter that is responsible for informing detainees about all aspects of life in the centre. Nevertheless, sets of 'informal' rules may exist that might have an even greater impact on detainees' lives. Vulnerability is closely linked to personal awareness of how one should conduct oneself, especially since the situation of detention is new to so many of the detainees that were interviewed. If one does not know how to interact within the boundaries of detention, set by the formal and 'informal' rules, then they may become vulnerable to harm from both the environment of detention, and the other people in the centre.

4.1. Detainees' awareness of the rules, and its impact on daily life in detention

4.1.1. Average data findings

More than half of the detainees say that the most familiar rules to them are those that regulate daily routine. Detainees within this group frequently describe the times that they must wake up and have breakfast, when they must stay within their cells, when they can watch television, use the telephone, have dinner and so forth. Some detainees portray daily routines that are isolative and very low in physical activity. A 19-year-old man detained in Greece says, "They open the cells for 30 minutes to one hour, three times per day. During this time we can make a telephone call, go to the toilet and take a shower, etc. We go to the yard two to three times per week for one hour." Another detainee in Greece, a 24-year-old Afghani man, expresses a similar scenario: "We are always indoors. We go to the yard only once or twice per week for 30 minutes."

Alongside the description of the daily routine, a number of detainees tell of particular behavioural rules, such as the inability to smoke cigarettes in certain places, or the inability to use their mobile telephones. A small percentage of detainees say that there are *no rules* in their detention centre. "There are no rules to follow here", says a Somali man detained in Malta, "We're locked in here and do what the soldiers tell us to do." Another says, "There are no rules. You respect me and I respect you."

Another small group of detainees say that they do not have any information about the rules. "Nobody explained to me the rules", says a 31-year-old woman detained in Spain, "there is an absolute lack of information. I know about the rules from other detainees." Metaphors to prison are again used: "I don't know the rules. We are in prison. We cannot do anything." Other detainees describe a set of informal rules that are determined by certain groups of detainees who possess a more powerful social status than the others. According to a detainee in Cyprus, "Rules are set by the 'high-order' prisoners, the ones that are here for a longer period of time and who have better relations with the guards." The issue of staff bias towards detainees appears in some of the detainees' responses. "Guards segregate detainees by race", says one detainee, "Certain detainees are treated more favourably than others." The arbitrariness of the rules within some detention centres has an effect upon detainees' self-perception. A Ghanaian woman detained in Germany says, "If you want to go outside, you cannot. When it's raining, they tell you to go out. They are treating us like animals. When they are cleaning, they lock us in one room."

Most detainees feel that the rules within the detention centre cannot be changed. Even for those who feel that opportunities for change may exist, in the end they conclude that in practice the rules are hardly ever changed. According to detainees, the most relevant rules for are those that dictate daily routine – in particular, the rules that dictate sleeping times. They express frustration both at being forced to sleep at fixed times, i.e. mandatory nightly curfews, and at not being allowed to sleep whenever they wish. One detainee says that the "hour to go to sleep is way too early", and another says, "We sleep all day long; it's too difficult to go to sleep early." A person detained in Belgium laments, "If only they could let us sleep. We do not work. We wake up tired. We do not have the right to rest during the day. 7:00am [wake up time] is not OK."

A smaller number of detainees express that "all rules" within the detention centre are important to them. An even smaller group believe that none of the rules are relevant for them. Many report not being interested in whatever rules exist; and yet others simply do not know how to respond to the question, "Which rules are most important for you?" But others tell of a situation in which they find the detention centre rules to be the least of their problems. "There are no important rules here," says an Algerian detainee in Belgium, "I left my country for the better, [but] I found worse."

4.1.2. Disaggregated data findings

There is little variation in the types of responses when comparing legal status. The climate of closed detention and the existence – or non-existence – of rules is more or less the same irrespective if one is an asylum seeker or an irregular migrant. The exception to this is that irregular migrants more readily say that no rules exist in their detention centre, than when compared to asylum seekers. More variations emerge when examining the data by sex, age and duration of detention. Nine percent more females than males say that they do not have information about the rules. Minors report to know less about the rules than those in other age categories, and they more frequently report not caring about the rules. Twelve percent of people detained for one month report that they do not know about the rules of their detention centre, while over one third of those detained for 151 to 180 days describe their detention centres as being without rules.

4.2. Chapter summary

The rules within a detention centre are important because they impact the daily lives of detainees. Precise and clearly communicated rules allow detainees to navigate the environment within a detention centre, and to establish boundaries for themselves and for others. Any discrepancy in the existing rules, or the lack of rules at all, might very well lead to situations where certain detainees or groups of detainees become more powerful than others, thereby leading to a disordered environment that may worsen the personal impacts of detention. Disaggregating the data set does not show any stark differences between groups of detainees. The rules, or lack thereof, apply to almost everyone in the data set irrespective of legal status, sex, age and time spent in detention. In this regard, the most compelling data findings emerge as we examine the averages from the total sample.

- *Detainees are most impacted by the rules that affect their daily routine*. The data informs us that detainees are most familiar with the rules that dictate daily regimen. The fixed eating times, recreation hours and mandatory nightly curfews are described in negative terms by most. This fixed daily regimen leads detainees to compare their situation to that of prisoners.

- *For many detainees, the rules lead to isolation and inactivity*. A large number of detainees depict detention centre rules that keep them inside their cells for long periods of time, with only periodic breaks to move around within the rest of the centre. As a result, many detainees say they sleep too much during the daytime, which leads to insomnia at night. The inactivity and isolation leaves other detainees feeling degraded and undignified.

- *The 'informal' rules are just as important as the 'formal rules'.* Some detainees describe an atmosphere where detainees of certain nationalities receive more favour from the staff, and are thus freer to do as they please. The consequence is that 'less favourable' detainees become subject to whatever system of rules that are established by the more dominant group. This creates an atmosphere of arbitrariness, uncertainty and mistrust. It also makes certain detainees more vulnerable to other, more socially dominant, detainees.

5. DETAINEES' INTERACTION WITH STAFF IN THE DETENTION CENTRE

Detainees were asked to describe the type of security staff they are in regular contact with, and the quality of their interaction with them. An obvious limitation to this question is that detainees may be unfamiliar with the division in roles among staff. They might perceive everyone in the staff as belonging to security, especially if the existing staff-detainee relations are poor. In any case, the level and quality of interaction with staff is important when considering the vulnerability of detainees. Staff persons have a high level of leverage over detainees, who, as a result of their position, are much less empowered than staff members are. As a result, detainees may either benefit from staff persons who interact well and respect their dignity and rights, or detainees may suffer from staff attitudes and behaviours that are abusive. Staff persons form an important part of a detainee's social network within the detention centre. Detainees may become very dependent on the staff, since the closed environment of detention restricts detainees' abilities to independently manage their lives. This dependence has the power to both improve and worsen the circumstances of detention.

5.1. Level of contact with staff and quality of interaction

5.1.1. Average data findings

An overwhelming number of detainees say they are most frequently in contact with the security staff of the detention centre. Within this group we find that one-third report to have contact with social service staff. But detainees from only eleven out of the 23 countries in the DEVAS study report having contact with social service staff, and of that group 28% were interviewed in Belgium and 26% in the Czech Republic. The frequency of contact with healthcare, domestic and administrative staff is low.

Detainees feel mostly positive about the quality of their interaction with staff. These detainees express their interactions with staff as being "nice", "fine", "friendly" and "kind". A 37-year-old Brazilian woman detained in Portugal describes the staff as "good, humble people" who are available "every time we need [them]". Sixteen percent of detainees describe their interactions with staff as being negative. Detainees who feel this way describe being treated "inhumanely" by staff, or in a "violent" manner. Others criticise staff for being unwilling to grant requests, or being "indifferent" to their needs. But more detainees simply feel neutral about their interaction with staff, and just as many feel that it varies depending on the situation. A 29-year-old Nigerian man detained in Bulgaria says that "some of them are really nice, but some of them are not. They [those who are not 'nice'] treat us like animals."

Many more detainees feel negative about the manner in which staff supports their needs. While the majority feel positive, almost one-third say that staff does not adequately support their needs. In these cases detainees express frustration at not having access to translators, having too little access to self-hygiene products or not being able to receive special requests. Most detainees say that their opinions reflect staff's inability to fulfil the full range of their needs; others say that staff persons do not address special circumstances. A 21-year-old Moroccan man detained in Greece, for example complains of not receiving staff support for his skin disease. A 38-year-old Syrian man detained

in Hungary says, “I got no answer about my many requests to meet my lawyer.” An Ethiopian man of the same age detained in The Netherlands states that the staff refused his many requests to meet with a doctor.

5.1.2. Disaggregated data findings

None of the minors who were interviewed report being in contact with health care staff. Together with 18 to 24 year old detainees, these two groups are below the total sample average in the frequency of contact with health care staff in the detention centre. The data shows that contact with health care staff increases as detainees become older – up to 21 percent for detainees older than 45 years. Similarly, the older detainees are the more likely they hold positive opinions about staff fulfilment of their needs, starting at 39 percent for minors and ending at 61 percent for detainees older than 45 years. Concerning the duration of detention, those detained for three to four months feel the more negative about the quality of staff support than other groups within the category. There is little difference when comparing legal status and sex. The exception to the latter is that women aged 18 to 24 are more negative about the quality of staff interaction and support than men of the same age.

5.2. Staff discrimination towards detainees

5.2.1. Average data findings

A majority of detainees say that they have not experienced any discrimination from detention centre staff; but 20 percent do say that they have. Most detainees within the latter group attribute the discrimination to particular factors and circumstances, and not as a part of a pattern of discrimination from detention centre staff. For example, some detainees identify positive discrimination from staff as a result of their good behaviour. A 32-year-old Croatian man says, “If you respect them [staff], they will respect you too.” Others remark that detainees who are detained longer are treated differently than newcomers. A 46-year-old Iraqi detained in Bulgaria says “the guards treat the people who are more than one year in detention differently from the others … they are treated better.”

Nonetheless, approximately one-third attributes the discrimination they experience to ethnicity and nationality. For example, two Indian and Pakistani men detained in Germany state that the staff treats European and Asian detainees differently. A 29-year-old Kosovar woman detained in Hungary says that the staff treats Albanians very poorly. A detainee in Spain goes so far as to say he is “treated better than the Moroccans and Africans” because he is Hispanic.

A smaller percentage attributes being discriminated against due to their inability to speak the same language as the staff. “[One] who doesn’t understand Czech is nothing here. [He] has no rights,” says a 27-year-old Mongolian man detained in the Czech Republic. Few detainees in our sample pointed to age and sex as reasons for staff discrimination. A woman detained in Austria explains that the staff treats her nicely “because I’m the only woman here.”

5.2.2. Disaggregated data findings

An examination of the data by age category does not reveal great differences from the total sample average. The one exception is for minors: detainees within this group more frequently identify language as a factor for experiencing discrimination from staff. A 16-year-old girl from Sierra Leone, for example, says that when she goes to the detention centre guards, “they ask me to speak German”. Bigger variations exist when we disaggregate the data by sex. Women report experiencing staff discrimination slightly more than males do, and they overwhelmingly point to ethnicity and nationality as reasons. The same finding applies to women aged 18 to 24, where 82 percent blame ethnicity and nationality as a reason for discrimination. We also find that female asylum seekers more frequently report experiencing discrimination than male asylum seekers do. But this does not apply to male and female irregular migrants: in this respect, male irregular migrants more frequently report discrimination than their female counterparts.

Looking at legal status, irregular migrants more frequently report experiencing staff discrimination than asylum seekers do. They also more frequently blame ethnicity and nationality, language and sex as reasons for the discrimination – but not their legal status. Concerning duration of detention, irregular migrants detained for less than 90 days at the time of their interview most frequently report experiencing staff discrimination. Taking asylum seekers and irregular migrants together, we find that those detained for 121 to 150 days experience staff discrimination more frequently than others.

5.3. Chapter summary

The level and quality of detainees' interaction with staff in the detention centre can serve as an important indicator for detainees' overall experience in detention, simply because detainees are so often in contact with staff due to the circumstances of their situation. The restriction upon their liberties means that detainees are fully reliant on the staff to meet their needs. As such, detainees are also subject to the behaviours and attitudes of staff, whether they are positive or negative. In this sense the data indicates that

- *Detainees are more frequently in contact with security staff than with other types of staff in the detention centre*. It may be the case that some of the detainees we interviewed do not know the differences in staff roles, resulting in their perception that all of the staff belongs to 'security'. Whether or not this misperception exists, it may indicate that detainees perceive the general role of the staff to be more security-minded than sympathetic.

- *Generally, detainees find their interaction with staff to be good but the fulfilment of their needs by staff to be poor.* Detainees may feel positive or neutral about the behaviours and attitudes of staff, but many feel that the staff is inadequately addressing their needs, e.g. fulfilling access to interpreters, to medical treatment, self-hygiene products and access to legal counsel, for example.

- *Detainee opinions of the quality of staff support improve with age*. Older detainees feel better about the quality of staff support than those who are under 24 years old. The latter report having less frequent access to health care staff than older detainees do.

- *Detainees report being discriminated against by staff not only for reasons of ethnicity and nationality, but also for reasons of language*. Detainees report experiencing many types of staff discrimination. Among these, and especially for minors, linguistically based discrimination in a small but not altogether insignificant basis. In these cases detainees report being treated poorly because they do not speak the language of the staff. Women more frequently report to experience staff discrimination than men do.

6. SAFETY WITHIN THE DETENTION CENTRE

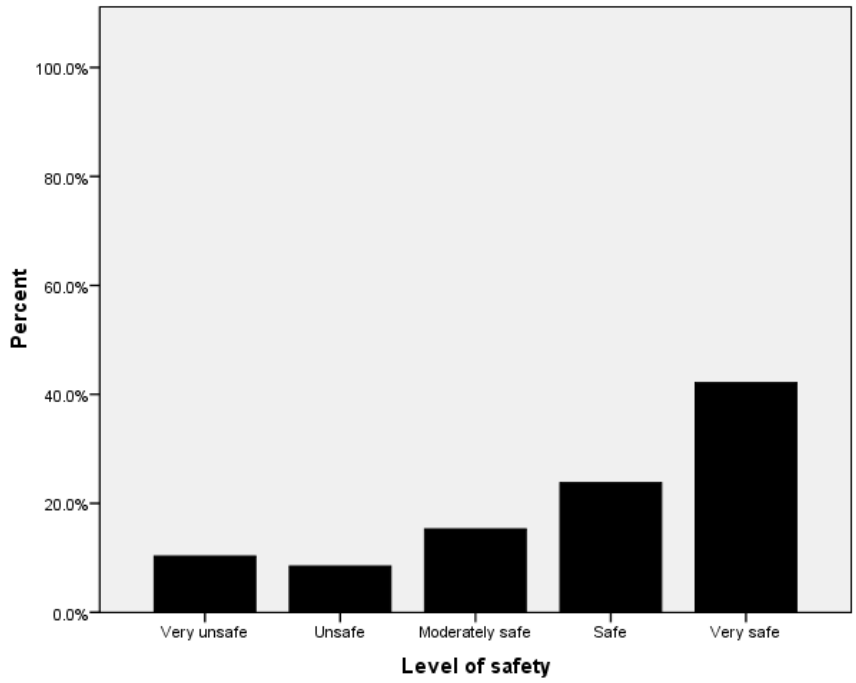
The concept of safety is intrinsically linked to the concept of vulnerability. If the most fundamental meaning of 'vulnerability' is the level of one's exposure to harm, then safety becomes the most obvious antidote against vulnerability. Detainees were asked to rate and describe their personal sense of safety within the detention centre, and to describe instances (if any) of when they experience verbal insult or physical abuse from other persons within the detention centre. The purpose of this questioning was to assess the extent to which feel vulnerable in the most basic sense of the term. The mix of nationalities, the attitudes of staff persons and the restrictive environment of detention among the factors that might highly impact detainees' personal level of safety, both in a physical and in a mental sense. Detainees who feel safe in the detention centre may be better able to cope with other adversities; those who feel unsafe might likely experience a continued deterioration of their situation.

6.1. Detainees' reported level of safety

6.1.1. Average data findings

Detainees were asked to rate their level of safety on a scale of 0.0 to 5.0, from "very unsafe" to "very safe". At an average score of 3.79, detainees report to feel quite safe in the detention centre. As shown in Chart 1, only ten percent of detainees feel very unsafe, while 42 percent feel very safe. Among those who answered, 26 percent attributed their level of safety, for good or ill, to the security guards. A 30-year-old Pakistani man detained in Romania, for example, attributed his sense of safety to the frequent presence of security guards. Conversely, a 26-year-old man detained in Malta told us that "the detention staff are soldiers and I don't feel safe about that." Some detainees reported to be fearful of experiencing physical abuse by the guards, while others express anxiety at being closely watched by security.

Chart 1: Detainees' perception of their level of safety in the detention centre



Second to security guards, detainees attribute their safety – for better or worse – to the living conditions and to their co-detainees. Detainees in these categories report a fear of being attacked by other detainees, or their uneasiness at the mix of nationalities and cultures and the tensions it could produce. Concerning living conditions, people held in a detention centre next to Brussels National Airport, for example, complain of the frequent and severely disturbing noise made by airplanes. A 21-year-old Nigerian man detained in Malta feels in danger because there is no safe exit in case of a fire. Even the poor level of cleanliness in some centres makes some of detainees feel unsafe. They also blame the prison-like atmosphere of the detention centre as a reason for not feeling safe.

In other cases, detainees feel that the living conditions contribute to a positive sense of safety. "I have no reason to feel unsafe here. I have a place to sleep and food to eat," remarks one person detained in the Czech Republic. Another detainee in Portugal says, "In here it is all very controlled so there cannot be any problems." Yet others observe that the safety of the living conditions does not contribute to a psychological sense of safety. "Nobody comes from the outside, but we are not safe mentally", says a Pakistani man detained in Romania. Detainees who attribute their positive sense of safety to other detainees either report feeling safe because of the presence of co-

nationals, or because they feel that they can defend themselves against others. "I am not afraid of anyone" is an oft-repeated refrain from the detainees that were interviewed.

A smaller percentage of detainees attribute their safety to the 'outside world', i.e. either being protected from it or being isolated from it. A 35-year-old Russian woman detained in Poland describes the detention centre as a "safer place than the one I used to live in". Some are afraid of being returned to their country of origin, and yet others feel unsafe by the danger posed to their lives. "I have fear," explains a 24-year-old female asylum seeker from Cote d'Ivoire, detained in Hungary, "because of the things that happened in my home country."

6.1.2. Disaggregated data findings

Detainees' attributions of safety differ depending on how safe they actually feel. Those who feel safe point to the security guards as an explanation for their safety; those who feel unsafe point to their co-detainees. As Table 13 shows, in terms of safety, detainees perceive their co-detainees more negatively than they do the security guards. Furthermore, detainees are more likely to feel 'safe' from the outside world rather than 'unsafe' by it.

Table 13: Detainees' explanations of their reported safety, disaggregated by category of safety

	Unsafe	Moderately safe	Safe
Attributions to the level of safety			
The 'outside world'	6%	10%	18%
Living conditions	20%	31%	19%
Security guards	19%	20%	29%
Co-detainees	33%	27%	14%
'Other' reasons	22%	12%	21%

An examination of the data by age reveals that minors feel the least safe in detention. They score the lowest on the safety scale of measurement (3.64), and almost one quarter specifically says that they feel unsafe. Approximately one quarter within this group attribute their level of safety to co-detainees – most say that they feel unsafe by the presence of co-detainees. Detained minors who feel safe tend to point to the living conditions as an explanation of their safety.

Detainees aged 25 to 34 stand out among the sample as a group that reports to feel particularly unsafe in detention. They score almost as low as minors do on the safety scale of measurement (3.67), and 21 percent report feeling unsafe. Just as with minors and the total sample average, this group of detainees more frequently attributes their lack of safety to co-detainees, and their positive sense of safety to the security guards.

One quarter of persons detained for 151 to 180 feel unsafe in the detention centre – six percent more than the total sample average and more than any group disaggregated by duration of detention. Unlike the others, detainees in this group more frequently attribute their *lack* of safety to the security guards.

> "The soldiers can come in when they want and beat us. In case of fire, electrical accident, etc., we cannot escape. With the rubbish, inside the room where we sleep, we risk getting sick."
>
> *Male, 46-years-old, asylum seeker, detained in Malta for 161 days*

6.2. Occurrences of verbal insults and mocking in detention

6.2.1. Average data findings

One quarter of the detainees that were interviewed report to have experienced one or more incidents in which they were verbally insulted or mocked by someone else in the detention centre. Among these, 48 percent blame the security staff and 44 percent blame co-detainees. Forty percent say that these experiences are frequent[24], while 26 percent say that such incidents occur on an occasional basis.[25] According to 46 percent of detainees, the reason for the mocking or insulting behaviour stems from a general attitude of unfriendliness from the detention centre staff. Many of the detainees within this group report incidents of simple verbal abuse, to those where more severe mocking is involved. A 34-year-old Algerian man detained in the Czech Republic says that the staff calls him and other detainees "bad names when we ask for something; to give us a ball for example". A 19-year-old Kurdish man from Turkey who was detained in Greece at the time of his interview says, "Policemen swear very often. They often call us *malaka* or say similar things for no particular reason". In many cases detainees report being shouted at for making simple requests, such as to use the toilet, to have more food or to have medical treatment.

> "I was sick one day and asked for help. They refused to take me to the hospital. I started to knock the door very hard. This time the commander came and insulted me [by] saying 'black monkey'."
>
> *Male, 35-years-old, Sudanese asylum seeker detained in Malta*

Incidents of insults and mocking from co-detainees often have a strong racist sentiment. Detainees interviewed in Ireland report having racist insults hurled at them from the Irish criminal offenders that are detained within the same space. Muslim detainees say they have been subject to insults for outward expressions of spirituality. A 30-year-old irregularly staying Chinese migrant detained in Spain explains, "It is because [we] do not understand their [co-detainees'] language. During the night our bed sheets get stolen. I do not know if they do that as a joke or because we don't understand what they say".

6.2.2. Disaggregated data findings

Examining the data set by age, we find that minors most frequently report experiencing insults and mocking. Among those who have experienced verbal abuse, 79 percent blame the security guards, attributing the verbal abuse to unsympathetic staff attitudes. This latter figure is almost one-third more than what is found in the total sample average, meaning that the minors within the sample are particularly subject to verbal insults and mocking. Similarly to minors, women aged 18 to 24 years report experiencing more insults and mocking than when compared to other groups by age and sex.

Asylum seekers seem to more frequently experience a high percentage of insults and mocking than when compared to irregular migrants. One-quarter say they have experienced such incidents, and half within that group blame the security guards for the verbal abuse. According to asylum seekers, incidents of verbal insults and mocking are quite frequent and can be attributed to unsympathetic staff attitudes. People who were detained for three to four months at the time of their interview – of which 53 percent are asylum seekers – more frequently report being insulted and mocked than when compared with other groups based on duration of detention.

[24] "Frequent" verbal insult and physical abuse indicates detainees who have experienced such cases on three or more separate occasions.
[25] "Occasional" verbal insult and physical abuse indicates detainees who have experienced such cases on less than three separate occasions.

6.3. Occurrences of physical abuse and assault in detention

6.3.1. Average data findings

The vast majority of detainees say that they have never experienced physical abuse or assault in the detention centre. Nevertheless, a small group within the sample – nine percent – did report cases of physical abuse. For most within this group such incidents do not occur frequently, and in a majority of cases detainees blame co-detainees; but almost one-third blame the security guards. Many of the reported incidents, involving both security staff and co-detainees, involve aggressive pushing or slapping. A small minority of those who report physical abuse say that they have endured beatings.

> "He beat me with a stick. Somebody was shouting, but the policeman said it was I who was shouting. He came to me and asked me if I was the person shouting. I replied in English that I didn't understand. Then he told me 'speak in Greek'. I said again in English that I didn't understand. Then he walked towards me and started beating me."
>
> *Male, 17-years-old, Somali illegal migrant detained in Greece*

> "I told him [a security guard], 'You are not strong just because you are a policeman and I am detained here.' He took the chair and hit me with it. I put my hands in front of my face and he hit my hands."
>
> *Male, 21-years-old, Iraqi illegal migrant detained in Greece*

Most detainees attribute the reasons for the physical abuse and assault to inter-personal quarrels and to unsympathetic staff attitudes. Some say they have been physically assaulted by co-detainees for something they had, such as cigarettes, or because of their nationality. Others describe a general atmosphere of tension and stress that frustrates detainees and leads to physical conflicts. "It's a daily reality among detainees", admits a 27-year-old Vietnamese person detained in the Czech Republic. A 17-year-old man detained in Greece describes being beaten by four Albanian co-detainees simply because of his Afghani nationality.

6.3.2. Disaggregated data findings

Among those who admit having experienced physical abuse or assault in detention, 40 percent were detained in Malta at the time of their interview. More than half within this group identify co-detainees as perpetrators of the abuse. But one-third of these detainees do blame staff, with some describing being beaten for making simple requests, such as for a mobile telephone SIM card, or being "pushed" and "cuffed" for apparently no reason while having their valuables "tore up". Second to those detained in Malta, the most frequent reports of physical abuse and assault come from Greece. Although the number of reported incidents are much fewer than those reported from Malta, the cases in Greece – of which almost half are minors – are more frequently attributed to unsympathetic staff attitudes.

Once again, minors more frequently report having experienced physical abuse or assault in detention than when compared to other age groups. Almost one-third says that these incidents occur frequently, and just over half identify the detention centre security staff as perpetrators of the abuse. Detainees in this age group frequently attribute physical abuse to ethnicity or nationality. Looking further within the category of age, the data findings show that women aged 18 to 24 report physical abuse or assault more frequently than when compared to other groups by age and sex.

Asylum seekers and persons detained for 61 to 90 days – of which 53 percent are asylum seekers – report experiencing a higher percentage of physical abuse or assault than when compared to irregular migrants and other duration of detention categories. Well over half of the persons within these two groups who have experienced physical abuse and assault identify co-detainees as perpetrators. But there does exist small, but significant, minorities in each group that blames the security staff. Neither legal status nor time spent in detention is attributed as reasons for the abuse. Instead, detainees in these two groups point to unsympathetic staff attitudes, and ethnic or national differences, as reasons.

6.4. Chapter summary

The DEVAS project has sought to measure detainees' level of safety in three primary ways: firstly, by asking detainees to rate their level of safety on a Likert scale of 0.0 to 5.0; secondly, by recording incidents of verbal insults and mocking; thirdly, by recording incidents of physical abuse and assault. Every detainee who say they feel unsafe in detention also say that they have experienced physical abuse or assault; 65 percent of those who feel unsafe say they have experienced verbal insults or mocking. Conversely, only four percent of the detainees who feel safe report incidents of physical abuse, and 21 percent report incidents of verbal insults and mocking. Despite these incidents, in general detainees report to feel safe in the detention centre. Most have not experienced verbal or physical abuse.

- *Detainees most frequently attribute their level of safety, whether for good or ill, to the security staff*. Interestingly, detainees more frequently attribute a positive sense of safety to the security staff, and a negative sense of safety to co-detainees. In other cases, detainees more frequently report feeling safe from the outside world, rather than being in danger from it.

- *The living conditions within the detention centre impact detainees' sense of safety*. Detainees perceive 'safety' as not only prevention from physical harm, but also prevention from mental harm. Excessive noise, unhygienic conditions and the prison-like atmosphere of the detention centre all contribute to detainees' feelings of being unsafe.

- *Minors particularly feel unsafe in detention.* Detainees within this age category not only more frequently rank themselves as unsafe, but they also more frequently report incidents of verbal and physical abuse while in detention than when compared to other age categories, and also the total sample average. Similarly, women aged 18 to 24 years report more incidents of verbal and physical abuse than other groups by age and sex.

- *Incidents of physical abuse or assault in detention centres are widespread in the EU.* Although 40 percent of those who reported physical abuse or assault were interviewed in Malta, it remains notable that such incidents were recorded in three quarters of the EU Member States where the DEVAS project was implemented. Incidents involving verbal insults and mocking were recorded in 19 EU Member States. Detention centre security staff and co-detainees are most frequently implicated in both forms of abuse.

- *Asylum seekers more frequently experience verbal and physical abuse than irregular migrants do.* This also includes people detained for 61 to 90 days, of which 53 percent are asylum seekers. Asylum seekers do not attribute these incidents to their legal status, but instead to cross-cultural tension between detainees and to the unfriendly behaviours and attitudes of staff.

7. PROVISION AND PARTICIPATION OF ACTIVITIES WITHIN THE DETENTION CENTRE

7.1. Availability of activities and level of detainees' participation

Detainees were asked about the provision of activities within the detention centre, and to elaborate on whatever activities are provided. They were also asked about their level of participation and to elaborate upon the reasons for doing so. Within the context of the DEVAS project, 'activities' was broadly defined to consist of what is formally organised by the detention centre staff, what is informally provided by the staff to detainees, and what is informally organised by the detainees themselves. The availability of activities within the detention centre is important, since the nature of closed detention leaves detainees with little else to do. Prolonged periods of physical inactivity can lead to fluctuations in appetite and weight, for example; prolonged periods of mental inactivity may lead to increased psychological stress.

Vulnerability is closely linked because the inability to engage one's physical and mental faculties has the tendency to weaken one's personal condition. People who are held for prolonged periods of time in detention centres that do not offer sufficient activities may suffer not only in detention, but also when they are released to find that it has become difficult to find work or to re-enter school, for example.

7.1.1. Average data findings

On average, well over half of detainees say that the detention centre does provide for activities, and most say that they participate in them. Sports and watching television are activities that detainees most frequently participate in. Much smaller percentages of detainees report doing other activities related to arts and education, or even religion and spirituality. Detainees admit that they participate in these activities mostly to relieve themselves of the stress and boredom of detention: to "kill time" or to "forget problems", to "liberate" their "state of mind" and "to release tension". But detainees just as often participate in activities simply for their personal satisfaction. Those interviewed in Slovenia, for example, frequently say that they do activities because they have "plenty of time", or even "too much time" at their disposal. In general the notion of having ample 'time' arises frequently in detainees' statements. For many, the provision of activities is an important distraction from the protracted inactivity inherent within the situation of detention, and the mental stress that it imposes on detainees.

Alternatively, 29 percent of detainees say they do not participate in activities. For the most part they are uninterested. Some are "bored" by the activities, and others say that the activities provided are not what they want. A smaller number of detainees attribute their non-participation to their general state of unhappiness in detention, or because they do not expect to be in detention for much longer. "I hope I will leave soon so I won't have to participate in activities", says a 28-year-old Brazilian woman detained in Ireland. Second to a lack of interest, 22 percent of detainees say that they do not participate in activities because of mental health reasons. For these detainees, the provision of activities is not enough of a distraction from the stress of detention. Statements like "too stressed" and "no peace of mind", or "I'm just tired" and feeling "too depressed" is a frequently expressed sentiment. A Serbian male detained in Hungary says that he does not participate in activities because he sleeps all day – a consequence of his inability to sleep well at night due to the stress he feels.

Alongside mental health, a small number of detainees say they are physically unable to participate in activities. In these cases detainees often admit to experiencing physical pain, but they do not attribute it to detention. Yet other detainees say they do not participate in activities because they are unaware of what the centre provides, or they say that the centre does not provide for anything to do. Very small percentages of detainees say they do not participate either because of other personal obligations, e.g. single females with children, or because of language barriers.

7.1.2. Disaggregated data findings

An examination of the data by age group reveals that detainees aged 18 to 24 most frequently report that the detention centre does not provide for activities. Consequently, they have the highest percentage of non-participation when compared to other age groups. More so than others, 18 to 24 year olds say they do not participate in activities because of the mental health stress they experience as a outcome of detention. Looking at other age groups, we find that minors participate most frequently in activities and do so for their own personal satisfaction, while detainees older than 45 years frequently report a physical inability to participate in activities.

People who were detained for 61 to 90 days at the time of their interview most frequently report participating in activities in order to relieve psychological stress. As for legal status, asylum seekers are more likely than irregular migrants to say that their detention centre does not provide for activities. Nonetheless, more asylum seekers participate in educational and sports activities than irregular migrants do. Furthermore, asylum seekers say they do these activities for personal satisfaction, whereas irregular migrants do it more for stress relief. Asylum seekers who choose not to participate do so for lack of interest; irregular migrants most frequently say that they do not participate because they are unaware of any activities. Elsewhere in the sample, female detainees more frequently report non-participation in activities than males do. Women say they do not participate in activities because they are unaware of them, while men choose not to participate because of the stress they feel in detention. Females, however, do report having more access to educational activities than male detainees do.

Responses from women aged 18 to 24 present telling results. When asked if the detention centre provides activities, 45 percent said no – 19 percent more than the total sample average. Up to 45 percent of women in this age group admit that they do not participate in activities – 16 percent more than the total sample average. They also more frequently report being unaware of activities than when compared to their male counterparts. Additionally, a significant minority within this group say they are uninterested in participating in activities and that they are physically unable to participate.

7.2. Access to specific activities and detainees' preferences for activities

7.2.1. Average data findings

Most detainees express having frequent access to the telephone and to the television. At the same time, most detainees say that they do not have access to computers nor the Internet. Almost half of detainees say that they do not have access to books.[26] Many also say that the detention centre does not provide access to sporting equipment; but slightly over half say that outdoor space is generally available to them. Going further, only one-quarter of detainees admit having access to educational activities, and just over one-third report having access to some type of religious/spiritual space.

Apart from stating what they have or do not have access to, detainees were asked to list an activity they would prefer to have, insofar as the detention centre could "reasonably provide" it to them. Responses to this question were varied, with most responses matching closely to the activities listed in the preceding paragraph (see table 14). Approximately 17 percent say they want greater access to computers and the Internet. A number of detainees express that it would be easier for them to communicate with family and friends, and to stay abreast of events happening outside of the centre if they had access to the Internet and also to email. A 21-year-old Russian man detained in Lithuania says he would like "PCs, Internet and Skype to keep in touch with family and friends." A 25-year-old Kazak man detained in the Czech Republic says he needs computers and Internet "to have access to information."

[26] The highest percentages of detainees who say they do not have access to books have been interviewed in Malta and Spain.

Table 14: Activities that detainees prefer to have in the detention centre, insofar as the detention centre can "reasonably provide" for it

	Percentage
Activities	
Computers/Internet	17%
"Freedom"	14%
"Nothing"	13%
Entertainment, e.g. television/radio	12%
'Other' activities	12%
Sports	8%
Better living conditions	7%
Religious/spiritual	4%
Work	2%
Artistic/creative	1%

Second to that, 14 percent of detainees say that they want "freedom" as an activity, and 13 percent say that they want "nothing". These two responses are interesting in that they do not pertain to the question asked, and telling because they reveal a level of irrelevance – or absurdity – to the question asked of them. For these persons, no type of activity can alter their present situation of detention. "Freedom is the main priority", according to a 19-year-old Somali man detained in Malta. While it is obvious that the detention centre will not provide "freedom" as an activity, these detainees feel that there is nothing more that the centre could reasonably provide. "Even if they gave you 100,000 euros", says a 27-year-old Congolese woman detained in Belgium, "nothing could improve your life in here".

7.2.2. Disaggregated data findings

Variations in access to the activities described above do exist when the data is disaggregated for legal status, age and sex. Asylum seekers have more access to books and educational activities, while irregular migrants have more access to computers, Internet, the telephone and television. Minors say they have good access to books, but very low access to computers and Internet, educational activities and religious/spiritual space. But those aged 18 to 24 describe having little access to books, sports equipment and outdoor space. While those aged 25 to 34 years report good access to the telephone and television, detainees older than 45 years report having little access to it. In regards to sex, women say they have more access to books than men do; but men more frequently report having access to computers, Internet, telephone and television. Women have greater access to educational activities than men do. As shown here, it is evident that a disaggregation of the data shows no clear pattern as regards to who has access, or no access, to certain activities.

Concerning the activities that detainees would prefer to have, both asylum seekers and minors express a desire to have greater access to computers and the Internet. The latter also reports wanting more access to educational activities. Detainees older than 45 years more frequently report wanting "freedom" than all other age categories. Women aged 18 to 24 want more access to computers and Internet, while men and women aged 25 to 34 more frequently report wanting "freedom" and "nothing" than when compared to other groups by age and sex. Men aged 18 to 24 wish for more sports and educational activities. In general, the entire male sample expresses a desire to have more educational and religious/spiritual activities. Looking at duration of detention, whereas people detained for 121 to 150 days most frequently express wanting "freedom", those detained two to three months would like more access to computers and Internet.

7.3. Chapter summary

The primary rationale for inquiring to detainees about the provision of activities in the detention centre, and their level of participation, is to determine the extent to which detainees are permitted to engage in mental and physical pursuits within an environment where their freedom of movement is severely curtailed. Since detainees cannot leave the

detention centre – some for months – their ability and motivation to engage in any kind of activity might serve as a measure of what their level of vulnerability to the deteriorative effects of detention may be. Prolonged periods of inactivity may lead to a progressive deterioration of mental and physical capacities. Physical idleness may lead to fluctuations in weight, appetite and sleep patterns, and mental idleness may lead to increased stress, anxiety and depression.

On average detainees express that activities available and that they participate in them. The top two activities that detainees most frequently engage in are related to sports and entertainment, e.g. football and television watching. According to detainees' statements, detention centres seem reluctant to provide activities that would require the dedication of extra personnel, organisation or space. Among the findings presented in this chapter, the most notable show that

- *Activities can serve as an antidote to boredom and stress*. Prolonged inactivity is inherent within the situation of closed detention. Detainees have little to do unless the detention centre staff organises activities. According to detainees, the boredom they experience in detention increases the stress that they feel. In other cases, those who do not participate in any activities say that there is nothing the detention centre could provide that would distract them enough from the reality of detention.

- *Detainees aged 18 to 24 years, most notably women within that category, report high levels of inactivity*. As a whole, 18 to 24 year olds frequently say that the detention centre does not provide for activities; consequently they have the lowest rates of participation when compared to other age categories. Furthermore, many say that, in any case, the psychological stress they experience would prevent them from engaging in any activities. Almost half of women aged 18 to 24 say that the detention centre does not provide for activities, and almost half say that they do not participate in any activities that are provided. Detainees within this category frequently describe a disinterest in activities provided, and a physical inability to participate in them due to bodily "pain" or "feeling tired". They are also more unaware of the activities than when compared to males.

- *Detainees have greater access to sedentary and physical activities, but not to activities that would engage their mental capacities.* On average, activities that involve television, sports and outdoor space are more readily accessible to detainees than educational and religious/spiritual activities. Even books are not accessible to a significant minority of detainees.

- *Detainees either want to be able to connect with the outside world, or they want nothing at all.* When asked what activity they prefer to have, insofar as the detention centre could reasonably provide, detainees replied by requesting computers and Internet, "freedom" and "nothing". The irrelevance of the latter two responses reveals the inherent absurdity of the question that was asked – detainees would rather attend to their lives outside of the detention centre than worry about what the detention centre does, or does not, provide for.

- *Asylum seekers and minors report having little access to activities that would enable communication with the 'outside world'.* Compared with others, detainees within these two groups report little access to the Internet, telephone and television. The first two are important because asylum seekers, by the very nature of their legal situation and requisite need for information and assistance from others, might be at a disadvantage without access to activities that connect them to the 'outside world'. Minors might be made further vulnerable to the negative effects of detention if they are unable to access support on the outside.

8. LEVEL AND QUALITY OF MEDICAL CARE PROVIDED IN THE DETENTION CENTRE

8.1. Level of access to medical care

If 'safety' can act as a measure against 'vulnerability' in detention – at least in its most basic sense, as protection from harm – then the level and quality of medical care within the detention centre can serve to mitigate any damage that is done to a person's physical and mental integrity as a consequence of being in detention.[27] Detainees were asked to describe both the level and the quality of the medical care that they receive in the detention centre. Appropriate medical care may ensure that persons with pre-existing physical conditions, such as chronic hypertension, diabetes or viral diseases, can continue to receive unabated treatment. It can also treat physical conditions that arise as a consequence of detention, such as skin infections, gastro-intestinal problems and improper nutrition intake. Just as importantly, good medical care may ensure that persons with a history of psychological trauma are not neglected and made vulnerable to retraumatisation in detention.[28] Even persons with no prior history of trauma may experience severe mental health effects in detention if appropriate medical care is not provided for. The provision of medical care can act as a safety valve for detainees – as a way to identify signs of physical and mental deterioration, and as a way to minimise potential harm done to detainees.

8.1.1. Average data findings

Almost all of the detainees interviewed state that there is some type of medical staff within the detention centre. Well over half say that they meet with someone in the medical staff at least once per week, or as often as needed. Just under 20 percent of detainees say that they meet with the medical staff only once per month or even more infrequently. When asked what kind of medical staff is available, most detainees say that doctors, and to a slightly lesser extent nurses, are most accessible to them. But 87 percent say that psychological staff is not available in the detention centre. Most detainees report having had a medical exam upon arrival to the detention centre, and most agree that medical staff communicates in an understandable language. One quarter say they do not understand the language used by the medical staff, with almost half admitting a reliance on co-detainees for translation or interpretation assistance. A minority of these detainees say that they would want the services of professional interpreters or translators, and an even small number say that they would expect the staff to provide linguistic assistance.

The data shows that language, *per se*, emerges as an important factor in migrants' lives within the detention centre. A 26-year-old Eritrean man detained in Malta insists that having a translator would be "very important" for him, "to explain my problems … I can't do that in English or Maltese". "Nobody [of the medical staff] spoke to me", explains a 21-year-old Somali woman detained for more than nine months at the time of her interview, "There was no interpreter. I wish he [the interpreter] were there. I wish I [could] understand".

8.1.2. Disaggregated data findings

Irregular migrants more frequently report having access to doctors and psychological staff than asylum seekers do. Despite this, more asylum seekers say that they have had a medical exam upon arrival to the detention centre. Minors report the most frequent access to the medical staff when compared to other age categories. Nevertheless, 19 percent of minors say that they are unaware of the medical staff in the detention centre – nine percent more than the total sample average, and more than any other age category. "I've never seen a doctor while in here", admits a

[27] For the purpose of this report, "medical care" is defined to include general care, emergency and specialist care, and mental health care.
[28] For more on the risk of the retraumatisation of asylum seekers in detention see: Silove, McIntosh & Becke (1993). Risk of retraumatisation of asylum seekers in Australia. *Australia and New Zealand Journal of Psychiatry, 4*(27), 606-612.

16-year-old Nigerian boy detained in Bulgaria for three months at the time of his interview. Further, 46 percent of the minors interviewed say that they did not receive a medical exam upon arrival to the detention centre. This age group most frequently reports not being able to understand the language used by medical staff than when compared to all other age groups.

In general, women report having slightly more access to medical staff, especially doctors, than men do. But a specific look at women aged 18 to 24 reveals that they more frequently report being unaware of medical staff than when compared to other groups for age and sex. Overall, however, male detainees seem to fare slightly worse than females in regards to medical care. They report having less access to medical staff, and less report having had a medical exam upon arrival to the detention centre than when compared with women.

8.2. Quality of medical care in the detention centre

8.2.1. Average data findings

Approximately one-third of detainees say that the quality of medical care in the detention centre is poor – just over one quarter say the quality is good. A smaller percentage felt neutral, perceiving it as neither instrumental nor detrimental to their situation in detention. Detainees who feel negative about the state of medical care most often said that they possess medical needs that are left unattended. "Very poor. Only basic needs are attended", says a 27-year-old Iraqi man detained in Latvia.

> "The medical staff makes us pay for medicine. As a refugee, how can I pay? They offer only basic treatment … the doctors do not care about my situation."
>
> *Male, 26-years-old, Turkish illegally staying migrant detained in Lithuania*

A number of detainees say that they are only provided with pain relievers for all types of medical complaints. A Nigerian man detained in Malta says that the medical care is "worse than at home [Nigeria]. Only paracetamol[29] is given to us, for everything". A detainee in Spain laments that the medical care in his detention centre is "awful … because I need specific medical treatment and they give me downers instead". "Whatever problem we have", states a Moroccan man detained in Greece, "they give us a pain relief tablet". A number of detainees even say that the medicines that they receive are expired.

> "They give me the same pills for different problems"
>
> *Male, 25-years-old, Serbian asylum seeker detained in Hungary*

> "They give us drugs without giving its name (even for paracetamol). They always say 'it will pass, it's only stress.' I don't understand how they work. Not everything is stress … it's real."
>
> *Female, 24-years-old, Cameroonian rejected asylum seeker detained in Belgium*

[29] Paracetamol is a medication used to ease mild or moderate pain, such as headaches, sprains, toothaches or the symptoms of a cold. It can also be used to stabilise a fever for persons who have influenza. Source: http://www.nhs.uk/Conditions/Painkillers-paracetamol/Pages/Introduction.aspx

Up to 43 percent of detainees express a desire to receive additional medical services, including access to medical specialists such as dentists, gynaecologists, psychologists and cardiologists. The vast majority of detainees do not place blame upon the medical staff. Instead, 87 percent of those interviewed said that they would rather have greater access to medical care that would address their real needs: "something to cure my skin problems", "problems with my eyes", "a specialist in asthma", treatment for "hepatitis C", "more attention to my diabetes", "a psychologist", are examples of just some of the medical needs expressed by detainees.

8.2.2. Disaggregated data findings

There is little variation between asylum seekers and irregular migrants in regards to perceptions and opinions about the quality of medical care in the detention centre. There is more variation when the responses from 'rejected' asylum seekers and "Dublin II" asylum seekers are examined, and also when duration of detention is factored together with legal status. Concerning the first two, slightly more than one third within each say that the quality of medical care in the detention centre is poor. Standing alone, the findings from these two groups are already above the total sample average with regard to negative opinions of medical care.

Adding to that finding, the data shows that asylum seekers and irregular migrants who are detained for more than 90 days are far more negative about the quality of medical care in detention than when compared to other disaggregate groups by legal status. More than half of irregular migrants detained for more than 90 days feel that the quality of medical care is poor – more than any other group from within the entire data set. Strikingly, there is a large gap in the opinion of the medical care between asylum seekers and irregular migrants detained for more than 90 days, and those detained for less than 90 days (see table 16). These findings show that duration of detention can be major factor in the opinions asylum seekers' and irregular migrants' have of the quality of medical care.[30]

Table 16: Detainees' opinions on the quality of medical care within the detention centre, by legal status

	Good	Poor	Neutral
Average:	*28%*	*33%*	*19%*
Legal status			
Asylum seekers	29%	33%	19%
Illegal migrants	27%	32%	20%
"Dublin II" asylum seekers	11%	39%	31%
"Rejected" asylum seekers	17%	39%	23%
Asylum seekers detained for <90 days	24%	27%	22%
Asylum seekers detained for >90 days	36%	43%	15%
Illegal migrants detained for <90 days	31%	27%	22%
Illegal migrants detained for >90 days	13%	56%	14%

Discrepancies in the data set also appear when age is considered. Up to 44 percent of detainees aged 18 to 24 feel that the quality of medical care is poor – eleven percent more than the total sample average and more than all other age categories. Paradoxically, this group also more frequently feels positive about the quality of medical care. This contradiction can be explained when the time period of detention is considered: the mean duration of detention for 18 to 24 year olds who feel positive about medical care is 3.04 months; the mean duration of detention for those who

[30] Approximately half of sample of asylums seekers detained for >90 days were interviewed in Malta, where prolonged detention is frequent.

feel negative is 4.23 months.[31] Just over one quarter of women aged 18 to 24 feel that the medical care is good. But when this finding is compared to other groups by age and sex it shows that females of this age are the only group whose positive rating of medical care falls below the total sample average. In general, the percentage of detainees who feel negative about the quality of medical care increases until 25 to 34 years.

Table 17: Detainees' opinions on the quality of medical care in the detention centre, disaggregated by age

	Good	Poor	Neutral
Age (in years)			
10-17	32%	18%	11%
18-24	28%	27%	26%
25-34	25%	39%	17%
35-44	32%	32%	18%
45-64	31%	31%	20%

An examination of duration of detention independent from other variables reveals that people who were detained for 121 to 150 days at the time of their interview most frequently report that the quality of medical care is poor. Closely following this group are those who were detained for 91 to 120, and 61 to 90 days at the time of their interview, respectively. As with age, a trend emerges that depicts detainees' opinions of the quality of medical care becoming worse as the duration of their detention endures. The trend stops at the 121 to 150 day period, whereby detainees' reports decrease in their level of negativity. Importantly, this finding lends further support to the finding that duration of detention – across legal status and on its own – seems to factor highly in detainees' perceptions and opinions of the quality of medical care in the detention centre.

Table 18: Detainees' opinions on the quality of medical care within the detention centre, disaggregated by duration of detention

	Good	Poor	Neutral
Detention duration (in days)			
0-30	36%	34%	30%
31-60	39%	33%	28%
61-90	31%	45%	24%
91-120	39%	47%	14%
121-150	33%	48%	19%
151-180	44%	33%	22%

Half of the women aged 18 to 24 express a need for additional medical services. Women in this group describe the need to meet with medical specialists, such as gynaecologists and dentists. In fact, over 90 percent within this group say that they want to receive access to more appropriate medical care. Elsewhere, we find that detainees aged 45 to 64 and people detained for 121 to 150 days more frequently express a need for additional medical services than when compared to the total sample average.

> "I have a lot of prescriptions but I don't have the medicines."
>
> *Female, 22-years-old, Nigerian asylum seeker detained in Malta*

[31] Ironically, the highest percentages of respondents in both categories were interviewed in Malta.

> "I think I need special treatment for my headaches, which are sometimes so bad that I feel nauseous."
>
> *Female, 24-years-old, Guatemalan asylum seeker detained in Belgium*

8.3. Chapter summary

Detainees were asked about the level of medical care within the detention centre, and the resulting quality of care that they receive. The availability and quality of medical care within detention centres factors highly in the experiences that asylum seekers and illegally staying migrants have in detention. The experiences JRS has had with accompanying detainees in Europe has shown that many people enter detention with pre-existing medical conditions, or, the imposition of detention itself leads to the onset of previously inexperienced conditions. In other cases, detention exacerbates long dormant medical conditions such as those related to mental trauma. The restriction of detainees to a confined space thus forces them to be dependent on the medical services provided by the detention centre itself. Their inability to select appropriate medical care for themselves is severely curtailed, leaving them with a stark choice: accept whatever medical care the detention centre provides irrespective of its quality, or live without medical care irrespective of one's medical needs. Among the major findings presented in this chapter are:

- *In general, detention centres are only able to provide very basic medical care to detainees, irrespective of their medical needs*. On average, detainees say they have access to doctors and nurses, and that they have access to basic medical care whenever they need it. Most do not have access to medical specialists such as psychologists, gynaecologists and dentists. In cases where detainees need specialised treatment, detention centres may transport them to medical providers in the outside world. But even for this detainees often say that the response time of the detention centre staff to their needs is inadequate.

- *Language is a major factor in detainees' ability to access medical care*. Detainees who need linguistic assistance often rely on co-detainees for help. But according to those who were interviewed, medical staff within the detention centres where DEVAS was implemented are generally unable to provide services in languages that detainees might understand. According to detainees, professional interpreters and translators are not made regularly available.

- *Young detainees frequently report dissatisfaction with the medical care in the detention centre*. When compared to the total sample average, minors more frequently report to be unaware of the medical staff, go without a medical exam upon first arrival to the detention centre and are unable to understand the language used by the medical staff. Half of the women aged 18 to 24 report a need for additional medical services, and over 90 percent say that they need better medical care.

- *According to detainees, the quality of the medical care provided within detention centres is poor*. Even the provision of basic medical care does not meet the needs that detainees report to have. A large number of detainees say that they receive pain-reducing medication, such as paracetamol, for whatever medical problem they report. In some cases even this medication is found to be expired and thus inadequate for use.

- *The duration of detention is a major factor in detainees' opinions of the medical care within the detention centre*. Asylum seekers and irregular migrants who were detained for more than 90 days at the time of their interview report greater dissatisfaction at the provision of medical care within their

detention centre than when compared with those detained for less than 90 days. People who were detained for up to five months at the time of their interview are more negative about the state of medical care within the detention centre than when compare to other detainees by duration of detention. Detainees who feel negative about the medical care are detained on average for one and a half months longer than detainees who feel positive about the medical care.

9. PHYSICAL HEALTH WITHIN THE DETENTION CENTRE

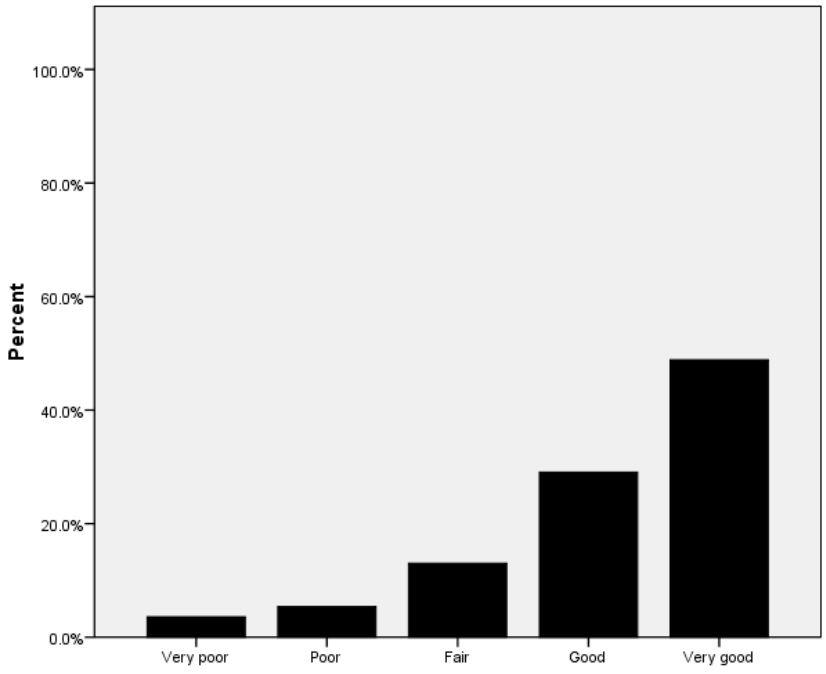
9.1. Detention impact on physical health

Detainees were asked to rate their level of physical health before and during detention, using a scale of one to ten, with one being "very poor" and ten being "very good". They were also asked if detention has had an impact on their physical health, and if so, to describe this impact. The purpose of this questioning was to assess the extent to which detainees possess pre-existing special needs or vulnerabilities, and to assess the extent to which detention might impact a person without any pre-existing conditions. If safety is an antidote to vulnerability, and if medical care serves to limit one's level of vulnerability, then 'physical health' can serve as an indication of what one's level of vulnerability may actually be. People who enter into detention with weak physical health may be especially vulnerable to the environment of detention, particularly if the living conditions are poor. But even persons who enter into detention with relatively normal or strong physical health may *become* vulnerable as a consequence of detention, particularly if the level of medical care is poor, or if they experience too much psychological stress, or if the hygienic and sanitation conditions are lacking. Poor physical health can serve as a strong precursor to vulnerability, as someone who is physically weak becomes susceptible to further degradation in body and also in mind.

9.1.1. Average data findings

Only nine percent of the detainees that were interviewed said that their physical health prior to detention was "poor" (see chart 2). Almost half of the total sample said that their physical health was "very good" before detention. Taken together, 78 percent of those who were interviewed said that their physical health was "good" before they were detained.

Chart 2: Detainees' physical health prior to detention

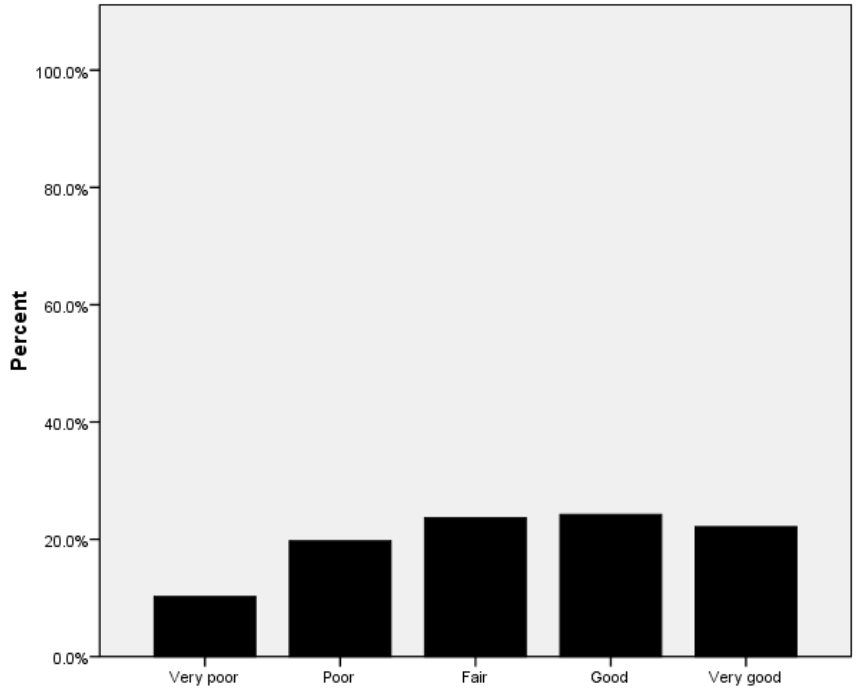


Detainees present a far different picture of their physical health during detention (see chart 3). Almost one-third describes their physical health as “poor” in detention – 21 percentage points more than what it was before detention. About one quarter say their physical health is “very good” in detention, a marked decrease from their description of their physical health before detention.

More than half admit that detention has impacted their physical health. Among this group, 67 percent say that the impact has been negative. Most detainees relate their physical problems to the living conditions in the detention centre. “Its cold here, “ says a 17-year-old Guinean boy waiting for a “Dublin transfer” in a Belgian detention centre: “I have problems with my skin. I’m spending all night rubbing my skin.” A 60-year-old Ukrainian woman detained in the Czech Republic blames her physical ailments on the conditions of confinement. “That is why I am ill”, she says, and reports having “higher blood pressure” as a result of prolonged immobility.

The simple lack of fresh air, due to prolonged periods of stay within the interior of the detention centre, brings negative consequences to detainees’ state of physical health. “I have difficulty breathing”, explains a 24-year-old Afghani asylum seeker detained in Greece, “I take medication but I need fresh air, and here we do not go out at all. Sometimes I cannot breathe at all.” Many other detainees complain about the quality of the food in the detention centre. As a result, a number say they eat very little. The psychological stress of detention, according to detainees, often impedes their ability to eat.

Chart 3: Detainees’ physical health during detention



Approximately one-third of detainees attribute their poor state of physical health is to the psychological stress they experience in detention. Detainees frequently describe being “nervous” and having “headaches” as a result of stress, or as they call it: “thinking too much”. This is a recurring theme in detainees’ statements. A 19-year-old Palestinian woman detained in Greece says that she has asthma, and when she gets nervous the asthma “becomes worse.” Detainees with pre-existing medical conditions often report that their situation worsens as a result of detention, due to living conditions or psychological stress, but also due to the lack of appropriate medical treatment.

> "In detention, the pain started to come because of the stress. The old pain started to come all over my body. My heart, the stress, my head and the pain: that is my illness. I'm too stressed. There is too much pressure so I have to calm down."
>
> *20-year-old male Sierra Leonean asylum seeker detained in Belgium*

Only 10 percent describe the impact detention has on their physical health as positive. Some of these persons have migrated under very difficult circumstances, and thus view detention as a respite from the hardships they suffered on the way to Europe. A 22-year-old Somali woman who came to Malta to seek asylum says, "After the journey we all were in bad shape. Now my health is good." In other cases detainees' lives prior to detention were problematic, and being in the detention centre has allowed them to receive treatment for alcoholism and drug use, for example. "Before I was in prison [the detention centre] I drank a lot of alcohol", explains a 48-year-old Algerian man detained in Portugal, "…now I stopped everything." Other detainees said that being in the detention centre at least provides them with a shelter, regular meals and a bed.

9.1.2. Disaggregated data findings

People who were detained for 121 to 150 days at the time of their interview report some of the most negative findings in regards to physical health and detention. Only ten percent within this group describe their physical health as "poor" prior to detention, with 66 percent saying that it was "good". But when asked about their level of physical health during detention, 72 percent say that it is "poor" – 62 percentage points more than what it was before detention. Eighty five percent said that detention impacts their physical health, and within that group, almost everyone says that the impact is negative. Weight loss, anxiety, stress and the poor living conditions of the detention centre make up a large part of their complaints. The lack of fresh air within the detention centre comes up again: "Bad air, no ventilation … blood coming out of my mouth when I wake. Doctors give me medication but it has no effect because I am locked in a place without air", says a 27-year-old Liberian man detained in Sweden for 148 days at the time of his interview.

In general, the data clearly shows that percentage of detainees who describe their physical health in detention has "poor" increases as the length of detention endures (see table 19). This trend abruptly stops at the 121 to 150 day period. Similarly, the data indicates that the percentage of detainees who feel that detention has negatively impacted their physical health increases as detention length endures (see table 20).

Table 19: Percentage of detainees who describe their physical health in the detention centre as "poor", by number of days in detention

	Percentage (Total sample average: 30%)
Days in detention	
0-30	25%
31-60	28%
61-90	25%
91-120	41%
121-150	72%
151-180	26%

A broader examination of physical health and duration of detention shows irregular migrants and asylum seekers detained for more than 90 days more frequently describe their current physical health as "poor" than when compared

to the total sample average. These two groups also more frequently say that detention has negatively impacted their physical health than when compared to the average. In particular, just over half of the asylum seekers within this category attribute the negative impact of detention on their physical health to the existing living conditions.

Table 20: Percentage of detainees who feel that detention has negatively impacted their physical health, by number of days spent in detention

	Percentage (Total sample average: 67%)
Days in detention	
0-30	67%
31-60	57%
61-90	80%
91-120	76%
121-150	93%
151-180	57%

Besides duration of detention, age may be a factor in how detainees' physical health might be impacted by detention. The data shows that the percentage of detainees who report that detention has negatively impacted their physical health decreases as they become older (see table 21). Minors are the only age group where most feel that detention has not impacted their physical health. Nevertheless, for those minors who do admit such an impact, 71 percent say it has been negative. Elsewhere, 73 percent of women aged 18 to 24 say that the impact of detention on their physical health has been negative. Almost one-third within this group attributes the negative impact to the lack of appropriate medical care in the detention centre.

Table 21: Percentage of detainees who report that detention negatively impacts their physical health, by age

	Percentage (Total sample average: 67%)
Age	
10-17	71%
18-24	67%
25-34	69%
35-44	62%
45-64	65%

9.2. Chapter summary

Detainees were asked to describe their level of physical health before and during detention. The purpose for this line of questioning was to determine the extent to which detention impacts people who have pre-existing medical conditions, and also people that enter into detention relatively healthy. In this context, 'physical health' is used as an indicator to assess one's actual – or potential – level of vulnerability at its commonly recognised form: that of physical weakness. The findings from this chapter include:

- *Detention harms otherwise physically healthy people*. The vast majority of detainees describe their level of physical health prior to detention as being "good". But far fewer detainees answered in the same way when asked to describe their physical health while in detention. Although a number of detainees in the sample possess pre-existing conditions, such as asthma, chronic pain or medical illnesses, most say that they entered detention with generally good physical health. Adding to this, a majority of detainees say that detention has a negative impact on their physical health.

- *A variety of conditions affect detainees' physical health.* Many attribute the negative impact to the living conditions, such as the lack of fresh air or the mere confinement to one location. Others attribute the impact to the psychological stress they experience in detention, leading to a reduced appetite and higher blood pressure, among others. Yet in other cases detainees say that the restrictive nature of detention actually helps overcome pre-existing problems such as alcoholism, drug addiction, or even homelessness. However these findings are very much the exception.

- *Physical health deteriorates as detention endures.* Whereas one quarter of detainees detained for 0 to 30 days describe their physical health as being poor, 72 percent of people detained for 121 to 150 days describe it in this way. The data indicates a steady upward trend of physical health becoming worse as the length of detention endures. The same finding applies to those who feel that detention has negatively impacted their physical health.

- *Younger detainees suffer more negative consequences than older detainees*. The percentage of detainees who report negative physical health impacts in detention decrease as the sample becomes older. Moreover, the numbers indicate that minors and women aged 18 to 24 more frequently experience negative physical health consequences than when compared to other detainees.

10. MENTAL HEALTH WITHIN THE DETENTION CENTRE

10.1. Detention's impact on mental health

Detainees were asked to describe their mental health in the same way as they did for physical health: by rating their level of mental health before and during detention on a scale of one to ten, with one being "very poor" and ten being "very good". They were additionally asked if detention impacted their mental health, and if so, to describe the manner of the impact. The purpose of this questioning was to determine the extent to which detention affects the mental integrity of the person, since vulnerability is relevant not only within the context of physical weakness, but mental weakness as well. Persons with pre-existing mental health conditions, such as post-traumatic stress disorder, may find it very difficult to cope with the environment of detention. The risk of retraumatisation runs high since many detention centres have a 'prison-like' atmosphere where a number of adversities exist. Yet just as with physical health, people with otherwise normal or strong mental health may suffer as a consequence of detention. This may be especially true if there is a lack of mental health services, or if the person is in prolonged detention and does not receive sufficient information or social support. While vulnerabilities in physical health may be easy to identify and treat, vulnerabilities in mental health are harder to identify, monitor and treat because they so often pass unnoticed to untrained observers.

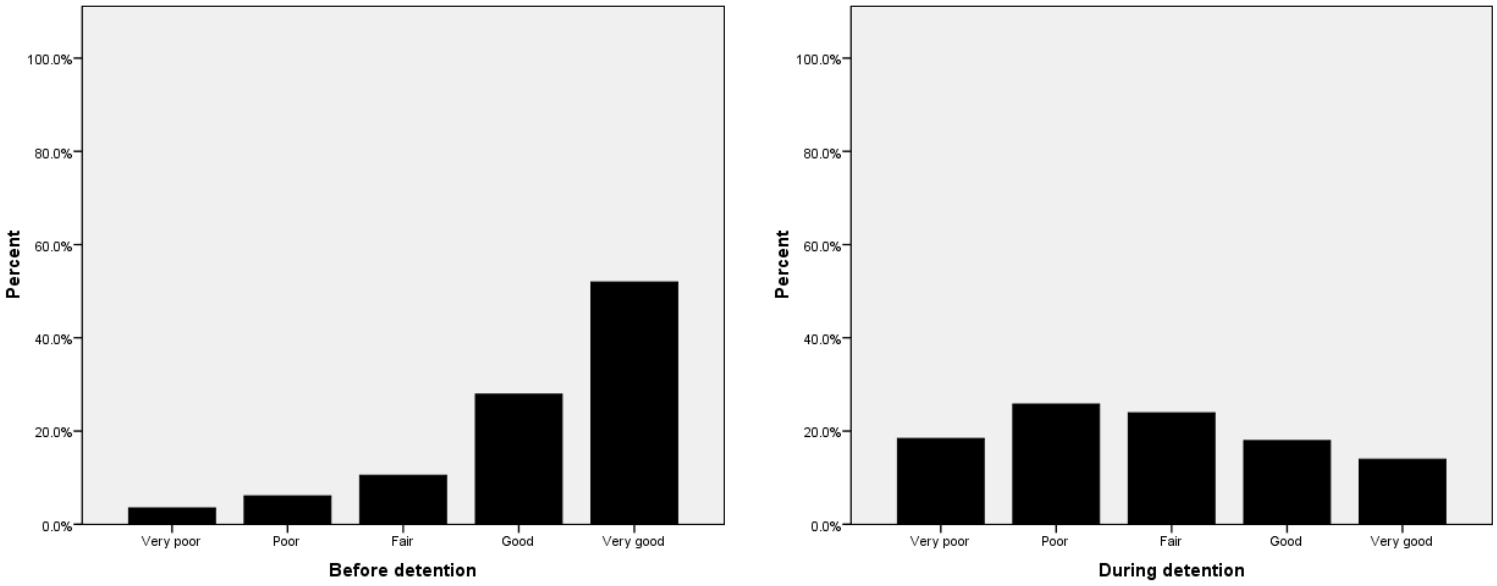
10.1.1. Average data findings

The vast majority of detainees describe their mental health prior to detention as being "good". However, most say that their mental health is "poor" while in detention. The data shows a 34-point increase in the percentage of detainees who feel that their mental health is poorer in detention than what it was before. In addition, it shows a 48-point decrease in the percentage of detainees who feel that their mental health is better in detention than it was before (see charts 4 and 5). An overwhelming majority of detainees said that detention has impacted their state of mental health, largely in a very negative manner.

Detainees describe the mental health impact of detention in a variety of ways. Grouped together, their statements reveal the impact detention has on their mental health in five ways: firstly, as a consequence of detention itself; secondly, the living conditions; thirdly, psychological stress; fourthly, medical problems; and fifthly, past trauma and the expectation of difficulties in the future. Almost half of detainees' statements that are attributed to the first

category, 'detention itself', describe various "unspecific factors" that are present within their experience in detention. In other words, most of the detainees in the sample were unable to articulate the specific reasons why detention negatively impacts their mental health. A 35-year-old Nigerian asylum seeker, for example, describes the "great shock" that he experienced upon his detainment in Cyprus. According to him, "being brought to prison was unexpected." When asked to describe how detention impacts his mental health, a 38-year-old Ukrainian asylum seeker detained in the Czech Republic can only say "it is very hard to stay in here." Many others describe being fearful because they have never before experienced detention. "It is my first time in a prison", says a Palestinian woman detained in Greece, "so it is difficult." Detainees frequently describe their detention centre as a "prison", and attribute the mental health impacts they feel to being kept within a confined space with little indication of when they might be released. "I am locked in – that is the problem", says an Azerbaijani woman detained in Sweden. A 34-year-old Cuban man detained in Slovenia explains, "I am not used to being locked in." Regardless of their legal situation, detainees perceive their situation as one of punishment, and as such they do not understand the reasons for their detainment.

Chart 4 and 5: Mental health in detention, before and during



A number of detainees explain that their poor state of mental health in detention comes as a result of being disconnected from friends, family and other sources of support in the outside world. "I'm in a cage, it is hurting me", said a Ukrainian man detained in the Czech Republic, "The telephone is not enough to keep in touch. I feel like crying sometimes." Others feel that detention has disrupted their life plans, and there are those who feel that the imposition of detention has severely eroded their human rights. "I am not a criminal, but I am in a prison," says a Nigerian man detained in Hungary, "I have nothing to do for the whole day. It is horrible." Anger is palpable among the detainees that were interviewed – anger at the perceived injustice of their situation, and anger at their perceived powerlessness.

> "I miss my children and wife. The biggest problem is not being able to communicate with them. I do not know if they are alive or dead."
>
> *46-year-old male Somali asylum seeker detained in Malta for 167 days*

Almost one third of detainees' descriptions about the impact detention has on their mental health can be attributed to stress. But just as they are unable to articulately specify which aspects of detention impact their mental health, detainees in this group are mostly unable to pinpoint the reasons why they feel stressed in detention. They described feeling severe "tension" as a result of "thinking too much". The psychological stress makes many feel "tired", "sad" and "nervous". Others express deep self-worry and self-uncertainty. "I don't know what will happen", says a 36-year-old man from Gabon seeking asylum in Belgium, "if they accept me or send me back. My life is in danger."

A significant minority of detainees attributed the mental health impact they experience in detention to psychological issues. Detainees express this impact by describing the trauma of their journeys, or the trauma they experience as a result of being separated from family. "Every day it hurts", says a Rwandan asylum seeker detained in Belgium, "...I have been threatened. I have dreamt a lot about members of my family who died." A woman detained in Ireland says, "I suffered depression in Zimbabwe, but it is worse now since I've been in prison." Sadness, irritability, anger, and despair are some of the most prevalent emotions that are described by detainees. Mental tension, sleeplessness and appetite loss are among the more frequent ways in which detainees link their mental state to their physical condition.

A smaller, but no less significant, number of detainees express anxiety at the prospect of being returned to their country of origin. "Tension has made my pain much worse," says a 47-year-old Palestinian man detained in Sweden, "I sometimes cry, feel pain when I think about my problems, if they send me back to Palestine." A 38-year-old Ukrainian asylum seeker retells of the difficult position he now faces while detained in the Czech Republic: "It may happen that I will be deported back to Ukraine, where I cannot go. It's very dangerous for me there. I'm a political refugee. To go back to Ukraine where I think they could kill me – these are very hard thoughts." For some detainees, the shock of being put into detention has displaced the expectations they had of seeking safe haven in Europe. "I was very happy to arrive in Europe," says a Somali woman detained in Malta, "but then I was put into detention and after all the months here I received a rejection. I am very depressed. Sometimes I just cry and cry the whole day."

10.1.2. Disaggregated data findings

Detainees aged 18 to 24 most frequently describe themselves as having poor mental health in detention. But the data indicates that minors more frequently express negative mental health problems as a consequence of detention than when compared with other age groups. Almost everyone in this group say that detention impacts their mental health, and among those, approximately half say that the most negative impacts of detention come as a result of detention itself. Compared with other ages, this group of detainees more frequently reports experiencing tension, stress, worry and self-uncertainty. In addition, they often attribute the mental health consequences of detention to being disconnected from the outside world, and to the disruption detention imposes on their life plan.

Alongside age, the data shows that duration of detention is a factor in how detainees mentally cope with being in detention. The entire group of persons detained for 121 to 150 days at the time of their interview say that detention has negatively impacted their mental health. From that group, 71 percent attribute the impact to detention itself – at a rate of approximately two times more than the average detainee. As found in the average findings, detainees within this category are frequently unable to articulate exactly how detention impacts their mental health. The same can be said for stress: over half attribute the mental health impact to "stress", but in many ways they are unable to pinpoint the most stressful aspects of detention. Those who are able to provide more descriptive responses frequently point to the self-uncertainty they experience as a result of not having enough information, or being unaware of when they will be released or how their family is coping on the outside.

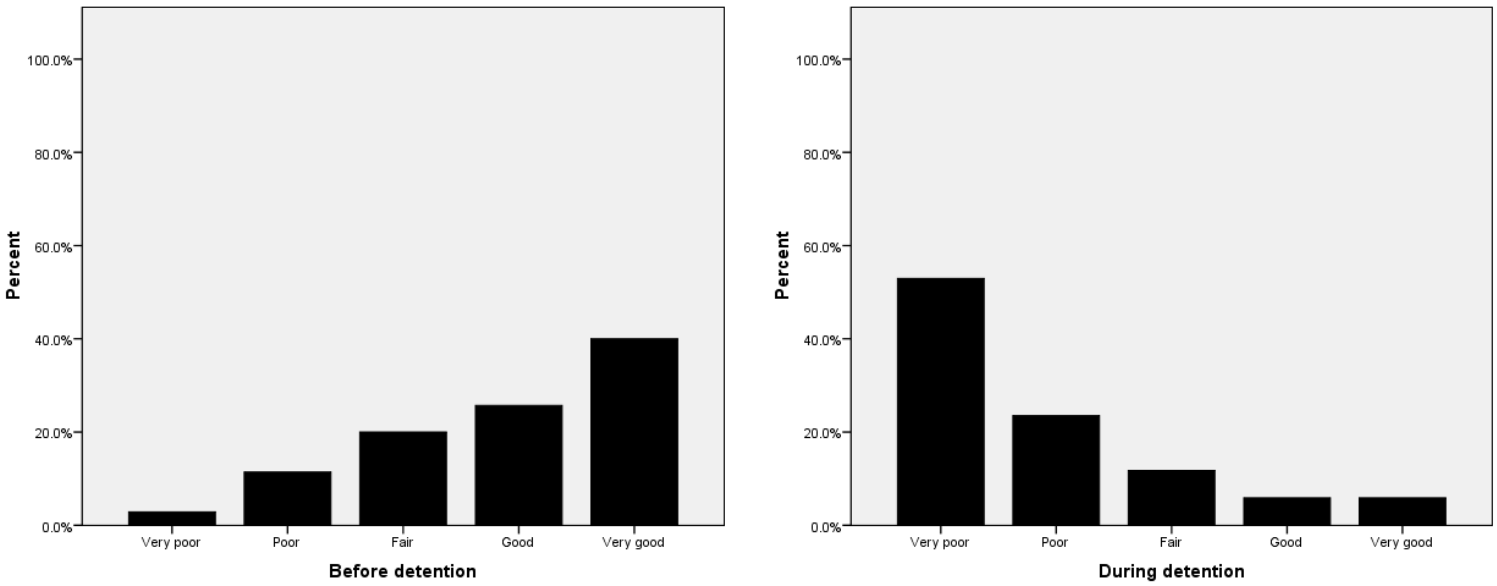
Besides the general atmosphere of detention itself, all of the detainees within this group point to the inadequate state of the living conditions in the detention centre as a reason for their poor mental health. In this case detainees frequently complain about the poor quality of the food, the unseemliness of the detention centre, the difficulties in

cohabitating with other detainees and the relations with detention centre staff. The negative responses made by persons within this category reflect the general trend shown by the data: that mental health of detainees worsens as the length of detention endures.

The data does not indicate a significant departure from the average for detained asylum seekers and irregular migrants. Detainees in these two categories respond in ways that reflect their respective situations: asylum seekers appear to experience general shock at their detention, and difficulty coping with the trauma that gave way to their flight to Europe; irregular migrants seem to be more worried about what might happen to them upon deportation, and what will become of their lives once they return to their country of origin. But the data shows that detention has a significant impact on the mental health of asylum seekers in the so-called "Dublin II" procedure, and of asylum seekers whose application has been rejected. In the case of "Dublin II" asylum seekers, 77 percent describe their mental health as being poor while in detention – 33 percent more than the total sample average. Just over half of the "rejected" asylum seekers who were interviewed describe their mental health as poor while in detention, and 95 percent say that detention has impacted their mental health. Compared to other groups, "Dublin II" and "rejected" asylum seekers appear to suffer the worst mental health impacts in detention.

The numbers indicate a 63-percentage point increase in the number of "Dublin II" asylum seekers who report poor mental health before and during detention (see charts 6 and 7). Asylum seekers in this category attribute the mental health impact of detention mostly to the stress of uncertainty, and to stress as a result of worry. "I don't want to leave Sweden," says a 30-year-old woman detained in Sweden, "I don't want to go to Germany or Kosovo. There are soldiers shooting in Kosovo. It is not good for me or my daughter." Rejected asylum seekers experience similar mental health impacts, but with an extra burden: that of failure. A 27-year-old Rwandan woman in detention frames her rejection as a "terrible failure". "I don't expect things to get better", she says. An Afghani man fears the "terrible things" which "await" for him in Afghanistan. Persons within this category frequently talk about their need for anti-depressant medication, their inability to sleep and the anxiety that is the consequence of an uncertain future. A few even admit harbouring thoughts of self-harm.

Chart 6 and 7: Mental health in detention for "Dublin II" asylum seekers, before and during



Detainees were asked to rate their level of mental health before and during detention on a scale of one (very poor) to ten (very good). They were also asked if detention has had an impact on their level of mental health, and if so, to describe the impact. While physical health may be a more obvious indicator of vulnerability, the ability of an asylum

seeker or irregular migrant to mentally cope with their situation of confinement becomes all the more apparent. The traumatic pasts and uncertain futures of many of the detainees who were interviewed reveal the fragility of their mental health, and their vulnerability to further mental harm. But the data also shows that detention weakens persons who might otherwise have normal or strong mental health. The findings within this chapter inform us that

- *Detention negatively impacts the mental health of detainees*. When asked to rate their mental health prior to and during detention, the average findings show that a high percentage of detainees report poor mental health as a result of their detainment.

- *Detention is itself a primary determinant factor in the negative mental health impacts described by detainees*. Many detainees were unable to specifically articulate the reasons why they feel their mental health is negatively affected in detention. Instead, they more frequently described being "shocked", "fearful" and "depressed" at their situation.

- *Psychological stress comes not only from detention itself, but also as a consequence of poor living conditions, self-uncertainty and isolation from the outside world*. Detainees' inability to establish a perspective of their future, due to a lack of information and disconnection from the outside world, places a great deal of psychological stress upon their shoulders. This stress often leads to deeper anxiety and depression.

- *Prolonged detention compounds the adverse mental health consequences of detention – but newly arrived detainees suffer just as much.* The figures show that mental health steadily worsens as detention endures. But the differences in mental health impacts between detainees in the first month of detention and those in their fourth or fifth month of detention are not wide.

- *Age and legal status are two important factors for how detainees mentally cope with detention at a personal level.* Minors and persons 18 to 24 frequently report adverse mental health impacts as a result of their detention. Asylum seekers express mental shock at being detained, while irregular migrants express anxiety and uncertainty about what may happen to them once they are expelled. A high percentage of asylum seekers in "Dublin II" detention and those with rejected applications experience very adverse mental health impacts as a result of their detention.

11. SOCIAL INTERACTION WITHIN THE DETENTION CENTRE

11.1. Level and quality of interaction among detainees and with staff

Detainees were asked to describe the level and quality of their social interaction with co-detainees and with staff. Being isolated from the outside world means that detainees exclusively rely on the social environment within the detention centre to have their needs met. As a consequence, detainees are subject to the prejudices of co-detainees and staff. Detainees whose culture and ethnicity are widely accepted within the detention centre may find that social interaction improves their ability to cope with the adverse impacts of detention. Those who are not accepted, or those who find themselves in the minority within the detention centre, may find that social interaction only exacerbates the difficulties they face and thus make them more vulnerable to physical and mental harm. Vulnerability, therefore, might be viewed as a condition that is affected by personal and social circumstances: detainees can be either supported by persons in their social network, or they can be further weakened by the lack of support or by additional adversities imposed by the persons within their social network.

11.1.1. Average data findings

Few detainees say that their interaction with others is negative. Most report positive, or at least satisfactory, social experiences in detention. The majority of detainees who say that they interact well with others do not elaborate except to say that it is "good", or "fine" or "without any problem". A minority of detainees say that their linguistic capacities are a reason for the positive level of social interaction that they experience. Detainees who report negative social experiences also tend not to elaborate upon the reasons. But a small number point to inter-cultural and linguistic differences. Some describe not having good relations with persons of particular nationalities, while others describe the difficulty of having to interact with people who speak different languages.

Approximately one-third of detainees say that social problems exist within the detention centre. Most attribute the problems to inter-cultural tension, while a significant minority say that problems arise simply as a consequence of detaining a large group of people in one location. One person describes detention as a "bad place for everyone". Other detainees tell of problems that arise out of "trivial" matters, or out of competition for services that are insufficiently provided for, such as telephones and televisions. Problems that arise between men and women, or between groups of particular religions, are reported in only very few cases. Whenever a problem arises, most detainees say that they feel that they can go to the detention centre staff. But almost one-third says that they would rather take up their problems with co-detainees.

11.1.2. Disaggregated data findings

The level and quality of social interaction does not greatly differ among the different groups within the total sample. Smaller, but no less significant, variances arise when age is factored. Minors, for example, are among the most positive in their description of social interaction with others. However, almost half say that they do not have someone to go to whenever a problem arises. Approximately half of women aged 18 to 24 say the same. According to them, if they were willing to speak with anyone it would most likely be the medical staff within the detention centre.

The data shows that, in general, social interaction becomes more negative as the length of detention endures (see table 22). According to the findings, people who are within the first month of their detention more frequently report positive social interaction than those who are in their third or fourth month of detention. Similarly, people who are in their fourth or fifth month of detention more frequently report having been witness to problems between detainees than those detained for only one month. Those in their fourth month of detention more frequently attribute these problems to 'common life' in detention, and also inter-cultural tension, than when compared to newly arrived detainees.

A broader look at duration of detention reveals that asylum seekers who were detained for more than 90 days at the time of their interview more frequently report problems between detainees and that they do not have someone to go to in case of a problem, than when compared to asylum seekers detained for less than 90 days. This finding holds true when irregular migrants are considered.

Table 22: Percentage of detainees who say that problems exist between detainees, by duration of detention

	Percentage (Total sample average: 37%)
Days in detention	
0-30	30%
31-60	37%
61-90	44%
91-120	35%
121-150	45%
151-180	40%

11.2. Chapter summary

The isolation from the outside world that is imposed on persons as a result of being in a closed detention centre means that detainees must rely on the social network within the detention centre in order for their needs to be met. As a consequence, detainees are subject to the attitudes and prejudices of co-detainees and of staff. An ability to function within the social network may enable a detainee to better cope with the adverse affects of detention. Alternatively, isolation from the social network may further exacerbate the negative aspects of detention, and may thus make the detainee more vulnerable to physical or mental harm. Thus we see that vulnerability carries social, as well as personal, consequences. The findings from this chapter tell us that

- *The environment of detention has a negative impact on the level and quality of social interaction, between detainees and between detainees and staff.* The mix of cultures, nationalities and languages within detention centres makes conflict inevitable. The data shows that the longer people are detained, the more frequently they describe social interaction within the centre in negative terms.

- *The presence or absence of language capacity within detainees plays an important role in the quality of social interaction.* Detainees with language skills more readily adapt to the different types of people they are in detention with. Alternative, the absence of such skills fosters isolation, or opens particular detainees to abuse from more dominant social groups.

- *Young detainees are especially susceptible to social relations within the detention centre.* Minors and persons aged 18 to 24 more frequently report having witnessed problems between detainees than other age groups. Additionally, they more frequently report not having someone to go to in case of a problem.

12. COMMUNICATION WITH THE OUTSIDE WORLD

12.1. Ability to communicate with the 'outside' and personal visits in the detention centre

Detainees were asked about the presence of family and friends in their country of origin, and in the country where they are present (at the time of the interview). They were also asked to describe which means they normally use to contact persons on the outside, and the extent to which they receive visitors from the outside. Since detainees are especially subject to the social environment within the detention centre, it is important to assess the extent to which they are able to access social networks that exist outside of the detention centre. Access to external resources could enable detainees to receive information about their legal situations, to stay in contact with family, relatives and friends and to receive social assistance that might not be available within the detention centre. The inability to access these and other resources on the outside might further exacerbate one's vulnerability the negative consequences of detention.

12.1.1. Average data findings

Most detainees report having family in their country of origin, and just over half admit that their family back home are sufficiently supporting themselves. But slightly more than one-third of detainees say that their family back home depends on them for income, and are thus not receiving support as a result of the person's detention. The migration to Europe has been a lonely endeavour for many within the sample: 42 percent say that they do not have family or friends in the EU host country where they were interviewed. The telephone remains the most widely used means of communication for detainees. But only two percent say that they regularly use the Internet.[32] Likewise, detainees

[32] 50 percent of this group were interviewed in Sweden, where Internet access is made available to detainees.

hardly use the post as a means of communication with the outside world.[33] Almost 80 percent of those interviewed said that they do not receive visits from persons in the outside world.

According to the majority of detainees, the telephone remains the most important means of communication. But many detainees say that they cannot use their personal mobile telephones. Detention centre staff often requires, as a policy, detainees to relinquish such devices. The alternative for most, then, is to use landline public telephones within the detention centre or to purchase telephone cards from the detention centre staff.[34] While telephones may be technically available, detainees say there are not enough to satisfy the needs of everyone. As a consequence they consider themselves to have little access to it. Alongside the telephone, an important minority of detainees said that they see the Internet as the most important means of communication. But the vast majority of detainees who would like the Internet do not have access to it. In the end, the data indicates that almost half of the entire DEVAS sample say that they do not have access to their preferred means of communication.

The number of visitors that detainees report to receive does not make up for detainees' lack of access to the telephone and Internet. In general, detainees who do claim to receive visitors are in the minority. Those who are the exception more frequently report receiving visits from friends and religious/spiritual persons than from family. Half of the entire sample reports to receive visits from lawyers.[35] Similarly, almost half of the sample report to receive visits from non-governmental organisations.

12.1.2. Disaggregate data findings

A comparison between asylum seekers and irregular migrants in detention reveals few yet striking differences. If isolation were to be defined in terms of the presence of a social network outside of the detention centre, then the data shows that asylum seekers seem to be affected (see table 23). They less frequently report having family or friends in the host country, and as a result they do not receive nearly as many visitors as irregular migrants do. In particular, asylum seekers in detention while awaiting a "Dublin II" transfer are more isolated than irregular migrants, and even more isolated than asylum seekers with rejected applications.

Table 23: Personal visits to asylum seekers and irregular migrants in detention

	Asylum seekers		Irregular migrants	
	Yes	No	Yes	No
Friends/family in the host country	47%	53%	69%	31%
Use of personal visitations as a means of communication	12%	88%	29%	71%
Visits from family	9%	87%	23%	75%
Visits from friends	20%	76%	40%	58%

Minors are shown to be especially isolated from the outside world. Half of the persons interviewed in this age group report not having family or friends in the host country, and almost half say that they do not have familial connections in their country of origin. Up to 83 percent say that they do not receive any personal visitors; and 68 percent report not having access to their preferred means of communication (the telephone). Only 23 percent within this age group say that they receive visits from lawyers – approximately one quarter less than the total sample average, and lower than when compared to other age groups. Looking to the next age group, women between 18 and 24 years also show to be isolated from the outside world. Almost half report not having family or friends in the host country, and

[33] 20 percent of this group was interviewed in the Czech Republic.
[34] All detention centres surveyed in this study prohibit detainees from using their personal mobile telephones. Sweden, for example, offers detainees replacement mobile telephones, as a policy, from the staff. Detainees must still purchase telephone cards in order to make calls.
[35] Belgium, the Czech Republic, Germany, Slovakia and Sweden contain the highest concentration of detainees who report to receive visitations by lawyers.

just over one third say they do not have family in their country of origin. Sixty percent say they cannot access their preferred means of communication (the telephone).

The isolation of the younger detainees in the sample reflects a trend in the data: isolation from the outside world decreases as detainees become older (see table 24). Although a number of these detainees were interviewed in Malta and in Greece, it is worth noting that particularly isolated detainees are found in over half of the 21 EU Member States where the DEVAS project was implemented.[36]

Table 24: Percentage of detainees with access to family, friends and lawyers, by age

	Family in country of origin (Average: 78%)	**Family/friends in host country** (Average: 59%)	**Visits by family** (Average: 16%)	**Visits by friends** (Average: 30%)	**Visits by lawyers** (Average: 47%)
Age (in years)					
10-17	59%	50%	12%	23%	23%
18-24	79%	46%	13%	24%	51%
25-34	81%	63%	19%	32%	51%
35-44	82%	69%	18%	37%	51%
45-64	64%	62%	19%	39%	65%

The data does not demonstrate a similar trend in regards to duration of detention. If isolation were to be defined by the lack of access to family and friends, and even lawyers, then a person in their fifth month of detention may be just as isolated as someone in their first week. Yet the data does reflect some discrepancies between averages found in the entire sample, and averages found in groups of asylum seekers and irregular migrants detained for more than 90 days. In particular, asylum seekers and irregular migrants detained for more than 90 days report to receive much fewer visits from friends and family than the average. Asylum seekers within the same category more frequently report not having access to their preferred means of communication – the telephone – than when compared to the average and even to irregular migrants detained for the same length. Adding the factor of duration of detention to the category of detained asylum seekers shows that they are a rather isolated group, in terms of their lack of access to a social network existing outside of the detention centre.

12.2. Chapter summary

If the restrictive environment of a closed detention centre means that detainees must rely on social networks within the detention centre itself, then the existence of any lines of communication with persons or organisations in the outside world would likely have a high impact on their overall experience in detention. A detainee who has regular access to the telephone, to visits from family or friends and even to lawyers may be better able to cope with the negative aspects of detention, in that he or she may have access to legal information and news related to family developments, for example. Conversely, a detainee who does not have lines of contact to the outside world may instead fare worse in detention, as their sense of isolation would likely grow and thus impact their mental well being. Vulnerability is a factor with both personal and social ramifications. Personal weaknesses can be simultaneously lessened or deepened based on the level of support provided by a social network. The closed environment of detention makes the existence of social support all the more important for detainees. Main findings from this chapter indicate that

[36] Including Bulgaria, Netherlands, Portugal, Slovenia, Slovakia, Austria, Belgium, Czech Republic, Germany, Hungary, Spain and Romania

- *Detainees lack family and friends in the host country*. Almost half of the sample admits that they do not have relations to anyone in the host country. Those who were interviewed were more likely to receive assistance from strangers than from familiar persons.

- *The telephone is the most widely used means of communication, and according to detainees, the best way to stay connected to the outside world*. Based on their statements, detainees have very little access to the Internet and to personal visitors. The telephone is a more reliable means of communication, and more widely available. However, many detention centres prohibit the use of personal mobile telephones, which detainees find more important than the landline telephones available in many centres. Mobile telephones are more important because they are portable, and contain personal data such as the telephone numbers of family and friends.

- *Asylum seekers are particularly isolated from the outside world*. Compared to irregular migrants, even when duration of detention is factored in, asylums seekers receive less personal visits from family and friends, likely owing to the lack of familial and friendly network in the host country.

- *Isolation from the outside world decreases with age*. According to the data, older detainees more frequently reported to have good access to means and lines of communication than younger detainees did. Detained minors and women aged 18 to 24 stand out from the sample as having little access to a social network outside of the detention centre.

13. THE IMPACT OF DETENTION ON THE INDIVIDUAL

13.1. Nutrition and sleep

The DEVAS project uses 'nutrition' and 'sleep' as two indicators to better understand detainees' perceptions of the quality of the living conditions in the detention centre, and also to measure the personal impact that may come as a result of these living conditions. Detainees were asked to discuss their opinion of the suitability of the food provided in the centre, whether the quality of the food has changed their appetite and if such a change has had an impact on their well being. Following this, detainees were asked about how well they sleep in the detention centre, and to elaborate upon whichever response they offered. Nutrition and sleep are important indicators for vulnerability because they can impact a person's physical and mental integrity. Insufficient nutrition might not only lead to fluctuations in weight and energy but also to cognitive capacities, such as the ability to concentrate and to articulate oneself.[37] The lack of sleep not only affects one's level of energy and cognitive capacities, but it might also lead to emotional imbalances.[38] In a situation of closed detention, the ability to eat and sleep in a manner that sufficiently meets the needs of the mind and body can impact one's level of vulnerability to the environment of detention.

13.1.1. Average data findings

The majority of detainees say that the food served to them in the detention centre is unsuitable. From this group, 41 percent attribute their dislike of the food to its poor quality. While many define "poor quality" as food that is tasteless,

[37] An article by Kenny, Silove and Steel (2004, *Medical Journal of Australia, 180*, 237-240) explore the legal and ethical implications of detained asylum seekers who are on hunger strike. After one week of strike, the person "experiences dramatic weight loss", along with "fatigue, headache, faintness and dizziness" (p.238). None of the detainees interviewed for DEVAS were in the middle of a hunger strike. But the article does indicate some of the consequences detainees may face as a result of poor nutrition. A report by Manandhar, Share, Friel, Walsh and Hardy (2006, *Food, Nutrition and Poverty Among Asylum-Seekers in North-West Ireland*) states that "fear over a food supply that is controlled by (unknown) others can lead to alarming psychosocial issues for asylum seekers. Hunger strikes are common in detention centres, protesting their lack of control and disempowerment" (p.25).

[38] References in the scientific literature to insomnia within the situation of immigration detention are widely available. For example, see: Koopowitz and Abhary. (2004). Psychiatric aspects of detention: Illustrative case studies, *Australian and New Zealand Journal of Psychiatry, 38*(7), 495-500.

others say that the food is often under-cooked, or is simply unsuitable for consumption. A Libyan man detained in Belgium echoes others when he says that the food is "not cooked enough", and is "almost always expired". Most detainees expressed very strong negative opinions about the quality of the food, frequently describing it as "awful", "terrible" and "uneatable".

A minority of detainees attribute their dislike of the food to the little variety offered to them. Within this group there are frequent complaints of eating similar meals everyday, such as rice, pasta and potatoes, or bread and cheese. Others complain about not getting enough fruits in their daily meals. The significance of the food for detainees is better understood when factoring in the length of their detention. One detainee says, "I cannot eat anymore … always the same thing for five months". An Iranian man, detained for almost two years, says he is "sick" of eating the "same thing" for the duration of his detention.

On average, detainees say that their appetite has changed during their detainment. From this group, 90 percent say that they have lost their appetite as a result of the quality of the food. This loss in appetite has worsened many detainees' situations. Oft-repeated statements such as, "I don't feel like eating because of all the problems", or, "I eat less because I am thinking too much", give an indication as to the effect of stress – imposed by detention – on detainees' appetites. "I eat less because I am not hungry", says a 16-year-old Pakistani boy detained in Greece, "I am not working here, we are sitting all day, so I am not hungry." Many detainees connect their loss of appetite to the lack of nutritional variety offered by the detention centre staff, and to the quality of the food that is on offer. Detainees complain of gastro-intestinal problems such as constipation and diarrhoea. Other detainees report forcing themselves to eat despite the poor quality of the food and the mental stress they experience. "I have to force myself because I know I need to eat", says an Ecuadorian man detained in Spain, "I've lost weight". Weight loss is a frequently reported consequence of the poor quality of the food and of decreased appetite. In some instances detainees describe losing as much as six or eight kilograms in a matter of weeks. These negative opinions prevail over detainees who feel positive: in that regard, less than ten percent said that they have gained appetite in detention and feel better as a result.

Just as most detainees dislike the food, a majority say that they do not sleep well during the night. Of this group, 61 percent attribute their inability to sleep well to stress and worry, or in their words, "thinking too much". Detainees describe a seemingly endless playback of their anxieties and fears, particularly about their families in the outside world, and what will happen once they are released from detention. A Ghanaian woman detained in Germany speaks for many other detainees when she describes her nights in the detention centre: "In the night my head is heavy, and my body is very hot. I sweat. I am not OK. When I came here, I was not like this."

> "Tensions, worries about my future, missing home and family, fear of deportation to Russia … In detention, you have too much energy that you can't use. That keeps you awake."
>
> *20-year-old Russian man detained in Latvia for seven months*

Almost one quarter of detainees who say they do not sleep well at night specifically blame the living conditions in the detention centre. Hot temperatures and the lack of fresh air, either due to improper ventilation or to the number of persons sharing one dormitory, is a problem for many detainees. The social atmosphere within the detention centre that comes as a result of detaining people in close proximity to each other prevents some from sleeping when they would like to. "I read most of the nights in the corridor," admits a Ukrainian man detained in the Czech Republic, "I don't want to disturb my roommates at night because I make noise with my teeth when sleeping. So I only sleep during the day." Detainees frequently describe nights filled with noise, either from airplanes – due to the detention centre's proximity to an airport – or from co-detainees who are sick and moan or scream throughout the night as a consequence. Others say that the lights are frequently left on during the night, preventing them from sleeping fitfully in darkness.

A small minority of detainees describe experiencing vivid nightmares or physical problems that prevent them from sleeping. According to detainees, the detention centre authorities distribute sleeping pills as needed. Often this is their last line of defence against another sleepless night. "I only sleep well if I get my pills … Otherwise the pain in my legs keeps me awake."

13.1.2. Disaggregated data findings

The data reveals few variations from the average in the way that different groups within the total sample feel about the quality of the nutrition in the detention centre. Exceptions are found for people detained for 61 to 90 and 121 to 150 days at the time of their interview. Approximately three quarters of each group states that their appetite has changed in detention; 98 percent of those detained for 61 to 90 days, and 100 percent of those detained for 121 to 150 days say they have lost their appetite during detention. A broader examination of duration of detention and nutrition reveals that asylum seekers and irregular migrants who are detained for more than 90 days feel more negative about the food in the detention centre than people detained for less than 90 days (see table 25).

Elsewhere, women aged 18 to 24 years also show to be an exception to the average. In their case, 80 percent report disapproving of the food in the detention centre, and 96 percent say they have lost their appetite as a result.

Table 25: Detainees' negative responses regarding nutrition in the detention centre, by legal status and duration of detention

	Asylum seekers detained for		Irregular migrants detained for	
	<90 days	>90 days	<90 days	>90 days
Percentage of detainees who …				
Feel the food is unsuitable	58%	70%	61%	73%
Experience a change in appetite	51%	74%	58%	72%
Have lost their appetite	87%	95%	86%	95%

The duration of detention also seems to have an impact on sleep. Approximately three quarters of people detained for 121 to 150 days at the time of their interview say they do not sleep well at night. People within this group frequently cite stress and worry as reasons. Looking at others, men and women aged 18 to 24 point to similar reasons when asked to explain why they cannot sleep. But in general fewer variations exist in the data when examining 'sleep' as an indicator for detainees' well being. Young people and those in prolonged detention appear to suffer more acutely than others, but these variables offer little explanation as to why they feel differently than other groups. Detainees' opinions and experiences in regards to sleep and nutrition are mostly similar – besides the exceptions described above – irrespective of legal status, sex, age and duration of detention.

13.2. Detainees top difficulties in detention

Detainees were asked to provide an indication of the biggest difficulties they face in detention. This was done in order to elicit information that depicts, as accurately as possible, their own feelings about their situation of detainment. Put in another way, the question was presented as an opportunity for detainees to describe their detention in their own words. In turn, they express such "top difficulties" in a broad variety of ways. But despite the variations in age, sex, legal status and duration of detention, and even the place of detention, detainees more or less articulate their difficulties in detention in a similar manner to one another, allowing the DEVAS research team to situate their statements within four broad categories: detention *itself*, living conditions, stress and medical problems. In doing so, a conception of 'vulnerability' emerges that is based on detainees' own experiences, rather than on the perceptions of external stakeholders. Thus a complex understanding of 'vulnerability' is revealed, showing that alongside specific categories of vulnerability that already exist, there are a number of factors present within a

detainee's situation that determines, to a large extent, the level of vulnerability he or she may have to the situation of detention.

13.2.1. Average data findings

The most frequently reported difficulty in detention is the negative impacts caused by detention *itself*. Half of the sample rate this as their primary difficulty in detention, and as many as 42 percent rate it as their second most-experienced difficulty. A large majority of detainees are unable to point to a specific difficulty about their detention. Instead, many offer broad and abstract reasons such as "being detained", "the detention itself", "my situation", "being locked", "that I cannot get out" and "being in here". These *unspecific negative factors*, as we call them, are present within the majority of detainees' responses that are about their biggest difficulties in detention. The mere situation of closed detention, and the ensuing restriction on their freedom of movement and the imposed isolation imposed from the outside world is the biggest difficulty that detainees grapple with.

Yet in many cases detainees do cite more specific difficulties, such as their loss of rights, their disconnection to the outside world and the disruption of their life plan. A 28-year-old Palestinian man detained in Sweden says he used to be a translator in his home country, and that he had wanted to continue his studies. His rejected claim for asylum, and his consequent detainment has blocked these plans. "My life has stopped", he says. Detainees express deep worry about their family, and their inability to provide support while in detention. "The hardest thing for me is being without my children", says a 29-year-old Nigerian woman detained in Ireland. Many detainees perceive that their freedom has been seriously infringed upon, and that their situation is akin to imprisonment. "The fact that I am in prison and that I cannot get out" is the biggest difficulty for a 16-year-old Pakistani boy detained in Greece; many others share these sentiments.

> "The fact that they treat you like any other prisoner: like a criminal when you go to court, or when you go [to the authorities] to answer questions. I made a complaint about that in court. I was not handcuffed, but they put you in a prisoner's car; they way they treat you isn't right."
>
> *27-year-old Congolese asylum seeker detained in The Netherlands*

The second most frequently reported difficulty in detention is the factors related to the living conditions in the detention centre (see table 26). A large number of detainees express strong dissatisfaction at the food provided to them. But others cite "sleep deprivation", or "dirty toilets", or "the lack of sports facilities". The unhygienic condition of the space within the detention centre bothers many detainees. While the living conditions, *per se*, are very problematic for detainees, they also point specifically to issues that arise from cohabitating with so many others. The mix of cultures and nationalities, newly arrived detainees and long-term detainees, families and single persons, for example, cause a great amount of frustration among persons who are primarily worried about their own situation. The inability to communicate in a common language exacerbates co-habitational tension in the detention centre. Added to this are problems associated directly with the manner in which staff treats detainees. A smaller, but no less important, number of detainees describe situations of "abuse from detention centre staff", "shouting between policemen and detainees", and the "lack of respect" shown by the staff.

Table 26: Frequently reported difficulties made by detainees concerning the living conditions in the detention centre

"There is no outdoor space to play, walk or sit."	*17-year-old Afghani detained in Greece*
"No clean air."	*31-year-old Belarussian detained in Sweden*
"Lack of something to stimulate the mind."	*36-year-old Congolese detained in Malta*
"Cultural differences [among detainees]."	*62-year-old Serbian detained in Slovakia*
"The closed windows."	*42-year-old Moroccan detained in Belgium*
"No possibility for self-education."	*18-year-old Eritrean detained in Latvia*
"The strict programme. We are not allowed to go out."	*19-year-old Pakistani detained in Romania*

The third most frequently reported difficulty in detention is the factors associated with stress. In this respect, detainees repeatedly express feelings and experiences that are replete with self-worry, fostered by a fear of being sent back to their home country, and self-uncertainty that comes as a result of not having a clearly defined plan. The "sense of unfairness" due to the lack of clear information about their case and situation – as specifically expressed by a Bangladeshi man detained in Cyprus but also by many others – is a leading factor in the stress that they feel. Prolonged detention, or simply being unaware of a release date, adds to this tension. Statements such as "waiting and not knowing when detention will end", "not knowing anything about my case", "I don't know how long I have to stay here", recall an image of someone who is stuck in a very negative situation and uncertain of what to do next.

These sentiments are closely associated with those made by detainees concerning the difficulties posed by detention and the living conditions of the centre. But they are also related to concerns about family, relatives and friends in the outside world. The negative consequence of being "stuck" in the detention centre not only concerns the ability to provide for oneself, but also to provide for loved ones. A Sri Lankan asylum seeker detained in the Czech Republic, for example, is worried about his wife because he "can't earn money to send" to her. "Being separated from my wife and child" is one of the biggest causes of stress for a 21-year-old Kazak man detained in Lithuania for just over three months at the time of his interview. Detainees frequently repeat "separation from family" as a reason for their feelings of insecurity in detention, and also the stress that they report to experience.

The fourth most frequently reported difficulty in detention is the factors association with medical problems. In this context, detainees express problems linked to mental and physical health. Detainees regularly cite the non-treatment of chronic ailments, such as diabetes and bodily pain, and inadequate medical care for acute medical concerns, as factors that exacerbate the difficulties imposed by detention. "Lack of adequate health services", "especially in emergency cases" is, according to detainees, a serious problem within the detention centre. Moreover, the inability to sleep properly affects detainees' level of energy and predisposition to mental health stress.

In this regard, detainees are less specific about the mental health problems that they experience. This may be due to their inability to access psychiatric or psychological care in the detention centre, as described in Chapter 8 of this report. Without any consultation, it would be very difficult for someone in closed detention to articulate their state of mental health other than to describe themselves as being "sad", "fearful", "anxious" or "thinking too much".

Statements such as “I can’t think straight about my problems”, “my life is over”, “my mind is not well” and “being alone” are conceptualisations of poor mental health that are frequently made by detainees.

13.2.2. Disaggregated data findings

The difficulties that are present within the situation of closed detention do not affect one group of detainees more than another. The data shows that detainees experience very similar problems irrespective of age, sex, legal status and duration of detention. A 30-year-old single man, for example, may suffer from the same mental health problems as an 18-year-old single woman. A person in their fifth day of detention may experience similar self-uncertainty as a person in their sixth month of detention. Nevertheless, the numbers do indicate that some groups report particular types of difficulties more frequently than other groups, and at a higher percentage than found in the total sample. But these differences may owe more to individual factors and contextual settings rather than to homogenous group factors.

An examination of the four broad difficulties that detainees experience in detention – detention *itself*, the living conditions, stress and medical problems – shows that minors are particularly concerned about the negative impacts fostered by detention itself. While it is true that a majority of these detainees were interviewed in Greece, where poor conditions of detention are well documented,[39] they were also interviewed in ten other EU Member States.[40] According to the minors who were interviewed, the mere imposition of closed detention and the consequent restrictions on movement and contact with the outside world is very negative. A 16-year-old Nigerian boy detained in Bulgaria, for instance, misses going to school, and a 14-year-old boy detained in Greece cannot call his parents in Pakistan when he needs to. “Being detained is the most difficult thing”, says a Somali asylum seeker awaiting a “Dublin II” transfer from The Netherlands. A 17-year-old Ghanaian asylum seeker says that he does not know how he will be able to “rebuild” his life after being in detention. Although detained minors most frequently cite the negative aspects of detention itself, they also point to the lack of activities and the mix of nationalities in the detention centre as being problematic. In Malta, a 17-year-old girl is worried about the other men she is detained with, saying, “Detention is not safe and secure for me as a single woman being detained with men.”

Similarly to minors, persons detained for 121 to 150 days at the time of their interview more frequently point to detention *itself* as their primary difficulty in detention when compared to the rest of the sample. The sense of imprisonment figures prominently in the experiences of this group. “They keep me here for too long”, says a Lebanese man detained in Bulgaria for five months at the time of his interview. When asked to state her biggest difficulty in detention, a 23-year-old Somali woman simply says, “I am imprisoned”. The stress of uncertainty and dissatisfaction with the living conditions are additional difficulties they report to experience. But people detained for less than 90 days – asylum seekers and irregular migrants – also express very similar difficulties. Closed detention is a new experience for many persons within this category. Thus detainees describe their “shock” at being detained, while many others decry the prison-like living conditions of the detention centre.

Other groups that frequently report difficulties in detention are women aged 18 to 24, and asylum seekers in “Dublin II” detention. Detainees in both of these groups regularly point to the problems associated with detention *itself*, and the stress they experience as a consequence. Many women aged 18 to 24 identify their difficulties with the living conditions in the detention centre; the poor quality of the food in the centre was of special concern to this group.

[39] For more information on the treatment of migrant children detained in Greece, see, for example: *In the Migration Trap: Unaccompanied Migrant Children in Europe*, Human Rights Watch World Report essay, January 2010; *Greece: Unsafe and Unwelcoming Shores*, Human Rights Watch, 12 October 2009; *Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, Human Rights Watch, 11 December 2008; *The Dublin II Trap: Transfers of Asylum Seekers to Greece*, Amnesty International, 22 March 2010; Report of Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visit to Greece on 8-10 December 2008; *The Truth Must be Bitter, But It Must be Told: The Situation of Refugees in the Aegean and the Practices of the Greek Coast Guard*, ProAsyl, 2007.

[40] 39 percent were interviewed in Greece; 11 percent in Malta; 7 percent in Bulgaria, Netherlands, Portugal and Slovenia; 4 percent in Austria, Belgium, Czech Republic, Germany and Hungary.

13.3. Living with the difficulties of detention

Detainees were asked to speak about the way in which they live with the difficulties of detention described in the previous section. The intention here was to acquire an understanding of how such difficulties might change during the course of detention, and to identify points in time when these difficulties might be most severe. In addition, detainees were asked about their eventual departure from the detention centre, and, to describe the personal impact they feel if they are unaware of when they will be released. The purpose of this questioning was to reveal the scale and scope of the difficulties detainees report to experience, so as to investigate in greater detail detainees' personal sense of vulnerability within the environment of detention.

13.3.1. Average data findings

A majority of detainees say that the difficulties they experience tend not to change over the course of their detention. For these persons, life in detention is a situation where one day segues into the other without any major difference. Their lives become static. But for those who do experience a change in the difficulties of detention, most would say that the difficulties become worse. A Kosovar man detained in Slovenia, for example, says that detention is "getting worse", making it "more difficult to live without a life perspective." A Tunisian man detained in Spain admits becoming "more desperate over time". An Afghani detained in Romania says he feels as if he has "aged 20 years" since he was first detained.

A minority of detainees admit that the difficulties they first experienced in detention have improved during their detainment.[41] Some describe having learned to adapt to the adversities of detention, while others attribute the improvement of their situation to the provision of psychological care or medication. Yet others come to the detention centre after having lived homeless on the street, or having had problems with alcohol and drug abuse. It is important to note that almost none report a marked improvement in the *conditions* of detention, in the sense that a bad practice was ameliorated. Instead, detainees describe an adaptation to the circumstances of detention, in the sense that their personal disposition towards the situation of detention has improved.

But for a larger number of detainees, detention is an experience that brings negative consequences. Just over half of those interviewed can describe a specific time when detention became especially difficult. When asked, most say that "every day" they spend in detention is difficult for them. But approximately one quarter of these detainees specifically point to the very beginning of detention, or the "first days", as many within the sample say. A Brazilian woman detained in Portugal says she felt "very trapped" during her first days of detention; a Cameroonian man detained in Belgium realised the difficulties he would face when he "entered the place" and "saw the bars" on the windows. Other detainees describe specific events as being their most difficult time in detention: A 19-year-old Serbian man detained in Hungary says it is in "the afternoon … because we are locked in the room and there is nothing to do." One man describes the frustration he felt when he learned of his father's death, and being unable to attend the funeral because of his detention. A woman detained in Malta spoke of being informed about her daughter's death in Somalia. The lowest point in detention for others is when they receive a rejection to their asylum application, or when they are told of their impending deportation. Some detainees say detention becomes difficult in the first weeks, while others describe the one-month mark as the tipping point. "After one month, I realised it was too long", says a Gabonese man detained in Belgium.

Coping with the negative aspects of detention is especially hard for detainees who do not know what the outcome of their detention will be. Indeed, only a minority of detainees claim to know what will happen to them after detention: some know which country they will return to, while others know they will be released into the society of the country

[41] 31 percent of these detainees were interviewed in Portugal, where psychosocial support is afforded to every detainee. Additionally, Portuguese law lays down a 60-day maximum period of detention. If the person is not returned to their country of origin by that time (since Portuguese law stipulates detention only for irregular migrants), they are then released into Portuguese society. According to JRS-Portugal, detainees are routinely informed of the 60-day maximum period of detention.

that is detaining them. Many more detainees are unsure of what to expect. Some say they are "ready for everything" and are "hoping for the best"; others are very pessimistic and worry that their lives will be endangered if they are not given either a protection status or permission to remain within the territory of the Member State that detains them. Most of the detainees that were interviewed do not possess any clear optimism or pessimism – they simply do not know, and are looking for almost any remedy to their situation of detention.

Startlingly, 79 percent of detainees in the sample do not know when they will actually be released from detention. The consequent personal impact of not knowing is very negative. A Ghanaian man detained in Germany compares his situation to being in a "dark tunnel" as a result of not knowing when he will be released; and his statement echoes those made by the vast majority of detainees. They report severe and persistent levels of stress, and express deep dismay at being unable to establish a life perspective for themselves and their families. "I want to set an agenda. I want to set plans for my future", explains a detainee in Lithuania. Another detainee says, "I am living without having a plan for my future life".

> "I cannot plan anything with my family, with my mother who is taking care of my baby now. I cannot arrange for a flat for myself, to pay for it, because I do not know for how long I am going to stay here."
>
> *25-year-old Ukrainian woman detained in the Czech Republic*

Being unaware of the release date negatively impacts detainees' ability to communicate to family, relatives and friends in the outside world. They longer their detention endures, the more they feel like "birds in a cage", as expressed by a Albanian asylum seeker in detention. Worry for self and for loved ones, mixed with the uncertain circumstances and duration of their detention negatively impacts detainees' ability to mentally cope with the adversities of detention. "I feel more depression" and "I am getting crazy" are frequently said by many of those who were interviewed. The stress of uncertainty leads to anxiety and this further leads to sleepless nights, depression and, for a minority of those interviewed, suicidal ideation.

> "My life is over."
>
> *28-year-old Palestinian man detained in Sweden for 15 months at the time of his interview*

13.3.2. Disaggregated data findings

According to the data, the difficulties inherent within the situation of closed detention affect a broad range of detainees. But the numbers continue to show that particular groups stand out from the rest, in terms of the way they cope with life in detention and how the negative aspects of detention personally impact them. Individual factors such as age and duration of detention provide a more specific indication of how detainees fare in the situation they are in.

The data continues to portray minors as having great difficulty in coping with the adversities of detention. Slightly over half admit that they have experienced a change in the level of severity of the difficulties imposed by detention. From that group, 85 percent say that such difficulties have worsened – approximately one quarter more than the total sample average. Detainees within this group point out specific times or events that represent a low point in their time in detention. But for most other minors the difficulties of detention are a daily occurrence. Almost three quarters do not know when they will be released. As a consequence they report to experience very high levels of stress, tension, anxiety and self-uncertainty.

The experiences of people who were detained for 121 to 150 days at the time of their interview also stand out from the average as being particularly negative. Over 90 percent of people within this category were able to describe a moment, or a series of moments, when detention became especially difficult for them. For a man detained in Slovakia, the "time of Christmas" was very hard because he was without his family. Others talk of being unable to regularly communicate with their spouses and children. Three quarters of the detainees in this group admit that they do not know when they will be released from detention. A Syrian man detained in Hungary says that the impact of not knowing makes his life "less and less meaningful over time". Others describe feeling a "mental blockage", "uncertainty", and nervousness.

A broader look at duration of detention reveals similar findings. Asylum seekers and irregular migrants that are detained for more than three months are more likely to say that detention has become harder to cope with than those detained for less than three months. Still, 82 percent of asylum seekers detained for less than three months do not know when they will be released from detention.

Difficulties persist for asylum seekers even when duration of detention is removed from consideration. Eighty percent of detained asylum seekers say that they do not know when they will be released from detention. Almost the entire sample of "Dublin II" asylum seekers, and asylum seekers with rejected applications, do not know when they will be released. The latter, in particular, have great difficulty coping with life in detention because they had hoped to receive a protection status in a EU Member State. The personal impacts on these asylum seekers are strikingly similar to the rest of the sample: stress, anxiety, uncertainty, worry and depression.

13.4. The impact of detention on self-perception

In an effort to better understand the personal impacts that are consequent to the situation of closed detention, detainees were asked to complete the sentence, "I see myself as …". The intention here was to ascertain how detainees self-perceive in an environment of restricted movement, of isolation from the outside world and where access to information is difficult to obtain. By asking them to describe how they perceive themselves, we may obtain a closer understanding of the factors that increase their level of vulnerability in detention.

13.4.1. Average data findings

On average, there is an even split between detainees who self-perceive positively and those who self-perceive negatively (see table 27). Despite the circumstances of their situation, many detainees are able to make very positive statements about themselves. This finding is striking because for almost the entirety of their DEVAS interview detainees made very negative statements about their situation, the conditions of detention, the lack of information, their isolation from the outside world, the mental and physical health impacts and so forth. Yet they become more positive when asked to depict *themselves*, and not the environment around them. Detainees with positive self-perceptions describe themselves as being resilient, strong, friendly, kind, hard working and eager to learn. Conversely, detainees who self-perceive negatively describe themselves in a severe manner, comparing themselves to animals, prisoners, pawns and being "less than human". A disquieting number of detainees portray themselves as a "forgotten person", or as "a criminal". Others speak of themselves using words that depict mental health suffering. Indeed, 92 percent of detainees who negatively self-perceive also say that detention negatively impacts their state of mental health. While many detainees describe themselves as being "unlucky", there remains still a strong sense of personal wrongdoing; that their detention and the consequent difficulties that they are subject to are no one else's fault but their own.

Table 27: Positive and negative self-perceptions in detention; Completing the sentence, "I see myself as …"

"…Someone with skills; a confident person."	*Nigerian man detained in Ireland*
"…As somebody in transit."	*17-year-old Kazak boy detained in The Netherlands*
"…A person who likes to help and support."	*53-year-old Venezuelan man detained in Portugal*
"…An animal."	*Iraqi man detained in Bulgaria*
"…A person of confidence. People come to me to get advice an information	*33-year-old Congolese woman detained in Belgium*
"…Stuck in one place"	*22-year-old Nigerien woman detained in Malta*
"…A Vietnamese person who came to Germany to have a better life."	*40-year-old Vietnamese woman detained in Germany*

Over half of the detainees that were interviewed say that the environment of detention negatively impacts their self-perception. A 25-year-old Kosovar asylum seeker detained in Austria, for instance, says of his detention: "I feel that I'm not able to concentrate or learn anymore." Detainees' statements reveal that the situation of closed detention has deteriorated their self-image. Frustration, anger, sadness and despair form the basis of how they perceive themselves in detention. "I am not the same person as I used to be," says a Nigerian man detained in Spain, "and I will never be the same again."

13.4.2. Disaggregated data findings

The data reveals that detainees' self-perception improves as the sample becomes older (see table 28). Whereas minors more frequently make negative statements about themselves, those aged 45 to 64 are more frequently more positive. But in their statements detainees do not portray age as a factor that impacts their self-perception. Whether they feel positive or negative, detainees offer similar statements irrespective of their age. A slightly different trend emerges when considering the impact of *detention* on self-perception: Minors feel more neutral, while 18 to 24, and 25 to 34 year olds more frequently say that detention has deteriorated their self-image.

Similarly to age, the data shows that self-perception becomes more negative as the length of detention endures. Whereas only one-third of detainees in their first month of detention self-perceive negatively, more than half do so in their fourth and fifth month of detention. Of those detained for 151 to 180 days at the time of their interview, 80 percent say that detention has negatively impacted the way they perceive themselves. Asylum seekers and irregular migrants who have been detained for more than 90 days harbour very negative self-perceptions than when compared to those detained for less than 90 days. Three quarters of both asylum seekers and irregular migrants detained for more than 90 days say detention has worsened their self-perception.

Table 28: Self-perception in detention, disaggregated by age

Total sample average:	**Positive** *39.3%*	**Neutral** *21.1%*	**Negative** *39.6%*
Age (in years)			
10-17	24%	20%	56%
18-24	33%	24%	43%
25-34	43%	22%	35%
35-44	40%	21%	40%
45-64	43%	18%	39%

13.5. Existence of personal special needs, and vulnerabilities in others

At the end of their interview session, detainees were asked to describe the special needs that they might have in detention, and the special needs and vulnerabilities that they perceive their co-detainees to have. The intent of this questioning was to allow detainees to voice their personal needs, and the needs of others, in as concrete a manner as possible. Whereas for the entire interview detainees were asked to share their experiences in relation to the conditions and environment of detention, these final two questions focused on their experiences in relation to their personal selves. In doing so it was hoped that detainees could somehow articulate their own understanding of 'special need' and 'vulnerability'.

13.5.1. Average data findings

Remarkably, 68 percent of detainees said that they do no have special needs that stand them out from the rest. This finding is notable because it may seem to contradict detainees' previous statements about the negative aspects of detention. When asked to elaborate, most within this group of detainees indicate that they have the same needs as everyone else. "We are all the same here" and "we are all in the same situation" are common refrains from detainees. A Moroccan man considered the question, *do you have special needs that no one else has?* by saying, "It is difficult to say. There are some who have more needs than I. Some are in a worse position than my own. They cannot speak; they have to ask someone to translate."

The majority of detainees who do admit having special needs provide examples that are not commonly regarded, such as language capacity. Many of these detainees point to their inability to speak the language of the detention centre staff, or the language spoken by other co-detainees. "I need an interpreter to make myself understood", asserts a Guatemalan asylum seeker detained in Belgium. "I need somebody who understands my language," says another. Alongside language, a number of detainees identify other special needs, such as for educational activities: whether it is for learning a new language, or having access to books or even access to formal education. Others describe their need for information about their family back home, affairs in their home country or about the asylum/immigration procedure.

Linked to this is the need for greater access to the telephone, or more importantly, access to their personal mobile telephones, and also access to persons in the outside world. Statements such as, "I need to see my children", or, "I have to take care of my wife" are frequently presented by detainees as special needs. Other needs include access to the labour market and to financial resources in order to repay debt or support loved ones. Some detainees want better medical care, while others simply cite "freedom" as a special need. The data does not show a trend where one special need, or one set of needs, stand out from the rest. Instead a picture emerges of mixed needs that are exclusively related to the personal situation of detainees.

The exception to this lies with detainees who voice special needs that are more widely recognised, i.e. 'classic' special needs. Most within this smaller group of detainees especially point to medical needs. Some express the need for treatment for conditions they had before detention, such as diabetes, while others describe needing psychological support for their deteriorated mental health. This finding adds further weight to the medical needs expressed by detainees elsewhere in their interviews (see Chapter 8). Only one person specifically linked their special needs to their sex (a woman), and only one other person linked their special needs to their age (a minor).

As regards to the special needs and vulnerabilities of others in the detention centre, the detainees that were interviewed more frequently identify others as having 'non-classic' special needs. In particular, many detainees mention insufficient language capacity as being a factor of vulnerability in others. People who cannot speak the language of the detention centre staff, for example, are perceived to be more vulnerable than those who can because they are unable to communicate their needs. Detainees also recognise people in prolonged detention as being vulnerable, typically defining 'prolonged' as any period lasting more than two months.[42] In addition, they identify elderly people, those without sufficient financial resources to support themselves and their families and those with little or no family connections as being especially vulnerable in detention. Some detainees identify 'nationality' as being a factor of vulnerability, saying essentially that the cultural characteristics of some nationalities place detainees at a permanent disadvantage to others in the detention centre. Persons with humanitarian protection needs, such as those who fled conflict or political persecution, are identified as being vulnerable. In other cases, persons who suffer from drug addiction are perceived as vulnerable, because in the detention centre they often go through the painful process of withdrawal with little to no medical attention. But there are detainees who feel differently: Approximately one quarter say that "everyone" is vulnerable in detention, and a much smaller minority – six percent – are not able to identify vulnerabilities in anyone.

13.5.2. Disaggregated data findings

The data does not reveal many variations from the average in regards to detainees' perceptions of having special needs. In general, detainees express similar needs to one another. Exceptions nevertheless exist, such as, for example, female asylum seekers and detainees aged 45 to 64. Both of these groups more frequently report having special needs than the total sample average. But besides the few female asylum seekers who identify their pregnancy as a special need, the needs that they express are not entirely different from the needs of other detainees; and the same can be said for detainees aged 45 to 64. Duration of detention does not seem to be a factor either – actually, perceptions of having special need decrease slightly as detention endures.[43] Young detainees report having special needs less frequently than the average. A high percentage of detainees aged 18 to 24 describe 'non-classic' special needs, but these needs do not altogether differ from those expressed by the rest of the sample.

13.6. Chapter summary

Throughout the DEVAS interview detainees were asked to describe the conditions of the detention centre, its staff, the quality of its medical care, the level of information they have and so forth. But at the end of the interview session, detainees were asked a series of questions relating to how they personally cope within the environment and adversities of detention: The impact of the quality of the food on their appetite and physical health, their ability to sleep fitfully at night, the primary difficulties they face in detention and how they cope with such difficulties. Additionally they were asked to describe the way in which they perceive themselves in detention, their possession of special needs and how they identify special needs and vulnerabilities in other detainees. The purpose of this

[42] This is what many detainees have said. The author of this report refers to any detention period lasting more than three months as 'prolonged'. It is not intended to be a definition of 'prolonged detention', nor is it a position of the DEVAS project partners. Rather it is a reflection of the data, which shows a marked difference in the responses between persons detained for less than and more than three months at the time of their interview.

[43] This phenomenon may be due more to the decreasing sample size as detention endures, rather than the actual level of needs detainees possess.

questioning was to allow detainees to use their own words to describe how they are personally impacted by detention.

- *The quality of the food and the ability to sleep at night highly impact detainees' ability to cope with detention*. A majority of detainees expressed deep dissatisfaction over the quality of the food in the detention centre, and most said that they could not sleep well at night. Both conditions contribute to the level of stress detainees feel. In particular, the poor quality of the food contributes to an overall sense of 'inhumanity' among detainees. Conversely, the stress imposed by detention itself negatively affect detainees' motivation to eat properly, and their ability to get enough rest. Prolonged detention seems to exacerbate these negative effects.

- *The situation of detention itself is the biggest difficulty that detainees cope with*. The mere imposition of detention and all of its consequent effects – isolation from the outside world, poor communication channels, and its impact on physical and mental health – is an insurmountable difficulty for detainees. Minors and long-term detainees seem to especially suffer, but the negative aspects of detention affects everyone irrespective of age, sex, legal status, duration of detention and even location of detention. Detainees' express a very strong sense of personal wrongdoing and a feeling of imprisonment.

- *The difficulties of detention figure daily in the lives of detainees; any changes are usually for the worse*. The negative aspects of detention are persistent. While the data shows that these negative aspects may become worse as detention endures, the level of its severity is similar for all groups of detainees that were interviewed.

- *Most detainees do not know when they will be released*. Being uninformed, even in this small way, leads to very negative personal impacts for detainees. The absence of a future perspective prohibits detainees from finding ways to rebuild their lives after detention and to take care of their loved ones.

- *Detainees think positively of themselves, but struggle to continue doing so as their detention persists*. Despite the adversities they have described, detainees remarkably hold positive perceptions of themselves. But the environment of detention and the negative factors associated with have a significant deteriorative effect on their self-perception.

- *Most detainees do not admit to have special needs, but they readily point out needs in other detainees.* Detainees are apt to say that they have the same needs as everyone else. But those who do admit having special needs frequently describe needs that are not usually considered: language capacity, connection to family, possession of information and ability to communicate with the outside world. Detainees cite similar descriptions when describing the vulnerabilities of other detainees, prioritising language and familial connections as important factors of vulnerability.

ANALYSIS

- Why assess 'vulnerability'?
- Vulnerability within the context of detention
- Assessing vulnerability in detained groups and individuals

14. 'VULNERABILITY' IN DETENTION

14.1. Why assess vulnerability?

Existing conceptualisations of vulnerability[44] and special need in detention mostly focus on pre-determined personal factors, such as unaccompanied minors, single parents with children, persons with medical illnesses and persons with traumatic histories. While these factors are based on a history of experience with detainees, they are 'pre-determined' because they continue to be applied by political, legal and humanitarian actors to subsequent groups of detainees with little further assessment of their validity to detainees' individual situations. The persons within these so-called 'vulnerable groups' are rightly given extra attention by policy makers and non-governmental organisations because they do possess special needs that should be looked after: unaccompanied minors may need the assistance of responsible adults, single parents with children may need help with childcare, persons with medical illnesses may need treatment and persons with traumatic histories may need psychological attention. The special needs of the persons within these categories are palpable.

Less clear is whether detainees who fall outside of these pre-determined categories – single adult men, married childless couples, prolonged detainees and persons with no history of medical or psychological trauma – also possess 'special needs' that require concerted attention. Moreover, pre-determined conceptions of vulnerability usually focus on groups who possess special *needs*, because it is easier to ascribe operational definitions to the latter than to the 'vulnerability' itself. Thus the notions of 'vulnerability' and 'special need' become blurred, and the understanding of who fits within each category and how a person qualifies to be in either category, becomes confused. This gap in understanding leaves three fundamental questions open to speculation: *What is vulnerability within the context of detention? What are detainees vulnerable to? How can vulnerability be assessed in individuals and in groups?*

14.2. Vulnerability within the context of detention

The methodological implementation of the DEVAS project, and the findings that were attained from interviews with detainees, offer another perspective on vulnerability and special need in detention. It is a perspective based on the voices of detained asylum seekers and irregular migrants rather than on pre-determined notions, and on the multitude of the factors that make up their experiences in detention. This is not to say that pre-determined criteria of vulnerability and special need are no longer worthy or unnecessary – the DEVAS research confirms that persons within pre-determined categories actually do have special needs and vulnerabilities. It is also not to say that the perspective offered by the DEVAS project is better than others – here too we see that the DEVAS project comes with its own limitations.[45]

The results of the DEVAS project should rather be seen as an additional input into the long-standing discussion on the constitution of 'vulnerability' and 'special need' in detention, and one more tool which might be useful for policy makers, practitioners and detention monitors. Above all, the results of the DEVAS project should be seen as an

[44] The Reception Conditions Directive (2003/9) includes "vulnerable groups" such as "minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence" (art. 17.1). The Asylum Procedures Directive (2005/85) does not lay down a definition for vulnerable groups, but does place unaccompanied minors within this category, "on account of their vulnerability" (preamble 14). Guarantees for unaccompanied minors are laid down in Article 17 of the Directive. The Dublin Regulation (343/2003) does not define vulnerable groups, but does allow for certain procedures in the situation that an asylum seeker is an unaccompanied minor. The Qualification Directive (2004/84) and the Return Directive (2008/115) both define vulnerable groups in the same way as in the Reception Conditions Directive. Apart from governmental references to vulnerability is the standard set by UNHCR in their *1999 Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*: "single women, children, unaccompanied minors and those with special psychological or medical needs", as well as "unaccompanied elderly persons, torture or trauma victims, persons with physical or mental disability."

[45] Refer to the Introduction of this report for "methodological remarks" and "research limitations".

embodiment of detainees' voices for the purpose of using their accumulated experiences to ensure that detention, if used at all, reduces its harm to individual persons to the largest extent possible.

The findings of the DEVAS project show that 'vulnerability' is a complex and multi-layered concept that falls well outside the boundaries of predetermined categories. The data offers a story of detainees who not only have special needs such as medical problems, pre-existing traumatic histories and families to take care of, but also of detainees who *become vulnerable* to the negative effects of detention. Since every person possesses traits, characteristics and experiences that differ from one another, then we must assume that each persons 'level of vulnerability' also differs from one person to the next. Some detainees may find that they can cope with the adversity posed by detention; others find that they are easily crippled. Some detainees find that detention does not negatively affect them until after one or two months; others find that detention harms them from the very first day.

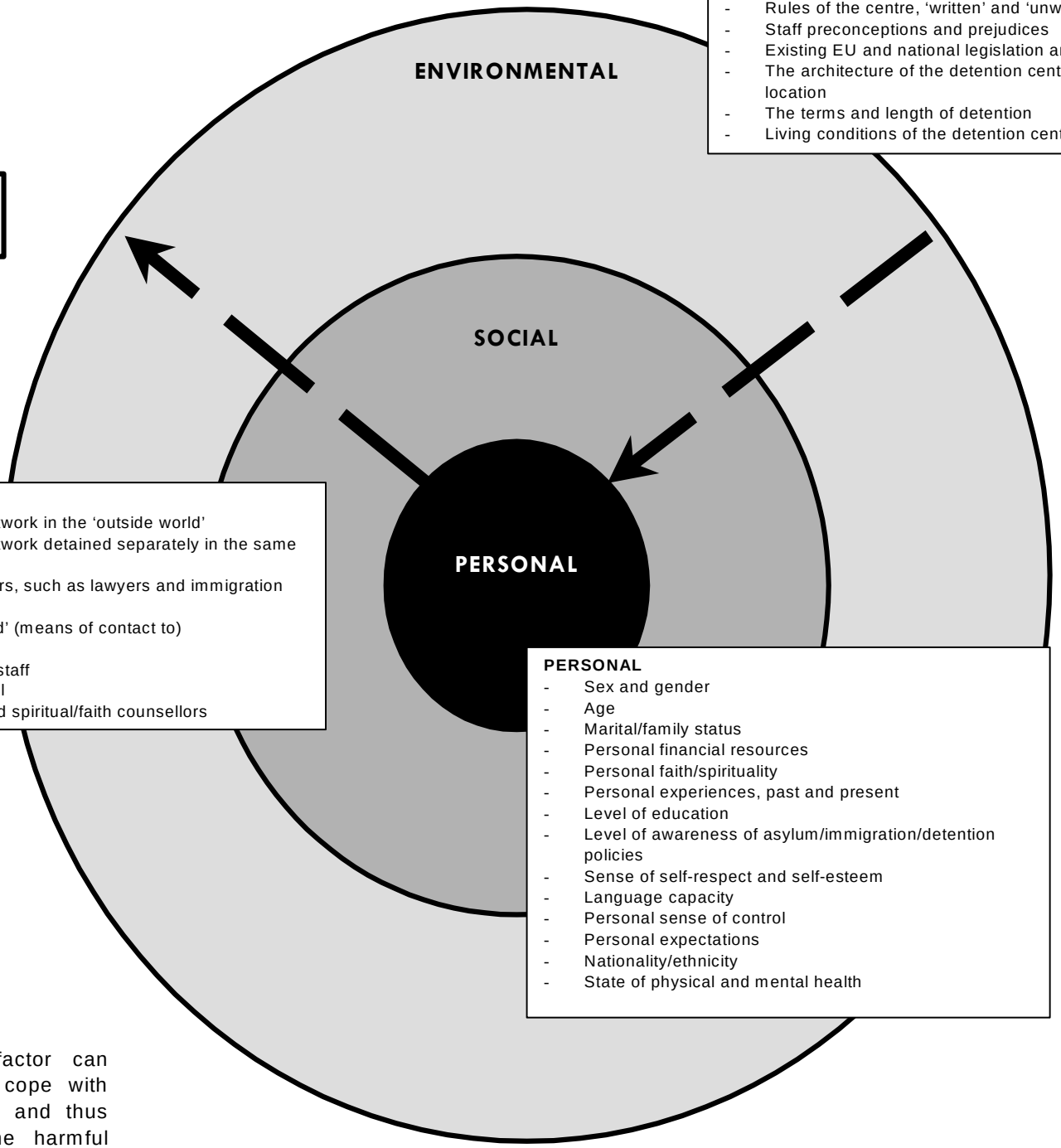
In and of itself, 'vulnerability' is a loss of control of oneself to someone, or some thing, with more power, thus making oneself susceptible to some type of harm. The picture that emerges from the data is one of the detained asylum seeker or irregular migrant someone who is trapped, isolated and cannot escape, and is thus vulnerable to further harm from internal and external factors. The detainee must therefore rely on their personal attributes, the people in their social network and the characteristics of their environment in order to free him or herself from that trap. Conversely, the same personal, social and environmental factors – or an absence of such factors – may hinder an individual's ability to free him or herself from this trap.

Within the context of detention and the data that was collected for DEVAS, 'vulnerability' can be conceptualised as a concentric circle of personal (internal), social and environment (external) factors that may strengthen or weaken an individual's personal integrity (see diagram on page 91). Put differently, the presence or absence of these factors may either empower a detainee to cope with the negative effects of detention, or they may expose the detainee to further harm. Factors interact at all levels of the concentric circle, and they can either positively or negatively impact each other. A detainee, for instance, has no control over the personal beliefs of a detention centre security guard, but the detainee's nationality may spark discriminatory behaviour from the guard. An individual in prolonged detention may not be able to communicate with his or her lawyer and thus remains poorly informed of the asylum procedure in the country where he or she is detained. The inability to communicate with a lawyer on the outside, and the resultant lack of information, may instil a deeper sense of personal uncertainty, stress and despair within the detainee: all of which may lead to a deterioration of their mental and physical health.

14.2.1. Personal factors of vulnerability

The DEVAS research shows that a determination of one's level of vulnerability to the negative aspects of detention should first begin with an assessment of personal factors. This first level of the concentric circle can simply be defined as the *sum of the individual's personal sense of agency*. It is a set of determinants that an individual personally carries with him or herself, all of which may hinder or improve the individual's ability to cope with the adversities of detention. The factors listed on the diagram on the preceding page are not exhaustive; nor, for this matter, are any of the subsequent factors presented in this way. Instead, each of the personal factors relates to experiences that were expressed by detainees in their interviews. Among the personal factors listed on Table 29 (see page 93), language capacity, level of awareness of the asylum/immigration procedure and state of physical and mental health were shown to have the most influence over an individual detainee's ability to cope with the environment imposed by detention.

The Concentric Circle of Vulnerability



ENVIRONMENTAL
- Rules of the centre, 'written' and 'unwritten'
- Staff preconceptions and prejudices
- Existing EU and national legislation and policies
- The architecture of the detention centre and its geographic location
- The terms and length of detention
- Living conditions of the detention centre

SOCIAL
- Family/friends network in the 'outside world'
- Family/friends network detained separately in the same facility
- Information carriers, such as lawyers and immigration authorities
- The 'outside world' (means of contact to)
- Co-detainees
- Detention centre staff
- Medical personnel
- Visiting NGOs and spiritual/faith counsellors

PERSONAL
- Sex and gender
- Age
- Marital/family status
- Personal financial resources
- Personal faith/spirituality
- Personal experiences, past and present
- Level of education
- Level of awareness of asylum/immigration/detention policies
- Sense of self-respect and self-esteem
- Language capacity
- Personal sense of control
- Personal expectations
- Nationality/ethnicity
- State of physical and mental health

At each level, any one factor can **strengthen** one's ability to cope with detention, or it can **weaken** and thus make one vulnerable to the harmful effects of detention.

The inability of a detainee to express him or herself in a language that the detention centre staff can understand may lead to a fundamental imbalance in the relations between the two. In this way, the detainee loses the capacity to verbally assert him or herself and becomes vulnerable to the personal and professional dispositions of the staff. Unsympathetic staff may become short-tempered with detainees they do not understand, which may lead to verbal and physical abuse. But even sympathetic staff may be unable to meet the needs of detainees who language they do not understand. Meanwhile, the detainee becomes dependent on the language capacities of co-detainees or on visitors from the outside world. If these resources are unavailable to the detainee, then he or she may be at risk of losing touch with the reality of their situation due to the lack of information; their level of vulnerability to the consequent negative effects of detention may thus increase. The opportunity to be informed in an understandable language is a widely recognised fundamental right.[46] In the context of detention, the ability for detainees to articulate themselves in their own language, or in a common language, is also very important as it is the primary way they can assert their rights in detention.

Closely linked to language capacity is detainees' level of awareness of Member State procedures on asylum and immigration. Detainees who receive information in a language they cannot understand may fall vulnerable to the closed environment of detention, especially since the ability to independently access information is restricted in many detention centres. Detainees frequently describe the lack of information as one of the more persistent difficulties they experience in detention; they want to know when they will leave, what will happen to them after detention and how they will care for their loved ones. The possession of information enables detainees to at least develop a perspective for their immediate future, and to establish a semblance of a plan for themselves and loved ones outside of the centre. Without this information detainees experience more isolation and high levels of psychological stress – all of which brings physical consequences as well.

Detainees find that their state of physical and mental health becomes vulnerable to the negative effects imposed by the closed environment of detention. Persons with pre-existing physical and mental conditions often fare worse, and otherwise healthy persons find that their overall health deteriorates. The psychological stress that was expressed by many detainees is closely linked to the lack of information, and to some extent, the inability to be understood in their language. As time passes detainees become more despondent and hopeless that their situation can be resolved in a positive manner. This stress affects their ability to properly nourish themselves, and as a result they may lose their appetite and experience the negative physical consequences of prolonged decreased food intake, not to mention insomnia and other physical manifestations of stress.

[46] The right to non-discrimination on the basis of language, and the right to be informed in an understandable language, is enshrined in: art. 2(2) of the International Covenant on Economic, Social and Cultural Rights; art. 2 of the Universal Declaration of Human rights; arts. 5(2), 6(3)(a), 6(3)(e), 14 and 1(1) of the European Convention on Human Rights and its Protocols; arts. 2(1), 40(2)(vi) of the UN Convention on the Rights of the Child; art. 1, 7, 16(5), 16(8), 18(3)(a), 18(3)(f) and 22(3) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This right is also recognised in existing EU law related to asylum and migration: art. 5(2) of COUNCIL DIRECTIVE 2003/9/EC laying down minimum standards for the reception of asylum seekers; preamble 13, arts. 10(1)(a), 10(1)(e) and 17(5)(a) of COUNCIL DIRECTIVE 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status; arts. 22 of COUNCIL DIRECTIVE 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees who otherwise need international protection and the content of the protection granted; art. 3(4) of COUNCIL REGULATION (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; preamble 21, arts. 12(2), 12(3) of DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third-country nationals. This right is also recognised in the *1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*.

Table 29: Personal factors of vulnerability

Personal factors	*Relation to detainees' actual experiences as recorded by the DEVAS project*
Sex and gender	Women expressed unease at being detained with men, and not having access to specialised medical treatments, e.g. gynaecologists. Men felt unable to fulfil their perceived role as familial caregiver; in some instances they reported experiencing frequent physical abuse in detention.
Age	Asylum seekers are highly concentrated in the group of detainees aged 10 to 17 and 18 to 24, and they are less informed than older detainees. Minors, in particular, more frequently report negative experiences than other age groups. The environment of detention is generally composed of adult populations, making young persons, especially minors, susceptible to harm.
Marital/family status	Many detainees with a 'single' status are lacking in supportive social networks. Those who are 'married' or have families suffer due to imposed separation. Detainees who maintain good communication with spouses or family benefit from the support that is given.
Personal financial resources	Detainees without money cannot purchase telephone cards in the detention centre, or support themselves in other ways. Their level of financial resources affects their capacity to continue supporting family during detainment. Access to legal aid and representation often depends upon financial resources.
Level of awareness of asylum/immigration/detention policies	Detainees who are not fully informed of the Member State's asylum or immigration procedures express feelings of isolation, stress, uncertainty and deteriorated mental health. Unawareness of the length of detention exacerbates these negative effects. Detainees who are informed can at least establish a future perspective and plan for life after detention.
Sense of self-respect and self-esteem	Rejections of asylum applications, deportation decisions and prolonged detention seriously impact self-perception, holding very negative consequences for detainees' mental health.
Language capacity	Detainees who do not share a common language with detention centre staff and co-detainees express a deep sense of isolation and an inability to fulfil basic needs. The lack of mutual understanding may lead to verbal or physical abuse.
Personal sense of control	Inherent within the imposition of detention is the removal of personal control. Detainees become dependent on detention centre staff, and even on co-detainees, for needs fulfilment. Possession of information boosts detainees' sense of control over their situation, for example. Personal control mitigates the negative aspects of detention.
Personal expectations	Detainees may expect that their detention is a means to some other end, e.g. stay in the Member State, or an accepted asylum application. Poorly informed personal expectations lead to further negative consequences. Persons that are detained for longer than expected also express a deterioration of their personal integrity. Detainees express shock at the conditions of their detention due to their expectations that they would find safety in Europe.
Nationality/ethnicity	Detainees find comfort if others of their nationality/ethnicity is present in the detention centre. Conversely, detainees who are alone in their nationality/ethnicity express deep isolation. Certain nationalities/ethnicities spark prejudices and discriminatory behaviours from detention centre staff and co-detainees.
State of physical and mental health	Detainees with pre-existing physical and mental conditions suffer due to the lack of appropriate medical care in the detention centre. Detainees who have been persecuted view detention as yet another form of persecution. Poor material conditions may lead to physical ailments. Even persons who enter detention physically and mentally healthy express deterioration in their condition as detention endures.

14.2.2. Social factors of vulnerability

If we define vulnerability as a "loss of control over of oneself to some one, or some thing, with more power, thus making oneself susceptible to some type of harm", then an assessment of a detainee's personal factors would seem to be the most important act in determining his or her level of vulnerability to the negative effects of detention. But even detainees with a strong sense of personal agency may be made more vulnerable if they do not have a social network to rely on for aid and assistance. Just as important as the existence of a social network is the means to communicate with it. Thus the second level of the concentric circle may be defined as *the sum of the individual's existing social network, and available means of communicating with that network*. It is made up of the persons, organisations or bodies in the detainee's life who may lessen or increase his or her level of vulnerability to the adversities of detention. These social factors may also be labelled as 'external factors', in the sense that they are situated outside of the personal self. Yet these factors do not necessitate existence in the 'outside world', *per se* – such factors may also be present in the detainees' social network within the detention centre. Among the factors presented in Table 30 (see page 95), those that seemed to influence detainees' personal situations the most are family, relatives and/or friend in the 'outside world', the 'outside world' (means of contact to), co-detainees and detention centre staff.

Detainees frequently expressed that it was very important for them to maintain steady contact with family, relatives and/or friends in the 'outside' world. In doing so they can stay informed of family-related news, and they can also keep their family informed of their situation in detention. Others frequently described detainees who do not have this type of network as being vulnerable in detention. Certainly, if a detainee cannot rely solely on him or herself to cope with being in detention, then relying on family and friends networks on the outside becomes all the more important. Without such support detainees may become more vulnerable to the negative aspects of detention, such as its closed and isolative environment, and the physical and mental stress it creates as a result.

The ability to maintain communication with family, relatives and friends on the outside world depends on the means of contact to that are available to detainees. In most cases detention centres offer fixed landline telephones, but many detainees say that they cannot be accessed regularly, either due to the inability to purchase telephone cards, or to the mere unavailability of enough telephones for everyone. Use of this means of contact might thus depend on detainees' personal financial situations, and on their level of existing relations with co-detainees and staff (who may facilitate, or impede, access to the telephone). Detainees are mostly unable to use their personal mobile telephones, which in many cases are confiscated by detention centre staff upon arrival. Since important telephone numbers are often stored on mobile phones, even fixed landlines offered by the detention centre become useless if detainees cannot remember which numbers to dial. Other means of contact, such as the Internet, are not widely available. Curtailing detainees' ability to contact potentially supportive persons or organisations on the outside may consequently reduce their capacity to cope with the adversities of detention, making them more vulnerable to stress, mental and physical deterioration.

If detainees are unable to find support on the outside, or even to maintain contact with those on the outside, then their dependence on co-detainees might increase. Detainees that need to speak with the detention centre staff, or to the medical personnel, often rely on the language capacities of co-detainees. It is also done when seeking social and emotional support. But this factor may also be negative, as expressed by detainees who attribute their lack of safety to co-detainees. Personal factors such as nationality/ethnicity, age, sex and faith/spirituality highly impact relations between detainees. Persons who find others with common areas of interest might benefit from the support given; those who do not interact well within this social network may find themselves vulnerable to exclusion and stigmatisation from co-detainees, and also to verbal or physical abuse.

Together with co-detainees, the detention centre staff form an integral and immediate part of detainees' social network in detention. In many instances detainees can only rely on the staff for the fulfilment of their basic needs. Staff persons that are unsympathetic, or even verbally or physically abusive, can very negatively affect the lives of

detainees. If detainees cannot trust staff persons, then the dynamic between the two becomes imbalanced. This holds strong consequences for the vulnerability of detainees, since they are already in a disadvantaged situation because they do not posses the same influence as the staff. Detainees who must rely on staff who hold prejudices and discriminatory attitudes, for example, may find that their situation in detention worsens due to the abuse or inattention they might experience as a result. Linguistic understanding between staff and detainees is vitally important in order for the two groups to relate well to each other. The inability of staff to comprehend the language of detainees is a source of social stress; and the consequence for detainees may be deepened isolation and the absence of important information.

Table 30: Social factors of vulnerability

Social factors	***Relation to detainees' actual experiences as recorded by the DEVAS project***
Family, relatives and/or friends in the 'outside world'	The presence of these persons in the Member State where the detainee is kept can serve as a support outlet for the latter. They can provide the detainee with news from the 'outside', legal information, material and even emotional support. The non-existence of such networks deepens detainees' sense of isolation. Conversely, the existence of familial networks may worsen the experiences of detainees who are unable to provide support themselves due to their situation in detention.
Family, relatives and/or friends detained separately but in the same facility	Detainees feel very negative if they separated from family or friends, but held in the same general facility. This imposed separation further exacerbates a sense of punishment, and also uncertainty and worry for others.
Information carriers, e.g. lawyers, NGOs, immigration authorities	Detainees who are able to meet with lawyers benefit from an improved understanding of their legal situation. But incompetent legal advice misplaces detainees' expectations. Visitations from NGOs serve as a source of information and connection to the outside world, and may mitigate uncertainty and isolation.
The 'outside world' (means of contact to)	Prohibiting detainees' use of their personal mobile telephones has the consequence of severing them from their social network, especially because important information is often stored on mobile telephones. It also fosters isolation because detention centres do not usually provide enough means of communication relative to the detainee population.
Co-detainees	Detainees benefit from the affinity of co-detainees with similar backgrounds, nationalities, ethnicities, language capacities and religious affiliations. But detainees who fled due to persecution may experience more suffering if they are placed with persons who exemplify the reason for their persecution. Detainees more frequently attribute their lack of safety to co-detainees than anyone else in the detention centre. Nevertheless, detainees do rely on each other for mutual support, such as for language translation and interpretation as well personal accompaniment.
Detention centre staff	As a consequence of their situation, detainees inevitably become dependent on the capacity of detention centre staff to fulfil basic needs. Well-trained, supportive and sympathetic staff can help to alleviate the negative effects of detention. Staff who are verbally or physically abusive damage the level of trust detainees possess towards them, and foster an environment of animosity.
Medical personnel	Most detainees describe the medical personnel as being unable to provide anything more than pain-reducing and sleeping medication, irrespective of the ailment. Nevertheless, the medical personnel play an important role in ensuring the health of detainees. In cases where such personnel are able to offer additional services, such as psychological treatment, then detainees seem to fare better.
Visiting NGOs and spiritual/faith counsellors	In many cases it is the NGOs who visit the detention centre that provide legal aid, asylum/immigration information, language assistance and medical

	assistance. Visits from such organisations are important as they mitigate the isolation that detainees feel to the outside world, and serve to meet detainees' needs. Many detainees described relying upon their spiritual beliefs as a means of coping with detention. Detainees may thus benefit by meeting with spiritual/faith counsellors, or pastoral care workers.

14.2.3. Environmental factors of vulnerability

A detainee may exert a modicum of control over the personal and social factors that he or she possesses in the situation of closed detention. He or she may choose whom to socialise with, their manner of interaction with the detention centre staff; he or she may also work to improve, even if only slightly, their language capacity so they can communicate with co-detainees and staff and understand the information that is given to them. But he or she cannot exert any control over the factors in the larger environment that affect their level of vulnerability just the same.

These environmental factors, which make up the third level of the concentric circle, may be defined as *the sum of the determinants that exist in the individual's larger environment but which the individual cannot control nor influence, and which may still increase or lessen his or her level of vulnerability to detention*. These factors can be considered as "external" together with the social factors, because they exist outside of the detainee's personal self. Some of the factors described in Table 31 (see page 97) are closely linked to the social factors listed in the previous sub-section. The important difference is that social factors entail direct interaction with other persons and social networks. Environmental factors may include persons in the detainee's social network without entailing direct interaction; but as we shall see it mostly includes non-human elements. Among those that seemed to most influence detainees' level of vulnerability was the architecture of the detention centre, the terms and length of detention and the living conditions in the detention centre.

The well being of detainees seems to be very negatively affected by the prison-like architecture of many of the detention centres where DEVAS interviews took place. The bars on the windows and entryways, the restrictive rules and strict schedules and the high walls and barbed wire of the external perimeter of the centre foster within detainees a sense of wrongdoing. The prison-like atmosphere of detention especially has an effect on detainees with a history of trauma, perhaps due to a dangerous voyage to Europe or to persecution endured in their home country, and also on persons who expected to find safety and security in a EU Member State. As a result detainees experience shock and disbelief at their situation of detention and on the consequences it has on their personal condition. Although detainees are affected in this manner from the first week of detention, prolonged detainees become especially vulnerable to the prison-like atmosphere as seen in their worsened state of mental health and persistent reports of psychological and physical stress.

The prison-like architecture of the detention centre becomes more significant for detainees who do not know the terms and length of their detention. Even if detainees are aware of the reasons for their detention, e.g. for expulsion, they are less aware of the purpose for their detention if it endures for a prolonged period of time. Additionally, detainees who are detained for longer than expected see a sharp deterioration in their condition due to the ongoing exposure to the adversities of detention. Detainees who do not know when they will be released are unable to establish any life plan or perspective of their immediate future. They consequently become more vulnerable in detention due to physical and mental stress that weakens their general condition.

Poor living conditions in the detention centre intensify the negative effects that come as a consequence of the prison-like environment and the indeterminate duration of detention.[47] Overcrowded dormitories, unsanitary facilities and the poor quality of the food have a severe effect on the self-perception of detainees, many of whom compare themselves to animals as a result of the poor living conditions. But it is not only the extremely negative conditions that affect

[47] This is not to say that Member States do not legally define a specific duration period of detention. The usage of the phrase "indeterminate duration of detention" reflects detainees' frequently made statements describing their lack of awareness of their date of departure from detention.

detainees: the lack of intellectual stimulation, Internet accessibility and educational activities lend to an atmosphere of idleness. A consequence is the inability to sleep well at night, due to resting throughout the day, which exacerbates stress and worsens physical health. The incidence of skin problems as well as digestive ailments may increase among detainees living in poor conditions, as well as the incidence of psychological symptoms related to depression and anxiety.

Table 31: Environmental factors of vulnerability

Environmental factors	***Relation to detainees' actual experiences as recorded by the DEVAS project***
Rules of the centre, 'written' and 'unwritten'	Detainees tend to perceive the rules of the detention centre as a means of restriction, rather than maintaining order or security. They decry rules that keep them indoors for most of the day and require them to be in their cells between mealtimes. The rules often exacerbate detainee perceptions of the detention centre as a prison.
Staff preconceptions and prejudices	Detainees are unable to control or influence the staff's attitudes towards them. Many acknowledge that staff persons treat them well and maintain supportive attitudes. But others complain of racial and discriminatory behaviour from the staff. Detainees are vulnerable to negative staff attitudes because they often have no one else to turn to.
Existing EU and national polices on asylum and immigration	Detention conditions differ from one EU Member State to the next. Although the consequences of detention are similar across the EU, the variety in conditions means that detainees kept in one country might experience a greater level of vulnerability than detainees in other country. Thus detainees are made vulnerable to a policymaking process that prioritises the use of detention without sufficient regard for the lives of detainees.
The architecture of the detention centre and its geographic location	Many detention centres maintain a prison-like atmosphere, with barred windows and entryways, and strict schedules and rules. High walls and barbed wire fences are often found on the exterior perimeter. The poor quality of the conditions leads detainees to feel that they have committed a wrongdoing. The location of the centre, in some cases in very rural areas and in others next to airport runways, exacerbates a sense of isolation in detainees.
The terms and length of detention	Detainees frequently compare themselves with convicted criminals. But the difference between the two is that the latter will usually know when they are to be released, while the former does not. The severe environment of detention, together with an unclear understanding (of detainees) of the duration of detention, deepens detainees' level of uncertainty, stress and negative health impacts.
Living conditions of the detention centre	Poor living conditions, such as unclean rooms and unsuitable food, negatively affect the experiences of detainees. It lends to the prison-like atmosphere of detention. Inadequate living conditions make detainees vulnerable to adverse physical health impacts, such as skin and stomach ailments, and also to mental health problems akin to depression.

14.3. Assessing vulnerability in detained individuals and groups

The data shows that detention has the potential to harm many types of people: those with pre-existing special needs or otherwise healthy persons. It is important to stress that a person becomes vulnerable from the first day of their detention, as the individual's personal condition is instantly affected due to their disadvantaged and weakened position. From a State perspective, detainees are persons to be controlled and managed in order to affect policy towards a particular end. Such ends might be a final decision on an asylum application or a removal from the State's territory. The removal of personal control therefore makes detainees dependent on State authorities. As a consequence, detainees become vulnerable to the manner in which they are controlled by the State. Detainees' level

of vulnerability fluctuates in relation to the characteristics that they personally possess, the factors in their social network and the determinants in their wider environment.

The 'concentric circle of vulnerability' described in the preceding sections attempts to acknowledge the variety of factors that enable vulnerability in detained asylum seekers and irregular migrants. In this context it may be utilised as a tool to individually assess persons before detention, and also as a tool to continually determine the necessity and proportionality of detention. However, it is the position of JRS-Europe and its project partners that asylum seekers should not be detained, and detention for irregular migrants should be used as a last resort when non-custodial alternatives have been exhausted. Thus the 'concentric circle of vulnerability' may be additionally viewed as a tool to ensure that the implementation of detention – if used at all – does not cause unnecessary harm to individuals, and is not disproportionate to their actual situation.

The data reveals the presence of individuals and groups in the sample that seem to especially suffer from the negative consequences of detention. An application of the 'concentric circle' shows that there are indeed a variety of factors that impact the level of vulnerability within these persons. The following sections will examine in more depth how the 'concentric circle' tool may be used to assess the level of vulnerability of minors, 'prolonged' detainees, and asylum seekers in the total sample. An emphasis on these groups is not to say that they are more vulnerable than the rest. Rather, they have been identified because their statements emerge from the rest of the sample as being particularly indicative of vulnerability. They will be examined in the subsequent tables along the lines offered by the 'concentric circle' by identifying their relevant personal, social and environmental factors, but also in response to two questions: 1) what pre-existing needs and/or conditions do they possess that might make them vulnerable to the effects of detention? 2) What factors and/or conditions of detention might further impact their level of vulnerability to detention?

14.3.1. Minors

Among the most apparent of the *pre-existing conditions* within this group of detainees is their age: the youngest being 10 and the oldest 17 at the time of their interview. Their youth means that they are psychologically and physically susceptible to the behaviour and attitudes of the adults that make up the detention centre staff, and also of adult co-detainees[48]. As a consequence they are vulnerable to physical injury from staff members who are abusive. Moreover they are vulnerable to mental injury not only from staff, but also to the conditions and environment of detention and all of the negative factors that are entailed. This disadvantaged position is exacerbated since over half of these detainees were asylum seekers at the time of their interview, with one quarter coming Afghanistan and Pakistan – countries where personal security is often compromised. Many within this group report difficulties in communicating with the detention centre staff, due to their unfamiliarity with the language of the host Member State. Furthermore, they came to Europe knowing little about the asylum and immigration policies of the Member State they arrived to, and the reasons for which they may be detained.

The difficulties posed by these pre-existing conditions are compounded when put together with *factors within the situation of detention*. The inability of the detention centre to provide sufficient linguistic assistance means that these detainees may become further isolated from important sources of information, and also from medical treatment since they cannot adequately communicate with medical staff. The closed environment of detention limits their ability to contact the 'outside world'. A significant number of these detainees lack family, relative and friend networks in the host Member State, which deepens their sense of disconnection. Many within this group feel unsafe in the detention centre, owing to verbal and physical abuse that the have experienced from detention centre staff and co-detainees. The mere situation of their confinement and the poor living conditions affects their physical and mental health, and

[48] In some instances minors with parents are separated from the rest of the detainee population. Among those interviewed for DEAVS, some were detained with the general population, while others were kept in specialised facilities.

may lead to long-term psychological trauma. The lack of educational opportunities may make it all the more difficult for detainees within this group to resume their lives post-detention, due to the interruption in their education.

Table 32: Factors affecting the level of vulnerability to detention for *MINORS*

Personal factors	Social factors	Environmental factors
Legal status • Over half are in need of international protection	*Detention centre staff* • ⅓ report verbal abuse; most blame the staff • ¼ report physical abuse; most blaming the staff	*Architecture/location of detention* • Many were interviewed in Greece and Malta; both are known for poor detention conditions
Nationality • ¼ are from countries of conflict and social strife	*Co-detainees* • Reports of good relations with co-detainees; more interaction with them than with staff	*Living conditions* • Most have no access to educational activities, nor access to the computers and Internet • Over half feel negative about the dormitories
Possession of information • ⅓ do not know the reasons for detention • Most are uninformed about the asylum procedure	*Networks in the centre* • Almost all say they have no one to go to in the centre when problems arise	*Rules of the centre* • More frequently unaware of the centre's rules than other age groups
Personal safety • Feel more unsafe than other age groups	*Medical personnel* • Almost ⅓ do not understand the language of the medical staff	*EU and national asylum/immigration policies* • Some await a "Dublin II" transfer in detention, and report to understand little of this process • The asylum procedures of Greece and Malta are restrictive. Refugee recognition rates in Greece are low
Physical & mental health • Physical and mental health has deteriorated as a consequence of detention • High rates of reported stress, uncertainty	*Family, relatives, friends in the 'outside world'* • Almost half do not have these networks in their home country • Half do not have these networks in the host Member State	*Staff preconceptions and attitudes* • Detention centre staff have used racial epithets against detainees
Self-perception • Over half hold negative self-perceptions	*Means of contact to the 'outside world'* • Most do not receive personal visitors • Many report difficulty accessing the telephone	
Personal experiences • Most say difficulties have worsened in detention	*Information carriers* • Only ¼ say they have met with lawyers	

14.3.2. 'Prolonged' detainees

The average duration of detention in the DEVAS sample is three months. But within the sample there are persons who were detained for as long as 31 months at the time of their interview. Thus for the purpose of this analysis, we

define “prolonged detainees” as those persons – asylum seekers and irregular migrants – who were detained for more than three months at the time of their interview.[49]

There are a number of *pre-existing conditions* that might impact the level of vulnerability of persons within this group. Firstly, the data reveals that 65 percent of detainees held for more than three months are asylum seekers. As such, these persons may have been fleeing from a severe risk of danger to themselves and also to their loved ones. They may have also incurred a level of trauma, either in their country of origin or in the process of their flight. Secondly, many within this group come from countries where conditions of persecution are known to exist, such as in the region of East Africa. Additionally, about one-third of the asylum seekers within this group claim to be uninformed of the asylum procedure; and most say that they need more information about asylum and immigration procedures. Any information that they do know of was given to them either during their arrest for detention, or during official procedures with State authorities. Many came to Europe knowing little of what to expect. The lack of awareness of asylum and immigration procedures in the EU, and the fact that many are seeking protection and may thus be fleeing from persecution and conflict, constitute important pre-existing conditions that may impact their level of vulnerability to the situation of closed detention.

There are a number of *factors within the situation of detention* that might aggravate the vulnerabilities already present within this group of detainees. Most apparent is the long-term nature of their detention, which average almost eight months,[50] and the quality of the living conditions in the detention centre, which most feel very negative about. Their level of physical and mental health has deteriorated as a result of the negative factors associated with detention: the poor quality of the food, the inability to sleep properly, the psychological stress of uncertainty and the limited means of contact to the outside world. The long-term nature of their detention – mixed with the negative consequences described above – may foster conflict between detainees and with detention centre staff, as evidenced by their frequent reports of having experienced physical and verbal abuse from staff and co-detainees. Moreover, the general situation of detention has a strong negative impact upon self-perception.

Table 33: Factors affecting the level of vulnerability to detention for *PROLONGED DETAINEES*

Personal factors	Social factors	Environmental factors
Legal status • Well over half are in need of international protection	*Detention centre staff* • Little contact with health and psychological staff • Most feel that the staff does not meet their needs	*Architecture/location of detention* • Many of the centres where detainees were interviewed have prison-like atmospheres
Nationality • ¼ are from countries of conflict and social strife	*Co-detainees* • Co-detainees are the primary source of physical and verbal abuse	*Living conditions* • The poor state of conditions in the centres have a physical and mental health impact on detainees • Quality of nutrition and of sleep are poor

[49] The DEVAS research methodology did not intend to establish a definition of “prolonged detention”; and nor is it the intention of this re port to arrive at such a definition. The analysis in this sub-section simply reflects the group of detainees who fall outside of the average on the variable “duration of detention”.

[50] This statistic should not be confused with the average duration of detention of the entire sample, which is 3.01 months. This figure comprises the average for asylum seekers and irregular migrants detained for more than three months at the time of their interview; in this case the exact statistic is 7.74 months.

Possession of information • ⅓ do not know the reasons for detention • ⅓ are uninformed about the asylum procedure	*Networks in the centre* • Inter-detainee relations are reported to be poor	*The terms and length of detention* • The average detention period is almost eight months • Detainees are mostly unaware of when they will be released
Personal safety • Many experience verbal and physical abuse from co-detainees and also detention centre staff	*Medical personnel* • Less frequent access to medical personnel than other detainee groups • Most feel negative about the quality of the care • Half say they need more medical services in the form of improved quality of care	*EU and national asylum/immigration policies* • Current EU legislation does not promote short time periods of detention • National legislation of where detainees were interviewed allows for detention of asylum seekers and irregular migrants for longer than three months[51]
Physical & mental health • Physical and mental health has deteriorated as a consequence of detention • High rates of reported stress and uncertainty	*Family, relatives, friends in the 'outside world'* • Over half do not have family, relatives or friend networks in their home country	*Staff preconceptions and attitudes* • Detention centre staff have used racial epithets against detainees; smaller numbers have committed physical abuse
Self-perception • Over half hold negative self-perceptions; these self-perceptions worsen as a result of detention	*Means of contact to the 'outside world'* • Many do not receive personal visitations • But many do receive visits from spiritual/faith counsellors • Telephones are not readily available; Internet is unavailable	
Personal experiences • Most say that their difficulties have worsened in detention	*Information carriers* • Over half receive visits from lawyers	

14.3.3. Asylum seekers

As a group, asylum seekers are not generally considered as meeting criteria of vulnerability and special needs *per se*. Yet the DEVAS research shows that asylum seekers on many levels fare quite negatively in detention than when compared to other groups. The most apparent *pre-existing condition* within this group is their legal status. As asylum seekers it may be the case that they are fleeing from a severe risk of danger to themselves.[52] A number of asylum seekers alluded to past traumas and negative experiences that continue to impact them in detention. Added to this is the finding that almost half reported to be uninformed about the asylum procedure in the Member State where they were detained at the time of their interview. If these persons did in fact have protection needs, then their unawareness of the asylum procedure would put them at a significant disadvantage. It might also increase their dependency on detention centre staff and national authorities for accurate information; sources that may be biased or inaccurate if relations between the two are obstructed in any way.

Factors within the situation of detention may deepen the vulnerabilities that these asylum seekers already have. Most notable is the long duration of detention: an average of 3.5 months. The time spent in detention aggravates a number of factors, such as the poor living conditions, the prison-like environment of detention and asylum seekers' inability to get reliable and accurate information about their case and the reasons for their detention.

[51] Malta, Bulgaria, the Czech Republic and Slovenia are the top three countries with the highest concentration of asylum seekers and irregular migrants detained for more than three months at the time of their interview.
[52] The DEVAS research methodology did not assess detainees for their need of international protection; and neither was it the intention of the DEVAS project to assess legal protection needs.

Table 34: Factors affecting the level of vulnerability to detention for *ASYLUM SEEKERS*

Personal factors	Social factors	Environmental factors
Legal status • As asylum seekers, they may be fleeing from severe risk of danger or persecution	*Detention centre staff* • Little contact with health and psychological staff • Most feel that the staff does not meet their needs	*Architecture/location of detention* • Many of the centres where detainees were interviewed have prison-like atmospheres
Nationality • Many flee from dangerous situations and from persecution in their home countries; consequently the may be endangered if returned	*Co-detainees* • Co-detainees are a primary source of physical and verbal abuse	*Living conditions* • The poor state of conditions in the centres where detainees were interviewed have a physical and mental health impact
Possession of information • Many are uninformed of the asylum procedure where they are detained. • ¼ are unaware of the reasons for their detention	*Networks in the centre* • Despite occurrences of abuse, inter-detainee relations are reported to be mostly positive	*The terms and length of detention* • The average detention period is 3.5 months, among the highest in the total sample • Detainees are mostly unaware of when they will be released
Personal safety • Many experience verbal and physical abuse from co-detainees and also detention centre staff	*Medical personnel* • Most feel negative about the quality of the care • More than half say they need more medical services in the form of improved quality of care	*EU and national asylum/immigration policies* • Current EU legislation provides little standards for the detention of asylum seekers • National legislation of where detainees were interviewed allows for detention of asylum seekers for at least three months[53]
Physical & mental health • Physical health is affected, but not too differently from the average • Asylum seekers report deteriorated mental health due to psychological stress, self-uncertainty, isolation from the 'outside world'	*Family, relatives, friends in the 'outside world'* • Over half do not have family, relatives or friend networks in their home country	*Staff preconceptions and attitudes* • Detention centre staff have used racial epithets against detainees; smaller numbers have committed physical abuse
Self-perception • Almost half hold negative self-perceptions; these self-perceptions worsen as a result of detention	*Information carriers* • Over half receive visits from lawyers, and others receive visits from NGOs and spiritual/faith counsellors	
Personal experiences • Many report having experienced traumatic situations in the past, which continue to negatively affect them while in detention		

[53] Malta, the Czech Republic and Slovenia are the top three countries with the highest concentrations of asylum seekers detained for more than three months at the time of their interview.

CONCLUSIONS

- Research implications
- Recommendations for EU and Member State policymaking and practice on the detention of asylum seekers
- Recommendations for EU and Member State policymaking and practice on the detention of irregular migrants

15. THE IMPLICATIONS OF THE DEVAS RESEARCH FOR POLICY AND PRACTICE

The data that was collected from one-on-one interviews with 685 detained asylum seekers and irregular migrants in 21 EU Member States reveals a set of implications that impacts the manner in which the EU uses detention in policy and in practice. While the DEVAS research sample does not purport to be statistically representative of the population of migrant detainees in the EU, its size and scope does permit the issuance of observations based primarily on the personal experiences of detainees. Above all, the DEVAS project rests on the voices of detainees and on the way they perceive their situation of detention to be. Thus the project relies on the assumption that detainees know best how detention does or does not affect them, and which vulnerabilities and special needs they may or may not possess. The following pages shall further elaborate on the implications to be made from the research, and on the conclusions it holds for EU and national-level policy and practice concerning the detention of asylum seekers and irregular migrants and the consequences thereof.

15.1. Research implications

The data reveals that detention is implemented in a broad variety of cases and situations. Everyone, from asylum seekers to irregular migrants, from minors to older persons, and from medically ill persons to the healthy, can be subject to detention irrespective of their special needs and vulnerabilities.

Detention is used in a mostly indiscriminate manner with little deference to personal choice and preferences. The cases that were recorded and the persons who were interviewed demonstrate a situation where detainees can do little to alter their circumstances within the detention centre. Detainees must accept the state of living conditions within the detention centre, and cohabitation with persons of differing nationalities, cultures and even personalities and temperaments. They must accept the restriction on their freedom to move about as they please, even within the confines of the detention centre. Although exceptions may exist in some Member States for persons with special needs,[54] the 'average detainee'[55] will find that he is unable to exercise a degree of personal choice and must therefore accept detention as one accepts a punishment, rather than an administrative procedure.

The results show that persons with officially recognised needs, such as minors, young women and the medically ill, are indeed negatively impacted by detention. The adult environment of detention immediately puts minors at a disadvantage, especially if they are unaccompanied, because they are vulnerable to the behaviour of the staff and to the prison-like atmosphere of detention, for example. The data findings show that women, especially between the age of 18 and 24, especially suffer from adverse mental health impacts. The medically ill may not be able to receive the treatment they need because the detention centre only provides for basic medical care.

In almost every case, the study shows that detention has a distinctively deteriorative effect upon the individual person. Only in very few cases do detainees describe their personal situation as having improved after detention; and just as few say that detention has not impacted them whatsoever. The vast majority of those who were interviewed describe a scenario in which the environment of detention weakens their personal state. The prison-like environments within many of the detention centres where interviews took place, the isolation from the 'outside world', the unreliable flow of information and the lack of means to get information lead to mental health impacts such as depression, self-uncertainty and psychological stress, as well as physical health impacts such as decreased appetite

[54] Many Member States do make an effort, in policy and practice, to identify detainees with special needs and to afford them discriminatory treatment. For example, persons with psychological trauma may be referred to mental health practitioners, and unaccompanied minors may be placed in specially designated centres that provide extra support. Despite these exceptions, the DEVAS research shows that, for the most part, detainees are treated as one homogenous group with little distinction for subjective elements.

[55] Any use of the term 'average detainee' within this report is strictly based on the statistical average of the total sample that was assembled and analysed for the DEVAS project.

and varying degrees of insomnia. The manner in how detainees see themselves is significantly impacted by detention. In this context, self-perception becomes an important indicator of the effects of detention because as an administrative measure, *per se*, it should not bring such detrimental personal consequences.

The data shows that detainees are vulnerable to the environment of detention, and that these effects are as apparent in the first month of detention as they are in the sixth month. Detention weakens persons with pre-existing special needs, but it also weakens otherwise healthy people. The negative environment of detention and the restriction upon personal choice and movement places the asylum seeker or irregular migrant in a situation in which they become stuck. The detainee must then rely on his or her personal capabilities, the resources of their social network in and outside of the detention centre and on the factors in their wider environment in order to be able to cope with the adversities imposed by detention.

Vulnerability, therefore, is shown to be a multi-layered concept where the presence and interaction of personal, social and environmental factors determine the extent to which a detainee is susceptible to personal harm that is often the consequence of detention. Detainees who do not share a common language with detention centre staff or with the national authorities, and are unaware of the Member State's asylum and immigration procedures might be more vulnerable to the negative aspects of detention than someone who is the opposite. Detainees who have a network of supportive family or friends, and have regular access to lawyers and visiting organisations might find that they can better withstand isolation in the detention centre. Persons who are kept in detention centres that have barred windows and entryways and unsanitary living conditions, and who are detained in Member States where the duration of detention is ill-defined may suffer considerably with each passing day due to the prison-like environment, and to the inability to establish a future perspective for themselves.

In general, detention centres are unable to sufficiently respond to the ensuing vulnerabilities and special needs fostered within detainees as a consequence of detention itself. Many detention centres are only capable of providing rudimentary medical care for uncomplicated ailments. Even in these cases detainees may be given pain-reducing medication irrespective of their medical complaint. Those who experience mental health problems are usually unable to access psychological services. Moreover, existing criteria for "vulnerability" often focuses on persons with presumptive special needs – parents with children, unaccompanied minors and trauma victims – without a holistic assessment of how that person may actually be vulnerable to the environment of detention. Thus detention centres may not be able to identify persons who are particularly affected by detention if they do not possess such officially recognised special needs. Personal factors alone cannot adequately determine one's level of vulnerability in detention: social and environmental factors must also be assessed, along with the way in which these factors interact with one another.

The biggest implication from the DEVAS research is the way in which detention – frequently implemented as a tool of asylum and immigration policymaking for the EU and its Member States – leads to high rates of vulnerability in people. It calls into question the proportionality and necessity of detention in relation to the ends it seeks to achieve: that is, to systematically manage migration flows so that States may enforce their asylum and immigration policies. But the research reveals that the human cost of detention is too high, regardless of the achievability of these ends because

- The negative consequences of detention and its harmful effects on individual persons are disproportionate to their actual situations, in that they have committed no crime and are only subject to administrative procedures, and

- It is unnecessary to detain persons and thus make them vulnerable to the harmful effects of detention because non-custodial alternatives to detention do exist.[56]

These implications necessitate a review of the way detention is applied towards asylum seekers and irregular migrants in EU- and national-level policymaking, and in the way detention is implemented in practice.

15.2. Recommendations for EU- and Member State policy and practice on the detention of asylum seekers

15.2.1. EU policymaking

The institutions of the European Union and its Member States have an important role to play in the way asylum seekers are received and treated within the territory of the EU. The legal minimum standards that have been established at the end of the first phase of the *Common European Asylum System*, and in the Reception Conditions and Dublin Regulation, provide very little guidance for the use of detention, and for the treatment of asylum seekers with special needs. As a result, asylum seekers can expect to encounter different policies and procedures in each of the Member States, especially concerning the use of detention.

In an effort to reduce these discrepancies, the European Commission in December 2008 published a set of proposals to legislatively amend the so-called Reception Conditions Directive and the Dublin Regulation. Both pieces of law currently provide for few guidelines on the terms and conditions in which Member States may hold asylum seekers in detention, even though detention is actively implemented within both of these legal contexts.[57] The Commission's proposals to "recast" these laws acknowledge the frequent use of detention by Member States, and thus provide detailed legal provisions on how detention should be implemented. These provisions are based on the principal that "Member States may not hold a person in detention for the sole reason that he/she is an applicant for international protection",[58] and that "detention shall be ordered for the shortest period possible."[59] Notably, the Commission's proposals emphasises that Member States may detain asylum seekers "when it proves necessary" and "on the basis of an individual assessment of each case."[60] Guidelines for the treatment of "vulnerable groups and persons with special needs" are provided for, focusing mostly on minors, women and families.[61]

Taking the Commission's proposals into account, the DEVAS research findings allow us to put forth a series of recommendations that aim to further improve future EU policymaking on vulnerability within the context of detention for asylum seekers.

[56] The existence of workable alternatives to detention for asylum seekers and irregular migrants is documented by a variety of actors, such as UNHCR, the International Detention Coalition, JRS-Europe, all of which can be found on http://www.detention-in-europe.org/index.php?option=com_content&task=view&id=90&Itemid=212. In 2009 the Spanish Commission for Refugees, CIRÉ (of Belgium), the Flemish Refugee Council and the Hungarian Helsinki Committee published a paper entitled, *Good Practices for a Europe of Protection*, citing, among other things, alternatives to detention: http://www.vluchtelingenwerk.be/bestanden/publicaties/trio-memorandum.pdf

[57] The applicability of the Reception Conditions Directive to persons in detention has been contested by Member States, see Bührle, Cornelia and JRS-Europe, 30 June 2006, *Administrative Detention in the Context of the Reception of Asylum Seekers*: http://www.detention-in-europe.org/images/stories/reception%20cb.pdf. Article 14.8 allows Member States to "exceptionally set modalities for material reception conditions different from those provided" within the article, and "for a reasonable period which shall be as short as possible." Asylum seekers "in detention or confined to border posts" may be thus excluded. The Dublin Regulation contains no guidelines for the implementation of detention.

[58] Article 8.1. of the re-cast Reception Conditions proposal; Article 27.1 of the re-cast Dublin proposal

[59] Article 9.1 of the re-cast Reception Conditions proposal; Article 27.5 of the re-cast Dublin proposal

[60] Article 8.2 of the re-cast Reception Conditions proposal; Article 27.2 of the re-cast Dublin proposal

[61] Article 11 of the re-cast Reception Conditions proposal

RECOMMENDATIONS OF THE DEVAS PROJECT FOR *EUROPEAN UNION POLICYMAKING CONCERNING VULNERABILITY WITHIN THE CONTEXT OF THE DETENTION OF ASYLUM SEEKERS*	
EU Recommendation 1	***Asylum seekers should not be detained during the asylum procedure.*** It is not appropriate for asylum seekers to be detained because there should neither be a presumption that they have committed a wrongdoing, nor a presumption of rejection or removal while they are in the asylum procedure. Furthermore, the legal complexity inherent within the asylum procedure means that asylum seekers should access all means of support at their own volition; the closed environment of detention cannot provide this. The negative impacts of detention, and the vulnerabilities it creates, make the asylum seeker less able to present his or her case in an appropriate way, calling into question the fairness of the asylum procedure.
EU Recommendation 2	***Non-custodial alternatives to detention for asylum seekers that respect their human dignity and fundamental rights should always take precedence before detention.*** Asylum seekers, due to the legal complexity of their situation and the asylum procedure, require a level of care and support that cannot be provided in a detention centre. In particular, detention cannot be implemented if there is no assessment of their special needs and vulnerabilities at the beginning, because it would then not be known how they might cope within the environment of detention. This is why non-custodial alternatives to detention should always take precedence.
EU Recommendation 3	***A system of qualified identification of asylum seekers' special needs and vulnerabilities should be designed and implemented at ports of entry, be they land, sea or air, for the purpose of avoiding the use of detention.*** This identification should be done as soon as possible after entry. It can help to ensure smoother procedures at later stages, a more efficient use of State resources and a higher degree of safety and care for asylum seekers' potential vulnerabilities. Most importantly, an appropriate assessment of special needs and vulnerabilities can ensure that detention is not used for persons who may be particularly harmed by it.
EU Recommendation 4	***A qualified identification system should be individually based and holistic, taking into account the personal, social and environmental factors that are present within the asylum seeker's situation.*** Factors such as legal status, country of origin, marital status, the possession of information, the presence of supportive social networks and the state of physical and mental health highly impact detainees' level of vulnerability to detention. These and other factors should be assessed in order to determine an individual asylum seeker's vulnerabilities, and the types of concrete special needs he or she may possess.
EU Recommendation 5	***If the detention of asylum seekers cannot be avoided, and if all non-custodial alternatives have been exhausted, then detention should be subject to regular tests of necessity and proportionality; the duration of detention should be for as short a time period as possible.*** Criteria for the necessity of asylum seeker detention should adhere to the 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers. Regular tests of necessity and proportionality should be conducted on a monthly basis by the relevant judicial authority.
EU Recommendation 6	***If detention cannot be avoided, then asylum seekers should be given appropriate and effective legal aid and/or assistance from the very first day of their detainment.*** The legal complexity of asylum procedures in the EU, mixed together with the precarious situation of asylum seekers, means that they may not be able to adequately fulfil all of the asylum procedures in a manner that serves their best interests – especially if they are in detention. Legal aid and/or representation are thus vitally necessary.

EU Recommendation 7	***Detained asylum seekers should be given regular and transparent access to all information concerning their asylum case and the terms of their detention, in verbal and written form, and in a language they can understand.*** The isolative environment of detention means that extra efforts should be made to inform asylum seekers as well as possible on all details that concern their situation. The regular provision of information is a key step in lowering asylum seekers' vulnerability to the adversities of detention.
EU Recommendation 8	***Detained asylum seekers should be afforded all means of contact to the 'outside world'.*** Detained asylum seekers should be able to contact family, relatives, friends and other supportive persons who are in the 'outside world'. The DEVAS research shows that it can reduce psychological stress, and it can help prepare detained asylum seekers for their eventual release from detention.
EU Recommendation 9	***Detained asylum seekers should be given regular access to activities that engage their physical and intellectual capacities.*** The monotony of detention that comes as a consequence of its isolative environment can have a negative impact upon the physical and mental health of detained asylum seekers. Time spent in detention should not be 'wasted time'; instead, detainees should be afforded activities that help them to pursue their goals.
EU Recommendation 10	***Detained asylums seekers should be given regular access to appropriate and relevant medical care, including mental health care.*** Medical care, as well as mental health care, should be made available everyone in the detention centre. In the case that such care only exists outside of the detention centre, the staff should ensure that access remains unhindered and facilitated.

15.2.2. Member State policymaking and practice

While EU policy on asylum seekers and detention is being debated,[62] Member States can take steps toward improving the immediate situation of asylum seekers in their territory. They can do this by implementing current EU asylum law in a manner that best serves the interests of asylum seekers, and in a manner that narrowly restricts the use of detention.

RECOMMENDATIONS OF THE DEVAS PROJECT FOR *MEMBER STATE POLICYMAKING CONCERNING VULNERABILITY WITHIN THE CONTEXT OF THE DETENTION OF ASYLUM SEEKERS*	
MS Recommendation 1	***Article 18.1 of the Asylum Procedures Directive, "Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum", should be adhered to in all circumstances.*** Member States should make this principle applicable for reception conditions and for asylum seekers in the "Dublin system". It should be the one principle that applies to all circumstances. In this context, "detention" should be defined as confinement to a particular place and therefore also covering the situations at the port of entry.
MS Recommendation 2	***If detention cannot be avoided, then Article 18.2 of the Asylum Procedures Directive stipulating, "Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review" should be strictly adhered to.*** Access to regular judicial reviews is important in order to

[62] As of this writing, the European Parliament and Council of the European Union are engaged in co-decision negotiations on the Commission's proposals to amend the Reception Conditions Directive, Dublin Regulation, Qualifications Directive and Asylum Procedures Directive. These negotiations are foreseen to continue forth during the second half of 2010.

	continually determine the necessity and proportionality of detention. This is especially necessary for detainees to know when they will be released from detention. The data findings show that not knowing the release date places a great deal of psychological stress upon detainees. Therefore, such judicial reviews should be effective, transparent and should occur at least once per month.
MS Recommendation 3	***Detained asylum seekers should have regular access to visitors from the 'outside world', including the UNHCR, lawyers, civil society organisations and also family, relatives and friends.*** Alongside this, detained asylum seekers should have access to persons in their social network that help them cope with the negative effects of detention, e.g. spiritual/faith counsellors, psychosocial care providers – all of which may greatly limit the level of vulnerability asylum seekers may experience in detention.
MS Recommendation 4	***All guarantees and protections contained within the Reception Conditions Directive should be extended to asylum seekers in detention.*** This should include rights to information, medical care, education and vocational training. In the case of Article 14.8 allowing Member States to "exceptionally set modalities for material reception conditions different from those provided … when the asylum seeker is in detention", such modalities should include strong safeguards that monitor the level of vulnerability of detained asylum seekers.
MS Recommendation 5	***Health care provision – foreseen in Article 13 of the Reception Conditions Directive – should include sufficient resources to care for the mental health needs of detained asylum seekers.*** Access to mental health professionals such as social workers, psychologists and psychiatrists, should be afforded to asylum seekers who need such services; these services should be available from the first day of their detention.
MS Recommendation 6	***Detention centre staff persons should receive sufficient training in order to respond to the vulnerabilities and needs of detained asylum seekers.*** Article 24 of the Reception Conditions Directive – ensuring the necessary training of staff – should be implemented so they can be able to respond appropriately to asylum seekers' concerns and needs. In particular, staff persons should be trained to identify signs of vulnerability within detainees.
MS Recommendation 7	***Access to translators and interpreters should be ensured for asylum seekers who need it.*** The inability to speak the same language as detention centre staff, the asylum authorities and even with co-detainees has a profound effect on one's ability to cope with being in detention. Translators and interpreters can help detained asylum seekers with understanding the information that is given to them, and they can also help to maintain good relations between staff and detainees.

15.3. Recommendations for EU and Member State policy and practice on the detention of irregular migrants

15.3.1. Detention within the context of removal

In 2008 the European Parliament and the Council adopted the Return Directive,[63] which provides for common standards and procedures for the return of migrants who are irregularly staying in the EU territory. Chapter IV of the Directive provides a set of legal provisions concerning "detention for the purpose of removal". It lays down certain conditions in which an irregular migrant may be detained,[64] and requires that detention be "for as short a period as possible and only maintained as long as removal arrangements are in place".[65] Additionally, the Directive provides

[63] DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.
[64] Ibid, article 15.1(a, b)
[65] Ibid

for judicial review of the lawfulness of detention if an administrative authority orders it,[66] and if detention is prolonged. The most controversial aspect of the Directive concerns the duration of detention: Member States may detain irregular migrants for as long as six months, with the possibility of extension for up to twelve months in certain cases.[67] Alongside these provisions, the Directive lays down a definition of "vulnerable persons" as including "minors, unaccompanied minors, disabled people, elderly people and pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence."[68] Concerning the detention of vulnerable persons the Directive stipulates, "Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided."[69]

In a way the Return Directive reflects the situations of the detained irregular migrants who were interviewed for the DEVAS project, in that it requires certain procedural safeguards to be made available. Excepting the duration of detention that it sets, the standards within the Directive may have the potential to ameliorate some of the hardships that irregular migrants face in detention, such as: the review of detention at "reasonable intervals"[70], the opportunity for visitations from "relevant and competent"[71] external organisations and the systematic provision of information explaining "the rules applied in the facility ... and rights and obligations."[72] Furthermore, the Return Directive at least defines "vulnerability"[73] in a manner that covers some of the groups identified by the DEVAS project.

The first problematic aspect of the Return Directive is that Member States are left with too much discretion in how to apply their return procedures, including detention within the context of removal. This means that while an irregular migrant may receive certain support in one Member State, such as mental health care and a short period of detention, an irregular migrant in another Member State may be subject to opposite conditions. Secondly, the minimum duration of detention that it sets – six months, not counting the twelve-month extension – is already far too long. The DEVAS research findings show that detainees become increasingly vulnerable to the negative consequences of detention as the period of detention endures – vulnerability is particularly high after three months in detention, but even within one month detainees may suffer considerably. Thirdly, the Directive's definition of "vulnerable" groups ignores those irregular migrants who do not possess officially recognised special needs, such as single adult men and women, or persons who cannot speak the language of the host Member State. Finally, the Directive contains no provision for an individual assessment of irregular migrants in order to determine whether detention is both necessary and proportionate to their situation, in relation to the individual factors of vulnerability that they may possess. If certain persons are not fit for the environment of detention, then non-custodial alternatives should be made available.[74] The Directive does stipulate that detention can only be applied "unless other sufficient but less coercive measures can be applied effectively in a specific case."[75] However the usage of the phrase "specific case" excludes the systematised implementation of alternatives to detention for larger groups of irregular migrants.

Taking into account the elements within the Return Directive that relate to the detention of irregular migrants, the DEVAS research allows us to propose a set of recommendations that aim to improve government policymaking in

[66] Ibid, article 15.2(a, b)
[67] Ibid, articles 15.5 and 15.6 (a, b)
[68] Ibid, article 3.9; the same definition is found in the RC Directive
[69] Ibid, article 16.3
[70] Ibid, article 15.3. "Reasonable intervals" remains undefined in the legal text. JRS-Europe would argue that a review of detention at least once per month would satisfy the minimum criteria for being "reasonable".
[71] Ibid, article 16.4. The problem still remains that such organisations would be unable to visit detention centres in border and transit zones, as Member States may exclude such zones from the scope of this Directive (see Article 2.2).
[72] Ibid, article 16.5. Information about the rules, rights and obligations within detention should be in languages that detainees can understand. The DEVAS research reveals cases in which detainees say they are unable to communicate with detention centre staff due to a common language gap, and that no other means of translation or interpretation were provided. In many other cases detainees were only able to learn of the rules within the detention centre from co-detainees.
[73] Ibid, article 3.9
[74] In 2009 Belgium has implemented an alternative to detention for irregularly staying families with children. Instead of closed detainment, families with children are housed in open facilities and are each assigned a State caseworker. The role of the case worker is to not only prepare families for the possibility of return, but also to assist them with finding means to obtain a legal residence in Belgium. Thus far the alternative has been favourably received by families and by Belgian state authorities.
[75] Ibid, article 15.1

this area. But since the deadline for national transposition has not yet passed,[76] it is too early to indicate in which specific way EU policy in this area can be improved since the common standards contained within the Directive have not yet been sufficiently tested in the Member States. Thus the main target of the following recommendations will be targeted towards Member States' efforts to transpose the Directive into their respective national legislation.

RECOMMENDATIONS OF THE DEVAS PROJECT FOR *MEMBER STATE POLICYMAKING CONCERNING VULNERABILITY WITHIN THE CONTEXT OF THE DETENTION OF IRREGULAR MIGRANTS FOR THE PURPOSE OF REMOVAL*	
MS Recommendation 1	***Detention for irregular migrants should only be used as a last resort.*** The negative effects of detention are so great as to warrant its spare use. Detention should only be applied in cases of strict necessity, and in a manner that is directly proportionate to an individual person's situation.
MS Recommendation 2	***Article 15.1 of the Return Directive stipulating "sufficient but less coercive measures" should lead to the establishment of non-custodial alternatives to detention that respect the fundamental rights and human dignity of individual persons and families.*** The optimal way to reduce people's vulnerability to detention is to limit its use by instituting viable alternatives to detention. Only by removing persons from the closed and isolative environment of detention can they best prepare themselves for the possibility of return, but also for the possibility of legal residence within the Member State should the opportunity present itself.
MS Recommendation 3	***The criteria foreseen in Article 15.1(a, b) for the purpose of determining whether an irregular migrant should be detained should go beyond the "risk of absconding" and the hampering of the "return or ... removal process" to include a holistic assessment of the person's level of vulnerability to detention.*** The DEVAS research shows that all types of persons are vulnerable to the negative effects of detention, irrespective of whether or not they possess officially recognised special needs. Holistic individual assessment criteria should include a review of the personal, social and environmental factors that are present in an individual's situation, such as their legal status, the presence of supportive social networks and their level of physical and mental health.
MS Recommendation 4	***If detention cannot be avoided, then it should be strictly set for "as short a time period as possible and only maintained as long as removal arrangements are in progress", as laid down in Article 15.1 of the Return Directive.*** The DEVAS research shows that while detention carries negative consequences from the first days of its implementation, the personal circumstances of detainees deteriorates as the time period of their detainment endures. Alternatives should be immediately sought when detention is no longer necessary or proportional.
MS Recommendation 5	***The situation of individual detainees and detained families should be reviewed at least once per month, using holistic assessment criteria to determine the personal impacts of detention.*** Ongoing assessments are the only way to ensure that harmful effects of detention are minimised as much as possible. Detention centre staff, especially social workers or staff who have received sufficient inter-cultural or psychosocial training within the context of detention, may be among those who conduct these assessments.

[76] The deadline for Member State transposition of the Return Directive is set for 24 December 2010. As of this writing, most Member States have not yet communicated national transposition measures to the European Commission.

MS Recommendation 6	***The provision of information on "rules ... rights and obligations" in detention – as foreseen in Article 16.5 of the Directive – should be provided in a language the detainees can understand.*** Many of the persons interviewed for the DEVAS project have never before been in a situation of detention. The stress of detention and its isolative effects means that detention centre staff should make an effort to immediately inform detainees of all rules, rights and obligations. Language is a key factor of vulnerability because it facilitates communication and understanding. This is why it is important that such information be given in an understandable language.
MS Recommendation 7	***The provision of "legal assistance and/or representation" – as foreseen in Article 13.4 of the Directive – should be provided to all detainees at no additional cost, and in a language that detainees can understand. Such legal assistance and/or representation should extend to detainees who challenge the lawfulness of their detention.*** The DEVAS research shows that the legal complexities of detention can have an adverse affect on detainees because they are unsure of how to proceed and how to alleviate their situation. Legal assistance and/or representation is a key factor of vulnerability in detention; without it detainees are left disempowered and with further deteriorations in their mental health.
MS Recommendation 8	***Detained irregular migrants should have the opportunity to establish immediate contact with supportive persons or bodies in the 'outside world', as foreseen in Article 16.2 of the Directive.*** Detainees should be able to communicate by fixed-line and mobile telephone, especially since the latter often contains vital contact information that detainees need. Internet stations should be made available, as this would allow detainees to search for support if they lack a social network in the Member State.

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NATIONAL REPORT: AUSTRIA

By: Caritas Austria

1. INTRODUCTION

Caritas Austria conducted interviews with eleven detained asylum seekers and irregular migrants. Additionally, five staff from NGOs working in the detention centres were interviewed, and five interviews were conducted with members of staff of the detention centres being researched. Altogether Caritas Austria was able to conduct 21 interviews.

Caritas obtained access to the detention centres in Eisenstadt (province Burgenland), Feldkirch (province Vorarlberg), Graz (province Steiermark), Salzburg (province Salzburg) and Vienna (province Vienna). This represents five centres out of the total of 14 detention centres in Austria (as of 26th Nov. 2009). These centres often form part of prisons for administrative detainees, whose policies are generally bound by the Foreign Aliens Police Act (*Fremdenpolizeigesetz*); but the Detention Regulation (*Anhalteordnung*) also lays down relevant rules, procedures and policies. As a consequence there is no separate accommodation or houses for immigration detainees – instead they are kept in prisons. There is however a separate area for them within the prison. The capacities of most centres are fairly small.

To gain access to detainees a person or organisation needs to have direct contact with a detainee, unless you are a relative or visitor arriving during official visiting hours. This means that Caritas had to be granted permission from the Ministry of Internal Affairs in order to conduct the research. The process of obtaining permission initially went very fast. Verbal assurance was provided from the national authorities that access would be allowed within days; but then months were spent waiting for the written confirmation. Information sharing about our project within the centres was erratic: in one centre nobody had been informed about our visit despite the fact that there had been written communication and a number of telephone calls.

Only the staff of Caritas Austria could be interviewed with the "NGO questionnaire". Attempts were made to interview Diakonie Osterreich and Verein Menschenrechte Österreich (VMÖ): two NGOs who regularly meet and work with detainees. However, Diakonie had recently lost its mandate to be present in the detention centres, meaning they could not be interviewed; VMÖ refused to take part in the study.

The willingness of the detention centre staff to participate in the study highly varied. In one centre no staff was willing to take part, while in another centre all staff members were very interested and ready to support our work on the project.

Nearly all of the detainees that were interviewed are male, because there were only a few women in detention during the time of the interviews; and most of them did not agree to take part. Some questions in the detainee questionnaire were misunderstood in part or entirely. This may have been a consequence of detainees not being accustomed to answering open-ended questions, or because some of the questions may have been difficult for them to answer in their present circumstances.

A positive output of the project was that by visiting different centres in the same period, and by talking to staff members it was possible to compare national regional standards in depth, such as the daily routines, which are

handled differently in the centres. Some centres try to work together with NGOs to create sporting activities; other centres refuse these kinds of activities because they have concerns about security. There were also differences not only in detention conditions but also in the legal advice and the social counselling services that are provided.

2. NATIONAL LEGAL OVERVIEW

2.1. Legal grounds for detention

In Austria the legal grounds for detention are based in the Aliens Police Act (*Fremdenpolizeigesetz, FPG*), which came into effect on 1st January 2006. This is complemented by the Detention Regulation (*Anhalteordnung*), which came into effect on 1st May 1999, but was revised again on 1st January 2006.

2.2. Legal grounds for minimum age for detention

Legal grounds specify that people as young as 16 can be detained, but that they should be placed in separate accommodation and away from adults.[77] If under-aged persons are detained together with parents they can choose a separate and/or common room. From the age of 16 years onward the Aliens Police Act regulates that these minors do not have to be legally represented; for those under 14 years of age detention should not be imposed at all (but due to alleged security reasons that can happen).[78]

2.3. Legal grounds for the detention order

The legal premise in Austrian legislation for ordering detention for asylum seekers is based on the Aliens' Police Act, while for irregular migrants it is the Foreign Police Law.[79] There is no judicial authority to order detention, as this is done by the Aliens' Police.

2.4. Legal grounds for judicial review of the detention order

The competent judicial authority is the Independent Administrative Senate, which has to control the legitimacy and proportionality of the detention after six months. Otherwise judicial review is only done upon appeal.

2.5. Legal grounds for the right of appeal against the detention order, or to challenge detention

It is possible for detainees to file a complaint against detention (*Schubhaftbeschwerde*). This is an objection against: the imposition of detention as such, the continuation of detention despite reasons against it (such as sickness, high psychological stress etc.) or the lawfulness of the detention. Legal grounds for detention have to be present according to the law and the proportionality principle has to be applied accordingly.

It is additionally possible to complain against violations of the house rules (the conditions of detention). However this can be seen rather as a form of soft law, as it is rare to have actual consequences from the submission of complaints.

The result of an appeal against the first instance decision in the asylum procedure might change the legal backdrop for detention and therefore render it unlawful according to law and/or jurisdiction.

[77] RIS - Bundesrecht - Fremdenpolizeigesetz 2005 (Fremdenrechtspaket 2005) Art. 3 § 79, RIS - Bundesrecht - Anhalteordnung § 4
[78] §4 Abs. 4 AnhO
[79] Asylum seeker detention is based on Aliens Police Act § 76 Abs. 2 FPG – Schubhaft; Irregular migrant detention is based on Foreign Police Law § 76 FPG – Schubhaft.

2.6. Legal grounds for the right of information about the detention order and/or the reasons for detention

Generally detainees are informed about their rights through the Aliens' Police, which is the responsible authority.[80] Non-governmental organisations that are entrusted with social counselling in the centres also inform detainees about the reasons for their detention. However, in Austria the provision of legal advice falls under the responsibility of the Interior Ministry.

2.7. Legal grounds for the duration of detention

The duration of detention should be as short as possible, but can be imposed for up to six months, and in certain circumstances for up to 10 months within a two-year period. After six months various legal provisions provide for a judicial review concerning the reasons and lawfulness of the continuation of detention.[81]

2.8. Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

The Detention Regulation provides for the provision and scope of health care, which says that health care has to be provided by a medical officer or, in the case of minors, by a paramedic.[82]

2.9. Legal grounds for contact with the outside world

Generally the legal basis for visitation can be found in the Detention Regulation, which stipulates the following:

- *Family members and friends*[83]: efforts should be done to enhance the duration and frequency of visits, especially for family members.
- *Pastoral workers*[84]: Detainees should be free to attend any religious service and receive visits of pastors at any time.
- *Officials of the consulate/embassy of the country of origin*[85]: Consulate and embassy officials are allowed to visit detainees to a "necessary extent" at any time, if possible within the official hours; and telephone calls to embassies and consulates should be free of charge.
- *International organisations and NGOs*[86]: Relevant international organisations are subjected to the same rules as officials of embassies and consulates; Austrian NGOs entrusted with social counselling in the respective centre may visit detainees within the official visiting hours. Often, these NGOs have special visiting hours.
- *Other visitors*[87]: Within the official visiting hours (normally twice per week), visits of private persons can be received.

All of these options can be suspended during a hunger strike.

2.10. Legal grounds for the provision of legal aid

According to the national system of legal aid, private lawyers that provide *pro bono* services can be sought for if the procedure is already at the stage of a high court, such as the Administrative or Constitutional High Court.[88]

[80] Aliens' Police Law (acc. § 76/2 FPG, RIS - Bundesrecht - Fremdenpolizeigesetz 2005 (Fremdenrechtspaket 2005) Art. 3 § 76).
[81] Foreign police law: RIS - Bundesrecht - Fremdenpolizeigesetz 2005 (Fremdenrechtspaket 2005) Art. 3 § 80
[82] RIS - Bundesrecht - Anhalteordnung § 10
[83] RIS - Bundesrecht - Anhalteordnung § 21
[84] RIS - Bundesrecht - Anhalteordnung § 11
[85] RIS - Bundesrecht - Anhalteordnung § 21: §21 Absatz 3 AnhO
[86] RIS - Bundesrecht - Anhalteordnung § 21
[87] RIS - Bundesrecht - Anhalteordnung § 21

Detainees are free to pay for their own lawyer, but special rules apply for visits and calls.[89] Access to free legal counselling from NGOs or lawyers is not guaranteed.

2.11. Legal grounds for the protection of persons with special needs

Austrian law contains a few regulations for the protection of persons with certain special needs:

- *Unaccompanied minors*: Minors can only be detained if appropriate facilities are provided. They have to be detained in separate rooms, but if there is a parent in detention they have to be detained together.[90]
- *Single parents with minor children*: Parents and children must be kept together in detention.[91]
- *Families*: Families should be detained together, except if is not in the interests of their well being.[92]

Previous regulations concerning victims of torture and violence as well as traumatised persons have been abolished some time ago.

2.12. Alternatives to detention and legal basis

The Aliens' Police may require that a person report daily to officials. These persons may be accommodated in specialised facilities.[93] Alternatively, some restrictions on the freedom of movement can be applied, such as forcing asylum seekers to remain within one administrative district during their "admission procedure".[94]

2.13. Legal grounds for providing release from detention

The cessation of detention is specified in RIS - Bundesrecht - Fremdenpolizeigesetz 2005 (Fremdenrechtspaket 2005) Art. 3 § 81. In short, release from detention can be provided if, according to the legal grounds of detention explained in the beginning of this report, it has exceeded its legal duration limit, or if the Independent Administrative Senate decides that detention must end on the basis of other legal grounds that are found upon appeal or judicial review.

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1. Basic information

The majority of the detainees interviewed are male and single, and of the average age of 27. The apparent youth of persons within the data set may be due to the fact that persons under age 30 were more willing to take part in the study than others. More than half of those interviewed are from African countries such as Mali, Tunisia, Nigeria and Gambia; others are from Palestine, Kosovo, Serbia and the Philippines.

The average duration of detention is just over one month; the maximum amount of time that one person had been detained was 100 days. The majority of those interviewed are asylum seekers, with two persons in "Dublin II" detention and one irregular migrant, as well as one rejected asylum seeker facing deportation. All of the interviews

[88] Federal Law Gazette: BGBl. II Nr. 439/2005
[89] Detention Regulation (§19, §21 AnhO)
[90] Aliens Police Act: RIS - Bundesrecht - Fremdenpolizeigesetz 2005 (Fremdenrechtspaket 2005) Art. 3 § 79
[91] Aliens Police Act: RIS - Bundesrecht - Fremdenpolizeigesetz 2005 (Fremdenrechtspaket 2005) Art. 3 § 79
[92] Aliens Police Act: RIS - Bundesrecht - Fremdenpolizeigesetz 2005 (Fremdenrechtspaket 2005) Art. 3 § 79
[93] Aliens Police Act (§ 77 FPG).
[94] Asylum Law (§12 Abs. 2 AsylG)

were conducted in English, perhaps reflecting that fact that most of those interviewed had been detained on arrival, did not speak German and were not integrated into Austrian society.

3.2. Case awareness

The lack of information seemed to be a recurring theme among those questioned. More than half felt the need for more information about the procedure, the duration of the detention or his rights. For example, one detainee wanted to be able to make a phone call to his lawyer, others wanted to know how and when, or whether they would get asylum. Most felt completely uninformed about the asylum procedure. Detainees who needed more information said this was important because it affected their anxiety levels and mental health: “I would have the feeling that it saved my life. I’m only thinking about what will happen to me, I’m always anxious and nervous, and it would calm me down.” A few detainees also reported that this uncertainty caused them to feel sick and weak.

Recent changes in funding have meant that social counselling services have been greatly diminished. Remaining services include return counselling and counselling prior to detention. Legal counselling has also been recently excluded from funding support, which might account for why detainees feel so badly informed.

3.3. Space within the detention centre

When asked about the room in which they are required to sleep and about the space in the detention centre in general, the answers leaned towards the negative. Most detainees did not report feeling overcrowded in the centres; although many detainees also said they did not have a place in which to be alone. “Everything is closed; I don’t have any space where I can be alone. Always noise.” One detainee complained about being locked up in a small space, and only being let out for one hour a day. Another detainee complained that the policemen were drunk, and that he did not understand their rules, for example why the cells were closed at 6pm, why people were not allowed to visit other cells at night, and why the detainees were seldom allowed showers. Less than half of detainees described their room and centre space as “ok”. The biggest problem seemed to be related to mere detention, rather than the condition of facilities: “The room is ok, I just don’t want to be closed in”; “Being detained is not life” and “It doesn’t make me feel good”.

3.4. Rules and routine

Clear house rules do exist, and they are distributed to detainees at the beginning of detention and are visibly posted on boards within the detention centre. These rules are translated into different languages and most of the detainees can understand them. The problem is that detainees do not always understand the whole content or the reasons why a particular rule exists. Thus they feel uninformed or do not know how to behave as a result.

Most of the detainees stated that the daily routine is understandable: wake up times, cleaning times, when to take meals, and the time spent in open areas or outside. Detainees mostly agree with the rules, but some just accept them: “I have no other chance than to follow them”.

But some of the detainees felt that there were no clear rules. This may result from the misunderstanding of their situation or perhaps from their lack of understanding about the house rules within the detention centre. It also might result from the fact that they do not want to accept that the facility is actually a prison. This may reflect their level of misunderstanding or even resistance to living in prison like conditions. One person complained about the lack of control over his own life: “There exists no individuality in organising my day-to-day life. One has to get up, although you fall asleep very late, or you have to clean your room even though you did it the day before.”

3.5. Detention centre staff

The average detainee is in contact with the security staff at the centre, as well as doctors, cooks and other housekeeping staff. Detainee responses about detention centre staff were rather varied, perhaps owing to the fact that they are treated differently by all types of staff: “It completely depends on who is on duty”, and “A few really try their best and are friendly, a few really take their time and are unfriendly.” Most described the staff as helpful, within the limits of what they can provide. While contacts with staff were usually reported as being positive or neutral, in some cases very negative situations were reported: “A lot of them don't respect us, especially when they are drunk. They don't listen to us and don't fulfil the rules so they have less work. They put our lives at risk.”

Related to this are communication difficulties due to a lack of common language. Detainees are in direct contact with detention staff, lawyers and NGOs who speak German, but hardly any detainee speaks German and only some speak English. If the detainee hardly speaks English then the centre staff often cannot communicate with them at all.

3.6. Level of safety within the detention centre

The typical detainee feels safe inside the centre. He has not experienced verbal or physical abuse, either from co-detainees or from staff. Detainees’ descriptions of the detention centre as a safe place is corroborated by responses from the detention centre staff and NGO questionnaires, as well as by Caritas’ own independent observations.

Most attribute their safety to the security guards. However, a few alluded to the idea that detention itself makes one feel unsafe: “There is nothing to fear, except your own situation”; “I think too much, I’m stressed, I’m sick”. One person remarked that particular behaviour of staff was making them feel unsafe: “In prison, you always feel unsafe. If I have health problems, policemen don’t believe me. They don’t come. And they are drunk.”

3.7. Activities within the detention centre

According to detainees, no activities are offered. The only ‘activities’ mentioned as being accessible were telephone and television. Moreover, detainees felt unsatisfied about their level of access to the centre’s outdoor grounds. The centres that took part in the study have an outside court, but the detainees are allowed to use the court only once a day for a specified period of time. Few detainees use the outside court for walking around. Sometimes they are allowed to play football but there is no chance to practice other outdoor activities.

When asked what activities could be reasonably provided by the centre, the detainees reported that opportunities for physical exercise would be appreciated, as well as access to education. Otherwise detainees asked for a variety of activities: “Sports equipment, more hours out of cell, work”; “I would like to watch TV until late. Sports equipment would make my life feel easier because I would calm down. I can only phone my family when Caritas give me their phone. Telephone access for everyone would be necessary.”

3.8. Medical issues

The data shows that detention, in general, brings negative consequences to detainees’ health. The detainees did not, however, report problems in accessing medical services. All are aware of the presence of a medical service and could access it frequently, with most detainees reporting visiting medical personnel more than once a month. The detainees reported having access to doctors, and some reported having access to psychologists. Despite this, almost half reported needing further access to medical services, and among these, one wanted a psychologist, one wanted medication for insomnia, one wanted dental treatment and one wanted a psychiatrist with a translator.

Physical health

Detainees typically reported a heavy degradation in physical health during their time in detention. For some this was related to the facilities: “Yes, there is no fresh air, bad food, and I sleep badly”, “Because there are no sports

opportunities." Others related this more to the psychological effects of being in detention: "The longer I am here, the more I get stomach problems because of medication. Prison is responsible for this: I think all day long about how long I'm here and I can't move or do sports"; "I don't' feel happy here".

Mental health

Detainees reported an even stronger deterioration in their mental health. In addition to the above-mentioned reasons, detainees also said that the uncertainty about their future was affecting their mental health*:* "I can't stand to be closed in especially since there are no reasons. I'm always nervous and unsure about my future: therefore I get tense and aggressive and very irritable". Similarly, one man felt that the unfairness of the situation affected his mental health: "I'm not guilty, it's not right to keep me in this jail". Others said that being apart from their family was causing them mental anguish: "I'm sad, I cry, I can't sleep. I feel lonely here, I think of my children."

3.9. Social interaction within the detention centre

The typical detainee feels positively or neutrally in his relations with co-detainees. Only one person said that there were problems: "Some people are difficult, shouting, knocking at the doors." It is difficult to form a picture of social interaction in the centre from this data, in particular why so few problems between detainees were reported. One detainee said that he was so happy to meet a fellow countryman because they had the same culture and understanding, and this was something that brought them together. On the other hand, it was observed by NGO staff that even if detainees come from different cultures they share similar experiences when they are in detention; this can serve as a basis for good communication.

3.10. Contact with the 'outside world'

Detainees' contact with the 'outside world' varies a lot and generally is not easily facilitated. The reception of personal visits are privileges of certain detainees who have spent time living in Austrian society, and thus have family and friends in the country. Those without family in Austria do not receive personal visits, which might have negative impacts on their mental health. Most detainees reported having family back home and, quite often, family members counted on them for financial support. This brings pressure on the detainees, as they are not able to fulfil this duty any longer due to the circumstances of their detention.

The telephone is still the favoured means of communication; but most would like better access to it. The main problem is that only pay telephones exist, and most of the detainees do not have the money to buy telephone cards. "I would like to have more access to the telephone. I can't afford the telephone, pre-paid-cards are too expensive, when I will be released, I will be in contact with them again." Using the Internet is not possible as there were no facilities for it; in any case it may be difficult to make the Internet available again due to previous difficult situations, according to interviews with staff.

Generally lawyers and religious persons do not visit detainees. Although such visits would be permitted, only a few detainees take advantage of this opportunity.

3.11. Conditions of detention and nutrition

Most detainees said they were dissatisfied at the quality of the food provided in the centre. Amongst the complaints are that it does not cater for vegetarians, those on Ramadan or those with other special religious diets, that it is not well cooked, that they are not used to it and that there is no variety. Some complain that is simply bad: "The food does not suit me at all. But this has nothing to do with my culture; the food is simply not good. Especially the salad is unappetising." Over half say that they have lost their appetite in detention, with some saying that this has resulted in them losing weight and feeling weak.

3.12. Conditions of detention and the individual

Almost all detainees reported having problems sleeping. Most put this down to stress and worry, rather than on the living conditions. Uncertainty about the future seemed to be important in explaining why people felt unable to sleep: “Nightmares, afraid that I have to go back don’t know what will happen”; “Thinking and thinking about my future; a lot of nightmares.”

When asked about the difficulties faced in detention, the most oft-repeated point is being confined: “being detained”, and “that I cannot get out”. Another difficulty mentioned by many was the lack of information about their case, in particular for how long their detention would endure. Other problems were lack of possibilities to do exercise, missing family members and general stress.

One striking finding was that ten out of the eleven detainees interviewed do not know the outcome of their detention, or the date of their release. According to detainees, this leads to considerable mental distress: “I will still feel insecure after release because I can't concentrate anymore. I think I’ll go crazy”; “I become depressed”; “I feel very insecure and worry about my future”.

Despite these difficulties, detainees perceive themselves in positive terms: “I am full of joy of living”; “I am a strong person, know what I want and how to achieve it. I’m very social”; “I take care for my family alone, I’m a strong person”. But many say that detention has negatively impacted their self-perceptions: “I am not full of the joy of life. My body reacts in a different way and I started smoking.”; “I feel I am not able to concentrate or learn anymore.” Only three people said that detention had not impacted their self-perception.

Most detainees did not consider themselves having special needs, and when asked to identify those who needed special help, two people identified an elderly man as vulnerable, and one person mentioned someone who was “speaking to himself and shouting at the TV.” Another person identified those who don’t speak the language as being vulnerable.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

4.1. The meaning of vulnerability within the context of detention

The DEVAS research that has been done in Austria lends toward a new concept of vulnerability for persons in detention. The research also shows how people may become vulnerable as a result of detention.

Vulnerability can be understood as the inability to counter an external negative impact with one’s own means and resources. Officially, pregnant women, elderly, the young, and people with disabilities and medical illnesses are recognised as being vulnerable in detention, amongst others. The findings of this study show that **mental and physical stress** is also a strong source of vulnerability, and one that affects **almost all persons in detention**.

4.2. Factors of vulnerability

Vulnerability results from a variety of factors, primarily falling within two categories. One category concerns the **personal factors** of a detainee. Generally it can be said that a person with strong mental and physical health will possibly have better resources to deal with the challenges and difficult situation of detention. Therefore such a person might have the ability to cope with the situation. Contrary to this assumption, the DEVAS interviews showed that even strong and healthy persons may experience a very difficult time. The DEVAS data from Austria draws attention to the degradation of mental health during detention. This can be found in the answers to the part of the survey that deal

directly with mental health, which saw the detainees report a huge drop in their mental health during detention. It can also be seen from other responses: detainees reporting become anxious and nervous as a result of lack of information; detainees feeling like they are suffering psychologically because they do not know when they will be released; the fact that almost all detainees reported having problems with sleeping due to anxieties and worries; and a perceived drop in their physical health, often explained by the worries that they face. In fact, some detainees seem to be saying that detention may have permanently affected their mental health. “I will still feel insecure after release because I can't concentrate anymore. I think I’ll go crazy.” More evidence for how detainees felt detention had affected their mental health can be found in the section about self-perception, where people who felt “strong” when they went into detention then described themselves negatively later on.

Other personal factors affecting vulnerability are the health of the detainee and the family circumstances, as well as their legal situation. With such a small sample, it was difficult to draw any firm conclusions on how these affected vulnerability, except to see that detainees mentioned health problems as something that made them feel worse in detention (for example, problems sleeping). We did not interview people with significant health problems. Some detainees mentioned missing family members, and the fact that most of these detainees felt a financial responsibility to provide for their family in their home country probably added to their sense of frustration and isolation while in the centre. It was difficult to compare those in different legal situations, as most of those interviewed were asylum seekers, but it is clear that the uncertain nature of the asylum system was causing considerable stress.

While it is clear from our data that detainees experience a steep decline in mental health, there was no one personal factor that stood out that made a difference: perhaps strengthening the argument that detention was a cause of vulnerability for everyone, and not just for those with ‘classical’ vulnerabilities.

The **social and environmental sphere** comprises all the factors which arise from the environment in which the detainee is and his or her interaction with all groups of individuals.

On the face of it, the data shows that some factors that might create vulnerability are absent. For example, most detainees felt safe in detention, and did not have significant problems with staff or with other detainees. Also, detainees felt neutral or positive about the spaces in the detention centre, and did not report any significant problems with facilities or overcrowding.

However, this effect on well being seems from the data not to depend so much on the conditions and personal circumstances of detainees, but more generally to the fact of being in detention itself. This can be seen in a number of places in the data: when asked about the main difficulties of their lives in detention centre simply being locked up was one of the most common factors mentioned; in the section about space, instead of complaining about size or facilities, many detainees said that the fact that it was a prison was the worst thing; when asked for the reasons for the physical and mental degradation of their health, detainees mentioned the fact of being behind bars. Also, the fact that people have to follow certain rules in detention and are not free is mentioned as a source of frustration.

Apart from this general negative effect of being locked up, two other external factors arise from the data as a possible cause of vulnerability: lack of information and lack of activities. One can see this problem with communication of information at several points in the DEVAS data: more than half needed access to more information, mostly about their asylum case and their date of release, and some related this to a fall in mental health; contact with the outside world was limited because of expensive phone cards; ten out of the eleven detainees interviewed did not know when they are going to leave the centre, and this led in many cases to detainees saying that they this effected them very badly mentally; and not knowing what was going to happen is mentioned as one of the biggest problems for detainees. Related to this, there seems to be a problem, concerning a general lack of understanding or acceptance about why one is locked up. For example, many detainees do not understand why they are kept in prison, although they have not committed any criminal offence.

This situation is very common in Austria, because of changes in law and also because of a new government. After 2005 the asylum law was followed by six amendments and at the beginning of 2010 the alien's law amendment will come into effect. Those amendments are very complicated and strict, which leads to a more complex and harsher system. Moreover the new ministry of internal affairs supports these stricter regulations for aliens, especially for asylum seekers and illegal migrants. Due to this situation it became very hard to predict when the detainee will be released.

In addition, there were some problems related to language and communication within the detention centre, particularly for detainees who do not speak English or German. Many detainees did not have friends or family outside of the centre, owing to the fact that most of them have recently arrived. They therefore have very few visitors, which leads to more feelings if isolation and means that the detainees to rely on information provided solely by those in the detention centre.

The challenge here is to try to understand the underlying problems. It seems that it is not the lack of information that is given to detainees *per se*. Generally at the very first stage, when migrants are detained, they are informed about their rights and their legal status by the Aliens' Police. Then the counselling organisations try to clarify questions or to explain it again. But the organisations are not allowed to give legal advice. It was felt by NGOs that the initial shock of detention makes detainees less receptive to information or to explanations of their legal status. Regarding communication and language barriers, providing more information is not the problem: rather, the problem lies with providing information in a language that can be understood.

The second external factor that comes through from the data is the lack of **activities** and opportunities for physical exercise. Detainees say that doing nothing or not having the opportunity to participate in activities makes detention worse. Social workers clearly point out that **engagement in a daily routine** supports mental well being. This would be very appreciated by the detainees. Social workers have tried to organise a variety of activities, such as sporting tournaments; and these tournaments have been very successful. But other activities, such as painting workshops, have been refused by the centre staff because of security reasons.

5. CONCLUSIONS AND RECOMMENDATIONS

The results of the project conceives of 'vulnerability' as a set of multi-layered factors that adapt to the particular personal, environmental and social determinants that one carries with him or her self. As described above, vulnerability is not established by the compliance with all criteria on a black and white list that can be applied to all persons and to all situations.

It has to be pointed out that detention should always be *ultima ratio***:** used only in cases where no other possible legal means are purposeful. This is backed up by the findings of DEVAS in Austria, which clearly show that detention exacts a very heavy toll on detainees. The data even suggests that detention itself is the leading cause of vulnerability in detention centres. Because of the amendment that came into effect in Austria at the beginning 2010 detention may now be applied in the case of Dublin procedures under many different circumstances. This could lead to an excessive appliance of detention in cases where the lawfulness of the detention might be very debatable, as already happened after the last amendment in 2006. At that time the interpretation of legislation was at least partly revised by jurisdiction.

It is the practice in Austria that detainees are held in prisons; and prisons were not conceived for this purpose when they were built. Therefore the Ministry of Internal Affairs and its subordinate authorities have a responsibility to ensure that adequate standards are met. The **human rights advisory board has issued recommendations** for detention carried out by security authorities. These recommendations are formulated to establish national standards that are

monitored regularly. These **standards** describe that detention should be carried out for security reasons only and without any of the characteristics of arrest.

Caritas wishes to highlight the necessity of **monitoring** the implementation of these recommendations and the adherence to standards. A report of the Human Rights Advisory Board (established due to the 10th anniversary of the board, "*10 Jahre Menschenrechtsbeirat - Themenschwerpunkte des MRB aus 10 Jahren*", 2009) shows that detention conditions are still a critical point in Austria.

The DEVAS results show a strong link between detainees' state of mental health and self-uncertainty. Not knowing about his or her situation but moreover not knowing how long he or she has to stay in detention are one of the main issues detainees have to deal with. **Communication** starts at the very first moment when the detainee is informed about his or her situation, and there is a need for adequate communication during the whole detention. Adequate communication requires that translators be available to provide written information documents in other languages, and that alternatives are made for persons who are illiterate. Moreover, adequate communication would be supported by the joint accommodation of spouses, siblings and families.

More activities and greater access to outdoor facilities should be provided. Here once more the fact that detention is carried out in prison is a distinct disadvantage. The prison-like atmosphere means that detainees are possibly handled too strictly and therefore hardly any outdoor activities or projects are implemented. There should open areas for detainees where they can move about freely, which would support detainees' sense of independence and therefore help to reduce vulnerability

The **negative consequences** of detention on asylum seekers and irregular migrants may never be resolved. The project is beginning to show us that the negative effects of detention are great and the system of detention may always make people vulnerable to harm: "You will never believe what detention can do to a person, until you have the possibility to see him in both situations - in detention, but also as a free person," a NGO colleague said. These recommendations are the minimum set of requirements that should improve the circumstances of detention. It is extremely important to explain to detainees that they are not "prisoners", but detained due to reasons stated with the aliens' law.

NATIONAL REPORT: BELGIUM

By: Jesuit Refugee Service Belgium

1. INTRODUCTION

In the course of this study, the Jesuit Refugee Service Belgium interviewed 39 asylum seekers at various stages of the procedure and 25 irregularly staying migrants awaiting deportation[95], for a total of 64 interviews. The interviews were conducted by members of the staff of JRS-Belgium in three detention centres in Belgium, over the months of February until July 2009. Twenty five detainees were interviewed in the Transit Centre 127, located at the Brussels National Airport. This centre hosts a population of asylum seekers who were denied access to the Belgian territory and whose procedures are processed in the centre. Irregularly staying migrants who are to be deported quickly are also maintained in this centre. Fifteen persons were interviewed in the detention centre 127bis and 24 persons in the detention centre of Bruges (referred to as CIB). Those two centres mostly receive irregularly staying migrants awaiting deportation, for detention periods that are typically longer than in Transit Centre 127. Asylum seekers are also to be found in those centres, especially rejected asylum seekers and persons who are in Dublin procedures.

Furthermore, a social worker of the centre 127bis and a member of the direction of Transit Centre 127 agreed to meet JRS-Belgium during the course of this study. Such an interview was however not possible in the Centre of Bruges, due to the lack of volunteers among the staff. Interviews were also conducted with NGO workers who visit the Transit Centre 127 and the Centre of Bruges.

JRS Belgium wishes to express its thanks to the Belgian Aliens' Office for granting access to those three centres in the framework of this DEVAS project, as well as to the management of these centres for the help we received in the practical implementation of the project.

2. NATIONAL LEGAL OVERVIEW

2.1. Legal grounds for detention

A) Asylum seekers:

Asylum seekers presenting their applications **at the border** – in most cases at the Brussels National Airport – and who have been denied entry to the Belgian territory can be detained for up to two months, on basis of the article 74/5, §1 to 3 of the law of the 15th of December 1980, in order to process their asylum applications. This period can be extended of maximum 15 days if an appeal is lodged against a negative asylum decision. If the appeal is rejected, the detention can be extended to up to five months, under strict conditions, in order to expel the person.

Asylum seekers who have been refused refugee status or subsidiary protection status by the General Commissioner for Refugees and Stateless can also be detained on the basis of the article 74/6, §1 of the law of the 15th of December 1980 for the duration of the **appeal procedure**, if deemed necessary in order to remove the person from

[95] For the purpose of this study, 'rejected asylum seekers' who went through their asylum procedures in detention are included among the asylum seekers (two cases), while 'rejected asylum seekers' who have been arrested after the end of their procedure are included among the irregularly staying migrants (nine cases).

the Belgian territory in the case of a negative decision in appeal. The article 74/6, in its paragraph §1bis also provides a list of cases in which an asylum seeker might be detained, insofar as the person would be in irregular stay in Belgium if he had not introduced an asylum application. The cases are varied (non-collaboration, lack of respect of the procedure deadlines, multiple asylum applications). This article is in practice mostly used to detain persons who apply for asylum while already detained. For the purpose of the article 74/6, the detention can only last two months – insofar as the procedure was not concluded negatively – and is extendable to five months under strict conditions explained in §2 of said article.

The law of the 15th of December 1980, in its article 51/5, §1er provides that, during the procedure of determination of the responsible state under the application of the **Dublin Regulation**, the applicant can be detained for up to one month. This detention is extendable for up to two months in particularly complex cases. In its article 51/5 §3, it also provides that an asylum seeker for whom a responsible Member State has been determined can, if necessary, be detained for up to one month in order to proceed to the transfer.

B) Other cases:

Irregularly staying migrants who have received an order to leave the Belgian territory because they do not possess the required documents – a majority of the detained irregularly staying migrants – are detained on the basis of article 7 of the law of the 15th of December 1980. This article provides that they can be detained for two months, extendable up to five, insofar as a deportation is still possible.

Foreigners who had a permit of stay valid for less than three months and are ordered to leave the Belgian territory for **other reasons** than the simple lack of documents, fall under the application of the same art 7. They can be detained in a similar fashion as irregular migrants. This covers, for example, people exercising a professional activity without permit, people with insufficient means of subsistence, people deemed to be a threat to public order or national security, etc.

2.2. Legal grounds for the minimum age for detention

There are currently no legal grounds preventing the detention of minors.

An order of detention might be issued with regards to the parents, and the children would stay with them in application of the article 8 of the European Convention of Human Rights (right to family life). Only families with minor children applying for asylum at the border were detained at the time of this study. [96]

Article 41 of the law of the 12th January 2007 (concerning the reception of asylum seekers and other categories of foreigners) specifies however that unaccompanied minors presenting themselves at the border must be assigned to a specific observation and orientation centre.

2.3. Legal grounds for the detention order

The detention orders find their legal grounds directly in the texts that provide the basis for detention, as detailed above in section 2.1. Those texts specify that the Minister or his delegate issue the detention order. The Minister is the person in charge of immigration, and the Delegate is in general the Director of the Aliens' Office (Office des Etrangers / Dienst Vreemdelingenzaken).

2.4. Legal grounds for judicial review of the detention order

[96] This practice has ended since the 1/11/09, following a ministerial decision.

There is no legal ground in Belgian law providing for an automatic judicial review of detention orders. There is however one exception. When the Minister decides to detain an irregular migrant or a rejected asylum seeker for a fifth month, he is obliged to refer this decision to the "Chamber du Conseil/Raadkamer" who must review the lawfulness of this decision (see for example, art. 74 of the law of 15th December 1980).

2.5. Legal grounds for the right of appeal against the detention order, or to challenge detention

In all cases considered above, the detained person can petition from the first day for release in front of the Chamber of the Council (Chambre du Conseil/Raadkamer), as provided for by the articles 71 to 73 of the law of 15th December 1980. The Chamber will only consider the legality of detention. The foreigner can make the petition once a month. The decisions of the Chamber are subject to appeal in front of an Appeal Court (Chambre des Mises en Accusation/ Kamer van Inbeschuldigingstelling).

2.6. Legal grounds for the right of information about the detention order and/or the reasons for detention

As a general rule, the Royal Decree detailing the working of the detention centres (Royal Decree of the 2nd of August 2002) provides in its article 17, al.3 that the director of the centre, or a delegate, must inform the detainee of the reasons of his detention. This must be done in a language he can understand.

With respect to asylum seekers, the Royal Decree of the 2nd of August 2002 further specifies in its articles 71/2bis (Dublin cases), 74§2 (various cases), 75§3 (asylum seekers after a negative decision at the first stage of procedure), that the detainees must be informed of their detention orders, which are written and should be motivated in law and in fact. All detainees must sign the decision to confirm that they have been informed of it. They should also receive a copy of the decision.

2.7. Legal grounds for the duration of detention

The duration of detention has already been discussed in section 2.1 of this national report.

It must be further noted that if a person refuses to take a return flight organised by the Belgian authorities, the detention period is said to start anew from that day. This practice is grounded in the jurisprudence of the Belgian *Cour de Cassation* and of the European Court of Human Rights.

2.8. Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

The articles 52 to 61/1 of the Royal Decree of the 2nd of August 2002 regarding the working of the detention centres guarantee that the detainees have a right to healthcare. It is either provided free of charge by the centre's doctor or by a private doctor chosen by the detainee, at his costs. If necessary, the centre's doctor can send the detainee to a specialised medical centre.

The articles 67 to 70 of the same Royal Decree also establish a social service in each centre. The missions of this service are to accompany the person, socially and psychologically, during his stay in the centre and to prepare him for his return. Furthermore, the director of the centre has to ensure that recreational, sportive and cultural activities are organized.

2.9. Legal grounds for contact with the outside world

The articles 34 to 36 of the Royal Decree of the 2nd of August 2002 regarding the working of the detention centres gives a right of visit to the family of the detainees. In particular, the detainee can receive his wife in an intimate setting

once a month, this right being only applicable after one month of detention. [97]

The article 37 of the same Royal Decree also consecrates a right of visit for the friends of the detainee. However, those visits are subjected to prior approval by the centre's director.

Visits by pastoral workers are authorised by the article 46 to 51 of the Decree. Officials from the person's consulate or embassy are also authorised to see him (article 32). Finally, the Minister can grant to NGOs the right to visit the centre, as provided for by the articles 45 and 73 of the decree.

2.10. Legal grounds for the provision of legal aid

The right to legal assistance is found in the articles 62 to 66 of the Royal Decree of the 2nd of August 2002 regarding the working of the detention centres. Each detainee is entitled to a lawyer paid for by the Belgian State. The director of the detention centre is responsible for informing the detainees of this possibility. The detainees are entitled to contact their lawyer by phone at any time, free of charge, and the visits by the lawyer cannot be forbidden.

2.1.1 Legal grounds for the protection of persons with special needs

There is no single legal ground for the protection of person with special needs. The article 41 of the law of the 12th January 2007 (concerning the reception of asylum seekers and other categories of foreigners) specifies that unaccompanied minors presenting themselves at the border must be assigned to a specific observation and orientation centre. Those particular centres are open reception structures.

As exposed in section 2.8, persons requiring special medical attention might be sent to a specialised medical centre by the doctor attached to a detention centre (article 55 explicitly states the case of childbirth, life threatening afflictions and more widely "afflictions which cannot be properly treated in the centre"). The articles 115 to 117 of the Royal Decree of the 2nd of August 2002 regarding the working of the detention centres finally deal with the persons susceptible of committing suicide. The direction of the centre must dedicate a special attention with respect to those persons when identified by the medical service.

2.12. Legal grounds for alternatives to detention

In the case of persons who entered illegally on the Belgian territory, or who are residing illegally in Belgium and who introduced an asylum claim, the article 10 of the law of the 12th of January 2007 (concerning the reception of asylum seekers and other categories of foreigners) states that those persons are assigned a place to register themselves, and article 11 states that they are assigned to a particular reception centre, as place of registry.

As written above, article 41 of the law of the 12th January 2007 (concerning the reception of asylum seekers and other categories of foreigners) specifies that unaccompanied minors presenting themselves at the border must be assigned to a specific observation and orientation centre.

More recently, the Royal Decree of the 14th of April 2009 established "return houses" for families with children. Families who have been ordered to leave Belgium might be assigned to one of these houses in order to prepare their deportation. It might concern irregularly staying migrants as well as asylum seekers under the Dublin regulation. Families applying for asylum at the border were not eligible for stay in those houses at the time of this research.

[97] This right was not of application for the whole period of the study. The disposition providing for it only entered into force in June 2009.

2.13. Legal grounds for providing release from detention

In the case of asylum seekers in detention, if the asylum procedure cannot be processed in two months, plus the two weeks granted to write the appeal claim, the person must be released.

With regards to the other categories, the detention can only be extended, as seen in section 2.1, if the Belgian authorities can justify that the necessary measures to proceed to a deportation have been taken in the first seven days of detention, that those measures were executed with due diligence and that there is still a possibility to deport the detainee within a reasonable delay. If a detainee is granted a permit of stay due to pending procedures or procedures initiated while in detention, then he shall be released.

The articles 9 and 61 of the Royal Decree of the 2nd of August 2002 also provides that the director of a detention centre must inform the Aliens' Office if he notices that there are serious elements justifying the release of a detainee, especially in medical cases.

3. OVERVIEW OF NATIONAL DATA FINDINGS

The persons interviewed for this study were two-thirds men and one-third women – a proportion roughly reflecting the balance of sex in the detention centres. The average age among interviewees was of 30. The vast majority was single (75%), but this figure is inflated as it only takes into account official relationships. Quite a few detainees reported long standing relationships or prospects of marriage. The sample was varied in terms of nationalities, even if half of the persons interviewed were coming from sub-Saharan countries, especially the Democratic Republic of Congo.

For the persons in the centres 127 and 127bis, the average length of detention at the time of the DEVAS interview was similar: one month. For the persons in the centre of Bruges, the detention had been longer, up to an average of one month and a half. This reflects the fact that the maximum detention time in the 127 is of two months and a half, to be compared to five months in Bruges. In our sample, the average detention periods are not significantly different for asylum seekers and irregularly staying migrants.

3.1. Case awareness

Almost all detainees have at least some awareness for the reasons of their detention. This information was usually provided by the Belgian authorities (mainly by the centre staff or the police at the airport). However, asylum seekers consider themselves badly informed about their ongoing procedures. Only one third says that they are correctly informed. On a scale of 10 (10 being fully informed), the average score given is a low 4.77. In consequence, a majority of the asylum seekers have questions they feel unanswered, most of those relating directly to the procedure or detention.

According to the interviews conducted with the staff:

- The detainees are provided with information regarding their situation either during the "intake" (an introduction time detainees go through when arriving at the centre) or through an initial meeting with a social worker;
- Information materials about the procedure are available in 12 different languages;
- Formal decisions are notified promptly by the social worker;
- Contact with the lawyer is free through the phone.

It still appears from the detainees' answers that these measures do not alleviate the feeling of misinformation. According to the NGOs interviews, even those basic guidelines are not always met; many detainees are not in possession of a copy of the documents concerning themselves. The NGOs stress that linguistic and cultural differences often mean that the message passed on by the social worker is either not understood or misunderstood. Important documents come either in French or Dutch and are at best roughly translated by the social assistants at delivery.

3.2. Space

Very few interviewees feel positive about their rooms. This perception is heavily dependent on the centre considered: in the CIB, the percentage of unambiguous negative perception is rising to 87%, for roughly 50% in the 127 and 127bis. The complaints are related to social issues of cohabitation, in rooms hosting a large number of occupants (up to 15-20 occupants per dormitory). The bad general climate of the rooms (smell, noise, excessive temperature) was also frequently pointed out. Detainees were less negative in the centre 127bis, where they share rooms of four. Dirtiness was singled out though, as explained below.

The reactions about the centres' other areas (refectory, common rooms, lavatories, etc.) are also negative, but slightly less so. The lack of cleanliness is pointed out in the centre 127bis; while the centre is cleaned regularly, the walls and furniture are covered with graffiti. The difficulties of interacting in a small space are pointed out in the centre 127. In the CIB, the common rooms where detainees stay all day long are described as too small with respect to the number of residents, hot and extremely noisy.

Those two last problems directly relate to the lack of privacy available in the centres. One detainee out of two indeed feels that the centre he is living in is overcrowded, a feeling shared across all the centres. Almost all interviewees see no place in the centre where they could find a sense of privacy. As a detainee of the CIB states: "Sometimes you search for a place to rest but it is not possible. You want to pray, the others play pool… You have to ask for respect, this is not easy. You cannot find a quiet place here. People play the music very loud."

From the reports of NGOs and our own visits, such feelings match the reality of the physical layout of the centres. It should be noted that the prayer room set up in the centre 127bis is perceived by some detainees as such a place of privacy. On the contrary, the fact that prayers are held by Muslims in the common room is repeatedly noted as a source of tension by the detainees of the CIB.

3.3. Rules

85% of the persons interviewed had some knowledge of the rules of the centre, regarding daily routine and what kind of behaviour was expected of them. As a rule, detainees did not think they could require a change or were pessimistic about possible changes, with the notable exception of the centre 127bis. There, both detainees and staff questionnaires gave examples of concrete changes in daily practices, related to food, access to showers and such. During one visit in the framework of this research, tense protests were witnessed, leading quickly to more changes.

3.4. Staff

The detainees say they mostly interact with the security staff and the social service. Even if they do not mention spontaneously the medical staff, they are actually aware of their existence. In line with what was witnessed by NGOs in the visited centres, interactions with the social services are more widely reported in the 127 and 127bis, where the social workers are relatively easily accessible, whereas interactions with security staff are put forward in the CIB. While detainees are free to roam in between their rooms and the common areas in the 127 and 127bis, the regime in Bruges is more prison-like in its daily functioning. The guards have to accompany the detainees from one room to another many times a day. The guards are thus brought more in contact with the detainees in a position of authority.

It must be mentioned at this point that educators are present in Belgian centres. Many detainees indeed refer to them in their answers. In charge of providing recreational, cultural and educative activities to the detainees, these members of the staff are reported very positively by the detainees as being “easier to speak with”, and “closer to us”.

As said above, the centres 127 and 127bis distinguish themselves from the CIB by the quality of interaction with the staff. Positive figures go up to 50% in the centre 127 and 127bis and down to 12.5% in the CIB. Negative answers, which are quite consistent at around 20%, do not account for this variation. The difference consists in detainees who feel that the quality of staff interaction varies. The detainees express in those answers that some members of the staff are friendlier and more likely to support their needs while others are not. A particularly worrying trend is the fact that social workers are mostly perceived negatively in the CIB. Many detainees state explicitly that they do not want any contact with them anymore, unless forced, as the social workers are seen in being only interested in return.

A young woman sums it up: “Guards: They call us by our tag number ‘Miss Z99’. The chief don’t know my name; I’m a person, and this is not good. It really depends from one guard to another. Some let us rest five minutes before turning off the lights. With some it is: ‘poof, off’. Some are friendly though. I don’t go to see the social workers anymore; all they say is: ‘you must go’.”

Other detainees also explain that they have to select the guards or social workers to whom they will approach for a service. “Sometimes, they give you what you need, sometimes not. And no means no. It depends a lot on the mood of the guards though. We learn to see if someone is in a good mood before asking.”

The detainees usually feel that they can receive some form of help from the centre staff but, once again, most of the answers received are fairly nuanced. The reportedly received help consists mostly in items of daily life given by the security staff or small favours. This matches the staff questionnaires which insist on the flexibility of the guards and educators in supporting the daily needs of the detainees. For the centre 127, the assistance received from the social workers to contact the outside world is pointed out positively, particularly for contacts with the family in the country of origin.

It is comforting that very few cases of discrimination based on nationality, race or religion are reported. If a third of the detainees say that they experience some form of differentiated treatment from the guards, it is more often positive discrimination than negative and often linked to personal reasons. Still, among some detainees (especially detainees originating from the Democratic Republic of Congo), there is a strong uneasiness with the use of Dutch by the staff in front of detainees (all three centres visited are located in the Flanders and are mostly staffed by Dutch speakers). Unable to understand what is said, they suspect it to be derogatory racial comments or insults. One detainee reported a serious case of violent behaviour from the staff; he however admitted that he initiated the fight when refusing to go in isolation. This matches what is said by the NGOs. While violence is not encountered daily in Belgian detention centres, NGOs mention cases of unnecessary force in the dealings of the security staff with more agitated or violent detainees.

3.5. Safety

A more surprising result of the research is that a significant proportion of the detainees do not feel safe in the centres, a third of them even feel unsafe. The reasons are varied. The proximity of the centre 127 to the airport’s runways is certainly frequently mentioned in the interviews. The centre is indeed situated right next to the runway of the airport. The other reasons given are more varied and less centre-specific:

- Potential risks coming from other detainees because they are drugs users, coming out of jail or simply because they could “loose their mind and hurt anyone”;
- Feeling of being watched over all the time by the guards;
- Potential damages made to one’s health by lack of proper care, both psychologically and physically.

Mocking or insults have been experienced by a third of the detainees; half of it comes from other detainees, half of it from the centre staff (security staff almost exclusively). The cases reported erupt in daily life's disputes that escalate: refusal to light up a cigarette, conflicts around TV's use and so on. Reports of violent altercations involving the interviewees, either with the staff or the other detainees, are extremely limited. However, many a detainee in the centres 127bis or in the CIB has been witness of violent altercations. During a visit for this research, such a fight happened once in common areas right in front of the interviewer.

3.7. Activities

Detention centres in Belgium offer activities of various kinds. Educators are responsible for organising those. A centre will usually offer creative and entertainment activities (handicraft, painting, etc.), basic languages classes, some possibilities for sport as well as access to books, television and an outdoor place. The interviewees as a whole are aware of the activities offered in the centres and participate at various degrees in those activities. The persons strongly insist on the function of stress relief played by those activities (60% of the participants), more so than on the pleasurable aspect. Out of 25% who choose not to participate, half simply have no desire to do so but more than a third consider that they are too stressed or are feeling too depressed to participate. This feeling of being too low mentally to participate is twice as often encountered among women than men. A few detainees state that the activities are inadequate: "too childish", "inappropriate for someone of my age". From the NGOs' perspective, some of the activities offered, such as t-shirts painting or small handicraft, are purely occupational and unlikely to seriously interest the main group of detainees: young grown up men.

3.8. Medical

In all detention centres, a medical service is guaranteed by the presence of nurses and a psychologist as well as the presence of part time physicians. All interviewees are aware of the presence of those medical staffs. In their large majority, they either know they can access it on demand or they actually meet the medical service frequently. However, only one third is aware that a psychologist is present within the centre.

Persons with a limited command of French, Dutch or English report problems in communicating with the medical service: "I have pain at one side in my head which causes impacts my eyesight; it's because in Colombia I had a treatment for epilepsy, and since then I have pain in my head whenever I'm worried. But I couldn't explain this to the doctor in the centre, because he doesn't understand me." Such cases represent 16% of our interviewed sample but this figure is probably understated, as we mostly interviewed persons who had at least some command of those languages. When there are linguistic problems of communication, the medical services seem to use informal means of translation (co-detainees, nurses) rather than calling to trained translators, despite the obvious privacy concerns.

As a whole, the interviewees report a degradation of their physical health (from an average of 7.57/10 before detention to an average of 5.76/10 at the time of interview, 10 being best) and they add that detention itself had a negative impact in two third of the cases. The reasons given are equally spread on the facilities of the centres, the lack of appropriate treatment and psychological reasons linked to detention and/or procedures. On the side of mental health, the detainees report an even stronger degradation (from an average of 7.80/10 before detention to an average of 3.72/10 at the time of interview). When asked to explicit this degradation, 39% allude to unspecified serious stress and worries and 34% allude to mental health problems such as losses of memory, serious sadness, concentration problems, inability to sleep or headaches.

Half of the detainees express being unsatisfied by the medical services offered by the centres. They feel that they are seen a priori as liars, people exaggerating their troubles or requiring undue attention. In consequence they would not receive proper care. Some detainees see also the medical service as "working for the administration" and, as such, not really interested in their well-being. According to detainees, the medical services often hand out the same medicines – usually painkillers – for all the lesser afflictions. When drugs are provided, they are often given without

label or explanation notices. Furthermore, they feel outraged that the medical service would constantly refer to their symptoms as consequences of stress: “I’m losing weight; I already lost 12kg here. The doctor says it is stress. They only have this word to say … stress”. While it might be a correct assessment, it is perceived as a minimization of their situation.

30% of the detainees consider they need further medical attention than what it is available in the centres, mostly under the form of visits to specialists (dentists, ophthalmologists but also radio for formerly broken bones, etc.). These demands particularly come from asylum seekers detained at the centre 127, who have just arrived in Belgium and come from countries with limited medical capacities. Such visits do actually take place in clearly urgent and identified cases, as confirmed by detainees themselves as well as the staff and the NGOs. Quite a few interviewees indeed describe an improvement in their situation since their arrival. There seems to be severe restrictions however on treatments that are not deemed necessary by the physicians in the centres, irrespective of earlier prescriptions. “I need an operation for my legs. My first meeting with the specialist was cancelled because of my first detention. A second meeting is uncertain. In Bruges, the direction told me it was too expensive.”

3.9. Social interactions

According to the detainees, their social interactions with other detainees are good or at least without problems. Half of them however acknowledge problems ranging from disputes to fights in between the other detainees. They do not relate those problems to inter-cultural or inter-religious tensions but rather to personal characters and the tension of common life in detention, something confirmed by staff and NGO questionnaires and already alluded to it in the section dedicated to the centres space. The problems noted above with regards to people arguing over prayer in common rooms are the only reported cases of inter-religious tension. Most people (but one) in fact consider these conflicts as a problem of space and cohabitation rather than actual religious confrontations.

This being said, persons who are not members of majority groups in the centres (in practice, persons not coming from either Africa or from the Maghreb) express the idea of being isolated. They more readily see the centre as a place where fights occur. As a woman who only spoke English told us: “It is difficult to establish contact with the Africans, the Arabs. How can I communicate with them without arguing?”

Detainees usually find a person to trust inside the centre (at least 70% do), which is as likely to be a co-detainee as a member of the staff. This division crosses all divides (ages, sex, origin, status…).

3.10. Contact with the ‘outside world’

In general, the person interviewed had family in the country of origin (80%) and, in a significant number of cases (25%), those family members rely on the financial help of the person detained in Belgium. The detainees in their large majority have also family or friends in Belgium. Whether for communication inside Belgium or abroad, the telephone is the most employed tool of communication by far (used by 81%) and is considered by many as the optimum tool of communication in their situation. In comparison, visits by family or friends concern one third of the interviewees. If people have access to public phones as well as, in some centres at least, to their own mobile phones, effective access to the telephone is restricted by the cost of communications. Half of the persons who consider the telephone as the best mean of communication consider at the same time lacking an effective access to the telephone. “I don’t have contact with my wife anymore. When you have money, then you can call, and if you really don’t have anything, then you can try to ask your social assistant”. If the staff indeed attempts in many cases to facilitate communications, these efforts still fall short of the needs.

The requests for Internet access are also important and are coming from persons from all origins. Some detainees in the centre 127 report the possibility of accessing Internet in the framework of their asylum procedure or in order to contact their families. The staff and NGO questionnaires points out that this remains an informal procedure in the

centres where it is practiced, at the discretion of staff.

The right of visit for lawyers is effective, but far from being always used by lawyers. Still, most of the detainees (and almost all asylum seekers) have met their lawyer, usually when going to court or to administrative hearings. Chaplain visits are common place as well as NGO visits.[98] Calling the lawyer by phone is free and the staff from the centres also allows at times the detainees to contact the NGOs free of charge, especially in the centres 127 and 127bis.

3.11. Family

If only one person had children with her in the centre, one fourth of the interviewees have children living outside the centre (see section above).

3.12. Nutrition in detention

The vast majority of detainees are not satisfied with the food provided and, in consequence, they eat less than before. The stress also compounds to reduce appetite. In the centres 127 and 127bis, the inadequacy in between the food provided and the detainees' culture is pointed out first while, in Bruges, the first point raised is the variety and the quality of the food. However, in all centres, the religious needs of the interviewees were reported as being catered for. This is mostly valid for Muslims. Hindus are arguably less numerous in detention, but said however that they had the feeling to receive less attention.

3.13. Detention and its impact on the individual

Sleeping is problematic for 75% of the interviewees. The worries and the stress associated to the detention and procedures are quoted first by half. The physical living conditions (especially the planes' noise in the centre 127 and the noise made by other detainees in the CIB) come second.

When we asked the detainees what the first difficulty in detention was, the answers were mostly spread along two axes: detention in itself being experienced as difficult (the simple shock of being detained, especially for asylum seekers at the border, the feeling of being cut from the external world, the feeling of being deprived of one's rights) and the living conditions (especially cleanliness or rather lack of, food and the daily routine). Asking for the second and third difficulties, the same issues come back, with a special emphasis being put on communication problems and a loss of autonomy (being forced to follow the group or act as told by the staff). If a significant minority of detainees expresses the idea that detention is getting more unbearable as time goes by, many detainees say that it was difficult from day one and stays so. And this even among detainees who have been detained a long time.

Nearly all detainees have experienced detention as particularly or too difficult to bear at one point. For some, it is at the beginning of detention (for 12%). For some, it is after more than one month of detention, a strong turning point (for 22%) and, for others, this feeling emerges after a particular event such as being brought to court or learning of a procedure results (for 32%). In three cases, suicide was expressly mentioned with seriousness.

The outcome of detention is an unknown for almost all detainees. If some detainees have a slightly better idea of when they will leave the centre, a large majority does not. The impact is without surprise mostly reported as "stress and worries" but quite a few (15%) directly relate mental health problems directly to this uncertainty. This matches the perception of the NGOs who notice that faced with the uncertainty of procedures, some persons will grow apathetic and detached or, at the contrary, anxious or even aggressive. Even in the case of denied asylum seekers or illegally staying migrants for whom the issue of detention seems at first clear cut (deportation), uncertainty is very present. In

[98] This is however inflated by the fact that the persons interviewed usually were in contact with the NGO before the interview was conducted.

practice, many who are issued expulsion orders are not actually deported or are only deported after a long period of uncertainty. This could be for various reasons: successful petition for releases, prospects of regularisation, lacks of documents, delayed answers from a third member state in Dublin II procedures.
When asked to describe themselves, the interviewees still do so positively for half of them. A fifth of them describe themselves negatively. A strong 75% of the detainees however say that detention had a negative impact on them, in terms that match what is described above: “I find myself aggressive. Outside I wasn’t like that. You get attached to small things here.” Or: “I’m too disabled in my head to make decisions for myself anymore. I cannot even decide if I should petition for release in front of the judge for example.”

A fourth of the detainees consider having special needs beyond the usual categories of vulnerability. The two points coming out most are at first people who cannot speak any common language neither with the centre staff nor with the other detainees. The people unable to speak any common language are also recognized by both staff and NGOs as having particular difficulties in their daily life in the centre. Secondly people who have family outside the centre describe themselves as having special needs. The hardship of being separated from one’s children and/or wife or companion is often reported in the interviews. It is further aggravated when the detainee knows that his/her family needs support; a support he cannot provide considering his situation. The special needs identified by the detainees among other detainees are very classical: older people, sick people, minors and pregnant women.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

Being detained is shocking, difficult to live with. This simple fact is at the core of what is reported in the interviews. Whether or not the centre is considered positively, whether or not information is received or understood, whether or not the relations with the staff are positive, whether or not the centre is experienced as a safe place, detention itself comes back again and again in the words of most of the persons we interviewed. No analysis can spare the expense of dealing first with this central human issue.

This is clearly exposed by the fact that a large majority of detainees say that detention has impacted their life and that such an experience was difficult since the very first day. Detention of course comes with its unavoidable corollaries: interruption in one’s life plan, feeling of rights’ deprivation, loss of personal autonomy, immersion in an unknown and somehow threatening social setting. As seen in the section above, those are the difficulties mentioned first by detainees.

Detention is even more shocking to the asylum seekers. First it is unexpected. Few among the persons interviewed expected detention. Then comes the experience of being criminalized. As a woman told us, “I came here for help and I found myself in prison.” The physical settings of all detention centres is coming heavily into play: barbed wire fences, guards in uniform, locked doors and windows. Security practices reinforce this impression. Being cuffed at the occasion of transfers or when brought in front of the judge is an experience mentioned frequently by detainees. And, finally, the cohabitation in between asylum seekers, especially in the centres 127bis and in Bruges, and illegally staying migrants who are directly transferred from prison blurs the lines definitely. In front of those facts, the well-intentioned efforts of the staff do little to alleviate the feeling of being somehow punished.

The fact that some asylum seekers are actually fleeing experiences of arbitrary detention or persecution is also to consider. In a few but significant cases, the persons interviewed shared that being detained was a constant and painful remembrance of what they had endured at home.

More generally speaking, detention focuses detainees on their pre-existing problems. Detention is then experienced as a standstill, or even a regression, on the path of improving one’s condition. Particularly exemplifying was the case of a man whose drug rehabilitation was interrupted when he was arrested in order to proceed to his deportation.

Unable to act on his problems anymore, he spent the whole interview coming back to it again and again. In similar cases, people shared that this powerlessness was overwhelmingly occupying their thoughts.

Intertwined with detention are the procedures. The persons we met could be described as such: persons waiting in a peculiar environment for a vital decision about their future, decision over which they have no grasp. Stress and worries are prevalent in a detainee's life. The consequences of "thinking too much", as the detainees express it, are numerous and widespread in the answers received: inability to sleep, lack of appetite, loss of energy and irritability in common life. This prevalence of stress is also exemplified by the psychosomatic medical conditions reported and the way those are answered to by the medical service of the centres. One of the main sources of worries reported by detainees is unsurprisingly the asylum decision itself (or, for illegally staying migrants, procedures surrounding the deportation) but, in fact, all the acts surrounding the procedures are experienced as an opportunity or a threat.

We are not equipped to diagnose strictly the combined psychological impact of detention and uncertainty. However, the serious degradation reported by the detainees in their mental well being is particularly telling, both in strength and magnitude. It certainly matches the experience of both staff and NGOs. The symptoms reported by detainees such inability to sleep, loss of memory, difficulty to concentrate, lack of appetite, anguish, apathy, ... are noted by all actors in detention.

Case awareness

In this context, the bad score given by detainees with regard to the information received about their ongoing procedures is worth being taken into account. The current efforts by the staff or the procedural safeguards into place are still not sufficient to guarantee a feeling of understanding of the procedure in the detainees. The complexity of the procedure means that, for many detainees, information leaflets and official documents are confusing and require further explanation. The social workers in charge of the procedure may not always have the time for such work, as exemplified by the questions people still had with regards to their procedures. People with lower education or coming from different cultural backgrounds also find themselves lost in those documents or misunderstand them. Detainees often do not understand what their lawyer is – or could – be doing for them. Communication with the lawyer is reported as often scarce and the information given difficult to grasp. The persons with low level of education, lack of knowledge of French or English and coming from a different culture are particularly at risk. This last category is also reported by both staff and NGOs as the most difficult to approach and support in practice.

The waiting periods before administrative or judicial decisions are also experienced as period of "not knowing what is going on" by the detainees, especially by the persons awaiting an answer from another country in the frame of Dublin procedures. One time information is thus insufficient and the explanation must be given again as the days go by. It is particularly difficult for the detainees to understand why procedures are taking so long; would it be for procedures of identification (in the cases of illegally staying migrants awaiting deportation) or the procedures of determination of the state responsible for the asylum claim (Dublin II cases). The limited amount of actual contact reported by some detainees with their lawyer reinforces this problem, especially in the cases of complex procedures. A typical question among detainees was "I would like to know what my lawyer is doing now".

Finally, a basic level of trust is required for information to be received properly. As seen above, many interviewed detainees bluntly say that they do not wish to meet the social assistants in the CIB anymore; the perception is that they are only interested in return procedures. While it can be understood that, in a centre hosting mostly people awaiting deportation, the issue of return is important, the very direct approach taken by the CIB's social service, as reported by detainees ("The first thing they told me, when I arrived here, was to bring my luggage because I was leaving soon"), is deterring the detainees to search further contact. In a centre hosting a mixed population of asylum seekers and illegally staying migrants, the negative perception held by illegally staying migrants is passed onto the asylum seekers. In the NGOs' experience, the work climate in the CIB, strongly focused on returns, is effectively little conductive to a proper accompaniment of asylum seekers.

Detention and the uncertainty around the asylum or deportation procedures are by themselves sufficient to make any amount of time spent in a detention centre a difficult time. It cannot be stressed enough that persons who report no problems with the practical aspect of detention (contacts with the staff, food, material conditions, etc.) or even are positive about it – which is not uncommon among persons who just flew areas of conflict –, insist also on the hardship of being constantly centred on their procedure and awaiting decisions, in a setting where there is little else to do. Some factors however further aggravate the situation and could be alleviated. The issues of healthcare, privacy and of the communications with the outside world are exemplary.

Healthcare

Access to the medical service is not the primary problem, with permanencies organized in all centres. Neither are the treatments offered as it can be argued that the medical services in the centres actually do provide proper service in most cases, as exemplified by the number of detainees reporting having been sent for examinations in hospitals or to a dentist. Still, the global detainees' perception is that they do not receive proper attention from the medical staff. What can explain this discrepancy?

Firstly, some reported objective practices are prone to raise suspicion in between the detainees and the medical service. Being offered only painkillers in many occasions, often unlabelled, is very strongly perceived as a lack of interest and care from the medical staff.

Secondly, in some cases, detainees do not receive the treatment they feel appropriate to their condition. While the Belgian legislation provides for the possibility of receiving the visit of an outside physician, it seldom happens in practice. Because of the cost, lack of awareness, lack of available doctors, the possibility of having a counter expertise is practically inexistent. This situation reinforces the feeling of dependence and frustration.

The lack of awareness among detainees about the presence of a psychologist in each centre is also a darker point. So is the feeling expressed by some detainees that going to see him/her is useless. While the detainees report generally a worse mental condition in detention, they might not under those conditions receive the attention they need. From the NGO and staff questionnaires, it appears that persons are only erratically referred to the psychologists, depending on how untrained members of the staff are able to detect the worst cases over time. The possibility of receiving the visit of an external psychologist or psychiatrist is almost null, unless in the cases where the lawyer organizes it himself.

In this context, the initiatives launched in the centre 127, as reported by the staff, are a step in the right direction. Multidisciplinary team meetings held thrice a week include discussion of the psychological state of the detainees. Members of the staff in close contact with the detainees are invited to fill in observation sheets, upon which the centre psychologist can act pro-actively. These changes have indeed been noted positively by the NGO visiting the centre in the last months, especially the increased visibility of the centre's psychologist. It must be said however that those initiatives are quite recent and are not yet adequately reflected in the detainees' answers.

Privacy and cohabitation

It is acknowledged by all actors that privacy is virtually nonexistent in detention centres. The problem is especially severe in the centres 127 and the CIB. A strict "group regime" is of application in the CIB. This means that detainees sleep at night in dormitories accommodating up to twenty, are brought together to the refectory at fixed hours for meals and outdoor recreation and are obliged to stay together in noisy common rooms for most of the day. Such a system makes it impossible to find privacy, in a centre where detainees can stay there for extended periods of time (up to 5 months among the interviewees). In the centre 127, the detention periods might be shorter but the lack of privacy is even direr. The centre is built out of stacked prefabricated units and is quite small. The common area is

dominated by the blasting noise of the TV. While women and men have different dormitories, those are literally next to each other and the doors do not lock. Some women report men entering their room either during day or night. While they do not report malign intent in those visits, this completely undermines any sense of privacy they might have had. This lack of privacy has at least two main consequences. On one hand, it reinforces as time goes by the feeling of being deprived of one's rights. The detainees experience a forced cohabitation and cannot escape from it. On the other hand, this cohabitation prevents them to find some forms of stress relief. A typical example is the difficulty to find a place to pray. It is also difficult in most centres to find a place where to reflect upon one's situation or simply where to rest during the day.

Not only are detainees unable to find a place where they can feel at ease, they are also forced to stay all day long among a group where tensions could be high at times. It is less the case for the centre 127, where NGO and staff findings support the overall good atmosphere reported by detainees. Tensions are however commonly reported in the other centres. As exposed in the previous section, the accumulated stress might translate into aggressive behaviour, attachment to small details, irritability. Those conditions explain for part the fact that detainees do not feel safe in the centres. The perception of the threat that *"other detainees might go crazy and try to kill someone",* as found in detainees' answers, is certainly fuelled by the daily disputes or fights. The detainees mostly perceive those altercations as a consequence of the nervous state of their co-detainees.

Finally, the detention centres host a highly diverse population, in terms of cultures, languages, nationalities. Even if most of the detainees downplay the conflicts issued form those factors, it is worth taking particular notice that detainees who feel marginalized in the centre because they are neither originating from Arabic countries nor Sub-Saharan Africa are more sensible to the latent violence in the closed centres.

Communication with the outside world

While, for detainees, visits are certainly the most appreciated way of entering in contact with one's family or friends, this form of communication knows some serious limitations. The family may or not be in the country, the costs for coming to the centre are not insignificant and the friends may be in illegal stay in Belgium, to only review a few of answers. It appears thus from the detainees questionnaires that the telephone is today the most significant window to the outside world for detainees. Considering the important number of answers which touch the question of access to the phones, it is also a point of concern for most detainees. Furthermore, the ability of keeping in touch with one's family, either in Belgium or in the country of origin, is of particular importance for those persons who have children or spouses outside the centre.

Communication towards the outside world, especially for those people who have difficulties to communicate inside the centre for language reasons, is not a trivial issue. For some detainees, it is the only place to receive moral support throughout their detention time. For asylum seekers, it is the only way to actually request some important materials to document their cases.

This raises a few issues, the first being the financial one. Calling cards for the public phones found in all centres are particularly expensive. If some detainees can afford to use this system, either by receiving external support or by doing small cleaning jobs inside the detention centre, it is not the case of all. The possibilities of actually being given a small job are perceived as erratic at best and the payment rate is insufficient to purchase a call card frequently enough.

Secondly, equal treatment is not guaranteed across the centres. The structural answers given vary widely from a centre to another. While the easy access to one's own mobile phone in the centre 127 appears positive in front of the restrictive approach (public phones only) taken in Bruges, it is not perfect: what of the persons who arrived without their own mobile phones? Communication might seem easier in the 127bis where detainees get access to mobile phones provided by the centre but the limitations of the system (they only get access to the phone for 30 minutes per

day) leads to many frustrations. The imperfection of the system is partially corrected by informal practices. In some centres, it appears that the social staff will allow some detainees to make use of telephones outside of the common rules or help them for long distance calls, if they perceive those detainees as needing it.

Finally, Internet is today an important mean of communication, including towards developing countries. Similarly to what happens for the telephone, Internet access is sometimes granted in the 127 or 127bis, once again at the discretion of the social service, more particularly in the case of asylum applications. If infrastructure and security reasons may prevent an unrestricted Internet access in all centres, it is difficult to comprehend why widely different policies are applied today. Furthermore, while the importance of communication is today acknowledged by the practice of the centres' staff, the rules governing it are unclear and possibly open to the arbitrary.

5. CONCLUSIONS

At this point, JRS Belgium wants to reiterate its constant position with regards to the administrative detention of asylum seekers and illegally staying migrants[99]:

- No asylum seeker shall be detained during his or her asylum procedure.
- Administrative detention of irregular migrants shall be avoided to the utmost extent possible.

In light of this research, the relevance of those two points is clearer than ever. From the interviewees' answers, it appears that detention itself is not harmless. It imposes an extra layer of negative constraints on individuals already dealing with painful procedures. This has a real human cost. Persons who experience the negative consequences attached to detention considered those as a punishment, especially if detention lasts. Any policy of detention must thus take the potential suffering of the detainee into account and balance it against policy arguments.

When it comes to asylum seekers, the difficulties of detention as experienced by the persons we met cannot be put in balance with the practical advantages the Belgian State might find in their detention. The European Commission in its report to the Parliament and Council on the implementation of the reception directive from 2007 highlighted that **"**given that according to the Directive detention is an exception to the general rule of free movement, which might be used only when 'it proves necessary', automatic detention without any evaluation of the situation of the person in question is contrary to the Directive"[100]. The Belgian policy of routinely detaining asylum seekers, either at the border and/or during Dublin II procedures, does not comply with this requirement.

Furthermore, the question raised in the same report from the Commission, question addressing the procedure of identification of vulnerable asylum seekers is still left unaddressed. No such procedure of identification is in place in Belgian detention centres to date.

In the short term, the current situation has to be improved on some practical points.

With regards to the medical service:
The concerns voiced by the detainees about their health in detention go beyond the simple delivery of efficient healthcare. In order to relieve part of the detainees' stress, these concerns must be seriously heard and dealt with. We thus invite the Aliens' Office as well as the directions, medical services and psychologists of each centre to:

- *Establish integrated health teams, including also the psychologist of the centre, in order to deal with the*

[99] Position which follows the 14-point position on detention released by JRS-Europe of March 2008 and available on http://www.detention-in-europe.org/index.php?option=content&task=view&id=210
[100] http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0745en01.pdf

detainees' concerns in all their aspects so that any detainee who refers himself to the medical service experiences being heard and dealt with appropriately.

- *Set up procedures to refer pro-actively detainees to the centres psychologist in all necessary cases.*

With regards to the role of the social workers:
As exposed, trust can exist in between detainees and members of the staff. Trust in between the detainees and the staff in charge of informing them about administrative and court decisions is furthermore necessary for the correct reception of information. However, the involvement of the social workers as return officers in the enforcing of the deportation procedures significantly hinders that trust, even for asylum seekers. We thus recommend to:

- *Guarantee that all detainees can meet, in practice and at their request, someone able to properly inform them without being associated with the deportation procedures. This would be best accomplished by the dissociation of the roles of social worker and return officer in detention centres.*

- *The social workers of the centres to make a greater use of professional interpreting services, in order to be certain that the decisions communicated to detainees are properly understood, as well as their consequences.*

With regards to the functioning of the centres:
Detention centres, as they are currently managed, are perceived to be "prisons" by the detainees. Both the experience of criminalisation and the loss of autonomy are weighting heavily on the detainee well being. As outlined in the recent report of the Belgian Federal Ombudsman, the "closed centres" should switch towards a model granting greater autonomy to the detainees and weighting in security measures as secondary. We thus recommend to the responsible authorities to:

- *Review the practices surrounding the transfers to the tribunal and especially to end the use of cuffs when detainees are brought in front of the Courts and Tribunals.*

- *Re-think the physical layout of the detention centres in order to provide a greater internal autonomy to the detainees and to pursue the considered projects on this topic.*

- *Avoid as much as possible the mixing of asylum seekers and persons coming straight from prisons, by initiating the return procedures during the time of their imprisonment.*

With regards to the communications to the 'outside world':
While things are moving in the right direction with the liberalization of the use of mobile phones in the Belgian centres, there are still a lot of discrepancies, from one centre to another. We thus invite the directions of the centres to:

- *Harmonize the initiatives taken with regard to mobile phone use along the current most liberal practices;*

- *Take into account with special care in the design of those initiatives the persons without financial resources;*

- *Level the field with regard to internet access, by providing at least email access to all detainees, if necessary under supervision of the educators;*

- *Take into account the geographical proximity of the detainees to their social network when assigning a detainee to a detention centre.*

NATIONAL REPORT: BULGARIA

By: Bulgarian Helsinki Committee

1. INTRODUCTION

The DEVAS Project in Bulgaria followed the aim to research and identify the national detention conditions and practices and what was their effect on the asylum seekers. The research also focused on what other groups of vulnerable detainees could be identified in detention centres and to collect, summarise and analyse the situation in existing national detention facilities from the prospect of the detainees themselves.

In order to fulfil this task Bulgarian Helsinki Committee as the national project partner obtained permission to extend its visiting hours to Busmantsi detention centre, near the capital Sofia - presently, the only existing detention facility for aliens in the country's territory. The detention centre administration was introduced to the content of the detainee questionnaire, planned the number of interviewees (30 individuals) and the approximate time limit of each interview. Communication was also made to the management of the Migration Directorate of the MOI in order to get authorisation for interviewing two members of the staff. Finally, other NGOs involved in activities in Busmantsi detention centre were asked to consent to fill in a questionnaire designed to draw conclusions on their working experience in the facility; Caritas-Bulgaria was the NGO to answer positively.

Additional categories of people were added to the research: recognised refugees, and persons who have been granted asylum but who were detained after an issued expulsion order on national security grounds.

Only one detention centre was accessed because there is only one functioning detention centre for aliens in the country's territory. The capacity of the national detention centre is approximately 300, thus the chosen number of persons to interview - 30, represented 10% of all detainees. The interviewees among all detainees were selected on the principle of diversity, but the percentage of women compared to men in detention was significantly lower; thus only 5 out of 30 interviewees were women, composing only 16% of all interviewees.

All persons interviewed were asked to sign a consent form stating that the interviews were conducted according to their free will and for the purposes of the DEVAS project.

The most important impediment that was encountered during the project was the lack of resources to engage interpreters in the interviewing process. It limited the selection of people whom the project could interview as far as this selection was preconditioned to a great extent by the possibility to communicate in spoken either by the interviewer, or, by the detainee, language.

Among the stated categories of third-country nationals under the DEVAS project methodology as subject of research, in Busmantsi detention centre were established following groups of detainees that fell under the specified categories, namely:

- *10 applicants for international protection and 2 recognised refugees* - persons who apply for asylum while they are administratively detained for illegally staying in the Member State / persons who have been granted asylum, but who were detained after an issued expulsion order on national security threat grounds;

- *8 irregular migrants awaiting deportation* - persons who are in administrative detention for illegally staying in the Member State, in view of being returned to their country of origin or a country of transit;

- *10 rejected asylum seekers* - persons whose asylum applications have been denied by the Member State authorities, and are thus administratively detained in view of being returned to their country of origin or a country of transit.

The demographic profile of interviewees is the following: 43% were from Middle East, 20% from Sub-Saharan Africa, 16% from ex-USSR, 15% from Asia and 6% from Europe. Detailed data breakdown as follows: 5 Iraqis (male), 5 Nigerians (male), 2 Lebanese (male), 2 Armenians (male), 4 Palestinians (2 male, 2 female), 2 Russians (male and female), 1 Albanian (male), 1 Algerian (male), 1 Afghani (male), 1 Vietnamese (male), 1 Indian (male) 1 Kosovar (male), 1 Iranian (male), 1 Somali (female), 1 Tunisian (male) and 1 Ukrainian (female).

2. NATIONAL LEGAL OVERVIEW

2.1. Legal grounds for the detention / detention order

Detention of aliens in Bulgaria can be ordered on the basis of the Law on Aliens in the Republic of Bulgaria (enforced on 27.12.1998). The law does not provide an explicit rule for detention of asylum seekers. Temporary detention may be implemented for the period between the submission of asylum application at the border and the issue of a release letter from the State Agency for Refugees /Art.58(4), Art.67a(2)-1 of the LAR/. The SAR may conduct the Dublin procedure in the detention centre /§5 of the Transitional Clauses of the LAR in conjunction with Art.14 of Ordinance №332 from 28.12.2008/. In practice it was never applied until September 2009 when problems with capacity of the Reception centres for asylum seekers occurred and the asylum administration started fingerprinting under Dublin regulation prior releasing the asylum seekers from the detention centre, if they applied after their detention. This practice concern only persons who applied for asylum while they were already administratively detained for illegally staying in the Member State. The general national term used to regulate the administrative detention of aliens is “coercive accommodation” under Art.44 of the Law on Aliens. It is a measure applied in cases where a deportation or expulsion order was issued on the basis of, respectively, illegal residence or national security concerns.

Law on Aliens - Article 44(6) (Last Amendment, SG No. 36/2009) In the cases where the alien, who has been imposed upon a compulsory administrative measure in compliance with Article 39a,pt. 2 and 3, is declared with an uncertain identity, prevent the execution of the order or there is a possibility of his hiding, the authority, which has issued the order, may issue an order for a compulsory accommodation (detention) of the alien in a specific shelter for a temporary accommodation of aliens in order to organize their deportation to the border of the Republic of Bulgaria or their expulsion.

Comments and recommendations: Bulgaria was one of the few EU member states to fail in providing the legal safeguard of an automatic judicial revision of the detention order. This safeguard was met in national criminal proceedings (Article 64 of the Criminal Procedure Code) for all individuals, irrespective of their nationality or origin, if accused in committing a crime, but it was not guaranteed for those immigrants who were subjected to administrative detention for violation of the national immigration regime for the sake of securing their deportation. This approach was found to be discriminatory by nature and in direct violation of the *right to liberty and security* of the person under Article 5 (3) of the European Convention on Human Rights (ECHR) and Article 15(2).a) of 2008/115/EC Return Directive. Judicial control in cases of detention for deportation should be immediately initiated by the police authorities that applied the detention measure; its scope should extend over the legal grounds and actual necessity of the detention in each individual case in order to meet the generally recognised legal standards for protection of the right to freedom of all human beings.

2.2. Legal grounds for judicial review of the detention order and the right of appeal against the detention order, or to challenge detention

After the legal questionnaire was answered a major amendment of the Law on Aliens was introduced on 15 May 2009 explicitly providing for the right to appeal:

Law on Aliens - Article 46a. (New, SG No. 36/2009) (1)The Order for a compulsory accommodation in a special shelter (detention centre) can be appealed within three days of the actual accommodation in the administrative court in the area of the headquarters of the authority, which has issued the contested administrative act. The appeal does not suspend the execution of the order.

Comments and recommendations: Although the adoption of an explicit provision on the right to appeal the detention orders was admitted as a significant national progress, however, the deadline for submitting the appeal was found to be unreasonably short. It undermined the possibility of the detainee to organise his defence in terms of proper research of the facts and circumstances that motivated the detention as well as to develop legal arguments against it. This ability was additionally hindered by the fact that the detention orders were not served in the language spoken by the alien, neither any interpretation services were ensured. Lastly, having the fact that the deportation orders have been in general awarded with the effect of an immediate implementation, and thus the aliens were usually immediately detained, the tight appeal deadline proved to be highly disproportionate to the extent of pure formality and obvious uselessness.

2.3. Legal grounds for the right of information about the detention order and/or the reasons for detention

Administrative Procedure Code - Article 59 Para 2, item 7: When the administrative act is issued in a written form it must state, *inter alia*, (7). the appeal deadline and the appeal authority;

Comments and recommendations: Legal aid in Bulgaria is not provided for administrative proceedings. Therefore, in terms of safeguards for the access of aliens to information and legal advice national detention legislation suffers major deficiency.

2.4. Legal grounds for the duration of detention

Introduced on 15 May 2009 with amendment of the Law on Aliens:

Law on Aliens - Article 46a. (New, SG No. 36/2009) (3) Every 6 months the director of the special shelter for a temporary accommodation of aliens (detention centre) presents a list of the aliens who have resided in it for more than 6 months due to obstacles occurred for their deportation from the country. The list is sent to the administrative court of the area where specific shelters are located.
(4) After the expiration of each 6 months of accommodation in the special shelter for temporary accommodation of aliens, the court officially passes a decision for extension, termination or substitution of detention with another measure in a closed session. The court decision is not subjected to further appeal.
(5) When the court revokes the detention or determines the release of the alien, s/he is immediately released from the detention centre.

Comments and recommendations: Legal arrangement of the judicial control over detention duration also does not meet the general legal standards. Although detention duration is set to be automatically revised by the court when 6/12 months deadline has expired, the law is not clear on the transposition of Article 15(5) and (6) of 2008/115/EC explicit prohibition of prolongation of the detention in excess of thus set maximum terms of duration; to the contrary, the law determines court's competence to "extend" the detention, which is in direct violation of the above mentioned

acquis communautaire. Additionally, no legitimate reasons were stated to support the regulation of this judicial control as held in closed sessions without the presence of the detainees and, thus, in violation of the *habeas corpus* principle and the right to oral hearing before the court.

2.5. Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

Law on Health care - Article 99: (1) The state provides the organisation and finance for urgent medical assistance. (2) Urgent medical assistance is provided in cases when there was a sudden deterioration in the health condition of the person that requires an immediate medical assistance.

Comments and recommendations: The law failed to recognise the needs for medical treatment of those detainees who suffer chronic diseases and who, by definition were deprived from access to general health and medication services. Similar situations as for the convicted criminals who serve prison sentences have been already solved in the law by obligating the state to cover under the budget their health insurance costs (Article 40 (3) item 6 of the Law on Health Insurance).

2.6. Legal grounds for contact with the outside world

Ordinance № I-13 from 29 January 2004 of Ministry of Interior - Art.15, item 4 of on the rules for administrative detention of aliens and the functioning of the premises for aliens' temporary accommodation: The detainee has a right to have: […] (4). Meetings with lawyers, relatives, acquaintances, official representatives of relevant embassies or consulate services.

Comments and recommendations: In practice, the right to contact with outside world was affected quite negatively by the fact that detention centre's administration and, especially security guards were severely understaffed and lacked opportunity to provide sufficient time for each individual to spend with his/her family members, lawyers or other visitors during the designated for this purpose days/hours.

2.7. Legal grounds for the provision of legal aid

As the Law on the Legal Aid (in force as of 1 January 2006) provided for means of state sponsored legal aid (legal representation) solely at the court stage, if the latter has been reached by means of submitted appeal, the detainees are deprived from legal aid while pending in detention.

Comments and recommendations: The right to enjoy free legal aid is a legal safeguard that should be mandatory in all cases where the right to freedom and security of person is involved.

2.8. Legal grounds for the protection of persons with special needs

Ordinance №332 from 28.12.2008 for the responsibilities and coordination among the state agencies, implementing Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003, Council Regulation No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 - Article 16, Para 2: Detention is not applied in cases of asylum seekers from vulnerable groups such as unaccompanied minors, pregnant women, individuals with physical or mental disabilities who should be transferred to the premises of the State Agency for refugees.

Comments and recommendations: In practice, the lack of capacity in the national reception centres for asylum seekers resulted regularly in detention of individuals, representing all vulnerable groups mentioned, including people with physical or mental disabilities, pregnant women and families with minor children.

Also, for legal grounds for accompanied and unaccompanied minors, *Ordinance № I3-1695 from 26 September 2006 of Ministry of Interior - Article 9:* Persons who cannot be detained in special shelters (detention centres): (5) minor and adolescents;

In contradiction with:

Law on Aliens - Article 44, Para (9): (New, SG No. 36/2009) Exceptionally, if there are circumstances under Paragraph (6) for the accompanied and unaccompanied juveniles or minors it is issued an order for a compulsory accommodation in a special shelter up to three months. At the special shelters referred to in Paragraph (7), there are separated rooms for the accommodation of juvenile and minor aliens that meet their certain needs and requirements.

Comments and recommendations: None of these legal standards on detention of accompanied or unaccompanied children is met in practice.

2.9. Legal grounds for alternatives to detention

Law on Aliens - Article 44*, Para 5:* (New, SG No. 36/2009) When obstacles exist for the foreigner to leave the country immediately or to enter another country the alien shall be obligated to appear daily in the police office according of his stay or residence following by an order of the institution which has issued the order for compulsory administrative measure as determined by the regulations for implementation of this law until the obstacles cease to exist.

Comments and recommendations: In practice this measure has not been applied widely enough, despite the evident advantages in terms of safeguards for the right of freedom for the aliens and cost effectiveness from the prospective of the government.

2.10. Legal grounds for providing release from detention

Law on Aliens - Article 44 (6): (Last Amendment, SG No. 36/2009) In the cases where the alien, who has been imposed upon a compulsory administrative measure in compliance with Article 39a,pt. 2 and 3, is declared with an uncertain identity, prevent the execution of the order or there is a possibility of his hiding, the authority, which has issued the order, may issue an order for a compulsory accommodation of the alien in a specific shelter for a temporary accommodation of aliens in order to organize their compulsory walking off to the border of the Republic of Bulgaria or their expulsion.

Read in conjunction with,

Law on Aliens - Article 44 (8): 8)(New, SG No. 36/2009) The accommodation (detention) lasts to the revocation of the circumstances under Paragraph (6), but not more than 6 months. An exception can be made when the person refuses to assist the competent authorities, there is a delay in the process of obtaining the necessary documents for the removal or expulsion or when the person is a threat to the national security or the public order, and the period of accommodation may be extended further to 12 months.

Legal costs for appeal procedures, Civil *Procedures Code - Article 8, Para 2 and 3:* Fees and costs of the proceeding shall not be deposited by any natural persons who have been found by the court to lack sufficient means to pay the said fees and costs. Considering the petition for waiver, the court shall take into consideration: 1. the income accruing

to the person and to the family thereof; 2. the property status, as certified by a declaration; 3. the family situation; 4. the health status; 5. the employment status; 6. the age; 7. other circumstances ascertained.(3) In the cases covered under Paragraphs (1) and (2), the costs of the proceeding shall be paid from the amounts allocated under the budget of the court.

3. OVERVIEW OF NATIONAL DATA FINDINGS

Information collected on the basis of conducted interviews was analysed by the DEVAS Evaluation Committee in Brussels, which after an in depth analysis identified the following main problems and concerns vis-à-vis the detention population in Bulgaria.

3.1. Basic information

Having average length of detention of 14.21 months (maximum 35 months) Bulgaria hit the highest detention duration among all 23 Member States participating in the project examination. Another alarming finding was the fact that the total months spent from detainees in the country prior detention was established to 88 months on average, which means that the country fails to provide adequate procedures for legalization or extension/prolongation of granted residence permissions. Detention population in Bulgaria has a larger than average in the EU number of married people and who have been in the country previously an extremely long time prior the actual detention. These factors may well make a difference to vulnerability as far as people with families, people who have been in detention a long time, and people who are well integrated in the host country and have few ties with their home country fall into very vulnerable and harmful situation especially in relation to their established family life and right to exercise it when faced with deportation.

3.2. Case awareness

Research established that the detention population is very badly informed. Some detainees are informed on the reasons for their detention quite late during following the arrest routine administrative procedures, which is a big concern. The fact that 1/3 of interviewed detainees want to know more information because it is a ‘general right’ points towards the fact that people in Bulgaria feel that their rights are not being respected. In general, the government fails to implement its obligation under Article 5 (2) of ECHR and Article 12 (2) of the 2008/115/EC Return Directive. Interpretation in language spoken by the detainee is provided when the detention orders is served; many were explained by immigration officer orally in Bulgarian that they were illegal. Thus, detainees are left unaware on specific reasons, facts and circumstances for their detention as well as on possibility to appeal and more important, on appeal deadlines which lead in the majority of the cases to missing the deadline and thus, access to independent judicial control over the police decision for detention. Having in mind short (3 days) appeal deadline as well as the lack of automatic judicial review of detention, the failure of the government to provide adequate information on the reasons for detention and due procedures to be followed reflects immediately in damaging the rights of detainees and causing additional reasons for vulnerability.

3.3. Space within detention centre

28% of interviewed detainees feel neutral and 38% to negative about the detention staff supporting their general needs. Majority report general inaccessibility of higher ranking staff that are authorised to make decisions or advise detainees on how to proceed to solve problems both from situation of detention and for its termination notwithstanding the method for it, release or deportation. BHC greatest concerns on the centre space relate to the lack of privacy not only in general, but also in dormitories that accommodate from 12 to 18 individuals in one room. Other NGOs visiting the detention centre on regular basis often receive complaints about the limitations imposed on

moving between the floors, but when at the end of researched period this movements were authorised the detainees' complaints reverted to the behaviour of the detainees coming from other floors and rooms being overpopulated and extremely noisy. Major concern of the detention staff was the lack of safety nets between the floors and the understaffed guards on duty (2 on each floor) who are considered incapable to react adequately in cases of violence among detainees and particularly, in cases of general unrest or riots. When asked to describe the centre fairly common were comments of detainees such as 'it's like Guantanamo' or 'it's not fit for humans'.

3.4. Rules and routines

Although the detention centre staff when asked could produce an information leaflet it seemed that the detainees were generally unaware about these written materials. Almost all of them are acquainted with the rules on sleeping, eating, bathing and other daily routines, however all of them thought the rules arbitrary not obligatory, but they stated the rules to be generally respected (68%). BHC is taking note on general lack of understandable information about the routine and in-house rules, particularly on the conditions to be put in an isolation cell which is considered as applied as a disciplinary measure, but to a great extent arbitrary and without clear rules on the maximum time limit that could be spent in.

3.5. Detention centre staff

Reports on being physically attacked are not registered. Only one person had filed a complaint, which was unsuccessful. However, detainees feel very unsafe in general. Reports for mocking by staff are worryingly common and underreported. The feeling of unsafely present in the detention centres referred to the power of the staff to use isolation in a single cell quite freely and uncontrolled by higher-ranking officials or court. NGOs state that the level of rapport between detainees and the centre's staff is considered unsatisfactory, as many detainees reported zero level of responsiveness to petitions for meetings with administrative staff and immigration officers. Problems that there are between the detainees and the staff could be illustrated with quoting the detainees when asked to describe their relation such as: "They don't support us. Nobody gives us information. To meet the director is like to meet God." Or " When they know you have money or something like that you are untouchable. I can't explain more than this."

3.6. Level of safety within the detention centre

Almost half, 44.4%, reported feeling 'very unsafe'. Mostly this is because of security guards or other general reasons not related to other detainees. One fourth of people have been mocked or verbally abused, and this is most likely to be by staff (over 70% of those mocked) while 28% of those mocked reported being mocked by other detainees. Several incidents of quarrels and fighting were reported among detainees and being detained for long time was stressed as reason for raise of aggression and mood alteration to worse. Unlikely to state having any special needs (68%), if they did the detainees in 22.7% stated to have same needs as everybody else, which in effect is assessed as actually saying that everybody who is detained has special needs that derive from the fact of detention which previously did not exist.

3.7. Activities within the detention centre

There are very few activities provided in detention. When asked about activities that could be provided, the detainees are most likely to state access to Internet (55.6%), and then freedom or nothing (25%). Thus, communication through the Internet could be defined as most important activity that could be provided in, rather than more education or sports activities, however, sports activities were also stated as an important stress relievers. Half and half split on whether activities are provided, but if they are, the detainees are 65% likely to take part, and the activities are most likely to be sport (84%). Reasons given for taking part were for mental / stress relief (40%), and physical exercise (25%). The reasons not to take part in activities (36.7%), it is mostly because the detainees feel physically unable or because they are not interested in the activities that are provided. Detainees state to have access to telephone (66%, but 33% say there is no access to phone) and TV, as well as outdoor space (76.7%). However, the BHC observations

prove that access to telephone is provided only to those who can buy telephone cards themselves. In general the report is that detainees do not have access to books, computers, Internet, education, sports equipment and religious space, although 33% of them said that there is and they practice their religion on regular basis. NGOs position is that there are very few activities provided but that most important to detainees seems to be the access to Internet.

3.8. Medical issues

Almost 90% of detainees report feeling unsafe because of the deterioration of their health and the lack of respect they feel in general due to being detained and under the control of others. In terms of medical services **-** existing medical staffs (doctor and a nurse) are seen less than once a month (62.7%), although 27% of detainees who report health problems see them once per week. All detainees report to have had medical examinations upon arrival in detention centre. Most of detainees reported that they can understand the language that the medical care is in, however 30% cannot and feel that the staff should speak more languages to solve this problem. It could be explained by the fact that large percentage of the detainees have spent long time in the country prior detention and had learned Bulgarian. Therefore, the complaint that the medical personnel do not speak any foreign languages should be assessed higher in the problem chart reported, in terms of meeting the communication need of immigrants who were detained short after or upon their arrival in the country. 93.1% of detainees report that they have had their physical health affected (only 6.9% have not). Physical health has on average dropped from 8.45 to 3.17. According to the detainees interviewed, this has almost nothing to do with availability of medical facilities, but is psychological (76.2%), followed by being affected physically by poor living conditions (19%). This finding demonstrate clearly that the mere fact of detention and being detained situation make people vulnerable *per se* resulting in immediate negative consequences on physical, but more significantly on the mental health of detainees (see below). 73% are negative about the quality of provided medical care, and 65.5% have specific medical needs that are not being met and need access to appropriate care for this. In terms of mental health **-** 96.3% of people report that their mental health has been affected. Mental health has dropped on average 9.21 to 2.68. The fact of being behind bars is the most given factor (46.7%) and the effect of it is very negative. As for other reasons for deterioration, living conditions are negligible (3.3%), while 33% say the deterioration of their mental health is because of stress and worries, 30% are specifically worried about their mental health. Detainees largely report the detention centre to have changed negatively their self-perception and self-esteem to the level of losing it completely. BHC considers the issue of poor level of medical services, which extent in general to inadequate drug treatment on irregular basis as the most serious of all problems in the detention centre. NGOs in general support that urgent medical cases or serious medical problems of the detainees cannot be treated immediately in detention and there are sent to external hospitals/clinics, which can condition grave health consequences due to the delay in time.

3.9. Social interaction within the detention centre

The detainees report to get along on well to neutrally with others and only 11% report to have problems with the co-detainees' interaction. When asked to explain they state it is most likely due to linguistic reasons. In general detainees (73.9%) do not report to the detention staff, if problems occur between them. This statement is supported by the BHC observation as when consulted to complain against a particular violation or co-detainee, detainees reject to do it. The problems itself are not seen as hugely significant by detainees and they explain them either as caused on individual dislike or by tension due to common life. However, BHC observations reveal that a lot of mistrust and tension is based on ethnic, religious or racial grounds. This observation is supported by the finding that 59.3% of interviewed detainees claim to have no-one to trust in the centre and those who do trust someone (40%) most say that they trust the staff (66.7%), thus only 1/4 say they trust other detainees.

3.10. Contact with the 'outside world'

In general, detainees report to have not problems with contacting people outside detention. All report to have contacts by phone; half also report having access to personal visits. Detainees who do not have family in the country of origin are 53% and only 23% of detainees had family that were in need of support. Most of detainees reported to have friends and family in Bulgaria (63%), 1/3 of them reported to have children outside the centre. They do contact them by phone, and half also report having access to personal visits. Phone contact, visitors and the Internet is cited as the best ways of contact. However, 14/30 detainees interviewed answered that the best method of communication would be to be free and be with their family, rather than a specific method of communication, i.e.: “To be free and out from this place, because I am not guilty”, “To be free. To be with them and take care of them. They need me”; this explains why the majority say they do not have access to their preferred means of communication. 43% of detainees do have visits from a family member, 43% from a friend. 30% have been visited by a religious organisation. 3 people had been visited by UNHCR, 83% by lawyers, and 80% have been visited by NGOs (Bulgarian Helsinki Committee, Caritas, ACET Centre for Torture Victims).

3.11. Conditions of detention and the family

Only 6,6% of interviewed detainees had their family with them in the detention centre, all of them asylum seekers waiting to be released and to get access to asylum procedure. They reported to feel unsafe and uncomfortable being in conditions of detention and that see themselves as being persecuted again. BHC observe that due to the present institutional arrangement more asylum seekers who apply at country’s borders are being sent to the detention centre directly causing the detention of families with children, which has great negative impact on their parent as they feel unable to provide normal and secure environment for their kids.

3.12. Conditions of detention and nutrition

The poor nutrition and bad quality of food seems to be a universal stress to all of the detainees. The food is largely reported as awful, without any variety and in very small portions. Many report stomach and gum problems as a result of it. Nearly three-fourths report that they don’t sleep well. Stress is reported to be the principle cause (81%) with 14% citing living conditions (e.g. overcrowded bedrooms, noise, uncomfortable bed) as the problem. The detention staff recognises the poor quality of the nutrition provided, but report to have no means to improve it due to the tight budget allocated for it.

3.13. Conditions of detention and the individual

Up to 96% of detainees have negative self-perceptions. People describe themselves as animals [to quote]: ‘Even the animals feel better than me’ or ‘I see myself as being treated like a slave or animal’ that points to a generally inhumane nature of detention as an administrative measure to ensure deportation. The overwhelming problem that detainees face is simply being locked up, rather than specific conditions in detention, even though for example 100% of people say that the food is unacceptable. Even worsened or bad health condition has not being stated as big a worry as one might expect, perhaps because the health conditions are largely related as a result of being in detention. On the issue of outcome of detention **-** 0% report knowledge on the outcome, 0% know departure date. Not knowing this affects people to the worst as far as: being locked up effects to 66% of them, and the loss of rights affects to 27.3% of them, which was the highest score among all participating 23 member states. Asked to identify the most important reasons for vulnerability, almost none of the detainees who were interviewed mentioned classic vulnerable categories such as disability, health condition, pregnancy, and younger age. Instead the detainees focused on other, strikingly different than expected reasons - 1/4 mentioned that the most vulnerable are those who had been there a long time, and 1/3 mentioned as most vulnerable those detainees with families outside the detention centre.

Other key issues according to the detention centre staff

In general, the responses of the interviewed detention staff were quite formal and strictly abode by the written rules and regulations regulating minimum detention standards applicable.

Notwithstanding, when asked to state the factors that according to them might lead to changes in the detainees' mental well-being while they are in detention the response was [quote]: "Limitation of the freedom and free movement. The long duration of detention. Separation from relatives and friends".

Therefore, it can be fairly concluded that even the detention staff that was empowered by law and employment to administer detention as primary duty task, recognised the negative effect of detention itself to one's life and especially, in terms of its duration as well as the effect it had on individual's right to liberty and family life.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

Based on the analysis of the data collected and reflected, a number of factors were specified to determine a status of vulnerability - social, environmental and personal. The thorough analyses of these factors from the perspective of the ones who actually bare the consequences of being detained, of NGOs/civil organisations rendering assistance in detention centres as well as by the detention administration itself outline several areas that need immediate action.

4.1. General lack of information or insufficient/formal information about the legal situation in detention, and the status and development of asylum or immigration case;

Most important information missing is about possible outcomes of detention, release date and what legal or practical actions can be undertaken by the detainees themselves and who can assist them in order to accelerate the discontinuation of the detention in the most suitable for each individual situation method. The lack of information and uncertainty about the future has been reported as the most influential factor to create stress, psychological unrest, depression and losing of self-esteem. Mental problems caused by insufficient information, lack of prompt/accessible legal advice and loss of life control are reportedly stated by majority of detainees as the most common ones to have to deal with and main reasons for creating feelings of vulnerability and exposure. Detainees do have access to state provided psychological support, however this support and assistance is evaluated as insufficient having in mind that it is provided simply in the form of therapeutic conversations. Due to the gravity of deprivation of rights and liberties in detention and its affect to one's life, it is considered that no "understanding" is enough to render a healing effect to people in detention.

4.2. Prolonged detention, as far as deterioration in mental and physical health, is observed even after couple of weeks.

Prolonged detention to all detainees who suffer it evoke feelings of being imprisoned without guilt which create perception of having rights, but also lives broken and violated. Feelings of streets, anxiety and depression caused mainly of being imprisoned without stated legal reasons or for a very long time (2-3 years). Detainees consider negligence, incompetence or unavailability of the staff involved with their cases (examining immigration officers, lawyers, judges, etc.) to be the main reason for protracted detention. Level of rapport between detainees and the centre's staff is considered unsatisfactory, as many detainees reported zero level of responsiveness to petitions for meetings with administrative staff and immigration officers to clarify their situation and to get information on actions that can be undertaken by the detainees themselves to improve their chances for prompt release. This, together with the lost control over the life plan and uncertainty about the future, lack of legal aid and assistance provided in the

language that detainees can understand and broken family life and disrupted contacts with spouses, children and relatives create in detainee's unbearable mental and emotional suffering.

4.3. Poor material and services detention conditions

Food quality and quantity is of major concern. Nutrition is provided according to a very tight budget and is not meeting the DNV and vitamin requirements; quite often detainees report to be ill-, or even, under-nourished. Lack of adequate medical and mental health support, particularly for urgent medical cases or serious medical problems of the detainees cannot be treated immediately in detention and need to be sent to external hospitals/clinics, can condition grave health consequences due to the delay in time. The death caused by a gastric ulcer of a detainee that happened in the early autumn of 2009 proved it in the most tragic way. These environment factors are among those which can be immediately addressed by authorities and without great impediments in order to secure detains from unnecessary physical and emotional hardship.

4.4. Detention, if applied pending an asylum procedure as far as asylum seekers report to suffer unexpected and unjust treatment after fleeing from persecution to safety and security.

Asylum seekers are individuals who are fleeing persecution and imminent harm to their lives. As a result, asylum seekers possess special needs that require special consideration, attention and assessment. Therefore, the government should institute a system of qualified identification of asylum seekers' special needs at ports of entry, be they land, sea or air and, especially - to avoid detaining them in closed institutions designed for deportation to the countries of origin. The legal complexity of asylum procedures together with the precarious situation of asylum seekers means that, if held in conditions of detention the government is not responding adequately to the protection needs of asylum seekers and is failing to provide asylum procedures in their best interest. Thus, the government should seek to avoid the detention of an asylum seeker at any cost as well as the state must provide appropriate and effective legal aid and/or assistance from the very beginning, i.e. as soon as the asylum status determination commences at the very first instance.

Based on observations and conclusions above following groups of detainees who share common reasons for vulnerability as a result of the detention could be identified, namely:

- People who have been detained for prolonged period of time;

- Asylum seekers, detained prior or during refugee status determination;

- Individuals, who have their families and relatives outside the detention centre;

- Individuals, who were detained after losing their residence permit;

- Parents, who are accompanied by the children.

5. CONCLUSIONS AND RECOMMENDATIONS

Detention and deprivation of freedom has a strong negative impact upon a person's life and well being. Significant decrease in the state of physical and mental health since detention is implemented is largely reported. This decrease proves to deteriorate the longer detention is continuing.

Lack of information proved to be of a major concern to all detainees disregarding their legal status or period of time they have spent in. Detainees unanimously express as dire need the access to more information about their asylum or immigration procedure, the reasons for their detention and the prospects for its duration.

Crucial factors supporting the detainees in meeting the challenges of their situation are access to legal advice and assistance as well as legal aid provided to all detainees. As far as detainees are in prison-like situation same standards, safeguards and practical arrangement as in criminal proceedings for protection of the right to liberty and security of person should apply automatically without any discrimination and/or limitation.

Poor material conditions in the detention centre as well as the lack of proper food, nutrition and medical care are the last group of national circumstances related to detention that are identified as country's specific to create additional factors for vulnerability of detained individuals.

5.1. Recommendations

General recommendations

Automatic judicial control must be applied immediately in cases of detention for deportation with scope to revise both legal grounds and actual necessity of the detention in each individual case in order to meet the generally recognised legal standards for protection of freedom of all human beings and to avoid violation of the *right to liberty and security* of the person under Article 5 (3) of the European Convention on Human Rights (ECHR) and Article 15(2).a) of 2008/115/EC Return Directive.

Deadline to appeal against detention under Article 46a. of the Law on Aliens should be made equal to general appeal deadlines in administrative procedures to avoid disproportionality and discrimination.

Legal aid should be provided to all detainees in order to render adequate means of assistance and qualified advice.

Article 46a.Para 4 of the Law on Aliens must be immediately amended in terms of deleting the right of the court to "extend" detention duration, if exceeding 6/12 months as being in direct contradiction with Article 15 (5) and (6) of 2008/115/EC Return Directive prohibition.

Legal arrangements for regularization as well as special, facilitated conditions for integrated individuals should be introduced in the immigration legislation.

Interpretation and improved means of communication, including access to the Internet and facilitated access to the telephone should be introduced in the secondary legislation regulating detention conditions.

Medical treatment of chronic diseases must be arranged using the approach as to convicted criminals who serve prison sentences by obligating the state to cover under the budget health insurance costs of all detainees.

Detention of children, accompanied or unaccompanied must be strictly prohibited.

Food and nutrition should be improved to meet DNV standards and quantity without any delay.

Specific recommendation related to asylum seekers

The detention of asylum seekers constitutes a double persecution because of the negative experiences they have already suffered as a result of fleeing from persecution and harm.

Detention conditions deprive asylum seekers from their legally recognised rights and entitlements they would otherwise have access to, if not detained.

As far as detention is used to ensure deportation/removal it is not appropriate to detain asylum seekers who are residing legally from the very moment of submitting an asylum application.

Most importantly, their detention is stripped from any reasons, legal or practical, as far as asylum seekers cannot be removed or deported on account of *non-refoulement* prohibition.

Detention, when implemented towards asylum seekers means that a presumption of their rejection and subsequent deportation/removal is applied in violation of *in dubio pro fugitivo* principle and standards for fair and efficient refugee status determination.

Therefore, detention of asylum seekers must be strictly avoided.

Specific recommendation related to irregular migrants

Persons with children, or families with children, are especially vulnerable to the negative effects of detention. Detention can cut families off from each other, and the prison-like environment of detention can have a traumatic effect on children and a destructive effect on familial interaction. Therefore, alternatives to detention for families with children, and persons with children, should be prioritised and exhausted before detention is implemented.

Free legal aid and/or representation can limit the most negative effects of detention, be it isolation, despair or deep uncertainty, because it can provide the irregular migrant with a set of expectations and a perspective of their immediate future. Such aid and assistance may also improve the efficient closure of their immigration case. It is important that this aid and assistance be communicated in an understandable language. Therefore, irregular migrants in detention should have access to free legal aid and assistance, provided to them in their own language or in a language they can reasonably understand.

Language is a critical factor for persons in detention. An inability to comprehend what detention centre staff communicates may mean that vital information is lost upon the detainee. Language incomprehension also increases detainees' sense of isolation and mistrust. Thus it is important that detention centres facilitate a greater language capacity that can meet the full range of detainees' needs.

In conclusion, it has to be underlined that the negative effects of detention are so great as to warrant that it should be used exclusively as a last resort. Alternatives to detention should always be identified and examined. Furthermore, the asylum seeker or irregular migrant should always receive an individual holistic assessment to determine their suitability for detention, should it be necessary and should all other alternative options be exhausted. If and only when detention cannot be avoided, then there should be frequent holistic assessments of the individual's status, and, frequent checks, including by the court, to determine if detention is still necessary and proportional to each individual situation.

NATIONAL REPORT: CYPRUS

By: Symfiliosi

1. INTRODUCTION

In February 2009 Symfiliosi sent letters to both the Ministry of Interior, which is the competent ministry for immigration and asylum, and the Ministry of Justice which is the competent ministry for the police and the prison system, requesting permission to visit three detention centres in different locations in Cyprus for the purpose of this study. The Ministry of Justice responded that the matter was outside its competency and referred us to the Ministry of Justice, which however did not respond in any way. On 30.03.2009 we phoned the Ministry and were informed that our request was still under examination pending clarifications awaited from the police. At the time it was pointed out to us by the Ministry official that our request would be granted, but we did not receive anything from them thereafter. On 13.04.2009 we sent another letter to the Ministry of Justice, which was followed a few days later by a rejection letter from the Ministry, arguing that asylum seekers are not detained in Cyprus. On 10.07.2009, following the resignation of the chief of police, we applied to the newly appointed deputy chief of police. The response this time was that we could interview 15 persons; all from a single detention centre (block 10 at the central prison). We wrote again to the police asking for permission to interview another 10 detainees – women, fact – held at another detention centre. The reply was negative. In August 2009 a researcher from Symfiliosi visited Block 10 and interviewed 14[101] male and female third country nationals in detention, most of them former asylum seekers whose asylum application had been turned down and were detained pending deportation.

The detainees were selected by the police, who were also present during the interviews. Two questionnaires from detention staff were also completed: one was presented to our researcher already completed and the other was completed out by our researcher, following an interview with a female police officer working at the detention centre. Interviews were also conducted with two NGOs active in the field of asylum, namely Apanemi and Future Worlds Centre. Efforts were made to interview a third NGO active in asylum (KISA) but this was not possible due to the busy schedule of the person in charge. A third interview was also conducted with the head of the human rights section from the Ombudsman's office, which also serves as national equality body, in view of their investigations and reports on detention conditions. Symfiliosi would like to thank all persons interviewed for their input, as well as the two researchers involved, Maria Ioannou and Nicola Solomonides.

2. NATIONAL LEGAL OVERVIEW

2.1 Legal grounds for detention

The relevant constitutional provision is provided in Article 11 of the Cypriot Constitution, which guarantees the right to liberty and security for all. Sub-article 2 states that no person shall be deprived of his liberty save where, inter alia, the arrest or detention is intended to prevent unauthorised entry into the Republic.

[101] Symfiliosi was granted permission to interview 15 detainees from one detention centre. Practical difficulties and constraints (similarity of cases; lack of time afforded by the authorities; no other females accepted to be interviewed) led to a sample of 14 interviews.

Asylum seekers: Article 7(4)(a) of the Refugee Law of 6(I)/2000 as amended prohibits the detention of an asylum seeker for the sole reason of being an asylum seeker. However under article 7(4)(a) detention is allowed by a Court Order either for establishing his/her identity or nationality in case the asylum seeker is not in possession of valid travel or identity documents; or for the examination of new elements which the applicant wishes to submit in order to prove his/her claim relating to his asylum application, in case his application has been rejected at first as well as at second instance and a deportation order has been issued against him/her. In practice, asylum seekers entering the country illegally are detained for the duration of their asylum procedure. Asylum seekers entering legally are usually not detained. However, there have been reports of several cases of asylum seekers unjustifiably detained and in some cases deported whilst their asylum application was still pending.[102]

Irregular migrants: The Aliens and Immigration Law allows the detention of irregular immigrants, as they are considered to be "prohibited immigrants", who are subject to expulsion defined as 'deportation'. Deportation is dealt with by section 13(1) of the Aliens and Immigration Law[103] which empowers the Chief Immigration Officer to deport all third country nationals who have violated the conditions of their permit or have committed an immigration-related offence. Section 13(2) allows the "detention in custody" or in "other confined places". In practice, the Chief Immigration Officer issues both detention orders as well as deportation orders without applying to the Courts to obtain any orders, a practice of questionable legality that has attracted criticism from both the Ombudsman and NGOs.
For the detention to be allowable, the person must be served with an order to leave the territory. In cases where a migrant commits an offence punishable with imprisonment, the police may arrest and detain such a person even in the absence of a notification to leave the territory.[104]

2.2 Legal grounds for the minimum age for detention

The Refugee law prohibits the detention of minors.[105] A "minor" is defined in the same law (article 2) as "a person who has not yet attained the age of eighteen". However, the detention of minors seems to be allowed (and is in fact practiced) in fields outside asylum. Article 6(a) of the Law that Provides for the Rights of Persons Arrested and are under Detention, N. 163(I)/2005, in the case of an arrest of a person under 18 years old, the parents or guardian have the right to be informed. Under article 20 it is the responsibility of the person in charge of the detention centre to ensure that detainees under eighteen reside separately from the rest of the detainees and in separate cells from the opposite sex.

According to the immigration police, no orders for detention of minors are issued except where the minor is involved in serious criminal offences.[106] In all other cases, when the parents are detained, the child is placed under the care of the Welfare Services, which will in most circumstances place the child in a children's home.[107]

2.3 Legal grounds for the detention order

Any immigration related offences that contravene the general rubric of immigration under the 'Aliens' and Migration Law, Cap. 105 provide the legal basis for a detention order. Unlawful entry or stay constitutes a criminal offence under the Cypriot immigration law.[108] The most common immigration related offences are: overstay (i.e. having entered legally for a limited period, the third country migrant remains in the Republic after the expiry of the prescribed period);[109] or having entered on a valid permit, the subsequent breach of a term or condition relating to the permit.[110]

[102] Some of these cases are recorded in the Ombudsman's Annual Report for 2005, issued in December 2006, pp. 50-56.
[103] Cyprus/ Aliens and Immigration Law Cap. 105, as amended 1972-2007.
[104] Cyprus/ Aliens and Immigration Law Cap. 155, Civil Procedure law, section 14(1)(b).
[105] Cyprus/ Refugees Law N.6(I)/2000 as amended, article 7(4)(c).
[106] Interview with the Nicos Theodorou, officer of the immigration police, 24.06.2009.
[107] However, this was not always the case: the national NGO 'KISA', reports that in 2008 there were at least three complaints by the organisation that minors were detained.
[108] Cyprus/ Cap. 105 Aliens and Immigration, section 19.
[109] Cyprus/ Cap. 105 Aliens and Immigration, section 19(λ).
[110] Cyprus/ Cap. 105 Aliens and Immigration, section 19(ι).

Also, If it appears, at some later stage, that the migrant concealed information about a previous conviction and that s/he had obtained a certain status by concealing this conviction (i.e. by deception) or "gained leave to enter or to remain by deception", the immigration officer may also consider to be "conducive to the public good" to deport him/her. All the above are criminal offences and carry punishment of imprisonment up to one year or a fine or both.

2.4 Legal grounds for judicial review/ right of appeal against the detention order

There is no automatic judicial review; the detainee has to apply for it. Detainees have the right to appeal to the Minister of Interior seeking their release from custody. In addition, the Constitution provides for the right to apply to the Supreme Court for judicial review of any administrative decision, including the decision to detain, under article 146. If successful, the application under article 146 of the Constitution has the effect of cancelling the administrative decision complained of and the immediate release from custody. This procedure however is costly and is not covered by the legal aid law.

2.5 Legal grounds for the right of information about the detention order and/or the reasons for detention

Article 11(2)(4) of the Constitution provides that all persons arrested must be informed at the time of their arrest in a language they understand of the reasons for their arrest and must be allowed access to a lawyer of their own choosing. The Refugee law, article 7(5) provides that detained asylum seekers must be informed in a language they understand, of the reasons of their detention as well as their legal rights, including the right to hire a lawyer. Also, the Law providing for the rights of persons arrested and in detention, N. 163(I)/2005 which applies to asylum seekers and irregular migrants alike, provides in article 3(3) for the right of arrested persons to be informed immediately after arrest in a language understood by them of their right to contact personally by telephone (a) a lawyer of their choice and (b) in the presence of a member of the police, a relative or any other person. The same provision states that persons arrested must be immediately informed in which police station or detention centre they will be detained.

2.6 Legal grounds for the duration of detention

The Refugee Law 6(I)/2000, article 7(6) provides that an applicant's detention may not exceed eight days. The detention may be extended for further eight-day terms upon Order of the Court, but the total detention period shall in no case exceed thirty-two days. On a more general level, the Prison Law N.62(I)/96 prohibits the detention of a person in detention centres for a period longer than fifteen days. Detention for the purpose of deportation is limited to eight days unless the court authorize for more. Considerations such as the deterioration of the human rights situation in their country of return are not taken into consideration for persons who have not been granted refugee status or other type of international protection, nor is it a factor justifying longer detention in law

The above ceilings are not always respected; irregular migrants have in many cases spent months and sometimes years in detention.[111] A recent decision of the Ministry of the Interior provides that detainees held on immigration offences can be released after 6 months of detention provided they have not committed a serious penal offence and provided they apply to their embassies to obtain valid travel documents; in such a case they are granted leave to remain in Cyprus for 18 months, after which they must depart. As a result of this policy, there no longer many detainees held for long periods of time whilst in the past there had been cases where they had spent 2 or 3 years in detention.

[111] The long periods of detention have been severely criticised by national and international reports. At a meeting of the Parliamentary Commission on Human Rights dated 27/02/2007 the Ombudsman suggested a maximum period of detention of 42 days or three months be adopted, as is the case of Greece or France. According to the 2009 Amnesty International report, detainees held in Nicosia Central Prison for periods exceeding 18 months while awaiting deportation were released throughout the year, but no numbers or details are given: *Amnesty International Report 2009 - Cyprus*, 28 May 2009, available at: http://www.unhcr.org/refworld/docid/4a1fadf3c.html (04.09.2009).

2.7 Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

Article 23(1) of the Law that Provides for the Rights of Persons Arrested and in Detention N. 163(I)/2005 states that every detainee has the right at any time to be given medical examination or/and treatment or/and medical attention from a doctor of his/her choice and to contact the doctor for this purpose personally by telephone the presence of a member of the police or the prison personnel, depending on the case. In case the detainee does not wish to exercise the right to appoint a doctor of his/her choice, s/he has the right to be given medical examination and/or treatment and/or medical attention from a governmental doctor who is arranged by the person in charge of the detention centre. The detainee pays the costs of the medical examination and/or treatment, and also the medical attention from a doctor of his/her choice above.

Under article 24(1) the detainee must be provided, immediately after he is remanded in custody, with a document that contains in a language of his/her understanding the rights that are contained in the above article.[112]

The only provision in the law about the provision of social services to detainees is to be found in the Law that Provides for the Rights of Persons Arrested and in Detention N. 163(I)/2005 article 3(4) of which states that persons who appear unable to exercise their rights of contact with a lawyer or a relative/other person due to mental or physical disability shall be entitled to assistance from the state Welfare Services for the purpose of exercising these rights.

2.8 Legal grounds for contact with the outside world

Under article 3(1) of the Law that Provides for the Rights of Persons Arrested and in Detention N. 163(I)/2005 a person arrested by a police officer is entitled straight after his arrest to contact personally by telephone (a) with a lawyer of his choice and (b) in the presence of a member of the police, with a relative or any other person. Under article 5(1) detainees have the right to contact personally by telephone, in the presence of a member of the police, the Consulate or diplomatic mission of their country of nationality in Cyprus and in case their country of nationality does not have a Consulate or diplomatic mission in Cyprus, then either the Ombudsman or the National Organisation for the Protection of Human Rights 'ETHNOPAD' (an independent public body), so as to inform them of their arrest and detention. Under article 16(1) all detainees have the right to meet with a person of their choice every day for one hour in total in a special area of the detention centre. In the case of minors, the only person they are allowed to meet with is the parent or guardian. Under article 16(2) detainees are entitled to meet every day for one hour in total with a representative of the consulate or diplomatic mission of their country of nationality in Cyprus, or if there is no such consulate or diplomatic mission, with a representative of a human rights organisation. Under article 15(1) every detainee has the right to send and receive letters as follows:

- To and from his/her lawyer without the letters being opened or read by anyone;
- To and from the European Court of Human Rights, the Attorney General of the Republic, the Ombudsman and any international or national body with competence to investigate allegations of violations of human rights without the letters being opened or read;
- To and from related, friendly or other persons with whom it is in his/her legitimate interest to retain or to come in contact with, subject to the condition that its content be checked by a member of the police or the prison personnel in the presence of the detainee, and may not be sent or delivered in case it is discover that it contains

[112] A research project conducted in 2007 showed that there seems to be a general practice of suspicion towards those detainees who claim to be ill. All detainees interviewed claimed that they were forced to wait for weeks to see a doctor and in general the authorities and public hospitals viewed them with suspicion: *Creating and strengthening a sustainable network of civil society concerning administrative detention of asylum seekers and illegally staying third-country nationals across the 10 new EU Member States which acceded to the European Union on 1 May 2004* (http://www.detention-in-europe.org/index.php?id=75&option=content&task=view).

any illegal object or its content subjects the security of the detention centre or the detainees or other persons to risk or it is of criminal nature or may interfere with the investigation of offences.

2.9 Legal grounds for the provision of legal aid

The Law on Provision of Legal Aid N. 165(I)/2002 provides for legal aid only for criminal and civil law cases and excludes administrative proceedings.[113] The exclusion from the scope of the law of applications to the Supreme Court to set aside administrative decisions is particularly detrimental for asylum seekers in detention, who have no other recourse against arbitrary or needlessly lengthy detention or arbitrary deportation. The law also extends legal aid to cases of human rights violations as these are defined inter alia in Part II of the Cypriot Constitution (which essentially adopts the European Convention on Human Rights) and a number of international conventions ratified by Cyprus.[114] The scope of the law is restricted to cases where the offences involved are punishable with a term of imprisonment exceeding one year.[115]

The legal aid law was amended in recent months by Law N.132(I)/2009 which purports to transpose articles 15(2), 15(6) and 38 of Council Directive 2005/85/EC of 1st December 2005 laying down minimum standards on procedures in Member States for granting and withdrawing refugee status. The amendment extends legal aid to asylum seekers applying to the Supreme Court to set aside a negative decision either of the Asylum Service or of the Reviewing Authority concerning either the rejection of the applicant's asylum application or the cancellation of the applicant's refugee status. The amendment does not cover recourse against detention.

2.10 Legal grounds for the protection of persons with special needs

Article 5(2) of the Law that provides for the rights of persons arrested and are under detention, N. 163(I)/2005 states that in case of mental insufficiency a foreign detainee who is apparently not capable of understanding or to be informed that he has the right to contact/correspond or to fully appreciate his right, a member of the police must contact counsel or diplomatic mission in the Republic, the Ombudsman's Office or the National Organisation for the Protection of Human Rights, as the case may be. A provision in the Law on Psychiatric Treatment N. 77(I)1977 provides for the placement of offenders with mental disorders in suitable units in order to receive treatment and serve their sentence;[116] however, no such units have been set up despite the debating of this issue amongst stakeholders for a number of years and as a result, patients with mental disorders are currently serving sentences in prison.

2.11 Legal grounds for alternatives to detention

There are no alternatives to detention in the Cypriot legal or policy framework.

[113] An ECtHR decision against Cyprus dated 04.12.2008 on the issue of availability of legal aid in administrative proceedings, stated that "a question arises as to the conformity of such legislation with the requirements of Article 6 of the Convention" and that "there is *a priori* no reason why it should not be made available in spheres other than criminal law."*Marangos v. Cyprus*, Application no. 12846/05.

[114] The European Convention on Human Rights, the Convention for the Elimination of all forms of Racial Discrimination, the International Covenants on Economic Social and Cultural Rights and on Civil and Political Rights, the European Convention on the Prevention of Torture and of Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Hard or Humiliating Treatment of Punishment.

[115] The Ministry of Justice has recently compiled a draft law to amend the Law on Legal Aid, currently under examination by the House of Representatives. The draft law aims at removing the restriction contained in article 4(1)(a) of the Legal Aid Law which restricts legal aid to offences punishable with imprisonment of over one year. The draft law follows a judgement of the Supreme Court in 2008 which found the said legal provision to be unconstitutional for unduly restricting access to legal aid; Andreas Constantinou v. The Police, Case No. 243/2006, 25.01.2008

[116] Cyprus/ A Law providing for the safeguarding and protection of the patients' rights and for related matters N. 1(I)/2005, articles 37 and 38.

2.12 Legal grounds for providing release from detention

Where deportation orders cannot be executed, mostly due to lack of cooperation on behalf of the detainee for the issuance of travel documents, it is policy[117] that the detention should in principle not exceed a period of six months, although there are still cases of detainees in detention for longer periods. If deportations cannot be executed within six months, migrants can sometimes be released under certain conditions and given a special residence and employment permit, provided they have not been found guilty in the past for criminal offences. The conditions of release*, to* be communicated in writing to the detainee, are:

a. A special residence/ employment permit is issued, for a period of 12 months from the date of release[118] on the condition that the released person cooperates with the Embassy of his/her country for the issuing of a passport. In case that that the person is issued with a passport, a residence/employment permit is issued for a period of 24 months from the date of his/her release, with a possibility of renewal.
b. Prior to the issuance of the above residence/employment permit the migrant is obliged to sign a contract of employment with an employer who will be indicated and approved by the Department of Labour. Change of employer will be considered subject to approval by the Department of Labour
c. The migrant is obliged to report a residence address within 15 days from release.
d. The migrant is obliged to report to the nearest Police Station once a month and must report any change of residence address.

3. OVERVIEW OF NATIONAL DATA FINDINGS

When evaluating the results of the interviews it is important to note that, apart from the small size of the sample, the responses from the detainees lack a level of specificity that is needed to identify patterns and themes. A possible reason for this may be the presence of a staff person in almost every interview, which may have pressured detainees into reticence, or at least into giving answers that would not be considered as controversial. Also, the interviewees were selected by the authorities based on criteria that were not made available to us.

3.1 Case awareness

The greatest majority of interviewees were aware of the reasons of their detention. Immigration authorities were the main source of information for the detainees; most of them were informed about their reasons of detention upon arrest by the immigration office, although some wondered how their asylum application ended up in their detention. Some were arrested when they voluntarily visited a police station to report something (e.g. stolen documents), which increased their sense of unfairness and helplessness over the procedure. A lack of trust towards the authorities and particularly the immigration police is evident from many interviews. This leads detainees to question the veracity of information emanating from that source, which is often their only source of information. Half of them were in need of more specific information about their case and the other half said that the information they had was enough. Those who stated that they needed more information wanted to know more on immigration procedures and on how to adapt to their current situation.

In general, detainees seemed to accept detention as an expected outcome of their illegal status. Additionally, most of the detainees who said that they had all information they wanted, were people who either maintained a passive attitude towards their detention- had no other alternatives (see for example the Iranian who preferred detention to deportation) or were seriously thinking of conceding to their deportation.

[117] Decision of Minister of Interior dated 21.05.2008.
[118] According to section 9(2) of the Aliens and Immigration Law and Regulation 15(1)(b) of the Aliens and Immigration Regulations.

3.2. Space

Most of valid responses rated the room they slept in neutrally, some positively and few negatively. Most of the detainees who rated it neutrally were people who strongly believed that their detention was temporary and therefore characterized the lodgings as “tolerable for a temporary stay.” The vast majority rated the rest of the centre’s space neutrally and a few rated it negatively. In fact, there was not much of “other space” to which they had free access. For both female and male quarters the “other space” was merely a corridor.

Most of the male detainees did not feel that the centre was overcrowded. The majority also reported that they had a space in which they could be alone (with this space being their room – cell), although one detainee stated that the wing of the building occupied by the “Asians” was often crowded in comparison with the wing of the “Arabs” the situation is different regarding women detained in the neighbouring Block 9 where detainees have to share cells with other women detainees, there is no privacy and no other space in the centre except a corridor in front of the cells. One detainee complained about having to share space with “girls from the street”, the irony being that the women so described are most probably victims of sex trafficking.

The interview with Apanemi however reveals that Block 10, where all interviews were conducted, is in fact a lot better than other detention centres, with bigger and cleaner sleep quarters and with the possibility to spend an hour a day outdoors. In police stations that serve as detention centres, detainees are not afforded any time outside, there is no privacy; the space is too small, the ventilation is bad and the rooms are badly lit. These findings tally with the information derived from another study, based on an interview with a priest who regularly visits a number of detention centres[119], as well as with the findings of the Ombudsman’s investigation.[120]

3.3. Rules

Although the guards vaguely referred to the existence of rules without describing details, none of the interviewees described concrete rules and some even stated that there are no fast rules. One detainee noted that although detainees want to see some things changing in their detention conditions, they are not taking concerted action to bring their demands to the authorities. Another detainee reported that detainees must follow informal rules set by the ‘high-order’ detainees, meaning the detainees who have been in the centre for longer periods and/or who have better relations with the guards. None of the persons interviewed could make reference to a concrete set of rules to which the detainees and the stuff have to adhere. This is why in reply to the relevant question the detainees merely described certain aspects of their daily routine, such as when they can walk outside, or use their mobile telephones. The detainees made particular reference to walks and use of mobile phones since these two were the most often used ‘conveniences’ they could have access to.

It can be derived from the answers of the detainees that a set of informal rules governed the frequency with which they could make use of these conveniences. Some of the detainees (the ones who were described as high-status detainees by one respondent) were allowed to carry their mobile phones even within their cells. This aligns with the allegations made by Apanemi that the guards try to create allies amongst the detainees, affording special treatment to some of them either because they are considered dangerous or in order to turn them into their trustees.

[119] Actions in support of civil society in the EU member states which acceded to the EU on 1 May 2004: Creating and strengthening a sustainable network of civil society concerning administrative detention of asylum seekers and illegally staying third-country nationals across the ten new EU Member States.
[120] Report of the Ombudsman on the conditions of detention of foreigners in Central Prison and in Police Detention Centres, 2 February 2005.

3.4. Detention centre staff

All interviewees responded that they are most in contact with the guards in the detention centre. No interaction (at least on a daily basis) with other staff was reported. Half of the respondents described their interaction with staff as positive, a few described it as neutral and some stated it was varying depending on the guard.

The vast majority of detainees stated that they have not been subjected to discriminatory behaviour from the staff. Those who had experienced discrimination blamed ethnicity and nationality as a cause, e.g. 'Arabs and Iranians get better treatment than Asians'. A couple of interviewees stated that detainees are segregated by the guards according to their ethnic origin and that some detainees particularly those of Arab origin are treated more favourably by the guards. Another detainee expressed his dissatisfaction over the guards' behaviour and referred to bullying and mocking and to an incident where he was beaten up by other detainees and the guards did not stand up for him nor did they answer his demand to see a doctor after he was injured in the fight; instead the ex-director of the centre punished him for getting involved in the fight. The same detainee said that some guards denied him painkillers when he asked for them and once unplugged the phone when he wanted to use it.

When asked whether the staff supported their needs, most detainees who responded positively stated that the staff positively responded to their needs, a few said that the support was negative, and a few that it was varying depending on the guard's "good will" and the nature of the need. One detainee alleged that, following a suicide attempt on his part, a guard approached him and asked him for money in order to arrange for his release, but although the guard received the money he didn't do anything for the detainee's release. Another detainee reported that the guards' behaviour could sometimes be insulting. As to whether they had ever been mocked, the vast majority stated there have been no incidences of mockery; the 2 who reported having been mocked, blamed co-detainees and security staff respectively.

Physical assault by co-detainees was reported by only one of the interviewees. No one reported filing any type of formal complaint to the staff perhaps evidencing a lack of faith in the protection that the guards can afford to them in case of aggravation of the situation with their co-detainees.

The Ombudsman's representative stated that some guards behave in a gentle way and make an effort to help the detainees, others more violently, depending on the personal relationship between the detainee and the guard and on the character of the guard. He added that it is possible to see some very brutal guards and some very humane ones and referred to a case where a guard made extra effort to locate the detainee's family in Cyprus and put them in contact.

The Ombudsman's representative further stated that there have been cases of violence, usually from the guards and referred to ill treatment, insulting the detainees, use of violence etc. The two NGOs interviewed also referred to ill treatment and occasional violence from the guards towards the detainees. However, Apanemi was particularly critical of the staff, describing their interactions with detainees as "manipulative, rude, distant, cynical and patronising." Apanemi also accuses guards of bribing certain detainees to foster good relations, and in order to protect themselves from detainees that are considered 'dangerous'. Apanemi stated that detainees are "beaten by police (especially immigration) in order to drop their asylum application or in order to accept their immediate deportation." The practice of applying pressure (which can sometimes be physical violence) on asylum seekers to drop their asylum application has also been established by the Ombudsman, who has recommended that withdrawals of asylum applications be made only in the presence of members of staff of the Asylum Service; the recommendation was indeed adopted, however it is not certain that it has resulted in the eradication of this practice.

These accusations are not repeated in any of the interviews with detainees or with the Future Worlds Centre. With regard to the latter, given that they are an 'implementing partner' of UNHCR, they might be reluctant to offer any

controversial statements about the asylum procedure. However even the interview with Future Worlds centre makes reference to situations where immigration staff would threaten detainees and probably physically assault them too.

The allegations of Apanemi and of the Ombudsman's representative are based on complaints received from persons in detention and should be considered as valid at least with regard to the complainants involved. Whether a pattern of standard behaviour or policy may be inferred from these, is a matter for further research. There are however national and international reports supporting the picture of ill treatment painted by Apanemi.[121]

3.5. Safety

Nearly all the detainees, and virtually all of the women detainees, reported feeling safe inside the detention centre.

3.6. Activities

Nearly all of the interviewees said that the centre does not provide activities; the two that said that activities are provided (both are females) referred to "leisure time" and "ball game". Television and the telephone are the only 'activities' that male detainees reported having consistent access to. More than half of the respondents said they do have access to religious/spiritual space; one interviewee complained that while space is provided for Muslims, Christians are not afforded a similar space. There are even less activities or women in Block 9, who are not allowed out of the centre and have no TV or kettle to boil water.

Given the limited amount of activities detainees have access to, the majority of interviewees expressed the desire for a range of activities, including more TVs, more sports activities, sports gear and religious space. A few detainees said they didn't want anything and two said they wanted "freedom".

The kind of resignation that often prevails amongst detainees becomes evident from the reply of one woman detainee to the question "what could the centre provide that would have the most positive impact on your life": she replied that she didn't care as she didn't belong there, she was vague and indifferent and showed unwillingness to answer the questionnaire through to the end, preferring to talk about her case rather than about her detention conditions.

3.7. Medical

No one reported having been attended to by any doctor; only one detainee stated having had a medical exam upon arrival to the centre. The vast majority of detainees who gave an answer to the relevant question expressed the need for more medical services, mostly in the way of having doctors present in the centre. The services of a doctor or of qualified medical staff are also desired by the detention centre's staff for practical reasons, e.g. it would save them from arranging transportation for detainees to the hospital. The centre's director informed the interviewer that there was a doctor appointed to serve at the centre but had been removed probably due to limited financial resources. This

[121] The Third ECRI Report on Cyprus expresses "concern with the extensive use of detention for both migrants and asylum seekers and the conduct of law enforcement officials, which included alleged cases of ill treatment." The report of the Bureau of Democracy, Human Rights, and Labour of the U.S. Government for 2007 issued on 11.03.2008, refers to a number of allegations of police misconduct, including the death of a Polish national in detention, noting that migrants arrested for illegal entry without identification were detained indefinitely and face discrimination while in detention (http://www.state.gov/g/drl/rls/hrrpt/2007/100554.htm). Also the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) dated 15 April 2008 regarding the visit of CPT to Cyprus carried out in December 2004 found that the detention conditions of foreigners detained on immigration offences were entirely unacceptable, whilst there were instances of violence from the guards which amounted to torture (http://www.cpt.coe.int/documents/cyp/2008-17-inf-eng.pdf). The Conclusions of the UN Committee against Torture on Cyprus (CAT/C/CR/29/1) of 18 December 2002 list under 'Subjects of concern' the "the existence of some cases of ill-treatment" of detained persons by the police. The Ombudsman's annual reports for the years 2005, 2006 and 2007 also criticise the conditions of detention as well as the length of detention of foreigners for immigration related offences, noting in particular the violation of the right to access to a lawyer (Ombudsman Annual Report 2005, page 37). According to the LIBE Report from their 2008 visit to Cyprus, in general NGOs have access to asylum seekers in detention, however, there are several cases where this has been made difficult by the police (Report from the LIBE Committee Delegation on the Visit to Cyprus (25 - 27 May 2008), Rapporteur: Jeanine HENNIS-PLASSCHAERT)

tally with the findings of a previous study on the subject, which established serious gaps in medical care and described situations where detainees had to wait for months in order to be visited by a doctor.[122] Apanemi also reports instances where a diabetic detainee was denied his insulin injection and a female detainee was refused medical attention despite an intense breast pain. According to Future Worlds Centre, the guards are doing their best to transport sick detainees to the hospital but the list is long and it takes time.

3.8. Physical health

The detainees were asked to rate their physical health prior to and during detention on a 10-point scale ranging from 1 (very poor) to 10 (very good). The average physical health reported before detention was 9.50 and during detention it is 7.43. The majority of the respondents indicated that detention did have a negative impact on the respondents' physical health.

3.9. Mental health

The average mental health before detention was 9.86 out of 10 and 4.57 out of 10 during detention. A few interviewees reported their mental health as "very poor", and a few as "poor". Most of the responses indicate that detention has had a negative impact on their mental health, citing distress, insomnia, helplessness and depression as the main symptoms. They also indicated uncertainty about their cases, a disruption of their life plan and worries about their family and their future.

Detainees didn't come across as being preoccupied with what impact detention had on them perhaps because the majority saw their detention as a temporary state. Their future (fate) seemed to engage their thoughts and their concern about it also determined their feelings and mental state in general.

Apanemi reports that the situation is far worse with torture victims in detention who experience detention (confinement, insecurity, lack of access to information) as an additional trauma. Future Worlds Centre reports that detainees have suicidal thoughts and that the guards are trying to address these situations (e.g. by arranging visits to the psychiatrist) so as not to be held responsible in case "anything happens". The Ombudsman's representative confirmed that many persons suffer from suicidal thoughts and referred to instances where the guards called their office in order to come and assist the detainee in question.

3.10. Social interaction with others in the centre

When asked to rate the interaction with their co-detainees half of the interviewees described it as "good" and the remaining described it as neutral. When asked to comment on how the rest of the detainees get along with each other, half of them said that there are problems between detainees and they blamed either intercultural tension or tension brought about by 'common life' in detention.

The majority answered that they do have people they can talk to about their problems, such as friends and family outside the centre, or co-detainees. No one mentioned security guards, even though the female guard interviewed reported that she is often approached by detainees who want someone to talk to. She also reported having gone for walks with detainees who felt extremely distressed.

A number of Asian detainees report that there is segregation amongst detainees according to ethnic origin and that Arabs and Iranians are treated more favourably by the guards than the Asians. They also indicated that the wing of

[122] Actions in support of civil society in the EU member states which acceded to the EU on 1 May 2004: Creating and strengthening a sustainable network of civil society concerning administrative detention of asylum seekers and illegally staying third-country nationals across the ten new EU Member States

the detention centre occupied by the Asians was often too crowded. Future Worlds Centre also reported having noticed that detainees are separated in groups based on religion and ethnic origin and that there are dislikes between the groups but could not report any serious clashes, but did observe that people in the same group are helping each other e.g. on language problems, submitting demands to the authorities etc. The interview with Apanemi also confirms the practice of grouping amongst detainees. The Ombudsman's representative stated that there is a differentiation of treatment depending on how well some detainees get on with the guards: if they are on "good behaviour" the guards may grant them more frequent opportunities for contact with the outside world. Later in the same interview, the Ombudsman's representative stated that people from different religious groups and countries are at the centre of conflicts, which are based on both personal issues and also on religion and race, and referred to the formation of 'cliques' based on religion and ethnic origin.

One detainee refers to 'high-order' detainees, usually Arabs who have been in the centre for longer than others and who bully the rest; he also reported an instance where he was beaten up by them and got no support from the guards. When asked whether he filed a complaint for the incident, he said that the guards would not listen. Whilst interviewing an Iranian detainee, the researcher noted that, unlike other detainees, he was allowed to have his mobile phone with him so it is possible that the allegations of favouritism are well founded.

Other detainees and especially the women reported good interaction amongst co-detainees as their "common fate united them".

3.11. Contact with the outside world

Almost all detainees reported having family in their country of origin; half of them said that their family needed their support. A large percentage of the interviewees reported having family and/or friends in Cyprus.

Most of them reported having access to the telephone, and describe it as their primary means of communicating with the outside world, although some stated that they were sometimes denied access to the phone. One detainee stated that he was sometimes denied "favours such as phone calls", implying that he did not consider he had an a priori right to use the phone. Three interviewees report wanting Internet access; this must be a demand also shared by a number of detainees, as the interview with Future Worlds Centre indicates. Interviews seem to suggest that detainees have access to a payphone and that free phone calls are allowed only for emergency cases. In general, detainees are entitled to receive visitors but according to Apanemi some detainees may be denied visits. Also, the Ombudsman's investigation into the conditions of detention of foreigners found that the authorities denied a number of detainees the right to see a lawyer, lest they receive advice on how to file an asylum application.[123]

Nearly all detainees said that they receive visits from friends. From the 11 detainees that reported having family in Cyprus only three of them report being visited by family members. As for other people/ bodies visiting the centre, a few detainees reported having been visited by UNHCR officers and others reported having been visited by lawyers. Interestingly, none reported having been visited by NGOs, even though both Future Worlds Centre and Apanemi claim to be regularly visiting detainees. In any case, the detainees' assertion regarding NGO visits may suggest that NGOs are only granted very limited access to detention centres and/or that very few NGOs have the resources and capacity to offer any kind of assistance to them.

The interview with the prison guard indicates that detainees require prior permission in order to be visited by religious persons. One detainee stated that a Catholic priest visited him, and a previous study on detention conditions has also

[123] Ombudsman's report on the conditions of detention of foreigners in Central Prison and in Police Detention Centres, 2 February 2005.

established that a Christian orthodox priest had regular access to detention centres.[124] It is possible that permits for visits by religious persons, however it appears that the authorities maintain discretion as to which religious person visits the detainees.

3.12. Nutrition

A bit less than half of the detainees reported disliking the food provided by the centre, blaming poor quality. One of the two guards stated that the centre does not take into account the differences in the detainees' cultures and only provides different food when the attending doctor so requests. The other guard interviewed stated that whenever there are special dietary requirements for religious or other reasons these are communicated to the kitchen in order to be catered for. The Ombudsman's representative stated that detainees often request changes regarding the quality of food, or food for religious beliefs and his office mediates between the police and detainees, adding that the police usually cooperate but not always.

The female guard added that the detainees are consuming large amounts of food and are putting on weight. This contrasts with the Ombudsman's findings in this area which found both the quality and quantity of the food unsatisfactory; however this was more the case in other detention centres and less in the case of Block 10, where all the interviews took place and where 3 meals a day are offered, albeit of poor quality. Apanemi also reports that in other detention centres only one meal a day is offered.

Both NGOs report to have received complaints from detainees about the poor quality of the food. Future Worlds Centre reports that some detainees go on hunger strike but did not specify the demands of the detainees in such cases. The food is invariably described as bad. One detainee suggested that the food menu should be changed at least every 3 months and detainees should be allowed to receive food from their visitors.

There are no cooking facilities and detainees are not allowed to cook their own food. According to one of the two guards, this is due to safety reasons.

3.13. Difficulties in detention

The most commonly reported problem and most significant difficulty of the detainees' life in detention was reported to be the inability to sleep well due to excessive stress (e.g. constantly thinking about their situation). Most of these detainees attributed their inability to sleep in detention to the actual imposition of detention – the stress caused by detention, the disruption to their life plans and their loss of rights. Some reported inability to sleep because of noise in the centre. Others attributed inability to sleep to their worries about their future. One detainee stated that the mornings are particularly difficult when he wakes up and realises that he is in detention, as obviously his hours of sleep are his only distraction from his situation.

The difficulty ranking second to the inability to sleep was related to living conditions (e.g. quality of food, lack of activities, difficulties between groups of nationalities, lack of laundry facilities, no private visitation room, etc). Interviewees blamed detention itself for this set of difficulties.

The NGO interviews report having received complaints that lack of activity, isolation from the outside world, lack of access to legal assistance, deprivation of freedom and lack of access to daylight to be some of the hardest things about detention. Future Worlds Centre referred to frustration and irritability from prolonged detention and stress related to threats and abuse from the immigration police. The same NGO described detainees as "victims of bureaucracy" and "forgotten people". The Ombudsman's representative stated that people in detention awaiting

[124] Actions in support of civil society in the EU member states which acceded to the EU on 1 May 2004: Creating and strengthening a sustainable network of civil society concerning administrative detention of asylum seekers and illegally staying third-country nationals across the ten new EU Member States.

deportation are faced with the hard reality of having to leave a part of their lives behind, as most have lived in Cyprus for a long time, even up to 10 years. He describes them as 'shattered' and as 'people in the desert: they have no travel documents, and half their expectation is in their home country, and the other half is in Cyprus, leaving them somewhere in the middle of a 'desert'.

According to one of the guards, the detainees' main concern was their financial situation resulting from their inability to earn an income. The guard also reported that in a way detainees were 'relieved' not to have work-related stress; however this submission was not confirmed by any of the interviewees.

3.14. Personal impact of difficulties in detention

In response to the relevant question, interviewees tended to report specific times when detention became particularly difficult for them (e.g. one interviewee reported being attacked by co-detainees, another detainee reported how lonely he felt during religious celebrations) Many detainees reported experiencing increased distress, poor mental health, feelings of helplessness, of having been treated unfairly (by the immigration authorities, by their employers) and worrying about their future.

The impact reported by the NGOs interviewed, and by one of the guards, refers to depression, becoming introvert, deterioration of mental and physical conditions, particularly for victims of torture, fatigue, lack of energy, pain in the eyes as a result of inadequate light, frustration and irritability. It is striking that, according to the guard interview, detainees sometime open up their luggage and just stare at their personal belongings, probably a memento from the previous lives they left behind when they were arrested.

3.15. Outcome of detention

The majority of the interviewees reported knowing the outcome of their detention, in terms of what will probably happen (i.e. deportation – in all cases). Slightly more than half said that they didn't know their exact time of release from detention. Not knowing how much time they had until release from detention was reported to raise uncertainty and worries for themselves and their families.

3.16. Special needs and vulnerability

Only three interviewees reported having 'special needs', giving a rather liberal interpretation to this term. One of them said that he has special needs because he had been detained for a long time, and the other two said that they were unfairly treated by their employer (prior to detention).

Five interviewees said that there are other vulnerable people in the centre, namely people who are physically weak, or those who cannot speak English or Greek, people without travel documents, "Asians" and those with low self-esteem. NGOs had a good grasp of the meaning of vulnerability. Future Worlds centre stated that torture victims relive their traumatic experiences in detention and are in dire need for rehabilitation. Also women from patriarchal societies feel lost when they are detained separately from their husbands and pregnant women face particularly harsh and unhygienic conditions in police station detention centres. Apanemi confirmed the assertion about women from patriarchal societies feeling lost and added that men detained whilst their families are free suffer because they know their families cannot lead a dignified existence without the income generated by them.

The female guard defined vulnerability as being physically small sized, young in age and having a tendency to believe what other detainees are telling them. The guard also reports that there are women detainees who feel strongly against the prospect of their deportation and who need to be psychologically prepared. However, it appears that little is being done towards preparing these women or other vulnerable detainees for their deportation and for what awaits them upon return

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

4.1. Possible violence and abuse

In spite of the methodological problems, the present study does shed some light, particularly into the less controversial subjects such as gaps in the level of information, gaps in medical care etc. However, when it comes to the more controversial issue of violence and abuse, the significance of the methodological limitations becomes more apparent. There is an abundance of evidence documenting abuse of the asylum system by the police, sometimes manifesting itself in violence by police officers against asylum seekers.[125] However this information does not come across in the interviews except perhaps indirectly in the case of asylum seekers who were arrested following the withdrawal of their asylum applications.[126]

The stark contrast between the allegations presented in the various interviews regarding the use of violence is indicative of the situation in Cyprus, which for years does not allow for a frank and open debate on this subject. Most NGOs working with migrants, the Ombudsman as well as regular press and media reports refer to frequent abuses and violence against detainees, whilst the authorities, including MPs flatly deny this, often accusing the NGOs of 'self-flagellation',[127] 'exaggerations' and 'inaccuracies'. It is contended that under the current system and given the reluctance of the authorities to allow researchers and NGOs access to detainees, only organisations such as the CPT or the Ombudsman are in a position to adequately investigate claims of police misconduct in detention centres.

4.2. A gap in the level of information

From the interviews conducted there emerges a gap in the level of information which detainees are provided with regarding their cases. The fact that the two interviewed staff persons and Future Worlds Centre suggest that detainees are well-informed about their cases is most probably related to the fact that both staff and Future Worlds Centre are commissioned to supply this information and a gap in the level of information would also reflect negatively on them. In the interviews, half of the detainees said that additional information is needed but the answers supplied throughout indicate that there is a wider gap in information about rights in detention, rights in deportation proceedings, opportunities for legal recourse, etc. All detainees were aware that they would be deported; this information is probably already printed on their warrant for detention. However they all seem to be very anxious to find out when this would happen and what this would entail for themselves and their families and what rights they have in this procedure. Lack of information about their fate appears to be the most common source of distress, hopelessness and vulnerability, citing for instance the problem of lack of sleep and poor mental health.

[125] The Ombudsman's annual reports for 2005 refers to a case involving an Iranian asylum seeker, who was arrested and detained despite the fact that he was an asylum seeker and then unlawfully deported by the police against the express orders of the immigration department. In another case, the police directed the lawyer of three asylum seekers to send his clients to the police station to submit their asylum application but upon arrival arrested and removed them immediately. The Ombudsman was highly critical of the fact that, in the investigation that ensued, the police gave her inaccurate and misleading information in order to conceal the fact that the three persons left Cyprus against their will. Other cases involved the arbitrary closure of files of asylum applications because the district migration offices failed to notify the Asylum Service of the applicants' change of address; the unlawful detention and deportation of a Palestinian asylum seeker even after the migration department established that he had not changed his address; cases of deportations without due cause; cases of asylum seekers withdrawing their asylum applications under suspicious circumstances whilst in police custody; the groundless detention and issue of a deportation order against an unaccompanied minor asylum seeker, in violation of the Cypriot refugee laws and many more (see pages 51-58 of the Ombudsman's annual report for 2005). The Chief Immigration Officer has been repeatedly criticised both by the media as well as by the Ombudsman for practices that violated Cypriot and international human rights legislation.

[126] There are a number of Ombudsman reports as well as court decisions against the immigration police who one or way or another convinced asylum seekers to withdraw their applications so as to arrest and detain them with a view to deportation.

[127] This was the term used by then MP, now MEP, Antigoni Papadopoulou during the specially convened meeting of the Education subcommittee of Parliament 23.12.2008 following the racial attack on 14-year-old female pupil. She used this tem to mock or reprimand those who insisted that there is a serious problem of racism and this is related to racially inflammatory contents contained in curricula, whish urgently need to be reformed as part of the education reform program. Papadopoulou was at the time third Vice-Chairperson of the Committee on Economic Affairs and Development: http://www.coe.int/T/E/Com/About_Coe/Member_states/e_ch.asp#TopOfPage.

4.3. Gap in medical care

The fact that the sample used in this study is rather small, the selection of interviewees was made by the police and the average stay of the interviewees was rather short (3.14 months) compared to others, may lead us into an underestimation of the problem and repercussions of lack of medical care. From the responses of the interviewees it is possible to infer at least a few of the characteristics of the system of providing medical care. First of all, no medical care is provided at the detention centre. Secondly, the detainees are not automatically taken to a hospital once they state that they need medical care: it is up to the guards to decide if the detainee in question should be transferred to the hospital. Thirdly, the method used to ascertain whether the need for medical attention is real or not is through questioning of the detainees by the guards. This practice is particularly problematic if one considers that the guards receive no training in identifying medical problems and particularly psychological or mental disorders often associated with detention and uncertainty about the future. Victims of torture, which are, according to one NGO, detained at Block 10 face a serious deterioration of their condition in the absence of any rehabilitation measures. .

4.4. Gap in social services and NGO support

There is no provision for any kind of social services to be provided to detainees. A sympathetic ear is apparently sometimes lent by the guards, especially in the women's ward in Block 9; but the guards have no training in this field and in some cases appear unfamiliar with basic concepts such as the definition of vulnerable groups. Some badly needed psychological support, counselling and advice on social matters is not available. This is particularly needed in the case of women awaiting deportation, women from patriarchal societies who experience a sense of loss when they are detained separately from their husbands, as well as men who had been the breadwinners of their families and, following their arrest, had to leave their families without any means of support. There are few NGOs interested in the fate of detainees or their families and even fewer who are willing to devote resources to irregular migrants detained and due to be deported. UNHCR does make some resources available for the support of asylum seekers, but this is usually restricted to legal advice on the asylum procedure and does not extend to the period after rejection of the application and prior to deportation. In other words there are no resources from NGOs or from other sources to assist persons awaiting deportation, as is the case with the majority of the detainees at Blocks 9 and 10, either by informing them of their rights in the removal proceedings or by offering support and NGO networks in the country where they will be deported to. Also the guards themselves and the authorities in general appear to have little confidence in NGOs and there is no structure in place for co-operation between NGOs and the authorities for the welfare of the detainees. It is particularly striking that when detainees appear to be having suicidal thoughts, the guards do not call on NGOs to come and offer support but call on the Ombudsman's office, which is staffed with lawyers, to come and assist the detainees

4.5. Segregation of detainees

It has emerged from a number of interviews that there is a practice of the detainees separating themselves into groups and there appears to be a contestation between the 'Arabs' and the Iranians on the one hand who seem to have spent longer time in detention and to get on with the guards and the 'Asians' on the other hand who feel disadvantaged and underprivileged. Some interviewees suggested that the guards encourage this segregation; on the basis of the evidence emerging from the interviews the practice of segregation appears to be at least condoned by the guards who apparently allocate cells to the 'Arabs' in a separate wing from the 'Asians'. The result of the segregation is of course the occasional fight, as described by one 'Asian' detainee, feelings of unfairness on the part of the 'Asian' detainees who see the 'Arabs' enjoying privileges denied to them, and the inability of the detainees to organise themselves so as to put demands to the authorities in order to improve their detention conditions. Instead their frustrations often manifest themselves in riots and in setting fire to the centre's equipment.

5. CONCULSIONS

5.1. A major problem in assessing the detention conditions is limited access and severely compromised conditions of interviews and information gathering, applied not only for this study but also for all NGO studies in this area. This leads to a lack of understanding producing estimations which do not necessarily reflect the real picture

5.2. Detainees emerge as more distressed and worried about their future rather than about their detention conditions and regard detention as a temporary measure. This despite the fact that detention has obviously had a serious impact on their mental health, often manifesting itself in depression, suicidal thoughts, insomnia etc.

5.3. There is no system in place to ensure that detainees receive appropriate and human treatment. There are no concrete rules in place, a lot depends on the personality of the guard involved and in general guards have no training whatsoever in addressing the needs of vulnerable persons. This laissez-faire situation has resulted in the formation of opposing 'cliques' within the detention centres that often clash with each other.

5.4. The current legislative and policy framework which criminalises undocumented entry and stay and detains such large numbers of third country nationals has produced a new group of vulnerable persons and has left hundreds of families without any means of support.

5.5. Detainees appear to be poorly informed of their rights in detention, as a result partly of inaction on the part of the authorities, partly of inefficient implementation of policies and partly as a result of police efforts to restrict opportunities for filing asylum applications in an effort to deflate the numbers of asylum applications.

5.6. The legal aid law was amended in recent months by to extend legal aid to asylum seekers applying to the Supreme Court in order to challenge a negative decision either of the Asylum Service or of the Reviewing Authority (detailed in paragraph 2.10 of this Report). However asylum seekers arbitrarily detained continue to have no effective recourse to the Courts, unless their financial means enable them to pay high legal costs.

5.7. The study confirms a number of reports that illustrate longstanding problems that detainees face in obtaining the most basic medical care and psychological support.

5.8. A culture of concealing human rights abuses against migrants continues to be prevalent in Cyprus, judging from the fact that only one out of 14 interviewees reported police violence, when international organisations and national NGOs regularly report police misconduct.

6. RECOMMENDATIONS

6.1 **The authorities must grant researchers and human rights organisations access to detainees to properly investigate any allegations of ill treatment and generally monitor on a regular basis the conditions of detention**. Apart from access, this requires that the authorities refrain from any involvement in the selection and the process of interviewing of detained persons.

6.2 **The legislation regarding detention must be reformed by decriminalising illegal entry and stay and by introducing a presumption against the detention of immigrants and asylum seekers, ensuring that detention for immigration related offences be used only as a measure of last resort.** The Ombudsman's recommendations that alternative non-custodial measures, such as reporting requirements or an affordable bond, must be explicitly considered before resorting to detention. Reporting requirements should not be unduly

onerous, invasive or difficult to comply with, especially for families with children and those of limited financial means. Moreover, any conditions of release should be subject to judicial review.

6.3 **Opportunities and encouragement must be given to the detainees to organise themselves constructively,** so as to be able to have an effective representation *vis-a-vis* the management in order to be able to bring up complaints and recommendations and to diffuse the tension that was created between the 'cliques''.

6.4 **Regular information campaigns must be institutionalised, involving all stakeholders who are usually excluded (such as human rights organisations and migrant/refugee organisations),** so as to inform the detainees about their legal position and rights in detention and in removal proceedings.

6.5 **The legal aid law needs to be further expanded to provide for the needs of asylum seekers beyond the asylum procedure *per se***, such as legal assistance for action against arbitrary arrest, detention and deportation.

6.6 **Regard must be had to the rights and needs of the families of detainees, who are often deprived of the only breadwinner in the family once the father is arrested.** Also detention often means the discontinuation of welfare benefit entitlements that leaves the detainees' families in a desperate situation. This must be addressed with decisive policy measures.

6.7 **The legislation must be amended to ensure that all immigrants and asylum seekers have access to individualized hearings on the lawfulness, necessity, and appropriateness of detention.** The authorities must ensure the adoption of enforceable human rights detention standards in all detention facilities those house immigration detainees, either through legislation or through the adoption of enforceable policies and procedures. There should be an effective independent monitoring mechanism to ensure compliance with detention standards and accountability for any violations: regular visits must be established by an independent committee for human rights to all detention centres to ensure that standards are met.

6.8 **Access to counselling, social and psychological support must be provided for all detainees from state psychologists as well as from NGOs providing such service.** Access to medical care within the centre is a necessity as are provisions for access to hospital medical care without submitting the detainee to unnecessary questioning. The guards must be better trained in human rights, as well as in recognition of symptoms of trauma in those detainees who are unable to express their needs to the guards. This procedure should be supplemented by involving the participation of NGOs specialising in the rehabilitation of victims of torture and in promoting the rights of mental patients, who should be invited to support and assist detainees in acquiring the medical attention needed

6.9 **A new approach to human rights is required by the authorities, the media and the public** so that possible abuses are seen as unacceptable and measures for a general improvement of the social position of migrants and asylum-seekers be seen as imperative.

NATIONAL REPORT: CZECH REPUBLIC

By: Association for Integration and Migration

1. INTRODUCTION

This report describes the situation of everyday life in three out of four detention centres that are currently being used for immigration detention purposes in the Czech Republic. It also includes national legal overview.

The findings in the report were elicited through direct interviews with 58 detainees, three NGO representatives who have access to the centres: Hana Franková, in charge of monitoring the situation in International airport Ruzyně reception centre for UNHCR purposes, working for The Organization for Aid to Refugees (OPU); David Kryska, lawyer, OPU; Martina Vodičková, social worker, Association of Citizens interested in Migrants (SOZE) and three staff members: two social workers (International Airport Ruzyne Reception centre and Bela-Jezova detention centre) and the director (Postorna detention centre).

There were a total number of three detention centres visited:

- Postorna detention centre, southern Moravia region, 50 km from Brno (only for men);
- Bela - Jezova detention centre, central Bohemia, 20 km from Mlada Boleslav;
- International Airport Ruzyne Reception centre, Prague.

The fourth one, Vysni Lhoty Reception centre (northern Moravia) was not visited as it has been moved to Zastavka u Brna (southern Moravia) at the end of the year 2009.

All centres were willing to cooperate in this study and interviewed detainees were chosen with help of social workers or accidentally.

2. NATIONAL LEGAL OVERVIEW

2.1. Legal grounds for detention

Three types of detention are governed by the Asylum Act; they are Dublin II detention, detention in the Reception Centre at the international airport and detention of asylum seekers in case their identity could not be reliably determined (i.e., he/she does not have a valid travel document or holds a forged identity document) or if the applicant presents a threat to state security:

Section 46 clause 3 of the Asylum Act provides for the Dublin II detention of a foreigner till s/he is transported to the Member State responsible for examining his/her application for international protection.

Section 73 clause 10 of the Asylum Act states that foreigners applying for international protection at the international airport shall be detained at the reception centre in the transit zone.

Section 46a clause 1 of the Asylum Act provides for the detention of asylum seekers when their identity was not ascertained unfailingly, applicant shows only his or her faked or retouched identity documents, or there is a supposition of threat that asylum seeker could endanger the safety of the state.

Three types of administrative detention of foreigners are governed by Act on the Residence of Foreigners:
Section 124 clause 1 of the Act on the Residence of Foreigners states that the Police can detain a foreigner older than 15 if procedures for removal have started and there is a risk that the foreigner might endanger state security, significantly disturb public order, or obstruct or hinder the execution of the removal decision, or if the foreigner is an undesirable person registered in the Schengen Information System.

Section 124 b of the Act on the Residence of Foreigners provides for the detention of foreigner for the time necessarily required, who didn't take the opportunity of voluntary repatriation under a special legal regulation in order of his or her exit from the territory if he or she didn't apply for international protection, although he or she was asked to do so; didn't travel abroad after the final termination of proceedings on the international protection within the time limit set by departure order or within 30 days, if departure order wasn't granted to the foreigner; or his or her permission of residence in the territory granted to beneficiaries of subsidiary protection has expired.

Section 129 of the Act on the Residence of Foreigners provides for the detention for the purpose of forwarding the foreigner or his transit to another state according to international treaty or EC law. This applies in cases when such an operation cannot be finished within 48 hours (72 hours when transit is carried out by plane).

2.2 Legal grounds for the minimum age for detention

According to section 46a clause 1 of the Asylum Act applicants under 18 shall not be detained or stay in the regime of detention.

Act on the Residence of Foreigners in its section 124 b empowers the Police to detain a foreigner older than 15. If minors are supposed to stay with their detained parents in the centre, they receive a status of "accommodated foreigner", as states section 140 clause 1.

2.3 Legal grounds for the detention order

The Asylum Act governing Dublin II detention and detention in reception centres does not provide for a detention order per se.

Section 124 clause 2 and section 124 b clause 3 of the Act on the Residence of Foreigners regulating administrative detention provides that the Police have to issue a written decision with justification included on detention specifying the legal grounds of the detention. The decision becomes legally enforceable upon its delivery or the foreigner's refusal to accept it.

2.4 Legal grounds for judicial review of the detention order

There is no automatic judicial review of the decision to detain.

The Asylum Act in its section 46a clause 3 provides for the possibility to take legal action against the decision on detention in the reception centre within 7 days since the delivery of the decision to the applicant; the fact of taking such legal action does not have a legal dilatory effect.

Similarly section 73 clause 5 of the Asylum Act provides for the possibility to take legal action against the decision about disallowing the entry to the territory within 7 days since the delivery of the decision to the applicant; the fact of

taking such legal action does not have a legal dilatory effect. In both cases courts shall see to such a legal action in preference, but in fact it hardly does. (Porizek)

Section 124 clause 5 of the Act on the Residence of Foreigners and section 200o of the Civil Procedure Code regulate appeals from administrative detention orders. In terms of these laws, the civil court has the authority to decide on the duration of detention or to order the foreigner's release if the legal reasons for continuing the detention have ceased to exist.

2.5 Legal grounds for the right of appeal against the detention order, or to challenge Detention

Section 46a clause 4 of the Asylum Act states there is a possibility to ask again for the review whether the legal reasons for continuing the detention still exist. Applicant may ask for this only after one month since the last decision on this question of Ministry of the Interior or the Court came into effect.

Section 73 clause 6 states that foreigner detained in the International airport reception centre is entitled to ask again for permission to enter the territory after one month since the last decision on this question of Ministry of the Interior or the Court came into effect.

For the right of appeal see section 2.4.

2.6 Legal grounds for the right of information about the detention order and/or the reasons for detention

The decision of the Ministry of Interior about the duty of stay in the reception centre up to 120 days comes into legal effect when delivered, as section 46a clause 2 states.

Section 73 clause 10 of the Asylum Act states that Ministry of the Interior instructs the foreigner in the fact that filing an application for international protection itself does not mean that the permission to enter the territory has been issued at the same time and that the foreigner is obliged to stay in the international airport reception centre during his application proceeds, if Ministry of the Interior will not decide otherwise. This instruction shall be done immediately after reception of the foreigner in the international airport reception centre.

Section 124 clause 2 of the Act on the Residence of Foreigners stipulates that foreigner may be detained only after a written decision with justification included was delivered to him/her or the foreigner refused to accept such a delivery.

2.7 Legal grounds for the duration of detention

Section 46a clause 1 of the Asylum Act provides for the Ministry to decide about the duty of applicant for international protection to stay in the reception centre till travel out for 120 days at the most, if identity was not ascertained unfailingly, applicant shows only his or her faked or retouched identity documents, or there is a supposition of threat that asylum seeker could endanger the safety of the state.

Section 73 clause 10 of the Asylum Act states that foreigners may be obliged to stay at the international airport reception centre 120 days at the most.

Section 125 of the Act on the Residence of Foreigners states that administrative detention cannot exceed 180 days, beginning from the moment personal liberty is restricted. In the case of a foreigner younger than 18 years of age, the detention period cannot exceed 90 days.

2.8 Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

Section 88 of the Asylum Act provides that an applicant for international protection and his/her child born on national territory is provided with free health care. Such care must be within the scope of care paid from the health insurance, as specified by a special legal regulation, and also health care in connection with an imposed quarantine or any other measure taken in connection with protection of public health. This shall not apply if health care is provided in accordance with another legal regulation.

With respect to administrative detention, section 176 of the Act on the Residence of Foreigners stipulates that the foreigner will be for the time of detention provided with health care or the urgent one, in states that immediately threaten life, may lead due to deepening of pathological changes in sudden death, will without providing rapid care cause permanent pathological changes, causes a sudden pain and suffering, cause changes in behaviour and action, endanger himself/herself or his surroundings, or are related to pregnancy and childbirth, with the exception of artificial interruption of pregnancy at the request of the foreigner, or in connection with the imposition of a quarantine or other measures in the context of protecting public health. The cost of health care provided is paid by the State. If health care cannot be provided in the facility, the operator shall provide this care in a medical facility. If the foreigner at the time of detention causes to himself/herself an injury by his own will, it is his duty to cover the cost of treatment, including the costs actually incurred on the security and transport to a medical facility and back.

Social, psychological and other services are available in all cases as section 42 clause 2 of an Asylum Act and section 134 clause 4 of the Act on the Residence of Foreigners state.

2.9 Legal grounds for contact with the outside world

Legal grounds for contact with outside world are the same for Dublin II detention, detention in the Reception Centre at the international airport and detention of asylum seekers as stated in section 46a of the Asylum Act. Section 21 clause 1 of the Asylum Act provides for the right to legal assistance free of charge and for right to contact with the person providing legal assistance. The Asylum Act also provides for the right to receive visitors, mail and packages, and to use the public phone.

In the case of administrative detention, section 144 of the Act on the Residence of Foreigners provides that detainees may receive up to 4 concurrent visitors once a week. The length of the visit cannot exceed one hour. In justified cases, the manager of the facility or his representative, in agreement with the police, may authorize the reception of the visit in shorter period than one week and a longer duration; if permitted by the capacity of rooms for the reception of visitors, the number of people may be increased as well. There is no restriction on contact with persons providing legal assistance. Where a detainee is subject to strict regime, visits must take place in the presence of the Police.

2.10 Legal grounds for the provision of legal aid

Section 21 of the Asylum Act states that applicant for international protection has the right to ask for a legal counsellor who is working in area of refugee law to receive legal assistance and the right to contact him/her. Applicants may seek their own lawyer as long as they pay for their services.

Section 144 clause 3 of the Act on the Residence of Foreigners provides that detained foreigner has the right to receive visits at the facility from his lawyer or a representative of relevant organization, which can prove, that the subject of its activities is to provide legal assistance to foreigners. The right to contact him/her is not stated.

2.11 Legal grounds for the protection of persons with special needs

Unaccompanied minors, single parents or family with minor children or with adult disabled children, disabled people, pregnant women, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence shall not be kept in detention for the reasons stated in section 46a clause 1 of the Asylum Act.

Ministry will permit to enter the territory to above-mentioned groups that applied for international protection in transit zone of international airport and transport these persons to the reception centre, as stated in section 73 clause 3 of the Asylum Act.

In the case of foreigners subject to administrative detention, section 141 of the Act on the Residence of Foreigners imposes a duty on the operator to take into consideration, as far as possible, any special religious, ethnic, or national characteristics, as well as any kinship and marriage relationships, age, and condition of health.

Unaccompanied minors are placed separately from adult foreigners and men are separated from women as a rule; however an exception can be made in the case of close family members. Detainees younger than 18 years or persons who have been declared incompetent for the purpose of performing legal acts are placed with a close family member or with the person into whose care they have been entrusted. These persons are not being detained in such a case but have the status of accommodated foreigner. Accommodated foreigner may leave the facility if care of him/her is assured in another way. In the case of a under-aged or a person deprived of legal capacity, may leave the facility only after written consent of the legal representative. The operator is obliged to enable to the foreigner, who is subject to compulsory education under a special law, the fulfilment of this obligation. If the detainee is an unaccompanied minor, the police will assign a guardian to him/her.

2.12 Legal grounds for alternatives to detention

There are no legal grounds for alternatives to detention.

2.13 Legal grounds for providing release from detention

Dublin II detainees are released on the moment of their transferral to the EU state which is competent to decide on his/her application for international protection or when he asks to leave the territory voluntarily.
There is no specific legislation concerning release from detention of asylum seekers held in detention under section 46a of the Asylum Act.

Section 73 clause 9 of the Asylum Act states that the permission to enter the territory is granted automatically (foreigner is moved to accommodation centre) in case that the court does not decide on the appeal against the negative decision of Ministry of the Interior on granting the international protection within 120 days since the foreigner filed an application.

Section 126b clause 2 of Act on the Residence of Foreigners states that in case the doctor declares that foreigner suffered such a damage on health that is of permanent nature, or if from the nature of the disease can be assumed, that his/her stay at the medical facility providing health care may be longer than the time remaining to the expiry of 180 days from the date of detention, the police will end the detention.

Section 127 of the Act on the Residence of Foreigners provides that administrative detention must be terminated without undue delay:
a) When the reasons for detention cease to exist
b) When a court orders release
c) When international protection is granted

d) When the foreigner is granted a long-term residence permit for the purpose of receiving protection in the territory.

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1 Basic information

Of all detainees,[128] 29 were interviewed in Poštorná detention centre, 22 in Bělá-Jezová detention centre and 7 in Ruzyně reception centre. There were 15 women in detention interviewed, of whom 2 were pregnant and 2 were single mothers with one child living in the detention centre. All interviewed detainees were adult but one unaccompanied minor. Each interview took 30 to 70 minutes.[129]

The age of detainees ranges from 17 to 58-year-old[130] and they were mostly single. They spent more or less 5 years in the territory of the Czech Republic, as many detainees are illegal migrants. Their experience with detention lasted from just a few days to many months (on average 5,69 months).

3.2 Case awareness

Of all, 37 the interviewees are applicants for international protection, of whom are 6 Dublin cases and the rest are illegally staying migrants. Absolute majority says they have been informed about their case (85 %). But the level of being informed itself seems to be problematic – in total 71 % of detainees report a need for more information. From the point of view of NGO workers the level of being informed is considered to be even smaller than detainees report simply because they don't know what kind of information they might be missing. Detainees need more information on the asylum procedure (almost 42 % of those needing information) and many of them do not understand the reason for their detention. Regarding Ruzyne Reception centre, detained applicants for international protection report to be very well informed about asylum procedure. They also receive information why they have been detained, however, it's still not well understood. "The man from the government told me the reasons, I could also read it written, but I don't really understand why do I have to wait here for such a long time". This kind of information seems to be explained in too legal way, which non-lawyers simply don't understand. In general, detainees want to know more information so they can prepare themselves for the future.

The ways of being informed are as follows: almost all say they have been informed through police and / or during official procedures and others while in the host country illegally. However, a social worker from Bela-Jezova detention centre admits that police misinforms detained foreigners quite often, for unspecified reasons. All proper information is provided in the detention centre itself by social workers or by NGOs then, as most of these agreed.

There was one Vietnamese unaccompanied minor interviewed in Bělá-Jezová detention centre who described his stay of at least one month in detention without a guardian being established. At a time of our visit, he spent more than 2,5 months in detention without any interpreter accessible, so he was completely unaware about his case until our visit.

3.3 Space within the detention centre

[128] Following countries of origin of interviewed detainees were represented: Ukraine (19 detainees), Vietnam (7), Mongolia (7), Nigeria (4), Turkey (3), Sri Lanka (3), Belorussia (2), Georgia (2), Macedonia (2), Algeria (2), Russia (1), Moldavia (1), Serbia (1), Kazakhstan (1), Palestine (1), Ghana (1), Cameroon (1). Nationalities of interviewed detainees are represented as follows: Ukrainian (15), Vietnamese (7), Mongolian (7), Nigerian (4), Turkish (1), Kurdish (2), Tamil (Sri Lanka) (3), Russian (4), Belorussian (2), Albanian (3), Georgian (1), Armenian (1), Moldavian (1), Carpathian Ruthenian (1), Algerian (2), Adai (Kazakhstan) (1), Palestinian (1), Ghanaian (1), Cameroonian (1).

[129] Variety of languages has been used: Czech (30), English (9), Mongolian (6), Vietnamese (4), Russian (4), German (1), Kurdish (1), Albanian (1), Arabic (1).

[130] Average 33, median: 31, mode: 29.

More than half of detainees feel neutral about the room they are required to sleep in. They would mostly say, “It’s OK, it’s not a big problem”. Still 41 % feel negative and only a few feel positive about their room. The biggest problem is cohabitation issues rather than cleanliness, facilities or room climate. Common complaints include inadequate size of the room, for example: “there are four people in the room that is big enough just for two; there is no place to read, to write my letters, to pray.” Some mentioned that people who snore at night should be accommodated together as a rule.

Detainees feel slightly worse about the rest of the centre space, 52 % feel negative. Facilities mentioned are more sports equipment, being able to be outside longer or having more outside space. Outside space is very problematic in Ruzyně Reception centre where a kind of semi-roofed room is situated on the side of runways, so it does not offer neither fresh air nor peace to talk to each other, no plants or trees are accessible. Indoor space here offers only air-conditioned air and natural light is only in a few rooms.

In general way, detainees complain mainly about ‘prison-like’ conditions which seems to be a particular problem in Ruzyně Reception centre and Poštorná detention centre: “I feel to be in normal prison; I can’t get the bars out of my head.” In comparison, Bela-Jezova detention centre offers bigger outside space surrounded by the forest and it was preferred for this reason by those who experienced both Postorna and Bela-Jezova.

Only 20 % of detainees feel the centre being overcrowded, most of these are in Postorna detention centre. All 57 % detainees report not having a space to be alone.

3.4 Rules and routine

Interviewed detainees mention routine rules, which are generally respected. Anyway, they complain about some rules, for example about the inability to use their mobile phones, where the telephone numbers of family and friends (in one case of a specialist doctor) are stored. New rule on impossibility to fax any legal documents to legal counsellors appeared to be a big problem in detention centres.

It is not allowed to have any personal electrical devices in detention centres; but radios with headphones are welcomed. Also, the inability to cook their own food and the strict meal times foster a prison-like environment among detainees.

It was also mentioned that some rules are missing, e.g. no clear rules about watching TV (how to agree on what to watch at the time when there are different language groups and only one TV set on the floor) and receiving and making phone calls (it is up to co-detainees to let to know to the others that somebody has a phone call) causes big tension among detainees.

According to the rules of the Bela-Jezova centre, unaccompanied minors occupy a separated floor where if there is just one person at a time, he or she stays in complete separation during most of the day and is in touch with other detainees only at a mealtime.

Suggestions to change some rules can be made, but they are not likely to be taken seriously in detention centres (Postorna, Bela-Jezova).

3.5 Detention centre staff

Detainees are most in contact with the detention centre’s security staff and social staff. They feel rather neutral about staff interaction. The way the staff support their needs is relative to other countries fairly positive.

In general there is no discrimination. Anyway, around 20 % of detainees in the minority feel discriminated against, 61 % of those feeling discriminated against by staff members mentioned language as the reason. This is a problem for example for Vietnamese or Mongolian detainees but surprisingly some detainees reported that their social worker does not speak even English or Russian language: „social worker does not understand me and there is no interpreter available to ask for anything; I got a smelly pillow when I came here but social worker ignores my requests to change it because he does not understand me."

3.6 Level of safety within the detention centre

The average level of safety shows that detainees feel generally safe inside the centres (8.4 out of 10) and NGOs workers would agree. Factors mentioned in relation to safety are mostly security guards inside the detention centres and policemen at the entrance. Centres in general prefer to place people of the same nationality and close language group on the same floor and into the same room. Groups of nationalities that are likely to provoke conflicts against each other are automatically placed on different floors (Postorna).

Significant minority, only one quarter of interviewees, have been mocked. Of those mocked, 70 % said it was most likely by other detainees and most likely for a mix of infrastructure, interpersonal and inter-cultural reasons. As staff members and also NGO workers say, it's mostly the result of stress and situation of being in everyday touch with the same people for quite a long time. For example, the choice of TV program or the usage of teakettles, are problematic areas. „The top stressful situation is when one person is using the phone and another one is waiting for a call from his family." Of those mocked, 80 % said they had been mocked ´sometimes´ or ´often´, rather than just once. Only a few reported to be mocked by staff which seems to reflect a minority that feels disrespected: „security guards call me names in Czech language, I understand these words but I don't understand why they're doing so." Verbal incidents between detainees and staff members come as well of course.

Physical assault is unlikely to happen. Only two interviewees said they had been physically assaulted and in both cases it was by other detainee or detainees rather than by staff members. This kind of situation is usually solved by moving the endangered detainee to another floor (Postorna), or to a protected zone (Bela-Jezova); this is a normal and available procedure even on request of the detainee.

Interviewees in general have not filed any complaints about the level of safety in the centre, but those who did, mention that their complaint didn't lead anywhere.

3.7 Activities within the detention centre

Almost all interviewees report there are some activities in the centres but not all of them do take part in these activities. Some even say there are no activities he would know about (4 %). Detainees most frequently report that they are provided some sports (for example football, volleyball, table tennis, fitness centre) and some report creative activities (e.g. sewing in Bela-Jezova, ceramics in Postorna, painting). Other activities include television watching or reading.

The reason for participating in activities is in general mental relief from the stress of detention and the uncertain situation. Anyway, many detainees say it's simply necessary to do something during the whole day while waiting for the decision on their case. "I need to spend the time here somehow and don't get silly." Those who do not participate in any activities mostly say that provided activities are not interesting for them or they are not able to participate for mental health reason. As social worker in Bela-Jezova admits, detainees are usually endangered by apathy already after three months of stay in detention. One example: "I used to sew, to do sports, I have read all Russian books they have in local library. But now I am just tired. The only thing I can think about is when I will go away."

Interviewees report the most widely available activity is television watching and reading books. However, more than 30 % don't have access to books mainly because these are not available in any language they would understand and some say there is lack of variety. Many detainees would like to have possibility to watch the movie till the end at night, but they have to switch the TV off at a concrete hour. As there is one TV per one floor in detention centres, the accessibility is also rather restricted for those in language minority. On the other hand, Ruzyne Reception centre offers TV in each room. Some detainees also report there is not enough or accurate sport equipment for outdoor or fitness activities, so they feel rather disappointed about the actual possibility to participate in these (Postorna). Interviewed unaccompanied minor was not even able to reach any activities besides watching Czech channels on TV because of his separation and language barrier.

Regarding religious space, almost one third of detainees report they have access to it, and they are almost all from Bela-Jezova, which is visited by an orthodox priest once a week. Places of prayer for Muslims are unavailable.

The detainees in the Czech Republic have no access to computers and Internet, which would be very welcomed by them. Internet connection is wanted to have easier contact with the outside world - getting in touch with family and friends for free and also possibility to read news in the variety of languages. Besides that, even more people (34 %) would like to have access to some kind of educational activities, mainly language courses. But only some report having access to it, as there is Czech language course in Bela-Jezova provided. Others say they don't want anything at all and some say they want ´freedom´ rather than another type of activity.

3.8 Medical issues

The detainees report that there is medical staff in the centre, that is doctor and nurse, and they can visit him or her on the request. During medical exam, as the first one takes place immediately after the arrival to the centre, they usually understand the language and medical instruction, although 27 % don't; the provision of interpreters could solve this.

Regarding the quality of medical care, 37 % detainees are negative about it, 27 % report it being positive. The rest is rather neutral. Of those being negative almost all cited access to appropriate medical care to be the problem. Detainees mostly complain about being given pain relievers whatever health troubles they have and not being cured by appropriate medicine. This counts also for dental problems when detainees report they have only two choices: to use pain relievers or to pull the tooth out. More than 40 % report they need more medical services, e.g. access to specialists, such as gynaecologist, dentist, psychiatrist, psychologists. Staff members say there is always the possibility of external medical care in the nearest hospital, however some detainees report it's being difficult to get such an external care unless the situation is really grave. If there is a pregnant woman, she is being taken to hospital once a month for medical checks as a rule.

Physical health

Most of detainees openly admit that detention affected their physical health, 77 % reported negative impact and almost 7 % reported they were affected positively. In the conditions of the Czech Republic, the physical health on average dropped from ´good´ before detention (on average 8.66 out of 10) to ´fair´ during detention (on average 5.81 out of 10). They blame the existing conditions in facilities and stress imposed by detention and significantly less the availability of medical treatment itself.

Mental health

When it comes to mental health, the level of negative impact of detention is much graver. Almost 82 % report to be effected, all of them negatively. Mental health has dropped from ´good´ before detention (on average 8.83 out of 10) to under 'fair' (on average 4.5 out of 10). First and foremost, they attribute this negative impact to the fact of 'being behind bars'. They feel that their mental health had been influenced by worries and general stress. Almost one

quarter of detainees admit they suffer from mental health problems and they attribute this to the life in detention. Secondly, they mention that their life plans were disrupted; they suffer from lack of contact with their family and with the outside world in general, or say they lost their rights in detention.

3.9 Social interaction within the detention centre

Except those cases, where detainees described being verbally mocked or physically assaulted, detainees report getting along neutrally with others. However, this attitude changes and it gets worse with number of days spent in detention. Less than one quarter of interviewees have said they were getting on badly and this happens mostly for intercultural reasons. Many mention that they don't get on with specific nationalities, or simply that they don't understand each other, could be linguistic or otherwise. This situation appears in spite of the fact that detainees are placed on the same floor according to their nationality, language group etc., because still some very different cultural groups have to co-exist together.

Many detainees say there are some problems among detainees. And again, most of these put this down to intercultural problems. Many others put this down to the very fact of being detained or say that it's caused by the tension due to common life together.

Most of detainees have someone to trust and it is in 90 % of cases detention centre staff, not other detainees.

3.10 Contact with the outside world

Although 81 % of detainees admit that they have family in the country of origin, whose members mostly have adequate support, its typical for illegal staying migrants that they have also some family members and/or friends in the host country. On the other hand, there is a greater likelihood that applicants for international protection don't know anybody in the host country at all.

If they want to contact somebody from the outside world, they use public telephone (in 77.4 %). Detainees are given one 200 CZK phone card per three months in detention centres, which stays more or less for 20 minutes of calling. They are allowed to buy more of these phone cards but most of them do not have any money to do so. The preferred strategy is to make 'missed calls' to the families and then to wait for their response. Keeping and use of any mobile phone is prohibited, which has very negative consequence for detainees because the phone numbers of their family and friends are stored there. Only Ruzyně Reception centre allows detainees to see those phone numbers, without allowing them the use of the mobile phone itself. This rule has also harsh impact on work of NGO lawyers who are not allowed to use mobile phone during the consultation so they can't call interpreters. Nevertheless, detainees consider telephone to be the most important way of communication with the outside world. There is no Internet access, but it is said to be the second preferred method of contact. Only significant minority would prefer contact through visits because it might not be feasible for this group, for example because of the detention position and almost no public transport accessible or because family is in the country of origin. Personal visits have enjoyed only about 15 % of detainees; 70 % of those visits were by legal consultants, 29 % by friends and only 15 % have had a visit from family.

If we ask whether they have access to their preferred method of contact, they would say no in 83 %. That is mainly because of mobile phones and Internet are not accessible. Nevertheless, one pregnant woman mentioned the possibility to spend the visiting hour[131] with her Czech boyfriend more in privacy to be her strong special need. This is in fact not possible because the security guard is always present in the visiting room. It means that other linguistic groups have an advantage of higher level of privacy when receiving a visit.

[131] Visit of maximum 4 persons per one hour per one week is allowed.

3.11 Conditions of detention and the family

Almost half of detainees have children who are mostly outside the centres. Two single mothers with their child being accommodated in Bela-Jezova detention centre were interviewed. These both reported negatively about their children, citing lack of adequate nutrition, lack care supplies for children, place to play, and one saying that a sick child should not be placed in any detention centre.

3.12 Conditions of detention and nutrition

Detainees in general don't like the food that is served in the centres. It is because of its poor quality (half of responses) and because of lack of variety. Many report it is also because of they are not used to eat Czech meals that differs to their national cuisine (it causes problems especially to Asian people). Women described they are missing more fresh fruit and vegetable, more vitamins and that they are mostly loosing their weight radically. Detainees mind they are not allowed to cook their own food. One third of detainees report their appetite had gone down and this made them feel worse, including stomach troubles.

Many detainees report they are hungry at night due to early dinner time and rather late breakfast, [132] so those who don't receive any packages with food from the outside feel to be more vulnerable. Those two interviewed mothers with child report that they would appreciate to be woken up by the centre staff not to miss the time to go for breakfast. If it happens, nor they neither their children have nothing to eat till lunch. Pregnant women are in the same position as well. To take the served food to their room to feed the child at a time when he or she is hungry is very problematic. Pregnant women complaint about not receiving extra vitamins or calcium, and at the same time they are not allowed to receive these vitamins by post from their relatives. They are not allowed to receive more food in a package than the others (5 kilos is the maximum per package). The only extra food they receive in the centre is a piece of fruit per day. One pregnant woman mentioned that after 11 p.m. she has no access to fresh cold drinking water, only warm water from the shower is accessible.

3.13 Conditions of detention and the individual

Just over half of detainees report they don't sleep well at night and of these, almost 68 % cite living conditions as the reason, e.g. noises and uncomfortable sleeping facilities. Some also say they don't sleep because of uncomfortable thoughts and worries.

Difficulties in detention

When asked to mention the first most important difficulty in detention, 53 % mentioned something relating to the impact of being detained itself; i.e. being behind bars, their life plan was disrupted, lack of contact with the outside world and their loss of rights in detention. The biggest proportion, all 31 %, mentions simply being behind bars as their biggest difficulty. Then 17 % mention lack of contact with the outside world. Only almost 14 % say living condition is the biggest difficulty for them and only approximately 7 % mention worries.

Interviewed detainees attribute their second difficulty in detention more to state of living conditions within the detention centre and again to the impact of being detained itself. Just fewer than 10 % mention being cut off from family is their second biggest difficulty.

Again, as third biggest difficulty was mentioned living conditions and being locked up in general.

[132] This is because of dinner starts more or less at 5 p.m. and breakfast at 8 a.m., this gap in receiving food seems to be too long.

There has been no change in difficulties. More than half of people (60 %) reported that there was a time in that life had become particularly difficult in detention, 44 % saying that it is bad everyday and 37 % saying it was worse at the beginning.

We still may have a look at the point of view of NGO legal counsellors, who say that the three biggest difficulties on the stay in detention are inadequate judicial review and arbitrariness in the behaviour of Police. They agree that also lost of personal freedom and isolation is very difficult to face to. For those who fled from actual war conflicts it is very important to know the news from their country and also to have any efficient way of contact with the outside world to be able to contact their relatives – especially in cases where they might doubt whether they are still alive, or not.

Outcome of detention

Only 25 % know the date they will leave detention and they mostly just count the rest of days till the maximum of 180, respectively 120 days of detention expire. Most describe that not knowing the date of their departure affects their mental health. Only 35 % are able to say they know the outcome of their detention.

Special needs and vulnerability in others

It is not likely that detainees admit they have some special needs, but if they do (30 % of them), then they don't mention classic needs, i.e. those sets of needs that are 'recognized' by existing laws and policies. Mostly, people mention family and being apart from loved ones as something that means that they have special needs. Some mention that they feel vulnerable because they don't speak Czech language, so they have less possibilities to ask for any kind of assistance. Also those who are not supported by their friends or relatives, for example those who don't receive packages with food or books in their language (via post service or visits) feel more vulnerable. Those who have any medical problem are likely to mention the inability to receive proper care. Person with specific case of vulnerability connected to psychological trauma was also interviewed: this man escaped from life-threatening event in which all members of his family had been killed. He succeeded to arrive by plane to the Czech Republic, where he applied for international protection. He spent in closed space of International Airport Ruzyně Reception centre as much as 3 months and 20 days at a time of the interview. He described that it was extremely hard for him, a person with such a harsh experience, to stay in this kind of jail for no reason, as he understood his situation.

On the other hand, detainees are more likely to be able to identify vulnerability in co-detainees. They cite classic needs (women with children, children themselves, unaccompanied minors, pregnant women, elder people, sick ones, those with psychological problems), but they mostly say that either everyone in detention is vulnerable, or nobody is more vulnerable than the others. They also mention that being apart from loved ones (their children, partners, etc.) makes people vulnerable. Many in detention described that people of weak characters or spiritually weak people are more vulnerable than others. Those who don't speak Czech are mentioned to be vulnerable group quite often and also those who spend in detention most of maximum 180/120 days.

Most of detainees said that being in detention had affected their self-perception negatively. Those who admit this are likely to become more passive and depressive, previously socially active people are falling into apathy.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

1. Detainees report a deterioration of physical and mental health: This is true even though they have been detained for relatively short periods. They are also suffering from loss of appetite and some have problems to sleep.

We had the possibility to meet detainees in variety of periods of their stay and those being detained for a few months

already reported that even if they faced the conditions in detention well at the beginning, after longer period of time they feel much more depressed, tired, their interest in any kind of activities disappeared and the only thing they could think about is how to get out of the detention centre. Some detainees suppose it will take some time to get back into previous mental and also physical health condition after being released.

Even if there is significant proportion of detainees stating that they are not getting the medical care that they need, it is interesting that this is not seen as the main cause of deterioration of physical health, and not at all a cause of deterioration of mental health. It certainly doesn't mean that access to appropriate care is not important, but it rather seems that being in detention itself causes health problems that simply providing more medical services will not solve. So we can say that their health is negatively affected by being detained itself rather than anything else.

2. Detainees have been informed about why they are detained, but still need more information: A majority of detainees (slightly over 70 %), all NGO representatives and one interviewed social worker admit that detainees are not well informed by the officials. NGO lawyers or staff members, such as social workers, fill this gap. In detention centres, this situation incurs quite a variety of problems: uninformed detainees who don't speak Czech or other helpful language might have more likely no way how to ask for more information, or it might take them much longer time. Secondly, for those who have the possibility to talk to NGO lawyers but need interpreter to do so, there might be no interpreter accessible even by phone (including translation of legal documents, decisions, etc.). Thirdly, uninformed detainees are catching information from other detainees where many rumours are being spread and this gives them unreasonable hopes or pointless worries – which has extremely negative impact on their mental health and psychic condition, as NGO representatives and social worker admit. In some cases, a co-detainee might be used as interpreter. If there is any, it's up to his willingness to do so and the quality of translation and also accessibility to, for example, NGO legal counsellors is questionable. In the context of the fact that Police itself seem not to be always providing the detainees with proper information, detainee might have little chance to create an accurate picture of his rights and future possibilities.

Regarding Ruzyne Reception centre, the reason why detainees have been detained is not well understood likely because it was explained in kind of ´legal language´. The other problem here is that applicants for international protection are not informed at all about conditions in accommodation centres, where they might get under certain circumstances. One of them mentioned that he didn't know whether it is possible to leave this kind of centre, or it is just another type of detention centre. Another one thought it was possible to find a job after his stay in actual detention, which was not true. So these detainees are also kept away from certain kind of information, for bad or for good.

Maximum duration of detention is well known to all detainees. However, most of them mention that 180 / 120 days are too much, mainly for mental health connected reasons. Many also mentioned that waiting for such a long time in detention seems to be just punishment for committing no crime. Those who knew they will be deported were mostly disappointed that even this procedure takes such a long time, i.e. it's wasting of their lifetime, mental and physical health, powers and money.

3. Communication problems: As we could see, being from a different linguistic group can have an isolating effect on detainees and this can make them vulnerable. Non-Czech speaking detainees feel discriminated by staff members because they don't receive the same kind of assistance as the others; 25 % do not have medical care in language that they understand so they can hardly share their health troubles.

4. Being cut off from family can make detainees vulnerable: When describing special needs, a large proportion of detainees talk about being cut off from family. It seems there are quite few visits and again, unsatisfactory communications. Approximately each second detainee has some children and most of those who have partners or other family members describe they are missing them a lot. From our observation, we could see that being in touch with friends and/or family plays extremely important role in the life of detainee. We have noticed also one request to

be moved to the other of the two detention centres, because of the family of detainee lived nearby.

5. Living conditions are hard, but the fact of being detained itself causes much more stress: From the mere fact of being detained and being forced to follow certain rules emerge some more or less harsh or inconvenient circumstances detainees have to face. In other words, detainees lost their power to take care about themselves in their preferable way and regime. Sometimes it seems that just a bit of tolerance of other human beings could solve certain kind of trouble, or from the side of member staff or from the side of co-detainees. However, there are some areas of living conditions in the detention system that are currently leading to certain types of vulnerability in general: the ways how to contact the outside world including legal counsellors and lack of preferable communication means, activities provided are not likely to offer suitable recreation of detainees, impossibility to own any electrical devices in detention centres (alarm clocks, radios, mp3 players, etc.), impossibility to choose or to cook preferred kind of meals, etc. Anyway, as there are no special rules set up for vulnerable groups in detention centres except from their separation according to their gender, age and other circumstances, we could see many particular problems that might appear to those with any kind of special needs. We could also see that these problems are not likely to find their positive and relieving solution. For details see the data findings above.

In comparison with other researched countries, we can say that there are certain conditions better than average in Europe, including feeling of safety, duration of detention, as well as peoples´ feelings about the outcome of their detention. However, detention is still a very harsh regime in itself, seen by the way in which detainees describe the deterioration of their physical and mental health, and the way their perception of themselves have changed.

5. CONCLUSIONS AND RECOMMENDATIONS

- The detention itself has negative impact on detainees´ mental and physical health. It emerges from out data that better and proper health care is needed, but even the best health care cannot exclude these deteriorative effects. Thus, detention should be imposed for the short period of time as possible.

- The legal overview shows us two connected issues. Firstly, due to the quite short 7 days period to take a legal action against the decision to detain and complicated accessibility to legal counsellors, in combination with the fact that courts might not in fact decide about these claims in short period of time, leads us to the conclusion that judicial review is rather inadequate and non effective. Secondly, there is no way for courts (of for Police itself) to order some alternative solution to the detention because alternatives simply do not exist. So there is no chance for foreigners to, for example, follow some concrete rules that would satisfy the states need to know where the foreigner is in case that decision on deportation has been released.

  We recommend starting with automatic judicial review of decisions imposing detention. It is also important to state the exact time within which the courts´ decision has to be released. Alternatives to the detention shall exist in the Czech legal system. These and other accurate steps might reduce the deterioration of mental and physical health caused by the detention itself.

- There is a certain lack of information on the reasons for the detention, asylum and deportation procedures and on the rights of detainees while being detained, and this situation exists for a variety of reasons. This also negatively affects mental health of detainees. We recommend providing detainees with accurate and easily understandable information, and giving them the possibility to have access to complete range of information in written form and in language they are reasonably supposed to understand. They shall have also a real possibility to reach legal counsellor and ask questions if needed. This means that counsellors should be provided with interpreters or they should have possibility to contact the interpreter while talking to the detainee.

- Language minorities felt discriminated against because no interpreters were accessible. We suggest creating a certain kind of efficient system how to get in touch with relevant interpreters when detainees, not only staff, need it. We would also like to recommend to Ministry of Interior and to the directors of these centres to employ social workers with language skills or at least to provide them with some language courses. English is a must in this international environment and it might happen that they will be able to find somebody speaking English-minority language rather than Czech-minority language.

- Activities are necessary for keeping good mental and physical health, mainly for stress relief and free time management. We believe, that well accessible and interesting free time activities might reduce the psychic tension of detainees and have a positive impact on their mental health. We could see that activities could be more usefully provided, and maybe directors of detention centres could ask the detainees themselves what kind of activities would be welcomed and try to cooperate.

- Contact with the outside world is also very important for mental health of detainees. We believe that allowing them to see their important phone numbers stored in their personal mobile phones may not endanger the safety or otherwise disturb the operation of the centre. More accessible public phones seems to be the necessity. We recommend allowing Internet access as a communication mean, at least for sending emails, etc. as it could be an easy accessible for-free communication.

- We could see that persons with psychological traumas are still being detained in the International Airport Ruzyne Reception centre. We believe that these people shall not be detained as they are much weaker to face the difficulties of detention itself and their recognition shall be made on professional basis.

- We believe that pregnancy of women shall be respected and they should receive proper nutrition and care, including possibility to take their food into their room, being woken up for breakfast, receiving more hygiene supplies, etc.

- Unaccompanied minors should not be detained. We could see the failure of the system when a 17-year-old boy ended up in isolation for up to three months without a guardian being established for at least one month, and without any interpreter accessible to this boy, whose only accessible activity was to watch Czech TV channels. These minors are supposed to be protected but their legal position might make their situation even more difficult. We suggest that no unaccompanied minor shall face the detention regime, especially not for such a long time and under these circumstances.

- It is questionable whether it is absolutely necessary to detain applicants for international protection in conditions where they have no access to the quiet outside space with fresh air, without fresh air and natural light accessible indoors. In the situation when the Asylum Act allows in its section 73 clause 2 to move some or all of detainees under certain circumstances (security, hygiene, capacity or other similarly fundamental reasons) to another type of closed facility in the territory and such a facility is legally considered to fulfil all needed criteria, the argument of necessity to keep these people in the very transit area of international airport seems to be vanished.

NATIONAL REPORT: GERMANY

By: Jesuit Refugee Service Germany

1. INTRODUCTION

JRS Germany provides pastoral service and legal advice in three detention centres: those in Berlin, Eisenhuettenstadt (Brandenburg), and Munich-Stadelheim (Bavaria). In these centres, our pastoral workers have full access to detainees and may enter the cell areas; however, in Munich access is limited to visiting hours. Access includes the permission to bring in certain goods for the detainees, like phone cards, tobacco or, in Berlin, cell phones without camera. In Berlin, we can also use a small office inside the facility, equipped with telephone and computer, which we share with the protestant pastoral workers.

The interviews for the study were conducted in the centres in Berlin and Munich, which we visit at least once or twice per week, in order to reach as many detainees as possible. As we had to ask for permission before carrying out research, we were glad that all authorities and ministries responsible for the detention centres supported our request.

Detention visitors interviewed 60 detainees in total; most of were interviewed in Berlin. Staff interviews were conducted in both centres. In Berlin, we interviewed the centre's psychologist; in Munich it was a social worker. Both of them are employed by the respective authorities that are running the facilities. The staff interviews in Berlin had to be approved by the head of the Berlin police, and were cross-checked, so it may in part reflect the "official" view more than that of the individual person.

The relatively small number of interviews did not allow for a distinction between the situations of detainees prior to detention. This situation may, however, be remarkably different. Some foreigners are detained after living in Germany for years as holders of a residence permit, which they lost due to a particular circumstance. This group tended to be the smallest in detention, and the duration of their detention the shortest, as they would regularly be given the opportunity to leave the country on their own, and even in case of forced return, they would generally have travel documents, making it easier for the aliens' departments to deport them quickly.

A large number of detainees during the period of this study were so-called "Dublin II cases", i.e. refugees who sought asylum in Germany, but waited in detention for transfer to the member state of the European Union responsible for their asylum case under the regulation (EC) no. 343/2003 (also known as "Dublin II regulation).

As the 16 federal states have different systems of detention (within correctional facility, in special detention centres and in both of it), it was near impossible to obtain an overlook over conditions in all states. JRS Germany tried this earlier by initiating parliamentary requests in several federal states, but data turned out to be not sufficiently comparable. A parliamentary request in the federal parliament ("Bundestag") returned comparative data on many aspects of detention, but even here it turned out that many federal states didn't collect data on relevant points, or did so on a basis that made the results incomparable.

The interviews, then, necessarily reflect only a part of the practice throughout Germany. It may be the better part, however, as most of our interviews were conducted in Berlin, which is one of the relatively small number of federal states who keep detainees exclusively in specialized centres, where rules are less strict and detainees are kept separated from criminals. In Munich, on the other hand, the detention centre is located inside a correctional facility taking in detainees prior to deportation in addition. Detainees are generally accommodated on a separate ward, but

some of them, especially women, still have to live among prisoners. House rules reflect this situation, paying respect to the stricter regime in a correctional facility, so the detention conditions in Munich are very different from those in Berlin. Here, rules are far stricter, and social interaction both with fellow detainees and the outside world is much more restricted. Take visiting times, for example: in Berlin detainees can receive visits every day of the week from 7-19 h, the duration is usually about one hour per day; in Munich only two visits, maximum one hour per visit, are allowed per month. Or regarding mobility: in Berlin the detainees have much more time to move outside of their cells at the floor and in common rooms as in Munich. Or regarding privacy and autonomy: in Berlin there are kitchenettes on each floor, where the detainees can prepare their own food whereas the detainees in Munich depend fully on the food of the prison. These circumstances, in turn, will have had a certain influence on the results of the study, as the statistics form sort of an average between poles that are at times very different.

For example, in the detention centre in Berlin, detainees have the possibility to meet in group rooms during daytime and cook their own meals from food their friends or relatives brought them. Even if there are up- and downturns (sometimes guards would inhibit relatives from bringing food with them for no evident reason), this was an important factor for Vietnamese or African detainees to assess their situation as more positive. On the other hand, detainees in the detention centre in Munich, placed in the correctional facility of Stadelheim, felt far worse about their personal situation.

The results may also be skewed in part as each of these detention centres has its own special situation. For example, there is a large Vietnamese community in Berlin, many of which live in illegality, and subsequently they are over-represented in the detention centre. So, the study might disproportionately high reflect their specific situation and views.

A joint characteristic is that both Berlin and Munich have large airports where many migrants arrive, and where those among them who do not have visas are frequently arrested on arrival. So, many of the immigrants detained here did not spend any time in Germany before (at least not in freedom), and frequently the authorities make attempts to push them off to other European states under the Dublin II Directive. So, usually a high percentage of detainees in both centres are Dublin II cases, which makes the situation there different from detention centres in other federal states without larger airports. However, the situation of detainees under Dublin II is less reflected in the study, as we preferred to carry out interviews with detainees we had time to build trust with over a certain period, which is usually not the case in Dublin II situations.

The results of the study, then, do not claim to be representative for detention practice in Germany in a scientific sense. They do exemplify, however, a number of serious problems that JRS Germany is confronted with in our service.

2. NATIONAL LEGAL OVERVIEW

Administrative detention in Germany is executed at the level of the federal states. However, the rules under which detention may be imposed belong to the law of residence, which is a domain of federal jurisdiction. Thus, legal provisions concerning the rules for imposing and carrying out detention can be found both at the national and regional level. While national law provides the requirements for imposing detention, the execution of detention is regulated only in part in federal law, but frequently amended in the law of the 16 federal states.

2.1. Imposing detention

2.1.1 Legal grounds for detention

Legal grounds for detention are to be found in Sect. 62 of the Residence Law (“Aufenthaltsgesetz”). According to this, there are two types of detention: Detention for preparation of expulsion/deportation (“Vorbereitungshaft”) or Detention for enforcement of deportation (“Sicherungshaft”).

“Sicherungshaft” according to Sect. 62 par. 2 Residence Law can be ordered to secure a person’s deportation. Requirements are:

- Deportation must be feasible (e. g. necessary documents must be at hand or achievable within reasonable time),
- One of six reasons for imprisonment defined in the law must exist (e. g. illegal entry to Germany, reasonable fear that the person will abscond),
- Imprisonment must be in accordance to the principle of proportionality, i.e. pursue a legitimate goal, and be necessary and adequate (especially of interest with persons that belong to vulnerable groups and those who have already been held in detention for a longer period).

As an exception, up to two weeks of detention are possible even without one of the reasons for imprisonment, if all requirements for a deportation within this period are fulfilled.

“Vorbereitungshaft" according to Sect. 62 par. 1 Residence Law can be ordered to secure a person’s expulsion and deportation. Requirements are:

- The decision to expulse or deport the person cannot yet be made;
- Deportation would be made impossible or severely hindered if the person wasn’t detained (e. g. because he/she might abscond).

As this type of detention barely has a practical effect, the following remarks will concentrate on detention for enforcement of deportation.

2.1.2 Legal grounds for the detention order and for a judicial review

Legal grounds for the detention order are to be found in the constitution and in the Domestic Relations and Voluntary Jurisdiction Procedure Act (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit , FamFG).

Art. 2 par. 2 s. 2 of the German constitution (“Grundgesetz”) calls personal freedom inviolable. Restrictions are only permitted on the basis of a formal law. Art. 104 par. 2 GG adds that the decision to deprive someone of his freedom may only be taken by a judge.

Consequently, detention may only be ordered by a judge. Responsible are the Local Courts. The aliens’ department – or in some instances the Federal Police – may apply for it, and regularly does so. There is only one case in which the aliens’ department itself is entitled to take someone in custody: when a judicial decision cannot be made beforehand and there is reason to believe that the foreigner will obviate deportation.

The FamFG then contains detailed requirements for the procedure to order detention. The person concerned must be heard before the decision. Other persons that may be heard (and regularly should in the interest of the person concerned, if they exist and are available) are his spouse, parents, children and a person of trust.

Only in cases where the alien has absconded or for other reasons the details of the case can’t be resolved immediately, the court may make a preliminary decision without a hearing.

The aliens' department has to show credibly that the requirements of Sect. 62 Residence Law are fulfilled. It is also supposed to provide its file about the person concerned in order to give the judge a possibility to gather as good information as possible.

The alien has the right to be represented by a lawyer. However, often he will have to pay for the lawyer himself. While there is a possibility to receive financial support from the state ("Verfahrenskostenhilfe"), this is linked to a prospect of success, which is frequently denied by the courts.

As every detention order has to state the date up to which the person may be kept in detention at maximum, and detention may only be extended beyond this date on a new judge's decision, there is an automatic judicial review of the decision to detain.

The legal provisions for a detention order, then, are quite detailed and made to secure the rights of the person to be detained. It should be noted, however, that there is a lot of criticism by lawyers, NGOs and churches concerning the practice of detention orders. The quality of decisions by the local courts frequently falls behind the intention of the law, and standards for detention procedures which the constitutional court has set up in a series of decisions are not met in all cases.

2.1.3 Right of appeal against the detention order, and to challenge detention

The detainee has the right to appeal against the detention order. The appeal will be decided by the regional Court of Appeal, which has to hear the detainee (and other persons involved) again unless it is firmly convinced that this will lead to no new findings. If the Court of Appeal holds that detention shall be continued, the detainee has a further right of appeal to the Federal High Court, which will only judge the legal aspects of the case without hearing the detainee. So far, there are no or little experiences with this type of appeal, because a change in law just shifted the responsibility for it from the Higher Regional Courts to the Federal High Court in September 2009. There are assumptions from critics, however, that there might be a smaller number of favourable decisions in the sense of detainees in the future than there were in the past, since the access to the Federal High Court is more difficult (e. g., you need to be represented by a special lawyer accredited at the court).

Constitutional complaints have proven to be a last resort for many detainees. Over recent years, there has been a remarkable series of decisions from the Federal Constitutional Court pointing out the constitutional requirements for ordering detention.

The detainee also has the right to challenge detention at any time. The local court will decide upon the respective application; if the decision is negative, there is a right of appeal against this similar to the appeal against detention orders.

The right of appeal even continues when the detainee has been released (or deported). In these cases, he has the right to apply for the court to hold that the decision to detain him (and the subsequent execution of detention) has been illegal. If this application is successful, it may be the grounds to seek compensation from the state.

2.1.4 The right of information about the detention order and/or the reasons for detention

The detention order has to give the reasons why detention has been ordered. As the person concerned has a right to an interpreter in the court hearing if he doesn't understand German, the reasons will generally be translated for him. In practice, however, this often proves insufficient, as the reasons in detention orders are frequently short and formulaic. In addition to this, there is neither an obligation to take detailed notes of what is not said during the hearing, nor is the detainee entitled to get a written translation of the detention order and the protocol. Thus, many detainees complain that they received little or no information about why they were detained.

2.1.5 Minimum age

There is no provision in federal law providing a minimum age for detention. Still, a certain age limit can be derived from a conflict between residence and youth welfare law. According to youth welfare law, the youth welfare offices are responsible for any minor under 18 years who cannot be taken care of by his parents or other persons in charge. On the other hand, the Residence Law contains a clause stating that a foreigner who is 16 years or older must lead his own case without help of a legal guardian before authorities and courts. Notwithstanding that this clause is seen as a breach of the Convention on the Rights of the Child, arguably, 16 years should be the absolute minimum age for detention. Consequently, some of the federal states have introduced clauses in their own law that make detention of minors below 16 years illegal.

Still, in an answer to a parliamentary request (BT-Drs. 16/11384), the federal government revealed that between 2005 and 2007, at least 377 unaccompanied minors had been detained all over Germany, almost half of them (155) in Berlin. The youngest children detained in Berlin were only 12 and 14 years old (although they spent only one day each in detention).

Some of the federal states have regulations concerning a minimum age of 16. The regulations about minimum age do not, however, mean that these states would abstain from detaining children under 16. For example, the state Brandenburg keeps children younger than 16 in a youth welfare facility in Fürstenwalde. As another example, Schleswig-Holstein abstains from detaining unaccompanied minors under 16, but finds it appropriate to keep children from the age of 10 in detention as long as they are together with their mothers.

The topic gets more complicated as frequently, arriving refugees who claim to be less than 18 or less than 16 are not accepted as such. By estimation of staff members of either the youth welfare offices or the aliens' departments, sometimes accompanied by medical estimate, X-ray of the hand bones, denture examination and visual inspection of the genitals, their age is set to a fictitious date, frequently one that makes them over 18 or at least over 16, the latter allowing for detention in all federal states.

2.1.6 Maximum duration

The maximum duration for detention in Germany is 18 months. There are limits, however, that have to be taken into account before that maximum.

Detention is illegal if it is clear that for reasons for which the detainee is not accountable, the deportation will not be possible within the next three months (Sect. 62 par. 2 s. 4 Residence Law). The Federal High Court (Bundesgerichtshof) has held in a decision in the 1990's that this 3-month-limit must be taken into account in any court decision ordering or extending detention, and not only forward-, but also backward-looking. I. e., if initially the aliens' department claimed it would finish the necessary preparations for deportation of the person concerned within three months, and now two and a half months are over, but the aliens' department announces that they will need at least another month, the detainee would have to be released unless the delay is his or her own fault.

The next limit to be considered is at six months in detention. Detention may be extended beyond that date only in cases where the detainee works against his deportation (Sect. 62 par. 3 s. 2 Residence Law).

2.2 Executing detention

In Germany, detention is executed by the federal states. National law provides a basic regulation for those federal states that keep migrants in detention in normal prisons. Those federal states that run specialised detention centres either as an exclusive means to execute detention or in addition to detaining foreigners in correctional facilities then additionally need own regulations. However, some federal states that execute detention in normal prisons also have

additional regulations. As a result, there is a fairly confusing situation when it comes to the legal grounds for executing detention.

2.2.1 Federal law

2.2.1.1 Health care

The legal grounds for healthcare for detainees are set out in the Asylum Seeker Benefit Act ("Asylbewerberleistungsgesetz"). This law states in Sect. 4 that "in case of acute diseases or pain, necessary medical or dental treatment is to be provided including medication, bandages and other benefits necessary for convalescence, recovery, or to ease diseases or their consequences." Further, according to Sect. 6, "other benefits may particularly be granted if they are essential in particular cases to secure subsistence or health". In other words: unless a disease urgently demands care, it can be difficult to obtain the necessary treatment. For people with psychological problems or chronic diseases, it can be very difficult to actually get treatment. It is a familiar situation, too, that refugees who suffer from serious diseases are only given painkillers – sometimes due to language barriers that inhibit them from describing their problems in detail.

The Penal Law Act ("Strafvollzugsgesetz") contains further clauses dealing with the right to medical care for inmates who do not have a health insurance. However, this will generally step back behind the Asylum Seeker Benefit Act.

2.2.1.2 Execution of detention in correctional facilities

Federal law takes into account that detainment is carried out in correctional facilities. In these cases, several clauses of the Penal Law Act are applicable. In combination with the house rules of the correctional facility, this generally leads to similarly restrictive rules for detention like for inmates who serve a sentence. This especially applies to contact to the outside world, which is regulated strictly for criminal offenders. Here, only minimum standards are granted: at least one hour of visiting time per month (Sect. 24 Penal Law Act); correspondence with friends and relatives is generally granted, but can be inhibited by the correctional facility by discretion, and it is also in the discretionary power of the facility staff whether phone calls are admitted.

On the other hand, the particular situation of detainees – considering inter-cultural differences, the particular problem that the ending point of detention is usually unknown to the detainee, or the specific problems of especially vulnerable groups – is not mirrored in the Penal Law Act at all.

2.2.2 State law

Since under the German constitution, a person can only be deprived of personal freedom according to a law, the federal states had to make additional laws wherever they detain foreigners outside correctional facilities, be it exclusively or in addition to also accommodating detainees in prisons.

Some of these laws consist of only one article referring to the federal Penal Law Act. Others contain general rules on police custody and are applied on detention, too. Only a relatively small number of federal states have made special laws and administrative regulations as legal grounds for the execution of detention.

2.2.2.1 Contact with the outside world

State law, like federal law, often provides regulations for visits, letters, presents etc. from the outside world. However, as these regulations concern security matters, and is too detailed to be cited here in full.

Contact with pastoral workers is granted both under federal and state law.

Some of the state laws explicitly mention visits by refugee NGOs (e. g., sect. 7 Berlin Deportation Custody Law; sect. 2.8.1 Berlin Deportation Custody Order), consulate/embassy staff (sect. 2.8.1 Berlin Deportation Custody Order) , members of the Committee for the Prevention of Torture (sect. 25 par. 2 Hessen Police Custody Order) or correspondence with members of parliament, the European Court for Human Rights and the Committee for the Prevention of Torture (sect. 7 par. 4 Brandenburg Law on the Execution of Detention outside Correctional Facilities) in addition to rules for visits by family members, friends or lawyers. Generally speaking, state laws tend to be more liberal about visits and correspondence, with even less restrictions for contact with lawyers, MPs, or NGOs.

2.2.2.2 Protection of persons with special needs

Some of the federal states have made special regulations for the protection of persons with special needs. However, most have not. The protection of special needs of persons belonging to vulnerable groups then is mostly a matter of case law, as even where there are no specific regulations, still, any detention order or detention condition has to comply with a basic rule, the principle of proportionality, and violations of this principle can be challenged in court. Unfortunately, this approach leaves the protection of vulnerable detainees mostly on their own hands, as many of them lack supporters or lawyers who could help them file claims etc.

Good practice examples include Berlin, Brandenburg, Hessen, Nordrhein-Westfalen and Schleswig-Holstein, where we find detailed laws and administrative regulations providing e. g. for the special needs of minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of torture or violence, traumatized persons, families, persons with suicidal tendencies, and long-term detainees who are detained six months or longer (although not every of the abovementioned states provides regulations for all of the aforementioned groups).

2.2.2.3 Social Services

Those federal states that have more detailed regulations, taking into account the protection of persons with special needs, generally also provide social services to detainees. There are differences concerning the details, however. While some states prefer to establish a system where social workers and psychologists are employed by the state (e. g., Berlin), others delegate these tasks to non-governmental agencies or volunteers (e. g. Schleswig-Holstein).

2.3 Alternatives to detention

Alternatives to detention are not regulated in the law. However, in application of the principle of proportionality, detention is not always ordered. The longer the person concerned already lives in Germany, and the more social relations he or she has, in other words, the less likely it is that he or she might abscond, the more often the aliens' departments will resort to other means. Sometimes residence documents are limited to very short periods, e. g. one week or a few days, and persons are requested to call in at the aliens' department or the local police station in order to ensure close contact to the authorities. For minors, accommodation in a youth centre or borstal can be an alternative.

3. NATIONAL OVERVIEW OF THE DATA FINDINGS

3.1 Basic Information

The average detainee in Germany is 30 years old, male, of Vietnamese origin, single, and has been in detention for 2.54 months before being interviewed. In other words, 81 % of detainees are men; 71.4 % are singles while only 21.4 % are married and 7.1 % divorced. 38.1 % of all detainees interviewed were from Vietnam, another 16.8 % from other Asian countries. 19.1 % came from Africa, 11.9 % from South-East Europe, and 7.2 % from the Middle East. It should

be noted, however, that most of the interviews from Germany were carried out in the detention centre in Berlin-Köpenick. As Berlin has a large Vietnamese community, many of which live in illegality, they tend to be over-represented in detention, too.

3.2 Case awareness

The vast majority of all detainees interviewed were illegally staying migrants awaiting their deportation. Only about one out of ten had applied for international protection. Of these, in one out of four cases their asylum applications had already been rejected.

While most interviewees said they had been informed why they had been detained, still the average level of how well detainees claimed to be informed about their asylum cases was remarkably low with 3.48 points on a scale from 1 to 10. However, it is not clear if this is linked to the structure of the questionnaire, as the question aimed at information about the person's asylum case, while only a minority of interviewees said they had applied for protection at all. Still, it was the impression of our pastoral workers that the main reason why detainees felt they weren't informed well was the difficulties of German law and the legal procedure, which refugees cannot understand.

If detainees had been informed, they were most likely to have been told by people not in charge like NGO members, lawyers or pastoral workers. Others had been informed by police, courts, the aliens' department or other administrative authorities. The information most frequently took place during official procedures or during arrest for detention.

This last answer indicates that at least a part of the interviewees had understood the question to aim at information about detention, as information on asylum procedures is usually not being given on the occasion of arrest, but during a hearing at the asylum authority. It should be added here that, according to JRS Germany staff experience, the standards for information about detention are frequently quite low. For example, while during court hearings the help of an interpreter is mandatory, no translation is usually provided during the arrest procedure. However, eventually one of the policemen arresting an illegal immigrant may speak English. Even during court hearings, it is common that important documents such as the detention application by the aliens' department or the court's detention order are only translated orally, and often even this translation is reduced to a short version of the actual document, sometimes leaving out important details.

Standards also seem to be varying between detention centres. While a staff member of Berlin detention centre pointed out that every detainee was given information about the reason for his/her detention within 24 hours after reception (however, without substantiating to what extent and in what language information was provided), the staff member of Munich detention centre said that normally the judge would inform detainees, but not always.

When asked if they needed more information, consequently, more than 60 % of the interviewees answered "yes". Specific information asked for concerned asylum or immigration procedures in the first place. About one fifth of detainees wanted to know more about reasons for detention or asked about the duration of detention. Individual questions completed the picture.

3.3 Space within the detention centre

Most detainees felt positive about their sleeping room or at least neutral. However, one third complained and said they were feeling negative. JRS detention visitors describe the rooms to be 10 to 15 square meters in size, providing room for four to six inmates, with only some rooms smaller, i.e. for one or two persons. Washing facilities are usually inside the sleeping room, the toilet being separated from the bedroom only by a curtain in Munich detention centre. Berlin detention centre additionally provides a separate room for families with children. In principle, there's also the possibility to have a room of your own; however, due to restricted capacity, only about one out of 25 detainees can

actually benefit from this. Wardens decide on an individual basis that will get the room; criteria are long stay, trouble the person might cause, or personal problems, such as disease, depression, and suicidal tendencies. Munich detention centre staff admitted that they do not always have enough space for detainees, the ward providing rooms for 34 persons, which then leads to detainees' accommodation in cells together with criminals.

Cohabitation issues and facilities were mentioned as main criticism. "Being in detention changed my mind", one of the interviewees said: "How wonderful it is to be outside." Another one added, "If I had known the detention centre, I would never have come to Germany."

As for the detention centres in general, a slightly lower percentage of inmates felt positive or neutral about the centre space, while about 40 % had criticisms. Here, facilities were mentioned as biggest problem. While most detainees said the centre was not overcrowded, a majority of almost two thirds of interviewees complained that there was no space to be alone. Some evidently suffered from this situation. "I feel like a dog, or worth less than a dog", one of the detainees told us. "Dogs go out every one, two or three hours. I only have the possibility to go out for one hour. But under control of police." Another detainee stressed the impact the living situation had on himself: "I am more introverted, I do not go out very often."

JRS visitors' observations confirm the view of the detainees. They are usually allowed to go outside only for limited time – one hour per day in Munich, one and a half in Berlin –, "outside" meaning the yard of the detention centre, observed by police. Inside, conditions are different. While detainees are allowed to change between cells and meet in group rooms for most of daytime in Berlin, in Munich, they are only allowed to go to the corridor for four hours per day, and are being locked in for the rest of the day. Our visitors also remarked that there is hardly any privacy inside detention, given the restricted space and four to six people in a bedroom. Frequently, the only space the detainees can use exclusively is a small locker to store personal belongings in.

3.4 Rules and routine

Rules for the detention centre are the strictest in Munich, where they apply to detainees and prisoners likewise. Even the detention centre in Berlin, where detainees are not mixed with criminals, is organized similar to prisons, and thus has very strict house rules. Consequently, asked about what kind of rules they had to follow in the detention centre, detainees were most likely to mention general rules on routine. These were also mentioned as the most important rules. Some detainees stated, however, that rules on behaviour or simply "all rules" were very important.

According to detention centre staff, rules are explained to detainees during the reception procedure in Berlin, while in Munich, they are handed out in a printout version in several languages.

Rules were widely seen to be respected by everyone; however, detainees did not see a chance for themselves to change the rules. More than 90 % denied this, and JRS detention visitors confirmed that there is practically no way detainees can achieve a change in rules. This was even admitted by the staff of Munich detention centre, while the staff member from Berlin answered that detainees could make suggestions, and even write letters to the centre administration, thus leaving open what chance a suggestion would have.

As one of the consequences of the routines, our pastoral worker in Berlin pointed out that time in detention is largely boring and detainees feel useless – "they cannot work or even cook for a large part of the day, and they do not know what will happen."

3.5 Detention centre staff

Detainees said they were mostly in contact with security staff and social services. Interaction with staff members was often described as varying. Only about a quarter of interviewees said it was positive, while roughly one fifth described

it as neutral, and slightly fewer detainees reported a negative interaction. From the view of staff, however, interaction was described as “fair”.

Some of the detainees we interviewed had evidently expected things in detention to be even worse. One of them told us, “I have a different feeling about the police now, because before I am very afraid.” Others stressed the negative experiences: “I feel dehumanised becoming a prisoner.”

A majority of almost three quarters of interviewees did not report discrimination; however, this indicates that more than a quarter made the experience of being discriminated against. If discrimination was reported, this was in most cases because of language or ethnicity. A little more than half of detainees felt that staff supported their general needs – but almost as many denied this.

Staff members denied in their interviews that there was active discrimination of staff against detainees. The staff member we interviewed in Berlin pointed out that staff tried to respect religious and ethnical differences and added, “Every attendant has his own way to deal with the detainees.”

According to JRS detention visitors, the interaction between staff and detainees was generally adequate; however, in some cases, verbal attacks and racist patterns were described. Language barriers were observed to be a main obstacle for interaction between staff members, who generally speak only German and, sometimes, also English, on the one hand and detainees on the other. “If a detainee speaks the same language, it’s easy”, our Munich visitor explained, “Otherwise, if the police asks something and the detainee doesn’t understand, they can be quite rude.” Some female staff members in Berlin were reported to behave less friendly (possibly a means to protect themselves). This was commented in the staff interview, “The women have another way to deal with the detainees.” The Munich staff member reported that female staff members were not totally respected by detainees from Arabic or African countries.

3.6 Level of safety within the detention centre

Detainees generally felt rather safe inside the detention centres. When asked to rate the level of safety they felt on a scale from 1 to 10, the average value was 6.76. As main reasons for this, detainees mentioned living conditions, other detainees, and the security guards. JRS detention visitors agreed that the level of safety was high; however, our Munich worker reported an individual case where a detainee had been put in the same cell with prisoners due to lack of space, and had been beaten up several times.

As measures to ensure a high level of security, staff members mentioned presence of police, and in Munich additionally alarm buttons in every cell and video observations. Staff members would monitor the interaction between detainees and intervene in case of altercations.

More than half of the interviewees said they had not been mocked. Of those who have been mocked, almost three quarters said that they have been mocked by the security staff; the rest reported to have been mocked by other detainees. Asked for the reasons for mocking, unfriendliness of staff, cultural reasons, and infrastructure reasons were the most frequent answers.

About 14 % reported to have been physically assaulted, in two out of three cases by other detainees.

Staff members both in Berlin and Munich confirmed that there had been altercations between staff and detainees. The reasons were sought on the side of the detainees – “because they want to call more often or do not want to stay in the centre; because they want to do something”. Berlin staff pointed out that, in case of arguments, the social service would be informed and would then intervene with methods of mediation and communication. In Berlin, there is

also a special training for attendants in police custody, while wardens in Munich receive no special training for work with migrants.

Only a small number of interviewees who had been mocked or assaulted filed a complaint. Those who did so said it had not been successful.

3.7 Activities within the detention centre

Almost all detainees say their detention centre provides for activities. Sports activities and religious activities are the most frequent ones. The vast majority of detainees take part in those activities, either for personal satisfaction, stress relief or physical exercise.

Access to books, telephones, television, sports, religious space and outdoor space is granted in Berlin. In Munich, telephones are accessible only if the detainee announces it to the social worker, and then between one and three calls per month are granted; however, eventually in-going calls may be received more often, but on another floor. At the same time, in Berlin it is possible for our pastoral workers to distribute telephone cards among detainees, and they are allowed to keep their private cell phones if these don't have a camera. In Munich, TV sets can be borrowed from the detention centre at a fee of 18 Euros per month. This is paid dear, compared with the roughly 28 Euro a detainee gets as pocket money in addition to free accommodation, food and things like clothing or soap.

Some of the detainees stated that access to books was denied, alongside with access to computers, Internet, and educational opportunities. As for books, this might be due to the fact that at least in Munich, there are no books in other languages than German, except a few in English. When asked where they'd like to see the variety of activities improved, almost half of the interviewees mentioned better living conditions, one out of five said he'd like IT and Internet equipment, and roughly 10 % would simply prefer freedom.

3.8 Medical issues

In both visited detention centres, medical staff is available. Detainees see them frequently, most of the interviewees said they see someone from the medical staff at least once per week. They are most likely to report access to a doctor. Roughly half of the detainees say that additionally they have access to nurses. Access to psychological staff was mentioned to a lesser extent. Still, only 62.5 % of all interviewees have had a medical examination upon arrival to the centre. The majority of detainees do not understand the language of medical instruction.

Quality of medical examinations sometimes leaves a lot to be desired from the point of view of detainees. There is a considerable language barrier between medical staff, who generally speak German and sometimes English, and detainees. Occasionally fellow detainees try to translate, and sometimes the authorities engage interpreters, but this is not generally the case. Under these conditions, misunderstandings with severe consequences may occur. In a case that was reported by our pastoral workers, a Vietnamese woman claimed to be pregnant on arrival, and denied to do the standard X-ray for tuberculosis. However, a quick test did not confirm the pregnancy, and she was suspected of faking. As a consequence, she was isolated in solitary confinement for about two weeks before a clinical test finally confirmed the pregnancy. In other cases, detainees got necessary treatment only with a delay or were given wrong medication that could have been dangerous for their health. In some cases, as a consequence, detainees simply would not go to see the doctor.

Only little more than a quarter of detainees feel positive about medical care. They have access to the appropriate services. On the other hand, almost as many feel bad about the quality of medical services. They say they do not receive the appropriate treatment. However, most detainees report that no medical services are lacking. Of those who are lacking medical services, one half says they are lacking access to appropriate medical care. Others say they would like to have better treatment from the existing staff.

Medical care outside the detention centre could sometimes be a solution, but is hard to obtain for detainees. Our pastoral worker in the centre in Berlin described several occasions where detainees were treated in normal hospitals, but these inflicted very serious health problems, like suicide attempts, severe skin diseases or kidney problems. In all other cases, detainees must rely on the medical standards available in the centre, which are not always the best. While detention centres generally have a physician, he or she is usually not a specialist for everything. Still, especially the doctor in the detention centre in Berlin was described to try and treat all kind of diseases and sometimes even mental health problems, which is in part beyond his skills. While there is a psychologist available, whose qualifications were described as good, the final decisions are up to the doctor, who is not a psychiatrist.

Staff members from both detention centres, however, assessed this point differently. It was admitted that examinations on arrival only cover certain severe infections like HIV or tuberculosis and are otherwise voluntary in Berlin, and non-existent in Munich. But while Munich staff admitted that medical services were not provided in a language detainees can understand, so other detainees had to translate, Berlin staff said language barriers were not a problem. Staff from both detention centres said that detainees had access to all kinds of necessary doctors, either inside the centre or outside.

3.8.1 Physical health

Almost three out of four detainees said their physical health had been affected by the situation in detention. They described, among others, symptoms like headache, fatigue, skin diseases or stomach pain. Physical health has on average dropped from 8.67 to 5.67 on a scale from 1 to 10 points over the time in detention. Interviewees were most likely to point to psychological issues as a reason for this. The condition of the detention facilities in general was also frequently mentioned. Roughly 14 % said they were lacking medical treatment and/or facilities. “The staying here wastes my time, energies, and health”, one of the detainees we met said. Another one simply stated, “Detention creates pain.”

Berlin staff confirmed the physical health problems detainees had mentioned and said that, as a response, they could see a doctor from the medical service. Munich staff also confirmed but said the centre itself didn’t really have the means to respond.

3.8.2 Mental health

An overwhelming 90 % of all interviewees say that detention has an impact on their mental health. Problems described included sadness, feelings of anger, the inability to sleep, feelings of tension and stress, suicidal thoughts and confusion. Mental health has dropped on average from 8.67 to 4.93 on a scale from 1 to 10 points during the time in detention, that is, even sharper than physical health (see 3.8.1). As the reasons for this, detainees indicate detention impacts. Exactly one third mention unspecific detention impact. Evidently, the mere fact to be detained had a strong negative effect on the self-perception of detainees. “I am a good person, a person who has a future”, one of the interviewees said. “But inside here I see myself as nobody.” This perception was confirmed by our pastoral workers. “They don’t know what will happen – deportation or freedom”, one of our detention visitors said. “They do not know who makes the decision and when the decision will come. This means stress.”

Another third see their life plan affected. “My dreams of life are in danger”, one interviewee told us. About one out of five detainees mentioned a loss of rights. “I feel like a small child who lost his family and does not know who will take care of him”, another interviewee described his feelings. The impact of living conditions was another issue. Living conditions in general were criticized broadly; other issues were complaints about treatment from staff, and cohabitation issues.

The impact of worries was also severe. More than 85 % of interviewees said they worried about themselves. Unspecific worries and stress were also mentioned as negative factors. “I feel like a bird who is arrested and can’t fly

away", one of the interviewees said. Detention visitors also described a negative impact of uncertainty. "They do not know what is going to happen, if they will be released or have to go back and what the situation in their country will be. They feel they are being treated like criminals without having committed a crime. They always ask: Why? Why? Why?"

Moreover, medical problems were mentioned as a reason for the decline in mental health by almost six out of ten detainees, and impact of external experiences was also quoted as a stress factor, as detainees expected difficulties in the future.

While a large number of detainees reported deterioration of either physical or mental health, bad health conditions could only in some cases be improved due to medical care. According to our detention visitors, better information about the situation and possible duration of detention could already help avoid a number of serious problems, and ease the situation for detainees. Closer contact to family members, either outside the detention centre or abroad in the country of origin, might also help, but is restricted especially in Munich detention centre.

Staff from both detention centres confirmed the mental health problems detainees had mentioned. Munich, again, said that their centre didn't respond to the needs with psychological problems in any special way. Berlin claimed that detainees could talk to the social service or a doctor, and that the doctor could send them to a specialist doctor in special cases.

3.9 Social interaction within the detention centre

In contrast to the influences of detention on their physical and mental health, almost three quarters of all interviewees marked the interaction between detainees as good. This was also the overall view of staff both in Munich and Berlin. However, roughly 10 % of interviewees referred to a bad atmosphere in the detention centre. While a majority of just above 50 % did not report any problems between detainees, others said they experienced problems. The main reasons given for this was inter-cultural tensions and tensions due to common life in detention.

Staff members pointed out that there were some groups among detainees who tried to dominate others and influence staff. Conflicts between detainees were linked to different cultures and individual ways to interact with others rather than to the overall situation in detention. The Berlin interviewee pointed out that with respect to minors, staff members acted in a friendly and caring way, and that interaction between detainees was encouraged by giving detainees from different floors the opportunity to visit each other once a week.

Most detainees reported they do not have a person to trust in the centre.

3.10 Contact with the outside world

Most detainees have a family in their home country. Two thirds say their family needs their support. The majority also has got friends and family in the host country. The most important way to keep in touch with the outside world is by telephone. In Munich, however, this is only possible to a restricted extent (see 3.7). Here, detainees tend to write more letters, and JRS provides stamps as a support. Personal visits are important for detainees in both centres and take place quite frequently. Telephone is also seen as the most effective means of communication by detainees themselves. Remarkably, other means of communication (e. g., internet) were hardly ever mentioned.

About one out of four detainees said he could receive family visits. More than half receive visits by friends. Frequently, detainees would also receive visits by lawyers and religious visits (which may reflect the work of JRS pastoral workers, but other denominations provide similar services at least in Berlin, too).

Our pastoral workers confirmed these contact possibilities largely. Remarkably, the possibility to receive visits from UNHCR was denied for Munich detention centre, even as visits from Amnesty International are possible there.

3.11 Conditions of detention and nutrition

Detainees generally don't like the food they receive. Almost 80 % uttered complaints. They complain about poor quality, would prefer food from their own culture and say there's little variety in the food actually served. Many also complain about the quantity. Our pastoral worker in Munich, who didn't have the possibility to see and taste detainees' meals, reported they referred to it as "horrible" and said they could not eat it anymore. Our pastoral worker in Berlin described the food there as "good for Germans, but bad for Asians", referring to the fact that it didn't cover the needs of the typical Asian diet based on rice and vegetables, which many of the Vietnamese detainees would have preferred.

Staff members had a different view on this issue. While Munich staff admitted that individual needs were only taken into account in case of Muslims or people with health problems, Berlin staff said that nutrition adapted to the needs of vegetarians, Muslims, people on diets and ill persons. Berlin staff denied that there was a kitchen for detainees to prepare their own meals and said there was only a hotplate to warm up food with. This does not coincide with reports from our interviewers, but possibly the reported kitchenette is not declared as such officially for security reasons.

In addition, many of the interviewees reported a change of appetite in detention. Most of these said they lost appetite. Almost everyone who complained about a change of appetite said this made them feel worse. Our Munich pastoral worker observed a loss of weight in numerous detainees due to the quality and possibly quantity of food.

While food seemed to be an issue especially for the Vietnamese in Berlin detention centre, who sometimes got angry because of the type of nutrition served, detainees from various nations said they'd rather cook for themselves, both for reasons of better food and to have a social occupation and reduce stress factors.

3.12 Conditions of detention and the individual

In addition to the health problems already mentioned above, almost three quarters of all detainees interviewed said they did not sleep well. This mainly results from stress and, to a lesser extent, from external reasons. Detainees mention feelings of restlessness as well as noise from co-inmates and guards.

Detainees were also asked what the top three most difficult things were during their time in detention. Impacts of detention itself were mentioned most often as the most severe issue, which split up in issues like feeling isolated from the outside world, complaints about a loss of rights or the feeling that the person's life plan had been affected.

Living conditions were also mentioned by a large number of interviewees to be the top difficulty, with living conditions in general – like accommodation, food, sanitation etc. – as main concern and cohabitation issues and treatment by staff way behind.

Other issues mentioned as top difficulty were the impact of worries or health problems.

In the second and third position, percentages varied, but again, impacts of detention were mentioned as biggest problem, followed by impact of living conditions, worries and medical problems. More than half of the interviewees said there had not been a change in these difficulties during their time in detention.

In contrast, staff in Berlin perceived cohabitation issues, money problems and (lack of) activities as the most difficult things for detainees, while Munich staff also agreed that uncertainty, the situation to be incarcerated without crime and boredom were the major problems.

In the perception of our detention visitors, the uncertainty as well about the duration and outcome of detention as about the procedures for detention and asylum were among the top difficulties detainees face, followed by the feeling to be treated like a criminal and a general feeling of helplessness. If these difficult conditions changed at all over the time of detention, the problems would rather increase. Pastoral workers were confronted with respective statements from detainees virtually in every encounter.

Most interviewees said that at some point, life in detention had become difficult for them and had even felt unbearable. Of these, almost three out of four said their life became difficult already after less than one month. Only a small minority said that they felt every day in detention was equally difficult for them. This coincides with observations from our pastoral workers that indicate a serious increase of stress already after one month in detention: “During the first four weeks they fight”, our Berlin detention visitor explained. “Then, we can see the first signs of stress and depression. After two months, things are getting even worse.” The average time detainees had spent in detention by the time of the interviews was 2.5 months.

More than half of detainees interviewed didn’t know the outcome of their detention. Among those who didn't know the outcome, about one quarter felt pessimistic about their prospects, in contrast to one fifth who expressed optimistic feelings, and a small group who felt neutral. A large faction, however, seemed to have no opinion whether the outcome would rather be positive or negative.

Only about 14 % of interviewees knew their departure date from detention centre, whereas the vast majority didn’t have an idea when they would be released. This coincides with the fact that, generally speaking, the German authorities give very short notice about the deportation date – it should be indicated one week before, but frequently, it is on the morning of the day on which deportation is to take place. A similar situation occurs if – for whatever reason – the detainee is to be released.

Not knowing about these things obviously leads to stress for detainees. More than 40 % complained about unspecific detention impacts as a consequence of the insecurity, one third said they felt their life plan was affected. Detainees are to a large extent worried both about themselves and others – almost three quarters of interviewees reported this. More than 40 % additionally reported mental health problems because of the uncertainty.

The burden that detention means to the individual was acknowledged by staff members too. Both in Munich and Berlin, they said that they see detainees as people in a very difficult situation that need help and support. Still, staff in Berlin had the perception that detainees were well aware of the outcome of detention, and that necessary information was given on reception and, in special cases, during detention either by staff or social service.

Our pastoral workers – together with visitors from other churches and NGOs – tried to relieve the burden of uncertainty by giving all available information during visits and by facilitating contacts to friends and families on the outside. Still, the negative effects were evident. “It’s one hundred per cent stress for them”, our Berlin detention visitor commented.

Notwithstanding complaints about their personal situation, almost 90 % of interviewees said they had a positive self perception, with a small minority feeling neutral on this issue. Interviewees described themselves as “a funny and communicative person”, “a strong man with good character”, or as a “quiet and friendly person”. Often, they would point out positive characteristics and a caring attitude. “I am a man who loves working for family”, one detainee told us; another added, “I am capable to give for creating a better society”. “I am honest and smart as a human being. I always try to understand character”, one interviewee described himself, while a woman derived comfort in simply describing herself: “I am not too tall, I am not too fat, and my hair is dark. I am simple. I am beautiful.”

It should be noted, however, that almost three quarters of interviewees reported a negative influence of detention on the way they see themselves. “I feel crazy”, one detainee put it, and another explained: “I feel like a murderer who is

in prison and after some time is told to be killed because of his bad activity." – About 10 %, in contrast, reported a positive influence.

More than half of detainees said they did not consider themselves to have special needs that other people don't have. This seemed to be their view on fellow inmates, too, as the question, whom they saw as the most vulnerable people inside the detention centre, was answered by four out of five interviewees by emphasizing that everyone in detention has special needs.

JRS detention visitors, however, were able to identify several especially vulnerable groups among detainees, including unaccompanied minors, families, older persons and traumatized or otherwise diseased or disabled persons. Among these, youths, families and people with mental health problems were seen as the ones with the most dramatic need for help. Sometimes it would be evident that a person had special needs, sometimes fellow inmates or even detention centre staff would ask our pastoral workers to look after somebody.

On the other hand, detention visitors perceived a general sense of vulnerability in all detainees, linked to the fact that they were detained in an uncertain situation and under conditions comparable to those for criminals without feeling that they had actually committed any crime.

Detention centre staff in Berlin responded that they saw people as vulnerable who did not have the ability to handle the difficult situation in the centre. However, vulnerability here was seen rather as a deficit of the individual, marked by a negative perception of police due to bad experiences in the country of origin or a lack in mental strength. But it was acknowledged that every imprisonment is an injury of self-determination. Munich staff remarked that, apart from feeling helpless and unjustly treated, detainees probably had a negative impression of Germany.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

4.1 Individual Situation

Although the average time in detention by the time of the interview is less than three months, we already see negative effects of detention.

Medical care is provided, but still detainees report a deterioration of their physical health. The reason for this is not so much a lack of access to medical treatment, but the fact of being behind bars and the psychological and physical consequences. Inmates of Berlin detention centre also reported that they had been given medicaments without an explanation what they were given and for what purpose. Consequently, some of them would refuse to take the medicaments.

Mental health also deteriorates, and at a rate faster than physical health. The detainees interviewed described as reason the psychological pressure they are under. Detention itself and the living conditions in detention have an impact on mental health, especially the uncertainty detainees are facing.

The majority of detainees also do not sleep well. Reasons for this are stress and psychological pressure in detention, but also external reasons, e. g. fear of return to their home country.

All in all, uncertainty about the outcome is characteristic for the situation in detention. Uncertainty causes worries and mental health problems.

The detainees' own perception of the development of their health is confirmed by observations of our pastoral workers. In part, it is even confirmed by staff members from both detention centres, even if these tend to some extent to play down the negative effects of detention and see individual deficits as the source of problems. Yet, the frequency and the extent to which detainees describe negative effects of the uncertainty they live in both on their physical and mental well-being is a strong indicator that it is detention itself that makes detainees more vulnerable, especially as the duration of detention expands to more than two or three months.

Detainees have a positive self-perception, but the time spent in detention has a negative influence also on the way they see themselves.

Although the majority of detainees has been informed about their case, the information is not detailed enough and not given continuously. They are lacking information on procedures and reasons for detention. This, again, contributes to uncertainty. A large quantity has been informed by JRS detention visitors or by their lawyer if they have one, but not sufficiently by the authorities. Lacking adequate information, detainees find it difficult to cope with detention or asylum procedures. In this situation, they rely heavily on qualified support. But only a minority has the means to engage a lawyer. Free and qualified legal assistance would be useful then to inform them properly about their prospects and help them secure their rights.

The situation in detention becomes difficult already after less than one month. Unspecific impact of detention, isolation from the outside world and living conditions in detention are the most prominent difficulties.

4.2 Social aspects

The interaction with staff (mostly security) is varying. It seems to depend very much on the individual person on duty if the relationship is good or bad. Many detainees report being mocking by the staff. The main reasons for these tensions seem to be difficulties in understanding each other because of language problems and lack of respect for their cultural background, according to observations from detainees themselves and detention visitors. Staff members, on the other hand, tend to seek the reasons for conflicts more in the personality of detainees than in their own and their colleagues' behaviour or in the general situation in detention. However, there seems to be a higher level of sensitivity towards the needs of detainees in specialized detention centres where staff has received an extra training how to interact with people from different cultures.

Interaction between detainees is good. A reason for this might be that many detainees have a similar cultural background. When there are tensions, they are most likely to be caused by inter-cultural differences. It is a general observation of our pastoral workers, though, that detainees tend to solve those problems among themselves, and not to disclose them to visitors.

Most detainees have relations in their home country. But there are also ties to Germany, as a large portion has got friends or family here. It is difficult, however, to uphold these contacts under the conditions of detention. Contact with the outside world is kept mostly by phone, not so much by personal visits. Personal contacts are much easier, however, in the specialized detention centre in Berlin, where rules are not as strict as in the correctional facility in Munich. It would be desirable, however, if contacts would be facilitated as much as possible, since our findings indicate that isolation from friends and families again contributes to the negative effects on detainees' physical and mental health.

Contact to third persons, like pastoral workers or NGO members, is not granted equally. In Munich, restrictions are stricter than in Berlin. This leads to fewer opportunities for detainees to receive support during their time in detention.

4.3 General situation in detention centres

The Interviewees have no complaints about centre space and rules. They feel safe in the detention centres, and some of them have even developed a more positive image of police compared to prior experiences. But daily routines are frequently boring and leave detainees with worries about their future.

Whether for stress relief, physical exercise or personal satisfaction, most detainees take part in activities that are offered in all three detention centres JRS is visiting. The main activities are sports offered by the detention staff and religious support offered by JRS. Interviewees complained that there are no educational opportunities and no Internet access.

If detainees were accommodated inside a correctional facility, like in Munich, several negative impacts were observable. Rules were generally stricter, and contacts to the outside world were subject to constraints. Staff members, usually working with criminals, would respond less to the needs of migrants. Sometimes when the centre was overcrowded, detainees would have to share cells with convicts. In this environment, they would feel even more to be treated like criminals, which caused a feeling of injustice.

Medical check-ups during reception procedures are restricted to checks for some serious infectious diseases and otherwise optional or even non-existent. Even later, some detainees do not go to see a doctor, or they do so but communication fails due to language barriers. As our pastoral workers observed, this gives way for some serious health problems with detainees to stay undiscovered. Hence, it would be preferable to make general check-ups mandatory and arrange for translation services.

Staff and detainees perceive the general quality of medical services differently. While staff members would generally point out that doctors and psychologists were available in the centres, and that detainees could be taken to specialist doctors outside the centres if they needed to, detainees themselves complained that they did not always get the kind of treatment they needed. This coincides with our pastoral workers' observation that it was in effect very hard to get specialist treatment outside the centre, and that this effort was usually only made for people in a dramatically bad state of health.

Nutrition is a general concern of many detainees. While taking into account some dietary rules (like no pork for Muslims), it is not adapted to the cultural background of the detainees. This leads to a decline in appetite and a loss in weight for some detainees; others get angry and argue about the quality of food. Berlin detention centre seems to have reacted to these criticisms and offers provisional kitchenettes, where detainees can reheat food that friends or relatives bring them during visiting hours, or prepare simple meals. From the perception of our pastoral workers, this not only improves the nutritional condition of the detainees, but also works as a social factor that improves the atmosphere in the centre.

4.4 Situation of especially vulnerable groups

Detainees do not report special needs for particular groups. They see everyone in detention as likewise vulnerable.

While this may on the one hand indicate that some impacts of detention – uncertainty about the future, feelings of helplessness, insufficient orientation about the detention procedures – make everyone vulnerable and on the other hand reflect a certain level of solidarity amongst detainees, the view of JRS detention visitors is slightly different. Often, it was clear that certain persons had exceptional problems. At times, even staff would ask our pastoral workers to take care of individual detainees because they had noticed that these persons were in a bad state. People that had an especially hard time in detention were those with psychological problems, but also unaccompanied minors or families. Due to the lack of proper check-up examinations on arrival, mental health problems often go undetected, sometimes for longer periods.

5. CONCLUSIONS AND RECOMMENDATIONS

In the words of the former director of the German Institute for Human Rights, Percy MacLean, detention should be organized as “normal life minus freedom”. While this may be a slightly euphemistic description, we do not even see this minimum level reflected in the overall situation of the detainees. While their basic needs are met – housing, nutrition, safety –, a remarkably high number of detainees reported physical or psychological health problems that worsened with the duration of detention.

> *JRS Germany recommends in accordance with Art. 15 Par. 1 of the Returns Directive (2008/115/EC) to make use of detention as a last measure only, i.e. as seldom as possible, and to keep it as short as possible. Taking into account the adverse effects of detention already during the first three months, 90 days should be an absolute maximum.*

Our findings show that detainees suffer from uncertainty about the outcome of their detention. Even if most of the laws on detention state that the detainee has to be informed about the reasons for his detention and about his rights and duties inside a detention centre, a large number of interviewees reported that they had not been informed about these facts at all, or only in part, sometimes only at a later stage. More than 60 % of detainees said they needed better information about their case. This led to negative impact on their physical and mental health. Information is rather given by NGOs or pastoral workers, especially when it comes to continuous information over the period of detention. However, access to detention centres for detention visitors is restricted in some detention centres. Only part of detainees can afford additional qualified information by lawyers.

> *JRS Germany recommends strengthening the state’s obligations to inform detainees about the reasons, rules and possible as well as maximum duration of detention in a language they can understand. NGOs and pastoral workers should have free access to detention centres during daytime and not be restricted to visiting hours. Free legal assistance should be granted to all detainees from the beginning of detention, comparable to a regulation for remand prisoners implemented in German law as of Jan 1, 2010.*

Vulnerability was an important issue throughout the study. While the abovementioned effects of uncertainty, prolonged duration of detention and lack of information contributed to the vulnerability of all detainees, the specific needs of some distinct groups – unaccompanied minors, families, elderly people, traumatized, disabled or diseased people – need to be taken into account, too. While not all of these groups were encountered during the study (which may be a result of restrictions in its implementation), the study made clear that especially the detention centre in Munich, located inside a correctional facility, faced problems in meeting some vulnerable groups’ needs. We especially see a need to improve health care for detainees with psychological problems, whose problems frequently are not detected or not properly dealt with. Also, the special needs of minors are generally not met in detention.

> *JRS Germany recommends in accordance with Resolution 1707 (2010) of the Parliamentary Assembly of the Council of Europe, par. 9.1.9, that vulnerable people should not, as a rule, be placed in detention and specifically, unaccompanied minors should never be detained. Where detention is inevitable, as an implementation of Art. 16 Par. 3 of the Returns Directive (2008/115/EC), which states that particular attention shall be paid to the situation of vulnerable persons, psychological examinations should be mandatory if there are any signs that the detainee suffers from respective problems; each detention centre should have specially trained staff who see every detainee on arrival and in regular intervals during his stay. JRS Germany further urges the German government to implement fully and unconditionally the Convention on the Rights of the Child, according to which detention of minors should be the absolute exception.*

Almost 40 % of interviewees reported that they had not been examined by a doctor upon arrival to the centre. Those who did, or needed medical care later, indicated that severe language barriers had led to misunderstandings and, in some cases, wrong medication.

JRS Germany recommends a mandatory medical check-up for every detainee arriving in the detention centre. Translating services should be made available during doctors' visits to ensure a sufficient flow of information.

The comparison between the detention centres in Berlin – a specialized centre specifically for detainees – and Munich – a correctional facility also taking in detainees – show that living under the strict rules of a correctional facility means an additional burden for detainees. Further, the study strengthened the impression that a specialized detention centre is in a better position to respond to the specific needs of detainees, and especially of more vulnerable groups.

JRS Germany recommends to keep the negative effects of detention as low as possible by consequently separating detainees from prisoners and have special detention centres for them, as the Returns Directive (2008/115/EC) postulates in Art. 16 Par. 1: „Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners." That would allow for more liberal rules, that is, more normality.

Contact with family members either in or outside the detention centre or abroad in the country of origin proved to be an important factor to stabilize detainees' mental health, especially over a longer period of detention. However, contact possibilities are restricted to a low level in some detention centres, especially those like in Munich, where detainees are kept in a correctional facility. Telephone turned out to be the main means of communication with friends or family who cannot visit the detainee.

JRS Germany recommends allowing for visits from family and friends for at least one hour per day. Communication means like public telephones or private cell phones, if necessary without camera, should be made available for all detainees, and their use should be permitted without restrictions,

Besides the possibility to keep in touch with friends and families, support from NGOs and pastoral workers can play an important role for detainees. Often, it is through these contacts that detainees get detailed information about their situation, their prospects and their rights, which strengthens them and makes them more resistible to the negative impacts of detention. However, the study showed that access for NGOs was not granted equally. Especially for Munich detention centre both our detention visitor and the interviewed staff member said that visits by UNHCR did not take place there.

JRS Germany recommends in accordance with Resolution 1707 (2010) of the Parliamentary Assembly of the Council of Europe, par. 9.2.8, to generally allow for visits by UNHCR and other NGOs.

While the level of safety in both detention centres that were involved in the study was assessed as high both by detainees and staff members, still there are reports of altercation and discrimination by staff from both centres. The reasons often seem to be trivial – arguments start because detainees want to use the telephone more often. Methods of conflict resolution in Berlin, however, seemed to be less affecting in Berlin, which might be connected to a special training attendants in police custody receive here.

JRS Germany recommends a mandatory training for attendants in detention centres that should include, among other things, multi-cultural competences, diversity issues, awareness-raising for different religious and ethnic backgrounds as well as for the needs of especially vulnerable groups, and de-escalating conflict resolution methods. It would also be helpful if it were a condition of employment for staff to speak at least one or two mother tongues of larger detainee groups. Language courses for detainees might also be helpful to reduce misunderstandings.

Food was an important issue for detainees. A large majority complained both about the quality and quantity of nutrition and said this had a direct effect on their physical health. Detention visitors observed a loss in weight of detainees where complaints were particularly grave. Detainees also criticized that food did not take into account their cultural backgrounds, e. g. the characteristics of a typical Asian diet based on rice and vegetables. On the other hand, where detainees were allowed to prepare their own meals from ingredients friends were allowed to bring them, this turned out to be an important social factor, at the same time stabilizing detainees' mental health and improving the atmosphere in the detention centre.

JRS Germany recommends accounting for the cultural backgrounds of detainees in the choice of nutrition. Wherever possible, detainees should be given a possibility to prepare meals for themselves.

NATIONAL REPORT: GREECE

By: Greek Refugee Council

1. INTRODUCTION

This report is an attempt to understand vulnerability and its causes among persons under administrative detention in detention premises in Greece. For this purpose we have interviewed 20 detainees (men, women and minors) in the Detention Facility for Aliens - Central in Athens (Petrou Ralli- April 2009) and 14 out of 40 minors in the Detention Facility for Aliens in Amygdaleza (June 2009), a detention centre for minors. Around half of the interviewed detainees were asylum seekers, who applied for asylum in detention, and half of them irregular migrants. However, it should be noted that this is not a representative proportion between irregular migrants and asylum seekers in detention. Instead an attempt was made to interview more people who applied for asylum in detention. In each detention centre we further interviewed one staff member and a member of an NGO called "Medical Intervention" ("Iatriki Paremvasi"), which offers medical, social and psychological support to detainees. Interviews in the Petrou Ralli holding facility were conducted in April 2009 and those in Amygdaleza in June 2009.

We also asked written permission to visit either of two other Detention Facilities: the detention area of the Athens International Airport, where most detainees are asylum seekers returned from other European countries and others that attempted to travel illegally to another European country; and the detention centre called "Former Holding Facility-Helliniko". Unfortunately we were denied permission for both. The competent authorities cited work overload and multiple duties during this period as reasons. We then contacted orally the Aliens' Directorate again for permission to visit any other Detention Facilities in Athens –since it was already near our deadline for collecting interviews (July 2009)- but we received a similar answer.

All participants in the current research consented before being asked any questions and no particular obstacles had to be overcome during this phase. More difficult was the conduct of the interviews due to language barriers; in many cases co-detainees participated as interpreters with other interviewees.

At this point we would like to thank the competent authorities, who permitted and facilitated our access for long hours in the detention premises, police and ngo staff who participated in the interviews and all detainees, who consented to express their minds and feelings, although they knew that they wouldn't benefit from this procedure. Hopefully any results following this attempt will be for the benefit of individuals in detention.

2. NATIONAL LEGAL OVERVIEW

2.1. Legal Basis for Detention

Administrative detention exists only as part of deportation proceedings. The general rule is that no one can be detained without a judicial decision ordering his or her detention; the exception is that detention is legal if a deportation order (judicial or administrative) has already been issued or will be issued within three days. Thus, issues of administrative detention are closely connected with issues of deportation. Aliens may be deported if they have been convicted for a custodial sentence of at least one year for several crimes prescribed by law; also when they have violated the 3386/2005 Law regarding their entrance and residence in Greece, which mainly refers to their

undocumented and unlawful presence. Additionally aliens may be deported when their presence is dangerous to public health and they refuse to comply with the measures set out by the medical authorities or dangerous to public order or security of the country. According to the latest amendment of this provision (Law 3772/2009) an alien is deemed dangerous to public order or safety in particular, as long as they have only been *prosecuted* for an offence punishable by deprivation of liberty for at least three (3) months[133]. This provision obviously violates the presumption of innocence. Further, there is in Greece a great number of crimes punishable by three months deprivation of liberty, and the great number of those can hardly be understood as injurious to the public order. So this provision, apart form violating a constitutional principle (presumption of innocence), is also disproportionately strict.

A deportation order however does not lead necessarily to detention: the person - in view of the general circumstances - has to be considered a suspect of escape or a danger to public order or likely to prevent or hinder the preparation of their departure or removal proceedings[134]. In this case detention serves the purpose of safeguarding the execution of the deportation, and is thus upheld until the deportation takes place, but cannot exceed 6 months. An exception exists when the detainee is not cooperating or there are delays with the receipt of documents needed for the deportation; the detention can then be extended up to 12 months. There is an obvious influence of the 2008/115 EC (Return Directive) in the latest amendment (Law 3772/2009), which has seriously extended the detention period of aliens. At the same time however there was no legal requirement to improve the detention facilities or detention conditions, and on that ground Greece has been regularly criticized by national and European institutions and also convicted by the ECHR.

Pursuant to the latest amendment, it is a Police Director (a commissioned officer of a certain rank tasked with the particular duties ex officio or by appointment in larger districts) who decides both on the deportation and the detention of the alien. The deportee has at least forty-eight hours to present objections[135]. That means that as soon as an alien is arrested and before the issuance of the deportation order, s/he has the right to submit objections against the detention and the future deportation order. Within five days of the issuance of the deportation order, s/he has the right to appeal against this decision before the Police Director. In practice, in most of the cases, the deportation order is accompanied by a detention order without any further explanation or particular justification for considering the deportee “suspect of escape or a danger to public order”. This might be less common in cases of newly arrived immigrants, in particular of unaccompanied minors, families and others seen as vulnerable, and those whose deportation is regarded as unfeasible. In such cases, the detention may last a few days or weeks. In all cases aliens, against whom a deportation order has been issued, should be detained in Special Holding Facilities, and in case of

[133] Art. 76 of the 3386/2005 Aliens Law on “Entrance, residence and social integration of third country nationals in the Greek State”:
“The administrative deportation of an alien is permitted if:
a. They have been convicted by a custodial sentence of at least a year or whatever penalty for violation of political crimes, betrayal of the country, crimes relating to trafficking and drug trafficking, money laundering, international economic crimes, crimes using high-tech instruments, currency offences, crimes of resistance, child abduction, against sexual freedom and economic exploitation of sexual life, theft, fraud, embezzlement, extortion, usury, the law on intermediaries, forgery, false certification, defamation, smuggling, for crimes relating to weapons, antiquities, to trafficking illegal immigrants in the country or to facilitate the transfer or promotion or securing accommodation for them to hide and if the expulsion was not ordered by the court.
b. They have violated the provisions of this Law
c. Their presence in Greek territory is dangerous to public order or security of the country. The alien is deemed dangerous to public order or safety in particular when they have been prosecuted for an offence punishable by deprivation of liberty for at least three (3) months. (Law 3772/2009 amendment in bold)
d. Their presence in Greek territory is dangerous to public health and they refuse to comply with the measures set out by the medical authorities for protection, although it has provided the necessary information."

[134] Law 3386/2005, Art. 76 as amended by Law 3772/2009. “3. If the alien, in view of the general circumstances, is considered suspect of escape or a danger to public order or prevents or hinders the preparation of their departure or removal proceedings, then with the decision of the institutions of the previous paragraph, a temporary detention will be ordered until the issue, within three (3) days, of the decision on expulsion. In case of a decision of expulsion, detention continues until the execution of the expulsion, but in any case cannot exceed six (6) months. If the expulsion is delayed because the alien refuses to cooperate or because there are delays of the receipt of necessary documents regarding the expulsion from the country of origin or provenance, the detention of an alien may be extended for a limited period not exceeding twelve (12) months.”

[135] Law 3386/2005, art. 76 “Deportation is ordered by a decision of the Police Director and, when the General Police Directorate of Attica and Thessaloniki, the Commissioner for Aliens Police Director or senior officers, appointed by the General Police Director, after giving the alien at least forty eight hours to present his objections.”

lack of these facilities, in the detention area of police stations. Minors and women are detained in separate areas, except in cases where the protection of minors or the perseverance of family unification must take precedence[136].

2.2. Detention conditions and rights of detainees

As the Committee for the Prevention of Torture (CPT) has also observed in the Report to the Government of Greece[137], detained irregular migrants remain under the same regime as criminal suspects. One of the reasons is that the joint ministerial decision prescribed in art. 81 (Law 3386/2005), which should define the terms and requirements for the opening of Special Holding Facilities for Aliens haven't been issued yet. There exists no regulation defining the way these Holding Facilities should work, no minimum standards set. Thus, the detention conditions and the rights of irregular migrant detainees derive from general legal principles and sometimes from particular provisions referring mainly to criminal suspects.

Right to information

Art. 76 of the 3386/2005 Law orders that aliens must be informed in a language they understand of the reason for the detention and also that communication with an attorney must be facilitated. There is no particular provision for the presence of an interpreter, and in usual practice neither lawyer nor interpreter appears. However, it should be mentioned that in a circular for the treatment and the rights of detainees by police authorities it is clearly stated that "...the detainee must, when brought before the police authorities, be fully informed of the reasons for his/her detention as well as about all the rights to which he/she is entitled during the period of detention (art. 9 ICCPR, art. 5 para.2 ECHR). To this purpose, detainees must receive an information leaflet, approved also by the Attorney's Office, in a language they understand, on their rights; these rights should also be clearly explained to them. In the case of alien detainees, who ignore the Greek language, an effort must be undertaken to explain these rights through the most suitable means (through an interpreter, a consular authority etc.). Police authorities are also obligated to display in the detention premises tables that describe the detainees' rights. ..."[138]. There is a similar provision in a recent Common Ministerial Decision (number 4000/4/46-a, 27/07/2009), which defined the details for the implementation of administrative and judicial expulsion orders for aliens, where it is stated that "The alien is informed in a language he understands and is given an information leaflet about the deportation procedure and his rights…."

Right to legal representation

Aliens also have the right to legal representation but they have to pay for these services. Furthermore, a lawyer's free access to the detainee and the offer of legal assistance is guaranteed under any circumstances, no matter whether this person is detained on the grounds of criminal or administrative procedures; this is enshrined in the provisions of article 6 of the ECHR.

The person under administrative detention also has the right to raise objections against the detention or extended detention before the Judge of the Administrative Court, in whose jurisdiction the alien is detained[139].

Right to Health Care

[136] Common Minsterial Decision, 4000/4/46-a, art. 5.
[137] Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg 30 June 2009
[138] Treatment and rights of persons detained by police authorities, Ministry of Public Order, 4 July 2003
[139] Law 3386/ 2005, art.76 "3. … The alien must be informed in a language he understands of the reason for the detention and his communication with the attorney facilitated. The alien detained, along with the rights that under the Code of Administrative Procedure, may also raise objections against the detention or extended detention before the Presiding Judge or before the by him appointed Judge of the Administrative Court, in whose jurisdiction the alien is detained."

Regarding the health care of detainees it should be mentioned that only in very few Holding Facilities there is medical staff appointed by the State. Art. 60 of the P.D. 141/1991 "competencies and in-service acts of the personnel of the Ministry of Public Order" defines that the Police Officer on duty takes care so that a doctor of the health services of the Hellenic Police, and in case of absence or obstacle, another doctor will provide the necessary medical treatment to sick detainees. Detainees also have the right to be examined by a doctor of their choice. The protection of the detainee's health is a basic duty of the police authorities. In case the detainee falls sick, suffers a serious accident or enters a medical institution, the police are obliged to inform thereof the family members, and, in case there are no family members, any person indicated by the detainee. Finally, special medical care is offered to detainees who are drug addicts and whose life is in danger due to the deprivation syndrome (art. 60 para 3 cases 8, 11 and art. 67 para. 4 case 22 P.D. 141/1991). Art. 67 prescribe that women and minors should be detained in a separate area from men.

Police officials should furthermore be even more sensitive in case of detainees who are considered particularly vulnerable and whose rights need particular protection. Such, should, in principle, be considered minors, sick persons, alcoholics, drug addicts, illiterate persons, political refugees, asylum seekers and aliens in general. (Circular for the treatment and the rights of detainees by police authorities)

Communication between detainees in police custody and their relatives or other persons of their choice includes telephone communication as well as personal contact. The police must facilitate telephone contact between the detainee and their families in order to inform them, if they so wish, of the place and reasons of their detention. The police is also obliged to allow visits to the detainees on the basis of a schedule that sets the timetable, the place and the persons that are allowed to visit the detainees (art. 67 para. 4 case 12 P.D. 141/1991). It is underlined that the right of communication includes, in the case of aliens detained, the obligation to inform the consular authorities of their countries, the facilitation of the telephone communication between these latter and the detainee and the obligation for the police authority to allow consular staff to visit the detainee, unless of course this latter refuses to do so (art. 36 of the International Convention on Consular Services ratified by virtue of Law 90/1975).

The case of asylum seekers

Art. 13 of the P.D. 90/2008, which transposed art. 18 of the 2005/85 Directive, prescribes that an alien who applies for refugee status shall not be held in detention for the sole reason that he/she entered and remains illegally in the country. That is not the case when someone applies for asylum while in detention after the issuance of the deportation order. In this case the detention continues and the application of the asylum seeker must be examined with the utmost priority[140],[141].

The recent S.D. v. Greece judgment of the ECHR demonstrates the legal error of this provision and of the practice followed [142]. The Court has concluded that the detention should serve the purposes of the deportation. Since the

[140] PD 90/2008, Art. 13. "1. A third country national or stateless person who applies for refugee status shall not be held in detention for the sole reason that he/she entered and remains illegally in the country. A person who applies for asylum while in detention and against whom a deportation order has been issued shall remain in detention and the application shall be examined with the utmost priority. S/he shall not be deported before the conclusion of the administrative procedure."

[141] In practice though, especially in the Petrou Ralli Holding Facility for Aliens that GCR is visiting regularly, the asylum applications of detainees are not examined with priority. Contrary to that, the asylum seekers are often detained for three months, without even being interviewed for their asylum application. At the moment of their release, they are handed in a document ordering them to leave the country within three months. Then they have to visit the Asylum Department to take an appointment for their interview. To this malpractice, it should be added that detained asylum seekers are rarely explained the procedure they have to follow, since they are not subsidized in this procedure by an interpreter.

[142] ECHR, S.D. v. Greece http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=851175&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

deportation of an asylum seeker is prohibited and is suspended, for as time his application is examined, his detention has no legal basis, and is therefore illegal[143].

Additionally the territorially competent Police Director may decide, in cooperation with the competent office of the Ministry for Health and Social Solidarity, to **restrict** applicants for asylum in an appropriate place in order to determine the circumstances of entry, the identity and origin of mass illegal entries of applicants, when this is required for reasons of public interest or public order or when this is considered necessary for the speedy and effective completion of the above mentioned procedure[144]. The total time under restriction should, in no case, exceed sixty (60) days. In a case known to GCR, the above provision when implemented resulted in aliens being firstly detained for three months (maximum detention period till July 2009) because of the deportation order and then 60 days for the purposes of this provision. This practice seems to misinterpret and mis-implement the ratio of the legal provision, as it unjustifiably leads to an extended detention period. Asylum seekers can appeal and/or submit objections before the Administrative authorities and before the Administrative Court against the detention decision but not the detention conditions [145].

Although there is no special provision for legal aid and interpreter services, the P.D. 90/2008 mentions that the authorities competent to receive and examine the asylum applications should take care so as to inform the detained asylum seekers about the reasons and the duration of their detention and guarantee the right of asylum seekers to legal representation[146]. However, since there is no other provision to specify how the aforementioned rights of the detained asylum seekers will be implemented, these provisions have unfortunately a more declaratory character. Similarly, the information leaflet about detention and deportation procedures cannot substitute the lack of interpreters or interpretation services in detention facilities, since it cannot respond to individual questions. Furthermore, this leaflet does not contain any information on asylum seekers.

Regarding the special needs of particular groups, it is mentioned that the authorities should take care so as to detain women in a separate place from men and avoid detaining pregnant women, or women who have recently given birth, and unaccompanied minors, and separating minors from their families while in detention[147].

3. OVERVIEW OF NATIONAL DATA FINDINGS

[143] Greek Ombudsman, "The European Court of Human Rights convicts Greece for the detention of an asylum seeker", press release http://www.synigoros.gr/pdf_01/8181_2_dtrom_katad.pdf

[144] P.D. 90/2008, art. 13. "2. The territorially competent Police Director and, in the cases of the General Police Directorates of Attica and Thessaloniki, the Aliens' Police Director or a senior officer appointed to this task by the General Police Director, may decide, in cooperation with the competent service of the Ministry for Health and Social Solidarity, to restrict applicants for asylum in an appropriate place when, and for as long as necessary, this is needed in order to determine the circumstances of entry, the identity and origin of mass illegal entries of applicants, when this is required for reasons of public interest or public order or when this is considered necessary for the speedy and effective completion of the above mentioned procedure. The total time under restriction shall, in no case, exceed sixty (60) days. "

[145] P.D. 90/ 2008, art. 13 "…3. Asylum applicants detained or restricted in an appropriate space according to the previous paragraphs shall be entitled to the rights to appeal and submit objections, as stipulated in paragraph 3 of article 76 of law 3386/2005." (see above)

[146] P.D. 90/2008, art. 13. "…4. In the cases that applicants for asylum are being detained or restricted, the competent authorities to receive and examine, without prejudice to the international and national legislation on detention, shall apply the following:
e. they shall see that the right of detainees or restricted persons to legal representation is fully guaranteed.
f. they shall take care that detainees are informed as to the reasons and the duration of their detention."

[147] P.D. 90/ 2008, art. 13 "…4. In the cases that applicants for asylum are being detained or restricted, the competent authorities to receive and examine, without prejudice to the international and national legislation on detention, shall apply the following:
a. they shall take care that women are detained or restricted in a place separate from men.
b. They shall avoid detaining or restricting minors, in particular children separated from their families and unaccompanied minors.
c. they shall avoid detaining or restricting women in an advanced state of pregnancy or who have recently given birth.

For the purpose of this report we interviewed 34 asylum seekers and irregular migrants, 14 in Amygdaleza Facility for Juveniles and 20 in Petrou Ralli Holding Facility for Aliens. The detainees interviewed have spent from 1 to 211 days in detention, but it should be noted that at the moment the interviews took place the maximum detention period was three months. It should also be remarked that three of the detainees interviewed had a judicial deportation order, therefore their detention exceeded three months. Almost half of the detainees interviewed applied for asylum while in detention, the rest of them have been irregular migrants and only a few have been asylum seekers whose application was rejected. Most of them are young single men from Iraq or Afghanistan. In many cases the findings confirmed our perception about the main issues of detained persons, following our regular visits to Holding Facilities.

3.1. Case awareness and outcome of detention

Detainees usually know the reasons for their detention either because police informs them or because they collect the necessary information from other detainees while in detention. However one out of five detainees declared that they didn't know why they were detained, as they couldn't believe that they were "imprisoned just for papers". A notable case was that of an unaccompanied minor who thought that he was detained because police found a small quantity of drugs, when they entered a compatriot's house. In certain cases the detainees were not handed the information bulletin that explains the reasons for their detention and their rights in their language. All detainees who applied for asylum while in detention, with one exception, declared that they were not aware or were very poorly informed about the progress of their asylum cases. It appeared that they didn't know when they would have an interview, what the result would be, when they would get the asylum seeker's card etc. Almost all detainees asked for more information about the detention period and the immigration and asylum procedures.

Half of them declare that they know the outcome of their detention and many among them believe that they will be released and stay in Greece. There is however a significant minority that remains in the dark about the possible outcome, whether they will be deported or released and permitted to stay in Greece. Finally, most detainees are unclear about how long they will stay in detention, and they cannot understand the criteria for holding one in detention longer than others. Especially when it comes to detainees of the same nationality the differing length of the detention period is completely incomprehensible and frustrating for them. A minor from Somalia says, "I don't know why I am detained. I see people who have no documents and they are detained for five days. I don't know why I am detained for a month."

3.2. Space

According to police authorities the maximum capacity of the detention centre in Petrou Ralli is 373 persons, which breaks down to 203 men, 150 women and 20 minors. Every cell accommodates 5 men or women and 1 minor.

The majority of detainees expressed either neutral ("it is normal, it is a prison, I cannot expect more") or negative feelings ("There are 5 beds but we are 7 persons. Two of us are sleeping on the floor. It is dirty. ..." "The blankets are very dirty, there are no sheets. There are bugs on the blankets. ...") about the areas they sleep in. More negative are the feelings on the toilets and the showers mainly because of the lack of sanitation ("Toilets and showers are very dirty. The cleaning service only cleans the corridors."; "There are three toilets and two showers for 40-45 people. Toilets are hell. They are extremely dirty and they stink."). There is no other common indoors space apart from the corridors. Some people also expressed disgust for the dirtiness of the space and the presence of bugs and cockroaches. Women and minors commented on the space less negatively, although they also mentioned the unseemliness of the conditions, the toilets in particular. This can be explained by the less overcrowded conditions in women and minors facilities and by the fact that women were offered cleaning detergents more often to clean the areas themselves.

According to police authorities the maximum capacity of the Detention Facility in Amygdaleza is 40 minors. There are four sleeping quarters of 70 square meters each with air-condition equipment, a dining room and hygiene facilities (toilets and showers).

The conditions in the juveniles centre in Amygdaleza were much better and the majority of minors expressed either neutral or positive feelings for the space they sleep in (“Normal. It is ok. We have beds, mattresses, sheets, and blankets. We are 8 persons in the room, but there is place for 10. It is not very clean, but it is not a house, it is a prison.”). They enjoy the fact that they have a TV in the dining room and they wished to have computers as well. Nevertheless a minority, particularly those sleeping closest to the toilets, mention the smell coming from there because of the lack of sanitation, the high temperature and the lack of fresh air due to small windows (Note: the interviews were conducted at the end of June 2010).

The majority of the interviewed detainees (34) regard the centre as overcrowded but a significant minority (44%) disagrees, and this percentage mainly corresponds to the detainees in Amygdaleza and the minors in Petrou Ralli, as their detention conditions seem objectively better.

3.3. Rules in the Detention Centre and Contact with the Staff

When asked about the rules in the detention centre, most interviewees could not mention any rules and would only describe their routine. Although there were some differences in those descriptions, the routine is mainly described as following:

“We eat three times per day. Every 2-3 hours they open the cells for almost half an hour. They usually open the cells 4-5 times per day. They let us out in the yard twice per week for 40 minutes to one hour." (Petrou Ralli); also: “They open the cells from 8.00-12.00 until the time we eat. Then we eat and they keep the door closed till 6 o clock. They open again the cells from 18.00 until 23.00. We eat 3 times per day. I play football twice per day." (minor Albanian in Amygdaleza); or “I think we have breakfast at 9, lunch at 14.00 and dinner at 21.00. We have no watch so I don’t know the time. In the meantime we stay in our rooms. At 17.00 we go in the yard and we play football for an hour. Today that you came here, they opened the yard and let us play in the morning. They open the doors 3 times per day for one or two hours. Today only, they left the door of the cell open for longer."(minor Afghan in Amygdaleza).

These differences can be probably explained by the potential lack of a stable and schedule known to them and the variance of their personal perception. Also, it was not confirmed whether the testimonies differed because of differential treatment of detainees or to differing perception of reality or to differing character. Thus, Albanian minors claimed to be satisfied that they could play football in the yard once or twice per day, while others (Pakistan, Somalia) denied having any activities and claimed that they were allowed to play in the yard a few times only. Further, some detainees in both detention premises (Arab women, Pakistani minors) felt that they faced less favourable treatment than their co-detainees (Georgian women, Albanian minors) because of ethnic/racial and religious reasons. It is furthermore repeatedly claimed in several wordings by detainees that “Police staff are not all the same” and that “There are some good police guards but also others who are not”, and this seems to influence their routine.

It seems like the personality of police staff may influence the reality of detainees more than the rules, and thus a few of them deny the existence of any rules (“The first rule within the centre is that there is no rule”), and the majority of detainees cannot mention any of them. On the other hand, it should be mentioned that almost one out of four detainees describe their contact with police staff as positive and half of them (detainees) declare that police staff supports their needs and requests (“Sometimes they make jokes with us. If they find us stressed, they will say something to calm down our brain. Some are good and some are not. When I need something like shampoo, paper, they bring it. Some of them may shout and are not so helpful.”), contrary to others, who are complaining that they have to ask many times before being allowed to see the doctor or go to the toilet (“If I want to go to the toilet, I may

have to wait for an hour. There are policemen, who come straight when you call them and others who let you wait."). Most of the times their reactions reveal mixed feelings towards different police staff.

Almost half of the detainees declare that they have been insulted by police staff, because of the obscene language they use against them many times. In addition to the verbal insults, five detainees reported being physically assaulted (use of obscenities followed by shoving and punching) by the police staff. One detainee describes: "I asked a policeman to give me my medicine. He told me "Fuck you". I said "Why?". He said again "Fuck you". I told him you are not strong but just because you are a policeman and I am here (in detention, you can treat me like that). He took the chair and he hit me with the chair. I put my hands in front of my face and he hit my hands."

It is important however to mention that most of the detainees claimed that they will refer to the police staff in case they face any particular difficulties, and they expressed trust in them in this regard.

3.4. Time in the Detention Centre, Activities and Contact with the 'outside world'

One of the problems often mentioned by detainees is the limited number of activities they can participate in. Sometimes they can play football or table tennis to relieve stress and boredom. But this activity is characterised as insufficient, as they can only play a few minutes each because of the large number of detainees and the limited time they spend outdoors. In Amygdaleza detainees declare that they have more (though not enough for many) time to play and they have also access to television, but no access to computers, Internet and books. When detainees in both centres were asked what extra activities they would want the centre to provide, they emphasized entertainment activities (television, books, music, newspapers, and games), more sports, access to computers, and Internet. They complain that they can only use the public phones to make phone calls, which actually cost a lot when they call back their families in their countries and they mention problems because of the limited time they can spend on the phone. Thus they wish they could use pre-paid international cards to call their families abroad and more time for phone calls. Telephone is the most popular means of communication but since they do not have access to their mobile phones, at certain times they cannot communicate with the external word as they cannot remember the numbers. Some of them mentioned as a problem the fact that they do not have money to buy telephone cards and their communication with the external world is rare. Finally, the majority of detainees often feel isolated since they rarely receive visitors with the exception of lawyers and medical NGO's. Their families are in their country of origin and almost half of the detainees reported that they are supporting them financially. The lack of a family network to support them morally an financially in the host country as well as the thought that their family in their country of origin is waiting for their financial support while they are in detention are factors of further stress and vulnerability.

3.5. Medical Care and mental and physical health

Most of the detainees declare that they receive an initial medical exam upon arrival to the centre by the NGO's medical staff working in the centre, are aware of this medical staff within the centre and they can meet with them when needed. They seem satisfied with the medical services provided, however this should be mostly attributed to the good relation they had with the medical staff, since a significant minority (47%) would like improved access to appropriate medical care because pain medication for their ailments is not enough. Others wish for a more regular contact with a psychiatrist/ psychologist and to take more medicine for their health problems; more than half detainees have expressed difficulties to sleep and wish they could take medicine to sleep. The last point is closely related to their mental health since an overwhelming majority reports that detention has had an impact on it. The deterioration of their mental health is related to stress due to the general situation of detention (duration of detention, fear for expulsion, disruption of their life plan, isolation from the outside world, loss of their rights and their normal routine - job, friends etc.). Thus most detainees describe that their mental health has seriously deteriorated while in detention, and they would rate it with 9 points on a 10-point scale before detention and with 6 points during detention. Their physical health has also been impacted by detention but to a lesser extent, and they report it before detention as 9 out of 10 and during detention as 7.5 points.

There is however a significant minority of detainees that does not believe that their physical health has been impacted during detention and there is a small minority that claims that their health has been positively impacted (drug addicts, Pakistani minors). This minority relates the improvement of their physical health to their nutrition and sleeping habits (regular food and sleep). This last opinion is also adopted by the police staff interviewed, who believe that the detainees are of a better physical condition when released because of sports activities, regular sleep and frequent meals. However most of the detainees report that they do not like the food provided by the centre (tasteless, dirty, cold, stale bread etc.), which is sometimes attributed to cultural differences ("we don't know these foods and we don't like them") or to its low quality. Apart from that, almost all Muslim detainees complained that they were served pork despite the fact that they cannot eat it for religious reasons. Also that they often did not know whether the meat offered was pork or beef, since they do not receive any information or when they do, it is often contradictory.

Regarding their sleep, most of the detainees reported that they cannot sleep well because of the stress and worry they experience as a result of detention. There is however a significant number of detainees who do not report any difficulties with sleeping, although some of them mention that they take medicine to sleep.

3.6. Interaction within detention

Detainees seem to interact well with their co-detainees in the centre. Some of them regard their co-detainees as friends, when they refer in particular to their compatriots. They express trust in other people and they mainly mention that their co-detainees are people they can discuss with. In case however they face a problem, most of them claimed that they would refer it to the police staff. Some of them mentioned that they would discuss it with their co-detainees and with the staff of the NGO working in the centre, but the majority felt that it is more efficient to talk to police staff, as they are more empowered or competent to solve certain of their problems in detention. Furthermore, it must be noticed that they basically mean a problem within detention related strongly with the detention e.g. a health problem, difficulties with co-detainees etc. Although the majority of detainees expressed a positive attitude towards their co-detainees, almost half of the detainees mentioned that they have observed problems among other detainees. These problems can be put into two different categories: problems that are less serious and are mostly related to the ill-humoured condition of detention (tensions because of missing cigarettes or of phone calling time) and others related to interethnic or intercultural differences. A mocking behaviour of Georgian Christian women towards Arab Muslim women – in particular at time of praying- was reported as such. The latter kind of problems seems to become more problematic for detainees when they felt that police staff implicitly tolerated it.

3.7. Difficulties of the Life in Detention

The detainees recognize that the most difficult thing they have to face is the negative factors of detention, in other words **detention itself.** Under this we include complaints about being restricted in locked cells many hours per day, lacking freedom in general, lack of activities, limited time spent outdoors, restricted communication with the external world etc. ("We are locked up all day long", "We cannot do anything in here and we are bored", "I cannot talk with my family"). The poor standard of living conditions in the centres, in particular in Petrou Ralli, is reported as a major difficulty as well. To the latter they include not only the dirty areas and the unsanitary condition of the facilities (dirty toilets, showers, blankets, and mattresses etc., inappropriate food) but the fact that police staff often poorly treats them. The fact that the facilities look of a low standard reinforces the feeling of uneasiness. Lack of respect, shouting and use of obscene language by police staff and general intimidation by them, are explicitly mentioned as factors which make their detention period more stressful and difficult. Many detainees added to the above the mental stress, worry and anxiety, at least implicitly provoked by detention, as their third most major difficulty. This restless psychological condition is often related to the reasons above but also to the lack of information about their legal status and the length and outcome of their detention. Although most of the detainees are aware of the reasons of their detention, they often perceive it as a punishment, and as such they find it very strict. They often ask "I didn't kill, I didn't steal anyone. Why am I here?". But the question most often repeated, is "When will I get out of here?" They also describe these questions as keeping them awake at night and frustrating them as long as they cannot find the

answers. Detainees couldn't describe a period/ moment, when detention became particularly difficult for them, but in most of the cases they repeat that the longer the detention the more unbearable these difficulties become.

3.8. Self-Perception, special needs and vulnerability

Therefore in a miserable, as they describe it, life-context the self-perception of the majority of the respondents is rather negative. They report: "I feel weak", "I feel hopeless and helpless", "I became pathetic", and "I have lost my force". Their self-perception has worsened during and because of detention "I see myself as a slave". However, most of the detainees do not describe themselves as possessing special needs and they suggest that other individuals or groups of people in detention have special needs and appear more vulnerable. Thus, many detainees reveal non-classical categories of people with special needs in detention by characterising as particularly vulnerable people of particular nationalities such as the Pakistani or the Bangladeshi (either because they stay three months in detention or because they are afraid of the police staff or the police staff shout at them frequently), those who do not speak and understand Greek or at least English (since they have less contact with the police staff, are less favourable to them and their needs are more often neglected), and those without financial resources (since they cannot buy telephone cards to call their families and friends or snacks to supplement their nutrition) and those without family links (since they do not have anyone to support them morally or financially). But certain detainees have also mentioned more classical categories of vulnerability, although to a lesser extent: as such they reported that women in a variety of contexts (a pregnant woman, a woman with a child), minors and sick people are more vulnerable. They also mention drug addicts as a particularly vulnerable group, as they are suffering from withdrawal. Finally, one out of four detainees' answers that everyone has special needs, as a way to say that everyone is vulnerable.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES, CONCLUSIONS AND RECOMMENDATIONS

4.1. Power and vulnerability

At this point we will try to analyse further some of the topics which appeared more frequently during the interviews with detainees and in many cases were confirmed by the police and NGO staff interviews. Their answers regarding their top three difficulties in detention underline the main topics to be analysed. Thus, detention seemed to be very difficult since it was taking place in poor detention conditions and with poor interaction with police staff. The lack of information regarding their detention period and their legal status seems to influence their mental health, since they are continuously occupied by these thoughts.

a) Interaction with Police Staff

Police guards are almost the only persons detained asylum seekers and irregular migrants are in contact with. Thus their role and interaction is of utmost importance. Police guards are regarded as those who one can inform about one's particular vulnerability, who can acknowledge their needs and requests, enforce the daily schedule and the rules in the detention centre, relieve them from certain problems. Although they cannot decide on the release of detainees, they can greatly influence the time they spend in detention. This influence is reinforced since detainees do not have many other people to turn to, apart from co-detainees, who can be equally weak. Thus although detainees declare that they will turn to police staff if they experience a particular problem, they also express a fear of being abused by police staff; the majority of them commented that they have experienced at least verbal abuse. In cases were detainees mentioned that they have been discriminated by police staff because of their nationality or religion, those detainees expressed more vulnerability than others, either by becoming more pathetic or by perceiving themselves more negatively. Regarding the verbal or physical abuse, even when they reveal it, they are very reluctant to make an official complaint, since they are afraid of reprisal. They are afraid of police staff but they show trust in them as well since they are the only "other", the one in whose hand lies their relief. This picture becomes

more convincing, since it is widely claimed by detainees that the quality of police staff is varying; they often mention a number of “good policemen” and a number of “bad”.

On the other hand, police staff is officially charged only with the security of the detention centre, but is in practice overburdened with other duties due to lack of administrative or other staff. They have to assume several duties such as distributing hygiene materials, handing each detainee their medicine and buying things for them. In an informal context police guards sometimes complain that “We have become nurses” or “hairdressers” or “We became policemen to fight crime, but we are stuck keeping illegal immigrants”. Although the staff interviewed in both detention centres expressed sympathy for the detainees, some police guards explicitly declared during informal chats that they don’t like aliens or that they feel that aliens are trying to cheat them.

In the way detention centres operate today the dependence of detainees on police staff is obvious. Furthermore, the complaints of detainees of verbal or physical abuse, demonstrate major tension between them and police staff and an often inappropriate treatment. A breakthrough change would be to employ civil staff in the detention centres and to limit the number of police staff to those needed for external security. A more moderate change would be to employ at least some administrative and other staff according to the needs and capacity of the detention centre. These employees (psychologists, social workers, and administrative staff) would be in charge of the distribution of the hygiene materials and medicine to the detainees, the organisation of several activities within the detention centre, of their psychological support and their physical and mental well-being. In any case, the staff employed in a detention centre should be trained to work with people from other nationalities, to recognize and respect their rights and the differences in their culture and religion, so as to overcome their preconceptions and their implicit or explicit racism. Finally, the role of interpreter services (even by telephone access) could better serve many of the needs of detainees and facilitate the exercise of their rights.

b) Detention Conditions

As mentioned above, the majority of detainees complained for the poor detention conditions. The poor standard of living conditions, in particular the level of the centre’s sanitation, ranks highly among detainees concerns. Detainees who feel negatively about the standard of conditions in the centre rank this factor as one of their top difficulties. Thus 94% of those who comment negatively on the centre’s conditions also say that the poor detention conditions are their second-most difficulty in detention. The standard of conditions may also have an impact on physical health as 90% of detainees who comment negatively on the centres conditions also say that being in detention has negatively impacted their physical health.

The numbers indicate that detainees who feel negatively about the centre’s conditions also feel that life in detention is worsening for them. When examining how the standard of living conditions impacts detainees’ self-perception, the numbers indicate that those who feel negative about the conditions of the centre also feel quite negatively about themselves.

Most of the detainees interviewed declared that they were held in poor detention conditions, in dirty places, they were deprived of their interests, they had limited contact with the external world (many of them didn’t receive any visits and they couldn’t afford buying telephone cards) and very few moments of entertainment, since they rarely had the chance to participate in any activities and spend their time creatively (books, TV, music, sports). Accordingly they declared that they were locked in cells many hours per day and they were not given the chance to occupy themselves and their minds with anything else apart from their life in detention.

The importance of the detention conditions and its influence to the vulnerability of detainees also becomes apparent if we compare the replies of the detainees in Petrou Ralli with those in Amygdaleza, where only minors, a classic category of vulnerable persons, are detained. The fact that detention conditions in Amygdaleza detention facility and

interaction with police staff were of a better standard is certainly connected with minors appearing to be less vulnerable than adult men in many cases.

The above lead to the obvious conclusion that although detention as such is always unfortunate, the quality of the detention conditions influences the vulnerability of the detainees and their daily life. For that reason, there is wide room for improvements of the detention conditions of Petrou Ralli Detention Facility and many others, which are of similar or worse standard. First and foremost care must be given to face the problems created by overcrowding, so as to eliminate the phenomenon of sleeping quarters being used above capacity, and of detainees sleeping on the floor. More effort for sanitation of the common rooms (sleeping quarters, toilets and showers) should be undertaken, since the majority of detainees complained about their unseemliness and some of them mentioned the presence of scabies and cockroaches. The lack of sheets and the dirty blankets and mattresses were also mentioned as reasons for feeling uncomfortable and having difficulties in sleeping because of the itching they provoke.

Complaints about food, at least those related with their religious beliefs, should be taken into consideration. In that case, special concern should be given so as to respect for example the wish of Muslims not to eat pork, without depriving them of food. Thus, the competent authorities should try to distribute either special meals to Muslims or offer them the possibility to cook for themselves. Furthermore, the lack of food "for Muslims" is also referred by the staff as one of the main difficulties detainees have to face.

Taking into account that the right to communication with the lawyer and the family/ friends is not restricted by any law, as well as the fact that there is a strong need of detainees to communicate with the external world, telephone access should be unhindered and telephone cards should be distributed at least to those who cannot afford them. The possibility to call foreign countries with international pre-paid phone cards, which cost less than the regular phone cards, should be reviewed and finally facilitated, since many detainees complained about the fact that the telephone boxes are locked and the use of these cards impeded (as a matter of fact they have to pay four Euros for a three minutes call to Iraq instead of a half an hour call). Additionally, the policy to prohibit the use of mobile phones should be reviewed. It has been observed in other countries, where the use of mobile phones is permitted, that it did not influence the level of the security in the detention premises. Regarding the time spent in detention, more educational and recreational activities should be offered and the time spent outdoors should be significantly extended, so detainees could spend at least a few hours every day in open air. A library with books in the languages spoken by detainees would positively influence their detention time. Furthermore other ways to improve the detention time would be the possibility for TV watching, radio listening and computer access.

Finally, the practice of keeping cells locked for the majority of day-time should be reviewed since it greatly hinders the movement of detainees and reinforces the feeling of imprisonment. This opinion is also reinforced by the fact that many detainees complained that they found it difficult to go to the toilet whenever they felt necessary, since they had to call and wait for the police staff to unlock the doors and that many times during the night they had to use bottles. Taking into consideration that the majority of detainees have not committed any other crime apart from entering or staying in the country without the necessary documents, it is irrational to regard and treat them as “dangerous”, for that reason only. Further, imposing on them stricter security measures than on prisoners seems disproportional and unnecessary. At this point, it should be noted again that according to the law, detention should be imposed only on those aliens under deportation, who are either dangerous for the public order or suspect to escape, in order to secure their deportation, and it is a misinterpretation and misuse of the law to impose it on everyone regardless of the above criteria. Further more, when detention is finally imposed, it shouldn’t restrict the movement of the detainees within the detention centre to such an extent so as to violate other basic rights, as it seems to happen now.

Furthermore, alternatives to detention should apply in the cases of minors, asylum seekers and others regarded as vulnerable individuals or groups (e.g. because of health condition, former traumas, victims of torture or trafficking et.c) since detention is not convincingly justified in these cases according to the law and it further traumatizes the already more vulnerable ones. Last but not least, the legal amendment that extended the detention period from three to six

months creates serious concerns. Taking into consideration the poor detention conditions that characterize most of the detention premises, it is completely inappropriate to detain people in these conditions. Thus, detention should be limited to the least time necessary and not be used as a punitive measure against people, who cannot be deported.

c) Lack of Information

Following the interviews conducted with detainees, it became obvious that the majority of detainees wished to have more information about their asylum or immigration case and their situation in detention. The questions asked most often are about the time of their release or of their deportation. It should be further mentioned that the majority of those detainees do not report having access to a lawyer.

It should also be noted that according to the data findings, the detainees who wish to know more about the duration of their detention, also rank as a top difficulty in detention the negative factors associated with it, such as stress, anxiety, isolation from the outside world, loss of rights etc.

The data shows probably that the lack of information impacts the detainees' well being. We can see as evidence that 71% of the total sample simultaneously says that they do not know when they will be released, and that detention has a negative impact on their mental health. Furthermore, the majority of the total sample simultaneously says that they do not know when they will be released, and that detention has increased their anxiety, worries and uncertainty for themselves and others. Thus the lack of information becomes an additional cause for anxiety and worsens detainee's well-being.

Furthermore the interviews with the detention centre staff confirm that one of the main problems detainees have to face is the insufficient information about their status/situation, worded as "the stress for their legal status", "The fact that they don't know when they will be released or expelled" and "the language difficulties which lead to lack of communication". The same is confirmed by the NGO staff, who rank the lack of information and the violence among the top difficulties detainees have to face.

There are several measures that would help minimize lack of information. Some detainees complained that they haven't received the information bulletin and the majority of detainees couldn't describe either the rules of the detention or their rights. For that reason, it is necessary to secure that every detainee comes into possession of the information bulletin or a decision, where the reasons, the length of the detention and their rights are fully described in their language. Taking into consideration that some detainees are illiterate, the possibility of using oral interpretation services accessible at least by phone would be of utmost importance. Furthermore, the fact that some among the detainees apply for asylum during detention, but they do not receive any information about their asylum process if they don't have a lawyer, reinforces the need to access more detailed and relevant information in a language they understand. Thus, the lack of information would be better served with the presence of "cultural mediators" or specially trained translators. These professionals will be able to speak the language of detainees and trained to inform them about the asylum procedure, the reasons and the length of the detention, the possible outcome of the detention, the procedure to be followed in case of a positive or negative examination of an asylum claim or of deportation. But apart from the general information, they will be able to refer to or ask the competent authorities about the progress of individual cases and to pass this information to detainees. Finally, legal aid is also an institution greatly needed for detained persons, especially when it comes to detained asylum seekers. These detained asylum seekers are usually rather vulnerable individuals as they may have suffered persecution in their countries and they are now in custody in the host country. Furthermore, as was articulated by the interviewed detainees, the reason for their detention and the procedure to be followed may not be totally clear to them. They do not speak the language; they do not know the law or what will happen to them. In cases where a lawyer is not affordable for the detainee, the state should provide competent legal aid.

4.2. Conclusions

This research has offered the chance to look deeper into detainees' vulnerability due to and during detention. Poor detention conditions, interaction with police staff and lack of information appeared as the most important themes for them to mention, which influence their life in detention. Hopefully, some of the comments and recommendations provided here will be soon adopted in order to ameliorate detention conditions.

However, it should be noted that since detention is prescribed by law as a means only to facilitate deportation under certain conditions, it should not be used without discretion. That means that in cases of asylum seekers or when it is well-known in advance that a deportation will not be feasible, detention lacking legal basis should not be used. In these cases at least, alternatives to detention should be considered. Furthermore, alternatives to detention should be considered for every individual case and detention should be used only as a last resort and for the shortest possible and necessary time to fulfil its aim. In any case the detention of minors and other "vulnerable" people (victims of torture, traumatized people, trafficked people, individuals with health problems, etc.) should be strictly avoided and alternatives to detention should be exercised.

Additionally, a law that takes into consideration state's international obligations should dictate the practice. Thus, when it comes to detention, lawfulness should be determined by a combined and consistent reading of national, European and international law; therefore a **legal basis** is necessary for ordering detention. In this context detention is lawful, **if action is being taken with a view to deportation** or extradition. When this kind of action is missing (asylum seekers, unfeasible deportations, protection of unaccompanied minors etc) detention cannot be lawful. Furthermore, it would be unreasonable to regard one's detention as lawful when the particular detention conditions may **violate article 3** (prohibition of torture or inhuman or degrading treatment or punishment) of the European Convention of Human Rights. When detention conditions are such so as to lead to inhuman or degrading treatment, then detention cannot be considered as lawful. Detention in practice should comply with these standards.

Finally, it is noteworthy that the police circular regarding the treatment of detainees characterizes asylum seekers and aliens in general as particularly vulnerable groups of detainees among others; the reasons can be many (language ignorance, lack of family links and friends in the host country, limited access to information, lack of moral, legal and financial support, double persecution effect, defenceless to power et.c). Vulnerability requires more state concern. Contrary to that, our policy is to detain people who are seeking to save their lives from persecution or who are claiming better opportunities in life. Taking into consideration this perspective could be a useful starting point for the practice.

NATIONAL REPORT: HUNGARY

By: Hungarian Helsinki Committee

Preface and acknowledgments

The information contained in this national report is current on 1 April 2010. As a result of parliamentary elections, a new government was formed in Hungary in May 2010. This may lead to significant policy and legislative changes in the field of migration and asylum quite soon. Changes in the actual detention regime (e.g. location of detention facilities) have already been implemented to some extent in April 2010; however, at the time of writing, it is too early to make final observations on these changes.

The Hungarian Helsinki Committee would like to express its appreciation to the police officers responsible for alien policing issues at the National Police Headquarters and at county police headquarters, who assisted the research with information during our visits to the detention facilities. Similarly, we would like to thank the staff of the Békéscsaba reception centre of the Office of Immigration and Nationality for their help during our research visit.

We are particularly grateful to the migrants who agreed to take part in the interviews and to share their experience and concerns with us.

Methodology (as applied in the national context)

The Hungarian Helsinki Committee (HHC) visited all existing alien policing jails in Hungary:

- Ferihegy Budapest airport (6 August 2009)
- Nyírbátor (18-19 May 2009)
- Győr (3 August 2009)
- Kiskunhalas (17 April 2009)

The HHC also visited the closed reception centre for asylum seekers in Békéscsaba on 16 April 2009.

We conducted interviews based on the three types of common questionnaires formulated by JRS at the beginning of the project: questionnaires for detainees, for NGOs and for staff from detention centres.

All together we conducted 34 interviews with detainees from Kosovo, Algeria, Jordan, Armenia, Syria, Morocco, Serbia, Nigeria, Ivory Coast, Vietnam, Iraq, Moldova, Sudan, Ghana, Bosnia, Pakistan, China, Somalia, Afghanistan and Tanzania.

In Hungary, the Hungarian Helsinki Committee is the main NGO that has regular access to detention centres, which are maintained by the Police. Access is based on a bilateral agreement of cooperation between the HHC and the National Border Guard Headquarters (succeeded by the Police), signed in 2002, which allows the HHC to provide legal assistance to detained migrants and to monitor conditions of detention in alien policing jails. Therefore we conducted interviews with our lawyers that regularly visit alien policing jails.

In the Békéscsaba reception centre, the Menedék-Hungarian Association for Migrants is very active in providing social assistance to asylum seekers. We conducted an interview with one of their social workers who is present on a daily basis in the centre.

Finally we managed to obtain one staff interview with the head of the alien policing jail in Kiskunhalas.

1. INTRODUCTION

A mixed population of detained asylum seekers and/or illegally staying third-country nationals can be found in a total of 4 alien policing jails in Hungary. The police run the alien policing jails, where the maximum length of detention cannot exceed 6 months. The regime in the alien policing jails is very strict and provides nearly no social services or leisure or educational opportunities for detained migrants.

A closed reception centre for asylum seekers is run by the Office of Immigration and Nationality in Békéscsaba. Although this is a closed centre, the regime applicable is far less strict than in above mentioned alien policing jails. The population of the centre is exclusively asylum seekers and they can move freely within the centre, including the yard. However, since they cannot leave the centre on their own will, the centre can be considered as *de facto* detention.

2. NATIONAL LEGAL OVERVIEW

Hungarian legal regulations applicable to the detention of migrants are:

- Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (TCN Act)[148]
- Government Decree no. 114/2007 on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals[149]

Hungarian legal regulations in the field of asylum:

- Act LXXX of 2007 on Asylum (Asylum Act)[150]
- Government Decree 201/2007 implementing Act LXXX of 2007 on Asylum[151]

2.1 Legal grounds for detention

The TCN Act establishes two different types of detention measures:

i) detention prior to expulsion
ii) alien policing detention,

Both types of detention apply to irregularly staying foreigners apprehended by the immigration authority (Office of Immigration and Nationality (OIN) or the Police). These categories correspond to foreigners in various situations: irregular immigrants not complying with an order to leave the territory of Hungary; foreigners against whom an expulsion order had been issued and foreigners against whom the competent penal court issued a sentence declaring them undesirable in Hungary.

Asylum seekers may also be detained in alien policing jails if they had been given an expulsion order before they had applied for asylum (e.g. if they do not submit an asylum application immediately upon their interception when crossing

[148] http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0700002.TV (in Hungarian)
http://www.unhcr.org/refworld/country,LEGAL,,LEGISLATION,HUN,,4979cae12,0.html (in English)
[149] http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0700114.KOR (in Hungarian)
[150] http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0700080.TV (in Hungarian)
http://www.unhcr.org/refworld/country,,LEGISLATION,HUN,,4979cc072,0.html (in English)
[151] http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0700301.KOR (in Hungarian)

the border unlawfully). Once their asylum claim reaches the in-merit stage of the procedure, they should be released according to the law. Unfortunately this is not always the case.

The initial decision on ordering detention is taken by the alien policing authority (alien policing detention or detention for preparation of expulsion).

In the Hungarian legal framework no general rule provides for the automatic, mandatory detention of asylum-seekers. In principle, asylum-seekers are first accommodated in the closed reception centre in Békéscsaba, for the time of preliminary assessment procedure, from where they are sent to the open reception centre in Debrecen if their case is found admissible.

Since the closed reception centre in Békéscsaba is not considered as detention, there is no detention order, only a decision of the asylum agency that the asylum seeker's place of designated stay shall be the Békéscsaba reception centre.

(i) Detention prior to expulsion

Section 55(1) of the TCN Act:

"The competent immigration authority may order the detention of the third□country national prior to expulsion in order to secure the conclusion of the immigration proceedings pending, if his/her identity or the legal grounds of his/her residence is not conclusively established."

(ii) Alien policing detention

Section 54 of the TCN Act:

In order to secure the expulsion, the alien policing authority of the OIN may order the alien policing detention of the person concerned if:

a) *he/she is hiding from the authorities or is obstructing the enforcement of the expulsion in some other way;*
b) *he/she has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion;*
c) *he/she has seriously or repeatedly violated the code of conduct of the place of compulsory confinement;*
d) *he/she has failed to report as ordered, by means of which to forestall conclusion of the pending immigration proceeding;*
e) *he/she is released from imprisonment as sentenced for a deliberate crime.*

The substance and legitimate aim of 'alien policing detention' is to ensure the implementation of the expulsion order."

(iii) Closed reception centre for asylum seekers Békéscsaba

According to Section 48 (1) of the Asylum Act, the refugee authority shall designate a reception centre as a place of residence for the foreigner seeking recognition as a refugee or as a beneficiary of subsidiary protection, until the decision closing the preliminary assessment procedure becomes final, unless the applicant is under the effect of a measure restricting personal freedom or under the effect of punishment. In practice these asylum seekers are placed in the reception centre in Békéscsaba. According to the law, this reception centre is not considered as a detention facility, but since the asylum seekers' freedom of movement is limited insofar as they are not allowed to leave the facility, this is *de facto* detention. *"The applicant may only leave the reception centre in particularly justified cases, with the permission of the refugee authority, provided that his/her absence does not prevent the performance of the relevant procedural acts."* (Section 48(2) of the Asylum Act). However, such permission is only granted in extremely rare cases.

2.2 The minimum age for detention

According to the TCN Act, Section 56, third-country nationals under the age of 18 years may not be detained based on immigration law or prior to expulsion.

This does not apply in the case of the reception centre in Békéscsaba, where all asylum seekers, regardless of their age, are placed during the preliminary assessment procedure.

2.3 The judicial review of the detention order

Hungary established a system of a built-in judicial review guaranteeing the legality of ordering, and the lawfulness of maintaining, the alien policing measure involving deprivation of liberty. According to the TCN Act, Section 54(3) *"detention under immigration laws may be ordered for a maximum duration of seventy-two hours, and it may be extended by the court of jurisdiction by reference to the place of detention until the third-country national's departure, or for maximum thirty days."* The prolongation of the alien policing detention measure shall be reviewed every 30 days upon the reasoned motion of the Alien Policing Authority submitted eight days prior to the expiration of the detention measure.

Regarding placement in closed reception centre in Békéscsaba, no judicial review is possible.

2.4 The right of appeal against the detention order and to challenge detention conditions

(i) Right of appeal against the detention order and provision of information

Although the foreigner is not entitled to demand the suspension of the alien policing measures involving deprivation of liberty or to submit an administrative appeal against the decision imposing detention, it is possible to file an application to the court within 72 hours requesting the review of the legality of the alien policing measure entailing deprivation of liberty (TCN Act, Section 57(2)).

In practice, however, it seems that courts often render their decisions almost automatically, based on the motion of the alien policing authority and without duly assessing all the relevant circumstances of the case or the possible applicability of the principle of *non refoulement*. Moreover, penal judges of local or county courts, who often do not have the necessary expertise to make a meaningful assessment of asylum cases and treat alien policing cases as a 'branch' of penal cases, are in most cases assigned to review the prolongation of alien policing detention measures. This is highly inappropriate, considering the non□penal character of alien policing cases and especially those of asylum seekers.

The legislation does not say who should inform the detainee and how, neither does it specially mention the right to appeal. In practice the detainees are informed about their rights by the police, who use a general leaflet in different languages to inform foreigners in detention, entitled "*General information sheet on the fundamental rights and responsibilities of foreigners in alien policing procedures*". The HHC's experience with foreigners in detention shows that the wording of these information leaflets is often too complicated and detainees are not fully aware of their rights and obligations. Once the detention is prolonged by the court, the detainees receive this decision only in Hungarian, which is often insufficient since most of the detainees do not speak Hungarian and they may be illiterate as well.

Given that no formal decision is taken about the *de facto* detention in closed reception centre in Békéscsaba, asylum seekers cannot seek judicial review.

(ii) Right to challenge detention conditions

The third-country national placed under detention in alien policing jails may lodge a complaint to the local court of jurisdiction if their rights under the TCN Act are not respected (TCN Act, Section 57(3)).

For asylum seekers in Békéscsaba, Section 35(2) of Government Decree implementing the Asylum Act is relevant. It sets out that applicants in need of assistance under no circumstances may be deprived of their right to receive housing and nourishing. This assistance is a duty of the state (Section 12(1)), thus if the reception centre fails to comply with its obligation there must be an option to lodge a complaint first to the director of the reception centre and

finally to the OIN, as it is the supervisory body of the reception centre. However, this is not regulated in the Asylum Act or in the Government Decree.

2.5 The right to information about the detention order and/or the reasons for detention

This right is not explicitly mentioned in the law, but there is an obligation of the authorities to communicate the resolution ordering detention to the detainee in a language that he/she understands (TCN Act, section 89).

The act on Administrative Procedure guarantees the right to use one's native language in every administrative procedure consequently persons subjected to an alien policing procedure are also entitled to use their language and be informed (Section 10).

2.6 The maximum duration of detention

Any alien policing measure that involves the deprivation of liberty shall be terminated immediately whenever 'it becomes obvious that the expulsion cannot be implemented' (Section 54(4), TCN Act). The deprivation of liberty cannot exceed six months (Sections 54(4)c of TCN Act).

Asylum seekers are placed in Békéscsaba reception centre during the preliminary assessment procedure, which according to the Asylum Act, Section 47, shall be completed within fifteen days. This period is unfortunately not respected in cases of asylum seekers who fall under the scope of the Dublin Regulation. Those asylum seekers are currently *de facto* detained in Békéscsaba during the entire Dublin procedure, the duration of which may amount to several weeks or months.

2.7 The provision of health care and the scope of health care benefits, and for the provision of social services

(i) Provision of health care

According to the TCN Act, Section 61(3), third-country nationals placed under detention shall have the right to emergency and basic medical care. Section 138□140 of the Government Decree implementing the TCN Act provides that foreigners detained in an alien police jail are entitled to all necessary medical care free of charge, if they are not covered by social security insurance. Section 138 lists the health care services to which they are entitled.[152] Those health services have to be ordered by the doctor performing basic medical care or the specialized doctor of the out-patient services or in-patient health care institution (Section 139).

For asylum seekers, the Government Decree implementing the Asylum Act provides in Section 26(1) a long list enumerating the types of health care services that should be provided for free in case the asylum seeker does not

[152] Section 138 of Government Decree implementing the TCN Act*:*
a. examinations and treatment included in basic medical care;
b. examination, treatment received as a part of emergency out-patient specialized treatment – including emergency dental care – as well as medications and bandages used during treatment;
c. epidemic vaccination, examinations and health care;
d. following care specified in (b)-(c), following out-patient specialized treatment or inpatient treatment received in a health care institution, until his/her recovery or stabilization of condition
da) necessary examinations and medical treatment,
db) medication not substitutable by other type of medication, not included in (f) and the therapeutic equipment needed for the administration of the medication;
e. care during pregnancy and childbirth, including proper information on healthy lifestyle and preparation for appropriate nursing care;
f. in case of urgent need other health care services shall be provided to the foreigner in accordance with separate legal regulation on health care;
g. in case of treatment specified in (b)-(e), transportation if the foreigner's transportation cannot be arranged otherwise on account of his/her medical condition.

benefit from social security insurance.[153] In addition, Section 34(1) of Government Decree adds that persons requiring special treatment are furthermore entitled free of charge to all health care services that prove necessary having regard to their (special) medical condition.

(ii) Provision of social services

Legislation does not provide any provisions of social services in alien policing jails.

For asylum seekers placed in reception centres, the Asylum Act, Section 26 provides that the conditions of reception include social care as well. Section 14(2)(c) of the Governmental Decree further provides that the asylum authority may enter into contractual obligation with a service provider to provide the applicant with social and psychological services.

2.8 Contact with outside world

Section 61(3) of the TCN Act provides that the detained foreigner shall be entitled:
„(b) to consult their legal representative or a member of the consular representation of their host country without any supervision, and to be visited by relatives under supervision ;
(c) send and receive packages and letters as specified in specific other legislation, and to receive visitors"

2.10 Legal grounds for the provision of legal aid and right to interpreter

Access to detention facilities by lawyers providing free legal assistance and representation is guaranteed on the basis of the Co-operation Agreement between the HHC and National Border Guard Headquarters.

For the court proceedings the TCN Act, Section 59, prescribes that "*the court shall appoint a representative ad litem for any third-country national or his/her family member who does not understand the Hungarian language and is unable to contract the services of a legal representative on his/her own."*

Asylum seekers have according to the Asylum Act, Section 37(3) *"the opportunity to use legal aid at their own expense or, if in need, free of charge as set forth in the Act on Legal assistance, or to accept the free legal aid of a registered non-governmental organisation engaged in legal protection."*

2.11 Legal grounds for the protection of persons with special needs

[153] *a. examinations and treatment included in basic medical care;*
b. examination, treatment received as a part of emergency out-patient specialized treatment as well as medications and bandages used during treatment;
c. treatment received as a part of emergency in-patient specialized treatment - including surgical intervention as well as medications, therapeutic equipment, bandages and meals;
d. following out-patient specialized treatment or inpatient treatment received in a health care institution, until his/her recovery or stabilization of condition
da) necessary examinations and medical treatment,
db) medication not substitutable by other type of medication and the therapeutic equipment needed for the administration of the medication;
e. medication or therapeutic equipment, including its repair, prescribed by a doctor other than medications indicated in points d) and db);
f. emergency dental treatment
g. care during pregnancy and childbirth, including abortive treatment in accordance with the provisions of the act on the protection of the life of the foetus;
i. in case of treatment specified in b), c), d), da) and g) transportation if the person's transportation cannot be arranged otherwise on account of his/her medical condition.
j. mandatory epidemic vaccination.

TCN Act prohibits the detention of minor third country nationals, but makes possible the designation of a compulsory place of residence to minors against whom an alien policing measure involving deprivation of liberty would be applicable (Section 62(1)).

The detention of women is not precluded as such, but TCN Act prescribes that women shall be detained separately from men (Section 61(2)).

As regards the detention of families, TCN Act provides that by way of a temporary measure, the authority ordering detention shall take immediate action concerning the care of the family member of the detained foreigner remaining without supervision or who is dependant on the foreigner (Section 60(3)).

No specific norms govern the health care of seriously ill or foreigners with mental disability detained in alien policing jails. Many asylum□seekers suffered trauma or torture, which renders their mental health precarious. Still, victims of torture or violence are not exempted from the implementation of alien policing detention.

Asylum law contains special provisions for asylum seekers with special needs that apply also to the asylum seekers in Békéscsaba reception centre. Asylum Act defines a person requiring special treatment as a vulnerable person, in particular, a minor, unaccompanied minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a person who has undergone torture, rape or any other grave form of psychological, physical or sexual violence and has special needs because of his/her individual situation (Section 2k). A person with special need is entitled free of charge to all medical services necessary with respect to his/her medical condition, also including rehabilitative, psychological, clinical psychological, psychotherapeutic treatment (Section 34(1) of Governmental Decree 301/2007).

2.12 Legal grounds for the alternatives to the detention

TCN Act, Section 62 provides that the immigration authority shall have powers to order the confinement of a third-country national in a designated place, if the third-country national in question:
"a) cannot be returned or expelled due to commitments of the Republic of Hungary conferred upon it in international treaties and conventions;
b) is a minor who should be placed under detention;
c) should be placed under detention, in consequence of which his/her minor child residing in the territory of the Republic of Hungary would be left unattended if he/she was to be detained;
d) is released from detention, however, there are still grounds for his/her detention;
e) has a residence permit granted on humanitarian grounds;
f) has been expelled, and is lacking adequate financial resources to support himself and/or does not have adequate dwelling."

2.13 Legal grounds for providing release from detention

In terms of TCN Act, alien policing detention shall be immediately terminated when the grounds thereof no longer exist (Section 56(2)). The alien policing detention may last until the conditions of implementing the expulsion order are put in place but no longer than six months. Detention shall be terminated when the conditions of expulsion are assured or when it becomes obvious that the expulsion cannot be implemented (Section 54(4)).

Government Decree implementing TCN Act further states in Section 124(5) that the detention in preparation for expulsion shall be terminated if the proceeding authority has established the foreigner's personal identity or that he/she has been staying lawfully in the country, or if the foreigner's expulsion cannot be ordered due to the existence of the prohibition contained in Article 51(1) of TCN Act (*non refoulement*). If it is likely that the expulsion cannot be carried out even after six months of detention □ especially if the conditions of departure cannot be secured or if, due

to his/her physical state the foreigner is in need of longer hospitalisation the detention has to be terminated (Section 126(5)).

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1 Basic information

We conducted 34 interviews with detainees. 12% were rejected asylum seeker awaiting deportation, 55% were applicants for international protection, 27% were illegally staying migrants awaiting deportation and 6% were asylum seekers under Dublin II procedure. Average age of interviewees was 29 years (maximum age: 60; minimum age: 16). Majority were men, females make up 21% of the interviewees. Their nationalities were mixed; they came from southern Asia, northern Africa, the Caucasus, the Balkans, eastern Africa, western Africa, the Middle East, Eastern Europe and Southeast Asia, with slightly more Kosovars and Nigerians than others. 58% were single, 39% married and one person reported being divorced.

3.2 Case awareness

56% of interviewees say they've been made aware of the reasons of their detention, but 44% say they haven't. For those who've been made aware, they are most likely to know from the police (27%) or the courts (27%). Two people remarked that their interpreters/translators informed them, i.e. "people not in charge". Level of being informed about their asylum cases is 3.88 on a 10-point scale. 32% of respondents say they are "totally uninformed" and only two respondents (out of 25 valid responses) say they are "totally informed". Most people ask for more information while in detention (93%), in particular for information regarding asylum/immigration procedures (38%); out of 27 valid responses, seven wanted to know the "reasons for detention." Of the people who want more information, 35% say they need it to enable them to make decisions about their future.

The head of alien policing jail in Kiskunhalas estimated that the asylum seekers are totally uninformed about their asylum case, but emphasized that it is not the duty of the detention staff to inform the persons of the reasons for their detention or about their asylum case. This is the duty of the authority that issues the detention order and of the authority responsible for asylum procedure. HHC lawyers also reported low level of awareness.

According to the Menedék social worker in Békéscsaba, the asylum seekers are relatively well informed about their asylum case and why they have to stay in this centre. HHC would like to add that this is not the case for those asylum seekers that are under Dublin procedure, since they can be detained for longer periods, without knowing what is happening regarding their Dublin case.

3.3 Space within the detention centre

42% of the interviewees feel 'neutral' about the condition of the room they sleep in, meaning that they say "its fine" or "it's alright"; however 38% also feel negative. They generally attribute their response to the atmosphere in the room (57%), in particular the ambient temperature. Also 13% attributed their response to the quality of the facilities in their room, i.e. non-functioning electrical sockets, poor toilet facilities.

60% felt 'neutral' about the rest of the centre space, although 23% feel negative. They attribute this response to the general atmosphere of the detention centre (59%), in particular that there is too little space available for detainees. 25% attribute their response to the condition of the facilities, i.e. showers, water. 70% didn't feel that the centre is over-crowded; 30% said they do feel the centre is overcrowded.

A social worker from Menedék reported that Békéscsaba centre is usually overcrowded in winter months, from December to May.

All detainees reported that they don't have a space where they can seek privacy. Head of alien policing jail in Kiskunhalas stated that they accommodate the privacy needs of the detainees by providing lockers to depose private values, possibility to order goods from supermarket and a prayer room.

3.4 Rules and routine

The detainees are generally most aware of centre rules that dictate routine (45%), such as eating, sleeping and outdoor times. But 36% did report an awareness of rules that dictate behaviour, mostly relating to being "locked up" in their room for most of the day, or not being given enough time to use the telephone. Four respondents report that they have "no information about the rules." Some feel that everyone else respects the rules of the centre, but they feel mixed about whether or not detainees can change the rules (14 say no, 10 say yes).

The head of alien policing jail in Kiskunhalas stated that they inform the newly arrived about the rules of the jail with the help of an interpreter and that rules in various languages are also put on the wall. He further claimed that the detainees can propose changes of the rules, for example modification of 'sleeping time'. Every day from 2.30 to 3.15 pm they can submit written complaints or claims.

According to the interviews with HHC lawyers, the detainees can propose changes of the rules, but those proposals are usually not taken into consideration. The rules that most affect their lives are the strict rules regarding the time spent outside of their rooms, particularly for males. The lack of liberty affects the lives of the detainees in psychological and physical sense. The lack of activities is very detrimental as well.

According to the Menedék social worker in Békéscsaba, the asylum seekers cannot propose changes to the rules. The rule that the most impacts their lives is to maintain the hygiene in the common spaces, for example at the toilets and in the kitchen. This provokes conflicts between the asylum seekers, since they have different religions and nationalities.

3.5 Detention centre staff

Detainees mostly encounter security/police staff (93% of respondents). They report their level of interaction with staff as negative (36%), or "varying" (28%); 28% report their interactions as "neutral." Only three respondents reported their interactions positively. Majority don't experience discrimination from staff, but a significant minority, nine persons (or 27%), say they do. Of those nine that do report discrimination by staff, five attribute it to "ethnicity/nationality" while four attribute it to "interpersonal reasons". 50% feel that staff doesn't support their needs; 27% say staff positively supports their needs. Most respondents attribute this answer to special needs or requests (52%), but 36% say it relates to all of their needs.

Head of alien policing jail in Kiskunhalas estimated the level of rapport between the detention staff and detainees as fair. The only difference in treatment is accorded to women that are not obliged to eat in dinning rooms and to elderly people or pregnant women that are treated with special attention.

3.6 Level of safety within the detention centre

According to the interviews the level of safety is 8.03 on a 10-point scale. 56% of respondents report feeling "very safe," while only one respondent reported feeling "very unsafe." They attribute their feelings of safety to "not being afraid", i.e. a good sense of self-security. No one attributes their level of safety to the staff. Majority doesn't experience any mocking or insults from others (85%), but five respondents (or 15%) say they have been mocked or

insulted. Of those five, all blame the security/police staff for reasons ranging from racial/culture/ethnic reasons, to simply staff unfriendliness. The staff does not physically abuse them (97%), but one person does report physical abuse. This person blames a quarrel with a co-detainee. 91% despite their expressed need to receive more information about their asylum/immigration case, or the reasons for their detention, have never filed a formal complaint to the centre's authorities. Three respondents say they have, and all say the result has been unsuccessful.

According to the Menedék social worker in Békéscsaba, the security in the centre depends on the asylum seekers and their behaviour. The number of security stuff also matters and since they are not many, they cannot be present everywhere all the time.

3.7 Activities within the detention centre

Some detainees don't seem sure if the centre provides activities or not: of those who responded, 58% say the centre doesn't provide activities, while 42% say the centre does. Of those who say the centre does provide activities, most participate in sports activities, but also in "entertainment" related activities, i.e. television. Out of eleven valid responses, eight say they do these activities for stress relief. Out of 14 valid responses, eight say they don't do activities because they are unaware of them. They generally have access to television, telephone and to outdoor space, but not to books, computers, the Internet or educational activities. 40% report having access to sports equipment, although it is unclear whether they provide this themselves or if the centre provides it. When asked what activities they would want, they mostly responded with *needs* instead of *activities,* i.e. better facilities. But 24% report wanting access to more entertainment-related activities; not television, in this case, but rather more access to books.

According to the head of alien policing jail in Kiskunhalas, they do not provide any activities for the detainees.

A Menedék social worker in Békéscsaba said: "We need to turn their attention to these activities and then they participate."

3.8 Medical issues

Majority of detainees reports to be aware of the existence of medical staff in the centre (91%), but the number of encounters varies: 50% say at least "once per week" or when needed, and 41% say "less than once per month." They know that they are meeting with doctors, but they seem unaware whether or not other medical staff are nurses or not (44% say they meet with nurses, 56% say they don't). 79% said they received a medical exam when they arrived to the centre, but this exam may not be very thorough. The medical staff uses a language that they understand, but a significant minority (38%) said they don't understand the language used by the medical staff.

Average physical health *before* detention is 7.38 on a 10-point scale. 38% of respondents described their physical health as "very good", and 35% reported it as "fair". Average physical health *during* detention is 6.09 on a 10-point scale, or a 1.29-point drop. Most respondents reported their physical health in detention as "fair" (53%), while 26% said it was "very good". 83% responded that their physical health has likely been negatively impacted while in detention. They likely attribute this response to the quality of the detention centre facilities, i.e. poor air quality, ambient air temperature, quality of bedding, etc.

Average mental health *before* detention is 7.37 on a 10-point scale. 37% of responses described their mental health as "very good", and 33% say it was "good". Average mental health *during* detention is 4.67 on a 10-point scale, or a 2.70-point drop. 23% of responses describe their mental health as "very poor", and 40% as "fair". However a significant minority still report their mental health as "good " (27%). Their mental health has likely been impacted while in detention, and they attribute this impact to detention in general, i.e. anxiety and uncertainty about his personal situation, worries about family, a desire to be free, reports of sadness, concerns about the poor state of facilities. A slight majority report that they want extra medical services (59%), compared to those who don't want extra medical

services (40%). Nine out of eleven who offered supporting responses said they want better access to appropriate medical care.

The head of the alien policing jail in Kiskunhalas reported that paramedical staff is always present during the office hours, but the doctor comes only upon request. In case the centre staff cannot respond to the medical needs they provide the detainees with access to external medical care. The head of the alien policing jail observed that most of the detainees get depressed if kept for a longer time, also due to the lack of information.

According to the Menedék social worker from Békéscsaba the main problem is communication and therefore some services can be out of reach. Their organization has staff that speaks more languages and they try to help asylum seekers by facilitating their communication with medical stuff.

Lawyers from HHC reported that detainees in general complain that the doctors usually prescribe them sleeping pills for any sort of problems. The detainees are taken to the psychologist only when it is an emergency (e.g. attempt of suicide).

3.9 Social interaction within detention centre

Detainees generally describe their interactions with other people in the centre in “neutral” tones (58%), but 39% do describe interactions as “good”. They don’t tend to give a specific reason for the quality of the interaction, but instead describes it as “ok”, or “normal”, or “fine”. Majority doesn’t report any problems with other detainees – the few who do (six out of 34 respondents) blame existing problems on “common life in detention” and “inter-cultural tension”. 13 out of 34 respondents say they don’t trust anyone in the detention centre; seven say they do. Of those seven, four say they trust detention centre staff (mostly security/police), and three say they trust co-detainees.

The head of the alien policing jail in Kiskunhalas said that the communication between the detainees and staff is normal, but the guards are not allowed to be too friendly. Sometimes verbal insults occur among the detainees, but physical aggression is rare.

HHC lawyers report a low level of rapport between the detainees and staff, due to the language barriers.

3.10 Contact with the outside world

Majority has family in their country of origin, and the family is most likely being supported without their help. But a significant minority (41%) says their family is not being supported. 56% likely do not have any family or friends in Hungary, but a significant minority (44%) say they do. Mostly they have access to the telephone, and not to the Internet, mail and personal visits. 68% of respondents describe the telephone as the best means of communicating with the outside world, and most say they have access to it. However, many say that the centre does not afford them enough time on the telephone (only five minutes). Although they have access to the telephone, they would prefer be able to talk for longer. In general, they do not receive personal visits from anyone. A significant minority (39%) say they do receive visits from lawyers.

According to the HHC lawyers, the problem is that if the detainees don’t have money, they cannot order a telephone card. It should be also noted that the time restriction for using the phone only applies in alien policing jails and not in the reception centre in Békéscsaba.

3.11 Conditions of detention and the family

Children are not detained in alien policing jails at all. Married couples are separated and accommodated in different departments. They can speak with each other only through the bars that separate the ward for men from the ward for

women in the Kiskunhalas jail. In Nyírbátor, since the two wards are on separate floors, married couples cannot speak to each other at all, unless the guards provide a special supervised opportunity for them to meet.

In the Békéscsaba reception centre, the families are accommodated in a special protected area, which is a separate floor in one of the buildings. According to the social worker from Menedék the staff is very kind with the children. Their organization provides a person who works with children every day for 6 hours. There is space where children can play, study and do other activities. However, formal school education for children is unresolved in this reception facility.

3.12 Conditions of detention and nutrition

The majority of detainees don't tend to enjoy the food provided by the centre (58%), but a significant minority (42%) says they do enjoy the food. Of those who do not like the food, 32% attribute their response to the lack of variety offered, and 23% to the poor quality of food. 64% of respondents say their appetite has changed as a result of being in detention: when asked in which way, 12 our of 13 valid responses say, "lost appetite". When asked to describe how this has impacted them, 10 out of 11 valid responses say they "feel worse".

According to the head of alien policing jail in Kiskunhalas the problems are weekends, when only canned food is served and the detainees do not eat that kind of food. However in general the detainees become stronger, due to the regular nutrition and sport activities. According to the HHC lawyers this is not the case in Nyírbátor and Győr alien policing jails, where they observed that the detainees in general loose weight. According to the observations of HHC lawyers, in alien policing jails the detainees have no opportunity to make coffee or tea during the day and during the Ramadan no adaptation regarding the meals is made.

According to the Menedék social worker in Békéscsaba the main reason for dissatisfaction with food is that the asylum seekers are not used to that kind of food (e.g. lots of bread, little rice and vegetables) and they don't eat it.

3.13 Conditions of detention and individual

Respondents attribute their *first difficulty* in detention to simply being in detention (57% of valid responses). Specifically, respondents mention the "loss of rights" that comes with detention, i.e. no freedom, being in a prison-like situation, no liberty. A significant minority of respondents attribute their first difficulty to the state of living conditions (24%), i.e. poor facilities, poor food, not enough space to move around. Respondents attribute their *second difficulty* to the living conditions of the centre (60% of valid responses), i.e. not enough activities, not enough space to move around, poor toilet facilities, poor food. However 30% of those who responded continue to attribute difficulties to detention in general, i.e. lack of means to communicate with the outside world, no freedom, uncertainty of their case. Respondents attribute their *third difficulty* in detention once again to living conditions (58% of valid responses), with particular mention to the quality of the food provided. 29% continue to blame detention in general. However, most respondents did not offer a "third difficulty" while in detention, making the weight of these responses weak. 15 out of 18 valid responses reported that these difficulties have not changed in detention. When asked if there has been a time when life in detention became difficult, 64% said yes (36% said no). They attribute their responses either to specific events and/or circumstances or simply to "everyday" difficulties (43%).

The majority doesn't know what the outcome of detention will be (approximately 75% of responses). Moreover, they don't know when they will be released from detention (88% of responses). This lack of knowledge/awareness creates a strong sense of worry and anxiety (46%), and has left respondents with a very negative impression of their detention (46%). These responses tend to be unspecific.

67% report that they don't sleep well in detention but a significant minority says they do sleep well (33%). Those who don't sleep well tend to blame the stress of detention and the anxiety/worry that is caused as a result.

In 12 out of 17 valid responses, detainees say they do not have special needs. When asked if they know of anyone else in the centre that is vulnerable, 10 out of 19 respondents mentioned those who possess “classic” special needs, i.e. women, single mothers with children. Six out of 19 respondents mention those with “other” special needs, i.e. those that cannot speak the language of the centre’s staff, those with no money, old people, and people of particular nationalities (Albanians and Afghanis).

The head of alien policing jail in Kiskunhalas reports that the detention staff is mostly not aware of the detainees’ release in advance and they do not want to inform the detainees earlier, due to the fear of aggressive reactions. According to him the three main difficulties faced by the detainees are lack of due information on asylum and voluntary return proceedings, lack of education or spare time activities and a lack of possibility to clean their own clothes. The most vulnerable persons are women and the weakest within the group or those ‘mobbed’ by the others.

According to the HHC lawyers, the main difficulties in alien policing jails are lack of activities, bad food and lack of information, deprivation of liberty itself, lack of contact with families and the length of deportation procedure. The most vulnerable are asylum seekers and among them particularly women, severely traumatised persons, mentally disabled and sick.

According to the Menedék social worker in Békéscsaba, the three main difficulties are unknown environment, different nations and different cultures and language barriers.

4. ANALYSIS OF DATA AND CENTRAL THEMES

With the analysis of collected data from the interviews, we identified three main themes that are the most problematic and would need further advocacy for a change.

4.1 Lack of information

The numbers indicate a connection between detainees’ lack of information and their reported level of mental health. For example, detainees who report that they do not know when they’ll be released from detention also report a “very poor” level of mental health. There also appears to be a connection between the need for more information and the level of sleep: detainees who say they don’t sleep well also say they need more specific information. Moreover, detainees who say they don’t know the reason for their detention also say that they can’t sleep well at night due to stress and worry.

On its face, the data reveals that the non-existence of a perspective has a negative impact on detainees. Detainees who do not know when they’ll be released – a significant portion of the total sample – tend to report higher levels of stress, anxiety and uncertainty. Detainees also report that they need more information in order to help them establish a plan for their future. The lack of a perspective may relate to the “first difficulty” that detainees report, which touches on the impact of detention, the loss of liberty and being in a prison-like environment. This is interesting because the average length of detention in the sample, 52 days, is not especially long when compared with other countries.

The numbers do not indicate much of a connection between reported levels of mental health, anxiety, stress, worry and length of time spent in detention. The length of time in detention does not come up in detainees’ responses either, suggesting that “lack of information” may be a more significant factor of vulnerability than length of time in detention. Detainees also identify those who do not understand the language used by centre staff as particularly vulnerable. If this group of detainees already have difficulty accessing information, then being unable to communicate with staff probably compounds this difficulty.

The above mentioned finding, namely that there is no much of connection between reported levels of mental health and the time spent in detention, might be also due to the fact that the prison-like conditions are very strong cause for deterioration of mental health, with quite imminent effect, regardless of time spent in detention. This will be discussed further under the point 4.3.

HHC would also like to mention that the lack of information was mainly reported in alien policing jails and by the asylum seekers under Dublin procedure in Békéscsaba reception centre. Other asylum seekers in Békéscsaba were relatively well informed about their asylum case and their prospects of release from the centre.

4.2 Interaction with detention centre staff

The security and/or police staff seems to play an important role in the daily life of detainees. Regardless of whether these interactions are positive or not, the numbers indicate that the frequent level of interaction with security/police staff impacts upon the general experience detainees have in the centre. In regards to this sample, it is clear that detainees feel negatively about their interactions with security/police staff; this despite the finding that those who do report to trust someone in the centre say they trust security/police staff.

Given that those who were interviewed do not generally receive visitors, they may end up relying on detention centre staff for the information they need. However the numbers indicate that detainees who report that they need specific information, e.g. reasons for detention, asylum/immigration procedure, also report their interactions with security/police staff as being negative. While our analysis does not indicate a strong statistical relationship here, we can infer from the numbers that security/police staff may be an unreliable source of information for detainees. Worth mentioning is also the response of the head of alien policing jail in Kiskunhalas, stating that it is not the duty of the detention staff to inform the detainees on the reasons for their detention, their release or asylum case. In other words, if detainees report their interaction with security/police staff as negative, and if their connection to the outside world is limited, then how else can they obtain the information they say they need?

The situation is a little bit better in Békéscsaba closed reception centre, where asylum seekers are in regular contact with social workers, who speak several languages and can better explain the house rules and the asylum procedure.

4.3 Conditions of detention

The conditions of detention seem to impact on detainees' reported level of well being. Although the responses are not overwhelmingly negative, there exists a significant minority that should encourage further investigation into the relationship between conditions of detention and detainees' well being. In fact, living conditions comes up as the second and third reported difficulty in detention.

The HHC would like to stress that the conditions of detention are not the same in all the detentions visited. As already mentioned in introduction, there is a big difference between alien policing jails with strict prison-like regimes and the closed reception centre in Békéscsaba, where the conditions are much better. Further on, there is a difference between alien policing jails as well. In two out of the four administrative detention facilities, the strictest possible regime is in place (in Nyírbátor and Kiskunhalas): the detainees are locked in their cells almost the whole day, while a more human friendly and flexible arrangement with more freedom of movement within the detention ward is applied in Győr and at Ferihegy Budapest airport. These differences definitely affect the findings of this project, since the conclusions were drawn from all the interviews together and not for each detention separately and that is why the whole picture is not overwhelmingly negative.

In HHC opinion the conditions of detention is one of the main reasons for the deterioration of detainees' mental and physical health at least in alien policing jails with the strictest regimes (Nyírbátor and Kiskunhalas). The prison-like

regime, with closed cells, only one hour of outdoor recreation per day, food that lacks variety, absence of social and psychological assistance and no activities definitely cause negative impact on detainees well being.

5. CONCLUSIONS AND RECOMMENDATIONS

The data from Hungary reveals that detainees' lack of a perspective, as caused by not having the information they need, is a major factor of vulnerability in all visited facilities (with exception of asylum seekers that are not under Dublin procedure in Békéscsaba closed reception centre). This lack of perspective, i.e. not knowing the details of their asylum/immigration cases, the outcome of their detention, their release date, the expected duration of detention, seems to have an impact on their reported level of mental health. The findings indicate significant feelings of anxiety, stress, worry (for themselves and for others), sadness, despair and hopelessness.

Since detainees have little connection to the outside world – low numbers of visitors, little time on the telephone – they must rely on detention centre staff, especially security/police staff, for the information. However since they report their interactions with security/police staff as negative, then it seems that they cannot rely on them for the information they need. Exception is again closed reception centre in Békéscsaba, where asylum seekers can rely on the social workers to get more information about their asylum procedure. However for those under Dublin procedure this is not sufficient, since social workers do not know how and when their Dublin procedure will terminate.

The lack of a perspective seems to have a snowball effect on other factors, such as detainees' sense of imprisonment and their reported lack of liberty, in addition to their reports of the poor living conditions. The length of detention does not seem to be a significant factor, leading us to conclude that the possession of a life perspective may temper the negative effects of long-term detention, i.e. even if one is detained for five months, if the person knows when they'll be released, then they may at least be able to pursue other activities while they wait. This is of course impossible in the alien policing jails, where almost no activities are available and due to the high security regime the detainees are locked in their cells almost the whole day.

Based on the above conclusions, the Hungarian Helsinki Committee considers that the following changes should be implemented in the rules for administrative detention of migrants in Hungary:

- Cease with the practice of detaining asylum seekers in alien policing jails
- Soften the detention regime in alien policing jails and provide some activities and books, improve access to pay-phone and provide more time for the phone calls, allow residents to stay longer in the common area and provide bigger variety of food and hot water to make coffee/tea by residents
- Ensure that a psychologist and/or a social worker is weekly present in alien policing jails, in order to assure identification and treatment of torture victims and victims of other kind of violence and to ease the psychological distress caused by the deprivation of liberty
- Ensure a particular care for female detainees and assure that illiterate detainees can communicate their needs as well
- Ensure that married couples should be able to meet on a daily basis in alien policing jails
- Disseminate easy–to-understand information on the rules applicable to the procedures and house rules
- Provide more information on reasons for detention, asylum case and possibility of release
- Discontinue with the closed centre regime in Békéscsaba, or alternatively provide for judicial review of detention, with specific consideration of vulnerable groups
- Improve linguistic skills and cultural sensibility of security staff

NATIONAL REPORT: IRELAND

By: Jesuit Refugee Service Ireland

1. INTRODUCTION

The findings and conclusions in this report this report are based on a desk review of pertinent legislation, regulations, policies and procedures as well as on structured interviews with different stakeholders involved in immigration-related detention, including detainees, representatives of non-governmental organizations, (NGOs), attorneys and personnel working in both the Dochas Centre, which is part of the Mountjoy Prison, and Cloverhill Prison, both located in Dublin.

The detainees interviewed for this particular research included female asylum seekers and women awaiting deportation in the Dochas Centre. The researcher was unable to interview detainees held in the men's prison, Cloverhill Prison, due to its visiting policy. The researcher did attempt to interview men who had been detained and subsequently released. However, they declined to do so for one of two reasons. Some indicated that they "just wanted to forget the experience." Others were afraid that their cooperation in the research project could negatively impact their asylum or immigration case.

All interviews with the detainees were carried out in a separate meeting room, out of the sight and hearing of Dochas Centre staff. During the period of time that the research was carried out for the project in Ireland, there were only a small number of non-national women detained in Dochas Centre at any given period of time for immigration-related reasons. Because of the low numbers in the facility, only nine women were interviewed for this research.

2. NATIONAL LEGAL OVERVIEW

Persons subject to administrative detention

Ireland has approved legislation and created implementing regulations governing the detention and deportation of non-nationals from its territory. Under these laws and regulations, the following categories of non-nationals are subject to detention for immigration-related reasons:

- Non-nationals refused "permission to land" [154]
- Rejected asylum seekers [155]
- Non-nationals with final orders of deportation [156]
- Non-nationals awaiting trial for a criminal immigration-related offence(s). [157]

Detention only applies to non-nationals over the age of 18. Non-national children are not detained in Ireland for immigration-related reasons. [158]

[154] Immigration Act 2003, Section 5(2).
[155] Refugee Act 1996, Section 9(8).
[156] Immigration Act 1999, Section 5.
[157] Criminal Procedure Act 1984, Section 4. Non-nationals in this category are detained for criminal purposes rather than immigration-related reasons. If convicted, after they serve their sentence, they may be subject to deportation and, thus, detention pending such deportation under the provisions discussed below, depending on their status.
[158] Section 9(12)(a), Refugee Act 1996; Section 5(4)(a), Immigration Act 1999; Section 5(2)(b), Immigration Act 2003.

Places of detention and conditions

Ireland does not have detention centres for the exclusive housing of immigration detainees such as exist in the United Kingdom (UK) and other countries. Rather detainees are held in one of the following six penal institutions run by the Irish Prison Service: Castlerea Prison; Cloverhill Prison; Cork Prison; Limerick Prison; the Midlands Prison; Mountjoy Prison; Saint Patrick's Institution, Dublin; the Training Unit, Glengariff Parade, Dublin; and, Wheatfield Prison, Dublin.[159] Immigration detainees can also be held at Garda Soichana stations for a limited period of time not to exceed 48 hours or for any more than two consecutive overnight stays. [160]

The great majority of immigration-related detainees, over 90%, are held in one of two prisons in Dublin: Cloverhill Prison (male detainees) and the Dochas Centre at Mountjoy Prison (female detainees). These prisons accommodate immigration detainees as well as people suspected and/or sentenced for having committed criminal offences. Conditions for immigration detainees are generally better in the Dochas Centre than in the Cloverhill Prison. Cloverhill Prison has a capacity to accommodate 431 individuals. However, the prison is often overcrowded and residents sleep on mattresses placed on the floors of cells when sufficient beds are not available. The same occurs at Dochas Centre, Mountjoy Prison, which is generally overcrowded as well. It has a capacity to accommodate 85 but often exceeds that number.

Special needs

There are no specific prison rules governing the treatment of immigration-related detainees. The general rules governing the operations of prisons apply to all persons held within Irish prisons, including immigration detainees. [161] There are specific provisions that address the needs of pregnant women, [162] single parents with minor children, [163] persons in need of psychiatric care, [164] and other vulnerable persons. [165]

Health care

All persons in the Irish prison system, including migrants and asylum seekers detained for immigration-related reasons, have the right to health care. [166]After arrival in the prison, each detainee is given a medical exam. During their confinement in prison, they have access to medical personnel, doctors and nurses, for any medical concerns. For serious matters, a detainee will be transferred to a hospital for treatment there.

Contact with the outside world

All persons detained in an Irish prison have the right to receive visits from family and friends under certain conditions. [167] They are permitted to make one phone call a day, paid for by the Irish government, not to exceed six minutes. With the permission of the director of the prison, representatives of religious denominations can visit detainees at the prisons. [168] Additionally, chaplains are based in the Irish prisons to provide pastoral and other relevant care to detainees. Detainees have the right to receive visits from consular authorities from their countries' embassies. [169]

[159] S.I. No 56 of 2005 – Immigration Act 2003 (Removal Places of Detention) Regulations 2005. The Irish Prison service operates under the Statutory Authority of the Prisons Act 2007, the Rules for the Government of Prisons 2007 and other relevant laws and regulations.
[160] S.I. No. 344 of 2000 – Refugee Act , 1996 (Places and Conditions of Detention) Regulations, 2000, Section 11(1). The Garda Siochana is the Irish national police force with a presence throughout the country.
[161] Irish Prison Service Rules 2007.
[162] Irish Prison Service Rules 2007, Section 33(2).
[163] Irish Prison Service Rules 2007, Section 17(1).
[164] Irish Prison Service Rules 2007, Section 99(5).
[165] Irish Prison Service Rules 2007, Section 63(1).
[166] Irish Prison Service Rules 2007, Section 33.
[167] Irish Prison Service Rules 2007, Rule 35.
[168] Irish Prison Service Rules 2007, Rule 34.
[169] Irish Prison Service Rules 2007, Rule 39(1).

Asylum seekers have the right to receive visits from designated refugee organizations and non-governmental organizations. [170] Finally, detainees have the right to contact and receive visits from their legal advisors. [171]

Statistics and length of detention

During the late 1990s and into the very early years of the millennium, it was unusual for non-nationals to be detained in any significant numbers for immigration-related reasons in Ireland. However, that soon changed as laws were put into place to identify and detain individuals upon entry, after entry and prior to deportation. The highest number of detainees – 1,852 – was recorded in 2003. Ireland detained the lowest number of immigration-related detainees – 860 – in 2005.

Table 1: Detainees held in immigration-related detention [172]

Year	*Number of detainees*
2003	1,852
2004	946
2005	860
2006	1,113
2007	1,145
TOTAL	**5,916**

Asylum seekers can be detained, under the authority of a District Court judge, for a potentially indefinite period of time consisting of 21 day consecutive committals until his or her application for asylum has been decided. [173] Non-nationals arriving by air or sea who are refused permission to land may be detained for a period not to exceed 8 weeks, with some exceptions, in the aggregate under the warrant of an immigration officer of a member of the Garda Soichana pending their deportation. [174] In practice, the majority of non-nationals are detained for up to three days before either being released or returned to their country of origin.

Table 2: Length of detention [175]

Year	3 days	4-7 days	8-14 days	15-30 days	31-50 days	50 + days
2003	1,140	324	6	12	3	367
2004	414	195	127	75	65	70
2005	484	140	88	86	43	19
2006	439	255	167	138	55	59
2007	631	205	89	99	67	53
TOTAL	**3,108**	**1,119**	**477**	**410**	**233**	**568**

Alternatives to detention

There are no formal alternatives to detention. However, the Refugee Act 1996, Section 9(5), provides some alternative options for asylum seekers. Under that section, an immigration officer or other authorised person may

[170] Irish Prison Service Rules 2007, Rule 39(2).
[171] Irish Prison Service Rules 2007, Rule 38.
[172] These numbers are drawn from the Irish Prison Service Annual Reports, available on the Irish Prison Service website at: http://www.irishprisons.ie.
[173] Refugee Act 1996, Section 10(b)(i).
[174] Immigration Act 2003, Section 5(2)(a).
[175] Irish Annual Prison Service Report 2003, p. 13 (2003); Irish Annual Prison Service Report 2004, p. 11 (2004); Irish Annual Prison Service Report 2005, p. 13 (2005); Irish Annual Prison Service Report 2006, p. 15 (2006); Irish Annual Prison Service Report 2007, p. 13 (2007). Note that the Irish Prison Service Report for 2007 provides the length of detention for 1,144 of the total 1,145 detainees.

require an applicant for asylum to reside or remain in particular districts or places in the country, or, to report at specified times to an immigration officer or other designated person. All asylum seekers, including those who are initially detained, are housed in government-run hostels during the duration of their applications and any appeals. According to an interview with an NGO, the Garda National Immigration Bureau will permit some persons who are pending deportation to reside at home pending their removal. They may be required to report weekly to GNIB. In some cases, the GNIB officers may visit the home of the deportee. However, there are no written laws, regulations or procedures governing this practice.

Detention of non-nationals refused permission to land

Non-nationals arriving in Ireland by air or sea must present themselves to an immigration officer and apply for permission to land. [176] Non-nationals who arrive in Ireland other than at approved ports and/or who remain in Ireland without permission to land are considered to be "unlawfully present" in the country. [177]

Under Section 5(2) of the Immigration Act 2003, non-nationals over the age of 18 who are refused permission to land, or who an immigration officer or a member of the Garda Síochána with reasonable cause suspects have been unlawfully in Ireland for a continuous period of less than three months can be arrested. Such non-nationals can be detained under a warrant of the immigration officer or the Garda Síochána in an authorized place of detention pending removal from the country. [178]

Length of detention

A non-national arrested and detained under Section 5(2) of the Immigration Act 2003 can only be detained until such time as he or she is removed from the country. However, this period of detention cannot exceed eight weeks in the aggregate. [179] The following exceptions, however, act to toll the accrual of the 8-week time period: 1) the time period during which the person is remanded in custody pending a criminal trial or is serving a criminal sentence; 2) the period of time spent by the person on board a ship, railway, train, road vehicle or aircraft; and, 3) the period of time during which the person has instituted court proceedings challenging the validity of his or her proposed deportation. [180] It is important to note that two of the grounds under which a non-national may be detained under Section 5(2) of the Immigration Act 2003 constitute criminal offences. These are: failure to present oneself to an immigration officer and apply for permission to land; and landing at an unapproved port. [181] A person convicted of either offence can be imprisoned for a term not to exceed 12 months. Thus, any period of administrative detention is tolled during the period of imprisonment.

Information on reasons for detention and rights

Non-nationals who are refused permission to land are given a written notice advising them on why they have been refused. This information is provided in English and if a person does not understand the reasons, the immigration officer will try to identify an interpreter to translate. However, no other written information is given to non-nationals refused permission to land regarding either their detention under Section 5(2) or of their rights.

Appeal of decision

A decision by an immigration officer or by a police officer to detain a non-national under Section 5(2) of the Immigration Act 2003 can seek review from the relevant supervisor. Additionally, the detainee may seek review of

[176] Section 4(2), Immigration Act 2004.
[177] Sections 5(1), 5(2), 6(1), Immigration Act 2004.
[178] Section 5(2), Immigration Act 2003.
[179] Section 5(3)(a), Immigration Act 2003.
[180] Immigration Act 2003, Section 5(3)(b).
[181] Sections 4(9), 6(4), Immigration Act 2004.

the legality of the detention by filing a habeas corpus action with the High Court. Finally, where a non-national detained pursuant to Section 5(2) challenges the validity of his or her removal in court proceedings, the court entertaining the challenge can determine whether the person should continue to be detained. [182] A challenge to conditions of detention can be made under the European Convention of Human Rights within the courts.

Interpreters

There is no right to interpretation or the services of an interpreter for persons who are refused permission to land unless they are seeking asylum. In practice, where a non-national does not speak English, the immigration officer will try to identify an interpreter to explain in the person's language the reasons why he or she has been refused permission to land and why he or she is being detained.

Legal aid

Unlike asylum seekers, migrants who are detained under Section 5(2) of the Immigration Act do not have the right to free legal assistance. Nor is there any mention of the general right to access to a solicitor in the Immigration Act 2003 for persons detained under Section 5(2). In practice, access to a solicitor will be facilitated if a detainee affirmatively requests such.

Detention of asylum seekers

The Refugee Act 1996 provides the legal basis for detaining asylum seekers in Ireland. Under Section 9(8) of the Act, an asylum seeker over the age of 18 may be detained. An asylum seeker may be detained where an immigration officer or a member of the Garda Síochána with reasonable cause suspects that:

- He/she poses a threat to national security or public order;
- He/she has committed a serious non-political crime outside Ireland;
- He/she has not made reasonable efforts to establish his/her identity;
- He/she intends to avoid removal in the event of his/her application for asylum being transferred to a convention country pursuant to the Dublin Convention;
- He/she intends to leave Ireland and enter another country without lawful authority; or,
- He/she without reasonable cause has destroyed his/her identity or travel documents or is in possession of forged identity documents.

Length of detention

Asylum seekers who are detained under Section 9(8) of the Act must be brought as soon as practicable before a District Court judge who, if satisfied that one or more of the grounds listed above apply, may commit the asylum seeker to an authorized place of detention for a period not to exceed 21 days from the time of the initial detention. [183] This 21-day period can be extended by a District Court judge for additional periods of 21 days at a time if the judge believes that one of the grounds continue to apply. [184] In reality, most asylum seekers are released within a short period of time to accommodation in hostels that are run by the Reception and Integration Agency.

Information on reasons for detention and rights

Under Section 8 of the Refugee Act 1996, all asylum seekers are to be informed of their rights to consult a lawyer and the Office of the United Nations High Commissioner for Refugees (UNHCR). Where an asylum seekers is detained

[182] Section 5(4), Immigration Act 2004.
[183] Section 10(b)(i), Refugee Act 1996.
[184] Section 9(14)(a), Refugee Act 1996.

under Section 9(8) or (13) of the Refugee Act 1996, an immigration officer or a member of the Garda Síochána must inform an asylum seeker as soon as possible of a number of their rights. [185] This information is provided in a written notice.

Appeal of decision

As noted above, asylum seekers who are detained under Sections 9(8) or (13) of the Refugee Act 1996 must be brought before a District Court judge as soon as practicable after being detained. The judge may order continued detention or release of the asylum seeker. The question on whether grounds for detention continue to exist must be re-examined by the District Court judge every 21 days. In addition to this form of review, a detained asylum-seeker can challenge the legality of the detention in habeas proceedings under Article 40(4) of the Constitution in the High Court.

Interpreters

Asylum seekers do have the right to an interpreter during court proceedings and when consulting a solicitor as established under Section 10(f) of the Refugee Act 1996.

Legal aid

Asylum seekers have the right to legal aid as set forth in Section 10(1)(c), (f) of the Refugee Act 1996. Under regulations, they also have access to a solicitor if they are detained in a Garda station. [186] Asylum seekers can hire private solicitors to assist them in their claims for asylum or, if they qualify, can obtain free services from the Refugee Legal Services, an office of the Legal Aid Board of Ireland.

Legal authority to detain those pending deportation

Section 5(1) of the Immigration Act 1999 authorizes the detention of persons with final deportation orders. An immigration officer or a member of the Garda Síochána may detain a non-national with a final order of deportation if he or she suspects with reasonable cause that the non-national:

- Has failed to comply with any provision of the order;
- Intends to leave the country and enter another without lawful authority;
- Has destroyed his or her identity documents or is in possession of forged identity documents; or,
- Intends to avoid removal from the country.

In such cases, an immigration officer or a member of the Garda Síochána may arrest the person and detain him/her without warrant.

Length of detention

Detention of a non-national under this provision cannot exceed a period of eight weeks in the aggregate. However, the following events will toll that period of time from running: 1) the time spent on remand awaiting a criminal trial or sentence; and, 2) the time period during which court proceedings are brought to challenge the validity of the deportation order, including any appeal.

[185] Section 10, Refugee Act 1996. These rights include: right to be informed of legal basis for detention; right to be brought as soon as practicable before a court to determine detention or release pending a decision on the asylum claim; right to consult a solicitor; right to have the UNHCR or other person notified of the fact and place his/her detention; right to leave the country at any time during detention provided that a judge approves the removal; and, right to assistance of an interpreter when consulting a solicitor and during court appearances.
[186] Regulations 2000, S.I. No. 344 of 2000, Sections 16(5)(a), (b) and 16(6).

Information on reasons for detention and rights

Non-nationals who are detained pending their deportation are informed in writing that the government proposes to deport them. Detainees awaiting deportation do have certain rights, including the right to challenge the validity of their deportation and/or detention and the right to access an attorney. However, no other written information is provided to detainees pending their deportation relating to either their detention or their rights while detained.

Appeal of decision

A non-national detained under Section 5 of the Immigration Act 1999 can challenge the validity of his or her deportation in court. [187] If a challenge is filed, he or she can also challenge his/her continued detention. [188] A challenge to the legality of his/her detention can be made in habeas corpus proceedings before the High Court pursuant to Article 40(4) of the Constitution.

Interpreters

The notice of deportation that is provided to a non-national must be in a language that he or she understands. [189] However, there does not appear to be any other provision in the law relating to access to interpreters for non-nationals who are detained pending deportation.

Legal aid

There are no explicit provisions in the Immigration Act 1999 for detainees to access a solicitor pending their deportation. Nor do any laws provide for free legal aid for such detainees. However, in a decision issued in 2000, the High Court held that there is a constitutional presumption that upon arrest, a person detained under the Immigration Act 1999 has the right to obtain legal advice. [190] In practice, where a detainee requests access to a solicitor, he or she will be permitted such contact.

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1. Basic information

Generally, the women interviewed were young, with most under the age of 30. The average age was 31 years. Seven were Nigerian, one Brazilian and one young woman was from Zimbabwe. Most were single and only three were married. None of the spouses of the married women were in Ireland with them. Five of the nine women had children. The children of three of the women were being cared for by family in their countries of origin. The children of two of the women were living with them in Ireland prior to their mothers' arrest and detention. While their mothers were in detention, the children were under the jurisdiction of the child services agency in Ireland. They were permitted visits to their mothers in prison.

The average amount of time that the women were detained was 12.33 days, with the minimum being 2 days and the maximum being 43 days. Four of the women were rejected asylum seekers. Three of the women were seeking asylum. Two of the women were pending deportation after having been in an irregular status in Ireland.

[187] In the matter of Article 26 of the Constitution and sections 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999, [2000] 2 I.R. 360.
[188] Section 5(5), Immigration Act 1999.
[189] Sections 3(3) and 3(b)(ii), Immigration Act 1999.
[190] D.P. v. Governor of the Training Unit, Mountjoy Prison, [2001] 1.I.R. 492.

3.2. Case awareness

> "I have applied for asylum but no one explained to me how it works. I have not met or spoken to a lawyer. I filled in the application by myself and the governor sent it in. It is difficult to get information."

This is emblematic of the experiences of all those interviewed for the project. Although all of the women had been informed of the reasons for their detention, most felt that they did not have sufficient information to understand their rights as migrants or asylum seekers in Ireland.

For example, the three asylum seekers were unsure of how the process worked. None of them had spoken to a solicitor at the time that the researcher interviewed them and they had little knowledge of what the process involved. No one sat with them to explain their rights in any detail, including what asylum meant. When they indicated that they wanted to apply for asylum, they were given an application to complete – a 22-page document – and told that they would be notified of their interview date. They were not sure how, if or when they could speak with a solicitor. One of the women who said she was afraid to go back home told the interviewer that she did not know what asylum meant.
The migrant women had similar complaints, mostly focusing on the deportation process itself. For example, one of the women, a possible trafficking victim, wanted to understand why she was in prison.

> "I have a long story. I was an orphan back home and lived under a bridge. A man told me he would help me come here and make money. After I got here, he told me I had to be a prostitute and pay him 40,000 euros. I told him I wouldn't and he threatened to kill me or send me back to Nigeria. I want to know what will happen to me. I want to understand."

All of the women were especially anxious about the fact that they had no right to be informed of the date and time of their deportation. They were also concerned that they had no resources to fall back on once they arrived in their country, including something as basic as bus fare to travel to their homes. They felt it would be helpful to have access to information and assistance for their return, in the form of counselling on what to expect and financial support for basic costs after arrival. Although the women were aware of why they were being detained and deported, they felt that they had not received sufficient information during their time in Ireland regarding possible avenues to pursue legal residency.

Non-governmental organisation personnel confirmed this lack of awareness. According to the NGOs, the police will explain why they are being detained when they arrested – something confirmed by the detainees themselves. Beyond that, however, few if any really understand their rights or what will happen to them. Although detained asylum seekers are visited by Refugee Legal Services solicitors, certain NGO staff believe that they need to visit the detainees more consistently and frequently for two reasons: 1) to explain their rights and advise them on the status of their cases; and, 2) to work with them to avoid longer periods of stay in the prison.

3.3. Centre accommodation and rules

With the exception of one detainee, the women described their sleeping space in the facility in somewhat negative terms, mostly complaining of roommates who smoked and cleanliness issues. They were generally satisfied with the rest of the space throughout the centre but noted that they had no real place to be alone should they so desire. Although the facility is generally overcrowded, the women themselves felt no sense of such.

The prison authorities have developed an A4 sheet outlining information on how the prison operates including mealtimes, availability of classes and services, access to telephone calls and visiting times. It does not appear that these brief guidelines are translated into other languages. All of the women reported that they had received no

information – either written or oral – regarding the rules of the centre upon arrival. Instead, they watched what others did and followed them.

The prison chaplain is an important ongoing source of support and assistance whenever issues arise for immigration detainees in respect of their accommodation or the operation of the prison rules.

3.4. Staff, safety and interaction with other inmates

Detainees have most contact with the guards on a daily basis with varying reactions towards them. One detainee reported that, "Some are better than others." The women all reported that they could visit the doctor and/or nurse whenever they felt the need. The governor of the centre makes daily rounds and is accessible to all the women detained in the centre, either during her rounds or upon request for an individual meeting. Additionally, there is a full-time chaplain in the centre. Many of the women reported contact with her and spoke positively of her presence and assistance.

None of the women reported any physical assaults or incidents while detained. Almost all of them said that they had little interaction with other inmates. A few did report that some inmates had made derogatory racist remarks. None complained of any mistreatment by staff. Although all reported feeling generally safe, one woman did state, "I'm in the midst of criminals and I feel nervous."

3.5. Activities in the centre

The centre offers a range of activities to all inmates, including access to sports equipment, computers, television, educational opportunities, religious space and outdoor space. Most of the women participated in the activity, stating that it was a way to pass the time and reduce their anxiety and stress about being detained.

3.6. Medical issues

As noted above, all detainees undergo a brief medical examination upon entry and are permitted to meet with medical staff as often as needed. There are nurses and doctors on staff. None of the women reported difficulty in communicating with them. Most indicated that they were generally satisfied with their care with some complaints. For example, one woman noted that she needed a special diet. Another said that she would like help with panic attacks. At the time of the interview, however, they had not spoken to the medical staff or other centre personnel to make the requests.

Regarding their medical condition, almost all of the women reported that both their physical and mental health had deteriorated as a result of their detention. They attributed the negative impact on their mental health to obsessive worry and anxiety about what would happen to them, a fear of the unknown and, some, stating that detention made them feel bad about themselves, as if they were unworthy.

3.7. Contact with the outside world

The centre permits daily visits from family and friends. It also facilitates access by inmates to their solicitors. As previously noted, the families of most of did not travel with the women to Ireland. Rather they remained at home and were cared for by other family members. Two of the women had their children living with them in Ireland and the children did come to the centre to visit their mothers. Although UNHCR has access to the centre, none of the women or the staff reported having ever met with them. Women stay in contact with family and friends by phone and are permitted free calls to anywhere in the world for six minutes a day.

3.8. Nutrition and sleep

Although all the women said that there was sufficient food, most reported not liking the food, saying they would like to have their own traditional food. Less than half lost their appetite while in detention. Almost all of the women reported significant difficulties sleeping because of uncertainty regarding their futures, fear of being sent back to their country of origin and fear for how their families will cope if they are sent back.

3.9. Difficulties in detention

The women were specifically asked to name three difficulties experienced by them in prison apart from the complaints noted above. All of the women stated that the most difficult thing they experienced was a lack of freedom and the accompanying loss of rights. Most could not state a third difficulty, but those that did said that it was the anxiety they suffered as a result of being detained. None of the women had ever been detained in a prison in their lives and seemed shocked to find themselves in an Irish prison.

Most of the women did not know what would be the outcome of their detention and none knew when they would be released or returned to their home countries. As mentioned previously, this was the cause of significant stress for all women. Many reported a negative self-perception as a result of the experience. NGO staff confirmed this and noted that detention has a devastating impact on the women. It significantly impacts their moral and they are shocked to be in a criminal prison setting.

3.10. Special needs and vulnerability

Few of the women reported any special needs. Only two indicated that they needed specific medical care (for sickle cell anaemia) or psychological care (for depression and panic attacks). The woman with sickle cell anaemia was provided adequate medication. However, the woman who suffered depression did not receive any psychological care. Two of the women with children in Ireland expressed a need to see their children more often. None reported any special vulnerabilities experienced by other detainees but this may be due to the fact that immigration-related detainees are only held for short periods in detention.

The most significant vulnerability or perhaps, better said, what made the women feel most vulnerable was the lack of information about their cases and about the law. As a result, they felt afraid, nervous and depressed.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES, CONCLUSIONS AND RECOMMENDATIONS

Generally, the conditions of detention in the Dochas Centre are satisfactory and do not violate any international human rights standards which govern the detention of immigration detainees. Procedural safeguards relating to the detention of asylum seekers are satisfactory. A District Judge must order the detention of asylum seekers, and ongoing detention is reviewed every 21 days. In practice, most asylum seekers are released within a short period of time. Detention of non-asylum seekers is limited to eight weeks with some exceptions and challenges to such detention can be take in habeas proceedings. Most non-asylum seekers are either released or deported prior to the eight-week deadline.

The primary issue of concern identified during the research was the lack of information experienced by all of the women interviewed, relating to: 1) the operating rules of the prison; 2) asylum procedures and access to legal representation; 3) the final outcome of their detention; and 4) the deportation process. This lack of information contributed in great part to the sense of vulnerability, anxiety and isolation felt by the women.

4.1. Operating rules

The failure of the centre to provide information on its operating rules to all detainees in a language they understand was somewhat tempered by the access that the women had to the guards, to the governor and to the chaplain. However, the women still felt unsure and somewhat adrift in trying to figure out how things worked. As one woman stated, “You just watch the others and follow what they do.”

> **Recommendation:** Prison staff should ensure that each detainee upon arrival is informed of the rules of the centre in a language that they understand.

4.2. Asylum procedures and access to legal representation

As per its obligations under international refugee law and its own national legislation, the Irish government has an obligation to identify persons in need of international protection and provide them access to counsel to assist them in preparing and presenting their claim for protection. Despite laws and regulations requiring that asylum seekers be informed of their rights, detainees expressed confusion regarding the asylum process itself and were unaware of their right to have a solicitor work with them to prepare the application.

As noted above, the application – a 22-page document – is given to a detainee if she indicates a desire to apply for asylum. It appears that the governor or staff does ask detainees shortly after arrival if they want to apply for asylum. However, there is no protocol in place which does the following: 1) provides written and/or oral information on asylum procedures to a detainee upon her arrival in the centre; 2) provides clear information on her right to a solicitor to assist her in preparing the application and her interview with the asylum authorities; and, 3) provides information on what will happen to her if and when she is released.

Under Irish law, an asylum seeker who does not have the financial resources to pay for a solicitor is entitled to one from the Refugee Legal Services (RLS) free of charge. RLS attorneys provide advice and representation to asylum seekers who are detained under Section 9(8) of the 1996 Refugee Act. Visits and assistance by RLS attorneys to detained asylum seekers in the period of the research seemed inconsistent. The researcher was unable to determine if the RLS itself has any system in place to regularly visit the detention centre, not just on a case-by-case basis, and provide information and assistance to the detained women. Based on the interviews with the women, with prison staff and with NGOs, there does not appear to be any such system.

The failure on the part of the authorities to provide information on procedures in a language they understand and create a system in the facility whereby solicitors meet with each detainee seeking asylum runs the risk of failing to identify and support legitimate asylum seekers. All of the asylum seekers with which the researcher spoke seemed to have a basis for seeking protection. However, none understood exactly what she was required to do to establish the claim. Thus, there is a potential for denial of legitimate claims and the return of persons who are in need of protection.

Since in addition to the experience of the researcher a number of stakeholders raised concerns about the effectiveness of the RLS in providing legal assistance to immigration detainees, consideration should be given to an independent evaluation of the operation of the scheme for this category of beneficiary.

> **Recommendation:** The Office of the Refugee Applications Commissioner (ORAC), the office responsible for adjudicating asylum claims in Ireland, should meet with the prison authorities and with RLS attorneys to develop a protocol for asylum seekers in detention. This protocol should include instructions on the type of information given to all detainees upon arrival in the facility. Any information must be provided in a language and manner that the detainees can understand. RLS attorneys should visit the centre on at least a weekly

basis, not just case-by-case, to speak with detainees who have any questions about the asylum system and to assist them in the preparation of their claims.

4.3. The final outcome of detention and the deportation process

As noted, all of the detainees expressed frustration over the fact that they did not know if and/or when they would be released. Those awaiting deportation were especially anxious because they did not know the date or time when they would be returned home and thus could not make any short or long-term plans. The authorities stated that they could not advise the women of the precise time of their deportation for security purposes but they understood the women's anxiety.

Recommendation: The authorities should make sure to provide detailed information on how long a non-national can be detained for immigration-related reasons. The more information the women have about their situation, the better they will be able to manage their emotions during detention and plan for their futures. The authorities should also work closely with those detainees awaiting deportation to give them an approximate idea – consistent with security concerns – of when they will be deported. They should make sure to facilitate contact between the detainee and family and friends at home who can receive them upon arrival.

4.4. Alternatives to detention

Given the small numbers of persons who are detained for immigration-related reasons combined with the downturn in the number of persons seeking asylum, the government should seriously consider instituting alternatives to detention. Not all asylum seekers are detained at time of entry. Since all asylum seekers are eventually housed in government-run hostels that impose no restrictions on freedom of movement, it seems more practical and effective – with the exception of persons who may pose security concerns – to transfer asylum seekers identified at ports of entry to the hostels instead of detaining them in prison. Additionally, permitting a greater number of persons awaiting deportation to remain in the community until the actual date of deportation would save the government time and money and would permit the non-national greater freedom to plan for his or her future.

Recommendation: Unless persons seeking entry to Ireland pose a security concern, the government should consider alternatives to detention, such as regular reporting or the posting of a bond, for non-nationals refused permission to land and, especially, for all asylum seekers. Given that GNIB already permits some persons awaiting deportation to remain free pending their removal subject to adherence to specified conditions, the creation of a pilot program to formalize this practice should be put in place. Relevant NGOs can and should work with governmental authorities in the creation and implementation of such a plan. Any such plan could include options for non-nationals to pursue assistance from the International Organization for Migration for voluntary returns.

In closing, Ireland is clearly not a country of bad practices as relates to immigration-related detention. Some of Ireland's practices – such as the prohibition against the detention of children for immigration reasons – should be copied by other countries. However, the government can and should improve on its treatment of non-nationals and asylum seekers in detention as suggested in the recommendations above. The first step in doing so could and should be the creation of alternatives to detention, something with the international community as well as the UNHCR has been and continues to promote, particularly for asylum seekers.

NATIONAL REPORT: LITHUANIA

By: Caritas Lithuania

1. INTRODUCTION

The DEVAS project in Lithuania was implemented by Caritas of Archdiocese Vilnius from February to October 2009, at the Foreigner's Registration Centre in Pabrade, Lithuania. Pabrade is small city in northeastern Lithuania, 50 km from the Lithuanian capital city Vilnius, next to the Eastern State Border of Republic of Lithuania and EU to Belarus. For several years, Caritas Vilnius has had good relationship to the administration of Pabrade's Foreigner's Registration Centre due to a positive experience of long-term co-operation on refugee matters. The administration of the foreigners' centre, specifically the head officer and chief of the centre, agreed to implement the DEVAS project in Pabrade. During the time of the project, ten interviews with detainees were conducted: nine of them with male detainees and one interview with a female detainee. These detainees came predominately from the member countries of the former Soviet Union, so their life stories were closely related to the so-called transformation period within the societies of the former Soviet Republics since 1990.

The Foreigners' Registration Centre is the only detention centre in Lithuania. It consists of two separate premises: one for asylum seekers and their families (without restriction of mobility and with the possibility of free movement in Pabrade and the capital city Vilnius) and the other one for illegally staying third country migrants (with movement restrictions: the detainees are not allowed to leave the territory of the premises). As interviewers, we were not able to obtain free access to the premises for illegally staying third-country migrants. The interviews were instead conducted inside administration buildings, and thus as interviewers we had no possibilities to get insights into the living conditions within the detention centre and make up our minds about them.

Also involved in the implementation of the DEVAS project were two social work students from the Mykolas Roemeris University in Vilnius. They helped by conducting and transliterating detainee interviews. In addition, an official from the investigation unit in Pabrades Foreigner's Registration Centre was charged with assisting the DEVAS project team during the whole project period. The official in charge made proposals about how to manage the whole project implementation process, arranged the lists of detainees that we interviewed according to the project criteria (there was no way for us to choose the detainees by ourselves as a project team) and encouraged detainees to take part in the project. He also made sure that the detention centre guards brought the detainees to the administration building where the interviews were conducted.

The project staff from Caritas Vilnius were able to conduct all the detainees' interviews without being disturbed or interrupted by a third party except the two or three times when the officials came in order to take the detainees to official business such as a visit to their lawyer or a phone call from their embassy. Three out of ten interviews were conduct in Lithuanian, one in English and six in Russian. Further, one NGO that works with migrants was interviewed (Caritas Vilnius) and five staff members from the Pabrades Refugee Centre answered the staff questionnaire, which had previously been translated into Lithuanian and Russian. The staff preferred to complete the staff questionnaire in written form and anonymously. Almost no female migrants were detained in the detention centre of Pabrade. At the time of the project implementation, there were only two women in the premises for detainees. An interview was conducted with one female detainee from Belarus, but by that point the project timeline could not accept another interview into the DEVAS central database. The second female detainee, who was from the Congo, refused to participate in the project.

As the staff of the DEVAS project in Lithuania, we are grateful to all the detainees at the detention centre in Pabrade, Lithuania, who participated at the interviews and shared their life stories.

2. NATIONAL LEGAL OVERVIEW

The main laws regulating detention of illegally staying third country nationals and asylum seekers in Lithuania are the following: the Law on the Legal status of Aliens (2004; as amended on 29 November 2006), the Order of Interior Ministry of Republic of Lithuania "On Conditions and Description of Procedures of Temporary Accommodation of Aliens at the Foreigners Registration Centre" (2007), the Law on Administrative Proceedings (1999, as amended on 11 Nov 2006) and the Law on Pre-Trial Detention (1996).

2.1. Legal grounds for detention

Before Lithuania joined the EU as well as after the EU accession, the Law on the Legal Status of Aliens of 2004 and new amendments of Law on the Legal Status of Aliens in 2006 make *no distinction between the grounds for detention of illegally staying third country nationals and asylum seekers*. Accommodation of asylum seekers in the Foreigners' Registration Centre in Pabrade without restriction of movement became the most frequently used measure for asylum seekers since joining EU of Lithuania. *There are no any legal grounds in Lithuania to keep an asylum seeker in detention while she or he is awaiting the outcome of the asylum procedure*. The fact is that asylum seekers are usually housed in the Foreigners' Detention Centre in Pabrade (South East Lithuania), until they could be moved to the Refugee Reception Centre in Rukla (Central Lithuania), but not detained. Art. 70 of the Law on the Legal Status of Aliens declares the exemption from liability for illegal entry and stay in republic of Lithuania for those aliens who have provided they present without delay to competent institutions of Republic of Lithuania and rendered an explanation on their illegal entry into or stay in the Republic of Lithuania.

Articles 112 and 113 of the Law on the Legal Status of Aliens define the legal grounds for detention. These could be unauthorized admission into national territory, illegal entry or stay, using (or suspicion) of false documents, in case of decision on removal of the alien from the Republic of Lithuania. To these grounds of the detention in the case of breaches of Lithuania's immigration law is further related detention of aliens on public health grounds, in order to stop the spread of dangerous communicable diseases, as well as on security grounds, when the aliens' stay in the republic of Lithuania constitutes the threat to public security and public policy.

2.2. Legal grounds for the minimum age of detention

In terms of Article 114, Paragraph 3 of the Law on the Legal Status of Aliens, an alien below the age of 18 years may be detained only in an extreme case when the alien's best interests are the main consideration.

2.3. Legal grounds for the detention order

Article 114 of the Law on the Legal Status of Aliens authorizes detention by administrative authority, i.e. the police or any other law enforcement institution officer, for a maximum of 48 hours. Detention beyond 48 hours must be authorised by a court order. In terms of article of the Law on the Legal Status of Aliens, where grounds for the continued detention of a alien exist, the police or any other law enforcement institution officer shall apply to the local district court, within 48 hours from the moment of detention of the foreigner, to request authorization to detain her/him for a period of over 48 hours or to grant a measure alternative to the detention. The court's decision to detain an alien must state the grounds for detention, the time period of detention with the exact calendar date indicated and the place of detention.

It must be pointed out that the application of these legal norms is extremely rare in the practice. The asylum seekers are mostly detained because of violating the criminal law.

Considering an automatic judicial review of the decision of detention must be said, that there is no such an automatism in Lithuania.

2.4. Legal grounds for the right of appeal against the detention order, or to challenge detention

The court's decision may be appealed according to the procedure set forth in paragraph 1 of Article 117 of the Law on the Legal Status of Aliens. The alien has the right to appeal the regional court's decision to detain her/him or to extend the detention period or to apply measures alternative to detention. The appeal must be filed before the Supreme Administrative Court of Lithuania, according to the procedure established by the Law on Administrative Proceedings. The appeal may be submitted through the Foreigner's Registration Centre in Pabrade, which shall transfer the appeal to the Supreme Administrative Court of Lithuania.

2.5. Legal grounds for the right of information about the detention order, and/or the reasons for detention

According to the Article 116 §3 and §4 of the Law on the Legal Status of Aliens, the court's decision to detain an alien as well as impose against him a measure alternative to detention must be announced to the alien in language which she or he understands, indicating the reasons for her/his detention as well as measures alternative to detention. The Article 9 of the Law of Administrative Proceedings stipulates that the alien has right to make use of an interpreter's service free of charge. The stay budget pays for the services of interpreter. Further the Article 116 of the Law on the Legal Status of Aliens imposes that the court's decision to detain the alien must state the grounds for detention, the time period of detention with the exact calendar date indicated and the place of detention. The alien should be informed about the reasons for detention as well as measures alternative to the detention by the solicitor or officer by the court; the information should be provided in oral or written form. At last the alien should be provided with the copy of the document containing the court's decision to detain or to apply the measures alternative to the detention.

Article 87§1and §5 of the Law on Administrative Proceedings stipulates that the court's decision should consist of opening, descriptive, motivational and resolution parts. The resolution part should include, among other things, the term of appeal and appeal order. Article 85 §3 of the said Law requires that the descriptive and resolution parts of the court's decision are written and announced in public the day after the hearing.

2.6. Legal grounds for the duration of detention

Lithuanian law does not lay down a legal maximum duration of detention or alternative to detention, but there are two articles that are relevant.

In terms of Article 116, Paragraph 4 of the Law on the Legal Status of Aliens, the district court ordering detention beyond the initial 48-hour period determines its duration; this must be stated in the detention order, with the exact calendar date indicated and the place of detention. Article 119 of the said law provides that a detained alien shall be immediately released, upon the disappearance of the grounds for his/her detention, according on the effective court's decision, or once his/her period expires.

The legislator doesn't regulate the detention's period the Foreigners Registration Centre in Pabrade. According the courts, the aliens are accommodated from 1 to 6 months at the Centre. The uniform judicial practice still doesn't exist.

2.7. Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

The Article 71 §1.6 of the Law on the Legal Status of Aliens lays down the rights and duties of an asylum applicant in the Republic of Lithuania while his asylum application is being examined. According to this the asylum applicants have the right to receive free immediate medical aid and social services free of charge at the Foreigners Registration Centre in Pabrade (South East Lithuania) or Refugee Reception Centre in Rukla (Central Lithuania). The provision of health care is also regulated by the Order of Interior Ministry of Republic of Lithuania "On Conditions and Description of Procedures of Temporary Accommodation of Aliens at the Foreigners Registration Centre". The Article 17, subsection 4 of the said Order states that primary health care and emergency aid, shall be guaranteed to the persons accommodated at the Centre as well as social services have to be provided. The right of the immediate medical aid, the health care in the detention centre and special medical treatment in other medical institutions in the case of lack of the needed medical care in the detention centre is as well provided by the Article 19, subsections 1, 3, 4 of the Law of Pre-Trial Detention.

2.8. Legal grounds for contacts with the outside world

The legal grounds for contact with the outside world are found in the Order of Interior Ministry of Republic of Lithuania "On Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre" on October 4, 2007 No 1V-340. The Order of 2007 have replaced the former Order on Conditions of Temporary Accommodation of Foreigners at the Foreigners registration Centre, approved by the Decree of the government of the republic of Lithuania on January 29 2001 No. 103 which in Article 17 regulated the legal grounds for contact with outside world. The Article 17 of the above mentioned Order of 2007 stipulates in the subsections that persons accommodated at the Centre shall have a right to:

17.1. Use the services provided an the centre;
17.3. Receive the legal assistance guaranteed by the state;
17.5. Receive and send an unlimited number of letters;
17.6. Receive an unlimited number of parcels and wrappers;
17.7. Buy food products, clothes and other necessaries for life;
17.8. Receive and send money or make bank transfer;
17.10. Use the paid telephone in the residential territory;
17.14. Meet with the persons visiting him/her in the territory of the Centre upon the permission of the head of the centre;
17.15.Lodge complaints against the decision of the chief of the centre affecting disciplinary sanctions and address it to the State Border Guard service.

The Article 18 of the above mentioned Order as well as defines further rights of asylum seekers and detained asylum seekers as right to get reimbursement for costs by using means of public transport when it is related to the procedure of asylum application except detained asylum seekers (18.1.), right to receive monthly monetary allowances (18.2.), right to address the High Commissioner for refugees Board Representative and to meet them (18.5.).

The Article 71 §1 of the Law on the Legal Status of Aliens lays down the rights and duties of an asylum applicant in the Republic of Lithuania while her/his asylum application is being examined. The Article 110 of the said Law guarantees the support for the integration of aliens who have been granted asylum in the Republic of Lithuania.

2.9. Legal grounds for the provision of legal aid

The Article 71 §1 subsection 3 of the Law on the Legal Status of Aliens provides the grounds for the provision of legal aid. The provision of legal aid is guaranteed as well as by the Order of Interior Ministry of Republic of Lithuania "On

Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre" (2007), Article 17 sub-section 3 (right to legal assistance guaranteed by the state) and subsection 9 (right to hire a lower at their own expense of aliens). The situation how it often looks in the practice is that illegal migrants receive free legal assistance only during the trial and pre-trial hearing at the court. Being detained in the detention centre, they have to pay services of the lower by themselves.

2.10. Legal grounds for the protection of persons with special needs

The Article 71 §2 of the Law on the Legal Status of Aliens stipulates that aliens under the age of 18 may be detained only in an extreme case. The provision relating to the protection of particularly vulnerable people is that contained in the Order of Interior Ministry of Republic of Lithuania "On Conditions of Temporary Accommodation of Foreigners at the Foreigners Registration Centre" (2007), Article 17 subsection 16 according to which the minor aliens are allowed to attend the general education schools and to take part in the events organized by national and international NGO outside the territory of the centre in the Republic of Lithuania. The Article 19 of the said Order stipulates that psychological services shall be provided to the persons who experienced torture or rape, minors, single women and elderly.

2.11. Legal grounds for alternatives to detention

The Article 115 §2, subsections 1 to 4 of the Law on the Legal Status of Aliens lays down the measures alternative to detention: requirements to appear at the appropriate territorial police agency and to inform the appropriate territorial police agency about her/his whereabouts; entrusting the guardianship of an unaccompanied minor alien to a relevant social agency and entrusting the care of the alien, pending the resolution of the issue of his detention.

2.12. Legal grounds for providing release from detention

The provisions regulating release are those found in the Article 119 of the Law on the Legal Status of Aliens, which states that upon disappearance of the grounds for the alien's detention, stated in the court's decision, the alien shall be immediately released. The same applies when the alien's detention period, established by law or by the court, expires.

3. OVERVIEW OF THE NATIONAL DATA FINDINGS

3.1 Basic Information

According to the DEVAS interviews, the average detainee in the detention centre in Lithuania was male, single, and around 30 years old. Almost all of the detainees that were interviewed came from the former Soviet republics of Soviet Union like Belarus, Uzbekistan, Kazakhstan, Azerbaijan, and the Russian Federation. One detainee came from Iraq. The average length of the detention of detainees interviewed in Pabrade was 9.6 months. The longest period of detention among the detainees interviewed was more than 3 years.

3.2 Case Awareness

Almost all of the ten detainees that were interviewed by the DEVAS project team were illegally staying third country nationals whose life situation was directly related to the breakdown of the former the Soviet Union and the transformation of the former Soviet societies during the period since 1990. Six of the detainees were not in possession of passports or ID cards, having only expired passports of Soviet Union citizens. Typically the detainees were either living in territories or regions next to the state borders (Lithuanian-Belarus, Lithuanian-Russian

Federation), to which they had moved during the period of transformation, or oscillating between Lithuania and neighbouring countries, without applying officially for new citizenship instead of their expired citizenship of the former Soviet Union. Such cases came, for example, from Belarus and the Russian Federation (region of Kaliningrad). Another group of detainees were illegally staying third country nationals seeking asylum in Lithuania who had been denied asylum and were awaiting their deportation home. Such cases came, for example, from Iraq, Uzbekistan and Kazakhstan. Two of the interviewed young detainees had committed juvenile crime and had been sentenced. They had been brought to Pabrade in order to clear their identity and nationality.

All of the interviewed detainees affirmed that they had been “more or less” informed about the reasons for their detention. In four cases courts had explained the reasons for administrative detention to them and in two other cases they had been informed by police and other administrative authorities. In each case the sentence was announced in their mother tongue (mostly Russian or Lithuanian) or with help of interpreters. According to the detainees, the level of information provided was a problem. Only one detainee thought that the level of information was sufficient, whereas six detainees considered it as insufficient (“totally uninformed”). The difficulties were connected first of all to the lack of sufficient or any information about the complicated procedure of asylum. In most cases the detainees had an official document in written form from the administrative authorities about the decision of administrative detention without being informed about the possibilities of applying for asylum. Five out of seven detainees said that “more information about detention and asylum or immigration procedure is needed” especially about the duration of detention, application procedure for getting personal documents and the general conditions entering asylum or administrative detention. Most of all, information about the necessary documents for getting a new ID card was needed.

In addition, information about the time of release was important. Two interviewed detainees, those who had committed juvenile crime and experienced juvenile prison, were arguing that “within the young offenders’ institution we knew the exact day of our release whereas while being administratively detained in the Pabrades detention centre we absolutely do not”. The term of administrative detention can be prolonged every third month and because of that the exact duration of detention cannot be established. The detainees experience permanent distress because of this uncertain duration of detention and the resultant loss of control over their own lives.

A further issue that was mentioned in relation to case awareness was a lack of understanding of why they had been detained in the first place: “why have I been put into prison without being committed of any crime”.

3.3 Space within the detention centre

As already mentioned, the Foreigners' Registration Centre in Pabrade consists of two premises: one of them is the open premise for asylum seekers and their families in which they have full freedom of movement during the asylum procedure, and the other is a closed one where illegally staying third country nationals are accommodated. There are strict restrictions of movement: the illegally staying third country nationals are not allowed to leave the territory, which is fenced off from the remaining area of the Foreigners' Registration Centre, without being accompanied by the guards. At the time of the DEVAS research, around 50 detainees were accommodated in the detention centre. The detainees seemed to be grouped taking into account such criteria as nationality, language and culture as well as religion and also differences between national groups, for example Chechens and Russians or Armenians and Azerbaijanis. According to the statements of members of staff and detainees, there were no more than 50 persons on one floor. Almost all the detainees were men. The few women present at the time were accommodated in a separate place altogether. At the time of the DEVAS interviews illegally staying third country nationals from the republics of former Soviet Union , all of whom speak and understand Russian, were accommodated on the first floor. The second floor was designed for illegally staying third country nationals from other countries like Afghanistan, Pakistan, Iraq, and African countries. There were usually five detainees accommodated in one sleeping room, which has a size of 15 - 20 square metres. If the centre is not crowded and there are rooms available, there is the possibility for the remaining detainees to choose to sleep by themselves. Such a "free choice" is not usually exploited because it can

be seen by the other detainees as a wish to separate and can lead to alienation from the rest of the group. There is no separate room for retreat and no possibility to be alone, but the detainees did not see the centre as overcrowded.

All ten interviewed detainees were negative about the centre space because of the facilities, which needed renovation. They mentioned first of all the bad or insufficient condition of roof, walls, windows, central heating system (the detainees from southern republics of the former Soviet Union found the temperature in the rooms especially cold), means for cooking and washing which were out of order, shower cabins, and partly damaged power sockets. According to the interview statements of the detainees, the regular answer from the staff to their concerns about the poor state of the building in which they were staying was "there is no money because of the economic crisis in Lithuania". The wishes of the detainees to fix damaged electric equipment, such as washing machines or electric ovens, were not respected by the officials. Some of the detainees mentioned sanitation as a problem and did not agree with the requirement or the regulation that they keep the sleeping room clean by themselves. Outside, next to the detention centre, there is a small yard where the detainees could be for a while during the day, where there was also a place for playing football or basketball. During the night the centre is locked up.

3.4 Rules and routine

There are house rules in the detention centre in Pabrade, and they exist in written form. Detainees reported that they are informed about the house rules following their arrival. The information about the house rules is provided in oral or written form in only two languages (Lithuanian and Russian, not English) and afterwards should be signed by every detainee. The house rules concern daily life in the detention centre, for example rules about the living space, nutrition, activities and so on. Besides the main rules, there are possibilities for the detainees to make small choices by themselves, for example by deciding when to get up, about taking meals in the canteen or cooking it by themselves, about washing clothes by themselves or letting them be cleaned by the housekeeping staff. Previously, there were possibilities to set up some rules proposed by the detainees but nobody reported using such opportunities. According to the detainees, there are many "informal rules" within the detention centre, "which is similar to the situation in jail". There are groups that dominate, depending on the number of detainees from one country or cultural region. There is a main rule within the centre, which is the strict prohibition of the use of mobile phones. Nevertheless everybody uses them illegally, despite the regular control visits by the special military task force. Detainees identified a mobile phone is the most effective means of communication and they can be acquired easily with a small amount of money and a little help from family members, friends or asylum seekers that have access to the local community.

3.5 Detention centre staff

The regular staff within the detention centre are officers from the investigation unit who are responsible for each case, security guards, social service staff (librarian) and the chief of the detention centre. They were considered by the detainees as "competent". The staff uses a language that the detainees could understand well (Lithuanian, Russian and Basic English). Detainees reported that the staff responded quickly to requests that were presented to them. More than half of the detainees interviewed considered the daily interaction between them and the staff as positive. There were no cases of discrimination by the staff reported. In the case of special requests the detainees could apply in oral or written form. One of the detainees reported a "little experiment" he had done in order to check the effectiveness of the processing of the detainees' requests by the detention centre staff. The detainee sent a letter with a written request to the Ministry of Interior, with the help of asylum seekers he knew well. At the same time, he let the investigation official of the centre process the request. Both of the requests were processed.

Nevertheless, all of the interviewed detainees expressed a wish to be treated by the centre staff "with more respect". The detainees complained that some staff members regard them "not as persons but only as statistical figures and numbers". The centre staff, especially the security guards and officials from the investigation unit ("inspectors"), are the only persons who deal with detainees' daily needs, since many of the detainees have very little contact with the outside world, and some have no family members, relatives or friends in the host country who visit them while they

are in detention.

3.6 Level of safety within the detention centre

The detainees considered that the detention centre in Pabrade was "very safe". Some detainees mentioned security guards as the reason for this. However, some of the interviewed detainees expressed concerns about the "technical security" (danger of accidentally getting an electric shock from the partly damaged wiring system and the broken power outlets in the detention centre). The detainees also mentioned a small risk of being mocked or physically assaulted by other detainees because of pent-up aggression and other negative emotions as a result of the long period detention or because of national disputes, for example between Russians and Chechens, Armenians and people from Azerbaijan etc.

3.7 Activities within the detention centre

In the detention centre there are basic activities available in order to keep the detainees active. Generally the detainees regarded daily activities as "important", as a "main means to combat the monotony, isolation, the pent-up frustrations and aggressions of being ‘locked up’ and permanently in detention". As another 60-year-old detainee from Russia said, "otherwise it would be that passivity, this permanent nothing-to-do, killing us". The detention centre provides sports and entertainment in the form of TV and books in the library. All detainees have access to books (in Lithuanian, Russian and some in English), a telephone that uses cards (which is not functioning well the whole time), television, sports hall, religious space (a room, where is possible to meet with the priest from time to time, which is used only by Russian orthodox detainees), and to outdoor space (but without facilities like a park benches, only small basketball/football ground). There is no access to computers (no use of the Internet), educational opportunities (the detainees have expressed a strong wish to learn languages during the time they are in detention, including the language of the host country Lithuania) or to religious services.

In particular, the interviewed detainees mentioned that the equipment is mostly out of date. For example, in the library there are no newspapers, no language books for foreign languages (including Lithuanian) and no dictionaries. All ten detainees with whom the interviews were made wish to have the possibility to use the Internet or to have access to a PC. A chill-out room is desperately needed because most of the time the detainees are among others. Further, a group room is needed, where the detainees could gather for sessions or discussions. Despite the card phone the detention centre is provided with, the interviewed detainees reported difficulties in using it freely either because the card phone is out of order most of the time or because they have no possibility to buy phone cards especially if they do not have relatives, family members or friends in Lithuania. There is no other way to make phone calls except for the illegal use of mobile phones, for which the detainees can be punished.

3.8 Medical Issues

There is medical staff in the centre: two doctors, two nurses and one psychologist. The detainees can see them at least once per week or as necessary. All the detained persons have had a medical exam (measure of the blood pressure, several blood tests etc.) Upon arrival to the centre, detainees reported that they understood the language (Lithuanian or Russian, also basic English) of the medical staff. The health care unit within the detention centre provides only primary health care. In emergency cases like acute appendicitis, strong tooth pain, psychosis etc., detainees can be brought to a specialist in the city hospital in Pabrade. The detainees missed being regularly examined and treated by such a specialists like an ENT doctor or an ophthalmologist, especially those among the elderly detainees who needed glasses or hearing aids.

In general, though primary health care was provided in the detention centre in Pabrade, the interviewed detainees felt that they were offered only a superficial level of medical care, in which they were always provided with the same treatment of pills - aspirin or pain reliever –no matter whether they were complaining of pain in their bones, joints,

stomach or simply of headaches. In most cases the detainees felt that they lacked attention and emotional devotion on the part of medical staff. Some of the detainees felt dismissed by the medical staff, or did not feel that they were taken seriously. One detainee reported that a nurse had refused to give him stress relievers without even an explanation. However, when asked to rate the medical care overall, three detainees were positive about their medical treatment, two were neutral and one thought it was bad. Five detainees reported that better medical services were needed, in terms of better access to appropriate treatment or better quality.

All the interviewed detainees felt that being in detention had negatively impacted their physical health. There was a direct relation between the level of the negative impact on health and the duration of the detention. When asked why they thought that their health had deteriorated, most of the detainees said that the reasons were stress, the bad state of the detention centre buildings and the poor living conditions. Illegally staying third country nationals from the southern republics of the former Soviet Union like Azerbaijan or Uzbekistan reported difficulties in coping with the very low temperatures inside the buildings during the cold Lithuanian winter period. Low temperatures caused a lot of medical troubles like flu, cold, cough etc. Some of the detainees suffered allergies or stomach troubles that they had never experienced before and according to their statements the reason for this could have been the insufficient sanitary conditions within the detention centre and the lack of vitamins in the food. Most of the detainees saw a link between their poor state of physical health in detention and their deteriorating mental health. The frequency of being ill increased in detention and the period for recovery from medical troubles became longer.

Being detained also had a very negative impact on the perceived *mental health* among all the detainees interviewed during the DEVAS project. Through being detained, their mental health had dropped on average from “very good” (eight out of ten points) to “less good” (six out of ten points). The reasons given for this were the impact of being detained in a closed place, the impact of worries, and the impact of medical or health problems. The most negative impact happened in situations where the affected person had a physical or mental handicap or was vulnerable in some other way. Among the detainees interviewed for DEVAS was a middle-aged-man of German origin with his old mother, who suffered from schizophrenia. They had fled to Lithuania from a region of the Russian Federation next to the border of Kazakhstan and Siberia, because they had been discriminated against on account of their nationality. They had been detained in Pabrade for more than three years, and there was still no clear outcome for their future because the Russian Federation refused to provide them visas that would allow them to return home. The Lithuanian DEVAS project staff witnessed the deep hopelessness of this man during the interview, which was expressed in his motionless and static posture, in his quiet and lifeless voice, and in his dull and vacuous face. The situation had become unbearable for him because of his mother, who could not cope with the fact that they had been forced to flee to Lithuania or the fact of being in detention without any long-term perspective for the future. This permanent uncertainty meant that during the three-year period of detention she had become chronically mentally ill.

3.9 Social interaction within the detention centre

Six of the detainees interviewed considered the interaction between detainees as good. One detainee mentioned neutral interaction and one mentioned a bad atmosphere in the detention centre. When there were problems, it was because of inter-cultural tensions (for reasons of culture, religion and nationality) and tensions due to common life in detention. Some of the detainees used preventative tactics in order not to be involved in disputes or interpersonal conflicts. They were consciously keeping their distance, and trying not to respond to the aggression. The detainees generally tried to solve the problems by themselves without informing or involving the staff of the detention centre, "otherwise you can be considered as sneak or spy by the other detainees", as one of the detainees remarked.

Four detainees said that they had a person to trust in the centre (detention centre staff or other detainees). All detainees said had a family in their home country, and in most cases they do not rely on them for support. Five detainees reported having friends and family in Lithuania.

3.10 Contact with the outside world

The most important ways mentioned to keep in touch with the outside world were the card phone or mobile phones, as well as mail and personal visits. In the detention centre the detainees have a limited access to these ways of keeping of touch. The use of the mobile phones is prohibited while in detention, but nevertheless the detainees use them illegally at their own risk. All detainees said that the fixed line telephone that they have access to in centre is insufficient because most of the time it is out of order. In addition, money is needed in order to buy a phone card, and every time the detainee wants to use the card phone, he has to apply for it in written form and address it to the responsible official or to the chief of the centre in Pabrade. Therefore despite the strict prohibition of the use of mobile phones in the centre most of the detainees possess mobile phones, and in most cases the officials turn a blind eye to this. On two occasions during the implementation of the project, a member of the DEVAS project team was called by the detainees who were indignant because the special military task force from Vilnius had been called for an intervention within the centre. The reason for such an intervention was to find out and to punish the possessors of mobile phones among the detainees, on the grounds that they had broken the internal house rules. On one occasion, a detainee from Azerbaijan, who held university degree in journalism from Turkey and Iran, called the interview team (from his own mobile phone). He was extremely agitated, and told the team about “razzia” within the detention centre. During the “razzia” there were accidents like broken arms or ribs of detainees, which happened when detainees fought against the special military task forces. The detainee was calling to say that the physician had not been called in order to examine and treat the detainees’ injuries.

Three detainees reported receiving visits from family and friends, and one of the interviewed detainees has received religious visits. Generally the situation of the detainees was easier for those who had family members, relatives or friends in Lithuania, as they could provide them with means of communication with the outside world such as envelopes, stamps, pencils and sheets of paper for letters. Without these contacts the detainees are incapable of keeping in touch with those on the outside.

3.11 Conditions of detention and the family

The DEVAS team in Lithuania did not interview any detainees who were detained with their families.

3.12 Conditions of detention and nutrition

In general, the food that the detainees were offered in the canteen of the detention centre was not popular because it was simple, poor quality and always the same: pasta, porridge, a little meat, and no vegetables or fruit. Four of the interviewed detainees said they liked the canteen food, while three of the other interviewees did not like it and would prefer to cook by themselves. Further, the illegally staying third country nationals from other cultural backgrounds than Europe missed food from their own cultural background. Three detainees reported a change of appetite in detention. They report a loss of appetite because of the conditions mentioned before, which made them feel worse. Five detainees said they did not sleep well because of the stress of being detained with others in small rooms and because of their worries.

3.13 Conditions of detention and the individual

The detainees were asked to rank their difficulties in detention. As “difficulty one” they considered detention itself and further the poor living conditions in the detention centre, since the main premises of the detention centre is in need of a complete renovation. Also ranked as “difficulty one” are continuous worries about the situation of being in detention and sorrows about the situation of family members and relatives. One detainee saw the violation of human rights while in detention as having the biggest impact on his life and another detainee mentioned the loss of the control over his own life.

As “difficulty two,” detainees worried about the living situation of family members and relatives as well as about the strong restrictions of freedom and free movement within the detention centre. Again, detainees felt that the loss of control over their lives and the poor living conditions had a negative impact.

As “difficulty three” the detainees mentioned the emotional impact of being detained. One of the detainees in Pabrade expressed it as followed: “We are human beings not just figures in statistics. But in the detention centre we are just known by our personal numbers.” In addition, some detainees mentioned that illegally staying third country nationals who had not committed any crime were accommodated together with those who have committed a crime and have been sentenced to jail. The non-criminals among the detainees said that this caused them a lot of stress.

Analysis of the data suggests a strong link between the duration of detention and the negative impact of detention on physical and mental health. Physical and especially medical troubles increased with the duration of detention. Detainees observed a special emotional dynamic in the experience of coping with detention: first of all the person in detention has “high hopes” concerning the duration of detention, the terms of release and the general outcome of the whole procedure. These persons are highly motivated, make plans, keep attending different activities etc. Attempts to escape from the detention centre could be regarded as part of the typical behaviour in this first stage of detention. Three of the ten interviewed detainees in the detention centre in Pabrade had committed two or three successful attempts to flee. However, each time they were apprehended and again detained. Then follows a second stage: after this repeated detention the detainees lose their strength and motivation to cope, especially in the case of long-term detention, and instead of being active they fall into hopelessness and sort of stupor.

Only one detainee from the ten who were interviewed by the Lithuanian DEVAS project team knew exactly what the outcome of their detention would be, and only two detainees knew their departure date from detention centre. Not knowing this lead to worries and difficulties in planning their future. In particular, as mentioned above, those young detainees who have committed juvenile crime prior to detention could compare the situation in jail, when prisoners know their exact day of release. Having a fixed date of release from detention would ease the state of uncertainty among detainees.

How did the interviewed detainees define the “vulnerability” from their own perspective? For the detainees, “vulnerable persons” were regarded first of all as persons with a physical or mental handicap or with so called “classic special needs”. For instance, the detainees described as “vulnerable” “the old man with amputated leg” or “the elderly woman who is badly mental ill and suffers one psychotic episode after other”. The general opinion of all the interviewees in Pabrade was that “families with small children are vulnerable in detention” (but the families are not accommodated in the detention centre, but instead the centre for asylum seekers in Pabrade which includes separate apartments for couples and families with young children). Further, a “pregnant women or young mother after delivery, who can’t get a special nutrition or clothes for her baby, could be considered as vulnerable”. The other cases of vulnerability, noticed by detainees under the conditions of detention in Pabrade, were: “A 73-year-old-man, who is very sick and crying every night; a Polish man, who is seriously ill as well; a Vietnamese man who does not understand the language; and a man from Chechnya who is not allowed to see his family in Lithuania.”

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

In Lithuania, administrative detention is applied to illegal staying third country nationals and not to asylum seekers. This distinction between illegally staying third country nationals and asylum seekers determines their living conditions, which means they have different accommodation. In Pabrade the asylum seekers are accommodated in a new freshly renovated building. Asylum seekers have freedom of movement and access to the outside world. Meanwhile, illegally staying third country nationals live in an old building that is surrounded by a wire-mesh fence. They have no freedom of movement, and they can leave the premises only accompanied by the guards. It is important to note that

for a first period of 24 hours within Foreigners' Registration Centre in Pabrade, illegally staying third country nationals and asylum seekers are detained in the same building in order to find out their legal status. Afterwards they are led to two different premises, and illegally staying third country nationals and asylum seekers communicate only by sending each other letters through the fence. This form of communication is mostly used by illegally staying third country nationals in order to ask the help of asylum seekers in providing them with cigarettes, mobile phones, paper and pens.

This situation disadvantages illegally staying third country nationals in comparison to asylum seekers in one special respect. Between 2002 and 2007 Caritas Vilnius and the Red Cross in Lithuania provided social services and counselling to both illegally staying third country nationals and asylum seekers in the Foreigners' Registration Centre in Pabrade. Through this service, everyone was offered consultations with voluntary social assistants and lawyers. However, one and a half years ago Caritas Vilnius established a Community Centre in Pabrade town, 2km from the Foreigner's registration centre, and this Centre provides social services and counselling only to asylum seekers that have freedom of movement. The illegally staying third country nationals were subsequently cut off from any social assistance provided by two NGOs.

Specific recurring themes regarding administrative detention can be observed from the DEVAS interviews. One such theme is *the lack of information about administrative detention, especially about the duration of detention.* The distinction between illegally staying third country nationals and asylum seekers determines not only the differences in accommodation, movement of freedom and access to counselling by NGOs, but also in the level of information provided about the duration of their detention and asylum procedure. The illegally staying third country nationals complain about the lack of accurate information. The minimum duration of administrative detention in the Detention Centre is three months but the average duration of all interviewed detainees was more than nine months. The case of the detainee from Kazakhstan detained with his mentally ill mother for more than three years without having any indication of the outcome of their detention was a particularly bad example the DEVAS team came across. Uncertainty concerning the duration of the detention is one of the most stressful factors the detainees experience while being detained. Those interviewed detainees who had not committed any crime prior administrative detention felt criminalized because of the restriction of their freedom of movement, and because of indefinite term of release from detention. Further, because of being detained with "criminals", they felt as if they were being treated as such. In all interviews the detainees underlined the link between the indefinite duration of their detention and their physical, mental health and well-being. Interestingly, in two interviews the detainees stressed that there was a positive side to the prolonged duration of detention. They were homeless prior to detention and needed more time for an alternative form of accommodation being prepared and to recover from serious illnesses (for instance, leg amputation).

Another important topic mentioned by detainees was *the level of isolation from the outside world in the Pabrade Detention Centre and its negative impact on their physical/mental health and coping capacities.* As explained above, after NGOs Caritas Vilnius and the Red Cross moved their counselling and social assistance services from the Foreigners' Registration Centre to the new premises in the town of Pabrade, illegally staying third country nationals, especially those without family members, relatives or friends in Lithuania were deprived of NGO services and legal help. According the opinion of the DEVAS team, this group is especially vulnerable because they have no contacts with outside world for very long period of time, except the guards, staff and co-detainees. Without the help of family members, relatives or friends, the detainees do not have access to important means of communication such as mobile phones, phone cards, envelopes, stamps, pens, paper, etc. and they lose the ability to control their own personal life and to influence their environment. The most effective and frequently used means of communication in the detention centre in Pabrade were mobile phones, which are prohibited. Nevertheless the illegally staying third country nationals used them because the card phones in centre were often out of order. All of the interviewed detainees reported about the violence towards them by the special military task force who paid regular control visits because of their illegal possession of forbidden mobile phones. Overall, this isolation and alienation heavily affected their emotional and mental state and even during interviews the detainees burst into tears or expressed anger, rage or indifference. Sometimes the interviewing staff during the two hour DEVAS interview were the only human beings

with whom the detainees could share their worries, concerns, problems and joys. Giving them a possibility to meet persons and specialists from the outside world, like social assistants, psychologists, priests and a lawyer, could alleviate this isolation.

The third important topic mentioned by detainees is *the general impact of administrative detention, - especially, the restriction of freedom and movement, and accommodation in isolated location for indefinite period of time, – on physical and mental condition of the detainees.* This impact has several levels and aspects, such as living conditions, nutrition, and activities within the centre. This impact depends on other important factors such as the existence of a disability, age, gender, nationality, contacts with outside world and so on. The detainees reported a strong relation between their conditions of accommodation and nutrition within the detention centre on the one hand, and between their physical and mental state on the other. All interviewed detainees criticized the living conditions in Pabrade: they mentioned that the building should be renovated, the windows are broken (it is windy and cold inside) and roof should be repaired (it rains through), the wallpaper is very old. The detainees reported similar problems about poor nutrition (not tasty, not enough, small portions, lack of choice, no respect to cultural and religion differences) and lack of activities (for many detainees provided activities seem to be only “pro forma”: TV in bad condition, no sports equipment, old books in languages they do not understand, the table of tennis without bats and balls). The rules on communication mean the Internet is not available for them at all. The detainees reported positively on the possibilities to make food or wash clothes by themselves but they expressed regret that very often the equipment is out of order. One detainee reported that he was not provided with suitable clothing. He had been detained in summer and in winter time he was still wearing flip flops as no one had provided him with winter footwear. Many detainees also reported a sense of time being wasted. They expressed a wish to learn foreign languages and frustration that there were no manuals in the library and no lessons organized. They also expressed a wish to repair an old gas oven on which to cook, but none of the staff would give them permission to do so.

5. CONCLUSIONS AND RECOMMENDATIONS

The DEVAS research conducted in February – October 2009 in the Foreigners’ Detention Centre in Pabrade shows that while on the surface the detention of illegally staying third country nationals seems to be a procedure that respects human rights, there are a number of problems with the situation. This detailed survey confirmed that from the perspective of the detainees the long duration of detention without a fixed term of release, the isolation of being in detention, and the bad living conditions have a very negative impact on the physical and mental condition of these illegally staying third country migrants.

In order to smooth the impact of detention, one short term recommendation could be the following: the detainees have to be provided with *access to free counselling and social assistance from NGOs* like Caritas and the Red Cross. The experience of social advocacy gained by Caritas Vilnius during five years (2002 – 2005) has shown that complementary assistance and regular contacts with NGOs help detainees to cope with their desolate situation. Because these services have moved to the new community centre in the town of Pabrade, they are now only available for asylum seekers. Therefore those illegally staying third country nationals in the closed detention centre have been left without assistance from NGOs. This target group seems to be “abandoned” not only in terms of social funding and advocacy but also in human terms: isolated from the outside world, detained for a long period of time, without knowing the clear outcome of the detention, suffering from the consequences of isolation, loneliness and in permanent distress.

In order to assist the illegally staying third country nationals *the local community and institutions like schools and the parish of the local Catholic Church in Pabrade could be more involved.* Regular visits by volunteers to the detention centre to talk to the detainees would help provide moral support for those locked up. The local community could help by collecting products, finding and offering second hand shoes and clothes as well as equipment like washing

machines or gas ovens. As detainees mentioned in their interviews, the possibility of having even a few small choices in their daily lives in detention - like washing their clothes and underwear by themselves or cooking food instead of consuming prepared food or fixing broken house equipment - could make them more happy and independent.

It would be reasonable to *legalize the use of mobile phones within the detention centre* because they are the most used and effective means of communication with family members, relatives, friends and independent social or legal assistants. The fact is that the detainees in detention centre in Pabrade are using the mobile phones illegally in spite of a high risk of being found out and punished by special military task force that pays regular visits to the detention centre and uses violence to discourage such activities. *Free Internet access should be planned* in the future because many detainees mentioned as a most effective mean to keep in touch and be up-to-date with outside world.

As for “long term recommendations”, *the duration of the detention of illegal staying migrants in the detention centre in Pabrade should be defined with more exactness*. In cases where this is not possible and the limit of three months has been exceeded, either the possibilities for alternative forms of accommodation should be provided or the outcome of their legal procedure has to be speeded up. It is conceivable that co-operation between the detention centre and NGOs could help to provide measures alternative to detention and could give quite good results. NGOs based on Christian values are well experienced in working with marginalized groups of society and working with them while respecting their dignity.

NATIONAL REPORT: LATVIA

By: Caritas Latvia

1. INTRODUCTION

This report was carried out based on an approach and a methodology developed by DEVAS. To complete the project the only illegal immigrant and asylum seeker detention centre in Latvia, the Detention centre of Olaine (located 30 km from the capital Riga), was visited. On the basis of several questionnaires and guidelines, Caritas Latvia arranged for a number of interviews - with 8 detainees and 1 member of the staff. All the detainees were young males each from a different country (Cameroon, Turkey, Syria, Sierra – Leone, Eritrea, Somalia, Ghana, and Iraq). Altogether a total of 9 interviews were conducted and evaluated. It was not possible to implement one part of the methodology – interviews with Non-Governmental Organizations – since no NGO is working with the centre or visiting the detainees.

Caritas Latvia owes special gratitude to Head of the State Border Guard General Normunds Garbars, the Head of the Internment Camp for Illegal Immigrants “Olaine” captain Raimonds Paļčevskis, as well as all the detainees who helped Caritas Latvia to complete this report. And also a special thanks to all the project partners whose exchange of experience in carrying out this project was an important help in finishing this report.

2. NATIONAL LEGAL OVERVIEW

The National Laws that deal with detention of illegal immigrants (third-country nationals) and asylum seekers are the Immigration Law Act of 31 October 2002 (Immigration Law) and the Asylum Law Act of 15 June 2009 (Asylum Law). However, many of the laws contained in the Immigration Law concern asylum seekers, so in this text only if the laws for asylum seekers differ from those for illegal immigrants will they be explicitly mentioned or quoted. Otherwise, it is to be noted that the Immigration Law applies to both of these two types of foreigners. They are defined as follows:

- **Asylum seeker** – a third country national or a stateless person who, in accordance with the procedures specified in this Law, has submitted an application regarding granting of refugee or alternative status in the Republic of Latvia until the time when the final decision regarding his or her application has come into effect and become non-disputable;
- **Third country national or a stateless person** – a person who is not a citizen of the Republic of Latvia, another European Union Member State, a state of the European Economic Area or the Swiss Confederation, as well as a stateless person who has been granted this status by one of these countries. (Asylum Law. Section 1, 7) and 10).

2.1. Legal grounds for detention

The legal grounds for detention are found in the Immigration Law Section 51. It states that a third-country national can be detained by the Border Guard or the State Police (1) if he/she has illegally crossed the border of the Republic of Latvia or has otherwise violated the rules and regulations for third-country nationals entering the Republic of Latvia; (2) if appropriate state organizations have grounds for suspicion that the third-country national poses a threat to security of the state or to public order and security. Section 52 of the same Act states that the Border Guard or State Police officer has to write a detention protocol at the time of detention. The protocol must contain the information on

the time and place of detention, name and rank of the officer, information about the detainee, and the motives of the detention. Section 57 states that Border Guard or State Police officer has to find out the detainee's identity, take his fingerprints, carry out a search of his property, if necessary arrange for him medical examination, and has to include all that in the protocol.

The legal grounds for detention of an asylum seeker are found in the Asylum Law Act of 15 June 2009 Section 9 which states that the Border Guard has the right to detain an asylum seeker for a period up to seven days and nights if: (1) the identity of the asylum seeker has not been established; or (2) there is reason to believe that the asylum seeker is attempting to use the asylum procedure in bad faith; or (3) competent State authorities have a reason to believe that the asylum seeker poses a threat to national security or public order and safety.

2.2. Legal grounds for the minimum age for detention

The minimum age of detention is 14 years, as stated in the Immigration Law Section 51: (1) An official of the State Border Guard has the right to detain a third-country national, except a minor third-country national who has not reached the age of 14 years.

2.3. Legal grounds for the detention order

The legal grounds for the detention order for an asylum seeker (Asylum Law. Section 9, (2)) and a third-country national are described in the Section 54 of the Immigration Law, which states that to detain the third-country national for longer than 10 days the Border Guard officer needs to obtain the detention order from a regional judge, who can issue an order to detain the third-country national for a maximum period of 2 months. The Border Guard officer can ask for detention extension in the same court. Factors that have to be taken into account when assessing the need for the extension of detention include: the third-country national is hiding his identity or refuses to cooperate with the Border Guard authorities; the third-country national does not possess the required financial means to support his/her stay in the Republic of Latvia; competent state organizations have grounds to believe that the third-country national is a member of a criminal or anti-governmental organization, or that he or she poses threat to security of the state or to public order and security; the third-country national has committed a crime against humanity, crime against peace, a war crime or has participated in genocide, which has been recorded in court.

2.4. Legal grounds for judicial review of the detention order

The detention order is not reviewed automatically, but only on an appeal of the detainee.

2.5. Legal grounds for the right of appeal against the detention order, or to challenge detention

The Border Guard officer has the legal right to detain the third-country national described in Section 51 for the time period of up to 10 days. The detainee has the right to appeal the detention decision in the court. The legal grounds for right of appeal of the Court decision are found in the Section 55 of the Immigration Law point 6, which states that the third-country national or his representative has the right of appeal within 48 hours of receiving the Court decision. The appeal is addressed by the Regional Court immediately, and the Court decision is final and is no longer subject to appeal. If an asylum seeker has received a negative decision regarding his or her legal status, he or she can appeal the decision in the district administrative court, as specified in the Asylum Law, Section 30, Point 1. Within 10 days of coming into effect of the decision the application of appeal has to be submitted to the Office, who will, if necessary, ensure its translation, and submit it to the court. The Court decision is final and may not be appealed (Asylum Law, Section 31, point 4), unless the conditions which were the basis for taking of the decision have changed in his or her favour (Asylum Law, Section 32, point 1).

2.6. Legal grounds for the right of information about the detention order and/or the reasons for detention

The Immigration Law Section 56 states that the detainee in defence of his or her legitimate interests has the right to appeal the detention to a district (city) court, contact the consular institution of his or her country and receive legal assistance. A third-country national shall be acquainted with these rights at the moment of detention.

2.7. Legal grounds for duration of detention

The legal grounds for a legal maximum duration of detention are described in the Section 54 of the Immigration Law, which states that to detain the third-country national for longer than 10 days the Border Guard officer needs to obtain a detention order from a regional judge. If in the period of time prescribed by the Court decision it has not been possible to expel the third-country national, the judge, based on the Border Guard's request, can issue an order to extend the detention of the third-country national for a maximum period of 2 months. But the total detention time cannot exceed 20 months. The Asylum Law Section 9 specifies that the total time period of detention for an asylum seeker shall not exceed the time period of the asylum procedure. Section 13 of this law states that (2) the application will be examined within three months of submission; however, the State Secretary of the Ministry of the Interior or his or her authorised person may, due to substantiated reasons, extend the time period for examination of the application up to twelve months.

2.8. Legal grounds for the provision of health care and the scope of health care benefits, and for provision of social services

Section 59^1, point 2 of the Immigration Law states that when the third-country national is placed in the residence centre he/she undergoes a medical examination and necessary sanitary measures. If the detained third-country national has health problems, then according to the orders of the examining medical personnel he/she is placed in a specially designed room. Section 59^2 states that in the accommodation centre the detainee has the right to receive emergency medical assistance, as well as guaranteed health care services. The detainee also has the right to receive health care services and medicines that have been prescribed by medical personnel.

2.9. Legal grounds for contact with the outside world

Section 59 of the Immigration Law states that the detained foreigner is put in specially equipped facilities or a residence centre, separate from persons arrested or detained in a criminal procedural order. This centre is a structure unit of the State Border Guard. Section 59^2 describes that after being put in the residence centre the detained foreigner is introduced in a language he/she understands (if necessary, with assistance of an interpreter) to his rights and obligations, as well as to the centre's internal rules and regulations. It further states that the detainee has the right (1) to contact his/her country's consulate, (2) inform his/her family members, relatives or other people of his/her place of residence, (3) receive legal help for detainee's own funds, (4) meet with family members or relatives, as well as with representatives of international and non-governmental human rights organizations, (5) file complaints and petitions, (12) to receive consignments and parcels. And Section 4 of the Asylum Law states that (1) Upon the request of the United Nations High Commissioner for Refugees, the institutions involved in the asylum procedure shall ensure (1) the opportunity of meeting with an asylum seeker, even if he or she has been detained.

2.10. Legal grounds for the provision of legal aid

The Immigration Law Section 56 states that (1) the detainee in defence of his or her legitimate interests has the right to appeal the detention to a district (city) court, contact the consular institution of his or her country and receive legal assistance. A third-country national is acquainted with these rights at the moment of detention. In Section 59^2 it is specified that (1) after accommodation in an accommodation centre, the detained third-country national shall be acquainted in a language understandable to him or her (if necessary, utilizing the services of an interpreter) with his

or her rights and duties, which include the right to (3) to receive legal assistance, with his or her own means. An asylum seeker, however, has the right to request a person for the receipt of legal aid using his or her own funds, but if the asylum seeker does not have sufficient funds, he or she has the right to legal aid ensured by the State (Asylum Law, Section 10, point 3).

2.11. Legal grounds for protection of persons with special needs

Section 59^1 point 3 of the Immigration Law states that an unaccompanied detained minor third-country national who is at the age of 14 to 18 years up to the end of the time period of detention shall be accommodated in the relevant State Police structural unit. If up to the end of the time period of detention his or her identity and citizenship or country of residence has not been established, the State Police shall ensure the accommodation of the minor third-country national in a child care institution (Section 59^5 point 2).

Section 59^1 point 3 of the Immigration Law states that detained foreigner upon placement in the residence centre is handled observing all general human rights principles and internal security, as well as personal characteristics and psychological make-up. It also states that male and female detainees should be separated. If the detained foreigner is underage, he or she is placed together with detained parent or legal guardian. Also detained families, if they wish so, are placed together. And if the detained foreigner has a child that has not been detained, that child can be placed in the residence centre by the request of the detained foreigner together with his/her parent. The child of the detained foreigner has the same rights and obligations in the residence centre as the detained foreigner. It also states that a detained third-country national who has a health disorder shall be accommodated in accordance with the instructions of medical personnel in premises specially equipped for such purposes.

2.12. Legal grounds for alternatives to detention

According to Section 7 of the Asylum Law the asylum seeker must hand over his or her personal identity and travel documents to the State Border Guard until the final decision is taken regarding his status. And (3) the personal document of an asylum seeker gives the right to stay at an accommodation centre for asylum seekers, where necessary living conditions are provided, and he or she may be transferred from one accommodation centre to another (Section 8). Section 8 (2) specifies that an asylum seeker shall not be accommodated at an accommodation centre for asylum seekers while he or she has another legal basis to reside in the Republic of Latvia. When changing the place of residence, the asylum seeker shall inform the Office regarding the address of the new place of residence.

2.13. Legal grounds for providing release from detention

According to Section 59^4 of the Immigration Law detained third-country national can be released from the residence centre (1) if the detention term has ended, (2) in order to implement a return decision, or (3) in accordance with the State Border Guard officer's decision about the release of the detained third-country national.

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1. Basic information

All eight detainees that were interviewed are male and all, except one, are single. They are aged between 18 and 32 years. They come from Africa or the Middle East, and typically go into detention right after arrival. All of them are asylum seekers and their detention can last very long, usually over a year, and in 3 cases around 20 months (which is the maximum duration of detention).

3.2. Case awareness

The detainees feel usually rather well informed both for the reasons of their detention and the current situation of their case. They were most often detained by the border guard or by the police. Four detainees, however, feel the need for more information, all of them for legal questions related to the procedure: the possibilities of obtaining legal aid, and information on the conditions for filing an appeal.

3.3. Space within the detention centre

The feelings about the rooms are mixed: four are positive or neutral about it and four negative. It mostly relates to the question of privacy, which is hard to find because there is almost no place in the centre where the detainee could go to be alone, and also because most of them share their room with one or two other detainees. As one detainee said "Conditions of life are deplorable here, not good enough, not at all! There are two or three persons in one room. It's almost impossible to be alone", but another said "The room is good; it is a normal size room. But sanitary conditions are unacceptable, for example the mattress is very old". The reactions about the centre are however clearly negative – "Conditions of life are very poor here. It looks more like a prison, not like a detention centre. It was not so in Sweden for example." Strangely, while people point to the insufficient size of the centre and to the fact that there is no privacy, only two of them thought that it was overcrowded, at least for the moment, because the number of detainees is small.

3.4. Rules and routine

What the typical detainee thinks of the rules is not quite clear. Most of the detainees say that the rules are not respected, and their opinions are divided on whether or not it is possible to ask for a change in the rules of the centre. A staff member said however that the rules of the centre are elaborated and given by the Cabinet, but that some minor points, like schedule for meals or recreation, could be changed if the detainees asked for it. Four of them also said that most rules are more a matter of formality and as one of them put it "Not all the rules are respected in the centre; some of them are more theoretical and are not connected with the reality of life here". Others indicated that they are too restricting and compared it to a prison – "I understand that rules are necessary but they are limiting freedom, it is not a prison there! Sometimes the rules make me nervous".

3.5. Detention centre staff

The relations with the staff are mostly formal and rather distant. It is related to coldness towards him and not mistreatment, but the general feeling is that the staff is only doing what is in the framework of their daily job and no more – "They are only doing their work; there is not much personalized attitude". Some feel that some of the staff is friendlier and that it is possible to get some support from them. Only one detainee said that he was treated differently from the other detainees, mostly because of his complaints regarding the living conditions in the centre – "Most of the guards dislike me because I speak about all the inconveniencies in the centre and I complain to official institutions and NGOs by writing letters".

3.6. Level of safety within the detention centre

The detainees feel safe inside the centre. There has however been a case when a detainee was mocked by a staff member, or by another detainee and even assaulted physically, but it only happened once – "Few times I was offended by a detainee. And once when we were in the same room this aggressive detainee pushed me because 'I came too close'". Interestingly, these occasions led to a discussion with the staff, but it didn't result in any real changes.

3.7. Activities within the detention centre

All detainees are well aware that there are activities offered in the centre, but will not automatically participate in those. The activities are sport-oriented (ping-pong, or basketball in the yard) and not much else is offered (access to education, religious place, television, books is unclear). One detainee mentioned among the most difficult things for him during the detention “no possibility for self-education – no books, no Internet, etc.; and no tools for painting which is my hobby”. If he does not participate in the sports activities, it is because of feeling too weak or depressed – “Surely, it would be good for me to participate in some sports activities, for example, but I have no inner motivation to do that”, while others say that sports activities help to relieve stress and are good for their health in general. The main concern however, is availability of means of communication. The average detainee would like a free access to phone and especially to the Internet.

3.8. Medical issues

The detainees are aware of the presence of a medical service and can access it frequently (on average he sees a nurse once a week). They have access to nurses but not to doctors or psychologists, unless a serious health problem arises. A staff member said however that there is a psychologist available in the centre. Most of them report difficulties in communicating with the medical staff. They try to fix it with the help of staff or other detainees, but without much success – “I try to get translation with the help of other detainees, or use some kind of sign language”. Typically, their physical health has heavily degraded during detention, and all of them felt that detention has had a negative impact. Some link these problems to the stress and depression associated with detention, as well as the quality of the food – “[Detention] has a destructive impact on my health, especially because of the bad quality of the food and a lack of physical activities”. There is also as strong a degradation in his mental health. The uncertainty about the future is a major reason – “Days don’t differ from one another; the same people all the time, common feeling of depression, facilities are small. No contact with relatives. Life is not joyful here. The most difficult thing is the uncertainty about the future”. The detainees feel strongly negative about the quality of the medical services because they feel they don’t receive appropriate treatments, and complain that only the strict minimum is provided. However, almost none of them require specific further medical services.

3.9. Social interaction within the detention centre

The typical detainee reports good relations with his co-detainees and if he has witnessed problems between other detainees, it was only a small conflict mostly because of differences in characters (only one case). A staff member explained that there are two separate units or blocks for males in the centre, and that sometimes detainees who could have problems with one another (usually due to religious or cultural reasons) are put in different blocks. But he said that such cases have been very rare. The detainees also get along well with the staff, but the relationship is mostly formal – “My relationship with the staff is good in general; peaceful cohabitation, but no friendships or close contacts”.

3.10. Contact with the outside world

Most of the detainees have family in their home country, but their family members do not count on their support (only one reports this situation). They are informed that they can receive visitors, but because they have just arrived they do not know anyone in Latvia and thus receives no “friendly” visits (only one reported weekly visits from his wife, and several admitted that “Caritas Latvia” was the first visitor they have had). They don’t receive any visits from lawyers or religious persons. The telephone is the preferred means of communication (but it is not available all the time), but they would like to have access to the Internet – “Internet communication would be the best way for me to contact my family; it would significantly improve my life here”.

3.11. Conditions of detention and the family

None of the detainees have children (inside or outside the centre), or a spouse detained with him.

3.12. Conditions of detention and nutrition

The food served in the centre does not suit the average detainee, and all of the interviewed detainees complained about it. The two main problems with it are the small quantity and the limited variety available – "They are not giving enough food here. It is possible to buy extra food, but I don't have any money". One detainee complains that the food worsens his stomach problems. The reactions are very strong when asked about food.

3.13. Conditions of detention and the individual

The average detainee cannot sleep, sometimes because of the noise, but mostly due to stress and worry – "Difficult to fall asleep because I have a lot of disturbing thoughts running through my mind. Stress is the main cause of insomnia". The difficulties reported are varied. Most often however, living conditions are mentioned, mostly related to the size of the centre, as well as lack of physical activities and the quantity and quality of food. Then come communication problems. None of the interviewed detainees knew what the outcome of their detention would be, but they are optimistic about it (only neutral, optimistic answers). Also the average detainee does not know when he will be released, which leads to stress and uncertainty and often depression. When asked to present himself, he does so rather positively. However, three persons report that the detention had a negative impact on their self-perception. Finally, he does not think he has special needs (only one thought he did). He perceives that a person with special needs would be a woman and a person without friends and family.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

The sample being quite small, it is difficult to draw definitive conclusions about vulnerability factors. Negative answers also often have varied roots. The overall picture from Latvia is one of people being detained for a long time without anything to do, little contact with a far away family and little knowledge of their future, leading to a slow degradation of both mental and physical health, but without obvious mistreatment.

4.1. Living conditions in the centre

One of the main problems the detainees identified was the state of the living conditions in the centre. There are lots of complaints about the physical size of the centre and the rooms. One detainee said that his mattress was old and needed replacement; at least three of them noted that the centre wasn't well sound-isolated – it lets through noise which keeps them up at night. This is understandable given the condition of the centre – a two-storey brick building built around 1980, and even though it has undergone some renovation work six years ago to accommodate illegal immigrants, it still isn't in a very good shape. The living conditions in it are rather simple, acceptable, but not much more than that.

Another important issue is privacy – there is practically no place for a detainee to go to be alone. They live usually two or four per room (depending on the total number of detainees), the common rooms are few and there is almost always somebody there. The fenced court outside the building is rather small and does not offer much possibility for reclusion. And the close proximity with the guards creates the feeling of "being watched" – hence the comparison by many detainees between this centre with a prison. During the interview a staff member repeatedly stated that they are detainees and not prisoners, but their attitude – which is strictly professional of just doing their job, providing what is prescribed by the law and nothing more – is not helping either. This might actually be the main problem of

detainees in Latvia – the detention conditions make them feel being treated like criminals, which has very adverse effects on their morale.

Finally there is the question of food. All 8 detainees had strong negative reactions about it. The complaints are both for quality/variety and quantity that they receive. One detainee even named all the ingredients and their quantities for all the meals that he gets for one week, to stress how inadequate that was. A staff member said however that they give what the law prescribes and that they have no additional funds in the budget for food. The detainees are allowed to buy additional food for their own money, but having just arrived in the country not knowing anyone here they usually do not have any money.

4.2. Activities within the detention centre

Another important aspect is the range of activities available for the detainees. All 8 said they knew that some sports activities were available (like ping-pong and basketball), but only half of them said they would participate in those. The main reasons for non-participation are depression and lack of motivation. This creates a sort of a vicious circle, especially when the detentions last very long, because some of those who did do sports said that it made them feel better both physically and mentally. The main pastime remains watching TV, but there are complaints about that too because only local channels are available and nothing in English. Others would like some more books in English and some music. The limited number of activities makes their life rather monotonous, which for prolonged detentions adds to their weakening mental condition.

4.3. Duration of detention and mental health

A contributing factor to the mental health problems expressed and manifested by the detainees (such as stress and depression) is certainly the duration of the detention. The legal maximum duration of the detention is 20 months, and it isn't rare that this period is reached. The average time in detention of the interviewed detainees was around 10 months, and one could observe the differences between those that had been there longer than a year and those that had just arrived. Detainees that had been in the centre for a long period of time were noticeably more depressed, unmotivated, they complained about general health issues. But the one who had just arrived a week ago was rather "agile, lively", even refused the second-hand clothing that was being offered for the centre. Thus, the long periods of stay in the centre amplify the negative effects acquired during the detention.

4.4. Communications issues and contact with the outside world

The fact that detainees are more or less isolated from the outside world makes the availability of means of communication a priority for them. Six out of eight had family members in their home country and wanted to be regularly in contact with them. And they need to contact also their lawyers and/or legal advisors as well as some non-governmental organizations (though in the last few years none, except Caritas Latvia, had come to see the detainees). The primary means of communication they use is a mobile phone that is available for them every day upon a request from the guards, but they have to pay for the communication themselves. Six out of eight detainees said that they would like to have access to the Internet and that it would significantly improve their lives, for three main reasons – because it would let them communicate more and easier with their families; because it would let them obtain the necessary information regarding laws and legal procedures; and because it would be a tool of information in general and of self-education.

Not knowing the outcome of the case and the lack of information regarding the possibilities of legal assistance (expressed by half of the detainees) combined with the frustration due to limited means of communication and, hence, inaccessibility of needed information, put the detainee in a state of stress and uncertainty that degrades further their mental health.

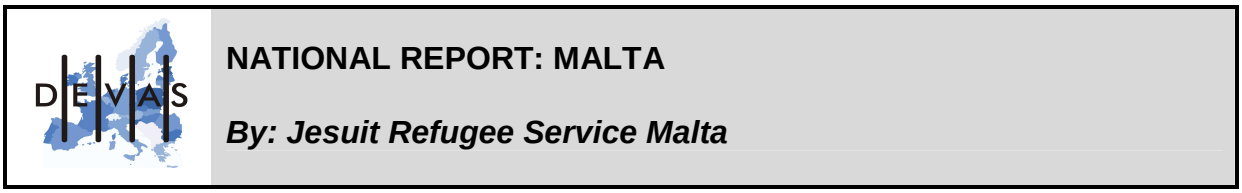
5. CONCLUSIONS AND RECOMMENDATIONS

Even though the detainees do not consider themselves as vulnerable people (all except one) the reality of their lives seems to indicate otherwise. To sum up one can apply the DEVAS model of vulnerability to the detainees in Olaine, on all three levels. On the personal level one will notice that most detainees that pass through this centre are young and single, recently arrived in the country with little or no financial resources, not speaking the local language, with vague awareness and understanding of legal policies regarding immigration and asylum procedures; their only help sometimes being their faith. On the social level the factors that "add to the vulnerability" are that their families are far away and it is often difficult to reach them with the means of communication available (or at least that this communication is limited), they receive practically no visitors, the relations with the staff are formal, almost impersonal. The only positive factor is the rare cases of friendship among the detainees, which is usually limited to people of same nationality/culture or religion. The environmental level of factors probably plays the most important role, since there is the centre with its geography/architecture and all the limitations that come with that, the legislation that determines the length of detention, rules of the centre, quality of medical services, and food (variety and quantity).

To give concrete realistic suggestions to improve the situation is not an easy task because of the many limiting factors on several levels (national/legislative, local), but with some effort several improvements can still be made. As we have seen the main problem of detainees in Latvia comes from the uncertainty of the outcome of their case and lack of information on possibilities of legal aid, which cause stress and depression. Mental (and physical) health is further worsened by the strict ("prison like") living conditions, insufficient quantity of food, difficulties of communication with the outside world leading to a sense of isolation, lack of activities offered in the centre, long duration of the detention. Unfortunately the main issues are hardly changeable because they either require serious adjustments in the legislation or the way the judicial system works (case outcome, duration), or because they would require significant financial investments (living conditions, type of building). So in order to give realistic recommendations we will focus on the remaining factors.

The question of food is obviously serious because it was mentioned by all of the detainees and even the staff admitted that this situation persisted only because of the limits in the budget. An assessment should be made of how well-grounded these complaints are and of the food rations' non-conformity to European standards (if such exist), and then submit this to relevant national authorities demanding necessary adjustments.

Another recommendation that would if not solve then at least significantly improve the every-day life of the detainees on several levels is providing access to the Internet. Apart from the initial installation costs it is also a rather cheap solution (the monthly expenses are probably less than what the detainees currently spend on the phone). Internet would let them gather information that could help them with their legal situation (including looking for and communicating with lawyers, researching the laws, which are available in English). It would also facilitate communication with their families and provide access to information in general, which could lessen significantly the feeling of isolation and being "cut off from the world". Finally, it would offer tools of self-education, literature, and entertainment in their native language thus making their every-day life more enjoyable.



NATIONAL REPORT: MALTA

By: Jesuit Refugee Service Malta

Acknowledgments

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1. INTRODUCTION

This report is based on the results of research conducted by JRS Malta as part of the DEVAS project. The first part of the report outlines national law, policy and practice relating to detention of asylum seekers and irregularly staying third-country nationals in Malta. The second part of the report examines the detainees' perspective of the social conditions of their detention. The third part outlines the procedures in place for the identification and assessment of vulnerability, within the context of administrative detention in Malta. Finally, it presents conclusions and recommendations from the results of the study.

In Malta, persons detained in terms of the Immigration Act[191] are held in facilities specifically designated for this purpose all of which are situated inside army or police barracks. During the period when the research for this project was conducted[192], there were eight such facilities in use: four at Safi Barracks, two at Lyster Barracks and two at Ta' Kandja. The centres are administered by a specially established civilian force known as the Detention Service (DS), which is run by army officers and whose members are recruited mostly from retired members of the security forces.

At the time the research was conducted the centres were filled to capacity following the arrival of a record number of migrants, by boat from Libya, during 2008 and the early months of 2009[193]. All such arrivals are immediately detained in terms of the Immigration Act. National law does not place a time limit on detention. Detention lasts until an asylum application is determined, in the case of those granted some form of protection. Since June 2005, asylum seekers whose application is still pending after the lapse of 12 months are released to await the outcome of their asylum application in the community. Those whose asylum application is finally rejected before the lapse of 12 months and those who do not apply for asylum are detained for 18 months[194]. The only exceptions are those who are found to be vulnerable, after an individual assessment of their situation, as in terms of government policy[195] vulnerable immigrants are not detained. Within this context, the assessment of vulnerability assumes particular significance.

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[191] This Act, and the subsidiary legislation enacted there under, regulates immigration into Malta. The Act provides for the mandatory detention of all immigrants issued with a removal order or refused admission into Malta.

[192] Between February and September 2009.

[193] From 2002, Malta experienced a sharp increase in the number of undocumented migrants arriving by boat in an irregular manner, usually leaving from Libya. In 2002 alone 21 boats carrying 1686 immigrants arrived in Malta in this manner, compared to just 57 in 1 boat the previous year. In the years that followed, with the exception of 2003, the number of arrivals did not decrease significantly: in 2003 some 502 immigrants arrived in 12 boats; in 2004, 1388 immigrants arrived in 53 boats; in 2005, 1822 immigrants arrived in 46 boats and in 2006, 1780 immigrants arrived in 57 boats[193]. The year 2008 witnessed a massive increase of arrivals of migrants of 2775 in total[193].

[194] This time limit was established by a government policy document published in January 2005 entitled *'Irregular Immigrants, Refugees and Integration'*, Ministry for Justice and Home Affairs & Ministry for Family and Social Solidarity, available at http://www.mjha.gov.mt/downloads/documents/immigration_english.pdf.

[195] Ibid. pg.13.

The situation on the ground in the centres today is totally different from that in which the research was conducted as, after Italy and Libya reached an agreement regarding the return of boats intercepted by the Italian navy in international waters and set up joint patrols off the Libyan coast, arrivals dropped to 1475 in 2009[196] and until April 2010 there were no arrivals. As a consequence of the drop in arrivals, detention centres were far less crowded in the last few months of 2009 and by the first quarter of 2010 only two detention facilities within Safi Barracks were being used to house detainees, as the number of detainees had dropped to approximately 250. However, both the law and policy regarding detention of illegally staying third country nationals and the rules regulating the treatment of vulnerable persons in detention and their release on grounds of vulnerability remain unchanged.

Methodology (as applied in the national context)

Interviews were carried out with 89 migrants detained in seven administrative detention centres between February and September 2009: Hermes Block and Tent Compound at Lyster Barracks; Warehouses 1 and 2, C Block and B Block at Safi Barracks and the new detention facility at Ta' Kandja. The sample included asylum seekers administratively detained while their asylum application was being processed and persons whose asylum applications were denied by the competent authorities and are at law liable to be returned to their country of origin or country of transit. An interview was also carried out with a member of staff of a local NGO actively engaged in working in detention centres. JRS Malta also completed a legal questionnaire, detailing the legal provisions regulating detention and the treatment of vulnerable asylum seekers.

All of the immigration detention centres in use at the time when the research was conducted housed both asylum seekers and illegally staying third country nationals awaiting removal. Moreover, persons at risk of vulnerability could be found in all of the centres in use at the time.

Out of the seven centres in which interviews were carried out, four housed only single men. In the initial weeks of the project women and family units were housed in Hermes Block at Lyster Barracks. After this facility was closed for refurbishment in April/May 2009, single women were detained separately from men at the new facility in Ta' Kandja. Couples were detained at B Block in Safi Barracks[197].

Data was collected from men, women and unaccompanied minors who at the time of their interview were still being detained pending age assessment. Of the 89 people interviewed, 71 were male and 18 were female. The breakdown is as follows: 38 Somalis, 8 Eritrean, 5 Ethiopians, and 38 West Africans out of which 22 were Nigerians. The number of detainees that were interviewed per centre reflected the composition of the detainee population, both in terms of age and gender as well as in terms of nationality/ethnicity. Additionally, selected respondents included a number of persons who appeared to be in a particularly vulnerable situation and others who would not normally be considered to fall within the categories of persons normally considered as vulnerable, some of whom were referred and released in terms of the procedure described in Section 3. In choosing the people to be interviewed, the recommendations of JRS staff members who were in regular contact with the detainees were taken into account.

As a number of respondents could not speak English, interviewers used interpreters to facilitate communication and to fill the questionnaires. The interviewees' consent for the use of a particular interpreter was always requested at the beginning of the interview; where the interpreters were chosen from among the detainee population, they were always chosen with the consent of the interviewees. The data collected was recorded on the questionnaires themselves and in other instances on a digital voice recorder.

[196] "1475 migrant arrivals, 319 repatriations, by end September", *Times of Malta*, 22 October 2009.
[197] Since mid-2009, men and women are no longer housed in the same accommodation centres unless they are a family grouping.

2. NATIONAL LEGAL OVERVIEW

Summary of national legislation

Immigration into Malta is regulated by the Immigration Act of 1970, Chapter 217 of the Laws of Malta, and the subsidiary legislation enacted there under. The treatment of asylum seekers is regulated by the Refugees Act 2000, Chapter 420 of the Laws of Malta, and related subsidiary legislation, in particular the Reception of Asylum Seekers (Minimum Standards) Regulations (S.L. 420.06 of 22 November 2005).

2.1. Legal grounds for ordering detention

In terms of the Immigration Act, detention is the automatic consequence of a refusal to grant admission into national territory[198] or the issuing of a removal order in respect of a particular individual[199].

Removal orders are issued by the Principal Immigration Officer, an administrative authority, against persons considered liable to removal as "prohibited immigrants". This includes those who enter or are present in Malta without the required authorisation from the immigration authorities and those who become "prohibited immigrants" for one of the reasons listed.

Unlike immigrants detained by virtue of a removal order, immigrants refused access to national territory, "shall be deemed to be in legal custody and not to have landed"[200].

Article 16 of the Immigration Act provides that any person who is in Malta without the required leave from the immigration authorities or who is "reasonably suspected of having so acted", may be taken into custody without warranty by any police officer and while he is in custody shall be deemed to be in legal custody.

2.1. Legal grounds for right of appeal against the detention order/for right to challenge detention

Maltese law does not provide for the issuing of a detention order; detention is the automatic consequence of a removal order or of a decision to refuse admission into national territory.

Maltese law contains no provision for automatic judicial review of detention. Article 25A (5) of the Immigration Act provides for the possibility of an appeal from a decision to issue a removal order. Any such appeal must be presented to the Immigration Appeals Board, within three working days from the date of issue of the removal order. If the removal order is revoked, the immigrant concerned is automatically released from custody.

The Board has the authority to grant the immigrant concerned provisional release from detention, even on a verbal request, during the course of any proceedings before it under such terms and conditions as it deems fit.

In addition, in terms of article 25A(9) of the same Act, the Board has jurisdiction to hear and determine applications, made by persons held in custody by virtue of a deportation or removal order, to be released from custody pending the final determination of their asylum application or their deportation/removal from Malta, as the case may be. In such cases, release will only be granted where, the Board is of the opinion that, the continued detention of the applicant is unreasonable as regards duration, in the light of the circumstances of the case, or where there is no reasonable prospect of deportation within a reasonable time.

[198] *Immigration Act* 1970 (Malta), Article 10(3).
[199] Ibid. Article 14(2).
[200] Ibid. Article 10(3).

The Board may refuse to grant release where the individuals concerned have refused to cooperate with legitimate attempts to remove them from national territory. The law further restricts the scope of this remedy, by prohibiting release in certain cases. Persons are released by virtue of this remedy must report at least once a week to the Immigration authorities. Moreover, in certain circumstances, they may be taken into custody again, pending their removal from Malta.

In practice, it would seem that the Board considers government policy on detention to be reasonable in the vast majority of cases and only grants release in exceptional circumstances. There is no fixed time limit within which the Board has to decide applications so procedures have lasted up to 3 and a half months and, in some cases the applicant was released in terms of government policy, before a decision was taken on his request for release.

Article 409A of the Criminal Code[201] also provides any detainee with the possibility of applying to the Magistrate's Court to challenge the lawfulness of his detention. If the court chooses to release the applicant, the Attorney General may apply for the person's re-arrest if he is of the opinion that the continued arrest was founded on any provision of this code or of any other law. The law imposes very strict timelines for the determination of such applications, which are usually rigorously observed by the courts.

This remedy was used on at least three occasions by immigrants (two asylum seekers and one rejected asylum seeker) to challenge their detention, but all three applications were rejected. On each of these occasions[202] the Court held that as there is a national law (the Immigration Act) authorising detention, which imposes no limit on the amount of time a person may spend in detention, such detention is lawful. According to the Court, the scope of this remedy does not include an examination of whether there are other circumstances which make the detention unlawful, e.g. if the detention violates the individual's fundamental human rights.

Irregularly staying third country nationals may also challenge the lawfulness of their detention in terms of article 34 of the Constitution of Malta and article 5 of the European Convention on Human Rights, which is now part of Maltese law and can be invoked before the local courts. In one such case[203], the First Hall of the Civil Court justified detention on the basis of national security concerns as the Court highlighted the need to "avoid a flood of 'irregular' people running around in Malta". Detention was held to be necessary for the stability of the country. Other cases are pending before the First Hall of the Civil Court (Constitutional Jurisdiction)[204]. Legal proceedings of this nature generally take months, if not years, to be finally determined.

2.2. Legal grounds for instructions on right of appeal/instruction on right to challenge detention

Maltese law does not make specific provision for instructions on the right to appeal from a removal order or to challenge detention.

2.3. Legal grounds for legal maximum duration

Asylum seekers may be detained for a maximum of one year. This time limit is not specifically stated in the law. Regulation 10(2) of the Reception Regulations states that asylum seekers shall be granted access to the labour market if a decision at first instance has not been taken within one year of the presentation of an application for asylum and that this access shall not be withdrawn during the appeal stage of the RSD procedures[205]. As it is impossible to work while in detention, these provisions have been interpreted to mean that all asylum seekers will be released from detention if their application is still pending after one year.

[201] *Chapter 9 of the Laws of Malta*, 1854 (Malta).
[202] *Napoleon Mebrahtu vs. Commissioner of Police*, Magistrates Court, 26 June, 2003; *Karim Barboush vs. Commissioner of Police*, Criminal Court, November 5, 2003; *Kinfe Asmelash Gebrezgabiher vs. Commissioner of Police*, Magistrates Court, June 27, 2006.
[203] *Essa Maneh et. vs. Commisioner of Police*, Civil Court, First Hall, 16 December, 2009.
[204] *Tafarre Besabe Berhe v Commissioner of Police et,* Civil Court, First Hall (Constitutional Jurisdiction).
[205] *Reception of Asylum Seekers (Minimum Standards) Regulations*, 2005 (Malta) Regulation 10 (3).

There is no legal time limit on the detention of rejected asylum seekers and illegally staying third country nationals who do not apply for asylum. In terms of a government policy document[206], published in January 2005, no immigrant may be detained for longer than eighteen months.

2.4. Legal grounds for health care in detention

In terms of article 13(2) of the Refugees Act[207] asylum seekers are entitled to receive state medical care and services. The law does not specify the scope of the healthcare to be provided and whether asylum seekers have the right to access health care under the same conditions as nationals in the public system or if they are covered under a specific scheme. However, in practice this provision is generally understood as providing access free of charge to most of the medical services that nationals receive. Regulation 11 of the Reception Regulations provides that, where applicants are working regularly or have sufficient means, they may be required to cover or contribute to the cost of material reception conditions. Moreover, in "exceptional circumstances" the law provides the possibility to modify these reception conditions in case "asylum seekers are in detention or confined to a border post" provided that "these different conditions cover basic needs"[208].

The law makes no provision for undocumented migrants' access to health care. There is only a non-legally binding "policy document" establishing that all foreigners in detention are "entitled to free state medical care and services"[209]. As with the provisions specifically applying to asylum seekers, this policy is informally interpreted as access free of charge to the standard health care coverage in Malta (preventive, investigative, curative, and rehabilitative services). This applies to all undocumented migrants and asylum seekers in detention in Malta.

2.5. Legal grounds for the protection of person with special needs, or particularly vulnerable people

Regulation 14(1) of the Reception Regulations provides that, in the implementation of the provisions relating to material reception conditions and health care, account shall be taken of the specific situation of vulnerable persons which shall include minors, unaccompanied minors and pregnant women, found to have special needs after an individual evaluation of their situation. Regulation 11(2) also states that material reception conditions for asylum seekers shall be such as to ensure an adequate standard of living for persons who have special needs.

Moreover, in terms of government policy on immigration, people who are vulnerable by virtue of their age or physical conditions shall not be detained[210].

2.6. Legal grounds for accompanied and unaccompanied minors

In terms of the Refugees Act, an "unaccompanied minor" is a person below the age of eighteen who arrives in Malta unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered Malta[211].

The regulations mentioned in section 1.1.7 above, regarding material conditions of reception for vulnerable asylum seekers, apply to both accompanied and unaccompanied minors. In addition the Reception Regulations stipulate that where the provisions on reception conditions are applied to minors, the best interests of the child shall constitute a primary consideration[212].

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[206] Op. Cit. *Ministry for Justice and Home Affairs & Ministry for Family and Social Solidarity*, pg. 11.
[207] *Refugees Act* 2001, (Malta)
[208] *Reception of Asylum Seekers (Minimum Standards) Regulations* 2005 (Malta) Article 12(6)
[209] Op. Cit. *Ministry for Justice and Home Affairs and Ministry for the Family and Social Solidarity*, pg. 12.
[210] Ibid. Pg. 13.
[211] *Refugees Act* 2001 (Malta), Article 2.
[212] *Reception of Asylum Seekers (Minimum Standards) Regulations* 2005 (Malta) Regulation 14

Apart from this, rather vague provision, the law only contains provisions regarding the education and placement of minors. Regarding education, the law provides that minor asylum seekers or minor children of asylum seekers shall have access to education on equal grounds as Maltese nationals for so long as an expulsion measure against them or their parents is not enforced. Such access shall not be postponed for more than three months, extended to one year for specific education, from the date of application for asylum[213]. Regarding placement, the Reception Regulations provide that accompanied minors shall be lodged with their parents or the adults responsible for them by law or by custom[214]. In practice, however, in assessing the family link, responsibility by custom may not be acknowledged by the authorities resulting in the splitting of an alleged family. Finally, the Reception Regulations stipulate that an unaccompanied minor aged sixteen years or over may be placed in accommodation centres for adult asylum seekers[215].

In terms of government policy on immigration, people who are vulnerable by virtue of their age shall not be detained. The law makes no provision regarding the procedures in place to implement this policy, which are regulated solely by what can be described as administrative practice.

2.7. Legal grounds for providing release

Procedures for release are implemented by the immigration authorities. All such procedures are regulated by policy and practice rather than by law.

2.8. Legal grounds for any other rights

National law does not contain provisions regarding the rights of illegally staying third country nationals held in detention.

Article 13(2) of the Refugees Act provides that asylum seekers have the right to access state education and training. Moreover Regulation 12(1) of the Procedural Standards Regulations[216] provides the right to be protected from forced removal pending the final outcome of an asylum application. Article 10 of the Reception Regulations provides for access to the labour market after 12 months from the date of an application for protection.

3. OVERVIEW OF THE NATIONAL DATA FINDINGS

3.1. Case awareness

From the results of the study, it transpires that information provided to detainees regarding their situation in detention is scarce.

The majority of the detainee population are not aware of **the reason for their detention** (58%). Those who were informed were given such information by the police during their arrest (30%) or by people who were not in charge, such as other detainees (24%). Only a very small proportion of people considered themselves to have been properly informed (13.5%).

Almost 80% expressed their need to get more **information on procedures** and/or **on the duration of detention**. This frustration was expressed very often through anger during the interviews. For the detainees, clarity and precision

[213] Ibid. Regulation 9.
[214] Ibid. Regulation 12(3)
[215] Ibid. Regulation 15
[216] *Procedural Standards in Examining Applications for Refugee Status Regulations*, 2008 (Malta)

particularly regarding the length of detention are important, both as a general right to know (38.6%) as well as in preparation for the future (33.3%).

This lack of information induces stress among detainees, many of whom feel that an injustice is being done, but are powerless to do anything about it. Furthermore, detention follows a very long and difficult journey which in itself renders detainees in an even more vulnerable situation. For example, a detainee explained: “70 out of 78 people on the boat died on the journey, and the newspaper said that the government said that the remaining eight should be released immediately, but six of us are still in detention. Why are we in detention? How long will I stay?”

3.2. Space within the detention centre

It results from the interviews conducted that the overcrowding in the detention centre together with poor sanitation is a huge problem for 75% of the detainees. More than 75% were negative about their room and almost 73% complained about the centre space. A third of the detainee population complained about hygiene, in particular those accommodated in the Safi detention centre. “It is not clean; toilets are dirty, even the basket for food is not clean.” 83% highlighted the lack of privacy, stating that there is no space to ever be alone in detention. A number of detainees feel that there is a direct link between living conditions and ill-health. “At time, we were 370 in a single warehouse. People are sick and they infect others. You are afraid to get sick.”

3.3. Rules

Almost half of the detainees interviewed said that there are no rules in detention. One detainee stated that: “Here it’s a jungle. There are no rules.” A quarter of those who acknowledged the existence of rules feel that they are arbitrary and inadequate. Although they tried to advocate for a change, these rules have proven to be inflexible in practice.

3.4. Staff

It results from the study that there is a lack of contact with the Detention Service staff who are the main interlocutors to the detainees. It should be stated however that, at times when the centres are filled to capacity, the staff to resident ratio is very low, as staff are hugely outnumbered by detainees; this makes communication between staff and detainees extremely difficult.

Interaction with staff yet this varies greatly according to the individual member of staff. A majority believe that staff generally fails to support their general needs. “They talked to us through the window. They are mostly polite but generally indifferent.” “They don’t even give us the food properly, they throw it towards us.” 20% report as having positive support from them. “If we need something or we have a problem, we can speak to speak to them. I generally get on well with them”. As a rule, however, rather than discrimination or ill-treatment, the problem in staff-detainee interaction seems to be linked to the lack of facilities or the lack of power of the staff to change the situation.

3.5. Safety

Regarding safety, 28% reported as being physically assaulted while in detention, of which 68% by other detainees, and 32% by the staff. “It happens when I asked for my Sim card, since I had all my contacts in it. They took me to the staff room but they couldnt switch on my mobile as the battery was dead. I told them I can get a similar battery from friends. I tried to explain that the numbers are really important for me but they refused. After I insisted, they punched me on both the leg and my face.” 18% of these reported that they filed a complaint in case of physical assault, but none reported to have resulted in any change. Even though, a number of detainees have reported physical abuse, there was higher incidence of verbal abuse by staff: 40% reported that they had been mocked, of which 58% claimed to have been mocked by staff. “Whenever I try to speak to them, they tell me that I am a black animal and to go away from them. They also keep telling us that we are illegal immigrants and Malta is going to deport us back to our

countries of origin." "Sometimes when the soldiers are drunk, they insult your colour, nationality, tell you to go back to Africa" As for mocking between detainees, 42% report such problems. It resulted that disputes due to different culture, language or religious were relatively low (12,25%). Often disputes among detainees are due to conflicts over limited resources and poor living conditions. "It happens when I argue with someone about cleaning, flushing toilets, changing TV station, and so on."

3.6. Activities

Almost 80% of those interviewed reported that there were no activities provided in the centre. It is pertinent to note, however, that most of the persons interviewed were not interested in any activities but were focused primarily on their freedom (40%) and then a number mentioned the wish for education (25%). A vast majority of detainees had access to television and telephone. However half of the detainees reported to have access to outdoor space while nobody had access to internet or computer.

3.7. Medical care in detention

Only two thirds of the detainee population reported medical presence in detention. Half of the persons interviewed said that they had access to medical staff once a week while a quarter of them reported to have access to medical staff less than once a month. These results varied according to the different centres. In Lyster Barracks, almost half of the persons interviewed were unaware of the presence of medical staff in detention.

3.8. Physical Health

62% declared that their physical health was affected by the fact of being in detention; almost 69% stated that their health was very good when they arrived but only 25% rated it good at the time of the interviews. The reasons mentioned for the negative changes are mainly facilities (69%) and then, psychological issues (18%) or medical facilities (11%). "It has a bad impact on me. Since I am here I have chest pain, headache and body pain. It is because of the noise and no activities."

3.9. Mental health

Almost 80% reported that their mental health has been affected by being in detention. According to the detainees interviewed, this deterioration is due to several factors, which are, in order inlcuding: the fact of being locked up, being separated from the world, worries, mental health problems, living conditions, being separated from their loved ones and past traumas. 65% said that their needs, in particular access to appropriate treatment, are not being met. "my wife in Somalia has delivered baby and she is sick, I couldn't do anything about my family, being in detention. I cannot stop thinking about them and this is deteriorating my mental health."

3.10. Social interaction in the centre

Over half of the population interviewed felt that their personal interaction with other detainees was positive. At the same time, this did not exclude 56,3% from saying that problems between others detainees had arisen. A majority felt that tension was mainly due to cultural differences (53.4%) and common life in detention (17%). 10% mentioned communication problems related to the release date, particularly the fact that some people are released on time and some others are not.

3.11. Contact with the outside world

A majority of those interviewed stated that they have families in their country of origin and identified the fact that they are unable to support them while in detention as an added source of stress. Almost 40% said that they kept in touch with their family by telephone but almost 80% stated that they do not have regular access to it.

In fact the access to the telephone is very limited; in some centres there is only one landline for all the residents, and only very limited credit is provided to each detainee. Moreover, detainees might not have their contact numbers with them as most of their belongings are confiscated upon arrival.

Regarding outside visits, NGOs come first (71%), followed by lawyers (49%), religious persons (42%), UNHCR (15%), and family members (4%). It should be noted that most centres do not allow visits from family members or friends. The limitation of contact with the outside world is mainly due to a lack of the necessary infrastructure (no internet, lack of adequate telephone and calling cards).

3.12. Nutrition and sleep

74% said that they do not like the food served in detention, and almost 50% feel it is of bad quality. 70% declared they had lost their appetite in detention. Often complaints are related to the food being served cold or not cooked.

75% said that they do not sleep well at night, mainly because of stress. The living conditions are often mentioned (38%) as another cause for not sleeping well (overcrowding, lack of hygiene, noise, etc.). A significant percentage of the population interviewed (13.4%) mentioned external reasons, such as worries about others: “He’s preoccupied with thoughts of the death of his brother or sister. He stays awake crying to God because he is suffering. He dreams of his brother.”

3.13. Difficulties

When asked to classify the most significant difficulties experienced in detention, most mentioned in first the impact of being detained (52%): the fact of being behind bars, locked up, with their life plan disrupted. The main diffuclty quoted in second position are the living conditions like the lack of services, problems with food, lack of clothes. The third difficulty mainly reported were again the living conditions, particularly food (42% of the third option).

3.14. Outcome of detention

Only 3% reported that they knew the outcome of their detention and only 14% said they knew the exact date when they would be released. For the interviewees, this was a great source of worry and mental health problems.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

Determining vulnerability’ within the context of administrative detention in Malta

In terms of the government policy which was published in January 2005: “Irregular migrants who, by virtue of their age and/or physical condition, are considered to be vulnerable are exempt from detention and are accommodated in alternative centres”[217].

In order to give effect to this policy, over time procedures were established with a view to determining whether or not detainees qualify for release on grounds of vulnerability, “by virtue of their age and/or physical condition”. These

[217] Op. Cit. *Ministry for Justice and Home Affairs & Ministry for Family and Social Solidarity*, Pg. 11.

procedures, which will be described in the following sections, essentially target the following categories of 'vulnerable' persons: unaccompanied minors, families with minor children, pregnant women, elderly persons, persons with disability, persons with serious or chronic health problems and people with mental health problems.

In spite of the clear policy statement that vulnerable persons are exempt from detention, in practice, all, even those who clearly fall within one of the above-mentioned categories, are detained on arrival and only released once their vulnerability is assessed, the competent authorities have concluded that they are indeed vulnerable, the necessary clearances[218] are obtained and accommodation is found in the community. As these procedures take time to complete, vulnerable immigrants may spend months in detention.

4.1. Determining factors of vulnerability

AWAS, the government agency charged with determining whether or not a particular individual is in fact vulnerable, currently operates two separate procedures:

- The age assessment procedure, which is applied in cases involving persons claiming to be unaccompanied minors;
- The vulnerable adult's assessment procedure, used to determine vulnerability on other grounds, including old age, disability, and physical or mental health problems.

From the information available it would seem that in the case of pregnant women and families with children a simplified assessment procedure is implemented.

Both procedures are implemented exclusively by AWAS staff and there are no written rules regulating the manner in which procedures are conducted or the criteria upon which assessment is based. In fact, national law makes only fleeting and indirect reference to vulnerability assessment, simply stating that the vulnerable persons are those "found to have special needs after an individual evaluation of their situation"[219].

This, in addition to the fact that the procedures followed have changed over time, makes it very difficult to determine exactly how such assessments are conducted. However, from our observations it would appear that the following procedure is followed:

- <u>Age assessment</u>

  Individuals claiming to be minors, who are not accompanied by an adult responsible for them, whether by law or by custom, are referred to AWAS for age assessment; referrals are usually made by the immigration police, where the person concerned declares that he is a minor upon arrival, or by the Refugee Commission, where an applicant for asylum declares minor age in his Preliminary Questionnaire (PQ) form.

  In cases where the individual concerned makes conflicting statements regarding his/her date of birth, e.g. in cases where the age declared on arrival and that declared in the PQ are different, a preliminary interview is conducted by one member of AWAS staff. It would seem that some claims to minority age are rejected solely on the basis of this interview.

  Those who pass this preliminary stage, as well as those who did not need to go through it, are interviewed by a panel of three members of AWAS staff known as the Age Assessment Team (AAT), who may take a decision on the individual's claim or, in case of doubt refer the individual for Further Age Verification (FAV).

[218] These include: health clearance in all cases, authorization of release by the Principal Immigration Officer in cases involving vulnerable adults excluding pregnant women and families with children where authorization is automatic.
[219] *Reception of Asylum Seekers (Minimum Standards) Regulations*, 2008 (Malta) Regulation 14.

From the information available it seems that the FAV consists of an X-ray of the bones of the wrist. Before an FAV is carried out, an interim care order is issued and the Minister for Social Policy who then becomes formally responsible for the individual concerned, who is presumed to be a minor (though only for the purposes of this procedure), authorises the medical test.

Where a person is found to be a minor, an application is made for the issue of a care order by the Minister for Social Policy in respect of the minor; once the said order is issued, the person concerned is released from detention.

Where a person is deemed to be an adult s/he is given a letter communicating the decision.

- Vulnerability assessment (for adults)

Adults who appear to be vulnerable in terms of government policy are referred to AWAS for assessment; in such cases referrals are made by the police on arrival, in cases where the individual concerned is clearly vulnerable, by the Detention Service, medical staff and by NGOs working in detention. AWAS has created a Referral Form, to be used when referring such cases for assessment.

Individuals referred are first assessed by a social worker who conducts an interview and writes a report recommending release or otherwise.

The said report is passed to the Vulnerable Adults Assessment Team (VAAT), a panel made up of 3 members of AWAS staff, which takes a final decision regarding whether or not the individual concerned should be recommended for release or whether some other action, e.g. follow-up in detention, is more appropriate.

In case of a positive recommendation the case is referred to the Principal Immigration Officer (PIO) who takes a final decision on whether or not to authorise release; in our experience such release is usually granted by the authorities concerned.

Given the relatively fixed parameters within which vulnerability assessment, which is practically exclusively linked to release from detention, takes place, the determining factor for a positive finding of vulnerability is the existence of a link to one of the recognised categories of 'vulnerable persons', i.e. minor age; old age[220]; pregnancy; serious, acute or chronic illness; disability; and serious mental health problems.

The results of the research would seem to indicate that detention, i.e. both the fact of being detained for an unknown length of time, as well as the conditions in which migrants are detained, cause significant stress and lead to a deterioration in detainees' physical and mental health. Although this finding implies that prolonged detention increases detainees' vulnerability to some extent, it should be noted that, in most cases this would not necessarily imply a positive finding of vulnerability and consequent release from detention. It is only in cases where the individual's mental and/or psychological health has deteriorated to a significant extent that it may give rise to a positive finding of vulnerability.

4.2. Identifying vulnerable groups in administrative detention

Vulnerable detainees are usually identified by the Immigration Police on arrival in Malta, Detention Service personnel, fellow detainees or NGO personnel. They are then referred to the Agency for Welfare of Asylum Seekers (AWAS) for

[220] Persons are usually considered elderly once they have reached the age of 60.

assessment. In cases where AWAS believes that the detainee concerned is vulnerable, they would issue a recommendation for release from detention, as outlined above.

It should be stated however that following identification and referral, the individuals concerned are held in detention pending the outcome of the vulnerability assessment procedure. During this time they continue to be held in the same facilities as other detainees and are not provided with any special care or support.

5. CONCLUSIONS AND RECOMMENDATIONS

The results of this research strongly indicate that many of those interviewed believe that a number of factors directly related to or resulting from their detention in Malta are at the root of a marked deterioration in their physical and mental health/well-being. Detainees interviewed complained of increased stress, frustration, loss of appetite, problems sleeping and feelings of powerlessness. The identified the following as causes: the fact that they are deprived of their liberty, the lack of information about their situation, their inability to do anything about their situation, the poor conditions in which they are detained, and the lack of possibilities to engage in gainful activities, all of which are often exacerbated by past traumas experienced in their country of origin or on the journey to Malta.

Although there is no clear definition of what constitutes vulnerability, these results would seem to indicate that detention significantly increases vulnerability, even in persons who would not *prima facie* appear to belong to one of the categories normally considered to be at risk of vulnerability.

The system that currently operates in Malta, while recognising the particular vulnerability and special needs of certain individuals and allowing for the provision of alternative reception arrangements for them, fails to take this broader, though possibly less acute level of vulnerability into account. We believe that it is extremely positive that the needs of particularly vulnerable individuals are addressed by the government agency responsible for the welfare of asylum seekers and migrants. However, the results of this research would seem to indicate that any measures taken to address or mitigate those factors that create or increase the risk of vulnerability would not only improve detainees' quality of life but would possibly also reduce the incidence of acute vulnerability, to the extent that this is precipitated or aggravated by detention.

We are therefore making the following recommendations for action on the basis of the outcomes of this research:

1. Alternatives to detention for the reception of asylum seekers
   Given the negative impact of detention on detainees' physical and mental health, JRS Malta strongly recommends that

   - **Alternatives to detention are put in place and that detention is only used as a last resort, where all other measures have proved ineffective.**

2. Length of detention
   Many of those interviewed identified the uncertainty regarding the exact duration of their detention as a factor that causes significant stress and frustration. The detainees' request for more clarity about the date of their release from detention and their complaints about the negative impact of the uncertainty on their mental health/psychological wellbeing are more than understandable. In addition, it must be stated that this lack of certainty is difficult to reconcile with human rights standards requiring guarantees of protection from arbitrariness

The duration of detention is currently determined not only by government policy on release, but also by the duration and outcome of the refugee status determination (RSD) procedure, which is governed by complex rules and is largely outside the control of the detainees.

While we believe that tackling this problem effectively would necessitate a complete overhaul of the way in which the system works, the current information gap can be reduced by systematically and regularly providing detainees with clear information about the status of their asylum application, as well as information about how changes in the status of their asylum application will affect the date of their release.

JRS Malta therefore recommends that

- **A process is initiated with a view to evaluating the current law, policy and practice on detention, with a view to bringing it in line with human rights standards requiring the laws regulating detention to be sufficiently certain to guarantee protection from arbitrariness.**

- **A procedure is put in place in order to ensure that detainees are systematically and regularly provided with clear and accurate information regarding the status of their asylum application, , as well as information about how changes in the status of their asylum application will affect the date of their release.**

3. Improved living conditions:

Detainees interviewed for this study consistently identified the conditions in which they are detained as a cause of significant anxiety and stress.

Although it is clear that in recent years the number of arrivals placed a huge strain on available resources, it is equally clear that the fact that local authorities have chosen to opt for a particular type of facility, usually capable of hosting large numbers of detainees in very basic conditions, has to some extent contributed towards the problems highlighted by the interviewees.

One major difficulty identified is the lack of communication between detainees and detention centre staff. It is clear that with large centres hosting up to 350 detainees communication between staff and detainees is made very difficult not to say impossible.

This difficulty could be addressed by opting for adequately staffed centres hosting smaller number of detainees in humane conditions, which allow for adequate personal space and the possibility of enjoying privacy and security. This which would also serve to minimise other difficulties relating to lack of adequate resources for the number of detainees held in a particular centre, overcrowding, lack of privacy, and security/safety and some sanitation concerns.

JRS Malta therefore recommends that

- **Where detention is resorted to, detainees are held in centres where conditions are in line with internationally recognised standards, furnished with sufficient resources for the number of detainees held therein, with adequate provision for privacy, security and safety and a daily regime of activities.**

- **Centres are adequately staffed in order to ensure that staff is less stressed, and better able to engage in meaningful communication with detainees and respond to their needs promptly and efficiently.**

4. Persons with special needs

Given the fact that detention of itself appears to be a factor that significantly increases the risk of vulnerability, it is important that the needs of detainee population are monitored and that particularly vulnerable persons with special needs are promptly identified.

Moreover, it is imperative that once particularly vulnerable persons are identified, their needs for medical, psychological and other forms of care or support are catered for even while they are in detention.

JRS Malta therefore recommends that

- **Mechanisms are put in place to monitor the detainee population and to systematically identify particularly vulnerable persons with special needs.**

- **Once identified, particularly vulnerable persons are provided with the care, support and treatment they require, even while they are in detention.**

- **The detainee population is provided with proper access to medical care and psychological support, in order to prevent the further deterioration of their physical and mental wellbeing.**

NATIONAL REPORT: THE NETHERLANDS

By: Dutch Council for Refugees

1. INTRODUCTION

The Dutch Council for Refugees has participated in the DEVAS Project from January 2009 – December 2009. The DEVAS Project aims to identify which factors contribute to the vulnerability of detained asylum seekers and irregular migrants. To provide an EU-wide perspective on this issue, the project has taken place in 23 European countries. The Dutch Council for Refugees has interviewed asylum seekers who were or had been detained. We also interviewed asylum seekers whose asylum claim was rejected and who were awaiting their expulsion. We therefore interviewed migrants with the legal status of asylum seeker and of illegal migrant.

The initial objective was to interview 25 detainees, 3 detention centre staff members and 3 NGO staff members. However, during the project we encountered difficulties in receiving permission from the authorities to access the detention centres. Therefore, as an alternative, we interviewed 8 recently released detainees. On 2 July 2009 we finally received permission from the authorities and commenced the interviews with actual detainees. Mid- August we completed our interviews. By that time we had spoken with:

Location	Number of detainees	Formerly detained (FD)/ detained (D)	Number of interviewed staff members of the Detention Centre
Asylum seekers centre (ASC) Alkmaar	2	FD	x[221]
ASC Katwijk	2	FD	x
ASC Leiden	1	FD	x
ASC Crailo	3	FD	x
Border Detention Centre Schiphol	3	D	1
Youth Detention Centre Maasberg – Overloon	2	D	1
Deportation Centre Zestienhoven	6	D	1
Detention Centre Zaandam	2	D	1
Total	**21**		**4**

[221] Since asylum seeker centres are not detention centres, we did not interview staff members.

We also interviewed members of the following NGO's/individuals active in the detention facilities:

- The Dutch Council for Refugees (Border Detention Centre/Application Centre Schiphol)
- Social worker (Border Detention Centre/Application Centre Schiphol)
- SAMAH; organisation for young asylum seekers (Youth Detention Centre)
- Asylum Lawyer (Detention centres in general)

This national report provides an overview of the results of the interviews particular to the situation in the Netherlands. In this report, first a legal overview with respect to detention of asylum seekers and other irregular migrants will be given. In Chapter III an overview of the national data based on the interviews will be provided. Chapter IV analyses the data and discusses five central themes that can be derived from the data. Finally in Chapter V conclusions will be drawn and recommendations will be provided.

2. NATIONAL LEGAL OVERVIEW

2.1 Legal Grounds for Detention

There are two main legal grounds for detaining migrants in The Netherlands. Both grounds are applicable to asylum seekers as well as to other irregular migrants. Although no distinction in application is made, the migrants are detained at different wings in the detention centres.

The first legal ground is laid down in art. 3 jo art. 6 par. 1 and 2 Aliens Act 2000.

Art. 3 section 1 Aliens Act 2000

In other cases than in the Schengen Border Code listed cases, access to the Netherlands shall be denied to the alien who:

a. *does not possess a valid document to cross a border, or does possess a document to cross a border but lacks the necessary visa*
b. *Is a danger to the public order or national security*
c. *Does not possess sufficient means to cover the expenses of a stay in the Netherlands as well as those of his trip to a place outside the Netherlands where his access is guaranteed.*
d. *Does not fulfil the requirements set by a general policy measure.*

Art. 6 section 1 & 2 Aliens Act 2000

1. *The alien to whom access is denied can be obliged to stay in a by the government official carrying out border control appointed space or location.*
2. *A space of location, as meant in the first section, can be secured to prevent unauthorised leave.*

Migrants are mostly detained because they do not fulfil the requirements as set out in art. 3 section 1 sub a and c Aliens Act 2000.

Migrants, who, after arriving to The Netherlands, claim asylum, are detained on the grounds of art. 3 AA 2000 as well. They are kept in detention throughout their asylum procedure. In practice no individual decision is being made nor are other, alternative measures considered. Detention is therefore not applied as *ultimum remedium*. This subject will be discussed further in § 2.12.

On the basis of art. 6 AA 2000 asylum seekers can also be kept in prolonged detention. If the Immigration and Naturalisation Service (INS) cannot render a decision within 48 working hours, detention can be prolonged lawfully up till 6 weeks. The average period of this so-called 'Closed Reception Centre Procedure' is 90 days.[222]

The second legal ground for detaining migrants is laid down in art. 59 AA.

Art. 59 section 1 Aliens Act

1. If necessary in the interests of public policy (ordre public) or national security, Our Minister may, with a view to expulsion, order the remand in custody of an alien who:
(a) is not lawfully resident;
(b) is lawfully resident on the grounds of article 8 (f) and (g).

2. If the papers necessary for the return of the alien are available or will shortly become available, it is deemed to be in the interests of public policy (ordre public) that the alien be remanded in custody, unless the alien had been lawfully resident on the grounds of article 8 (a) to (e) and (l)
3. An alien shall not be remanded in custody or the remand shall be ended as soon as the alien has indicated that he wishes to leave the Netherlands and also has the opportunity to do so.
4. Remand in custody pursuant to subsection 1 (b) or subsection 2 shall in any event last for no longer than four weeks. In case before the decision on the request article 39 was applied the custody shall in any event not last for longer than six weeks.

This article is only applied to migrants who are found (illegally) on the territory, including asylum seekers whose application for asylum is denied and who are no longer allowed to remain on the territory. This article is therefore not applied to migrants at the borders.

2.2 Legal grounds for the minimum age for detention

By law there is no minimum age for detention. However in policy guidelines some guarantees are laid down. According to WBV 2008/20 the following rules are applicable to the detention of minors:

- Minors younger than 16 who reside with their parents in The Netherlands, will not be detained separately from their parents;
- If possible, alternative measures will be applied to families with under aged children, or, if there are two parents, one parent can be detained;
- Unaccompanied minors between 12 –16 can only be detained if the actual detention can take place within 4 days in a Youth Detention Centre;
- Unaccompanied minors under the age of 12 will not be detained.

No other rules on the minimum age for detention are provided in The Netherlands.

2.3 Legal grounds for the detention order

As explained above, there are two grounds for detention in The Netherlands: migrant detention at the border (art. 6 AA) and migrant detention on the actual territory (art. 59 AA).

[222] F. Vogelaar, *Gesloten OC Procedure voor Asielzoekers*, Onderzoek in opdracht van UNHCR, conclusies van VluchtelingenWerk Nederland: September 2007.

Border detention

The legal grounds for refusing entry to the Dutch territory at the border are laid down in art. 3 section 1 sub a-d AA (see above). Subsequently on the basis of art. 6 section 1 and 2 AA, the migrant can be detained. In practice this leads to an initial detention of all asylum seekers at the border. This detention lasts throughout the asylum procedure and sometimes even prolonged detention is ordered. This last form of border detention can lead up to a 3 month period of detention.

Territorial detention

On the basis of art. 59 AA, migrants who are found on the territory can be detained on the grounds mentioned above. Detention on the basis of this article always has to be in the interest of public policy or national security and with a view to expulsion. If the prospect of expulsion no longer exists, the migrant has to be released from detention.

In general all asylum seekers will be detained after a negative decision on their request for asylum if an actual prospect of expulsion exists. If asylum seekers, after the negative decision on their asylum application, are detained for more than six months while expulsion is not apparent, the interest of the migrant of being released is often considered of higher importance than the interest of the authorities to continue the detention. In such cases a judge usually orders release from detention.

2.4 Legal grounds for judicial review of the detention order

Whether it concerns border detention or territorial detention, by law there is an automatic review by a judge of the decision to detain. In art. 94 AA, it is laid down that the authorities have to notify the district court within 28 days after the detention of an migrant is ordered, unless the migrant has already lodged an application for judicial review himself. When the district court receives the notification it considers this as if the migrant lodged an application for judicial review.

In the application of this article no difference is being made between asylum seekers, or other irregular migrants.

2.5 Legal grounds for the right of appeal against the detention order, or to challenge detention

In The Netherlands it is possible to appeal against the detention order on the grounds of art. 93 AA. This article states that the detention order should be considered a decision to which one can appeal. The migrants are informed of this right by their lawyer, or by the government official who issued their detention order.

Besides the right to appeal against the detention order, one also has the right to file a complaint against the detention conditions. Although there is no possibility to file a separate appeal against the detention conditions, this can be integrated in the general appeal against the detention order on the basis of art. 93 AA.

In order to file a separate complaint, one has to look at the Custodial Institutions Act and the Border Regime Facilities Code. Complaints, which are based on these acts/codes, will be reviewed by a special Commission, not by a Court.

In the application of these articles no difference is being made between asylum seekers or other irregular migrants.

2.6 Legal grounds for the right of information about the detention order and/or the reasons for detention

Detainees have the right to be informed about the reason for their detention; this is laid down in the Aliens Decree. Usually this information is provided by the government official who issues their detention order, or by a lawyer. In all cases, the detention order has to be given in writing. More practical rules on how the information should be provided, is laid down in policy guideline Aliens Circular A6/2.5.

2.7 Legal grounds for the duration of detention

In general migrant detention is limited to a sequential period of 6 months. This period can only be exceeded in specific circumstances: if the migrant does not want to reveal his identity and prevents the authorities from doing so (VC A6/5.3.5)

However, under the influence of the European Return Directive, the length of detention might change. The Dutch authorities intend to accept the proposed extension of the possibility to detain up to a period of 18 months.

If detention is ordered ex art. 6 AA for families with under aged children, the maximum duration of the detention is two weeks. If the detention is ordered on the basis of art. 59 AA, the maximum duration is four weeks (VC A6/5.3.5 & A6/2.7), unless there are special circumstances. (medical conditions, danger to public health) In those cases the detention can either be limited or extended.

2.8 Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

Border detention
Health care is provided to detainees during the asylum procedure. This is based on art. 8 sub d of the Border Regime Facilities Code. This provision states that the President of the facility has to provide for necessary medical care. If asylum seekers experience any medical difficulties, they have the right to see a doctor.

Concerning social services, the codes only provide for spiritual support.

Territorial detention
For migrants detained on the territory, the Custodial Institutions Act (CIA) applies. This act states in § 42 that the President is responsible for the provision of adequate medical care in the facility. Moreover, the detainee has a right to choose his own doctor. The article also provides for a complaint procedure (sub 5).

The Custodial Institutions Act states that the detainee has the right to social care and support. The President is also required to provide for professionals who are able to give such care and support.

2.9 Legal grounds for contact with the outside world

Border detention
Migrants who are detained at the border have similar rights as migrants detained on the territory. A major difference is that for migrants detained at the borders there are no minimum rules as to the duration of phone calls and length of a visit. Moreover, no organisation or institution has unrestricted access to these detainees; every detainee, either asylum seeker or irregular migrant, is subjected to the same rules. The detention regime at the border is in theory more restrictive than the regime in regular detention facilities.

Territorial detention
For those migrants who are detained on the territory, the CIA provides rules for contact with the outside world. In general, the detainee has the right to receive visitors at least one hour per week. Those visits are subject to specific times and places. It is noteworthy that the Council for the Administration of Criminal Justice and Protection of Juveniles and the Supervising Commission have unrestricted access to the detainee. Family members, lawyers and social workers are subjected to the general rules. Detainees also have the right to make phone calls at least once a week for a minimum duration of 10 minutes. The costs for these phone calls are at the detainee's own expense.

2.10 Legal grounds for the provision of legal aid

Migrants are provided with legal aid in detention that is paid for by the State. Besides the difference between border and territorial detention, there is also a difference between migrants who already claimed asylum upon their arrival; i.e. before detention, and those who applied for asylum at a later moment during their detention.

Border detention
Migrants who claim asylum upon their arrival at the border and who are subsequently detained, will be assigned a lawyer/legal aid worker specialised in asylum law. Migrants who do not claim for asylum immediately, will be assigned a penal lawyer whose knowledge of asylum often is limited; this frequently causes difficulties. Moreover, NGO's such as the Dutch Council for Refugees have no access to detainees, other than asylum seekers.

Territorial detention
Ex asylum seekers who are detained after a negative decision on their asylum application, also have a right to legal aid. In general, the lawyer who was assigned to their case during the asylum procedure continues his assistance during detention. Nevertheless, asylum seekers always have the right to seek another lawyer if they are not satisfied with their assigned lawyer.

In all cases – for border and for territorial detention – legal aid is provided for by the authorities; the detainee does not have to pay for the services.

2.11 Legal grounds for the protection of persons with special needs

In The Netherlands there are regulations for persons with special needs in detention. However, several reports and researches show that in practice these rules are not always applied. Particularly the rules laid down in the Receptions Directive and Procedures Directive are not always applied correctly.

In theory the following rules for persons with special needs exist:

- Minors younger than 16 who remain with their parents in The Netherlands, will not be detained separately from their parents;
- If possible, alternative measures will be applied to families with under aged children, or, if there are two parents, one parent can be detained;
- Unaccompanied minors between 12 –16 can only be detained if the actual detention can take place within 4 days in a Youth Detention Centre;
- Unaccompanied minors under the age of 12 will not be detained.

The abovementioned rules are applicable to border detention as well as to territorial detention.

2.12 Legal grounds for alternatives to detention

As indicated earlier in § 2.1, alternatives to detention do exist in The Netherlands. However, the authorities often do not consider applying these alternatives before detention is ordered. They do not consider them to be serious alternatives. Especially at the border, detention is almost always issued without considering the alternatives provided by law. Therefore, detention cannot be said to be an *ultimum remedium* in The Netherlands.

By law the basis for alternative measures, is laid down in art. 6 section 1 and art. 56 section 1 AA. In policy guidelines this resulted in the following alternatives to detention:

Aliens Circular par. A6/4.3.1

The Aliens Act contains five measures of freedom limitation:

- *staying an alien whom is refused access in a designated place or area (see art. 6 section 1 AA);*
- *arrest and staying of persons in order to determine their identity, nationality and legal residential position. (See art. 50 section 1 AA);*
- *Keeping aliens who are legally staying in the country under art. 8 section f Aliens Act, available on a designated place (see art. 55 AA);*
- *Limiting the freedom of movement of aliens if the importance of the public order or national security requires so. (See art. 56 AA)*

Staying of aliens whose request for asylum has been denied in a designated place or area. (see art. 57 AA)

These alternatives are applicable to asylum seekers as well as to other irregular migrants.

2.13 Legal grounds for providing release from detention

Under certain circumstances there is a possibility to release (ex) asylum seekers from detention.[223]

Migrants are released from detention when:

- They are expelled to another country (automatic);
- There is no longer a prospect of expulsion (Court order);
- The INS has displayed insufficient effort in trying to expel the migrant (Court order);
- There are special circumstances on the side of the migrant which compel the authorities to release the migrant from detention (Court order);
- Alternative ways for reception are provided;
- They are granted a status.

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1 Basic information

Most of the detainees that we interviewed were male, single and young. They came from very different parts of the world and had an average age of 27. The interviewed detainees were detained shortly after their arrival. This is typical to the Dutch situation where asylum seekers arriving at the international border are detained throughout their asylum procedure. This has also been described in § 2.1. Besides this form of detention, there are also other moments on which an migrant can be detained (after a negative decision on the asylum application, prolonged border detention).

The average duration of the detention of the interviewed detainees was 60 days. If we look at each detainee separately, most detainees were not detained that long. Two detainees who were detained for eight months influence this number. One of them was a Somali who was unable to return to his country of origin: “I am here because I signed

[223] Aliens Circulaire A6/5.2.6 and jurisprudence

a paper that I want to go back to Somalia. They tried to return me in December 2008. I had a transfer in Dubai to Djibouti but the flight was cancelled. So I had to return and I was detained here. They say I cannot go to Mogadishu now. They say it is too dangerous."

The legal status of the interviewed detainees differs. Of the 21 interviewees:

- 10 are irregularly staying migrants;
- 09 are asylum seekers;
- 01 has an unknown status;
- 01 has been granted a refugee status.

All irregular migrants we have spoken with were ex asylum seekers. Their application for asylum had been rejected and they were awaiting expulsion. Between the negative decision on their asylum request and their actual expulsion, the ex asylum seekers are 'labelled' irregularly staying migrants.

3.2 Case awareness

Two-third of the detainees felt that they were sufficiently informed on the reasons for their detention. A similar majority was satisfied with the quality of the information that they received. This view was however not supported by a volunteer of the Dutch Council for Refugees at the Detention Centre at Schiphol Airport: "(…) the procedure might be quite fast and for many detainees the reasons for their detention are not clear at all. We inform them therefore about the reasons for their detention. When they enter the detention centre they are either badly or somewhat informed, but they are well informed about their situation after meeting the Dutch Council for Refugees."

3.3 Space within the detention centre

Detainees do not have a particular opinion on the space within the detention centre. Mainly the fact that they are locked in their cells at specific hours during the day worries them (see also § 3.4). A small majority is positive about the rooms in which they stay: "The room is small but it is all right. There is a bunk bed, a TV and a fridge."

The only complaints detainees have about their room, concerns the climate within the room (too cold) and the impossibility to communicate with their roommate. The space of the centre itself is perceived quite neutral. Detainees do not consider the centre to be overcrowded and they usually are able to find privacy in their room.

From the interview with a detention centre staff member at the airport, two noteworthy aspects arose. Primarily, there is no separate male/female wing; both sexes are kept in the same area. Apparently the interviewed detainees do not consider this to be problematic. Secondly, detainees can request to be placed voluntarily in an isolation cell. This is allowed for a maximum period of 24 hours. Detainees sometimes request this if they need some time alone.

3.4 Rules and routine

Almost all detainees mentioned in the interview that at specific times during the day, they are locked up in their cells and are prohibited from going out: "They lock us up during lunch- and dinnertime. Why are they doing that? We can't go anywhere."

Only at the deportation centre at Rotterdam, this seems to be different: "There are no real rules as far as I know. Of course we can't leave the centre and from 20.45 to 8.00 we are locked in."
This rule seems to affect the mental health of the detainees deeply. Detainees experience being locked in a cell more negatively than being locked in a detention centre.

Concerning the rules in the detention centre; almost all detainees think that everyone will respect the rules in the facility. When it comes to opportunities to change the rules, they do not think that this is possible. However, according to theory and practice, this is possible. A detention centre staff member states the following: “Reasonable proposals are always discussed with the management. It is up to the management to give their consent or to reject something. Minor changes in food, can always be done; e.g. many Africans do not like spaghetti, so they will receive something different.”

3.5 Detention Centre Staff

From the relationship with the detention centre staff emerges a positive image. Most interaction takes place with the security staff and occasionally with medical staff. The relationship is mostly perceived positive/neutral: “Staff is ok. They are guards: usually either two men and one woman, or two women and one man. The guards change three times a day. I don’t have problems with them. Some are extremely friendly others are less friendly. I am quite content with them.”

Most importantly is that detainees do not feel discriminated in the centre. Another noteworthy aspect is that the detainees do not perceive the interaction with detention staff to be problematic due to language problems. It seems that they are able to express themselves satisfactorily on the daily issues. If detainees want to discuss their (asylum) case, they can contact their lawyer or an INS official. For those conversations an interpreter is available.

3.6 Level of safety within the detention centre

Most detainees feel safe within the detention centre. One of the interviewees was once mocked by other detainees. It did not become clear throughout the interview what happened exactly to him; he only stated that the mocking occurred during queuing for food. The other detainee participated in a hunger strike. Together with other detainees he sat down and refused to go back to his room. Security police forces came to stabilize the situation. The interviewed detainee states that he was hit by the security forces on his ribs, knees and neck. The whole group was handcuffed and returned to their cells by the security police forces. The Dutch Council for Refugees does not have information that complaints were raised against the security police force.

It is interesting to note that some of the detainees who are detained on the international airport are afraid that a plane might crash on the detention centre. This fear probably stems from a recent crash of a Turkish airplane near the airport: “I am sure you heard something about the fire in 2005? In the beginning I was nervous about that. But I am more nervous now about the Turkish Airlines crash. When I hear a plane I am thinking it might happen here.”

In general the noises of the airport are considered frightening. Some detainees say it constantly reminds them of the fact that they can be put on a plane and sent back to their country of origin at any time.

3.7 Activities within the detention centre

The awareness of organised activities in the centre is high; almost 90 %. However, this does not mean that detainees will also participate in those activities. The reasons for not participating are varied; stress and health problems seem to be the most important reasons. There are a great variety of activities available, but no access to education. Most detainees consider this to be acceptable and are not looking for more activities.

The guards also seem to be sensitive about the participation of detainees: “If people are not active this will be seen by staff. They will talk to the detainees or ask the medical staff.”

3.8 Medical issues

All detainees are aware of the presence of a medical service. Almost all detainees have access to the service at least once per month. The medical service provides for nurses and doctors, however not for psychologists. Interpreters are available in order to facilitate communication with the medical staff.

The effect of the detention on physical health is clearly negative. The average grading by the detainee of their physical health dropped from 7.2 at the beginning of detention to 5.71 after four weeks. According to the detainees, this is caused by the detention itself. The same applies to mental health: the negative effect of detention is perceived here even stronger. The grading of mental health dropped from 7 at the start of detention to 3.5 after four weeks. Explanations for this reduction are factors such as stress, thinking too much and worries about the uncertain future.

3.9 Social interaction within the detention centre

Most of the detainees have good relations with their co-detainees. Occasionally there are quarrels between the detainees; this is usually about personal things. Not all detainees can confide in someone at the centre. However, if they do have such a person, it does not matter whether it is a staff member or a co-detainee. As explained earlier the difficulty with co-detainees lies mainly in the communication. Most detainees would like to be able to communicate with their cellmate, but they are unable to do so, due to language problems.

3.10 Contact with the outside world

The detainees we have interviewed state that they do not have family members in their country of origin who depend on their support. Likewise, most detainees do not have friends or family in The Netherlands; they therefore rarely receive visits. The most favourite means of communication for them is the telephone. However, access to it is rather limited. Detainees are not allowed to possess a mobile phone. In most centres phone cards are distributed, but the credit on it (usually € 6 – € 10 per week) is only sufficient for one international phone call. Access to Internet is not available due to security issues. One detention staff member stated that sometimes detainees can send an e-mail or a fax, but this possibility/ is reserved for exceptional circumstances.

According to a detention centre staff member, visits are mostly made by family members. He also states that not all the detention centres abide strictly by the visiting hours schedule. Most of the centres are outside the urban areas and therefore hard to reach by public transport. The staff seems to be rather flexible when it comes to visiting hours.

3.11 Conditions of detention and the family

Since most of the interviewees did not have family members present in the Netherlands, no valid conclusions can be drawn from those answers.

3.12 Conditions of detention and nutrition

When it comes to food, most detainees are not satisfied about the quality or quantity. Although it seems to be possible to make some requests for specific meals (see quote § 3.7), detainees are possibly not aware of it. From the interviews it does not become clear to what extent the quality and quantity of food can be related to a decrease/increase of the detainees' health. More research into this specific aspect would be required.

3.13 Conditions of detention and the individual

Almost 80 % of the interviewed detainees report sleeping problems that they relate to stress. On the basis of the interviews we can also extract two major difficulties that are experienced by the detainees. Primarily, it is the shock of

being detained and the subsequent loss of rights that affects them deeply: “I was shocked when they brought me here. I was shocked they detained me”

As second difficulty, the living conditions and cohabitation issues are mentioned: “Lack of fresh air and the stinking toilet in the cell”

On a whole, the experience of being detained is very difficult for the majority of the detainees. They do not know what will happen after their detention. The fact that they do not know when they will be released worries them.

During the interviews detainees presented themselves negatively, but they do not consider themselves to have special needs. When asked which persons might have special needs, the interviewees gave the following answers:

- People not knowing the language
- People who are detained for a long period
- People under a Dublin claim

Especially the last category is in an awkward situation since their asylum application is not taken into consideration in The Netherlands. They can only wait until they are returned to their first Dublin country. In that country their asylum claim will be processed.

Some detention centre staff members indicate that they perceive women as vulnerable persons. Also persons who are ‘really confused’ are considered to be vulnerable by them. According to the interviewed NGO staff members, minors, victims of human trafficking and persons suffering from PTSS should be considered vulnerable and should be excluded from detention.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

In this chapter a more in depth insight will be given on three central themes that emerged from the interviews and the analysis. The first theme involves ‘information’ which was perceived very positive by the detainees. Two themes that need improvement, as shown by the negative experiences of detainees – concern ‘communication’ and ‘daily routine’.

4.1. Information

Throughout the interviews the image emerges that detainees are well informed on their case, the reasons for detention and the rules that are applicable in the detention centre. The extent to which detainees are informed on these aspects, affects their well being, and therefore their vulnerability, directly. From the interviews held in other EU-countries, it becomes apparent that if detainees are not sufficiently informed on their case, it causes mental as well as physical health problems.

Generally in the Netherlands, the INS official provides the migrant with basic information on his case and the reason for detention. If this information is insufficient, a volunteer of the Dutch Council for Refugees or the detainee’s lawyer will give more detailed information once the migrant arrives at the detention centre.

The Dutch Council for Refugees does not have the possibility to speak with migrants who are not (ex) asylum seekers. The Council does not have access to this group because the authorities expect that this will increase the number of asylum applications from migrants in detention. Since the basic information provided by the INS is sometimes perceived as insufficient by detainees to be fully informed on their situation, this leads to a potential lacuna for the migrants that the Dutch Council for Refugees and other NGO’s don’t access to.

Taking into account the conclusions drawn in other EU-countries on the correlation between the level of information and level of physical and mental health, it is of the utmost importance that all detainees, asylum seekers as well as other irregular migrants, are fully informed on their case and have sufficient opportunities to request for more information if they deem this necessary.

On the basis of this research the conclusion that (ex) asylum seekers have sufficient opportunities to be fully informed on their case and situation can be rightfully drawn. Unfortunately, this does not apply to the situation of other irregular migrants, since the possibilities to inform them are limited.

4.2. Communication

With respect to this theme a distinction should be made between communication with detention staff members and communication with others.

Almost all detainees are positive about the communication with the staff members of the detention centre. Also from the interviews with the staff members themselves, a rather positive image emerges. Guards approach the detainees with respect and an open attitude. In return, detainees state that the guards are only doing their jobs; they do not hold the guards responsible for their detention.

The first difficulty arises in communication with co-detainees. Usually detainees do not speak the same language and therefore encounter problems when speaking to other detainees. From the interviews the image arises that most problems are encountered in communication with cellmates. Especially if detainees want to confide in them on serious subjects, the language problem constitutes a barrier. The fact that the detainees cannot easily interact with cellmates should be a point of concern, since this prevents them from sharing their problems, worries and uncertainties. Not being able to talk about these things increases the level of stress, which directly impacts mental health. As we saw in the previous chapter, a decreasing (mental) health increases the level of vulnerability.

A second difficulty involves communication with the outside world. This seems to be problematic due to two factors. First of all, detainees do not have access to Internet or e-mail facilities. This limits the possibility to contact their family and/or search for documents that support their asylum case, severely. It is unclear for what reasons Internet is not made available to the detainees. A second factor that limits detainees' means of communication with the outside world is the prohibition on the use of a (mobile) phone. Detainees are not allowed to possess or use a mobile phone inside the detention centre. Most likely this is part of the security rules. However the rational for this rule has not become clear during the research. As compensation for not allowing mobile phones in the centre, detainees are handed out weekly a telephone card with the amount of approximately €10 (this differs per detention centre). Detainees state however that this amount is hardly sufficient to make one international phone call.

The consequences of not being able to freely contact friends and family have a negative impact on detainees' (mental) health. Therewith it is also a factor that increases their vulnerability. Earlier in Chapter 3 it has been pointed out that detainees as well as NGO representatives are of the opinion that people with mental health problems have special needs and are therefore considered vulnerable.

4.3. Daily routine

Concerning this theme, two different types of difficulties are encountered during detention. This firstly concerns the quality and quantity of the food, which is perceived as unsatisfactory by the detainees. A detention centre staff member stated that such issues can be discussed and if approved by the management, other food can be served. Apparently detainees are not aware of this possibility. The idea that rules cannot be changed confirms the findings of § 3.4.

A second major difficulty however, involves the 'lock-in hours', which appear to be applied in all detention centres, except for detention centre Zestienhoven at the Rotterdam Airport. 'Lock-in hours' mean that during a certain period of the day, all detainees are locked in their cells. For example a detainee at the detention centre at Schiphol airport stated the following: "You are locked in from 11.45 – 13.00, from 16.45 – 17.45 and from 20.45 – 8.00."

It has not become clear during the research why the detainees are locked in. Most likely capacity issues lay at the root of this.

This situation affects detainees severely. Most detainees have not done anything wrong. The majority of the detainees we have interviewed only asked for protection because they feel that their life is at risk. The fact that they are detained is a shock that they have to overcome. The feeling that they are not wanted in the Netherlands and put away in a distant detention centre outside urban areas has a severe negative effect on their mental health and self-perception. If, on top of that situation, the migrants are also locked in their cells which gives them even more a feeling of being a criminal, it increases their vulnerability to an unacceptable level.

5. CONCLUSIONS AND RECOMMENDATIONS

During this research the Dutch Council for Refugees has spoken with many persons on the subject of detention and to what extent migrants in detention consider themselves to be vulnerable. Groups of people who are considered vulnerable in detention by the interviewees in the Netherlands are:

- People not knowing the language
- People who are detained for a long period
- People under a Dublin claim
- Women
- Minors
- Persons suffering from PTSS
- Victims of human trafficking

Most migrants in detention do not consider themselves to be vulnerable. However from the answers to other questions during the interview, it can be derived that detention has a negative impact on them. The rating of their mental and physical health dropped during detention and their answers display a poor level of self-perception.

On two specific themes the Dutch Council for Refugees would like to recommend changes. Since we have only spoken with (ex) asylum seekers, the conclusions and recommendations as set out below, only aim at that specific group.[224]

Communication

Detainees encounter difficulties in communication with their cellmates, who often do not speak the same language. As a consequence of the 'lock-in hours' cellmates are obliged to spend quite some time together. Moreover, there are not many possibilities to share difficulties with cellmates; the environment in the detention is not stimulating. However, during one interview a guard mentioned the initiative of starting discussion groups for detainees. In these voluntary groups detainees can share their worries and problems with other detainees.

[224] Except for recommendation 10; this aims specifically at irregular migrants other than (ex) asylum seekers.

This research has shown that being able to communicate and discuss problems with other persons will decrease the level of vulnerability of detainees. If detainees are able to express themselves sufficiently and receive feedback on their problems and worries, this enforces their self-perception. A positive self-perception influences the level of vulnerability directly in a positive way. We therefore propose the following recommendations:

- ⇨ Detainees with the same nationalities or who speak the same language, should be placed in one cell
- ⇨ Create more opportunities to confide in a person, e.g. through discussion groups.

Detainees do not have access to Internet nor to e-mail facilities. Moreover, they are not allowed to have a mobile phone inside the detention centre. The credit on the telephone cards, which are distributed weekly, is only sufficient for one international phone call. These rules seriously impede the detainees' possibilities to contact their family members. It has a negative impact on their mental health.

As we saw in the previous chapter, the rational of this rule is unclear. If we look at other countries, the Dutch system is even harder to understand. If we take Sweden, for example, detainees are allowed to use the Internet freely in the detention centre. They are also allowed to use a mobile phone inside the centre, at the detainees' own expense. Difficulties concerning security do not seem to arise in those detention centres. Another suggestion would be to facilitate the use of Internet but only for e-mail, i.e. access to other websites can be blocked. In this manner detainees can stay in touch with family without using the Internet for improper purposes. We would therefore recommend the following:

- ⇨ Detainees should have access to internet and e-mail facilities
- ⇨ Detainees should be allowed to use a mobile phone inside the detention centre
- ⇨ Credit on the telephone cards should enable detainees to make at least two international phone calls per week.

Daily routine

Detainees are not satisfied with the quality and quantity of the food in the detention centres. The guards indicate that food preferences can be made known to them, so they can discuss the request with the management of the centre. Apparently detainees are not aware of this possibility, or do not make use of it. Although it cannot be concluded from this research that the quality and quantity of food directly affects the detainees' health negatively, it certainly does have a negative impact. Especially for the detainees who have to remain a longer period in detention, they notice that they loose their appetite and rate their physical health rather low. We would like to suggest the following:

- ⇨ The food in the detention centre should be more varied and of a larger quantity
- ⇨ Detainees should be made aware by the detention centre staff of the possibility to request changes in the food which is served.

The detainees' mental health is seriously weakened by the fact that during certain hours of the day, they are locked in their cells. This makes the detainees feel like criminals whilst they have not committed a crime. By locking detainees for more than 12 hours per day in their cells, the self-perception and mental health of the detainees is impacted negatively in a very severe way. This heightens therefore their level of vulnerability. It might not be necessary to lock detainees in during daytime, if a more efficient schedule for the security guards can be developed.

If we look at the situation in other countries, we see that many have semi-open facilities for (ex) asylum seekers. Slovenia, Sweden, Lithuania and Czech Republic, for example, have a separate facility for that group. These facilities are only secured at the entrance: detainees are allowed to move freely within the centre but cannot leave the premises. Denmark applies a similar policy towards (ex) asylum seekers; they also developed a separate facility for

this group.[225] Around the detention centre a large secured fence is placed. In front of the fence a row of trees prevents the detainees from having a permanent view on it. The detainees are allowed to move in and outside the detention centre, but cannot leave the premises.

Detaining people who have not committed a crime is not acceptable. However, if there are no other solutions, then detention should be carried out in the most prudent manner. Currently this is not the case in the Netherlands: (ex) asylum seekers are detained and locked in their cells as criminals. This lowers their self-perception and increases their vulnerability. We therefore recommend the following:

- ⇨ Create semi-open facilities for (ex) asylum seekers who are detained before, during or after their asylum procedure;
- ⇨ Detainees should never be locked in their cells voluntarily during day-time; a more efficient schedule for the security will make this possible.

[225] Denmark did not participate in this project. The statements made in this report about the situation in Denmark are based on the author's own experiences.

NATIONAL REPORT: POLAND

By: Caritas Poland

1. INTRODUCTION

This national report is the result of research having been done in 2009 in Poland. It is based on an approach and a methodology that was developed by the DEVAS project partners. On the basis of several questionnaires and guidelines, Caritas Poland arranged for 31 interviews with detainees – many of which included interviews with whole families.

Caritas Poland owes special gratitude to Komendant Główny , Straży Granicznej, all of the persons we met during our visits to the detention centres, as well as all of the detainees who helped us to accomplish this report.

Methodology (as applied in the national context)

The aim of the 'DEVAS project' (Detention of Vulnerable Asylum Seekers) was to study the conditions for vulnerable asylum seekers in detention in Poland as well as for irregularly staying third-country nationals in detention.

Caritas Poland participated in the DEVAS project as a partner to JRS-Europe, the lead coordinator, and the 23 collaborating NGOs. Katarzyna Sekuła, Migration officer, at Caritas Poland, was designated as the national project supervisor. She conducted all visits and interviews in the detention centres.

The research was done on the basis of three social questionnaires that were used to interview three distinct groups:

1. Asylum seekers and/or irregularly staying third-country nationals in detention;
2. Non-governmental organisations that work in the detention centres that were researched;
3. The staff of the detention centres that were researched.

A legal questionnaire was used to research the existing laws related to detention in Poland. Caritas Poland conducted the interviews in four detention centres located in Przemyśl, Krosno Odrzańskie, Grójec and Biała Podlaska.

The majority of interviews were conducted with the presence of an interpreter from Caritas Poland. There were two visits to detention centres in Biała Podlaska and in Grojec, and one to Krosno Odrzańskie and Przemyśl. All premises visited are Guarded Centres for Foreigners and apart from Groject, which is situated near Warsaw, are located close to the borders. The detention centres researched within DEVAS are all administrative detention premises that are designed for asylum seekers as well as irregularly staying third country nationals. The border guard manages all centres.

During the implementation of the research, a sudden influx of Georgians came to Poland to apply for asylum. This is why they constitute such a large portion of the sample.

In many cases whole families were interviewed. In the case of children who were detained, Caritas Poland asked for assistance and advice from psychologists working in Caritas Centres of Support for Migrants and Refugees to

analyse the children's situation and behaviour in detention, in order to a more nuanced perspective of their time in detention.

2. NATIONAL LEGAL OVERVIEW

2.1. Legal grounds for ordering detention

The legal grounds for ordering detention are included in Article 101of the Act of 13 June 2003 which says that the Border Guard or Police can detain foreigners for a period of time not longer than 48 hours. The authority that has detained an alien should take the alien's fingerprints without delay. If required by the circumstances, they should also make a request to the court for placing an alien into the guarded centre, or for the arrest for the purpose of expulsion.

Article 41 of the Act of 13 June 2003 on granting protection to aliens allows for an alien to be placed in the guarded centre or to detained in a facility for the purpose of expulsion. The arrest for the purpose of expulsion shall be applied if the circumstances determined by the Border Guard indicate that it is necessary for reasons of state security and defence, as well as for public security and policy.

2.2. Legal grounds for the right to appeal a detention order

In accordance with article 106 of the The Act of 13 June 2003, detainees have the right to appeal the detention order within seven days from the day of receipt of the Court decision. The court shall treat the appeal immediately. Article 44.3 expresses the following:

> "An alien may appeal against the decision of the President of the Office on refusal to accept a request for release from the guarded centre or from the arrest for the purpose of expulsion within the time limit of three days from the date the decision has been delivered. The appeal shall be submitted to the district court competent with respect to the seat of the President of the Office, through the head of the guarded centre or through an officer responsible for functioning of the arrest for the purpose of expulsion.
>
> The head of the guarded centre or the officer responsible for implementing the arrest for the purpose of expulsion shall - within the time limit of two days - send the appeal to the court, which shall examine it immediately.
>
> The provisions of the Code of Criminal Procedure concerning procedure for complaint against the ruling on preventive measures, shall apply *mutatis mutandis* to the procedure for appeal against the decision referred to in sec. 3; the President of the Office shall exercise the function of the public prosecutor."

2.3. Legal grounds for maximum detention

Article 106 of the The Act of 13 June 2003 on aliens stipulates that detention cannot be longer than 90 days. However, it can be prolonged for specified period of time in case it is necessary to have more time to execute the decision on expulsion due to obstruction of the foreigner. The period of detention in the guarded centre, or arrest for the purpose of expulsion, cannot exceed one year. However, what is not defined in The Act is the number of times the same person can be detained. In practice this causes the following situation:

> An irregularly staying third country national was detained for a period of one year after which he was released because he could be neither detained any longer nor deported because of a lack of documents. In this case still his legal status did not change which means that after that time he was still illegally staying in Polish territory and is once again eligible for detention.

2.4. Legal grounds for contact with the outside world

Article 117 the The Act of 13 June 2003 on aliens states that a foreigner that is detained in the guarded centre or in a facility for the purpose of expulsion has the right to contact with the following: Polish authorities, diplomatic representatives and NGOs. Paragraph 14 states that a foreigner can meet face-to-face with close persons in rooms specially designed for that purpose.

Art. 43.1 states that an alien placed in the guarded centre or in a facility for the purpose of expulsion shall be informed in a language he or she understands about the organisations that statutorily deal with refugees' affairs, and that s/he shall be allowed to correspond or make telephone contact with these organisations. Paragraph 2 of the same article states that an alien referred to in section 1 may, particularly for the purpose of being granted legal assistance, to personally contact, within the guarded centre or in the facility for the purpose of expulsion, the representative of the UNHCR or the organizations that statutorily deal with refugees' affairs. Paragraph 3 states that exceptions to this rule may only be justified by the necessity of ensuring public security and policy or observing organisational rules in the centres concerned.

2.5. Legal grounds for health care provision

Article 113.1 of the The Act of 13 June 2003 on aliens states that upon being accommodated in the detention centre or guarded foreigner's centre, the foreigner shall be immediately submitted to a medical check-up, and if necessary will undergo sanitary operations.

Article 117.4 the The Act of 13 June 2003 on aliens states that a foreigner has the right to access medical aid or can be put in medical centre if his/her health condition so demands.

2.6. Legal grounds for the protection of persons with special needs, or particularly vulnerable people

Article 103 of the The Act of 13 June 2003 on aliens refers to the situations in which detention could affect the health condition of a foreigner and therefore does not allow his/her placement in a detention centre.

Article 115 says that female and male foreigners should be separated. It also states that a foreigner accompanied by a minor should be accommodated in the same room as the minor if possible. In addition, if an unaccompanied minor is accommodated in a guarded detention centre, s/he is to be put in a separate part of the detention centre so as to avoid contact with adults. Those foreigners who declare they are with relatives may be accommodated, as per a written request they must make, in the same room. Article 121 states that a woman up to the seventh month of pregnancy can be accommodated in the facility for detention for the purpose of expulsion. After that time pregnant women are to be transferred to the guarded detention centre.

The Act on Protection to Aliens includes procedures with participation of aliens whose psychophysical state allows presuming that they have been victims of violence or of aliens with disabilities.

Art. 54.1 of the said Act states that in case of an asylum seeker whose psychological state leads to the presumption that s/he has been a victim of violence, or in the case of aliens with disabilities, procedures for the determination of refugee status shall be effected:

- In conditions assuring a freedom of speech, in a particularly tactful manner, adjusted to the alien's psychophysical state;
- In the place of his/her residence;
- On a date adjusted according to his/her mental and physical state, taking into consideration the dates of medical treatments undergone by such an alien;

- With participation of a psychologist and - if necessary - of an interpreter of the sex indicated by an alien or by a doctor.

If it is justified by the mental or physical state of an alien placed in the centre, he/she shall be provided with transportation in order to: 1) give testimonies and statements in the proceedings for granting the refugee status; 2) undergo the medical treatment.

An alien referred to in section 1 of said Act shall not be placed in the guarded centre or in the facility for the purpose of expulsion.

Art. 55 states that activities undertaken during the procedure for granting the refugee status in relation to an alien referred to in art. 54.1, or activities connected with granting the assistance in the centre, may be carried out by a person of the sex indicated by the alien and who has received vocational training working with victims of crimes or violence and persons with disabilities.

2.7. Legal grounds for providing release

Article 44 of the Act on Protection to Aliens states that an alien may be released from the guarded centre or from the facility for the purpose of expulsion in cases referred to in art. 107 1 of the Act of 13 June 2003 on aliens; or on the basis of the decision of the President of the Office rendered *ex officio* or upon request of an alien, if the evidence of the case indicates that the probability that an alien meets the conditions for being recognized as the refugee as specified in the Geneva Convention and the New York Protocol; or the condition for obtaining the permit for tolerated stay on the basis of art. 97.1.1. This decision shall refer also to minor children and spouses accompanying an alien.

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1. Basic information

The average age of the detainees that were interviewed is 34; of those, 53.6% are male and 46.4% female. The overwhelming majority of the detainees are Georgian. The average time spent in detention is 2.07 months, or, 66.32 days. As a rule, families are accommodated separately in special units. Males are separated from females, and minors are separated from adults.

As the research was being conducted Poland faced a sudden influx of persons from Georgia who applied for asylum, which is why they figure prominently within the sample. However, there were also persons from Vietnam, Chechnya, Armenia, Nigeria, India, Pakistan, Tunisia, Morocco, Ukraine, Rwanda and Iran.

Among the sample the biggest group were applicants for international protection (over 60%); and in second place irregularly staying third country nationals and asylum seekers detained for the purpose of “Dublin procedures”.

3.2. Case awareness

All of the detainees reported that they had been informed about their situation through official procedures, or upon arrival in the detention centre. The reasons for detention were known by all as well. Asylum applicants reported to be fairly informed about the asylum procedure. The most important issue for them was to know the duration of their detention. “Being here would be easier if I know how long I need to be here”, said a Georgian detained in Przemyśl.

The vast majority of the detainees reported that ruminating on the details of their cases takes up of their thoughts. As said by one detainee, “Thinking what happens next with little knowledge is unbearable.”

Detainees expressed an urgent need in almost all cases to be aware of possible scenarios for their future. The detention centre staff is constantly asked by detainees to look into their cases. The awareness of the legal steps and its consequences was very low in majority of the cases. “Please tell us what happens to us – we want to know.”

As opposed to people from the Caucasus, persons from African countries had no knowledge on legal issues and procedures, and also no understanding of their situation. “ I just want to get out”, and “I came here [to Poland] to visit my friend” were among the types of replies from African detainees.

In detention centres, the border staff do not deal with the legal issues, and there are no legal departments that analyse the cases of the detainees. Therefore, the staff working in the centres and having regular contact with detainees do not have knowledge of their situation and cannot answer detainees’ questions. In some cases the detainees regard this as a “lack of willingness or good will”; in fact it is more due to the limitations within the border guards’ job descriptions.

3.3. Space within the detention centre, rules and routine

The majority of detainees had positive feelings about their bedrooms. None of them reported that the centre was overcrowded. They also expressed a good understanding of the rules and routine in the centre. The family units are more spacious, and in many cases the educational staff takes care of children and baby-sits them. “The room is fine, light”, said one detainee. Another remarked, “We have a nice room, it is fine”. These types of replies were most often expressed. The majority of detainees relate rules and routine to schedules for meals, activities and free time.

In case of the detention centres in Przemyśl and Biała Podlaska, which were planned from the beginning as detention premises, meaning that the sections and spaces are designed accordingly for this purpose. Therefore, the conditions there are far better than in the detention centre in Krosno Odrzańskie, which was adapted for detention from existing facilities. But even this centre was recently renovated and looks much better than in 2007. Detention centres in Przemyśl and Biała Podlaska have units for male, female and families and also recreational spaces – all of which makes a big difference for the lives of detainees.

3.4. Detention centre staff

Detainees maintain frequent contact with border guards, medical and educational staff. Almost all of detainees assess their typical interactions with staff as positive or neutral saying, for example, that “they are doing their work or they are fine – it is their job”. None of the detainees interviewed reported experiencing discrimination from staff.

Over half of the detainees reported that the staff supported their needs if possible. Educational staff were very much appreciated in most of the interviews with families: “They are good, take care of children”, said one family.

The staff provides for the proper implementation of rules and regulations, and they focus mainly on these activities. The educational staff consists of civil workers who have flexible tasks and focus a lot on children and language activities.

The manner in which the staff treats detainees depends on the location. In the case of Przemyśl, the interactions are more humane and formal. It is the so-called ‘human factor’ that in many cases defines the attitude of staff towards detainees. Detention centre staff focuses on ensuring at least minimal conditions in detention as foreseen by law, such as medical care, social activities, food, space, separate rooms for families and children, etc.

In the centres the staff is composed of civil workers and border guards. This mixture makes for a good atmosphere. Caritas Poland also noted that there is a rising awareness among staff of the need to take part in intercultural trainings and to be aware of cultural differences and its consequences for their daily work. Increasing interest in cooperation and exchanging practices with NGOs is also noticeable. Ocalenie Foundation runs a programme of intercultural trainings for border guards and police. Psychologists, lawyers, social workers and intercultural advisors (of Chechen origin) working for Caritas Centres of Support for Migrants and Refugees have access to detention centres on daily basis and provide complex care for the detainees. Their work in detention is very much appreciated by the border guards, as described by one, “It is easier for us to work as we know that specialists and professionals are here”. Another said, “We would not be able to provide such complex support for detainees if not for Caritas’ help”.

3.5. Level of safety within the detention centre

Most detainees feel quite safe in the detention centre. They have not reported any cases of security infringement. They tend to attribute their safety to the conditions in the safety, or to safety from the ‘outside world’. Others mentioned feeling safe because of the presence of co-nationals (mostly for the Georgians). No one reported experiencing verbal or physical abuse.

The detainees did not express any vulnerability to danger from staff or co-detainees. Some said that existence of clear rules and routines, as well as the provision of basic needs, makes for a stable environment in the detention centre.

3.6. Activities within the detention centre

Most detainees said that they participate in activities in the detention centre. Of these, almost everyone described taking part in “educational” activities such as language classes. Many do it for their own satisfaction, but others for boredom or stress relief. Detainees reported access to books, television, telephone, educational opportunities and outdoor space; but not to Internet and computer access. Hardly any detainees describe activities that they would want the centre to provide. The educational staff observe high attendance rates in classes.

Detainees admitted that the language classes are very useful, especially since the groups are small and comfortable. They like the classes and they learn a lot, as noted by one detainee, “It is good learning Polish here at classes and to practice with the staff. I have a lot of fun and stop from thinking about my case”. Staff in Biała Podlaska admitted that detainees at the classes are highly motivated and active; they learn after classes and practice with border guards and staff. Families whose children attend classes remarked that the children enjoy them as well.

3.7. Medical issues

Almost all detainees reported meeting with doctors and nurses; and over 90% reported meeting them at least once per week. No one reported meeting with psychological staff. Almost everyone reports having had a medical exam upon arrival to the centre. Over half reported to understand the language of the medical staff. But a significant minority, or 45%, admitted to have problems with understanding and wished for a presence of interpreters. At the basic level most detainees felt that the quality of medical care is good. In more complex cases, and the in case of children, detainees remarked that the medical care is not enough.

The issue that remains a problem is the lack of a regulation obliging medical staff to be fluent in the foreign languages, or in at least one of the dominant languages used in the detention centres. Also the cultural differences seem to be neglected, such in the cases of Muslim women not feeling comfortable going to male medical staff. The medical aid that is provided is at a basic level; more complex cases are directed to the local hospitals. Detention centres that hold children should provide for a paediatrician.

3.8. Physical and mental health

The duration of detention in the majority of the interviews was short, meaning that no substantial observations of physical health deterioration were made. Almost half of the detainees admitted that detention negatively impacts their mental health. People describe this impact in unspecific terms – mostly in relation to the psychological stress they feel.

During the visits it was observed that detention, irrespective of the conditions, does affect children. The psychologists looked into the cases and confirmed that their development and mental health is highly affected by detention. They become hyperactive, and experience appetite and sleeping problems. The situation is even worse for children who lived in Poland before being put into detention as they miss their friends, schools, and relatives.

3.9. Social interaction within the detention centre

Detainees hardly reported any problems in their interaction with co-detainees. They also observed few problems existing between detainees. Some relate their good interactions to the presence of co-nationals and people who share a common language.

Over 78% admitted that they feel comfortable with approaching border guards for support, or, someone just to speak with. The atmosphere in majority of the detention centres subject to this research was good and the relations between staff and detainees can be described as friendly with the exception of the center in Przemyśl. A majority of the detainees comprehend the role of border guards and understand that it is their job. They also appreciated that they do what they can.

3.10. Contact with the outside world

Most detainees reported having family in their country of origin. A majority admitted that their family is being supported without them. Over 55% said they did not have family/friends in the host country. For the vast majority the telephone is the most crucial means of contacting family/friends. Public telephones are available in all centres for incoming and outgoing calls. No one reports access to the Internet, and no one describes using postal mail. The few who described receiving personal visitors mentioned that they more often see lawyers than family or friends.

The location and disperse of detention centres around Poland makes it difficult for UNHCR, NGOs and others to access detainees them regularly. Caritas staff frequently access without any obstacles the detention centres in Krosno Odrzańskie and Biała Podlaska, and also Białystok (but not included in the DEVAS research) where also Caritas Centres of Support for Migrants and Refugees are located. Therefore, the detainees have access to psychological, legal and social aid. Ocalenie Foundation mentors intervene each and every time intercultural interventions (such as for hunger strikes, etc.) are needed, irrespective of the distance.

3.11. Conditions of detention and nutrition

The greater percentage of detainees did not report having any problems with the food provided in the detention centre. About one-third felt more negatively, often saying that they missed the food from their own country, or complaining about the lack of variety. Negative impacts resulting from appetite and food are very few.

Children reported dissatisfaction with the food, saying that it could be more varied. A majority of Georgians reported that children should be provided with more fruit.

3.12. Conditions of detention and the individual

A majority of the detainees reported to sleep well in the detention centre. Almost none complained about the conditions. Most people attributed their top difficulties in detention to unspecific circumstances (e.g. the 'shock' of detention) and to the disruption of their life plans (e.g. uncertainty of their asylum applications, and upcoming plans). This aspect of detention appeared in most of the cases – lack of updates on the case, lack of information on their current situation and overwhelming sensation of waiting. Over half reported that thinking about their future is very difficult and tiresome; in these cases detainees constantly analyse their situation and possible scenarios for their future. These difficulties of detention do not change for most. However, such difficulties may be greater for people who are in prolonged detention.

The vast majority of detainees do not know what the outcome of their detention will be. Many are afraid of deportation. No one knows when he or she will be released from detention. These people report feeling psychological stress as a result.

In the case of children, as confirmed by psychologists working for Caritas Centres of Support for Migrants and Refugees, detention has very negative impact on their lives and development. Living in constrained spaces and with no access to formal education is very negative for children. Their psychological condition deteriorates over time. Parents face difficulties explaining to their children the reasons for detention and have no answers for their questions relating to the duration. The following observation was made, however, that mothers detained with their children are much stronger and cope with detention better as they have a strong feeling that they need to protect children. "I need to be strong to protect my children", says one mother. According to another mother, "We will manage, it is important to show to children that everything is fine".

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

Detainees that took part in the DEVAS project expressed their opinions on a number of topics related to their detention. From the number of interviews conducted the following perspectives can be outlined.

The living conditions, rules and routines, the level of safety and the availability of activities remain of little significance to detainees. They do not complain about the living conditions and activities as they play little role in their stay in the centre.

What is more important, and what brings about more emotions, are detainees' level of case awareness, their ability to plan for the future and the level of nutrition afforded to them in the centre. Detainees reported these factors irrespective of age, sex and duration of detention.

All detainees felt that their situation was akin to imprisonment. They were unaware as to why they were subject to detention and court procedures despite having committed no crime.

The most frequently reported factors identified within the research relating to the impact of detention on detainees are as follows:

- Sleeping problems
- Lack of appetite
- Feelings of uncertainty
- Feelings of unfairness
- Tearfulness (especially in children)
- Hyperactivity (especially in children)

- Negative thoughts

Information and communication

Each and every detainee complained about limited access to information on his or her current legal situation. They feel trapped and suspended, being unable to know what to expect. Almost all of them treated the DEVAS research visits as an opportunity to talk over their cases and possible solutions and future scenarios. Therefore, it appears that there is a gap that needs to be filled in the detention system so that people would feel more comfortable and become more familiar about the outcome of their detention. This solution would bring about significant changes to the lives of detainees.

The other problem that was reported relates to the communication barrier. In a number of cases detainees themselves act as translators and interpreters to others. The lack of proper communication can be, in the long term, quite frustrating and lead to stressful situations among detainees. In these situations it would be ideal for the staff to possess a greater language capacity, in order to enable better communication with detainees.

Intercultural interactions

What also appeared during the course of the interviews was that detainees' traditions and customs received little attention from staff. There is a strong need to take this issue more into account and to give it more attention. In this context, it seems that food should be adapted at least to some extent to the detainees' customs and traditions relating to their home country. The detention centre staff might also benefit from intercultural training so as to become more familiar with the varying customs and traditions of detainees. At the moment the civil workers and border guards already participate in these types of trainings. This is a good practice that should be expanded.

Children

During the course of interviews it occurred that children are most affected by detention – psychologically and developmentally. In detention, as especially noticed by psychologists working with Caritas Poland at the time of the interviews, some children became aggressive and hyperactive. Children cannot adequately comprehend the environment of detention and their legal situations. Although the education provided helps to stem some of the negative effects, in all it is not enough. Children should simply not be in a situation of administrative detention.

Emerging vulnerabilities in detention

Detainees' level of vulnerability, in the context of administrative detention and on the basis of observations and visits to detention facilities, seems to be most influenced by

- Access to information about their legal situations
- Their inability to plan ahead for their future

The approach used at present shows that the staff at detention centres apply the legal procedures step by step in order to meet the requirements posed by law. Yet the day-to-day needs of detainees are sometimes neglected by what may be too strict of an interpretation of the law, i.e. not being flexible enough to meet the full range of detainees' needs. The law allows staff little room to provide flexible services to detainees, such as explaining their legal situation.

When asked about vulnerability, almost every staff member defined it in a traditional way as defined by the law. They did not perceive the concept of vulnerability in a more flexible or broad manner. There is more awareness on "visible" vulnerability such as pregnancy, disability, the elderly, etc., than on "invisible" vulnerabilities such as

psychological stress, depression, etc. There is a strong need to raise more awareness on how detainees can become vulnerable in detention.

As stated by the NGO Dorota Parzymies[226], vulnerability is an individual issue that cannot be treated by a fixed and limited definition. It is not enough to ensure proper social conditions in detention centres and enough space for the detainees. According to them, what is a problem is the fact that detainees live in uncertainty and suspension for quite a period of time.

The personality and character of individual detainees cannot be ignored in assessments of vulnerability. Persons that are more sensitive, delicate, shy, and closed appear to be more vulnerable and psychologically susceptible to being harmed and cannot manage detention easily.

Cultural difference can be treated as a vulnerability in detention. The lack of intercultural knowledge and training by staff can result in increasing detainees' susceptibility to the harmful environment of detention. It seems that one's cultural background is of more importance than the traditionally defined categories of vulnerable groups.

The detainment of families with children should be avoided as in every case this group was perceived by Caritas Poland as being vulnerable. The mothers' instinct becomes very strong but children do not cope with detention well. It could be further observed that persons receiving support from family members living in the country of detention seem to cope with detention better than those that have no family tight here and no support from outside.

Detainees live in 'black hole' with the suspense of not knowing what to expect next. Caritas Poland is sure that the improved provision of legal information would enable the detainees to avoid many of the negative effects of detention, such as sleeping problems, loss of appetite and feelings of uncertainty. The lack of concrete information on their legal situation and fear from being deported paralyses detainees. It determines their activity or passivity in detention. It seems that the period of detention is not as important as the knowledge on what to do next, i.e. what their court decision means in practice.

As a result solutions need to be implemented that minimize vulnerability that is related to uncertainty that is fostered by a lack of information. The creation of legal units within the detention centres that can have access to detainee information is one possible solution.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. Conclusions

Since the last monitoring of detention centres in 2007 that was done as a part of the "Ten New Member States Project" [227], a lot of positive changes can be observed. Yet a lot remains to be done. The renovation of detention facilities, the setting up educational units, the participation of detention staff in a number of trainings and increased cooperation with NGOs should all be seen as positive changes. However these activities do not address the most crucial factors for detainees as reported by them to the DEVAS researchers.

[226] Withing DEVAS project Caritas Polska conducted and interviewed Dorota Parzymies, President of Ocalenie Foundation. (http://www.ocalenie.org.pl/), that launched its activities in 2000. Since then they have operated and focus on the support of refugees and asylum seekers in Poland, capacity building of institutions, mediations, workshops, monitoring of the current situation of asylum applicants and refugees in Poland. It is worth mentioning in here that it is the first NGO in Poland who employed persons of Chechen origin as mentors. Malika Abdoulvakhabova is the vice president of the Foundation. Mentors of Ocalenie Foundation carry out intercultural workshops for Boarder Guards and Police. Their support with mediation is of extreme importance and effectiveness in centers – both detention and reception around Poland.

[227] See http://www.detention-in-europe.org/index.php?option=com_content&view=article&id=75&Itemid=88

The perspective of detainees should be taken into account more closely. Bringing about changes that are crucial for them are needed. Such changes should impact their awareness of their legal situation, and how they can plan for their future after detention. Detainees cannot live in constant stress caused by the lack of knowledge on what will happen to them, and how detention will impact their ability to integrate into the host country.

Therefore, we believe that a possible solution would be to create a unit within the detention that has access to each detainee's case file. This unit would then be able to provide the detainees the most updated and relevant information as regards their legal situation. It would solve the majority of the problems that exist in detention centres and without any doubt would diminish the stress that detainees experience.

Currently in Poland there are a lot of possibilities to finance the needs of foreigners. Caritas Poland understands that in many cases the Border Guard is not eligible for funding. Yet it is possible to collaborate with NGOs that would enable cooperation for long-term solutions. The scope of activities run by NGOs in Poland is very wide, starting from intercultural trainings and language course and ending with interpersonal mediation.

5.2. Recommendations

Caritas Poland would like to recommend the following solutions to be implemented in detention centres:

To the administration within the detention centres:

- **Ensure detainee access to information on their current legal situation, including the duration of detention, and possible scenarios for their lives after detention.**
  Upon detention all of the detainees are informed about their situation through official procedures. However what is most important for detainees is to know the duration of their detention and the possible scenarios for their future and their life plans.

- **Provide language courses for detention staff to improve staff-detainee communication.**
  Currently, there are no qualification criteria that demand foreign language knowledge for detention staff. This should be obligatory at least among medical staff so that an appropriate level of communication is ensured, and to allow detainees to better voice their medical needs.

- **Increase intercultural awareness and skills among detention centre staff.**
  The awareness of intercultural issues is quite low among the staff. Intercultural knowledge is in many cases essential to provide for the proper care of the detainees and to understand their requests or customs. Detainees come from different cultures and may seem different in many aspects – traditions, food, and customs. Staff should have appropriate knowledge of detainees' cultures in order to better understand their situations.

To policy makers:

- **Improve the monitoring of detention and provide for information exchange among detention centres.**
  At the moment there is no system of monitoring detention centres in a complex and regular manner. Such a system of monitoring should take into account the perspectives of both staff and detainees. At the same time information exchange and exchange of good practices in detention centres should be strengthened. Good practices should be exchanged between detention centres so standards can be raised in a common effort.

- **Cease the detention of children.**
  Children are most affected by detention, not only psychologically but developmentally as well. Children do not attend schools when detained and their behaviour changes in detention in an aggressive and hyperactive. Detention may impose traumas that can continue to negatively affect them later in life.

NATIONAL REPORT: PORTUGAL

By: Jesuit Refugee Service Portugal

1. INTRODUCTION

The DEVAS Project in Portugal was carried out by the Jesuit Refugee Service (JRS) Portugal. In Portugal there is only one detention centre, *Unidade Habitacional de Santo António* (UHSA) located in Oporto to which JRS Portugal has full access in the extent that the JRS representative works full time with detainees inside the centre.

UHSA is a temporary installation centre, managed by Border and Alien Service, for irregular migrants having received a removal order from the Portuguese territory. In a Memorandum of understanding signed on February 13th 2006, with the Ministry of Interior, International Organization for Migration and the Jesuit Refugee Service, a Commission of Monitoring and Evaluation was made responsible for monitoring the functioning of the Centre and ensure that the principles written in the signed Protocol and the internal regulations are fulfilled.

Although being a partner with other organizations, JRS' work at UHSA is autonomous from other institutions/organizations/services; the role of JRS is to provide holistic support to all detainees during their stay at UHSA, and to identify vulnerable cases among those arriving at the Centre and provide special protection for these persons. JRS also maintains a social team composed of a Clinical Psychologist who accompanies vulnerable migrants, providing psychosocial support during their period of stay of in the UHSA. The support given is mostly oriented in themes such as the reduction of anxiety and stress, adaptation to the installation in UHSA, preparing the return to the countries of origin (contact with families and/or local organizations when it's necessary and oriented to the specific needs of the migrant) and the preparation of life plans. Other members of the team include: a chaplain, and a group of visitors and volunteers (including cultural mediators who will provide support to the immigrants) who regularly visit UHSA as well as whenever specifically requested to do so. We can also count on the collaboration of other institutions like schools and universities (in areas like Group Dynamics and Psychology) that develop activities with the migrants in the UHSA.

The centre has the capacity to host 30 adults (15 women and 15 men) and 6 children. In each floor there is a "family room", with a bathroom, 2 beds and a cradle.

For the DEVAS Project, in Portugal, 31 detainees were interviewed. They are mostly irregularly staying migrants; only four had asylum-related situations (one asylum seeker, one rejected asylum seeker and two asylum seekers in the "Dublin II" system). This is related to the fact that in Portugal the detention of asylum seekers is not foreseen. Despite this they appear in detention because people can make their asylum claims after being detained for irregularly staying or there can be situations under the Dublin Regulation.

The detainee interviews were conducted by the JRS staff member working fulltime in the centre. Because the proximity with the detainees is very high, working full time with them every day, it was decided to designate another person so that a 'outsider', *per se*, would interview detainees. This person was a Psychology student doing her practical fieldwork in the centre under the technical supervision of JRS; all of the work was directly accompanied and supervised by JRS.

All the interviews were made in the JRS Social Office or in the centre's Medical Office, because both of these spaces are private and reserved and it was possible to assure the confidentiality of the interviews. All of the detainees made their verbal consent for the interviews but preferred not to sign the Informed Consent document.

In what concerns the NGO questionnaire only the *Doctors of the World* were interviewed because JRS is the only other NGO working in the centre and has one staff member working there fulltime so it was not possible to conduct an interview. The Staff questionnaire was answered by a member of the Portuguese Immigration Service working fulltime in UHSA. These questionnaires were not completed under the direct supervision of the researcher; but this was done so after consulting the project coordinator, JRS-Europe. The Legal Questionnaire was completed by a jurist working for JRS Portugal.

JRS Portugal would like to thank everyone that took the time to participate in this project, especially the detainees that so willingly answered the interviews with the objective to try to make a difference – even though not directly to themselves, but for others in the future – and to collaborate with JRS.

We would like to thank also Dr.ª Sofia Mexia Alves, who helped with the interviews and Dr. Rui Amaral Mendes and all the team from Doctors of the World (not only for their participation in the study but for all the help and support in all situations) and finally the cooperation of the Aliens and Borders Service, in particular of the coordinator inspector Ms. Helena Cabral.

2. NATIONAL LEGAL OVERVIEW

In this section we will list the relevant regulations/legal acts that concerns asylum and immigration, with particular focus on how administrative detention is regulated.

- Act n.º 27/2088, 30th June establishes the conditions and procedures for granting asylum or subsidiary protection and the status of asylum, refugee and subsidiary protection to applicants, by transposing into the national legal framework Directives numbers 2004/83 EC, of the Council, of 29th April, and 2005/85 EC, of the Council of 1st December (Asylum Act).

- Act n. º 23/2007, 4th July approves the legal framework of entry, permanence, exit and removal of foreigners into and out of the national territory (Immigration Act).

- Implementing Decree n. º 84/2007, 5th November, regulates the Immigration Act.

- Decree-Law n. º 85/2000, 12th May that makes equivalent the spaces created in the airports (under the Council of Ministers Resolution n.º 76/97 of April 17), to the centres for temporary installation, for the purposes of paragraph 4 of the article 22 of the Decree-law n.º 244/98 of 8th August, with the wording of the Act n.º 97/99 of 26th July, while not approved the legislation referred to in the article 6, Act n.º 34/94 of 14th September.

- Council of Ministers Resolution n.º 76/97, 14th May that establishes the guidelines for situation of passengers waiting to be sent back (given the situation of illegal immigration) and applicants of political asylum, on the provision of legal support, social support and security in the national territory.

- Act nr. 34/94 of 14th September, which defines the regime for accommodating aliens or stateless persons in temporary installation centres.

- Act n.º 115/2009, of 12th October that approves the Code of Penalties Execution and Measures of Freedom Privation. This law will come into force on the 12th April 2010 (art. 10.º)
  (Decree-law n.º 265/79, 1st August: revoked by art. 8 n.º 1 paragraph a) of Act n.º 115/2009, of 12th October.)

2.1. Legal grounds for ordering detention

In Portugal, according to the Act n. º 27/2008, 30th June, asylum seekers cannot be detained. They are free to move and stay wherever they want in the country. They are offered the possibility to stay in the reception centre of the Portuguese Refugee Council (CPR) but if they choose not to do so, they must find accommodation for themselves. Asylum seekers must also present to the authorities whenever asked to and inform them of their whereabouts.

The only detention-like situation that is provided for in national asylum legislation is a special procedure for asylum claims presented at borders by migrants who do not meet the necessary legal requirements for entry in Portuguese territory (Act n.º 27/2008, June 30th, article 26º). In such cases, asylum seekers must remain in the "international area of the airport or seaport" while awaiting a decision on the admissibility of their claim, which is taken by the National Director of the Aliens and Borders Service or, in case of review by the Administrative Court. During their stay at border points, asylum seekers are detained (they cannot enter the Portuguese territory) until:

- A positive decision on the admissibility of their claim is taken, which allows them to enter national territory; or
  - Deadlines for the referred decision are not respected, which allows them to enter national territory; or
  - When a final negative decision on the admissibility of their claim is taken the asylum seeker has to return to the point where his journey began.

Article 12º, paragraph 1 of the Asylum Act says that *"the application for asylum to prevent knowledge for any administrative procedure or process by criminal illegal entry into national territory brought against the applicant and family members who accompany"* and the article 146º, paragraphs 5 and 6 of the Immigration Law says that are not organized deportation proceedings against the alien who, having entered illegally on national territory, submits an application for asylum to any police authority within 48 hours after its entry and that he/she will wait the decision of their application in freedom. But the person who asks for asylum after these 48 hours and who already is on detention will not wait for the decision in freedom – in the first phase of the admissibility of the claim will wait in detention like in the cases of the border points.

Act n.º 34/94, September 14th, defines the regime for accommodating migrants or stateless persons in temporary accommodation centres. Within it, article 2º, makes reference to asylum seekers, but to the extent that allows their installation in such centres for humanitarian reasons, qualified by law as a "social support measure" (when the migrant does not have means to provide for himself). In such cases, the installation (not detention) is determined by the National Director of the Border and Aliens Services and after a written demand by the migrant and consultation with the Regional Centre of Social Security about the existence of a situation of economic and social need (art. 2.º of Act n.º 34/94, 14th September).

Conversely, irregular migrants can be detained in Portugal (Act n. º 23/2007, July 4th, Section II, Removal ordered by administrative authority, articles 145º and 146º). The installation in those cases is made by "security reasons" and it is legally qualified as a "detention measure" (art 3.º and 4 of Act n.º 34/94, September 14th).

In practice, irregular migrants are not immediately detained. Usually, the immigration authorities (SEF) give them a 10 day or a 20 day period to leave the country voluntarily. If they do not obey they risk being detained by the police and brought before a criminal court within a maximum period of 48 hours, so the judge (judge of primary criminal jurisdiction, or judge of the district – Act n.º 23/2007, July 4th, article 146º, n.º 1) can validate or not the detention and

decide whether to apply coercive measures. The decision to detain should be judicially reviewed at the end of each period of eight days (Act n.º 34/94, 14th September, article 3, n. º 2).

The two kinds of installation centres (for humanitarian reasons and security reasons) could be in the same building (art. 5.º of Act n.º 34/94, September 14th), but in this case there must be a separation of access and their respective areas (that is the case of the transit zone which is equivalent to the CIT at the international airport of Lisbon).

In the Portuguese territory alternatives to detention can be:

- Periodic presentations at the Aliens and Borders Services: Act n.º 23/2007, July 4th, Chapter VIII;
- Removal from national territory, Section I – General arrangements, article n.º 142, n.º 1 a);
- The obligation to stay at home using electronic surveillance means according to law: Act n.º 23/2007, July 4th, Chapter VIII – Removal from national territory, Section I – General arrangements, article n.º 142, n.º 1 b);
- Term of identity and residence: Code of Criminal Procedure, Act n.º 78/87, 17th February, article 196º;
- Caution/Guarantee: Code of Criminal Procedure, Act n.º 78/87, 17th February, article 197º;
- Obligation to submit periodically: Code of Criminal Procedure, Act n.º 78/87, 17th February, article 198º;
- Suspension of the exercise of profession, function, activity and rights: Code of Criminal Procedure, Act n.º 78/87, 17th February, article 199º;
- Prohibition and enforced conduct: Code of Criminal Procedure, Act n.º 78/87, 17th February, article 200º;
- Obligation to stay at home: Code of Criminal Procedure, Act n.º 78/87, 17th February, article 201º;

The competent authorities to detain irregular migrants are the agents of criminal law: Aliens and Borders Service (SEF); the National Republican Guard (GNR); the Public Security Police (PSP); The Judicial Police (PJ) and the Maritime Police – Act n.º 23/2007, July 4th, article 146º, n.º 7.

The irregular migrant and the asylum seeker have the right to an interpreter during the hearing that determines if the detention will take place or not (Act. n. º 27/2008, 30th June, article 49º). This interpreter is paid for by the state (Act. n. º 27/2008, 30th June, article 49º, n. º 3).

2.2. Legal grounds for the right to appeal a detention order

The right to appeal a detention order is laid down in Act n. º 23/2007, 4th July, article 146º, n.º 1 in the extent that it is said that after the irregular migrant is detained he/she has to be brought before a criminal court within a maximum period of 48 hours, so the judge (judge of primary criminal jurisdiction or judge of the district – Act n.º 23/2007, July 4th, article 146º, n.º 1) can validate or not the detention and decide whether to apply coercion measures. The decision to detain should be judicially reviewed at the end of each period of eight days (Act n.º 34/94, 14th September, article 3, n. º 2)

The detainee is informed about his/her detention and right to appeal. In the case of asylum seekers this is foreseen in the Act n. º 27/2008, 30th June, articles 24º and 49º, N.º s 1 and 2, and for irregular migrants is foreseen in art. 7.º of Act 34/94, 14th September and articles 7.º paragraphs j), l), m), n), 117.º and 124 n.º 2 of Act 115/2009, 12th October. In what concerns irregular migrants, case law also states that the migrant in an irregular situation, arrested by the police and submitted to the judge, needs to be heard by the judge in order to be clearly informed about the causes of detention and the granting of means of defence (Judgment of RL of 25-03-2004 – Case N. º 8454/2003 – 9).

The detainee can also appeal against the detention conditions (art. 7.º of Act 34/94, 14th September and articles 116.º and 124 n.º 2 both of Act 115/2009, 12th October).

2.3. Legal grounds for instructions on the right to appeal a detention order

The case law states that a migrant in an irregular situation, arrested by the police and submitted to the judge (art. 146.º of Immigration Act), needs to be heard by the judge, in order to be clearly informed about the causes of detention and the granting of means of defence (Judgment of RL of 25-03-2004 – Case N. º 8454/2003 – 9). The irregular migrant, with the help of a counsellor, may present his or her defence to the court to try and get the arrest invalidated. The detention decision should be judicially reviewed at the end of each period of eight days (Act n.º 34/94, 14th September, article 3, n. º 2).

2.4. Legal grounds for maximum duration

As it was said before, asylum seekers cannot be detained in Portugal. The only detention-like situation occurs when the asylum claim is presented at border and the asylum seeker does not meet the necessary legal requirements for entry in Portuguese Territory. In these cases, the Asylum Act foresees an accelerated special procedure. The National Director of the Border and Aliens Service makes the admissibility decision within 5 (five) working days. An appeal can be lodged against that decision before the Administrative Court within 72 working hours. A final decision must be reached within 72 working hours – the asylum procedures at the border points has shorter deadlines that the in-country procedure in order to minimize the negative impact of a detention-like situation (Act. n. º 27/2008, 30th June, articles 24º and 25º). But such a short deadline has a risk: the time may not be enough for an appropriate inspection of the asylum claim.

In what concerns irregular migrants, the maximum period for detention in a closed centre is 60 days (Act. n. º 23/2007, 4th July, article 146º, n. º 3). After that period the migrant must be released and he or she is free to go into the community (some of them have a place to go, others do not). If the migrants do not have a shelter and ask for help, JRS staff in UHSA provides social and psychological support. The majority of these cases are undocumented migrants with an expulsion procedure running. Portuguese authorities cannot send them back to the country of origin because of the lack of documents proving their identity and nationality. On the day that the migrant is released the migration authorities' notifies him/her of the final negative decision related to the expulsion procedure, and gives them a 10-day or 20-day period to leave the country voluntarily. If they do not obey, they risk being detained once more (the maximum period is 60 days) – article 161º of the Immigration Act (Disobedience to the removal decision).

Alternatively, if the expulsion procedure it is not concluded yet (which is rare) the measure of detention is changed into an alternative measure, which is usually the "Term of identity and residence" (periodical presentations to the authorities).

Migrants can also be detained once more in case of violation of the measure of entry interdiction (article 187º of Immigration Act).
Therefore, the same person could be detained in UHSA more than once. On occasion this does occur.

2.5. Legal grounds for contact with the outside world

The access to the asylum seeker is foreseen in the Asylum Act, in relation to the access to the open centres in which they can be placed, by lawyers, family members, UNHCR and the Portuguese Refugee Council (The Act n. º 27/2008, 30th June, articles 49.º and 59.º).

In the transit zones asylum seekers are allowed to contact lawyers, UNHCR, the Portuguese Refugee Council (the operational partner of the UNHCR in Portugal), direct family members (spouses, sons and daughters, parents, brothers and sisters) and diplomatic or consular entities. They can also use the telephone, but only for short periods of time, unless they pay for the phone call.

While in detention in the UHSA, the detainee can have all the visits that he/she wishes to receive (after a verification of their legal situation). They can also use the telephone and other means to communicate. (Art. 7 of Act n.º 34/94, 14th September and articles 7.º paragraph e, art. 58.º to 73.º and art.124 n.º 2 of Act 115/2009, 12th October).

2.6. Legal grounds for health care provision

The Act n. º 27/2008, 30th June, in its articles 49º a) iv), 52º n.º 1 and 2, 56º n.º 2 and 61º n.º 1 and 3, states that asylum seekers have the right to health care.

While in detention irregular migrants also have the right to health care. They have access to the National Health Service in the same way that Portuguese citizens do (art. 7.º of Act 34/94, 14th September and articles 7.º paragraph a), i), art. 32.º to 37.º and 124 n.º 2 of Act 115/2009, 12th October).

2.7. Legal grounds for the protection of persons with special needs, or particularly vulnerable people

The Portuguese law, in its Asylum Act, foresees the protection for the unaccompanied minors (Act. n. º 27/2008, 30th June, article 26º, n.º 2, and articles Nºs 77º and 78º), for the victims of torture and violence (Act. n. º 27/2008, 30th June, articles Nºs 77º and 78º, n.º 3 and article 80º), for traumatised persons (Act. n. º 27/2008, 30th June, articles Nºs 77º and 78º, n.º 3 and article 80º) and for families (Act. n. º 27/2008, 30th June, articles Nºs 51º n.º 2 and 59º, n.º 1 a) and b)).

2.8. Legal grounds for accompanied and unaccompanied minors

The Portuguese law, in its Asylum Act, foresees the protection for the unaccompanied minors: Act. n. º 27/2008, 30th June, article 26º, n.º 2, and articles Nºs 77º and 78º. This Act, in its article 79º, n.º 4 states that unaccompanied minors under 18 years old cannot be detained and are transferred to special centres. Minors aged over 16 years old, however, are considered legally responsible and are, therefore, treated as adults.

2.9. Legal grounds for any other rights

The Act n. º 27/2008, 30th June, in its articles 56º, 57º, 58º and 59º, states that asylum seekers that do not have necessary material conditions such as health, shelter, and access to basic funds, have the right to social support in these areas.

Concerning legal aid for asylum seekers, this is foreseen in the Act n. º 27/2008, 30th June, articles 25º n. º 2, 49º n.º 1 d) and n.º 4, 59º n.º 4 and 63º. The Act n.º 34/2004, 29th July, in its article 7º n.º 1 and 2, extends this right to all the migrants, regular and irregular, and stateless persons that show that they are in a situation of economic need (irregular migrants are provided this service in the same way as Portuguese citizens).

Only asylum seekers in the Portuguese territory (and in open centres) can obtain financial support.

3. OVERVIEW OF THE NATIONAL DATA FINDINGS

The age average of the detainee sample is 31 years old; 58% were male and 42% were female, all single and mostly from South America or the Balkans region (only a minority came from Central Africa). Almost everyone was irregularly staying awaiting deportation (only four cases were related to asylum claims).

3.1. Case awareness

Everyone claimed that they knew the reason for their detention; more than half were informed by the police or in court, while others learned during their arrest for detention, or during immigration procedures. Nevertheless, the majority of the detainees say that they need more information on the legal situation concerning their asylum or immigration case. Many feel it is their right to know; others need it to prepare for the immediate future, and yet others need it because they it is necessary to better adjust to the situation – “There should be more information about our legal situation (once a week); explain better the procedures”.

3.2. Space

About the centre itself, the opinions are somewhat divided. Almost half of the detainees refer to the room in a neutral way but say, for example, that the mattress is too hard, the room is not comfortable, the air is not that good or even that should be more than one person per room. Mostly they refer to the room as “ok” or “fine”. The rest of the interviewees describe the room positively. They have individual bedrooms but some people make remarks about the size of the bed. The conditions of the centre are good, in general; and this opinion is shared by the NGO in the centre: “There is a small bed - rather small if the detainee’s stature is somehow higher than the average - and a desk. Heating is available and each detainee has his/her own room, which enables him or her to maintain their privacy. There are some rooms, intended for detainees with children, who have two beds and a cradle and a private bathroom”.

When we look at the opinions about the rest of the space the results are more or less the same. Many either feel positive or neutral about the centre space. They do not feel that the centre is overcrowded and they often use the room as a personal and private space. We find the same opinion in the NGO and Staff Questionnaires. In this last one it’s said that the space in the centre is enough for the people who are there “because we can’t exceed the maximum capacity”.

3.3. Rules and routine

Detainees are aware of the rules and feel that they are mostly respect by everyone. But they do not feel that they have the possibility to change them if they wanted to. The detainees are, in general, content with the rules with the exception that they would like to be able to use their mobile phone when they want to (they have a limited period of the day in which they can have access to it – during the week it is from 14h to 16h; on weekends it’s available for an more extended period, also during the morning): “There are schedules to eat, time to go to sleep, we can’t have watches and so, only having your cell at a certain time”; “There are rules to go to bed and wake up, eat and to use your cell. It’s necessary to have rules or else it would be a mess. The rules are adequate.”; “We have to go to sleep at 22h, we only have our mobile phones for 2 hours a day (except on weekends), we can’t go to the outside space (sports field) when we want to.”

3.4. Staff

Detainees say they are most frequently in contact with the security staff; and the majority feels very positively about their interaction with them. Almost all of the detainees say that they never felt any kind of discrimination from the security staff. In fact, 86% of the people say that the staff supports most or even all of their needs. All of the detainees feel that they have someone in the centre that they can trust, whether it’s the security staff, co-detainees or even JRS staff. Many remark that the interaction between detainees is good, but a significant minority also describe problems that exist between detainees, such as arguments over use of the facilities. Most agree that these tensions are merely due to the common living situation that detainees find themselves in.

3.5. Safety

Many detainees describe themselves as feeling very safe in the detention centre. No one reports feeling less than "moderately safe". They attribute this level of safety to the quality of living conditions and to the security staff: "Because I know that I won't have any problems with anybody and that the security guards also wouldn't allow it to happen."

They do not tend to report any incidents of abuse in the centre. Most do not report having experienced incidents of verbal ridicule or mocking; and the few persons who did report such incidents attribute it to arguments with other detainees as a result of cultural, ethnic or racial reasons. Only one detainee described an incident of physical assault, blaming it on a quarrel with another detainee.

JRS-Portugal regularly collaborates with a group of cultural mediators that come to UHSA whenever necessary, or upon detainees' request. This group of mediators helps detainees to peacefully resolve problems in the detention centre. As a result, only two detainees described having made formal complaints about the quality of their rooms; both cases were positively resolved.

3.6. Activities

Detainees are aware that activities are provided for in the centre, and most actively participate with fellow co-detainees and even with staff. Many watch movies or television programmes, read, and engage in other entertainment-type activities and also sports. Detainees participate mostly to make use of their time, as well as to relieve boredom and release stress. They have access to books, telephones, television and outdoor space but no access to computers and Internet, educational opportunities, sports equipment and a religious space. In JRS-Portugal's experience, it is not uncommon for detainees to request for a gym to be placed in the centre so they can engage in sports activities whenever inclement weather prevents them from going outside. Most detainees would like to see an increase in the number of activities provided in the centre.

3.7. Medical

The Doctors of the World (*Médecins du Monde*) provide medical support to detainees on a weekly basis. JRS-Portugal also enlists the support of additional volunteers, and especially doctors and nurses who have participated in JRS-Portugal's qualification recognition programmes. The detention centre offers to transport detainees with mental health needs to psychiatric services, and also to the local area hospital for additional medical needs. Detainees that are transported to external medical care providers are typically accompanied by the Immigration Service and by a JRS-Portugal representative.

A large majority of detainees are aware of the presence of medical staff in the centre; all meet with medical staff at least once a week, and everyone reports that they received a medical exam when they first arrived to the centre. They feel that the communication with the medical staff is effective, and done in a way that is understandable. Some detainees express a need for additional medical services such as HIV testing, more doctors on call and consultations with dentists and eye care specialists.

The good quality of the medical services in the centre is confirmed a representative from Doctors of the World: "Overall, I would say that the medical services are fully equipped to address most of the medical conditions usually diagnosed in the detainees. Emergency equipment is also available. Dental care is not provided due to the lack of specific equipment. Nonetheless, whenever necessary, the detainee will be referred to a hospital for specific treatment".

Physical health

A majority of detainees agree that detention has had an impact on their physical health. But half say that this impact has been positive. In fact, detainees report that their physical health has improved in detention. According to the experience of JRS-Portugal, this perception of physical health is likely to be related to prior conditions of alcohol and drug abuse that many persons experienced prior to their detention. In the UHSA they are required to participate in drug rehabilitation programmes; as a consequence their physical health improves, sometimes in a very dramatic fashion. The available of mental health treatment is an important factor in detainees' perception of the medical care. According to Doctors of the World, "They get medical treatment and are also accompanied by a psychologist".

Mental health

Detainees do not feel as optimistic about their mental health as they do for their physical health. When asked, most describe their mental health as being "fair" in detention. Almost everyone in the sample admits that detention has negatively impacted their mental health, mostly in the level of psychological stress they experience. In this respect detainees frequently reported feeling anxious, tired, and depressed, as well as feeling worried about what will happen to their life after detention. Mental health complaints are often presented alongside physical health complaints, according to Doctors of the World: "Headaches/migraines are usually associated with anxiety and insomnia". The deprivation of freedom that comes with detention is often reported by detainees to be a primary source of stress and anxiety.

3.8. Communication with the 'outside world'

Detainees have the right to receive visits on a daily basis from families, friends, lawyers, consulate representatives, religious persons and human rights organisations. In practice, however, detainees remark that they do not tend to regularly receive visitors. A number of detainees say that their family and friends are located in their country of origin, meaning that they have little such networks available to them in Portugal. But just over one-third admits to receiving visits from lawyers.

Detainees stay in contact family and friends mostly by telephone, since they have no access to the Internet and they tend not to use the postal system. Public telephones are available in the centre, and detainees who cannot purchase telephone cards can usually use JRS-Portugal's telephone. Most detainees disagree with the centre's strict policy on the restriction of mobile telephones. Detainees typically report to not understand the restrictions to their private property: "The schedule of the food is ok but I don't agree with the schedule for having your cell, it doesn't make sense". Despite the availability of public telephones, which require the use of telephone cards, a large number of detainees would be more content if they could use their personal mobile telephones.

3.9. Conditions of detention and nutrition

Detainees' opinions about the food in the centre are almost equally divided between those who like and dislike it. Just over one-third of detainees who do not like the food attribute their disapproval to the lack of variety: "Fish, potatoes, rice, soup; Fish, potatoes, rice, soup; Fish, potatoes, rice, soup … Not enough variety!" Others say that the stress of detention has somehow decreased their motivation to eat regularly. Despite this, detainees do report to eat well, with 61% saying that they have even gained appetite. JRS-Portugal's experiences with detainees reveal that this may have a lot do with detainees' lives prior to detention, in which many dealt with alcohol and drug abuse, and even homelessness.

3.10. Conditions of detention and the individual

Almost half of the detainees that were interviewed say that they do not sleep well at night. Many of these detainees blame stress and worry as primary causes for their insomnia.

The mere imposition of detention itself, and the psychological stress that comes as a result, is a difficulty that detainees frequently experience. The loss of rights is another frequently reported problem for detainees: “being locked up”, “the lack of freedom”, “being closed in here”. To a slightly lesser extent detainees refer to other factors that make life in detention harder: not knowing anyone, the slow passing of time. Some described the first days of their detention as being the hardest. The quality of the living conditions in the centre, such as the inability to sleep, the quality of the food, the lack of activities and the strict rules are additional difficulties frequently reported by detainees.

Despite these expressed difficulties, 81% feel that their situation improves as time passes, especially when they compare it to the first difficult days of detention. According to their response on the questionnaire, detention centre staff states that this perception of improvement may be due to the services available in the centre: “They receive medical and psychological support”.

Over half of detainees admit that they do not know what the outcome of their detention will be; but most do not feel particularly negative about this. Many detainees also know exactly when they will leave detention (either because they had arranged a flight from Portugal, or because they know about the 60 day detention limit). Over half of detainees who do not know when they will be released describe experiencing psychological stress and anxiety, mostly because they are unsure of what will happen to them and how they will be able to carry on with their life post-detention.

The detention centre staff states that detainees are given assistance toward the preparation for an eventual return to their country of origin, if it turns out that they must return.

Most detainees hold positive perceptions of themselves. Just over one-third says that detention has actually improved their self-perception. As described in other chapters within this report, this may be related to the social problems that some detainees experienced prior to their detention. Yet exactly one-third do say that they think worse of themselves as a result of being detained. It is not uncommon to hear detainees describing feelings of shame at having to return to their country as a “deported person”, returning “empty-handed” without achieving their dream of a better life and sometimes returning even in a worse situation than they were in when they left their home country: “Being arrested and going back as a deported … I feel very bad and I’m going to be seen badly going back like this. It’s a shame”. Three tenths of detainees say that their self-perception has been left unaffected by detention.

A majority of detainees do not report possessing special needs. The minority who do describe needs that are not usually officially recognised as being “special needs”, for example, not having correct immigration documents. According to detainees who express this need, not having the right immigration documents places them in a situation of vulnerability due to their lack of official rights: “Not having documents makes you have no rights… without documents I can’t do anything. If I had documents I could work and all, it would be better“).

Detainees feel differently about other people in the centre: in this case, everyone is able to identify vulnerabilities in other detainees. Here detainees typically describe needs that are related to detainees’ mental health, e.g. detainees who are “sad”; in other cases, detainees attribute the country of origin as a factor of vulnerability. Some go so far as to say that the people who work in the centre are vulnerable: “Everyone that works here, because we stay here but we all leave and you always stay here…”; “Nobody in particular. Sometimes the people who work here, you and not u”; “In here I don’t think there are any… maybe you (laughs a lot). You needed more help and you don’t have it”. Just

over one quarter of detainees say that everyone in the detention centre, rather than people with particular factors, possesses special needs.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

The data reveals that many detainees describe their situations in relatively positive terms. However, the data reveals an interesting pattern: negative responses are low within the first month of detention, but after one month they increase significantly, and in the second month they decrease again. This trend may be related to the 60 days maximum period of detention, meaning that detainees may feel positive as they approach the end of their time in the centre, but negative during the mid-point of detention: “The beginning is difficult but when you are here for a long time it gets even harder. When you are here for a month, time passes slower“. For example:

- Sleeping patterns: the numbers indicate that 13 percent who say they don’t sleep well are in their first weeks of detention. That number increases to 60 percent for people who have been detained for one month, and goes back down to 27 percent for people who have been detained for two months. Additionally, nine percent of the persons who report insomnia as a consequence of stress and worry are within their first weeks of detention, 73 percent are in detention for one month, and only 18 percent are in detention for two months.

- Knowledge of departure date: Eleven percent of those within their first weeks of detention report not knowing when they will be released from detention; this number increases to 79 percent for those who have been detained for one month, and goes back down to eleven percent for those who are in their second month of detention. When detainees were asked how not knowing their departure date affects them, more people reported negative factors after one month in detention – anxiety, uncertainty, worry about family, disruption of their life plan – than those who have only been detained for a few weeks at the time of the interviews and those who have been detained for two months.

- Top difficulties: 14 percent of those who are detained for less than one month attribute their top difficulty in detention to the ‘loss of rights’; this number increases 79 percent for those detained for one month, and back down to seven percent for those detained for two months. Similarly, more detainees complain about the standard of living conditions after one month of detention than those who have been detained for less than one month or more than two months.

- Physical and mental health: Detainees increasingly articulate their level of physical and mental health, either positively or negatively, when they are in detention for one month, than when they are detained for less than one month or for two months.

All this suggests that newly detained people in Portugal tend to react positively to the situation of detention. This can be related to the fact that a significant number of the detainees interviewed engaged in problematic behaviours prior to detention such as drug usage, prostitution and petty crime. Because of this, they may initially perceive detention as being positive due to the relatively good standard of living conditions, the social support they receive from centre staff and the psychological support and medical treatment that is available to them. However, the data shows that these initial positive reactions become more negative when people are detained for one month. These negative reactions tend to diminish again when people are closer to the end of the 60 days period (the maximum duration of detention in Portugal). This would suggest that detainees might be more susceptible to the negative factors of detention after the novelty of the situation wears off, but well before their release date.

From this we can conclude that the period in which detainees in Portugal are most vulnerable is at the mid-point of their term in detention, e.g. between four and six weeks. This is when they expressed the most negative factors of

detention: anxiety, nervousness, stress, uncertainty, poor living conditions and disruption of their life plan. We can see the same effect for their level of physical health, but in this case the descriptions are more positive. This may be due to the good standard of physical health care, or even due to the fact that detainees are unable to engage in the problematic behaviours they did prior to detention.

The data also shows that the staff in the detention centre appears to play a critical role: the positive level of interaction appears to benefit detainees. For example, the numbers indicate that detainees who positively rank their level of safety in the centre also positively rank their interaction with the staff. Similarly, detainees who feel safe say that the staff supports their full range of their needs. These findings are not fully conclusive: detainees who feel positively about the staff also report experiencing the negative factors of detention.

Thus we can infer that firstly, the staff are at least not contributing to the negative experiences of detainees, and secondly, that no matter what the level of staff treatment is, detainees may continue to experience the negative effects of detention. The data is not fully clear on this point. But the type of answers and JRS-Portugal's own observations in the UHSA indicates that detainees generally have a favourable attitude towards staff, especially the security staff; some detainees even labelled the centre staff as being 'vulnerable'. From this we could conclude that while the quality of treatment from staff may impact positively the experience of detention, it might not prevent the overall negative experience that is associated to it. On this point, the detention centre staff is in agreement: "I think they feel that it [detention] is a situation of waiting and uncertainty".

5. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

The data shows that, in general, the conditions of detention in Portugal are good. In fact, they may even be better than conditions of detention found in other EU Member States.

Detainees generally feel safe in the centre, and attribute their safety to their positive interactions with security guards. The medical services are sufficient enough to address many of the needs expressed by detainees. Psychological support is provided, both by JRS-Portugal but also by external providers. Detainees' rooms are able to provide a large measure of privacy, and the conditions of the centre are quite hygienic.

Despite these positive factors, migrants continue to have negative experiences as a result of their detention. Strikingly, detainees in Portugal seem to be particularly vulnerable during the mid-point of their detention: after the novelty of the situation has worn off, but well before they are to be released. Here we witness the mental health consequences of detention in the form of anxiety, psychological stress and self-uncertainty. Even the best conditions of detention cannot take away from the fact that detainee rights to movement and to manage their lives are severely curtailed: "Everyone, all the people who are in this situation are affected, no matter in what way". Doctors of the World, the only other NGO to actively operate within the centre describes detainees as being regularly anxious.

The lack of information is an oft-repeated concern made by detainees. Here we observe that the possession of information is an important factor for the way detainees experience their time in the detention centre: the inability to plan for the future, or to even adjust to the present situation of detention, does have an impact on detainees' level of stress and anxiety.

As is the usual situation in detention, detainees often express not having the ability to exercise personal choice, insofar as it can impact the daily regime within the detention centre. It is on this point where detainees, Doctors of the World and the detention centre staff disagree: detainees feel that they cannot exercise any degree of influence on the

rules and routine of the centre; Doctors of the World admits that detainees can influence changes so long as such changes do not jeopardise the safety of co-detainees and staff, and so long as the changes do not exceed budgetary restrictions; the detention centre staff clearly states that detainees merely need to speak with the coordinator of the centre if any type of change is requested.

Recommendations

Even in good conditions, the DEVAS research indicates that detention can still be a very negative experience for detainees. *Therefore JRS-Portugal recommends that detention should only be used as a last resort, when all other alternatives to detention have been exhausted.* This should especially be true in cases where there are pre-existing conditions that might make migrants more vulnerable: for example, physical or mental health conditions (including alcohol and drug abuse), minors that are unaccompanied, and families.

If detention is unavoidable, then *detainees should regularly undergo holistic evaluations that would determine the necessity of detention.* These evaluations should be held periodically in a manner that can determine if detention is still necessary and proportional to the migrant's specific situation.

This is especially important for migrants who apply for asylum request while they are already in detention for the purpose of removal (as described in this report's legal chapter, Portugal does not detain asylum seekers). The continuation of detention for asylum seekers in these cases could amount to a "double persecution", in the sense that it negatively impacts people who may already possess histories of trauma related to their flight. Furthermore, the asylum seeker should not stay in detention during his or her asylum procedure, because there should not be any presumption that the asylum seeker will be eventually removed, especially while the procedure is ongoing.

Since language is such a critical factor in detention, *interpreters and translations should be made accessible to detainees at their request*. The inability to communicate in an understandable language can increase detainees' sense of isolation, and can lead to mistrust and conflict between detainees, and even between detainees and staff.

Detainees should also have access to effective legal aid and/or representation, from the beginning of their case, whether it is an asylum claim or an immigration case. This assistance should be provided in a language that detainees understand.

Means of communication to the 'outside world' should be improved by the provision of Internet connections and facilitated access to detainee's personal mobile telephones. The DEVAS research shows that an inability to remain connected to persons and networks in the 'outside world' can have a very detrimental effect on detainees' mental health and on their sense of isolation.

The detention centre should provide for more activities to engage detainees' physical and mental capacities. Idleness can lead to an increase in psychological stress for detainees. This is why it is important to provide activities so that detainees can benefit from the time that they spend in the detention centre. In this way, if detention has to be implemented, then it should be done in a manner that brings the least amount of harm to the individual.

The DEVAS research shows that it is very important for the situation of detainees to be monitored by independent bodies and organisations. *This is why JRS-Portugal recommends that migrants detained in transit zones at the airports (known as 'CITs') should have access to social and humanitarian support provided by NGOs.* In this way the UHSA experience (the Memorandum of Understanding between the Ministry of Interior, the International Organization for Migration, and JRS-Portugal) demonstrates that the presence of NGOs in places of detention is very important for monitoring detainees' level of vulnerability, to help detainees to remain informed about their situation and to ensure

that the harmful effects of detention are kept to a minimum degree as possible. Moreover, evaluations show this model to be a good practice at both the national and European level.[228]

[228] See: European Parliament Report on Detention and Open Centres 2007 (http://www.libertysecurity.org/IMG/pdf_eu-ep-detention-centres-report.pdf); Global Detention Project (http://www.globaldetentionproject.org/countries/europe/portugal/introduction.html); SEF's Activities Plan 2009 http://www.sef.pt/documentos/56/PA2009.pdf; UHSA website: http://www.imigrante.pt/site-quinta-santonio/videos/2.htm

NATIONAL REPORT: ROMANIA

By: Jesuit Refugee Service Romania

1. INTRODUCTION

The Jesuit Refugee Service Romania (JRS-Romania) is an independent, humanitarian NGO whose mission is to accompany, serve and defend the rights of refugees, forced migrants and asylum seekers, advocating on their behalf from their first arrival in Romania until they are satisfactorily settled. This mission embraces all persons who are driven from their homes by conflict, humanitarian disaster or violation of human rights and whose needs are most urgent and unattended by others or simply forgotten – generally referred to as "destitute persons". JRS-Romania is also focused on persons kept in detention centres, mostly rejected asylum seekers.

JRS-Romania provides supplementary support to government and other NGOs in migrant detention centres (public custody centres)[229], covering legal counselling, social assistance and emergency aid. Close cooperation is maintained with UNHCR, the Romanian Immigration Office and IOM while lawyers and judges are supported through JRS Documentation Centre on Country of Return Information. An important part of JRS-Romania's work continues to be lobbying the Government for improvement of legislative policies, including protection of tolerated persons, detainees, refugees and asylum seekers.

As part of its advocacy work, JRS-Romania monitors detention conditions and practices through different projects and research studies. One of these projects is DEVAS – "Detention of Vulnerable Asylum Seekers" – a European project implemented in 23 EU Member States partly funded by the EU Commission and lead by JRS-Europe.

JRS-Romania targeted detained irregularly staying third-country nationals and particularly the asylum seekers that are found in detention centres in exceptional cases. The research was based on empirical findings coming from vulnerable groups in detention, conditions in these centres and how people cope with them.

The objective was to identify how detainees become vulnerable (factors and circumstances that could lead to vulnerability) in order to advocate for the improvement conditions in these centres, and more importantly, to advocate for stronger protections and alternatives to detention for vulnerable persons.

As regards to the research instruments, two social questionnaires were used to interview two distinct groups:
1. Detained asylum seekers and/or irregularly staying third-country nationals who are in detention
2. NGOs that work in the detention centres of concern

A legal questionnaire was used to research the existing laws related to detention. Topics addressed in these interviews included: duration of detention, health care, psychological support, legal counselling, visits from the "outside world", etc.

[229] Romanian aliens' legislation provides for "public custody" notion instead of the notion of detention, which is widely used across European and is also used in this report. For details see chapter 2.1.

JRS-Romania conducted 24 interviews in the Arad and Otopeni detention centres in the period between March and July 2009.[230] Before all interviews took place, prior written voluntary and informed consent of the interviewees was obtained. A JRS legal counsellor was interviewed as well.

JRS-Romania would like to express gratitude to the Romanian Immigration Office for its support provided in carrying out the interviews, access in the facilities and the overall activities under the DEVAS project.

2. NATIONAL LEGAL OVERVIEW

2.1 Legal grounds for detention[231]

The legal grounds for detention are foreseen by the following laws: The Emergency Ordinance of the Romanian Government no. 194, Republished, issued 12 December 2002, on the Regime of Aliens in Romania; and the Law no. 122 concerning the Asylum in Romania, issued 4 May 2006.

In Romania, asylum seekers are not detained for the sole reason that they have applied for asylum. Romanian authorities will not apply criminal sanctions for illegal entry or residence to asylum-seekers who enter or reside on Romania's territory without authorization. However asylum seekers can be detained under certain conditions. Asylum seekers are detained only if they have an expulsion order,[232] are declared 'undesirable' or if they asked for asylum at the state border checkpoints.

The migrant who requests protection in Romania (at the state border checkpoints) will remain in the transit area of the state border checkpoint until the decision to approve entry to Romania or the decision to reject the asylum application has been received and is irrevocable. The migrant should not remain in the transit area for longer than 20 days. The asylum seeker can be accommodated in special centres for reception and accommodation located near the border crossing points. These centres have the legal status of transit zones and have been established by order of the Ministry of Administration and Interior.

The asylum seeker cannot be expelled, extradited or forcibly returned from the border or from Romanian territory, except for the cases mentioned in Article 44 of Law no. 535/2004 regarding the Prevention and Fight Against Terrorism (art. 6 (1) of the Asylum Law). The asylum seeker can be taken in detention according to the provisions stipulated by the Law for Foreigners. (art. 75 (1) and (2) of the Methodological Norms for the application of the Asylum Law).

For justified reasons of public interest, national security, order, health and public morals, protection of the rights and freedom of other people – even if the migrant has the material means necessary for subsistence – the Romanian Immigration Office can establish a place of residency and can arrange transportation with a companion to that place for the entire duration of the asylum procedure, at the request of the qualified authorities.

Taking the migrant into public custody is a measure of temporarily restraining the freedom of movement on the Romanian state territory, and is ordered by a magistrate towards a migrant who could not be removed under escort

[230] These are the only two detention centres for irregular migrants on the Romanian territory. No interviews were carried out in the transit zones. Due to the caseload, most of the interviewed migrants were in Otopeni Centre; however, the report does not make a distinction between the two centres.
[231] The report does not cover prison facilities for migrants convicted in Romania and serving their sentences; however, in practice, this category of migrants are mostly at risk of becoming irregular on the territory and thus to be further taken into public custody after their release from the prison.
[232] In Romanian legislation the term "expulsion" is used for the penal/criminal sanction imposed following a deed committed by an individual. The aliens' legislation is using the notion of "removal" from the territory for the administrative measure of "expulsion".

within the term provided by law. It is also used towards a migrant declared as undesirable or against whom the court ordered the penal sanction of expulsion.

In the case of migrants who crossed the state border illegally and of migrants whose stay is illegal and whose identity could not be established, an order shall be issued for return under escort as well as an order to take the person into public custody. When there are serious indications that the removal under escort cannot be carried out within 24 hours, the migrant shall be taken into public custody.

The return order is an administrative order of the Romanian Immigration Office or its territorial units, used when migrants do not voluntarily leave Romanian territory upon expiry of the validity term of the return order (migrants whose entry was illegal, whose stay on the Romanian territory became illegal, whose visa or stay right was annulled or revoked, whose permanent stay right expired and against former asylum seekers[233]who are compelled to leave the Romanian territory). Removal under escort may also be carried out in the case of migrants with physical or mental disabilities or of those who are a threat to public health.

The penal sanction of expulsion may be ordered against the migrant who committed a crime on the Romanian territory, under the conditions provided by the Criminal Code and the Criminal Procedure code. The migrant's stay right shall end *de jure* on the date when the expulsion measure was ordered. The court may decide that, until the expulsion, the migrant should be taken into public custody, but the duration of such a measure should not exceed 2 years. If the expulsion measure cannot be enforced within 24 hours, the migrant shall be taken into public custody.

The declaration of undesirability is a measure ordered against a migrant who performed, performs or there is strong evidence that he/she intends to perform activities that may endanger national security or public order. The right to stay of the migrant shall cease as of the issuance date of the decision whereby he/she was declared as undesirable. The specialized staff of the Romanian Immigration Office shall enforce the decision whereby the migrant was declared as undesirable by escorting the migrant to the border or to the country or origin.

2.2 Legal grounds for the minimum age for detention

The Romanian legislation does not foresee a minimum age for detention both in the Emergency Ordinance no. 194 on the Regime of Aliens in Romania and in the Law no. 122 concerning the Asylum in Romania.

Asylum applications submitted by unaccompanied minors are not the object of a border procedure. Unaccompanied minor asylum seekers are given access to the territory and ordinary procedures. An unaccompanied minor is defined as a migrant or stateless minor who has arrived in Romania unaccompanied by either parents or a legal representative or who is not in the care of another person, according to law, as well as a minor who is left unaccompanied after entering Romanian territory. In the application of Asylum Law, all decisions regarding minors are made in conformity with the best interest of children. Unaccompanied minors are granted the same protection offered under the conditions of the law to minor Romanians who are in difficult situations.

The removal shall be forbidden if the migrant is a minor and the parents have a right to stay in Romania. In cases where the parents of the minor do not have their residence on the Romanian territory, he/she shall be returned to the residence country of his/her parents or to the country where other family members have been identified, with their approval. In cases where the parents or other family members cannot be identified, or if the minor is not accepted by the state of origin, he/she shall be granted the temporary stay right on the Romanian territory. With a view to finding adequate solutions, the Romanian Immigration Office shall cooperate with national and international specialized organisations in the field of minors' protection.

[233] Those with repeated asylum-requests, who are considered as requesting the "access" to a new asylum procedure; however, until the approval of the access they are irregular migrants according to the law.

2.3 Legal grounds for the detention order

Taking into public custody is a measure of temporarily restraining the freedom of movement on the Romanian state territory, ordered by a magistrate against the migrant who could not be removed under escort[234] within the term provided by law, as well as against a migrant declared as undesirable or against whom the court has ordered a measure of expulsion.

When there are serious indications that a removal under escort cannot be carried out within 24 hours, the migrant shall be taken into public custody (for example if the migrant does not possess a valid border crossing document, financial means and other formalities that are required). In the case of migrants who could not be removed under escort within the period provided by law, the taking into public custody shall be ordered by the prosecutor appointed for such purpose from within the Prosecutor's Office attached to the Bucharest Court of Appeal, for a period of 30 days, upon the request of the Romanian Immigration Office or its territorial units.

The renewal of the public custody period of migrants who could not be removed from the Romanian territory within 30 days shall be ordered by the court of appeal to whose territorial jurisdiction the accommodation place is subject, at the motivated request of the Romanian Immigration Office. The court shall issue a decision before expiry of the validity of the measure of taking into public custody that had been previously issued, and the court decision shall be irrevocable.

In the case of migrants against whom the measure of expulsion was taken, the court can order that the migrant shall be taken into public custody up to the moment when the police authorities expel the person in accordance with the provisions of the Criminal Procedure Code, but the public custody period should not exceed 2 years. The court may decide that, until the expulsion, the migrant should be taken into public custody, but the duration of such measure shall not exceed 2 years. If the expulsion measure cannot be enforced within 24 hours, the migrant shall be taken into public custody. If the court that issued the criminal decision did not order the taking into public custody, the Romanian Immigration Office may make a request to the Bucharest Court of Appeal to issue the decision for the taking into public custody of the migrant who is to be expelled. The court shall settle the application within 3 days of its receipt. The court decision shall be final and irrevocable.

The taking into public custody of migrants declared as undesirable shall be ordered by the court that issued the measure declaring the migrant to be undesirable. The decision is ordered by the Bucharest Court of Appeal, upon the notification of the prosecutor from the Bucharest Court of Appeal especially appointed for such purpose. The prosecutor shall notify the court, upon the proposal of institutions with powers in public order and in the national security field that hold data and serious indications.

2.4 Legal grounds for the right of appeal against the detention order, or to challenge detention[235]

Migrants, against whom the measure of return was taken, may submit a complaint, within 5 days, to the Bucharest Court of Appeal who shall be bound to solve it within 3 days from the date of receipt.

2.5 Legal grounds for the right of information about the detention order and/or the reasons for detention

Migrants accommodated in centres have the right to be informed immediately after their arrival to such places, in the language they speak or in a language they understand, regarding the main reasons that led to this measure, the rights and obligations they have during their stay in these centres. The reason of their being taken into public custody

[234] Also, the Law provides for the public custody measure to be applied in case of migrants who crossed the border illegally and irregular undocumented migrants.

[235] In case of migrants declared undesirable or under penal sanction of expulsion, the complementary measure of detention (taking into public custody) shall be decided in the same trial, with the possibility of further appeal.

as well as the rights and obligations of the migrants accommodated in the centres shall be communicated in writing by the persons appointed to run such centres.

2.6 Legal grounds for the duration of detention

The migrant who is requesting a form of protection in Romania will remain in the transit area of the state border checkpoint until the reception of the decision to approve entry in Romania or, depending on the case, until the decision to reject the asylum application remains irrevocable, but no longer than 20 days from the time of entry into the transit area.

The maximum period of taking into public custody of the migrants against whom the measure of the return has been ordered is 6 months.

In the case of migrants to whom the measure of expulsion was taken, the court can order that the migrant shall be taken into public custody up until the moment when the police authorities expel the person in accordance with the provisions of the Criminal Procedure Code, but that the public custody period should not exceed 2 years.

Public custody of migrants declared as undesirable shall cease on the enforcement date of the court decision. The decision that the migrant was declared as undesirable shall be enforced by escorting the migrant to the border or to the country or origin, by the specialised staff of the Romanian Immigration Office. The period for which a migrant may be declared as undesirable is 5 to 15 years, subject to the possibility of extending such period with a new period between such limit if it is established that the reasons which led to such a measure did not cease; however the detention has an indefinite period.

2.7 Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

Migrants accommodated in centres shall benefit from the rights by law and from the rights provided under the international treaties in the field, to which Romania is a party. The migrants accommodated in centres shall have the right to legal, medical and social assistance and to the respect of their opinions and specific nature in religious, philosophical, and cultural fields. Migrants taken into public custody shall be entitled to receive medical assistance, free medication and medical materials. Medical services provided under paragraph 1 shall be offered, as the case may be, through the medical service of the accommodation centres or medical units of the Ministry of Administration and Interior and the Ministry of Public Health. Reimbursement of expenses shall be provided by the Ministry of Administration and Interior, through the budget allocated to the Romanian Immigration Office.

2.8 Legal grounds for contact with the outside world

During their stay in centres, migrants shall be offered the possibility of communicating with diplomatic and consular representatives of the state of origin, and counselling assistance/support.

2.9 Legal grounds for the provision of legal aid

Migrants accommodated in centres shall have the right to legal, medical and social assistance and to the respect of their opinions and specific nature in religious, philosophical, and cultural fields.

2.10 Legal grounds for the protection of persons with special needs

Minors who are living in accommodation centres have free access to the mandatory educational system. The centres are established, organized, sanitarily authorized, arranged and equipped so as to offer appropriate conditions of

accommodation, food, medical assistance and personal hygiene. The centres are organised and operate based on a regulation approved by the Minister of Administration and Interior.

2.11 Legal grounds for alternatives to detention

Tolerance for remaining on the Romanian territory, hereinafter referred to as tolerance, is the permission to stay on the territory of the country, granted by the Romanian Immigration Office to migrants who do not have the right to stay on the Romanian territory and, who, for objective reasons, do not leave the Romanian territory. Objective reasons are those circumstances independent of the migrant's will, unpredictable and insurmountable, which prevent the migrant from leaving the Romanian territory.

Tolerance may be granted to migrants in the following cases:
a) When migrants are in the situations presented below, and fail to fulfil the conditions provided by law for granting a stay permit. Migrants shall not be allowed to leave the country under the following circumstances:

1) They are charged or indicted in a criminal case and the prosecutor decides to enforce the measure consisting in the interdiction of leaving the town or the country;
2) They were sentenced by final court decision and they have to carry out a prison sentence.

b) When migrants are taken into public custody, have a return measure ordered against them, but could not be removed within 6 months;

c) When migrants taken into public custody, against whom the court ordered expulsion, could not be expelled within 2 years from the date when they were taken into public custody;

d) When migrants whose temporary presence on the Romanian territory is required by important public interests. In this case, tolerance shall be granted upon the request of the state competent bodies;

e) When there are serious reasons to consider that the migrants are victims of human trafficking - in this case, tolerance shall be granted upon the request of the prosecutor or the court;

f) When the Romanian Immigration Office deems that such migrants cannot temporarily leave Romania for other objective reasons.

The removal shall be forbidden in the following cases:
a) The migrant is minor and the parents have a right to stay in Romania;
b) The migrant is the parent of a minor who has Romanian citizenship if the minor is the migrant's dependent or the migrant is bound to pay alimony, an obligation that he/she regularly fulfils;
c) The migrant is married to a Romanian citizen and the marriage is not one of convenience;
d) The migrant is over 80 years old;
e) There is justified fear that his life is endangered or that he will be subject to torture, inhumane or degrading treatment in the state where the migrant is to be sent;
f) Return is interdicted by international documents to which Romania is a party.

Persons provided under the above paragraph may be granted, or as the case may be, renewed the stay right in Romania by the Romanian Immigration Office.

Migrants on the Romanian territory may request the support of the Romanian Immigration Office and of international or non-governmental organisations with duties in the field of assisted humanitarian voluntary repatriation in case they have no financial means.

A migrant may not be expelled to a state where there are justified fears that his/her life is endangered or that he will be subject to torture, inhumane or degrading treatment.

2.12 Legal grounds for providing release from detention

The release from the centre may occur in the following ways:

- A decision taken by the competent Court of Appeal following the recourse submitted in due time (5 days starting with the moment of being taken in public custody);
- If the Romanian Immigration Office is not requesting the renewal of the public custody period;
- If the Court of appeal is not approving the renewal requested by Romanian Immigration Office (e.g. the court admits the appeal submitted by the migrant);
- At the end of the maximum period of detention foreseen for each category of detainee (irregular/undesirable/ expulsion).

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1 Basic information

With the exception of one woman (Bolivian, aged 25), all the detainees interviewed during the research were males, coming from Asia (Pakistan, Afghanistan, and India etc.), Africa and the Middle East. The average age was around 29, while the youngest detainee interviewed was a 19 year-old boy from Pakistan and the oldest - two Iraqi males - were 47 years old. Another issue of interest was the detainees' civil status – 90% were single persons.

The average length that participants in DEVAS had been detained was three months. However, at the time of conducting the interviews, some of the detainees had been in detention for just several weeks; while others had been there for 20 months. Some had had experience of previous detention centres: either in Romania (Otopeni or/and Arad migrant detention centres), or in Western European countries. The latter were mainly former asylum-seekers that had been returned under Dublin II Regulations. Several detainees had been convicted in Romania for criminal offences and had served their sentence in domestic prisons.

All the detainees interviewed were irregular migrants (with illegal staying status) awaiting deportation. However, almost half of them had submitted new asylum applications while in detention asking for access to a new refugee status determination procedure. Four of these detainees had been in Romania since 1991 while the majority had arrived within the last three years.

3.2 Case awareness

Two thirds of the detainees declared that they received information on the grounds of detention from police authorities either during the official procedures (expulsion following a penal sanction etc.) or during their arrest/detention. A few stated that they had been informed about their situation by other persons (e.g. NGO staff or lawyers). They also mentioned that in some cases the immigration officer communicated the information orally.

Even so, several detainees stated they did not clearly understand the grounds for their detention and/or the asylum/immigration procedures: "Why was my asylum procedure rejected, I was informed only briefly by authorities." Moreover, detainees underlined the importance of having access to information regarding their future, with a view to a possible voluntary relocation/return to their country of origin. They were also interested in information that may affect access to protection or toleration in Romania.

Lack of proper information may affect their legal status, their personal feelings about detention and its consequences, as well as having an effect on their mental health.

3.3 Space within the detention centre

As regards sleeping rooms and general space, more than half of detainees interviewed declared that they felt positive about their dormitory. These detainees said even that though the space is not very comfortable, all the necessities were provided and the space was cleaned regularly. The main discomfort was related to the size of the rooms. Allegedly they were too small to be shared with three other detainees; also, the atmosphere was considered as “not positive” due to the fact that the rooms were closed almost all the time and there was restricted access to existing facilities (TV etc.). Comparisons were made with the facilities offered by other centres from abroad, possibly even with asylum centres and not only detention facilities.

Most of the detainees did not consider the centre to be overcrowded. However, almost half of them reported that they could not find a private zone within the centre where they could be on their own, while the rest stated that their own room was the place were they could “felt alone with their thoughts”. Some detainees found it easy to be alone in different parts of the centre: dormitory, gym, library, club or the hall for visitors.

3.4 Rules and routine

When asked about the rules of the centre, most of detainees listed the regular rules that had become a routine for them. Within the centre there are strict rules including a programme for time of meals, time for walking outside etc. Some of the reactions to these rules were described by the detainees, for example: “I have to stay in the room; I can’t get out when I want”; “from 8:30-9:00 our room door is opened and we have to go to breakfast, then we are locked in again. At 12:00 we have to go for lunch and then come back to the room were we are locked in again and so on”; “during the day, they keep us all only in the rooms. Only from 18:00 20:00 or 21:00 hours we are in the hall for the TV”; “the rules are simple: a program for meals and the time we are to wake up and to go to bed”.

The detainees considered that the rules were widely respected in practice, but others considered that some of the detainees were more privileged.

With the exception of one detainee, all of them stated that the rules could not be changed. Even if the majority of them admitted that in theory they could propose changes, in practice they stated that these suggestions would not be accepted. Several of them stated that they had submitted proposals for changes but they were not approved or were delayed.

Among the rules considered by the detainees as being as most important were: 1) use of a telephone in order to stay in contact with the family; 2) permission for open air activities so as not to be confined to their rooms for many hours at a time; 3) equal treatment towards all detainees in detention; and 4) proper supervision in the centre.

3.5 Detention centre staff

Most of the detainees stated that the personnel with whom they are most frequently in contact with were the security staff while others mentioned the medical personnel or the director of the centre. Almost two thirds of them described the interaction with the staff as being positive or normal. They reported a friendly relationship if the rules and procedures were followed by both staff and detainees. However, a quarter of those interviewed considered that interaction with the staff was not positive. According to these detainees, problems that arose were related to communication between detainees and the security staff, especially if the detainees did not speak Romanian. They considered that staff support varied depending on the behaviour of the officers/detainees and in their specific cases they considered the staff unhelpful.

Most of detainees did not feel they were discriminated against and said that they felt supported by the staff. They felt that the staff of the centre provided them with support mainly by being sympathetic to their situation and by helping them with small shopping or other personal things. However, almost a quarter said that they did not feel supported by the staff, and around the same number mentioned that staff discriminated between detainees. In their opinion, the occurrence of a different treatment is due to personal reasons. The example mostly given when referring to different treatment applied towards detainees is: “because some detainees can have the door open all day long.” Regarding the reasons different treatment applied to detainees, the newcomers believed that the ones who were staying for longer periods had more privileges and vice-versa. Another group that were identified as being favoured were those who had been in Romania for longer and thus spoke the same language as the guards: “they treat me better because I speak the Romanian language. Officers paid much more respect.”

3.6 Level of safety within the detention centre

Almost all the detainees responded positively when asked about the level of safety in the detention centre, citing the clear rules regarding security and the presence of the security staff. Only on a few small incidents among detainees resulted in their stating that the level of safety is not that good.

None of the detainees reported having been physically assaulted, and two-thirds of those responding to the questionnaire also that they had not been mocked or humiliated while in detention. Where this had happened, it came from other detainees due to differences in both cultural background and life experience: “I have been insulted by other detainees because of cultural differences and education.”

However, other detainees had a different interpretation of the word: “safety”. Their concept was distinct from physical security, and was more related to personal problems, such as sickness (e.g. digestive problems), and concerns about their future etc.: “physically I feel safe, but mentally nobody takes care of us, our case, our depression, stress”; “it's physically safe, but we are afraid about the future.”

Very few detainees questioned had submitted a formal complaint. Some of the detainees explained they wanted any incidents resolved in an easy way, without formal complaint because they did not want the police to become their enemy.

3.7 Activities within the detention centre

Most detainees reported that there were no activities provided within the detention centre. Of those who stated that some activity was available, they mentioned sport, chess and cleaning activities.

Participation in these activities was motivated by different reasons. For some, the activities were seen as a good use of time, and an opportunity to take personal responsibility for one’s own health, etc. On the other hand, some detainees stated that they were not interested in taking part in any activities: “I don't want anything from here; I just want to be free.” Detainees said they had access in the centre to library books, a telephone, television, and sports equipment. However, according to the majority, detainees did not have access to computers, Internet, education, religious space, or outdoor space.

When asked what could have the most positive impact on their life if it were to be provided in the centre their answers were: entertainment (sports, a better equipped gym, TVs and TV cable with several channels for news, a place for relaxing); access to internet/computer; and educational opportunities (books in their own language, computer classes, Romanian language classes). Almost all of them wanted to spend more time outside their rooms or, if possible, outside the centre.

3.8 Medical issues

All detainees reported that there were medical staff in the centre (physicians, nurses and one psychologist) and most detainees said that medical personnel visited them at least once a week. However, with the exception of one detainee, they mentioned that access to specialised psychological care was fairly restricted.

Only a third of the detainees stated they had had a medical check-up on their arrival at the detention centre, although according to the regulations, this should have been done in all cases. If this check up did take place, detainees reported that it was very general or a few days delayed (possibly due to a week-end or other holiday).

Most of the detainees stated they understood the “medical language” and that is because with medical staff they could use Romanian and/or English. For detainees who have a problem with language, the solution seemed to be to use an interpreter, perhaps from the group of detainees.

Prior to detention, most of detainees stated that they did not have health problems, but during their detention almost 2/3 of detainees reported that their physical health was negatively affected. The causes that lead to impaired physical health condition, in their opinion, were related to psychological issues but also as a result of general conditions within the centre: “because of the pressure, we don't know when we will be released or returned”; "after nine months of detention, I feel even sicker, due to the closed space.”; “because of detention: no activities, we have to stand still.”

When asked about their mental health, 80% of those questioned said that being in detention had affected their mental health negatively. The following problems were considered as affecting their mental health: the impact of being in detention (a small percentage considered loss of rights as having a serious impact, while most of them focussed on the fact of being behind bars); the impact of living conditions (mainly general living conditions, while few specified cohabitation issues); the stress caused by worries; and the impact of medical problems (mainly mental, but also some physical problems).

The quality of medical services inside the detention centre was perceived as good by almost half of the detainees who remarked they had access to appropriate services. On the other hand, a third of them considered the quality of medical services to be ‘poor’, with a lack of adequate treatment. The issue of transportation to the hospital was mentioned both as positive and negative: “I was taken to the hospital immediately when I had problems” compared with “I was not taken to the hospital due to the lack of a car… that was the reason invoked by the police.”

When asked about medical services needed, but not provided, in the centre, the majority did not require anything specific. However, the problems mentioned “to be developed” were access to appropriate medical care (to medication, vitamins, and other treatments) as well as improved communication with the existing medical staff.

3.9 Social interaction within the detention centre

Generally the interaction between detainees was reported as good, and only a few of those questioned mentioned a “bad atmosphere”. The majority did not report problems between detainees. Those who experienced problems considered they were due to intercultural tensions and tensions between the newcomers and those who were already there: “Many detainees take advantage of other detainees. They get money from them telling them that they know a good lawyer that could get them released.” The majority of detainees declared they have a person they can trust in the centre. Usually this is a fellow detainee, but sometimes Jesuit Refugee Service staff or detention centre staff members are mentioned.

3.10 Contact with the outside world

Most of the detainees have a family connection in their home countries, while over half have friends and family in Romania. When asked what was the most way important for them to keep in touch with the outside world (family, friends), the majority said telephone, and specifically their mobile phones. However, this required them having money for calls. Other ways of communication mentioned were letters and also personal visits: “By phone with friends; I don’t answer to family because I don’t want them worried.” A few stated that the Internet would be an effective means for communication. However, it is not available in the centre. Detainees received visits mostly from NGOs (JRS), lawyers, friends and UNHCR. Very few received visits from families or religious people.

3.11 Conditions of detention and nutrition

90% of the detainees stated they did not like the food that they received in detention, complaining mostly about poor quality but also about the quantity. They complained that they are not allowed to receive cooked food in their packages. More than two-thirds reported a loss of appetite while in detention. All of those whose appetite was affected stated that loss of appetite made them feel worse.

3.12 Conditions of detention and the individual

More than half of detainees stated they sleep well. Sleeping difficulties could result from stress or external reasons (e.g. mosquitoes). According to detainees the top four most difficult things for them during the detention were:

- The impact of detention itself, “being locked 24 hours a day” and also being separated from family: “the visit of my family was very difficult, my child was crying and I did not know how to react.”
- The impact of living conditions in the centre, particularly the food and lack of opportunities to get in the fresh air;
- The impact of worries on mental health and on their ability to sleep, including the fear of being returned, and the uncertainty of what will happen next;
- The impact of medical problems.

For most of detainees these difficulties have not changed over the time they have been in the centre and life in detention become even more difficult – “Freedom is freedom, in detention there is too much depression”.

Only two of the detainees interviewed said that they were aware of the outcome of their detention, while only around half said they were aware of their departure date or release. Uncertainty in this regard led to stress and affects their plans for life. Detainees interviewed were worried about themselves and their future: “I feel I am in doubt, I don't know when and where.”

Most of detainees concluded that detention had a negative influence on the way they see themselves – “I feel like a 5 year old child whom they tell what to do - but I am the head of a family”. However, a small number of detainees mentioned the “positive aspects” of detention, including hope and confidence in solving their situation.

When detainees were asked if they consider themselves as persons with special needs, different from other persons, only a quarter considered their particular situation as requiring “special” needs, distinctive requirements, which were usually to do with specific medical requirements. When asked who was vulnerable, groups such as those who had been in detention for longer than a few months, pregnant woman and certain nationalities were mentioned. The most common answer was that ‘everybody’ in detention is vulnerable.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

A. Need for information

As for any detained individuals, migrants kept in public custody (whether or not they are asylum seekers) need to be informed about their legal status, procedures, rights and obligations from the moment they are confined to a detention centre.

The Law governing migrants explicitly provides for the right to be officially informed in writing on the main grounds for detention and their rights and obligations while in custody either in their own language or in a language that they understand. In practice, detainees are requested to sign the acknowledgement documents (available only in English and Romanian). The concept of "provision of information" was somehow vague to detainees, an important percentage (30%) said that they were not informed at all about their situation This should be connected with the finding that a large proportion of the detainees were not aware neither of the outcome of their detention (whether they would return to their country of origin or be able to stay in Romania), nor their departure date (and sometimes destination).

Therefore, the main piece of information missing here would seem to be related to the outcome of the individual's situation: detention plays a transitional role in concluding staying/exit in/from Romania for irregular migrants – with three options:

a) Forced/voluntary return (to the country of origin or to other country);
b) Release from detention and permission to remain temporarily as a 'tolerated' person or;
c) Regularisation of stay on the Romanian territory.

Other crucial information that detainees were missing related to the fact that in practice there is a lack of fixed and transparent time limits that one can be held in police custody. While there are legal remedies available (such as the possibility to appeal against the decision of being taken into public custody and its prolongation), observance of legal deadlines for submitting various procedural papers requires specialised assistance and due acknowledgement. Few detainees stated they were aware of this information and of their departure date from the centre.

The need for detailed information was underlined in the findings. In most of the cases this relates to dual procedures: challenging detention and the possibility of applying for a new asylum procedure (e.g. positive decisions issued in the asylum procedure may lead to the release from the centre). Data gathering and court rules are complex and sometimes demanding even for specialised jurists, and almost all the asylum-seekers considered they were not properly informed on legal procedures. Language barriers should also to be considered in looking at the complete picture.

Sources of information are also to be examined in order to ensure proper communication. The source of information may affect proper communication. While the communication was not the goal of our analysis, the manner of perception by detainees is relevant. Legally speaking, the authorities are responsible for informing detainees on the reasons for their detention, their rights and obligations, their legal status and procedures to follow. This information needs to be communicated in all cases. However, several detainees stated that they received "the information" on the grounds of detention from non-officials: NGOs, lawyers etc. – most probably they referred to explanations and details provided complementary to the authorized ones. Even if informed by all possible sources, several detainees stated that in their opinion the reasons for their detention were not that clearly explained to them.

The degree of perception of relevant information depends also on previous experiences, links with the host country, personal and cultural background of each detainee. Among these, previous experiences in detention play an important role: whether in migrants' detention centres or prisons in Romania or abroad, including former asylum-

seekers returned under Dublin II Regulation. Comparisons were made with the present detention regime and the opinions were mixed. Informal groups of unreliable dispatchers of information emerged and sometimes “legends” occurred in the centres: for example, those having remunerated lawyers are easily released; the voice of community is stronger than any outsider etc. Thus, from our experiences, the message can be altered; *bona-fide* migrants/asylum-seekers, mainly those newly arrived in the centre, are sometimes given incorrect information and even put at risk of losing procedural remedies.

B. Impact of detention on mental health

From our findings we can see that overall detention conditions seem to have an important impact on the mental health of detainees and their negative self-perception. For most of them, these difficulties have not changed over time and life in the detention centre has become harder. It should be noted that, based on medical grounds, an irregular migrant may be released from the detention centre when it is impossible to ensure adequate treatment etc.

The presence of medical staff in the centre was commonly recognised, with visits paid at least once a week. Although medical care is provided, detainees reported a deterioration of their physical health. Before detention, they consider they had no physical health problems, but they felt that they were seriously affected afterwards. Detention itself and living conditions in detention had an impact on mental health, especially the uncertainty detainees are facing. Uncertainty about the outcome is characteristic for the situation in detention. Uncertainty makes the time in detention difficult and makes people worried. The considerable stress reported by detainees was due to both to psychological/personal reasons and the detention conditions/facilities in general. Deterioration had been intensified proportionally to the length of detention.

Most detainees have a negative self-perception and the time spent in detention has a negative influence on the way they see themselves. Although the average time in detention by the time of the interview was three months, the negative effects were considered common to all. They were affected also by sleeping distress, linked among others to the fear of return to the home country. One detainee considered lack of spiritual alleviation as a reason of feeling helpless. Another reason affecting the common mood was related to nutrition and decline and/or change in appetite. Most of detainees stated they did not like the food provided, complaining mostly about poor quality but also about the quantity. All of those whose appetite was affected stated they lost appetite, making them to feel worse.

Although the majority of detainees did not consider overcrowding an issue, the need for a private zone within the centre where they could be on their own was emphasised, even thought some considered their own rooms as sufficiently private in this regard.

Overall, a mixture of the detention conditions and the fact of being in detention meant that detainees became physically and mentally depleted while in detention, and thus this is a cause of vulnerability.

C. Differential group approaches; relevance of Romanian ties

In general, the group of detainees was homogeneous, interacting in the same manner with one another. Interaction with staff (mainly security) is good in general; most detainees did not perceive themselves as being discriminated against by detention staff or by other detainees. It seems to depend very much on the one hand on the official on duty, and on the other if the detainees are abiding to the established rules.

With the exception of one detainee, all of them considered that the internal rules could not be modified. Even if the majority of them admitted that in theory they could propose changes for the rules, in practice they stated that these would not be admitted. The concern for the outcomes of the complaints submitted to the personnel in charge could prevent detainees from reporting incidents; those very few who submitted a formal complaint said that the problem was addressed by the police, but still somehow continued.

According to their statements, the problems that may arise are related to communication between detainees and the security staff, which was especially obvious if the detainees did not speak Romanian. Personal relationships and communication play an important role: some detainees admitted that they felt more supported than other detainees. Another group considered neutral position vis-à-vis differences in treatment from staff. The newcomers believed that detainees who had been in detention for longer periods had more privileges and vice-versa.

The same issue of communication with the staff occurred with regards to communicating information about rights and obligations on detention or on understanding medical instructions. Languages used are Romanian and English (with prevalence of the first one), while interpreters are seldom used, usually only in official procedures (interviews with asylum-seekers etc.). Use of Romanian is justified mainly by the fact that many (but by no means all) of the migrants have already been in Romania for some time (some of them for almost 20 years), and have links in the host country. The solution proposed by detainees for a better communication is the communication through an interpreter, perhaps from their own group; however, this may create an additional advantage for those knowing Romanian. Thus, detainees that know the Romanian language seem to fare better than those who do not.

In addition, those having ties in Romania - family members, friends and partners – had more contacts with the outside world. Most detainees had relations in their home country, and separation from their families had a negative consequence for detainees. Since no money or financial resources are provided, some of detainees cannot use the public telephone to communicate with or support in any way their families. Therefore, those without connections in the host country, financial resources and/or who do not know Romanian (or English) may be considered as being vulnerable.

D. Lack of activities

As it has been mentioned, the average length of detention was three months and the negative effects on people's well being were already visible. There were very few activities available (sport games/exercises, TV, reading or cleaning) and only a minority took part. Regarding the rules, they were strictly observed, including a programme for meals and walking, becoming a routine for detainees. Non-observance of the rules provided in the internal regulations may lead exceptionally to suppression (disciplinary measures) of certain rights, including interdiction to engage in sport or other cultural activities. Also, permission to enjoy certain entertainment, mainly TV, may be conditioned by certain obligations (cleaning of the common area etc.). The possibility of having different activities depending on personal behaviour of the detainee is perceived in various ways, with positive and negative impacts; however, it may lead to tensions.

Exercise in open air is available on a terrace of 90m^2 three hours a day (there is a different timetable depending on the grounds of detention: irregular migrants/expellees/undesirables). Most detainees have practically nothing to do while inside their rooms (radio or TV). Thus, a lack of activities leads to boredom and even to stress among detainees. The authorities stated that the lack of activities in the open air is due to insufficient staff to ensure security.

Lack of activities together with closed rooms had an impact on the group relationships – security issues, small incidents among detainees, rare incidents of detainees being mocked, tensions based on intercultural background or between groups of new-comers and former detainees. However, the level of safety was considered high due to clear rules for security and the presence of the security staff.

5. CONCLUSIONS AND RECOMMENDATIONS

Data gathered through the project reveals information comparable with the findings of JRS-Romania during the counselling sessions provided both in the centre and outside for those who had experienced detention. The group of

migrants could see that their situation did not represent a pressing issue for Romanian society, and that the provisions of the Aliens' Law has not so far been considered a matter of priority by the authorities. Most of the rules were included following the accession of Romania to the European Union and considering the practice of certain EU states (Austria, Germany, Netherlands etc.).

The data of the report was based on the statements made by detainees and JRS-Romania staff, thus missing the authorities' point of view. The findings drawn from discussions led to the conclusion that the vulnerability of both the situation *per se* and particular persons in custody are to be further considered:

a) Limits of the situation point to alternatives to detention, the possibility of revision of the detention's length and the need for information;

b) Vulnerabilities related to individuals are related to deficiency in communication, involvement in various activities and the address of physiological/psychological needs.

1. **Alternatives to detention** – The DEVAS study strongly suggests that detention is to the detriment of a detainee's well being. Therefore, "public custody" should be an exceptional measure applied to migrants who cannot be removed from the country under escort in a very short period of time (within 24 hours), covering together with undesirables and expellees, migrants who did not leave voluntarily the Romanian territory in 15 days for illegal staying or with illegal entry; it includes also migrants with physical or mental disabilities and those who are a threat to public health. The measure consists of restriction of freedom of movement thus sanctioning illegal condition of migrants in Romania, with the aim of removal from the territory. However, the tolerated status has a similar aim - obligation to leave Romanian territory and removal without any prior notice.

   Practitioners have already questioned the relevance of taking people into public custody instead of their being tolerated for a limited time. In practice, toleration is applied subsequent to public custody – in the case of impossibility of removal in the period provided by law. The period of time available to illegal migrants in order to leave the territory is very short and it does not leave the room for alternatives. Sometimes, links with the host country are significant and migrants should be allowed to proceed to departure in dignity. Non-compliance with these short deadlines is sanctioned with public custody, even in cases where return is objectively impracticable, i.e. to Somalia.
   Therefore, toleration should be seen as an alternative to public custody measures – which are a sanction that should be applied only after the exhaustion of all reasonable possibilities to leave the territory voluntarily with the self-respect that should be granted to all human beings. Toleration should be compared with the negative effects of detention, which are underlined in the DEVAS findings. This principle should be advocated for further inclusion in the amendments of Aliens' Law.

2. **Length of detention/release date** – The DEVAS study has found that a widespread lack of knowledge about the date of release from detention is a crucial contributing factor in detention's detrimental effect on detainees. In addition, the time spent in detention seemed to increase the problems experienced by detainees. The law provides for a single reconsideration of renewal of public custody within 30 days in a court of law. Being a request of extension of the measure accorded in an administrative procedure, it is hard to reasonably challenge it, without having new evidence. Moreover, although the Immigration Office makes the request for renewal, which has the burden to prove additional time needed for removal and concrete steps taken in this regard, very often the appeal procedure is formal. Besides, migrants are accountable for non-cooperation with diplomatic missions etc. in speeding up the removal procedure.

   Regular assessment of individual situation during detention and prospects for enforcing the removal measure should be considered and included in further revised legislation. Proportionality of the measure and

its negative impact may be presented in front of the court of law through the opinions expressed by independent experts.

3. **Need for information** – The DEVAS study in Romania has established that information plays a crucial role for persons kept in a closed centre who have undergone various legal procedures and who are in an unfamiliar country/society. The notion of "information" is very broad, covering official information (grounds of detention, procedural steps), supportive information (NGOs, lawyers) and in-side information (shared among the detainees); it covers more or less everything that may be connected with the detainee's situation. Coming from various sources, information is filtered and assessed by each individual and sometimes interpreted in an incorrect way. The complexity of legal procedures, the foreign situation and compliance with deadlines should be taken into account in understanding why the findings of DEVAS reveal a desperate need for information.

   Narrow official grounds provided by the authorities combined with lack of understanding of procedures put detainees in an uncertain situation. Explanations provided during the counselling sessions by their defendants are extremely useful, but they should be supported by inside information of the group of detainees, therefore keeping the power in the hands of the actors involved.

   The "best interest" of migrants should be considered. In the case of asylum-seekers, the specific law prevails over the general regime of migrants, while their particular vulnerability is recognised by the law. However, the legal complexity of the domestic procedure and consideration of their insecure status may affect the effectiveness of exhausting all legal remedies in the proper manner. It should be mentioned that free legal aid is not available in the administrative procedures as yet. Another issue of concern is related to respect of confidentiality – asylum-seekers applying for access to a new procedure are considered as migrants and sometimes presented to their diplomatic missions in order that the removal procedure can be carried out.

   A particular need for information relates to the possibility of removal: either return to the country of origin or to a different country. The court decisions approving the removal orders do not specify the target country and, regularly, the assessment of conditions for return (risk of torture etc.) are made in consideration of the country of origin. However, there were cases in practice where migrants were sent to other countries. This kind of information is not available until the moment of return, which keeps detainees in a state of anxiousness. Proposals to amend the legislation in ruling on the country of return should be further considered.

4. **Improved communication** - Language is a critical factor for persons in detention and one of the most important findings from DEVAS is that there is a lack of interpreters for detainees. Written communication of official documents (e.g. decisions, notification) are available only in Romanian while the rules of the centre were translated only into English. An inability to comprehend what detention centre staff communicates may mean that vital information is lost for the detainee. Those who do not understand them or who are illiterate are in a very vulnerable situation from this point of view. Even in cases where the reading of documents is possible, additional efforts to explain particular wording are required. Language incomprehension also increases detainees' sense of isolation and mistrust.

   Translation of relevant documents into useful languages should be considered, together with use of interpreters in for official documents; however, the overall responsibility of providing explanations remains to the NGO counsellors or lawyers. Thus it is important that detention centres provide for better language facilities that can meet the full range of detainees' needs and avoid discrimination between those understanding Romanian and those who do not.

Development activities and increment of those available – Considering the average length of detention and the small number of recreational opportunities reported in the DEVAS study, further progress should be made. Additional tensions are created since the possibilities to take exercise in open air are limited and sometimes suspended for different reasons. Proportionality and general support of detainees' well being should be considered as an alternative to their being confined to their sleeping rooms for long hours (where TVs and radio are not always available). The perception of time is different in detention centres and individuals should be offered adequate possibilities of coping with stress and anxiety through activities.

5. **Medical care** - Considering the reported deterioration of psychological well being during detention, specialised psychological care should be considered. A special requirement is to ensure proper communication between detainees and medical staff through interpreters, if this is necessary and possible.

NATIONAL REPORT: SLOVAKIA

By: Caritas Slovakia

1. INTRODUCTION

This national report is the result of inquiries and research that took place in Slovakia between February and July 2009. It is part of the DEVAS Project, implemented by JRS–Europe and its project partners, which aimed to research and identify the detention conditions and practices of 23 Member States towards vulnerable asylum seekers.

Caritas is a Catholic relief, development and social service organisation working to build a better world, especially for the poor and oppressed. Its activities are focused*, inter alia*, on poverty and social inequality, migration and asylum.

On the basis of several questionnaires and guidelines, Caritas Slovakia arranged for a number of interviews in two detention centres. Firstly, Caritas made several visits to the detention centre in Sečovce, which is located about 40 km from Košice, close to the Ukrainian border. There we completed 27 interviews with detainees, and one interview with a detention centre staff member. Secondly, Caritas visited the detention centre in Medvedov on eight occasions, which is located 70 km from Bratislava, close to the Hungarian border. There we conducted interviews with 36 detainees, as well one interview with a detention centre staff member.

Caritas also conducted interviews with two NGOs: the Slovak Humanitarian Board and the Human Rights League. The Human Rights League's mandate in the detention centre is to monitor the conditions in detention, with special attention paid to legality of detention and providing legal assistance to detained aliens.

Others contacted during the project implementation were IOM, the Goodwill Society, the
Head of Bureau of the Border and Aliens Police, the Police Presidium, the Secretary General of Caritas Slovakia, the Deputy Head of Sečovce detention centre, the Detention Camp Director of the Medvedov detention centre, Migration Office in Slovakia.

Caritas came across some difficulties in obtaining the data, which are detailed below in the report. In short, it was difficult for the researcher to have enough time and privacy to conduct the interviews thoroughly, due to restrictions imposed by the detention centres. In addition, the detainees felt intimidated by the official nature of the study and preferred to tell their own stories. Finally, the lack of linguistic interpretation meant that it was hard to obtain rich and full answers from some detainees.

2. NATIONAL LEGAL OVERVIEW

The main law dealing with the detention of illegally staying third country nationals and asylum seekers in Slovakia is the 48/2002 Coll. Act of 13 December 2001 On Stay of Aliens and on Amendments and Modifications to some other Acts, which came into force on 15 December 2005.

2.1. Legal grounds for detention

Section 62 §1 of the Act on Stay of Aliens provides that a police officer may detain an alien for the purpose of executing an expulsion order or facilitating his/her removal in case of illegal entry or stay in national territory.

2.2. Legal grounds for the minimum age for detention

The law does not refer to a minimum age for detention.

2.3. Legal grounds for the detention order

Paragraph 4 of the said article provides that upon taking a person into custody, the police department shall immediately issue a detention order and place the alien in a facility. Where it is not possible to immediately determine the identity of the individual concerned, the police department shall attach any available evidence/information that will prevent mistaking this person for another person, to the decision on his/her arrest.

2.4. Legal grounds for judicial review of the detention order

Section 62 § 6 says that an arrested alien may file a remedy against the decision on the arrest with a court within 15 days from the delivery of the decision on the arrest.

2.5. Legal grounds for the right to appeal against the detention order, or to challenge detention

Paragraph 6 goes on to state that an arrested alien may file an appeal in court against the decision on the arrest, within 15 days from the delivery of the decision on the arrest. Filing of the appeal shall not have a suspensive effect.

2.6. Legal grounds for the right of information about the detention order and/or the reasons for detention

Section 63 provides that a police department informs detainees, immediately after their arrest, about the reasons for the arrest and on the possibility to examine the lawfulness of the decision on the arrest in a language that he or she understands.

2.7. Legal grounds for the duration of detention

Article 62 §3 provides that the illegally staying third country national may be deprived of his or her liberty only for as long as is necessary and, in any case, for not longer than 180 days.

2.8. Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

Article 68 §1 provides that detainees shall be obliged to undergo a medical examination as determined by a physician, including the necessary diagnostic and laboratory examination, vaccination and preventive measures determined by an authority for protection health. The law also lays down that, in cases where a detainee requires healthcare that cannot be provided within the detention centre, the authorities concerned shall ensure that such care is obtained in a medical establishment outside the facility. In cases where detainees deliberately damage their health they shall be obliged to reimburse the costs of the treatment and the costs occurred for supervision and transportation to the outside medical establishment.

2.9. Legal grounds for contact with the outside world

Articles 71 to 73 of the said Act provide the legal basis for detainees´ contact with the outside world. Article 71 §1 provides that detainees may send written notices at their own expense. Article 72 regulates the detainees´ access to visitors, providing that detainees shall be entitled to receive a visit from up to two persons, once every three weeks, for duration of 30 minutes. The facility's director may grant an exception in justified cases.

The law does not place any limits on visits from persons providing legal protection. Article 73 provides that detainees may receive a parcel of up to five kilograms containing items for personal use, once every two weeks. This limitation does not apply clothes parcels. Police shall check all items received at the centre. There is no limit on the receipt of financial gifts.

2.10. Legal grounds for the provision of legal aid

Article 72 - The law does not place any limits on visits from persons providing legal protection.

2.11. Legal grounds for the protection of persons with special needs

Article 67, which regulates placement of detainees, stipulates that when accommodating a detainee the authorities shall take into account the individual's age, health condition, family relations and religious, ethnical or national characteristics. Upon placement, the authorities managing the detention centre must ensure that the detainee is informed about where he/she has been placed, his/her rights and obligations related to the arrest and the internal policy of the facility in a language he/ she understands. The law stipulates that minors shall be placed separately from adults to whom they are not related.
Regarding family unity, the law provides that families may be placed together. Where the police authorities decide to detain family members separately, they must take into consideration whether the consequences of such separation are proportionate to the aim to be achieved.

2.12. Legal grounds for alternatives to detention

Unaccompanied minors are to be housed in a special residential centre, and a guardian must be appointed for them.

2.13. Legal grounds providing release from detention

Article 63(f) provides that a detainee should be released without delay, where the reasons for his/her arrest cease to exist, if a court orders release, or if the maximum time limit of 180 days has elapsed.

3. OVERVIEW OF THE NATIONAL DATA FINDINGS

3.1 Basic information

The majority of the detainees in Slovakia that were a part of the DEVAS sample were single males. The average age was 31, and they were from a range of countries, with the majority being from Vietnam or Pakistan. Other nationalities interviewed were Indians, Georgians and Ukrainians. Approximately one-third of the detainees were married.

The average length of detention was between one and two months. Around one quarter had been detained shortly after arrival in Slovakia, with the remaining people having spent a longer time in Slovakia. Some of the detainees had been in the country for many years. This was reflected in the fact that almost a third of the detainees conducted their interviews in Slovak.

3.2 Case awareness

The majority of detainees interviewed were applicants for international protection, with some of these having applied for asylum while in the detention centre. Around a third of detainees interviewed were illegally staying third country nationals who were awaiting deportation. The detainees reported being rather well informed, immediately after detention and in a language that he or she understood. Only one quarter said that they needed more information, and these people wanted to know what the result would be on their case, and when they would be released. One person wanted “a leaflet about my rights“. Most of the people who needed more information wanted it so they could plan their future.

3.3 Space within the detention centre

The detainees interviewed seemed to feel “ok" about their sleeping rooms, and only a few people expressed negative sentiments about the room. Similar answers were found when the detainees were asked about the general space in the centre. One person said: “It’s OK except for the bars”, showing perhaps that even if you have an adequate facility, the fact that it is a prison still causes distress. Most detainees did not report feeling overcrowded in the centres, but some said they would like to have a chance to be alone from time to time and to have more privacy.

3.4 Rules and routine

The detainees respected the routine, which they described as “breakfast – lunch – supper – walk”. Nevertheless they all reported that they would like to have many more outdoor activities.

3.5 Detention centre staff

Detainees reported being in contact with security staff (although one co-detainee said: “I am in daily contact with the ‘bars’“.) The detainees reported that their interaction with the staff was good: “It’s ok” “they interact well with me”. Occasionally, problems with language barriers were mentioned, which caused a feeling of exclusion. Almost all the detainees reported that they felt that the staff supported their needs. Unfortunately, because of the short answers it was not possible get a thorough insight into why staff detainee relations were rather good.

3.6 Level of safety within the detention centre

Almost all the detainees reported feeling safe in the centre, and when asked why they felt safe, they replied that they felt well looked after and that it was safer than outside.

Only two people reported being mocked by others, one by a detainee and one by a policeman who was not very polite. Three people said they had been physically assaulted, and all by detainees during a quarrel. Three people had filed a complaint, and one had filed a successful complaint (this involved moving a detainee to another unit).

3.7 Activities within the detention centre

Almost all detainees reported that there were activities offered by the detention centre, and that they took part in them. Nearly all of them mentioned sport, particularly football or walks. When asked why they participated, the most common answer was because they enjoyed the activities. Almost all said they had access to books, telephone, TV, education, sports, spiritual/religious space and outdoor activities. They do not report having access to computers or the Internet.

When asked what activities the centre could reasonably provide that would improve their lives in detention, one-third of detainees simply said 'freedom', and that without this activities were irrelevant: "without freedom there is no positive impact." The other frequent requests were for computers and for more access to sports.

3.8 Medical issues

All the people interviewed said there were medical staff in the centres, and reported the presence of a doctor and nurse. Most reported having contact with medical staff once a week. Nearly all of the detainees said that they had had a medical exam upon arrival at the detention centre. However, almost half said that they did not have medical care in a language they understood, and they thought it could be solved by interpretation by co-detainees. This is a significant amount, signifying an underlying language problem that perhaps explains the problem of the short answers to the DEVAS interviews. Detainees reported that they were positive about the medical facilities provided, others were neutral, and some felt negative. Only 12% report having unmet medical needs.

One-fourth of detainees said that their physical health was negatively affected by being in detention, while the others said that they had not been affected. Of those who were affected negatively, half blamed the facilities (for example, diet), and others did not give a reason.

Half of the interviewees said that their mental health had been affected negatively by being in detention. Detainees reported that their mental health had dropped while in detention: 75% rated their mental health as 'very good' on arrival in detention, whereas only 45% rated their mental health as 'very good' at the time of the interview.

When asked for an explanation for this drop in mental health, some mentioned worries, others blamed health problems (including mental), some were worried about being separated from people on the outside, and some said that simply being locked up had caused their mental health to drop. No one mentioned living conditions.

NGO staff observed that the lack of duties and activities for the detainees seemed to lead to the decline in detainees' self-esteem and to depression.

3.9 Social interaction within the detention centre

The majority of detainees reported getting on positively with others. Only one in ten said that there were problems between detainees. Almost all of those questioned said that they had someone to trust in the detention centre, and interestingly they mention the staff of the centre, for example 'the advisor, policemen' rather than co-detainees. NGOs and staff noted that persons who could interact with co-detainees from their country of origin seemed to benefit from this and appeared less depressed.

3.10 Contact with the outside world

Most of those questioned had family in their country of origin, while around a half reported having friends and family in the host country.

The overwhelming majority reported that they stayed in contact with their friends and family by phone. Only a very small number said that they stayed in contact through visitors (this might be partly to do with the fact that they have been detained for a relatively short time). No one was able to stay in touch with family members through the Internet.

When asked for the best method of contact, the overwhelming majority said that it was telephone. However, only 61% said that they had sufficient access. This discrepancy is because many people answered 'mobile phone', which was not covered in the DEVAS questionnaire, and was not available to them at the centre.

Only around one in ten detainees had had family member to visit them, while one quarter had had a friend to visit. Almost all detainees had had a visit from the lawyer, and many reported having been visited by and NGO like Caritas or Good Will.

3.11 Conditions of detention and the family

Around one in five detainees had children outside the centre. Two women reported having children living with them in the centre. These two people said that their children had access to kindergarten and to recreational space. One raised concerns about the need for special baby food.

3.12 Conditions of detention and nutrition

Most of the detainees reported that the food in detention suited them: “I like the food very much, but I would like to have rice much more often." However, some detainees said that their appetite had gotten worse in detention. Most of the detainees said that they slept well, while one quarter reported having sleeping difficulties. These seemed to be related to the worries that people had in detention: “My problems, homesickness…” and “lack of freedom, problems” were echoed by a number of detainees.

3.13. Conditions of detention and the individual

When asked about top difficulties in detention, the first difficulty mentioned was the fact of being behind bars: ‘being locked up’ ‘we are not free’. The second most frequent difficulty mentioned was missing people on the outside world: ‘I miss my husband and family’ “I am so far from my pregnant wife …” A small minority (one in ten) mentioned living conditions as one of the main problems in detention: “I miss the food from my own country“; “I need a pen, I have to write“; “more outdoor activities“; “more cigarettes“.

Almost all detainees felt that the beginning of detention had been the most difficult: “the first three months, it is better now, time is moving on”. This may be because detainees know there is a fixed time limit of detention of six months, and therefore after a few months they know they are getting closer to the date that they must be released.

Approximately 80% of detainees reported that they did not know what the outcome of their detention would be, and less than one in ten reported knowing the exact date they would leave the centre. This was unsettling for the detainees: “It would be better to know”; “Nervous”; “It makes me very unhappy. I am not patient; I want to go home as soon as possible… Because of my mother… she is so sick.”

Most detainees reported positive or neutral self-perceptions: “I see myself as a free person.” “I see myself as a good man”. Of the 20% who described themselves negatively, many concentrated on feeling like a criminal or prisoner: “I see myself… as a monkey in a zoo.”

One in five detainees felt that they have special needs. Around half of these needs related to medical problems or being detained with children, while others related to separation from family, especially separation from children, needing religious guidance or extra activities. Many detainees point to “sick people” or “elderly people” as being vulnerable in detention. The remaining detainees were more apt to say that everyone in detention is in a very special situation with special needs: “Everybody here is vulnerable.”

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

The analysis of the DEVAS data from Slovakia posed some challenges. Although there were a relatively large number of interviews conducted, the answers were rather short and often did not reveal much about the point of view of the detainee. This could have been due to the fact that the interviewer, when conducting the interviews, was almost always watched over by detention centre staff or by a camera, which may have made detainees reluctant to open up. In addition, we found that many people were scared of ‘paper‘, and would prefer to tell their stories rather than answer the questions. The time allocated to interviews was also very short, because of the strict regime of the centres. Another factor was that there was a lack of interpreters in the centres, meaning that it was hard to obtain rich answers, especially for those from China. Further, it was felt that some detainees did not like talking about their problems, as answering truthfully to some of the more personal questions might be seen by some detainees as admitting weakness.

Nevertheless, there are several important themes that arise from the data. Detainees generally reported positively about the facilities such as space, food, and activities. They also reported positively about staff relations and relationships between detainees. One possible reason for this is that the facilities have improved greatly after some investment by the EU, and that some of the detainees could remember the conditions in the previous detention facilities. Unfortunately, it is hard to tell whether positive opinions of the staff (or indeed other positive opinions of the living conditions) were influenced by the presence of staff during the interviews, and the fact that detainees were afraid of the ‘paper' in the survey.

However, even if we take at face value the generally positive living conditions, detainees still report distress at being in a closed facility. For example, detainees reported that although activities were a good way to pass the time, they did not ameliorate the fact of being in detention. Similarly, when asked about the most difficult things about being in detention, simply being locked up was often mentioned as the most important thing. Being locked up was also seen a contributing factor to the perceived deterioration of mental health while in detention, marked by the fact that the number of those who rated their mental health as ‘very good‘ dropped considerably during detention.

Other explanations to this drop in perceived mental health related to isolation from their friends and family. In fact, lack of communication with the outside world was also one of the top difficulties mentioned. The fact that mobile phones cannot be used led to isolation for some. Only 1/4 had received visitors from family or friends (although almost a half had family in the host country), which perhaps added to their sense of isolation. The one in five who reported having children outside the centre felt that this was a particular problem, and reported missing their families as one of their top difficulties.

Another cause for isolation within the detention centres seems to be language. This was made obvious by the difficulty Caritas had in finding interpreters for the DEVAS interviews. This can also be gleaned from the data collected: almost half of the detainees said that they don’t have medical care in a language that they understand, and some mention that language barriers cause problem with staff members.

Detainees reported having relatively in depth knowledge about why they had been detained, and were also aware that there was a legal limit of six months on their detention. Perhaps this is a reason why some detainees in Slovakia seem to report managing detention with little effect to their mental health. However, lack of knowledge about specific departure date and the outcome of their detention (deportation or release) seemed to be a widespread problem, and one that was causing great distress.

5. CONCLUSONS AND RECOMMENDATIONS

The data collected in Slovakia through the DEVAS study also sheds some light on who can be considered 'vulnerable' in detention. On the one hand, there are some factors that lead detainees with particular characteristics to be more vulnerable. As well as the classic vulnerable categories (such as women, those who are sick, elderly people) the data seems to bring out another group: those who are linguistically isolated. For those who face language barriers in the centre among staff and detainees, their situation is worsened by the fact that there seem to be few interpreters at the centre. Caritas even had problems communicating with these people for the purposes of DEVAS, and it can be assumed that this significantly affects their experience of detention and also their understanding of their legal situation.

Another group that can be identified are those detainees who have families, and in particular those who have children outside the centre, often far away in their country of origin. Again, this situation is made worse by the fact that the use of mobile phones – which were considered the best means of communication - was not permitted. Those with young children in the centre form another vulnerable group, but did not report specific problems in this survey.
Other causes of vulnerability that can be identified apply more generally. One factor that makes everybody in detention vulnerable is that simply being locked up seemed to cause significant stress to many detainees. Added to this, the uncertainty of exact release date and outcome of detention affected detainees' well being. In these cases, all detainees are equally vulnerable to these negative effects.

As regards recommendations, it can therefore be said that the use of detention as a restriction on the freedom of applicants for international protection on the grounds of their illegal entry is a mechanism that has a general negative impact. In spite of the very decent conditions within the detention facilities and the respectful and friendly manner of staff, it is clear that detention deprives the human being of liberty and is therefore intrinsically undesirable. Therefore, there is a strong need to look for alternatives to detention and ongoing improvements in the existing conditions.

In particular, in light of the DEVAS research and the observations of Caritas Slovakia, Caritas would like to make the following recommendations to the national authorities:

- To grant NGOs more access to detainees, in order to provide activities and accompaniment so as to diminish the negative experiences of detainees;

- To ensure the ongoing improvement of staff language skills, and to ensure that detention centres off a reliable form of translation and interpretation. Detainees themselves might even benefit from language courses, which might diminish their level of social isolation, improve their ability to communicate with others and make beneficial use of the time that they must spend in detention;

- To provide for more outdoor activities so detainees do not stay closed within the interior of the centre for too long. Since many detainees view their detention as imprisonment, it would be beneficial to them if they had opportunities to be outdoors;

- To improve communication channels between detention centre staff and the government decision makers. Detention centre staff are very aware of what detainees experience and the impacts they live with in detention. As a result they are well placed promote laws and conditions that improve protections for detainees;

- To accelerate asylum and return procedures, and the examination of the legality of the detention. Doing so would ensure that detention is implemented for the shortest period possible, and causes the least harm to the individual detainee;

- To transfer asylum seekers to open reception and residential facilities. This could be a part of a more comprehensive set of alternatives to detention that could positively impact the situations of vulnerable groups and those with special needs, such as: elderly people, those who are isolated (linguistically or otherwise) in the detention centre, mothers with children, and mentally ill and sick people;

- To enable access to personal mobile phones. Detainees often keep important data on their mobile phones, such as the telephone numbers of family and friends, or even NGOs and lawyers. Ensuring access to this potential rich source of support could dramatically reduce detainees' sense of isolation, and improve their ability to stay connected with loved ones and helpful persons.

NATIONAL REPORT: SLOVENIA

By: Jesuit Refugee Service Slovenia

1. INTRODUCTION

The DEVAS study was conducted in the only Centre for Foreigners in Postojna, Slovenia, between February and June 2009. Among the 26 detainees who were interviewed, eight were asylum seekers and the rest irregularly staying third country nationals. To better understand the reality of detention and to include the point of view of staff, JRS Slovenia also interviewed two social workers: one working in the detention centre, the other from the open reception centre in Ljubljana who comes regularly to visit the asylum seekers living in the detention centre. Another social worker was interviewed from the only NGO that visits the detention centre on a regular basis.

Any study has its limitations. In this case, most of the interviews were conducted with men. This was because there were few women in the detention centre. Having more interviews with females might have enriched the quality of the data that was collected. Another limitation was the lack of an interpretation/translation capacity. Although this did not pose a major problem, on occasion it was hard to catch the nuances of detainees' answers. Generally, the detainees were willing to dedicate their time to talk about their experiences in the detention centre. Only one person refused to take part in an interview. Some were more willing to talk openly than others. It depended not only on the type of person, but also on the time they had spent in the centre. In most cases, the longer the person had been in the centre, the more willingness they had to talk.

JRS Slovenia would like to acknowledge the Ministry of the Interior for giving us permission to conduct interviews in the detention centre[236] in Postojna. Secondly, we would like to express our gratitude to all of those who responded to the questionnaires and generously gave their time so that we could better understand their reality in detention. In a special way our gratitude goes to all the detainees who revealed their lives and their vulnerabilities. We hope that the words, feelings, thoughts, and desires that they have communicated will help us toward better understating their view.

Finally, we would like to thank the Jesuit Refugee Service-Europe in Brussels for their constant help and assistance throughout the implementation of the DEVAS study.

2. NATIONAL LEGAL OVERVIEW [237]

2.1. Legal grounds for detention

The legal grounds for the detention of persons seeking international protection are found in Article 51 of the International Protection Act (IPA), which states that the movement of an international protection seeker (hereafter known as asylum seeker) can be temporarily limited on the grounds of: (1) establishing the identity of the applicant; (2) suspicion of misleading or abusing the asylum procedure; (3) preventing the threat to other persons' life or property; (4) preventing the spread of contagious diseases.

[236] The official name is 'Centre for Foreigners' (*Centre za tujce*). There is only one such centre in Slovenia and it is run by the police. To know more about this detention centre, one can read the Jesuit Refugee Service (JRS) Regional Report "Civil society report on administrative detention of asylum seekers and illegally staying third country national in the 10 new member states of the European Union", Valetta, October 2007, 120-131.

[237] JRS Slovenia wishes to thank Jerneja Cifer for writing this chapter.

Article 59 of the IPA (Dublin procedure) states that a competent authority may – until their transfer to the relevant state – accommodate the asylum seeker according to Article 51 in the Centre for Foreigners. Asylum seekers can be detained for three months in the detention centre. Their stay can be prolonged for one month.

The legal grounds for the detention of illegally staying third country nationals (also known as 'aliens') are based on Article 56 of Aliens Act. Regarding the detention of illegally staying third country nationals paragraph 1 of Article 56 of the Aliens Act provides that when a foreigner does not leave the state within the stipulated time limit or cannot be removed for any other reason, the police will order the accommodation of the foreigner in the detention centre or outside the centre until his or her removal from the state. The provisions of this Article apply to circumstances when the identity of a foreigner is not established. An alien can be detained in the detention centre for six months and their stay can be prolonged for another six months.

Neither the International Protection Act nor the Aliens Act provides a minimum age for detention.

2.2. Legal grounds for judicial review of the detention order

Paragraph 4 of Article 51 of IPA gives the asylum seeker the right to appeal against the detention order to the Administrative Court within three days from the receipt of the detention order.

Illegally staying third country nationals can appeal to the Minister of Interior and to the Administrative Court. Article 58 of the Aliens Act states that the police are the authority to order the accommodation of an alien in the detention centre, or under strict police surveillance. An alien can appeal to the Minister of Interior within eight days from the receipt of the written copy of the order on accommodation. The appeal does not prevent the execution of the order. The Minister decides on the appeal in eight days. Appeal to the Administrative Court is possible against the Minister's decision.

2.3. Legal grounds for the right of appeal against the detention order or to challenge detention

An alien can appeal to the Minister of Interior within eight days from the receipt of the written copy of an order on accommodation. The Ministry of the Interior then decides whether the detention order remains valid.

2.4. Legal grounds for the right of information about the detention order and/or the reasons for detention

The asylum seeker has the right to be informed about their detention and the reasons for his/her detention. The person must be informed orally and in writing. The Ministry of the Interior issues the detention order. The written copy of the order is issued within 48 hours of the oral issuing of the detention order as it is stated in paragraph 3 of Article 51 of the IPA.

Illegally staying third country nationals have the right to be informed about the reasons for the detention. The person is informed in writing as stated in the Article 58 of the Aliens Act.

2.5. Legal grounds for the duration of detention

The legal grounds for the duration of detention of an asylum are stated in paragraph 3 of Article 51 of the IPA. The detention may stay in effect as long as the grounds for it remain, but no longer than three months. If the grounds for detention still remain valid after the three month period, it can be extended for one month more.

Illegally staying third country nationals cannot be detained for more than six months. Paragraph 4 of Article 58 of the Aliens Act stipulates that, if due to objective reasons, removal is not possible within six months, detention can be prolonged for a further six months if it is expected that removal will be implemented during this extension.

2.6. Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

Detained asylum seekers have the right to health care as is prescribed in Article 84 of the IPA. But the scope of health care is restricted to care for emergencies, for women and for essential treatment of a disease. A person with special needs has the right to additional health care services, if approved by a special commission.

Illegally staying third country nationals also have the right to health care. The Health Insurance Act (Article 7) states that the state budget provides emergency heath care for people of unknown residence and for aliens from countries that do not have bilateral relations with Slovenia.

Article 87 of the IPA lays down provisions for financial, cultural and psychosocial assistance, child day-care for children and educational activities. For illegally staying third country nationals, psychosocial assistance is provided in cases when it is established by a medical examination that one's physical health or psychological condition requires such assistance. The Aliens Act does not prescribe any obligatory psychological assistance for persons with special needs.

2.7. Legal grounds for contact with the outside world

On the basis of an agreement between NGOs and the police, NGOs are authorised to contact the detained asylum seeker or alien. Lawyers and representatives of UNHCR can also have contact with detainees. In the Centre for Foreigners there are visiting hours when relatives and others can visit the asylum seeker or alien. The house rules of the Centre for Foreigners determine the time and the length the detainees can be visited. The visits occur in special rooms intended for this purpose.

2.8. Legal grounds for the provision of legal aid

Detained asylum seekers have the right to free legal aid in procedures (Article 78 of IPA) before the Administrative and Supreme Court. The Aliens Act does not provide for free legal aid for aliens. Article 13 of IPA requires that the Minister of the Interior appoint refugee counsellors to provide legal support and aid to asylum seekers who appear before the Administrative or Supreme Court.

2.9. Legal grounds for the protection of persons with special needs

Article 15 of the IPA states that special care is provided for vulnerable people with special needs, especially for accompanied and unaccompanied minors, disabled and elderly people, pregnant women, single parents with children, victims of torture and other forms of physical, psychological and sexual abuse.

Article 56 of the Aliens Act states that aliens who cannot be accommodated in the detention centre due to special reasons or needs can be accommodated in other social-protection institutions with the agreement of the Centre for Foreigners. Paragraph 1 of Article 60 of the Aliens Act states that an alien minor who entered Slovenia illegally and who was not accompanied by his/her parents or legal representatives should be accommodated in a special unit within the detention centre. In these cases the police must inform the Centre for Social work, who appoints a legal guardian for the minor.

2.10. Legal grounds for providing release from detention

Paragraph 1 of Article 61 of the Aliens Act provides that the accommodation of an alien in the detention centre will be terminated when the reasons for such accommodation no longer exist or when the purpose of such accommodation

is achieved. Paragraph 3 of the same Article provides that accommodation in the centre may be brought to an end on the request of the alien, if the police establish that the conditions for alternative measures are provided.

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1. Basic Information

The overwhelming majority of the detainees interviewed are male and over half are single. Less than one in five are married, while slightly more that that are divorced. The average age is approximately 30.

The average length of time that people had been detained was about three months, although some had been there for more than six months. One person had been there for more than a year[238]. The adults were situated in one unit of the centre, while the minors were in a separate unit with families.

Around half of those interviewed come from countries that were part of the former Yugoslavia. A number of others come from Asia, with a few from Central America and Africa.[239]

3.2 Case Awareness

Most of the detainees reported that they had been informed about their situation through official procedures, or upon arrival to the centre. On average detainees reported being only somewhat informed about their case. The majority of detainees said that they needed more information about the duration of detention; some reported needing more information about the reasons for the detention, and others on international protection procedures.

The detention staff stated that while people were informed about their legal status, this was sometimes not enough because they did not understand the law and its meaning. Oftentimes NGO representatives fill this gap in knowledge, as was confirmed by the interview with the social worker from the Jesuit Refugee Service (JRS).

Asylum seekers tend to be better informed, because they receive assistance from the staff member coming from the Asylum home in Ljubljana, who comes to the detention centre twice per week.

When asked why they needed information, many detainees explained frustration at being behind bars, a desire to get on with their future, whether it be to return home, to go to another country or remain in Slovenia. A number of detainees said that detention would be easier to bear if they had more information: “We feel better if we know the time to get out … for my mental and physical well-being.”

3.3 Space within the detention centre, rules and routine

The structure of the detention and the space within it has a very important impact on detainees’ lives. The majority of detainees reported feeling positively about their bedroom and were content that the centre is not over crowded, and that they have somewhere to be alone. However, most detainees reacted negatively when asked about the centre space in general. Their negative feelings seem to be more connected to their deprivation of liberty, rather than the facilities *per se*. One detainee declared: “It is like in a prison and I am not free to move”. Others mention how this

[238] The person was in the centre for 13 months. This is exceptional, because towards the end of his long stay in the centre he asked for asylum. Otherwise, the time limit in the centre is one year.

[239] The numbers of people who were in the Centre for Foreigners has fell in the last five years. The peak was in the year 1999 with 15.559 detainees who lived in the centre, while since 2007 until now the number has been under 1000. The last official numbers available are for the year 2009, which reveals that only 408 were in the Centre. See: http://www.policija.si/index.php/generalna-policijska-uprava/246, 22.2. 2010.

affects their state of mind: “How should I feel? I am depressed, humiliated by being here”. It is clear from the answers that this issue places an especially heavy burden on those who are detained for the first time in a closed facility.

As for rules, the detainees reported that they are respected but cannot be changed. Many compare the rules and routine to that of a prison. But the detention centre staff notes that on occasion detainees are able to influence the routine and rules, such as when they requested to reschedule daily dinner times.

3.4. Detention Centre Staff

Detainees maintain regular contacts with administrative, security, medical and social services staff on a frequent and daily basis. Almost 90% of detainees rate their typical interactions with staff either positively or neutrally. Persons who felt that their interactions with staff were negative put ethnic discrimination and the inability to communicate in a common language forth as reasons.

Over 70% of detainees felt that the staff supported their general needs; a smaller number felt that the staff left needs unsupported. In their answers, none of the detainees reported being mocked or physically assaulted by the detention staff. The social worker within the detention confirms these reports, and remarks that the staff acts professionally toward detainees.

3.5. Safety

Most detainees feel quite safe in the detention centre. In fact, many attributed their safety to the presence of police and security cameras. In some way this gives detainees a notion of the centre as a place where rules may be strict, but that they are at least observed.

3.6. Activities within the detention centre

In the centre detainees have the opportunity to engage in several kinds of sports and cultural activities. The majority of detainees have a lot of spare time, and as a consequence they report to enjoy participating in sports activities. The reasons given for taking part were for personal satisfaction, or for stress relief, with several people saying that they take part in order to take their mind off their situation or their worries. Detainees reported having access to books, telephone, television, and religious space (a room for silence), but they do not report access computers, the Internet, mobile phones or to educational opportunities.

When asked to give an indication of additional activities they would want the detention centre to provide, many did not answer; those who did asked for television channels from their home country, access to Internet and books in their own language. A few detainees simply said that to get out as quickly as possible would be the only way to positively impact their lives.

3.7. Medical issues

Almost all detainees said that they have regular access to nurses, doctors, and when necessary also psychiatrists. Most describe the level of medical care in positive terms, and did not report a need for additional care. All the detainees had had a medical examination upon arrival.

Despite this, 88% of detainees said that their physical health has been negatively affected in detention. Migraines, body pain, skin problems and gastrointestinal discomfort were widely reported. A number of detainees attribute their poor physical health to their situation of detainment, instead of the quality of medical care – “seeing these walls”, according to one detainee: “Yes, detention for more than one year impacted my health physically, mentally and conditionally. I have lost 13 kilos in a year.”

Nearly all detainees feel that detention has had a negative impact on their mental health as well. Sadness, confusion, feelings of anger, tension, stress, and sometimes even suicidal attempts were described by a large number of detainees. When asked why, most people again point to the simple fact of being detained. Others said that being apart from family members was affecting them: “Yes, being here without family support. I miss nephews, my daughter.”

3.8. Social interaction within the detention centre

Over 70% of detainees reported their interaction with others in the centre as being generally good. A small number specifically reported getting along well with those from their own language groups. Many even said that they could confide in their fellow co-detainees whenever problems arise. But 40% of detainees said that they had witnessed problems between detainees. One group of detainees describes social tensions as running on ethnic and cultural lines: “Detainees from ex-Yugoslavia tend to stay together in a group. There are no activities provided to bring together the different cultural groups.” Another group of detainees describe problems as being due to the stress of living in detention, and the resulting uncertainty of people’s situations. These detainees described aggressive behaviour from those who have been detained for a long time, and tension between those that are asylum seekers and those who are about to be deported. The detention staff confirms these viewpoints by saying that one of the biggest difficulties for detainees is “living in a different community with different people”.

3.9. ‘Contact with the outside world’

Detainees may use a public telephone that is available for 24 hours per day to contact persons in the ‘outside world’. While they expressed that the telephone is indeed the best way for them to communicate, a small minority said that they would like to have Internet access, which is unavailable in the centre. Other than the telephone, only a small number of detainees reported to have received visits in the centre. In fact, many comment that the staff from JRS Slovenia are the only ones who frequently visit them.

3.10. Conditions of detention and nutrition

The greater percentage of detainees did not report having any problems with the food provided in the detention centre. A smaller number felt more negatively, often saying that they missed the food from their own country: “I am not used to traditional Slovenian food: too much cabbage served, and it is always the same stuff, very predictable”. Others said that it was of poor quality or lacked variety. The detention staff acknowledged these views during their interview, but insisted that the staff tries their best, “but you can not satisfy everybody’s needs”.

Almost 70% of detainees describe experiencing changes in their appetite during the course of their detention; many of these said that they had lost their appetite. These impacts generally make detainees feel worse about their situation.

3.11. Conditions of detention and the individual

Half of the detainees reported not sleeping well at night. The stress of uncertainty was put forth as a principal reason: “When will I go out? My life – what will I do?” Some were missing their families: “I want to see my new born baby, my wife”.

The mere situation of detainment, according to detainees, is the hardest difficulty to bear. Even if conditions are suitable, the curtailment of their freedom and the uncertainty of their circumstances deeply affect detainees’ personal conditions. Being apart from their loved ones, and not knowing the outcome of their detention add to these existing difficulties. All the time spent in detention, and the resultant stress that is experienced, forced people to think critically

about their situations: “Thinking about my life. I want to go home after years of being in Europe and not making enough money.”

Through the interviews many detainees pointed to, in different ways, the central crux of their problem: “The plan to reach my destination country was interrupted by staying in the detention centre in Slovenia. It is not easy. My friends are waiting for me elsewhere”. Some detainees find time to reflect about their lives and to plan what to do next. However, with more days, weeks and months of the detainees staying in the centre, over three quarters of those interviewed said their lives in the centre became even more difficult. “Getting worse, living without life perspective is difficult”.

Detention centre staff confirmed the difficulties that detainees experienced, adding that “to reconcile with the decision to stay longer” in detention has an especially negative affect on their personal condition.

The vast majority of detainees expressed that their difficulties worsen as the length of their detention endures. Nearly all felt that every day was just as difficult as the next.

These difficulties are compounded by the fact that 88% cannot say what the outcome of their detention will be. The majority could not even say when they would be released from detention. Not knowing the date of departure or outcome of the detention makes many feel very anxious and stressful.

As a consequence, many detainees feel quite negative about themselves, comparing their situation to that of a criminal: “Being in a prison even if I did not do anything criminal”, is an oft-repeated sentiment among detainees. Another says he is “miserable, being here in a closed structure for the first time in my life.” As part of this, many display a frustration with their perceived lack of rights and bad treatment by the state: “As the victims of violence. The judge said we would be free within 48 hours, but now we have been here 40 days.” Nearly all detainees said that being in detention had impacted their self-perception negatively, saying that they had lost confidence and self-esteem: “it degrades me”.

When asking to point out others in the centre that might be vulnerable, most detainees identified persons in prolonged detention: “Some are here for many months; I do not know how they have survived”. People that cannot return to their respective countries, who do not share a common language with staff or co-detainees and those who are informed about their respective cases were additionally identified as being vulnerable in detention. Only one person pointed to elderly detainees as being vulnerable.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

4.1. Duration of detention

The data from the analysis indicates that the average time of a person in the detention centre is 3.39 months. This finding obscures the reality of *who* is subjected to prolonged detention. Detainees from southeast Europe[240] are usually sent expelled quite easily and quickly. This is because the national administrative authorities of these countries collaborate reasonably with each other – perhaps as a consequence of their recent history as having belonged to one country (Yugoslavia). Moreover, experience shows that the countries of southeast Europe are quick to portray themselves as managing migration flows well.

[240] Since 19th of December 2009 citizens from southeast European countries such as Serbia, Macedonia, and Montenegro can travel easier to EU as they no longer need an entry visa.

The situation is far different for detainees coming from India, Pakistan, and especially Afghanistan[241]; for these persons it is very hard to get some (or any) documents and official information. As a result, many persons in these situations are forced to stay for much longer than three months in the detention centre; sometimes even longer than six months. The Slovenian Aliens Act mandates the police to release such persons after a year of detainment, even if the person cannot be returned due to a lack of documents or proof of identify. Thus we see that the duration of detention does not similarly apply to each detainee's circumstances.

The research indicates that detainees are very sensitive to the duration of their detention. Many detainees, especially if they are men, feel very ashamed by their situation in detention. Some even begin to feel desperate when they realize they have little or no influence[242] on their case.

Duration of detention shows itself to be a crucial factor of vulnerability. The physical and mental health of detainees, already impacted within the first weeks and month of detention, continues to deteriorate the longer they stay in the centre. The duration of detention is linked to how detainees perceive themselves, and how they are able to manage their own situation, because the longer they stay in detention, the weaker they become.

4.2. Deterioration of Mental Health

The DEVAS study shows that detention has a deteriorative effect on detainees' mental health. Detainees (both irregular migrants and asylum seekers) lack enough information about the *reasons* and *length* for their detention. This lack in understanding may be due to detainees' inability to really comprehend their legal situations, as the legal intricacies of detention and there procedures therein can be complex for people. "Why should someone be locked here? Only because one is without a (valid) document?" is a common complaint made by detainees, which reflects the fundamental disparity between what they want and need for their lives, and the exigencies of the Slovenian state. Detention, therefore, is perceived as a punishment; and one for which no wrong was done: "I am not a criminal. I did not commit any crime", exclaimed many detainees. The sense of being punished for having committed no wrong places a heavy burden on detainees' mental health, because it deeply impacts their the way they perceive themselves and the expectations they had for their lives.

It is even harder for those who in a closed detention centre for the first time, as they are not used to its environment. The tough living conditions and strict rules and routine pose a great psychological burden on these detainees. They are confined to a small and very specific world with people whom the detainee did not choose to spend their time with. After the initial shock of the detention conditions and the new situation on which one has little influence, the detainee has to come to terms with not being able to reach Europe to work in order to support their family in their home country. Knowing that they are stuck for the time being in the centre with no or little prospects for their future lives, detainees become aggressive, depressed and loose hope. Detainees thus become very vulnerable and susceptible to mental health problems, often needing medicine in to sleep, to calm down and to reduce stress. Their mental health deteriorates further as their stay in the centre becomes longer and the prospect of release does appear not on the horizon.

The mental health consequences of detention become even more acute when a detainee must return to their country of origin. The DEVAS research shows that it is often the case that detainees deeply regret that they must return, especially because they were unable to work in Europe as a result of being 'stuck' in detention. Going back home means facing a situation of unfulfilled expectations. These issues place an especially heavy burden on detainees.

[241] In the centre there was a person who wanted to go home to Afghanistan. The detention staff arranged a meeting with the Afghan Embassy. But did not want to recognize this person, even if he declared he was from Afghanistan and spoke the native language.
[242] The question of detainees influencing or improving their case has two important aspects. The cooperation of a detainee with the national authorities is crucial, especially if they do not have the documents to prove their country of origin, so that the authorities can receive information about their identity. The other important aspect is the response from the country of origin of the detainee to the Slovenia authorities. In some cases it takes a lot of time – even many weeks or months – for the country of origin to transmit the necessary documents. In rare cases, it happens that it turns out to be impossible to obtain these documents.

Added to this are the physical consequences of poor mental health. The loss of appetite, the inability to sleep and the loss of weight are all intricately linked to the person's state of mind.

4.3. Inter-personal issues

Inter-personal relationships are also affected by deteriorating mental health. Almost half of those interviewed mentioned problems between detainees, some of these specifically mentioning problems from the stress of being in detention, as well as the difficulties associated in being in a confined space with people of different cultural backgrounds. The issues that are present in almost every detainee's situation, unfulfilled expectations, self-uncertainty and damaged self-perception, all influence the relationships among the detainees and also with the staff. Prolonged detention worsens interactions between detainees.

The experience of JRS Slovenia shows that helping detainees to solve problems in the detention centre in a manner that aims to respect all cultures and backgrounds brings benefits. But this is also a challenge because detainees are in very vulnerable situations, making it hard for many to see the needs of others.

4.4. 'Surviving' in the detention centre

Out of the three themes described above, which are linked with the vulnerability of people, a fourth one is related: how to 'survive' in the centre. In other words, the question is how to reduce people's vulnerability to the adversities of detention.

The detention centre in Postonja provides different activities, of which almost all are related to sports. Detainees can watch a variety of television channels, receive visits from the NGOs, UNHCR and lawyers, and make and receive telephone calls, which is very important. But they cannot use computers or have access to the Internet to be more informed more about their own countries or to receive and send personal information. In the centre there is a room for silence to serve the spiritual needs of the detainees. It is of great benefit for these people. The spiritual dimension is always a source of hope and comfort for many stressful situations in the detention centre. Some prefer to pray also in their own bedrooms.

Besides sports, there are other social and cultural activities of great help to detainees. In collaboration with detention centre staff, JRS Slovenia organises a variety of activities that aim to stimulate inter-cultural interest among detainees. These practices show that allowing detainees opportunities to make the best use of their time while in detention goes a long way towards reducing their vulnerability.

4. CONCLUSIONS AND RECOMMENDATIONS

JRS Slovenia considers it a great privilege to have had access to detainees through the DEVAS study, and also by the professionalism shown by the police, social workers, medical staff and the others involved who work with the detainees. As with any situation, improvements can always be made.

The data indicates that the duration of detention is one of the major factors that influence detainees' level of vulnerability. The study revealed that the mental and physical health of detainees deteriorates as a result of the shock of detention and the living conditions that are inherent within its environment. After adjusting to detention, detainees must then confront themselves with expectations that have been left unfulfilled because of their detention, and their inability to influence their outcome in any other way. Detainees in these situations begin to worry about themselves, their families and their future. All of this makes for a very heavy burden to bear.

It is clear that detention should be used only in the very last resort. The negative consequences that it brings means that it should be avoided whenever possible. All non-coercive alternatives to detention should be explored before a person is considered for detention.
If detention cannot be avoided, then its harmful effects should be minimised to the highest extent possible, and its duration should be for the shortest time as possible. It is therefore important to holistically assess the range of factors that each person carries with him or herself, in order to identify special needs and vulnerabilities from the outset, so as to prevent the person from entering into the circle of degradation that is inherent within detention. The longer a person stays in the detention centre, the harder their lives become. This is why detention must only be used as long as it is strictly necessary and proportional to an individual's situation. The current limit of one year, as laid down in the Aliens Law, is far too long.

The DEVAS research permits JRS Slovenia to issue further recommendations to the national authorities:

- *Cultural mediators and psychologists should be made readily available to detainees*. Psychologists can help detainees to cope with the most negative mental health consequences of detention; and they can work to identify early signs of vulnerability and special need. Cultural mediators can work to reduce conflicts among detainees, and to engage them in activities that make proper use of the time that they spend in the detention centre. The atmosphere in the centre would be better and easier for the detainees as a result, and also for those who work there. NGOs in Slovenia should take an active role in creating meaningful and substantial activities for detainees.

- *More involvement of NGO's with creative and other workshops* in this centre. Through these workshops one can help a detainee to use better their time in the centre. The more a detainee is involved with activities, the less the detention conditions will have a negative impact on the detainee. For this reason even the detention staff will have fewer problems with detainees.

- *Detention centre staff should take part in intercultural and psychosocial training workshops*. Staff participation in workshops dealing with inter-cultural issues, religious dialogue, psychosocial coping skills and problem solving techniques, as well as those that identify signs of vulnerability, can all positively impact the level of interaction between staff and detainees. The manner in which staff interacts with detainees can impact their level of vulnerability to the adversities of detention – especially if such interactions are supportive. Similarly, trainings on legal issues commonly found in detainees' situations might better prepare the staff to meet the needs of persons in detention.

NATIONAL REPORT: SPAIN

By: Spanish Commission for Refugees (CEAR)

1. INTRODUCTION

CEAR interviewed detainees in three immigrant detention centres: Aluche in Madrid, Capuchinos in Málaga and Zapadores in Valencia. CEAR received authorisation from the Ministry for Home Affairs through the Secretary of State for Security Matters, who issued the corresponding instructions to the Foreign Persons and Border Controls Office, which is attached to the State Police Department. A team was brought together consisting of around 40 people (lawyers, doctors, psychiatrists, anthropologists, psychologists, translators, mediators and back-up volunteers) from different social organisations (CEAR, Community Action Group, Médicos del Mundo - Spain, Pueblos Unidos).

The team conducted 107 in-depth interviews with detainees (39 in Madrid, 33 in Malaga and 35 in Valencia). However, since most of the interviews had to be translated into English, only 52 could be finally included in the central DEVAS database; and this report is based on those 52 interviews. The team also conducted 25 interviews with staff and administrators working at the centres, as well as interviews with the director and/or head of security at each centre. There were no interviews done with NGOs, because none were allowed to enter the centres at the time of the study.

2. NATIONAL LEGAL OVERVIEW

2.1 Legal grounds for detention

The regulations concerning the detention of migrants in Spain are based on *Organic Law 4/2000 of 11 January on rights and obligations of aliens in Spain and their social integration.*[243] Non-citizens can be detained by the national authorities for up to 72 hours before a judge authorises their placement in an officially designated detention centre. These centres cannot function as prisons.

Migrants can be detained for the following reasons:

- For the purpose of expulsion from the territory for violations listed under Articles 53 and 54 of Organic Law 4/2000, such as being in the territory without proper documentation and authorisation, posing a threat to public order or taking part in illegal immigration.
- When a judge orders detention in cases where the Spanish authorities cannot remove a migrant within 72 hours.
- When a migrant does not leave the country within the prescribed time limit after being issued a deportation order.

[243] Reformed by organic law 11/2003 of 29 September and organic law 14/2003 of 20 November; Royal Decree 2393/2004 of 30 December, of implementation of organic law 4/2000 of 11 January on rights and freedoms of foreigners in Spain and their social integration; Ministerial order of 22 of February 1999 on functioning norms and internal procedures of foreigners in detention centre.

2.2 Legal grounds for the minimum age for detention

Minors cannot be placed in detention centres. They should be sent to the competent services of Protection of Minors. Should a judge authorise it, the minor could be sent to an internment centre if his or her parents or guardians are also in there, and request to keep the family together; the unity and intimacy of the family must be preserved in these cases.

2.3. Legal grounds for the detention order

The Centres of Internment of Foreigners (CIEs) were firstly enshrined in *Organic Law 7/1985 of 1 July, On Rights And Freedoms Of The Foreigners In Spain*. Article 26.2 enshrines the "possibility of the judicial authority to order the preventive or cautionary entrance of foreigners engaged in specific expulsion causes, in centres with no penitentiary character, while their procedure is being substantiated."

Organic Law 4/2000 of 11 January on the rights and obligations of foreigners in Spain and their social integration. Modified by: Organic Law 8/2000, of December 22; Organic Law 11/2003, of September 29 and by the Organic Law 14/2003, of November 20.

Article 62. Entrance in internment centres

1. Once the sanction procedure has started due to the causes included in paragraphs a) and b) of section 1 of the article 54, as well as a), d) and f) of article 53, by which the expulsion from Spanish territory can be proposed, the instructor could request to the competent judicial authority the entrance in an Interment Centre of irregular alien while the sanction is taking place, but without having to wait for the issuance of the expulsion order for the detention to take place.

The judge, previous audience of the interested person, will decide by means of motivated sentence, attending different circumstances and, especially, the fact that the foreigner lacks domicile or documentation, as well as the existence of previous incriminating sentences or administrative sanctions and/or other pending criminal or administrative procedures (this section has been modified by the article 2º Four of the Organic Law 11/2003, of September 29).

2. The internment will stay for the minimum time necessary for the legal procedure, and in no case can exceed forty days, neither to order a new internment for anyone by the same causes of a previous internment. The judicial sentence that authorizes the procedure, assisting to the circumstances in each case, can fix a maximum period of duration inferior to the one mentioned.

3. The opening of a file of expulsion, the precautionary measures of detention and internment and the final resolution will be communicated to the Ministry of Foreign Affairs and the embassy or consulate of their country.

Organic Law 4/2000 of 11 January on the rights and obligations of foreigners in Spain and their social integration. Modified by: Organic Law 8/2000, of December 22; Organic Law 11/2003, of September 29 and by the Organic Law 14/2003, of November 20.

Chapter VI
Centres of Internment of Foreigners
Article 153. Centres of Internment of Foreigners

1. The Judge of Instruction of the place where the foreigner has been detained, at the request of instructor of the proceedings, the responsible for the foreigners unit on of the National Police before the detainee is presented, or the governmental authority that for itself or for their agents had decided the detention, in the term of 72 hours from the detention could authorize his/her entrance in centres of internment of foreigners. The Centre will not have a penitentiary character, in the cases referred the section 2 below:

2. The internment of foreigners will be ordered only when any of the following situations occurs:

a) That the person has been detained for being included in some of the expulsion situations of the paragraphs a) and b) of the section 1 of the article 54, as well as paragraphs a), d) and f) of article 53 of Organic Law 4/2000, reformed by Organic Law 8/2000.

b) That resolution of return has been issued and it cannot be implemented within the term of 72 hours, when the judicial authority decides the internment

c) When an Agreement of Return has been issued in accordance with this Regulation.

d) That a resolution of expulsion has been issued and the foreigner has not abandoned the national territory within the timeframe given for it.

3. The foreigner's entrance in a centre of non-penitentiary internment of character won't be able to be prolonged for more time of the indispensable for the practice of the expulsion. The governmental authority should proceed to carry out the necessary measures for obtaining the documentation that was necessary at the shortest possible time.

4. The detention of a foreigner with the purpose of being expelled will be communicated to the competent Consulate, to which the information on the foreigner's identity and the internment measure will be provided. This communication will go to the Ministry of Foreign Affairs and Cooperation when it has not been possible to notify to the Consulate or when there is no Consulate of the foreigner national in Spain. The authorities will communicate the internment to the foreigner’s relatives or other people in Spain, upon his/her request.

6. During the time of internment, the foreigner will be submitted to the jurisdictional body that ordered his/her internment. The governmental authority must communicate to this body any situation that may emerge in relation to the foreigner's internment.

7. People admitted in centres of a non-penitentiary character will enjoy the rights which are not affected by the interment measure, especially in articles 62 bis and 62 quarter of Organic Law 4/2000, of 11 January.

Likewise, they will have to comply with the obligations emerging from the internment situation in the conditions established in Organic Law 4/2000 of 11 January, and the norms for its implementation.

2.4. Legal grounds for judicial review of the detention order

OM of 22 Of February 1999. Article 2.2. Judicial Review

During his/her stay in the Centre, the foreigner will be under the control of the judicial authority that ordered the measure, who will be informed of any circumstance of interest that may occur in the centre. This authority will verify that the fundamental rights of foreigners in the centres are respected, *ex oficio*, at the request of the Prosecutor’s Office or the affected person

2.5. Legal grounds for the right of appeal against the detention order, or to challenge detention

Criminal Procedure Law (From Official Journal nº 260 of 17 September 1882 to Official Journal 283 of 10 October 1882) Modified by Organic Laws (…), 18/2006 (Official State Journal nº 134, of 6 June 2006).

Article 216

Against decisions of the Instruction Judge could be lodged the appeal mechanisms of reform, appellation and complaint.

Article 219

The reform and appellation appeals will be lodged before the same Judge that would have given the decision.

The appeal of complaint would be lodged before the competent superior Court.

Criminal Procedure Law (From Official Journal nº 260 of 17 September 1882 to Official Journal 283 of 10 October 1882) Modified by Organic Laws (…), 18/2006 (Official State Journal nº 134, of 6 June 2006).

Article 222

The appellation appeal could not be lodged but after having being lodged the one of reform; but it could also be lodged both appeals in the same written document, in which case the a

2.6. Legal grounds for the right of information about the detention order and/or the reasons for detention

Organic Law 14/2003, of November 20 that reforms L.O 4/2000.

Article 62.1 quarter. Information and Requests.

When entering the internment centre, foreigners will receive written information on their rights and obligations, issues or general organization, norms of the functioning of the Centre, the disciplinary norms and the means to lodge requests and complaints. The information will be provided in a language that they understand.

2.7. Legal grounds for the duration of detention

At the moment of the study the maximum duration of internment could not exceed 40 days. Should the expulsion of the foreigner be proven not to be possible within that that time, authorities should request his/her release prior to this date. A recent reform just approved by the Spanish Parliament has increased the maximum duration to 60 days.

2.8. Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

Royal Decree 2393/2004, of 30 of December
Article 154.

Health assistance and social services that is provided in these Centres could be delegated by the Interior Ministry with other ministries or public or private non profit entities, charging the costs of assistance to the pre-established budget lines for that purpose.

Ministerial Order Of 22 Of February 1999 On Functioning Norms And Internal Procedures Of Aliens Detention Centres Article 12. Health Assistance Service

1. In each centre there will be a Health Service under the responsibility of a medical doctor who will be assisted by a professional nurse. Specialised personnel of the National Police Force will fulfil those positions.

2. In order to attend the need of foreigners to be attended in a hospital as well as specialised medical assistance, the necessary agreements could be made with hospitals and specialized clinics near to the interment centre.

3. There will be function of the Health Service, besides medical and pharmaceutical assistance of the foreigners, the inspection of the hygienic system. The Health service should inform and propose the direction of the centre the necessary actions, in relation to the preparation and distribution of the food that would be appropriate for a normal diet (LO 4/2000).

LO 4/2000
Article 62.bis. Rights of the interned foreigners

To receive health adequate health assistance and being assisted by the social services of the centre.

2.9. Legal grounds for contact with the outside world

LO 4/2000. Article 62 bis. Rights of the interned foreigners

Foreigners will have the following rights: (…)

d) To receive adequate health and sanitary assistance and being assisted by the social services of the centre.

RD 1293 of 30 de December. Article 154. Competence

6. Health assistance and social services that is provided in these centres could be delegated by the Interior Ministry with other ministries or public or private non profit entities, charging the costs of assistance to the pre-established budget lines for that purpose.

Ministerial Order Of 22 Of February 1999 On Functioning Norms And Internal Procedures Of Aliens Detention Centres.

Article 13. Social assistance services

1. The centres will have the appropriate social assistance services for the foreigners assisted by social workers under the direct supervision of the Director of the centre to who they will present their plans and projects for action.

2. The social services that will be facilitated in the centres could be delegated to public entities of non governmental organizations or other no profit organizations according to article 6.

3. Social assistance will have the purpose of addressing the problems that have emerged to the foreigners in the internment centres, and if appropriate to their families, as a consequence of their internment in the centre, especially with regards to interpretation services, family relations with other countries or support in their paper work.

2.10. Legal grounds for the provision of legal aid

LO 4/2000. Article 62.bis Rights and obligations of the interned foreigners

The foreigners under conditions of internment will have the following rights:

f) To be assisted by a lawyer that will be provided ex-oficio (free of charge) if necessary, and to privately communicate with him/her, even after regular visiting schedule if the urgency of the case so require.

2.11. Legal grounds for the protection of persons with special needs

No norm addresses this issue.

2.12. Legal grounds for alternatives to detention

There are no alternatives to detention laid down in law.

2.13. Legal grounds for providing release from detention

Should the expulsion of the foreigner be proven not to be possible within that that time, authorities should request his/her release prior to this date.

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1. Basic information

The average age of the detainees interviewed was 30, with the youngest being 18 and the oldest being 53. Over 80% were male. They come mainly from Central and South America, with the next biggest group coming from North and Central Africa. There are also significant minorities from Eastern Europe and Russia. Around a quarter of those interviewed were married, with the rest reporting being single, with only a couple of people who were divorced or widowed.

On average, the detainees had spent 23.15 days in detention, with a minimum stay of 3 days and a maximum of 112 days.

Almost half of detainees had been living in Spain for four or more years, and in some cases they had been in the country for more as long as 20 years. The majority had not been detained in Spain before, although 1 in 5 had been.

3.2 Case awareness

All of those interviewed were irregularly staying migrants awaiting deportations.

Many detainees had been informed about their detention by police or in courts. It seems from the answers that many had been found illegal through random checks at for example the stall where they work or just walking along the street. A couple of people said they had not been properly informed about their detention “I was not properly informed. I did not understand the Spanish that the policemen used.”

While most detainees said they had been informed about the reasons for their detention, almost all also said they needed additional information. This was mostly two things, the date of possible release, and whether they will be

deported or not: “I do not know if I am going to be expelled or not. I feel completely abandoned.” A further group wanted to know why they had been detained, and what their rights were: “Why have I been arrested? I have lived and worked in Spain for many years, I have not done wrong.” Again, problems with communication were mentioned by many of those interviewed, who requested information in a language they could understand. Another group said that they had had no official information at all: “The only information I get come from my cellmates. We are persons, we have families, and we need to know what is happening to prepare the future. We should not live with such uncertainty. It creates panic.”

When asked why they wanted this information, many of the detainees reported that uncertainty and stress of not knowing their situation was affecting their mental health: “I need to know, otherwise my head will explode. I feel rage, pain. I know there are trials, procedures, I need to be informed!!”

Others felt simply angry that their rights were not being respected: “I feel indignation, impotence and much pain. In my country we take much better care of the immigrants. I am not a murderer; it is not fair. I am a person, I have my rights and I don't feel they're respected here.”

None of the centres issues an official certificate (as established by the Ministerial Order) testifying to the fact that the individual has been in the detention centre and specifying, at the very least, the cause for said detention and the date of entry and the date of discharge.

3.3 Space within the detention centre

Detainees were not positive about the rooms in the detention centre. When asked about the room that they sleep in, almost half gave outright negative answers, mostly related to the room being overcrowded, having poor quality bedding, and poor air quality. A significant minority attribute their responses to the level of cleanliness (very negative answers). Almost nobody reported positively about the room they have to sleep in.

Detainees were even more negative about the rest of the centre space, with more than half of detainees reporting that they are unhappy with the centre, with poor washing and toilet facilities, non-functioning vending machine, and not enough room to move. Detainees attributed these responses once again to the general atmosphere of the centre, but also to the conditions of the facilities that are provided.

A number of people felt like the space in the detention centre was not very important compared to the fact that they had been locked up: “I don't complain about the room, but about being locked up. We immigrants have build up Spain. We have built bridges, buildings...as slaves. Nowadays we are not needed nay more, they tell us: go back to your country.” and “It’s like being caged in.”

70% of those detainees interviewed felt that the centre is overcrowded, saying that there are too many people for the small amount of space. One detainee reported that sometimes people are even sleeping on the floor. Noise seemed to be a problem for some, with a couple of people saying it was impossible to talk on the phone because it was so noisy. People seem to be coming and going frequently from the centres, and many people say that as soon as one detainee is deported, another comes to fill his or her space. The effect of this kind of overcrowding is evident in some of the answers: “Every day, people come in and out. Even mad people come here. It is like a prison.”

The interviews with the Director and personnel in Aluche (Madrid) revealed problems with the building, rooms, toilets and showers, communal areas and exercise yard. These coincided to a large extent with comments and evaluations made by some of the administrators at the centre. The situations were found:

- Absence of toilets in the cells, which forces the detainees to use the washbasins as makeshift toilets at night, given that there is no intercom system to enable them to request permission to go to the shared

toilets;
- A complete lack of privacy in the bathrooms;
- The detainees are not given any toiletries whatsoever during their stay (soap, shampoo, toothpaste, toilet paper). Tampons for women require a medical prescription;
- The detainees are not given towels or sheets. They sleep under rigid fire-proof blankets that produce lesions on the skin;
- The detainees are not given clothing or shoes. This team was able to talk to various individuals who had been at the centre for more than ten days wearing the same clothing in which they were detained (including underwear).

The team's visit to the detention centre in Capuchinos (Málaga) with the Director and personnel revealed problems with the building, rooms, transit area, communal areas and exercise yard, as detailed in the report. There were also damp problems and a lack of light in the cell. All of these problems coincided to a large extent with comments and evaluations made by some of the administrators at the centre.

The team's visit to the detention centre of Zapadores (Valencia) with the Director and personnel revealed problems with the rooms, toilets and showers, visiting rooms, dining-hall and exercise yard, as detailed in the report. Under this heading, the following were found:

- Overcrowding in the cells;
- Absence of toilets, which forces the detainees to use empty water bottles at night in order relieve themselves, given that there is no intercom system to enable them to request permission to go to the shared toilets;
- A complete lack of privacy in the bathrooms;
- Damp in various rooms and lack of natural light;
- The detainees are not given clothing or shoes.

All of these situations impact negatively on the mental and physical health of the persons secluded in these very hard conditions.

3.4 Rules and routine

The questions about rules in the detention centre were mostly unanswered, but those who did answer seemed to suggest that there were no clear rules in the centre. "Nobody explained the rules to me. There is an absolute lack of information. I know about the rules from other detainees. The staff are dreadful people who don't care about us." Even more worrying was another person's reply when asked about rules in the detention centres: "I know the basics and I am learning over time and with every punishment. I've been sent to a guardroom."

Not all the detainees were negative about staff's attitude to rules, with one person saying that staff are sympathetic towards detainees and were open to requests to accommodate their food preferences, although in the end these were not taken into account.

The three Centres have isolation cells. The team was able to record deficiencies regarding their use from the visits themselves, as well as from interviews with the director and interviews with the detainees, especially the following:

- Non-existence of a set of punishment rules. Discretional use depending on the criteria of the head of security, who also determines the proportionality criteria;
- Absence of a register or any other document to record use of these cells, including the name of the detainee, the time of entry and the time of discharge from the cell, so that the judge or the competent

authorities can safeguard the rights of the detainees;

- Use of police measures (handcuffs) over long periods of time, instead of non-harmful forms of restraint;
- At the detention centre in Madrid, the light is on 24 hours a day so that the guards can see inside the cells.

3.5 Detention centre staff

Feelings about the detention centre staff seem to be rather mixed. Most say that they are likely to be in contact with security staff. Almost one quarter of the detainees described their interactions with staff in negative terms; only 19% described these interactions positively, and 28% said that the quality of interactions depend on the staff person.

Most detainees did not report having experienced discrimination from the centre's staff; but 22% do claim to have experienced discrimination. Many of these detainees mention the colour of their skin, and more specifically, that Africans are treated worse than Hispanics, as reasons for the discrimination. One person felt that some staff are homophobic. Others said that non-Spanish speakers were discriminated against.

Around half of those questioned felt that the staff did not support their general needs; although for special needs and requests, slightly more felt supported. Many detainees seem to think that the staff does what they can within the limitations of their role as guards, and respond quickly to individual requests such as phone calls. Another group said the level of support by staff depends on the day, or the staff person. As for those who did not feel supported, many replied with angry sentiments about staff not answering requests or making the detainees wait for days. The biggest complaint was from people with medical problems, who felt like the staff did not help them to get access to the care that they needed. For example:

> I have written 10 letters to the director because the doctor here says things that I do not understand and he does not give me anything. I have been 18 days without taking anything. This is very dangerous for my health because I have AIDS, and my immune system is low. My eye is getting worse. Half my face is paralysed. My heart is bad and I need medicines. I have only the ones my wife gave me until they run out. The director has not replied. Maybe the police don't give him my letters.

3.6 Level of safety within the detention centre

Many detainees did not feel safe in the detention centre, with almost 1 in 5 saying they felt very unsafe, and the majority saying they felt only 'somewhat safe'. Around one quarter said that they felt very safe. Those who felt safe mentioned that the centre was well run, that the police were keeping a close eye on things and would intervene if there were any problems, and that they did not experience problems with other detainees.

As for those who felt unsafe or only 'somewhat safe', a large number of these detainees felt scared of being returned to their home country, where they would not be safe; the potential for expulsion at any time was particularly frightening for these detainees: "I am scared of getting mad here. During the night, the police take out some detainees. I am terrified and I don't know when it will be my turn."

Another group said they felt unsafe because of fellow detainees being disruptive and because of petty theft within the centre. Some felt unsafe because some of the detainees are criminals. Others were more concerned with the staff of the detention centre, saying that they treat detainees as criminals. The living conditions also concerned some. One woman with a baby explained that she has to sleep on the top bunk of a bunk bed, and is afraid her baby will fall off. Another person was concerned that pregnant women were not getting fed properly in the centre.

A few people mentioned being isolated from the world as a problem. For example, one person felt unsafe because of the lack of information they had about their case, and the lack of access to a lawyer. "Because there is no

information, no lawyer, I do not feel safe." Others expressed concerns about their level of mental health, or the mental health of their fellow detainees.

It seems feeling safe is not just about policemen keeping the detention centre running smoothly, but also includes fears for the future, overcrowding, isolation, staff interaction and attention to special needs.

A significant minority of detainees, 20%, reported that they have been mocked or insulted by others: half of these reporting being mocked by other detainees, and another half reported being mocked by detention centre staff. Mocking between detainees were attributed infrastructure reasons, such as squabbles over use of the telephone, or personal insults. As for mocking by staff, general disrespectful treatment seemed to be a major factor: "Centre employees, they treat me disrespectfully, hey you, bloody immigrant!"

Reports of physical assault or abuse were quite low. However, five detainees in the sample reported experiencing occasional physical assault by the staff; no additional details or descriptions of this were provided.

Only a couple of detainees had filed official complaints to the detention centre staff. In both cases these had been ignored, much to the frustration of the detainees involved.

3.7 Activities within the detention centre

The detainees in the three centres reported that there are no activities organised by the staff. They are given the opportunity to watch television, but have no access to books, educational opportunities or sports equipment. Some report engaging in activities that are initiated by co-detainees, such as sports with equipment brought in from the outside. There is no access to the Internet in any of the centres.

When asked about what activities they would like to have, detainees answered that they would like to actually have activities (as there are none at present), access to the Internet, books to read and religious/spiritual activities. A number of people wanted televisions in their rooms, as they spent a long time locked in there each day. A few people did not find the activities question relevant, saying that they just wanted their freedom: "Respect and that they release me. I do not want to be detained."

3.8 Medical issues

Almost half of the detainees reported having the possibility of meeting with medical personnel either once per week or as needed. But almost one third said they only see medical personnel less than once per month. Detainees are mostly in contact with doctors, but it also seems that they are unsure of whether these doctors are provided by the centre or by an external organisation. Most detainees said that they received a medical exam upon arrival to the centre, but a significant minority, or 28%, did not receive an exam.

Just over half of detainees described the quality of the medical services as being poor, more so because of the quality of services provided, rather than level of interaction with medical personnel. Only 18% described the medical care as being good.

Over half of those questioned said they needed medical services that were not provided. Examples were access to specialists, such as a gynaecologists or cardiologists, access to certain medicine, or help for certain conditions like asthma, diabetes, or earaches. Some mentioned needing a dentist. One detainee made a request to meet with a psychiatrist.

Physical health

Detainees express that their physical health deteriorates while they are in detention. They mostly attribute this to the general condition of the facilities. In this regard they especially blame the poor quality of the food, and also the dirtiness and the poor quality of the bedding. Detainees also blame the availability of medical treatment and medical facilities, and a small minority report that psychological factors have worsened their physical health.

Mental health

Detainees recorded an even more significant degradation of their mental health, with almost all detainees reporting that there had been a general negative impact caused by detention. On entering detention, almost half rated their mental health as "very good", where as less than 10% rated their mental health as "very good" at the point of interview.

When asked to explain why their mental health had been impacted by detention, for this they point to the general impact of being in detention, i.e. the uncertainty and anxiety, the feeling that they have done something wrong, the unfairness of detention, despair and worries about family. They also feel that detention has negatively impacted their rights. Other detainees report the emergence of mental health problems, specifically tied to negative emotions. The state of living conditions also makes for a negative impact, including the treatment from staff.

3.9 Social interaction within the detention centre

In general, detainees said that they get along well with others in the centre; if they do not report their interactions with others as being positive, then they describe them in neutral terms, i.e. "its fine", "normal", "ok". Some said that they felt isolated because they could not speak Spanish, and did not have any friends; others said that people from the same country of language group made friends. And some detainees described differences between those who had been detained on criminal charges and those who were detained because of their immigration status.

However, many detainees did describe an atmosphere of tension between detainees. The bases for these tensions could be divided into two groups. The first and most frequently reported, arose over issues related to 'common life' in detention, and the centre facilities, i.e. fights about access to the telephone: "Problems with the TV, the bathrooms, there is not an adequate chair. We like to sit on the toilet like a human being, not like an animal." The other set of problems were inter-cultural or inter-lingual, or in some cases inter-racial. "Some problems between the Nigerians and the Senegalese" or "some detainees argue against the ones who do not speak the same language such as certain nationalities"

3.10 Contact with the 'outside world'

Lack of contact with the outside world seems to lead to a feeling of isolation for detainees. Most detainees do have family in their country of origin (but 34% said they do not). But many feel that their feels their families are not being supported well without their help. Over half said that they do have family and friends present in Spain.

But almost one quarter detainees said that they have no family members or friends in Spain, making it hard for them to obtain clothing, phone cards or money, or to carry out any kind of tasks or business outside the centre (such as giving employers notice of absence from work, or paying the rent). Seventeen percent of the detainees have no contact with relatives or friends in Spain or in their country of origin; 60% are able to maintain occasional phone contact and 30% receive visits. In this respect, Valencia is the centre that keeps its detainees in the most profound isolation.

The family visit systems at the centres present significant deficiencies in terms of how they are managed. Two cases

are especially worthy of mention. At the detention centre in Madrid the management system entails waits of up to two or three hours, with the visitors not even being guaranteed entry and visits lasting a mere 5 minutes. We should mention that visual and occasionally physical contact with children and others is possible. At the detention centre in Valencia, the visiting rooms are, in the team's opinion, completely unacceptable, as detailed in the corresponding section of this report and confirmed by the monitoring and active observation activities carried out by the team regarding the visitor regime.

Although detainees have good access to the telephone, in the interviews it was possible to verify that 45% of detainees in Valencia, and 19% in Málaga are unable to use the telephone due to the high cost of making calls (higher than the average market prices in Spain). At the detention centre in Madrid, detainees are not allowed to receive incoming calls. This creates considerable anguish and anxiety among family members and detainees and leads to chaos and other problems regarding family visits. In Málaga it is possible to arrange calls and in Valencia there are public telephones available solely for receiving calls from family members, something that is greatly appreciated by the detainees.

Added to this is that detainees are not permitted to use their mobile phones. Even if public pay phones are available in the centre, detainees would actually prefer to have their mobile phones, especially because of the important data that is stored within them.

Just over one-third of detainees expressed that it would be very good to have access to the Internet in the detention centre. Another 30% believed it to be a good idea to have telephone booths available with specially agreed prices that are more affordable.

3.11 Conditions of detention and the family

No cases were found of families admitted

3.12 Conditions of detention and nutrition

A large number of detainees express a strong negative reaction to the food provided in the centre, particularly blaming the poor quality of the food. Quite a few complain about the fact that the meat is not *halal* and they are served pork. Most of them believe it is of poor quality (poorly prepared or cooked and featuring little variety); while a significant proportion believes there is insufficient quantity. As a result many detainees feel that they have lost their normal appetite while in detention, and this has made them feel worse.

A small minority of detainees have no complaints about the food, saying that at least they get fed three times a day.

3.13 Conditions of detention and the individual

The DEVAS detainee survey contained a question about the ability of detainees to sleep at night. However, most people did not answer the question, and no one commented on why.

When asked about their top difficulties in detention, the problem that came up most frequently was having "no freedom" and "being locked up". Uncertainty was also a frequent factor: uncertainty of whether one is to be deported and the waiting related to this, "to know that I could be taken from my room and expelled at any time." The inability to plan for the future, and uncertainty about how to support family members was also listed as a major difficulty in detention.

A related issue was the lack of information: "The fear of being expelled and the yearning to go out as soon as possible. The lack of information about the whole procedure."

Being separated by family also described as a problem. In addition, living conditions such as the bad food were mentioned, but never as the top difficulty. There is a very small minority who were interviewed who are drug addicts, and therefore reporting finding detention particularly difficult as they suffer withdrawal.

Although the living conditions were reported as bad across this survey, with detainees feeling unsafe, unhappy with the facilities, and the food and overcrowding, this was not ranked as being more difficult than the restriction of liberty, or the uncertainty of their position and their fear of what would happen next.

Over half of those interviewed did not know the outcome of their detention. Of those who knew, most thought they would soon be deported. When asked if they knew the date of their departure, almost 90% did not know the date. This caused a lot of anxiety and stress among the detainees. "Impotence. I can't think of anything else"; "Not to know when I'll be released makes me feel desperate." A couple of people mentioned financial problems, that their families relied on them for support and thus when they were detained they worried about their families.

Detention seemed to have affected detainees' self-perception negatively. Most detainees described themselves positively, usually with some pride (often in their ability to provide for their family). For example, detainees described themselves as: "Available, open to others, generous. I confront things", and "Hard working. I used to have two jobs at the same time to help my family go forward. I am joyful, friendly and talkative."

However, over half of the detainees said that being in detention had negatively affected their self-perception: "Before entering the centre, I was someone very normal, very affectionate. But now, I am not as I used to be. I am very nervous"; "I am full of fears, discouraged, not able to think, inhibited"; "I have lost all confidence in me, in any police officer, and in people generally. I feel used and treated like an animal." In two cases of detainees who were addicted to drugs, detention had actually had a positive impact, as they had been forced to be clean, had had regular meals and sleep, and had had a chance to reflect on their lives.

Around half of the detainees felt that they had special needs. These related to specific medical conditions, food allergies and special diets, being isolated linguistically, and those who fear persecution on return to their country. A large group of people who said that they had special needs in the sense that *everyone* has special needs in detention. All in all, most of these needs were not 'classic' vulnerabilities.

When asked who were the most vulnerable persons in detention, there were a wide range of answers: those with no family, those with children (especially women), those with families to support financially (related to this was poor people in general), depressed people, people with mental illness, people with medical conditions, pregnant people, old people, people from specific ethnic/national groups, traumatised people (a few people mentioned those who had arrived by boat and have seen people die next to them), those with drug addiction, people who have been in detention a long time, those people whose character is not strong enough, or who have been through a lot before detention. Again, many thought everyone was vulnerable: "I think nobody should be detained. We are all running from hunger, poverty and war, and have committed no crime"; "We are all in very bad shape". When analysed, only one in five of the special needs were actually 'classic' needs, i.e. needs that are already officially recognised by the authorities and other sources such as UNHCR.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

Lack of information

On the face of it, the data tells us that detainees are not getting the information they need. They face a lack of information on two counts. Firstly, the information is not well communicated to them. For example, there were a few

people who said that they didn't understand when the policeman arrested them because of language difficulties, some people that said that they had not been informed at all, and some people who said that although they had been 'informed' about their detention, they did understand or accept the legal basis as to *why* they were detained. This failure of detention centres to communicate information can also been seen in other parts of the data. For example, detainees who report that they are not informed about rules in the detention centres, those that say that they sometimes cannot understand medical staff, those that try and fail to have their complaints heard and recognized. Also important is that detainees have problems communicating with the outside world.

Secondly, detainees lack information about the outcome of their detention and their date of departure because their legal situation has not yet been decided or finalised. This is reflected in the data by the fact that although most detainees admit they were informed about why they were detained, almost all need more information. Most wanted information about when they would be released, and if they would be deported. We can see from the data that almost half did not know the outcome of their detention and 90% of those questioned did not know the date they would be released.

The reason why this is mentioned in the context of vulnerability is that this uncertainty and lack of access to information seems to cause detainees huge anxiety and distress. Detainees report that they are nervous about being expelled, because of what they expect to happen when they return but also because they don't know when they'll be expelled. This uncertainty was mentioned as one of the top difficulties in detention, and also as a reason for detainees to feel 'unsafe' in detention.

A deeper look into the numbers tells us that detainees' lack of information has serious impacts for the state of their mental health. For example, detainees that report not knowing when they'll be released also tend to report a "very poor" or "poor" state of mental health. The numbers also show that detainees who don't know when they'll be released also report very negative statements about their situation in detention: 44% of detainees who said they don't know when they'll be released also report that not having any rights in detention is the biggest difficulty they experience. Furthermore, the numbers show that detainees who don't know their release date also report high levels of worry, anxiety and stress about themselves and others.

'Lack of information' must be differentiated from being 'aware of the reasons for detention.' The data indicates that detainees who report knowing the reason for their detention also report having "very poor" and "poor" levels of mental health. At a first glance this finding may seem confusing, especially if we ask why they would report poor levels of mental health if they know the reason for their detention. However they were probably already aware of their illegal status in Spain, and have probably acknowledged that doing so poses a risk for detention and deportation. Of more concern is that information is withheld from them once they are in detention. They are deprived of a life perspective: they don't know when they'll be released, they don't receive legal counsel, they can't challenge the state of living conditions within the centre, and they don't know when they'll be expelled and what awaits them in their country of origin. The data shows that the denial of a life perspective leads to anxiety, hopelessness, despair and negative levels of mental health – also factors that lead to individual vulnerability.

The numbers tell us that the denial of a life perspective has serious negative impacts upon individual detainees in Spain. They may know that they are detained because of their illegal status, and they may know that they will eventually be expelled, but their level of awareness stops there. It is clear that detainees do not know how long they will be detained for, when they might be expelled and what waits for them in their country of origin.

Living conditions

The quality of living conditions seems to have a strong impact on the lives of detainees. From the data, it is clear that detainees find the living conditions in detention difficult. For example, detainees for the most part feel negative about their sleeping and living spaces, the food in detention, and say that they need medical care that they are not

receiving. Overcrowding seemed to be a large problem, and detainees blamed the poor quality and lack of facilities for tension that arose between detainees in the centre. Also, the detainees reported that there were no activities in the detention centres, and many reported spending long hours locked up with nothing to do. Some people described that they felt unsafe in the detention centre because of the living conditions. Bad living conditions were also mentioned by some as their top difficulties in detention, and a cause for having a special need, i.e. the centre does not provide for Halal eaters.

This is mentioned in connection with vulnerability because it seems that the poor living conditions affect the mental and physical health of many of the detainees. The data indicates that detainees who make negative statements about the room that they sleep in also rate the state of living conditions as their second-most important difficulty in detention. Similarly, the data shows that detainees who make negative statements about the rest of the centre's space also rate the state of living conditions as their second-most difficulty in detention. Detainees that negatively describe the centre's space also report "very poor" and "poor" levels of mental health. The numbers also show that detainees who negatively describe the centre's space also report detention has an "everyday" difficulty that they must endure. Living conditions impact physical health: detainees who negatively describe the centre's space report "very poor" and "poor" levels of physical health. In fact, the data indicates a strong relationship between poor living conditions and negative physical health impacts.

The data doesn't indicate that those who are negatively describing living conditions are those that are detained for a long time. Instead the data shows that those who have spent up to one month in detention are associated with the most negative descriptions about living conditions.

The level of over-crowdedness seems to have a negative personal impact upon detainees. Detainees who think the centre is overcrowded also report poor levels of mental health and physical health. Detainees who cite living conditions as a primary or secondary difficulty in detention report that the centre is overcrowded. However when we compare over-crowdedness with personal reports of safety, the numbers tell us a different story: although some detainees who feel the centre is overcrowded also report feeling "very unsafe" or "unsafe", more detainees report feeling safe in general. In other words, the data tells us that there is safety in numbers: over-crowdedness may negatively affect an individual's mental health, but not their sense of safety.

Mental health

Detainees' poor levels of mental health emerge as a pattern from the data. The numbers show that detainees' who report "very poor" mental health also rate anxiety and worry as a top difficulty in detention; detainees who report poor levels of mental health also rate the loss of rights as a top difficulty in detention. Furthermore, detainees that report poor levels of mental health also say that detention has negatively impacted their self-perception. This finding is particularly interesting, because detainees who report poor levels of mental health tend to report positive self-perceptions. In other words, detainees think of themselves positively despite being in detention. However, the negative factors of detention – lack of information, living conditions, isolation from the outside world, and lack of a life perspective – do have an impact on detainees' level of mental health.
Of significance here is that detainees who report poor levels of mental health also report having special needs, in particularly, "other" special needs. This finding suggests that the factors associated with detention negatively impacts detainees' mental health and thus leads to special needs, i.e. needs that are not addressed as 'normal' or 'classical' in mainstream guidelines. Other points where it can be seen from the data that lack of information, overcrowding, uncertainty, lack of safety all seem to lead to negative statements.

5. CONCLUSIONS AND RECOMMENDATIONS

The data suggests that the denial of a life perspective may be a factor of vulnerability for detainees, in that it leads to increased stress, anxiety, hopelessness, despair and especially poor levels of mental health.

The poor state of living conditions also affect detainees' levels of mental health, such as their levels of anxiety, stress and worry. Their level of mental health while in detention is generally poor, especially when compared to pre-detention levels. The length of detention does not seem to be a factor: the average number of days spent in detention is not long when compared to other countries, and it is not associated with negative statements about mental health or self-perception. Of more significance seems to be that detention in and of itself possesses a variety of factors that leads to vulnerability in persons. In the case of the Spanish detainees the most important factors are feelings of humiliation, denial of a future perspective and the feeling of imprisonment. In addition, the lack of information seems to be a primary factor, followed by the poor state of living conditions. The type of vulnerability that emerges from these factors is the significantly poorer level of mental health that is reported by detainees.
Following from the DEVAS research conducted in Spain, CEAR makes the following recommendations to the national authorities:

Attribute responsibility in cases of torture and take the necessary measures to prevent such abuses from occurring in the future, especially the following:

- **All immigrant detention centres must have a team of social workers, as established in the Ministerial Order.** The report shows that this measure is a truly urgent necessity. The presence of such a team would help to alleviate serious deficiencies regarding lack of information, attention given to family members, the supply and provision of clothing, and communication with people outside the centres. In this respect, it would be extremely advisable to carry out the Ministerial Order recommendation of establishing agreements with social organisations that specialise in the field of immigration.

- **Detainees should be given simple and effective channels of communication with people outside the centres.** Detainees should be afforded access to the Internet, in particular. Providing good communication channels to detainees can go towards reducing isolation in the detention centre, and it can enable detainees to seek supportive social networks.

- **Guarantee immediate access to medical assistance upon the detainee's request or upon discovery of injuries**, whatever their cause may be, in accordance with Instruction 12/2007, with effective penalties for medical professionals who fail to carry out these procedures. The environment of detention can harm detainees physically and mentally, thereby making them more vulnerable to the full set of adversities in detention. This is why it is important to provide detainees with unrestricted access to medical care.

- **Effective distribution of the rules and duties sheet at the centres should be conducted by detention centre staff.** Information sheets about the right of asylum, containing the criteria established by UNHCR, should be among the information that is available to detainees. These sheets could be distributed to persons upon admission, together with the information on the rules within the detention centre. Detainees who are unaware of their rights and obligations in the centre are especially prone to increased vulnerability. Thus it is the obligation of the detention centre staff to ensure that all detainees are aware of what they can, and cannot, do in the centre, and how they can enforce their own rights.

- **Establish an effective and guaranteed complaint and request system at all the centres and especially at the immigrant detention centre in Valencia.** Through the complaint and request forms, allow detainees to address the judge or attorney handling his case, as established in the Ministerial Order. It is important for detainees to not only have information about their rights, but they should also be empowered to enforce their

rights whenever necessary. The environment of detention means that detainees are already at a disadvantage to the staff and to the authorities, simply as a consequence of the restrictions on their liberty. This is why detainees must have clear channels from which to exercise their rights in detention, and to ensure that their problems and complaints are heard and addressed.

- **Provide quality mental health care to those who need it, and regulate the transfer of psychiatric patients to appropriate centres, as occurs with minors and with members of other vulnerable groups.** Detention can bring severe consequences to the mental health of detainees. Psychological care must be provided in order to ensure that the harmful effects of detention remain minimal, and also to ensure that detainees who have serious mental health needs are cared for. If the detention centre cannot provide for adequate mental health care, then it should facilitate detainee access to external care providers.

- **Introduce an effective system of mediators and translators.** The inability to communicate in a common language with staff and detainees can have a dramatic impact on one's level of vulnerability. The DEVAS research in Spain shows that persons who cannot speak the same languages as those around them suffer from a high degree of isolation; this in turn brings negative impacts to their mental health. For this reason it is very important that translators and interpreters are made readily available to detainees.

- **Improve the organisation and visiting conditions of family members in Madrid and refurbish the visiting facilities in Valencia.** The DEVAS research shows that detainees who are isolated from their loved ones are especially vulnerable to the difficulties that detention brings. For this reason detention centre staff and the national authorities must ensure that families can easily access their loved ones in detention centres, and that the environment of such visits is respectful of family unity and intimacy.

- **Organise activities and, in particular, provide access to sports equipment.** Detainees spend long hours of their days locked in their cells with little to do. The result is that they can spend weeks, or months, without engaging in any meaningful physical or intellectual activities. This can impact not only their state of physical health, but also their levels of stress and anxiety. Detention centre staff should take an active role to ensure that detainees have opportunities to remain meaningfully occupied with sports equipment, access to books and writing materials, and access to spaces for prayer and reflection.

- **Improve the food that is provided to the detainees.** Far from being trivial, the quality of food is of especial importance to detainees. Taking nourishment is not only necessary for one's state of overall health, but it is also a factor of normality. If detainees experience stress and anxiety as a result of other factors in detention, they should at least be able to eat nutritional and satisfying meals; this would go a long way towards maintaining low levels of vulnerability within detainees.

NATIONAL REPORT: SWEDEN

By: Jesuit Refugee Service Sweden

1. INTRODUCTION

During the course of the project, three detention centres were visited – the Märsta Detention Centre (30 detainees interviewed), close to the Arlanda Airport in Stockholm, the Gävle Detention Centre (17 detainees interviewed), and the Flen Detention Centre (15 detainees interviewed) between February and August 2009. A staff member at each detention centre was interviewed. We also interviewed a detention support visitor from the Red Cross in Flen and a visitor from Caritas in Märsta, In Gävle no NGOs visited the centre.

Random groups of detainees were sought for interview, without preconceived notions about who is most vulnerable. In the end, the pool of interviewees has been determined by the detainees' willingness to participate – and some groups were more willing (though not necessarily more vulnerable) than others. Many had a huge need to talk about their own 'story' and the situation in their homeland, their disappointment in Sweden, etc – issues not really addressed in the questionnaires. Therefore the interviews took a long time and often became very emotional. Some detainees expressed frustration. One man got really angry at the end of the interview, walked out and slammed the door. "Why do you come and ask these questions when you can't get us out, it would be better if you never came!"

The staff members at the detention centres were very helpful. We were immediately granted access and allowed to come whenever we wanted and to stay for as long as we wanted. The staff has generally been helpful in finding rooms for us to be in when conducting the interviews. They have helped us to put up information sheets about our project on bulletin boards around the centre so that the detainees would be more prepared that we were coming.

The interviews were conducted by Marie Eidem, Christoph Hermann, Louise Degen and Karl Eidem. Linnéa Klefbäck; JRS Sweden provided the information for the national legal overview.

2. NATIONAL LEGAL OVERVIEW

Administrative detention is primarily governed by the Aliens Act ("Utlänningslagen") from 2005. The law actually came into effect in March 2006, and is accompanied by the Aliens Ordinance ("Utlänningsförordningen"). As to information and appeals, according to the law on Public Administration ("Förvaltningslagen"), a party shall always be informed about how a decision may be appealed, if it is not obviously unnecessary. Swedish detention centres are run under public law (The Swedish Migration Board is a public authority). Correctional institutions, remand centres and police arrest facilities, where detainees in some cases may be placed, are also run under public law. The law does not distinguish between detention of asylum seekers and detention of irregular immigrants; it only refers to "aliens" and the conditions to detain aliens.

2.1. Legal Basis

<u>Legal premises for ordering detention</u>

The conditions for detaining aliens are regulated in Chapter 10, Section 1 (aliens who have attained the age of 18) and 2 (children, that is aliens under 18) of the Aliens Act. There is no distinction made between asylum seekers or illegal migrants.

According to Section 1, paragraph 1, an alien who has attained the age of 18 may be detained if the alien's identity is unclear on arrival in Sweden or when he or she subsequently applies for a residence permit and he or she cannot establish the probability that the identity he or she has stated is correct and the right of the alien to enter or stay in Sweden cannot be assessed anyway *("identity detention").*

According to paragraph 2 an alien who has attained the age of 18 may also be detained if:
1. It is necessary to enable an investigation to be conducted on the right of the alien to remain in Sweden, *("detention for investigation")*
2. It is probable that the alien will be refused entry or expelled under Chapter 8, Section 1, 2 or 7, or
3. The purpose is to enforce a refusal-of-entry or expulsion order. *("Detention for enforcement")*

A detention order under the second paragraph points 2 or 3 may only be issued if there is reason on account of the alien's personal situation or the other circumstances to assume that the alien may otherwise go into hiding or pursue criminal activities in Sweden.

Chapter 8, Section 1, 2 and 7 – to which point 2 above refers – regulates the possibilities to refuse an alien entry to Sweden because the alien does not have a passport, visa or residence permit, or to expel an alien who is staying in the country but lacks a passport or the permits required to stay in the country. This would be the situation of so-called irregular immigrants.

Under Chapter 10, Section 2, first paragraph a child may be detained if:
1. It is probable that the child will be refused entry with immediate enforcement under Chapter 8, Section 6, or the purpose is to enforce a refusal-of-entry order with immediate enforcement,
2. There is an obvious risk that the child will otherwise go into hiding and thereby jeopardise an enforcement that should not be delayed and
3. It is not sufficient for the child to be placed under supervision under the provisions of Section 7.
Under the second paragraph a child may also be detained if
1. The purpose is to enforce a refusal-of-entry order in other cases than those in the first paragraph or an expulsion order under Chapter 8, Section 7 or 8 and
2. On a previous attempt to enforce the order; it has not proved sufficient to place the child under supervision under the provisions of Section 7, second paragraph.

Alternatives to detention
The only alternative to detention is supervision. This is regulated in Chapter 10, Sections 6 – 8 of the Aliens Act. According to these provisions, supervision may be used "instead of" detention. Regarding aliens that have attained the age of 18, the same conditions that apply to detention have to be fulfilled. Regarding children, Section 7 states that a child may be placed under supervision subject to the conditions set out in Section 2, first paragraph, points 1 and 2.

2.2. Legal proceedings for ordering detention during the asylum procedure

A judicial decision for ordering detention is not necessary. The competent public authority to order detention is, according to Chapter 10, Section 12 of the Aliens Act, the authority or court "handling the case". The same provision demands that the authority or court that makes a decision to refuse entry or expel an alien shall examine whether or not an alien who is detained or placed under supervision, shall be retained in detention or remain under supervision.

During the *asylum procedure,* the competent authority is normally the Swedish Migration Board, since it is the Swedish Migration Board that shall examine the question of refusing entry if the alien is seeking asylum in Sweden (Chapter 8, Section 4 of the Aliens Act). The Swedish Migration Board also examines the question if the alien has a close family member who is seeking asylum here. When the Swedish Migration Board has denied a residence permit,

the Migration Court becomes the competent authority when the decision is appealed and the case has been received by the Court (Chapter 8, Section 12 and 14).

Regarding *illegal immigrants* either the Swedish Migration Board or the police authority are competent, since they are both competent to refuse entry on grounds of not having a passport or the necessary documents to be allowed to stay in Sweden (Chapter 8, Section 4). However, if the police authority is in doubt as to whether an alien should be refused entry, the case shall be referred to the Swedish Migration Board (Chapter 8, Section 4).

Regarding *other immigrants*, both the Swedish Migration Board and the police authority are competent to refuse entry and both can therefore order detention. As seen above, if the police authority is in doubt as to whether an alien should be refused entry, the case shall be referred to the Swedish Migration Board (Chapter 8, Section 4). The Swedish Migration Board is normally the competent authority when it comes to different grounds for expulsion.

When it comes to enforcement of orders on refusal of entry or expulsion it is always either the Swedish Migration Board or the police authority that shall enforce the order and therefore also has the competence to order detention (Chapter 12, Section 14).

2.3. Appeals

There is a right of appeal against detention orders. A detention order made by a police authority or the Swedish Migration Board may be appealed to a Migration Court. If the government minister responsible for cases under the Aliens Act has issued a detention order, the Supreme Administrative Court examines, at the request of the alien, whether the measure shall remain in force (Chapter 14, Section 9).

There is also a right of appeal against the detention conditions, in so far as a decision of the Swedish Migration Board “in special cases” on questions concerning the treatment or placement of aliens being held in detention, can be appealed (Chapter 14, Section 10). The decisions concerned are for example, decisions to place an alien being held in detention in a correctional institution, remand centre or police arrest facility, decisions on restriction of freedom of movement, and right to visits or retention of property. The expression “in special cases” is supposed to mark that general regulations concerning the localities cannot be appealed.

According to the law on Public Administration (Förvaltningslag [1986:223]), a party shall always be informed about how a decision may be appealed, if it is not obviously unnecessary (Section 21). According to the same provision the authority decides if the information shall be given orally or by letter. This information shall however always be in writing, if the party so require. In practice, the detainee is informed orally about the written decision and his right of appeal by staff at the detention centre.

2.4. Case Awareness & Right of information

The detainee has the right to be informed about the reasons for his detention. The Aliens Act does not specify this, but the law on Public Administration (Förvaltningslag [1986:223]), Section 20, obliges public authorities to specify reasons for their decisions.

Regarding who and how the detainee is informed about his detention, the only given rule is the one mentioned above, Section 21 of the law on Public Administration (Förvaltningslag [1986:223]), which also states that a party shall be informed about the contents of a decision, but the public authority decides in what way the information is given. In practice the information is given orally about the written decision by staff at the detention centre.

2.6. Special needs

There are few regulations for persons with special needs in detention, except for rules regarding children. There is a general provision in the Aliens Act that in cases involving a child, particular attention must be given to what is required with regard to the child's health and development and the best interests of the child in general (Chapter 1, Section 10). More specifically regarding detention, Chapter 10, Section 3 states that a child may not be separated from both its custodians by detaining the child or its custodians, and that a child who does not have a custodian in Sweden may only be detained if there are exceptional grounds.

When it comes to detainees who are for example, mentally ill or have suicidal tendencies, such persons can be held in isolation. Chapter 11, Section 7 of the Aliens Act allows the Swedish Migration Board to decide to hold an alien who is being held in detention and who has attained the age of 18 in isolation from other persons being held in detention, if this is necessary for good order and security in the premises or if he or she constitutes a serious danger to himself or herself or to others.

The Swedish government has observed that the available institutions for placement of detainees are not the best for detainees that need medical care and support on account of their mental health. A commission assigned to suggest changes in the law required by the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, is to specifically look into possible alternative placements for aliens in need of medical care and support.

2.7. Maximum duration of detention

According to Chapter 10, Section 4 of the Aliens Act "detention for investigation" (Chapter 10, Section 1, second paragraph point 1) may not be carried out for more than 48 hours. In other cases an alien who has attained the age of 18 may not be detained for more than two weeks, unless there are exceptional grounds for detainment for a longer period. If, however, a refusal-of-entry or expulsion order has been issued, the alien may be detained for not more than two months unless there are exceptional grounds for detainment for a longer period. According to Section 5, a child may not be detained for more than 72 hours or, if there are exceptional grounds, for a further 72 hours.

This means that there is no maximum duration of detention for adults. Instead the authorities and courts have to decide in each individual case if there are "exceptional grounds" for further detention. In case law, some guidelines as to what to consider when deciding if a lengthy detention shall continue have been given: if the authorities have acted vigorously to enforce a decision on expulsion or if the case has been left unattended to and if the alien himself is deliberately obstructing the process. In one case, an alien who had been denied asylum and had been held in detention for one and a half years was not to be continued to be held in detention, because no new efforts to enforce the decision of refusal-of-entry had been made for more than one year and four months and there was still uncertainty about if and when the decision could be enforced (the Supreme Administrative Court, case RÅ 2005 ref 60). In another case, detention for enforcement of an alien that had been expelled on account of a criminal offence, was continued for more than two years and eight months when the sole reason for the decision not having been enforced was that the alien himself refused to sign the form needed to issue a travel document (Migration Court of Appeal, case MIG 2008:44). The opposite conclusion was drawn in a case of an alien expelled on account of a criminal offence, when the alien – who had an HIV-infection and was dependant on heavy medical treatment – had been detained for nearly 18 months and there was still uncertainty about how long it could take before the decision on expulsion could be enforced (the Supreme Administrative Court, case RÅ 2006 ref 5).

2.7. Minimum age for detention

As written above, there is no minimum age for detention, although the conditions are stricter when it comes to minors.

2.8. Health care

Health care is provided for persons in detention. The right to health care is regulated in Chapter 11, Section 5 of the Aliens Act, which states that an alien who is being held in detention shall have access to the same level of health and medical care as a person who has applied for a residence permit under Chapter 4, Section 1 or 2 ("refugee" or "person otherwise in need of protection"), even if the alien has not applied for such a permit. The same section also states that if an alien who is being held in detention needs hospital care during the period of detention, he or she shall be given the opportunity for such treatment. Children have access to the same level of health care as Swedish children.

2.9. Contact with the outside world

The only regulation regarding contact with people from outside the detention centre is to be found in Chapter 11, Section 4 of the Aliens Act, which states that an alien who is being held in detention shall be given the opportunity to receive visitors and have contact with persons outside the premises with the exception of the visits or contacts which would hamper activities concerning the detention in a particular case. Normally, a detained person is allowed one visit per day, but if there are times available, several visits per day can be allowed (*Förvarsverksamheten vid Migrationsverket. Gemensamma riktlinjer, standarder och rutiner. DNR: MAL 111-2006-346*).

2.10. Social Services

Social services are not provided to detainees.

2.11. Legal Aid

A detainee always has the right to a public counsel if he has been detained for more than three days, unless it must be assumed that there is no need for a counsel. It may be that the detainee already has a public counsel based on him being an asylum seeker, but if not, a counsellor will in any case be provided concerning the question of detention (Chapter 18, Section 1 of the Aliens Act). A public counsel shall always be appointed for children held in detention, if the child does not have a custodian in the country (same Section).

2.12 Financial situation

According to Chapter 11, Section 13 of the Aliens Act, an alien who is being held in detention is entitled to the daily allowance and the special allowance referred to in Sections 17 and 18 of the Act on the Reception of Asylum Seekers, etc (1994:137). The allowance is given to aliens who do not have private means. The government sets the guidelines for the calculation of the allowances. Today (June 2009) the daily allowance is SEK 24 per day.

3. OVERVIEW OF NATIONAL DATA FINDINGS

By way of background to the data that is presented below, many of the detainees in the Swedish detention centres have removal orders and are no longer asylum seekers. If they ever were, their claims have been rejected and they are waiting to be sent back to their homelands or another EU country in accordance with the Dublin II convention. Others are irregular migrants. Some of these may have later applied for asylum and are placed in detention while there application is processed if it is considered likely that it will lead to a rejection and that there is a risk that they will not comply of their own accord. The impression was that *most of* the detainees were extremely stressed and unhappy despite the general satisfaction with conditions at the detention centre.

Some had been in the centre for a very brief period. They were still in shock – and the questions about the rooms, space, and Internet/TV felt almost inappropriate to ask. Several of the detainees said explicitly that they would commit suicide if they were sent back – it was difficult to then ask about the comfort of the room. In general it was easy to find detainees who were willing to take part in the interviews, but it varied by nationalities. Young men from North Africa and the Middle East (Libya, Algeria, Palestine, Egypt, Iraq & Afghanistan) wanted to be interviewed. These men seemed to spend time together and the word spread among them. A large group of Russians at one of the detention centres were not interested in being interviewed. African detainees were also difficult to persuade. They were sceptical as to whether the project would not make any difference. Finding women who wanted to be interviewed was difficult. There are much fewer women than men to start with in the centres. Some of the women appeared to be highly depressed. This is a concern: that those who are potentially the most vulnerable were simply not receptive to being interviewed.

There was a noticeable longing for visitors in the Gävle detention centre, where there were no visits from NGOs, in contrast to the many NGOs visiting Märsta (although there are fluctuations there). A long queue of detainees in Gävle wanted to talk/be interviewed.

3.1 Basic information

In Sweden the average detainee who was interviewed is a 32-year-old male. The most common nationalities among the interviewees are Palestinian, Afghan, and Iraqi. As to marital status, 63% are single, 21% are married, and 10% divorced.

The average length detained among those interviewed is 6.8 months (the longest is 21 months). On average, the detainee had spent 33 months in Sweden prior to being detained, a remarkably long time.

The main languages interviewed in were Swedish (33%) or English (30%). Other interviews were held in French, Russian and German. Interviews were also conducted in Turkish and Arabic with the help of interpreters.

3.2 Case awareness

The legal status for the average detainee is a “rejected asylum seeker”, informed about the status, in most cases by the police, while living in the host country illegally. There is perceived information need by the detainees. The level of being informed measures 5.94/10. Of the interviewed, some 77% claim to need more information on why they have been detained (21%), on asylum procedures (18%) or on the duration of detention (13%).

From a *staff* perspective, the perceived information need stems from failure to take in and accept the new situation rather than any objective deficit of situational data. The detainee receives an explanation for the detention immediately upon detainment. At this point, basic information about legal rights, in simplified language if considered necessary, is provided. Following the immediate briefing (the next day) the detainee is informed about the chain of events leading to detention, relevant regulations etc. The staff talks once/week with detainees about physical/mental health and case-related questions. Moreover staff is available 24h/day, i e whenever detainees need to talk. Whenever there is a new decision, staff actively seeks out the detainee to inform. The staff is generally aware that the level of the detainees’ awareness depends on their level of education, maturity, and situational openness to listen and take in what is being said. Some NGO quotes illustrate this:

- “Detainees experience themselves as being less informed than they perhaps are: it is hard to take in/accept information they have been given…” NGO Märsta
- “Detainees are only somewhat informed especially as to why they are detained – when they are not criminal, it is inexplicable for many…” NGO Flen

Detainees express frustration and disbelief with regards to the situation and the detainment. From their perspective, the authorities' decisions and actions are rid of any empathy. There is a Kafkaesque resignation in their voices. The most clear information need revolves around the reason for the rejection and to understand why the decision has been made. "They say I must leave the country", says one detainee, "They say I must cooperate so they can send me back. I can't help them as I have problems in my homeland." Another asks, "What do they plan to do? Migration Board says it is Police's decision, Police says it is up to Police. It is about my life!"

"I just got a rejection for no reason", asserts a detainee, "They say, 'there is no trouble in Libya and you did not say who you are.' But I will be put in jail in Libya for having applied for asylum in Europe. I also have personal problems with Muslim extremists. I had a death metal band and they think we were praying to the devil. They beat me with a knife."

3.3 Space within the detention centre

Detainees feel neutral about sleep room, and mention co-habitation issues as the biggest concern. They express equally neutral attitudes about centre space, mentioning air conditions as the biggest problem. They do not perceive the Swedish centres as being over-crowded; there is in fact space where detainees can be alone.

3.4 Rules and routines

The detainees are most likely to cite rules dictating behaviour when asked about the existence of rules and routines in the centres. The general opinion is that rules are respected, but that you cannot change rules.

3.5 Detention centre staff

The average detainee is in contact, in order of frequency mentioned, with administrative staff, social staff, domestic staff, health staff, and security staff. Opinions about the quality of the interaction differ widely, from positive to neutral and negative.

Gavle is the only detention centre that reports more negative answers than positive answers to this question. Some quotes point to the kind of negative staff interaction encountered, which often seems to centre on feeling disrespected or ignored, for example: "they laugh at me. I said, 'I am sick, I need hospital.' They don't listen…"

The average detainee does not report discrimination, but if he does (21% do), it is likely to be because of personal reasons. The answers on explanation are inconclusive as to reasons for this, with racism, and personal differences mentioned by a few.

Detainees comment both positively and negatively in regards to the staff's ability to support their needs (which, as they say, is to be out of detention and not to be sent home). One detainee says that there are "no problems here. Everyone is nice. I just don't want to be sent back." Yet another says, "I think they are trying to break me by locking me here. They know I should not be here!" Some believe that the staff is conspiring against them.

3.6 Level of safety within the detention centre

Not everyone feels safe in the detention centres. Detainees who are to be imminently deported do not feel safe, for example. Other detainees stress the lack of safety due to living in close quarters, and others describe disrespectful treatment from staff.

Detainees frequently attribute their sense of safety to the 'outside world'. Those that reported feeling 'unsafe' or 'very unsafe' did so because they can not feel safe when they do not know what will happen to them. "If I knew what would

happen to me", says one detainee, "I would feel safe." Another remarks, "I don't know what I'm doing here" (even people who said they feel safe made similar comments). "Here I am safe", says another detainee, "I could be here for 10 years. I will be killed if I go back." Other detainees attributed their sense of safety to the mix of cultures and ethnicities; one person remarked that he feared for his safety because he was being detained with people who have criminal backgrounds.

In general, detainees do not describe being verbally insulted or physically assaulted in detention. Only five people reported situations of verbal insult, blaming both co-detainees and staff. According to these detainees, the source of verbal insult from staff seems to have been rooted in disrespect: "Rude treatment, very derogatory, hushing me like a dog. They kept talking to me like a dog, that I should stay quiet." Only one person had been physically assaulted, it was a fight with a fellow detainee.

Staff interviewed at all three centres explained that staff does not accept threats or violence as a matter of policy. They conduct regular checks in rooms and regularly separate detainees if they physically harass each other. By pressing the alarm button, other staff members arrive to assist in managing the situation. Detainees are calmed down in separate rooms.

Some detainees point to the overall insecurity of being held in custody against their free will. "How can you sit in jail and feel safe?" Safety, at some level, stems from being hidden away from earlier perpetrators. "I feel much more safe here than in Poland. There were attempts on my life there. The stress made me attempt to commit suicide. A friend told my family in Cameroon. They have separated themselves from me as it is seen as a curse on the family when someone attempts to commit suicide."

3.7 Activities within the detention centre

In the Swedish centres detainees have access to many activities. There is access to computers, books, Internet, telephones, televisions, religious space, gym with sports equipment and small outdoor spaces. But there is little to no access to educational activities.

The average detainee restricts his participation to Internet and television. This is most likely due to mental health reasons: people suffering from psychological stress may lack an interest in engaging in activities. Staff shares the view that many detainees are too depressed to take part in activities. English lessons used to be provided in one Swedish centre; however it was discontinued, as detainees were not motivated to participate.

Detainees were asked to list which activities they would prefer to have in the detention centre. Approximately one quarter said they would prefer "freedom", and another quarter "nothing". The range of detainees' responses to this area reflects their desire to leave the detention centre. The irrelevance of their responses points to the fact that detention itself, coupled with uncertainty about the future, is a major concern for detainees, more so than the facilities of the centre. "I have no interest in anything. No appetite. When I watch TV, I am not really watching. I cannot enjoy anything."

3.8 Medical issues

Medical
Medical staff is available once per week. Access to a nurse is frequently reported, however only 21% report access to a doctor.

Physical health
63% of detainees say that detention has impacted their physical health. On average, detainees' level of physical health deteriorates quite severely in detention. A majority of detainees point to psychological stress as a reason for

the decline in their physical health. Smaller numbers of detainees attributed it to the detention centre facilities; an even smaller number blamed the level of medical treatment. Certain special needs are expressed. A detainee with diabetes says, for example, “I need help for my pain. If you have a toothache, you take out the tooth or get it fixed. That’s what I need for my pain, not just the painkillers they give me. They have no effect on my pain.” Another detainee says, “I don’t get the cancer treatment I need. Before, I did not think about it, but now I think about it all the time.”

Mental health

Detainees’ level of mental health is very negatively affected in detention. They point to several contributing factors: disconnection from the outside world, disruption of their life plan, self-worries and worries about others, medical and mental health problems, and simply being behind bars. Others expressed worry about what would happen to them upon return to their home country. One detainee says he feels “stressed”, adding, “I have lost 7 years of my life.” Another laments, “I'm feeling worse and worse because I don't know what is going to happen with me. I just feel weak.”

One detainee describes his situation in very stark terms: “I have tried to kill myself. I asked for one Alvedon from eight different people. Took them all. Was sent to hospital. If they send me back, I will hang myself. If I die here or in Libya, it doesn't matter. But it will be messier and worse for the immigration authorities if I die here.”

Quality of medical care

One in three detainees reports feeling negative about the quality of medical care; only one person feels positively. Almost half report that they need medical services that they do not currently have access to. Three people were concerned about the way they had been treated by medical staff: “My eye needs operation. They don't care, they are waiting until I go blind.”

From an NGO perspective, the quality of medical care differs between centres. Both staff and NGOs raised the issue relating to the detention centre’s competence to determine the psychological state of detainees as being problematic.

3.9 Social interaction within the detention centre

Detainees feel neutral about the level of social interaction within the detention centre. There are no problems between detainees in general in the Swedish centres. But not all detainees who were interviewed feel that there is someone in the centre whom they can trust should any problems arise.

3.10 Contact with the ‘outside world’

Almost three fourths of the detainees interviewed report to have family in their country of origin. Of these, a majority said that their family was being supported. The same number of detainees describe having friends and family in the host country (reflecting the long time people have been in the country before being detained, and their high level of integration). Contact with persons in the ‘outside world’ is most likely to be done through telephone. Many detainees report receiving visits from friends, but less receive visits from family. Almost half say that they receive visits from lawyers. However we noted that detainees in Gävle are least likely to be visited by a lawyer. Approximately one quarter of detainees describe receiving visits from external NGOs. Again, we noted that in Gävle no one reported receiving visits from NGOs.

3.11 Conditions of detention and the family

The DEVAS study in Sweden did not collect data from detained families.

3.12 Conditions of detention and nutrition

More than half of detainees are dissatisfied with the food, mostly because it is of poor quality (although one-third thought it is adequate). There were many complaints among detainees with regard to the lack of variety of the food and that the food is lacking in vitamins and other nutrients. A large number of detainees described weight loss as a result of the poor quality of the food.

According to the *staff*, the food is adapted to serve people of different cultures: no pork, vegetarian options, food allergies are accounted for and halal meat is served. But the staff remarks that the food has to remain neutral so it does not cause problems among detainees. The staff does insist that the food is nutritional. There is recognition among staff that detainees' appetite is affected by their unhappiness, sleep during daytime, the lack of routines and also their loss of freedom.

3.13 Conditions of detention and the individual

Difficulties

Insomnia is a frequently reported condition: 83% said that they do not sleep well at night. The psychological stress that comes as a result of detention is a principal cause, according to detainees.

When asked to describe the biggest difficulties experienced in detention, approximately one-third of detainees stated factors relating to the situation of detention itself, i.e. being behind bars, the disruption of their life plan, the lack of contact with the outside world and their loss of rights in detention. Smaller numbers were specifically concerned about being cut off from friends and family, the living conditions. Others pointed to worry and stress as being their main problem in detention; medical problems, especially relating to physical health, were also seen as major difficulties in detention.

In this respect, the living conditions factor highly, i.e. the lack of fresh air and the number of detainees in the centre. But the mere situation of their imprisonment, and the resultant disruption of their lives, figures even more prominently. "Conditions much worse in Afghanistan, but I will be killed when I go back", worries one detainee.

One fourth of all detainees interviewed said that their difficulties become worse as detention progresses. A number of detainees describe particularly difficult times in detention: for some it is when they think of loved ones, or for others when they cannot go to mosque on Friday. Yet other detainees describe the first nights of detention as being the most difficult.

The responses of the detention centre s*taff* closely confirm the difficulties that detainees report to experience. One NGO visitor comments: "Some get used to it. For some, it is worst in beginning, then they adjust, for some, they get more and more stressed, some become lethargic and passive – it varies."

Outcome of detention

The final outcome of the detention is to a large extent unknown to the detainee; 78% do not even know when they will be released from detention. According to detainees, not knowing when they will be released leads to a deep sense of worry and stress. "I don't know what will happen", says one detainee, "If I think about it, I feel pain and cry."

The *staff* emphasised that they treat these issues with a high degree of professionalism: "We are very honest when we inform detainees – we do not give false hopes." According to staff, the impact of detention on those who experience it varies from person to person: "It breaks people down to varying degrees, depending on their mental state and what they have experienced, including the thought of returning home. Loss of freedom must be different for everyone. People are very different at dealing with this – some accept, some become depressed." Another staff

person says, “Detainees become more sensitive. They have time to reflect over their lives, hear other people’s life stories. Many turn to religion, start to pray.”

Self-perception
On average detainees hold neutral perceptions of themselves. However, this is not to say that their self-perception is adequate or tolerable by standards usually applied for persons not in the situation of detention. A number of detainees describe themselves in very negative terms. One detainee describes himself as “someone they don’t care about, laugh at, don’t listen to.” Another says he is “a person without rights, powerless. I have lost my human dignity here.”

Special needs and vulnerability
The average detainee does not feel that he has special needs. Detainees frequently describe “everyone” as having special needs and vulnerabilities. “There is an Iraqi 75-year old woman here”, states one detainee, “she is sick, has diabetes, high blood pressure, is depressed. This is a shame for Europe that she is here. A shame how they treat a sick person. She should be in hospital and then free.” Another says: “Us Africans [are vulnerable]. They treat us badly. Even if we are sick, they don’t care. There was an African girl, who was pregnant, carried out by six policemen.” A severely handicapped Lebanese man (with a handicap due to a previous car accident) awaiting deportation back to Italy states: “I am handicapped. I want to go to Italy, my church, people who care. Here I am like a dog, not important. No feelings here. No heart. I came to Sweden for help. You don’t help me. My muscles are disappearing. I can’t work, do anything.” In this way detainees often describe special needs and vulnerabilities that are not usually officially recognised.

The detention centre *staff* states that the most vulnerable in detention are very elderly people and young women (especially victims of trafficking/prostitution). They also identify persons with psychological problems as being particularly vulnerable. The staff sometimes worries that suicides might happen within the detention centre. ”Very old people are often illiterate and cry all the time”, says one staff person, “Young people manage somehow. They miss their families.” Another says: “Those who have families outside [are most vulnerable], they worry about their wives and children; they feel frustrated, powerless and helpless.”

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

- **Detention itself is a major factor of vulnerability. Detainees report a significant deterioration in physical and mental health caused by stress and uncertainty (rather than any physical mistreatment or poor living conditions).**

While detainees reported needing better medical care, they are unlikely to mention this as a cause of physical health deterioration; this is instead primarily seen as the result of the psychological pressure of being in detention. Detainees do not know about the outcome of their detention and when they will be released. Consequently, this causes stress, an inability to plan for the future, anger and mental health problems (one in five report this). The steep deterioration of mental and physical health indicates that detention is, in and of itself, makes detainees more vulnerable to negative impacts.

- **Stress and uncertainty is a consequence of detainees’ lack of information about their situation, and the lack of clarity about their future. Many fear imminent return to their homeland.**

Many detainees feel that their situation is unjust. Although they are likely to have been informed about the reasons for their detention, a large number still feel like they are in need of more personalised information. At the root of their sense of injustice is the level of disrespect they claim to experience, especially from the staff. Added to this is the fact

that many detainees come from refugee producing countries, and as a result they fear the possibility of experiencing violence in the future; all of which fosters very negative mental health conditions.

The stress and uncertainty detainees feel has a deteriorative effect on their self-perception. A sense of worthlessness and self-degradation is acutely prevalent. The ongoing deterioration of their self-perception means that detainees become more susceptible to the environment of detention. “I see myself as an innocent who is detained”, says one detainee, “My self respect has decreased. I am only a paper, a number….I have no control or power. I’m a prisoner.”

- **The situation of detention itself is a more prominent factor of vulnerability than the living conditions.**

Except for the food and the lack of fresh air, detainees do not tend to complain about the detention conditions. Based on their statements, detainees seem less concerned about the living conditions than their restriction of freedom. The stress of being detained, the disruption of their lives and the fear of being returned home are all too much to bear. Within this context, activities simply do not seem to be important or helpful.

- **Women may be especially vulnerable to the adversities of detention.**

The voices of women are not numerous in this study, as many tended to shy away from the interviewers. But as a general observation from visits to the detention, there seems to be higher degree of visible depression and numbness among women than men. Many of the women we approached to interview appeared withdrawn and catatonic. Since most declined to participate in the study, we can only speculate about their reticence. Based on our observations alone, we would venture to say that these signs are indicative of vulnerabilities or special needs that are left unaddressed.

- **A number of factors at the level of the individual create and shape vulnerability.**

The research suggests a variety of factors that impact an individual’s level of vulnerability to the adversities of detention. Gender, the duration of detention, the level of information, the country of origin, the condition of physical and mental health, and prior experiences of traumatic events are just some examples of personal factors that affect one’s susceptibility in detention. The presence and strength of these factors vary between each person. Moreover, each factor has the potential to either improve an individual’s ability to cope with detention, or to make them weaker and thus more vulnerable to further negative consequences.

5. CONCLUSIONS AND RECOMMENDATIONS

The focus of the DEVAS project has been to assess vulnerability by setting aside predetermined notions of vulnerability and listening to the voices of the detainees. Vulnerability is a fundamentally weakened sense of being both in terms of physical and mental integrity. It can be seen as a loss of control over oneself to someone with more power. The DEVAS research shows that detention has the potential to make almost any person vulnerable in this way.

Relatively speaking, Swedish detention centres are humane. They are managed by professional, well-trained and diverse groups of staff. But the psychosocial impact of detention upon individuals remains strikingly clear; this much is confirmed not only by detainees, but even by NGOs and detention centre staff. Despite the humane conditions of detention in Sweden, there appears to be a lack of staff competence with regard to identifying the signs of psychological deterioration in detainees, and obtaining appropriate care for those who need professional help. It is apparent that the loss of freedom, the uncertainty and lack of control of one’s destiny has a profound effect on the

mental well being of the individual; these consequences overshadow any positive element that exists within detention centres in Sweden.

Based on the conclusions of the research, JRS-Sweden offers the following recommendations:

Detainees should receive greater psychosocial support in the detention centre. The detention centre staff, as well as NGOs, has an important role to play in this regard. This is especially true for NGOs, considering that they are granted wide access to detention centres in Sweden. In one of the detention centres we visited we observed that no NGOs were present, which was to the detriment of detainees since it appear that they could have benefited from such external support. Even in detention centres where NGOs are frequently present, such as in Stockholm, a better coordinated NGO effort could bring very beneficial results for detainees.

Detainees should be provided with accurate and relevant information about their situations. The DEVAS research clearly shows that the lack of information leads to a sense of confusion and depression among detainees. The information that is provided does not appear to be understood very well, either because it is not presented in a suitable manner, or because the shock of detention prevents individuals from fully understanding their circumstances. Detention centre staff should acknowledge the fragility of each detainee's situation, and thus provide them with all relevant information in as clear and understandable manner as possible

The negative consequences of detention mean that alternatives to detention should be considered first. The DEVAS research shows that detention is almost certainly harmful for any person who experiences it. Even the most humane conditions cannot take away from the inherent isolation, stress and uncertainty that come with the deprivation of personal freedom. Non-coercive alternatives to detention should always be implemented and thoroughly exhausted before detention is considered for any individual.

In the case that detention cannot be avoided, there should be frequent holistic assessments of the person's condition and to ensure that the harmful effects of detention are reduced to the highest extent possible. Such holistic checks should also be used to continually determine the necessity and proportionality of detention. Assessments should take into account all of the factors that impact an individual's level of vulnerability in detention, such as their gender, country of origin, history of trauma, their state of physical and mental health. The persons who conduct these assessments should not be the persons who determine whether detention is implemented or not.

ANNEX
NATIONAL REPORTS

- *Estonia*
- *Italy*
- *United Kingdom*

Editor's note:

The following three national reports are distinct from the rest because they are not based on the methodology of detainee interviews as the other national reports are. The Estonian Refugee Council was able to interview only one detainee, because during the time of the data collection phase only one person was actually detained in Estonia. JRS-Italy (Centro Astalli) was not able to access the detention centre in Rome as planned, due to the severance of their Memorandum of Understanding with the Italian Red Cross, which had previously permitted them access to the centre. JRS-UK was unable to interview detainees due to the UK Home Office's refusal to allow the implementation of DEVAS in the UK.

As an alternative each of these partners wrote reports from an external perspective, based primarily on interviews with national NGOs, the existing literature on detention and on their own experience as detention-visiting organisations.

NATIONAL REPORT: ESTONIA

By: Estonian Refugee Council

1. INTRODUCTION

In Estonia, the Estonian Refugee Council implemented the DEVAS research. Due to the low number of asylum seekers in the country generally and even lower number of asylum seekers in detention only one person was involved and thus conducted the interviews. During the period the interviews were to be conducted there was only one asylum seeker in detention and by the virtue of the low number of asylum seekers in detention there only is one Detention/Expulsion Centre (Citizenship and Migration Board Migration Surveillance Department Repatriation Centre) in Estonia that is situated in Harku about 15 km from the capital Tallinn. For the present research one staff member from the above-mentioned Centre was interviewed and one NGO (Johannes Mihkelson Centre) representative who works as a supportive person for asylum seekers in detention. There is only one NGO besides ERC that has very recently started to visit the asylum seeker(s) in detention. No organization has interviewed the detainees before in the past so the present project, national report and results of the interviews are the "first" to reflect the feelings and experiences of detainee(s), NGO representatives but also the staff member(s) of the Detention Centre.

The main obstacle implementing the project was the language barrier between the detainee and the interviewer. The same issue was also pointed out by the NGO representative and detainee.

Clearly in order to receive thorough results the lack of target group, in other words asylum seekers in detention, was limiting the amount of data necessary to write a reliable report and draw some strong conclusions.

2. NATIONAL LEGAL OVERVIEW

From 1997 until the 3rd quarter of 2009 the number of asylum applications in total is 174 so it is very marginal in general and therefore the number of asylum seekers in detention is almost non -existing. Before 1997 when there was no Refugee Act and Estonia had not ratified the 1951 Convention Relating to the Status of Refugees all asylum seekers were treated as illegal immigrants and imprisoned.

In 2006 Estonia issued a new law Act on Granting International Protection to Aliens that says that an asylum seeker, who submitted his/her application while staying in the Detention Centre or in the course of the execution of his/her expulsion, must remain in the said Centre or in prison until the end of the asylum procedure.[244]

Main laws relating to detention in Estonia:

- Act on Granting International Protection to Aliens (AGIPA)
- Aliens Act
- Obligation to Leave and Prohibition on Entry Act (OLPEA)
- Imprisonment Act
- State Borders Act

[244] AGIPA, Art.33 (1)

- Internal Rules of the Detention Centre (decree)

2.1. Legal grounds for detention and ordering detention

In Estonia asylum seekers are not detained and they stay in the Reception Centre in Illuka that is not a closed facility. However there are grounds for ordering detention according to Estonian national legislation. Firstly a person can be detained because of illegal stay and if he/she does not leave the country within 7 days as fixed up in the legislation and stated in prescription to leave the person will be placed in the Detention Centre that is a closed facility.

According to Article 32 (1) of AGIPA an applicant who has submitted an application during his or her stay in the country may be detained at the initial reception Centre but not for longer than forty-eight hours. In practice there still is no such facility as the initial reception Centre. After the above-mentioned 48 hours with the permission of an administrative court judge, an applicant may be detained and be required to stay at the initial reception Centre in the following cases:

1) The identity of the applicant has not been ascertained, including in the case where the applicant does not co-operate in the identification or hinders identification;
2) For establishing circumstances relevant to the asylum proceedings if the applicant does not co-operate in establishment of the circumstances provided for or hinders the establishment thereof;
3) There is good reason to believe that the applicant has committed a serious criminal offence in a foreign state;
4) The applicant has repeatedly or seriously violated the internal procedure rules of the reception Centre;
5) The applicant fails to comply with the surveillance measures applied with respect to him or her, or fails to perform other duties provided by law;
6) The applicant's stay at the initial reception Centre is necessary in the interests of the protection of national security and public order.

Furthermore AGIPA Article 62 (6) says that with the permission of an administrative court judge, an applicant for residence permit may be detained and be required to stay at the initial reception Centre if the applicant has repeatedly or seriously violated the internal procedure rules of the reception Centre or the place designated by the Ministry of Social Affairs or the staying of the applicant for residence permit at the initial reception Centre is necessary in the interests of the protection of national security and public order.

Alien staying illegally in Estonia and has an obligation to leave the country and if the person does not fulfil the percept to leave an expulsion order can be issued and the person can be detained in order to carry out the expulsion. OLPEA regulates the placement in detention, providing that if it is not possible to carry out the expulsion within the limited timeframe 48 hours, the person will be placed in the pre-expulsion centre, upon the request of the institution requiring the expulsion usually The Citizenship and Migration Board (CMB) or the institution responsible for the enforcement of expulsion, with the consent of the Administrative Court judge. A person in the Detention Centre cannot be detained longer than 2 months. In practice, it can be indeterminately extended by the Administrative Court upon the request of the CMB or the Police.

A person to be expelled who is to be placed in an Expulsion Centre may be detained in a police detention house for up to thirty days instead of an Expulsion Centre. The conditions of execution of detention specified in the Imprisonment Act apply to detention in police detention houses.

Initial detention of asylum seekers for up to 48 hours can be prolonged in specified cases by the Administrative Court order.

2.2. Legal grounds for the minimum age for detention

The law does not set clearly the minimum age for detention for asylum seekers or for illegally staying third country nationals. If there is a need to detain both of the parents then the child is kept with the parents and is detained.

A minor shall be accommodated separately from adult persons except if this is evidently in conflict with the interests of the minor. If possible then family members shall be accommodated together. The provision of food for minors shall be organized taking into consideration the needs resulting from their age.

AGIPA also speaks about unaccompanied minors who are not detained in the Detention Centre but because of being a minor might not enjoy all the freedom that asylum seekers usually enjoy at the reception Centre and are under supervision and care. According to the applicable laws an applicant who is an unaccompanied minor shall be placed in the reception Centre or a social welfare institution for the time of the asylum proceedings, and welfare services appropriate to the age of the applicant shall be guaranteed to him or her. But he/she also may be placed with an adult relative or a foster family if the recipient is suitable to take care of a minor. When placing an applicant who is an unaccompanied minor in the reception Centre, a social welfare institution, with an adult relative or foster family, the rights and interests of the minor shall be taken into consideration above all. If possible, unaccompanied minors who are siblings shall not be separated from one another. The applicant who is an unaccompanied minor may be placed in the initial reception Centre for the time of examination (i.e. medical examination to determine the age).

2.3. Legal grounds for judicial review of the detention order

There is no automatic judicial review of the decision to detain in Estonia. According to OLPEA Article 25 that regulates the extension of term for detention in Expulsion Centre says that if it is not possible to enforce the expulsion an administrative court shall, at the request of a competent official of the Citizenship and Migration Board, extend the term of detention in the Detention Centre of a person to be expelled by up to two months at a time until expulsion is enforced or the alien is released.

2.4. Legal grounds for the right to appeal against the detention order

Detention order is an administrative act or court order in Estonia, it can be appealed in the Administrative Court and general rules of administrative court procedures apply.

An administrative act always contains a reference to the possibilities and place of and terms and procedure for the challenging of the administrative act[245].

In the case of an asylum seeker, the court must order the detention, so there is a court review before the person can be detained. By the law the person to be detained has the right to appeal the decision. In practice no asylum seeker has been detained so far and the asylum seekers in detention are the ones who have applied asylum after being placed to the Detention Centre.

In case where the Citizenship and Migration Board, an administrative body, have issued the expulsion order the person has the right to appeal the decision to the Administrative Court.

2.5. Legal grounds for the right of information about the detention order and/or the reasons for detention

[245] Administrative Procedure Act, Art. 57

The detainee has the right to be informed about the reasons for detention and this is done by the Citizenship and Migration Board official or/and also by the Detention Centre official.

The ground(s) for detention are listed in the administrative court order and the person to be detained shall be informed about the grounds, court decision, how to appeal/procedures, right to legal representation etc. immediately. The detainee has the right to access to this court order that is kept in his/her personal file in the Detention Centre at any time upon the request and in accordance with the Internal Rules of the Detention Centre.

2.6. Legal grounds for the duration of detention

If it is impossible to enforce expulsion within the term of detention in an Expulsion Centre, an administrative court shall, at the request of a competent official of the Citizenship and Migration Board, extend the term of detention in the Expulsion Centre of a person to be expelled by up to two months at a time until expulsion is enforced or until the alien is released[246]. The law does not fixate the maximum duration of detention so this two-month period can be reviewed over and over again and the detention extended. In practice persons have been under detention for years before they will be either released or expelled. The period however has shortened remarkably over the past years due to the re-admission agreements with third countries including Russian Federation.

2.7. Legal grounds for the provision of health care and the scope of health care benefits, and for the provision of social services

Health care is provided in the detention centre and in the Act on Granting International Protection regulates the health care provisions for asylum seekers in initial reception centre.

Detention centre(s) shall have permanent treatment facilities for the supervision of the state of health of persons in detention and emergency medical care shall be ensured. Health care services are provided by people with the qualifications pursuant to the provisions regulating specialised out-patient care. The persons providing health care services are required to supervise the state of health of persons in detention on a constant basis and place them in treatment in the Central Hospital of Prisons if necessary. The in-patient treatment in the Detention Centre shall be conducted under supervision in the Central Hospital of Prisons. The medical expenses of emergency services and regular/hospital treatment shall be paid from the state budget.

There are no social services provided in the Detention Centre and to ease somewhat the problem an NGO named Johannes Mihkelson Centre has provided supportive persons for the asylum seekers in detention. The detainee may call or write to his/her supportive person at any time and the supportive persons visit them at the Detention Centre approximately once a month.

2.8. Legal grounds for contact with the outside world

OLPEA Article 26 regulates the terms and conditions of visiting the persons to be expelled.
Visits by the following are allowed for persons to be expelled:

1) Consular officers of the country of nationality;
2) Legal counsels;
3) Ministers of religion with regard to whose reputation the head of the Expulsion Centre has no reasoned doubts.

[246] OLPEA, Art. 25

With the permission of the head of an Expulsion Centre, a person to be expelled may allowed to receive short-term supervised visits of personal, legal or commercial interest. Persons to be expelled are permitted to receive visits only from persons with regard to whose reputation and motives the head of the Expulsion Centre has no reasoned doubts.

Officials of an Expulsion Centre have the right to search visitors and examine their personal effects. It is prohibited to review the content of written material brought by legal defence counsel. An official of the same sex as the visitor must conduct the search. Items the holding of which is prohibited in an Expulsion Centre shall be temporarily deposited during the duration of the visit.

Persons to be expelled shall be visited pursuant to the procedure, at the times and in rooms prescribed by the internal rules of the Expulsion Centre. The duration of visits shall be determined by the head of the Expulsion Centre and shall not exceed three hours.

Persons to be expelled shall be visited in the presence of an official of the Expulsion Centre. Visits from a legal defence counsel or a minister of religion are allowed within sight but not within hearing distance from officials of the Expulsion Centre. OLPEA Article 26 sets the rules for correspondence and use of means of communication by persons to be expelled:

- Persons to be expelled have the right of correspondence and the use of telephone and other public communication channels if relevant technical conditions exist in the Expulsion Centre.
- Correspondence and the use of telephone and other public communication channels shall be affected pursuant to the procedure provided for in the internal rules of the Expulsion Centre.
- An official of an Expulsion Centre shall open letters sent to a person to be expelled in the presence of the person to be expelled and confiscate any items the holding of which in the Expulsion Centre is prohibited by the internal rules of the Expulsion Centre.
- The content of the correspondence of a person to be expelled and of messages forwarded by telephone or other public communication channels by or to a person to be expelled may be examined only with the permission of a court and on the bases and pursuant to the procedure provided for in the Surveillance Act.

The head of an Expulsion Centre may restrict the correspondence and use of telephone and other means of communication of persons to be expelled if this may violate the internal rules of the Expulsion Centre or impede enforcement of the expulsion. The correspondence of persons to be expelled with state agencies, legal defence counsels, ministers of religion and consular officers of the country of nationality shall not be restricted.

Costs related to correspondence and the use of telephone and other public means of communication shall be borne by the person to be expelled. For correspondence with Estonian state agencies, legal defence counsels, ministers of religion and consular officers of the country of nationality, a person to be expelled shall be provided with stationery and postal charges shall be covered if the person to be expelled does not have funds.

2.9. Legal grounds for the provision of legal aid

Asylum seekers have the right to legal aid guaranteed by the state, regulated by the State Legal Aid Act. State Legal Aid Act Article 6 says that a person may receive state legal aid if he/she is unable to pay for competent legal services due to his/her financial situation at the time the person is in need of legal aid or is able to pay for legal services only partially or in instalments or whose financial situation does not allow meeting basic subsistence needs after paying for the legal services.

2.10. Legal grounds for the protection of persons with special needs

There are no special legal provisions in the law for the protection of vulnerable people, with the exception of unaccompanied minors who seek asylum. In terms of law they cannot be detained.

In practice if possible and free rooms available then people with special needs are separated to their own rooms. Also specific diets required due to some illness are taken into consideration.

2.11. Legal grounds for alternatives to detention

There is no alternative to detention since in normal situations the asylum seekers are not detained. In case of an illegal immigrant who is placed in the Detention Centre to wait for the expulsion and while being in the detention decides to apply for asylum he/she shall not be released and one must stay in detention until the decision has been made.

2.12. Legal grounds for providing release from detention

When the legal grounds for detention cease to exist the person shall be released. There are no specific release provisions stated in the legal acts and the decision rests with the Administrative Court. According to OLPEA a person will be released when the expulsion is possible, when he/she gets a permission to stay in the country or when the precept to leave is declared void.

3. OVERVIEW OF THE NATIONAL DATA FINDINGS

3.1. Detainees' awareness of their asylum case

The court shall decide upon the use of detention, and its extension. The person is informed about the court decision (including the reasons for detention) immediately. Whenever the detainee has a question concerning his or her status they have a right to send a request letter to CMB and the CMB is obliged to reply. Before the CMB sends out its official decision the detainee receives a letter from the CMB with the grounds that support the decision to be made and then within 2-3 weeks the detainee has the right to respond before the official decision will be served.

3.2. Space, rules, routine and the Detention Centre staff

The Detention Centre (also known as Expulsion Centre) is situated 12 km outside Tallinn, the capital of Estonia. The Centre falls within the Citizenship and Migration Board structure and its internal code of conduct (internal rules) and is an administrative detention facility for rejected asylum seekers and illegally staying third country nationals waiting for their expulsion. It consists of one building and an outdoor area, part of which is closed to the detainees. The premises are rather new and in good condition. The Centre has 21 rooms and it accommodates max 42 people, including children. In their rooms there is a bunk bed, wardrobe, stools, table and a chair. All the furniture is made from metal and fixed on the floor. There are windows in every room. Men and women are detained in different floors. The average number of persons staying in the Centre is 12-15 so the Centre is not overcrowded. During the visits of ERC (Estonian Refugee Council) and JMC (Johannes Mihkelson Centre) representatives in June 2009 each of the detainees has his/her own room, the TV room and showers and toilets in the corridor are shared.

The Centre has clear rules, daily schedule, procedures that usually are respected by the detainees. The detainees cannot propose changes to the rules. Visiting days are twice a week; the time spent with the visitors is limited, and meetings are observed by staff persons that are either in the room, or in an adjoining room.

Based on the few contacts that ERC and JMC have had the staff seems to be professional, friendly, and tolerant and there seems to be no discrimination or misuse of power.

3.3. Safety

The general feeling about the safety of the Detention Centre is positive and the detainees get along well that was also said by the detainee. When accommodating the detainees the staff considers their religion and ethnicity.

The guards are on duty 24 hours a day and the Centre is surrounded by electric fence. All the visitors are registered (arriving time and leaving time) and get the permission to enter the Centre only if they present an identity card with picture, incoming mail (packages) are opened by the staff in the presence of the receiver (detainee).

If the detainee has conflicts with others he/she will be placed in a separated and locked room on the basement that has a bed, table, chair, hallstand, sink and a toilet. The detainees stay separately in a locked room until they calm down. After the wakening the mattress, pillow and blanket are taken away. Occasionally there have been conflicts but they have minor relevance; and the staff has been able to solve the conflicts. Generally the detainees get along well and no major conflicts have occurred.

3.4. Activities and social interaction

There are no organised activities according to schedule but the Detention Centre has provided different equipment for different activities. Most of the activities are connected to sports (table tennis, basketball, football etc). The detainees also have an opportunity to have outside activities (play football and other ball games mainly). Usually the detainees participate in these activities but it depends on their own free will.

There are books and newspapers available in English and in Russian, people not speaking the above mentioned languages do not find anything to read unfortunately. Indoor activities include board games and table tennis for example. The Centre provides appropriate equipment.

The Centre also has a separated place for religious rituals however there are no pastoral workers within the Centre or religious literature to read in various languages.

Often the language barrier and differences between the nationalities of the detainees affect their participation in activities or being active socially within the Centre.

If there is only one female detainee or vice versa and he/she wishes to communicate with the detainees from the opposite sex the manager of the Detention Centre shall consider that wish and normally the permission is granted.

3.5. Hygiene, sanitation, medical services and nutrition

The hygiene and sanitation conditions are well looked after. The detainees have the responsibility to take care of their rooms and all the necessary supplies are provided. All detainees must utilize rationally commodities given for his/her use and keep tidy and clean the premises for his/her use.

The detainee has the right to receive aid from the Detention Centre for acquiring toiletries if he/she does not have sufficient financial resources. Bed linen is changed every Wednesday and there are washing machines and dryers in every bathroom that can be used daily.

Medical

The doctor will examine the detainee upon the arrival. They also receive an examination at the hospital to make sure they don't have any contagious diseases and if treatment is necessary they will receive it.

The Detention Centre has first level medical service all examinations are made in the hospital on demand of detainee which means that the detainees also may receive medical care outside the Centre. If the detainee needs immediate medical help the staff will call the ambulance, external medical care is also provided whenever needed.

In the Centre doctor, nurse and the therapist receive detainees twice a week. There is female medical staff in the Centre and they are easily accessible to female detainees. The following medical services are available in the Detention Centre:

- Nurse (every day for 2 hours)
- Doctor (twice a week for 4 hours)
- Psychiatrist (every other week up to 8 hours)
- Psychologist (every week up to 4 hours)
- Special medical analysis shall be made if necessary.

According to the JMC the medical staff are able to speak in languages that the detainees are able to understand or if not, they are able to forward the information with the help of the translator. However according to the French speaking detainee and very often in other similar cases this might not be true the medical staff does not speak the language and there are no interpreters available every day so the medical staff has to do it's best to make themselves understandable to the detainee and be very open minded to understand the person in need.

Usually the detainees do not report about their physical conditions to the NGO representatives because the Centre provides relevant medical care. They sometimes report about sadness, feelings of tension, confusion and suicidal thoughts. These feelings usually come from the uncertainty about the future. In such cases they have the opportunity to speak to the therapist or NGO representatives (supportive persons) and these conditions normally are remedied. Each detainee has his/her own supportive person provided by the JMC whom he/she can call any time.

Nutrition

There is no kitchen for detainees in the Detention Centre. The detainees are given simple food from European kitchen mainly and hot meal at least once a day. The menu is checked over and confirmed by the doctor. From the nutritious perspective the food meets all the requirements however considering the fact that in the Centre there are people from different parts of the world lack of variety in different foods was mentioned. All people are not used to eat European food and therefore malnutrition might lead to weak physical but also mental health.

Special needs of a child are taken into consideration also people in need of specific diet due to some illness. The Detention Centre also considers persons religious and cultural customs and provides them appropriate meals.

3.6. Contact the 'outside world'

There is a possibility to use a phone (pre-paid phone cards provided by the NGOs upon the request) and write letters. There is no computer and Internet for detainees to keep contact with the outside world including friends and family members. Personal contact is allowed twice a week during the visiting hours.

Both calling and personal meetings are considered as effective means and used widely. Russian speaking detainees usually have friends or family in Estonia and people from further countries (Asia, Africa) use phones more however it

is quite expensive to call and detainees who can not afford these cards face difficulties being in contact with their friends and family. The detainees have the right to receive personal visits from family members, friends, religious persons, lawyers and other organisations (including international UNHCR etc.).

3.7. Conditions of Detention and Family Relations

Families are accommodated together in the section/floor where female stay and never the other way around. Married couples can stay in the same room with their children, fortunately children are not common in the Detention Centre and there have been only a few cases. There are no educational opportunities or special areas/spaces for children to play within the Centre. The children are treated with special care and the needs of a child shall be considered (food, medical attention, activities, and education). According to the Estonian legislation the Detention Centre has to organise schooling for the child (or children).

3.8. Conditions of Detention and the Individual

According to the NGO representative from the Johannes Mihkelson Centre, the main factors that influence the physical and sometimes mental well being of the detainee are uncertainty about their future and lack of family's and friend's presence and support. Based on the experience and observations the top three difficulties that the detainees face are loneliness, stress and uncertainty. Usually detention becomes difficult when the detainee receives bad news from home.

During the time of detention some detainees' physical condition has improved. The Detention Centre continues to assure the good workout conditions. Very often the detainees speak about their mental well being in other words they speak about their concerns and worries. The most common problems from the staff perspective are insomnia, depression and sadness caused by the uncertainty about the future, being away from family and friends, being captivated etc. The detainees also have the possibility to speak with the psychiatrist and/or Psychologist where they get appropriate treatment.

The vulnerability is determined by the JMC based on many factors for example if the detainee is without contact with his close family and when his/her family is in a war or conflict zone. The detainee is definitely more vulnerable if he/she has some illness or has had serious traumas/experiences in the past (war, torture, death etc.). At the moment there are no persons whom JMC supportive persons would call vulnerable nor is the asylum seeker in detention calling himself vulnerable or a person with special needs. He had been in the Centre for almost 3 months and regardless of the months spent there he still felt that his mental and physical health is very good just like before the detention. Also the interviewer's impression was that he was fit mentally and physically and his only concern was uncertainty about the decision as well as the future in general. However the longer he has to stay in the Detention Centre the more likely he might become vulnerable because of the possible stress and depression.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

The present research and its findings is the first step towards finding out how detention affects the mental and physical health of the detainee and what makes the detainee vulnerable. Unfortunately it is impossible to say much based on these three conducted interviews when only one of them was a detainee interview that really reflects the influence of being detained to a person.

The central themes mentioned in these 3 interviews and based on ERC previous experiences are pretty much the same and one confirmed the other.

2. Case awareness- in principle the detainee understands the reasons for being detained however either due to the shock and great concern of being detained or language barrier the details of the case might be misunderstood or not understood at all. Uncertainty about the future what type of status will be given, will he/she be expelled or given the permission to stay in the country, when the detainee will be released etc. According to Estonian legislation there is no maximum period of detention and in the past sometimes persons were detained up to 2-3 years before they were either released or expelled.

3. Language barrier during ordering detention and being in detention, influences in many ways every detainees' daily lives if one can not communicate with the Centre staff, medical personnel or with other detainees. The feeling of being helpless and lonely is much greater without a doubt if there is no one to communicate with and if one can not explain his/her health concerns and it definitely leads to vulnerability eventually.

4. Lack of social activities and difficulties communicating with the outside world makes the time spent in the detention look even longer. Lack of information about family on the outside (especially in conflict zones) and not being able to support them creates great sadness and depression among the detainees, as does the lack of activities. There is no internet and for many of the detainees no newspapers, magazines or other literature provided in the language they understand to find out about the news in their home country and so on.

It would also be good to point out that many of the findings were positive such as there is no misuse of power or discrimination by the Detention Centre staff, the quality of medical services provided is high, the Centre itself is newly renovated and modern building with rooms where there is enough silence, light and space and it has never been over crowded. The staff in the Detention Centre is well trained, friendly, helpful, open minded and tolerant towards detainees from different countries, cultures and religious backgrounds.

5. CONCLUSIONS

Estonia is a good example for many other European countries that detain asylum seekers. Regular asylum seekers in normal circumstances are not detained and the grounds for detention are listed in legal acts and can be enforced only with court order.

When we speak about asylum seekers with special needs and vulnerable asylum seekers, then Estonian relevant legislation does not speak about these people separately at all except for a few clauses for minors.

Considering the fact that some of the problems in the Detention Centre that were mentioned in the previous chapter might eventually lead to vulnerability, or make the situation of vulnerable detainees even more serious, the following ideas might help to improve the situation in the future.

Today if the detainee has enough financial resources he/she can hire an interpreter to help him communicating with the medical staff, Centre staff, etc. But in most of the cases the detainees do not have that kind of financial resources and they are left with the doctor who tries to be open minded and understanding. Using this method many serious illnesses or other problems/worries may be left unaddressed and this definitely affects detainees' physical and mental well being, level of stress and depression. Language barriers should be taken more seriously, and additional funding for using interpreters whenever necessary (especially when providing medical services) should be possible. Many problems and misunderstandings could be avoided and solved if an interpreter and/or cultural mediator would be present.

In the Detention Centre in Estonia there are no social workers, nor any organised activities by the Centre staff or by the organisations from outside the Centre. Some extra attention and organised activities might help the detainees to be preoccupied with the activities, think positively, and worry less about their future and this way not to fall in depression. Involving NGOs, volunteers and people with different skills and qualifications from outside the Centre would also be good means in helping the detainees pass by the time in the Centre and wait for their decision. Seeing that there are people who care about you might reduce the level of tension and stress and help a person being more stable mentally but also physically.

Last but not least by far is the question of how long a person can be detained in total. This maximum period of detention is not fixed in legal acts. According to Estonian legislation a person cannot be detained longer than two months; but in practice the detention can be indeterminately prolonged by the Administrative Court, upon the request of the CMB or the Police. As already mentioned several times the uncertainty about the future is the most serious factor in creating mental and physical health problems for detainees, and it makes them fall into depression and therefore they might become very vulnerable. Over the past years the period of detention has shortened considerably. But in the case of an asylum seeker where the procedure might take up to six months, and if the decision made by the CMB is negative, if the applicant decides to appeal it might still take years and the whole time the asylum seeker still has to stay in the Detention Centre. It would be very important to lay down the maximum period of detention and to be absolutely sure that it is absolutely necessary to detain the asylum seeker(s), and to take the risk and responsibility that by detaining the person he or she might be further traumatised.

NATIONAL REPORT: ITALY

By: Jesuit Refugee Service Italy (Centro Astalli)

1. INTRODUCTION

The work carried out by Centro Astalli has been strongly conditioned by an external factor: the impossibility to obtain interviews directly from detainees.

In fact, while previously Centro Astalli could enter regularly (once a week) the detention centre of *Ponte Galeria* in Rome, during the period scheduled for the interviews by the DEVAS timetable the authorisation was suspended. This was due to the change of organization that managed the Centre, and also to the expiration of the contract. All these changes resulted in the suspension of the authorisation by the Italian Ministry of Interior, and in the consequent reduction in providing assistance by Centro Astalli.

As an alternative, Centro Astalli collected data from six NGOs and three former detainees. This was the only alternative option, since it was not clear when the government could have given the new authorization; thus waiting for a response would have resulted only in a loss of time.

This resolution was successful in collecting meaningful data about the conditions of detainees from multiple points of views. The involved NGOs belong to different intervention sectors and are specialised in different target groups (some of them work only for refugees, other for detainees in general; others are focused on women slave trade etc.). Thus they can bring different perspectives and enrich the resulting overview. Furthermore, they are some of the most active and appreciated NGOs at the national level.

The limitations of these solutions are obviously due to the lack of direct evidence obtained from detainees *during* their detention period; but the data provided by the NGOs, together with the three interviews with ex-detainees, could in any case provide a small measure of a reliable and complete depiction of the overall situation.

Research participants

Three former detainees from Nigeria were interviewed at Centro Astalli and “Cases di Giorgia” (a shelter for refugee women run by Centro Astalli).

The interviews with NGOs were planned taking into consideration the role and the engagement each of the NGOs have in the Ponte Galeria centre. They were six in all:

1. CIR – *Consiglio Italiano per i Rifugiati* (Italian Council for Refugees)
2. Centro Astalli
3. USMI – *Unione Superiore Maggiori di Italia* (Union of Major Superiors of Italy), Ethnic Mobility and Trade Sector
4. Office of the Guarantor for Detainees’ rights of Lazio Region (*Ufficio del Garante dei Diritti dei Detenuti della Regione Lazio*)
5. Italian Red Cross – Provincial Committee of Rome
6. Caritas International, *Caritas diocesana di Roma*

Research instrument and protocols

The data were collected making use of formatted questionnaires with open and closed questions: NGO staff questionnaires for NGOs' representatives and detainees' questionnaires for former detainees.

In order to ensure homogeneity to the data presented and discussed, the report will be focused only on the data coming from the NGOs' representatives.

2. NATIONAL LEGAL OVERVIEW

The following sub-sections summarise the most relevant findings of the survey carried out about the current Italian regulation for asylum seekers and irregularly staying third-country nationals.

This is a very important issue for the Italian government, since in summer 2009 Italy's parliament has given final approval to a law criminalizing irregular immigration and allowing citizens' patrols to help the police keep order.

The new measures have been strongly criticised by human rights groups and the Vatican. According to the new law, irregular immigration is punishable by a hefty fine and those who knowingly house irregular migrants will face up to three years in prison.

The law also extends detention periods for irregular migrants to six months.

2.1. Legal ground for detention

The basic ground for the Italian regulation is the Legislative Decree 25 July 1998 n. 286 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero" ("Consolidated Act of the provisions about regulations on immigration and norms on the condition of foreign citizens"). It collects the majority of the rules about migration and thus is called "testo unico" (consolidated act). It contains the rules established by the first law trying to systematically face the different issues posed by the immigration, i.e. the Law n. 40 6 March 1998 "Regulations on immigration and norms on the condition of foreign citizens" (s.c. Turco-Napolitano Law). It comprises provisions about health, education, housing and social assistance, but it does not give indications about crucial issues such as the request for asylum. Furthermore, it has undergone many deep changes by a series of other laws.

Currently, detention is based on the *Simplified Procedure* established by the Law n. 189 30 July 2002, Art. 32. This article says that the asylum seeker cannot be detained only to examine his or her application. He or she can anyway be detained for the time strictly necessary to determine the authorisations for the stay in the State, such as in the following cases:

1. To verify or determine his/her nationality of identity, if he/she is lacking documents of trip or of identity, or if at the arrival in the State territory he/she showed false documents;
2. To verify the elements the asylum application is based on;
3. Following the proceeding related to the recognition of the right to be admitted into the State territory.

The detention must always be ordered:
1. When the asylum seeker has applied after having evaded or having tried to evade border controls or, immediately after entry, he or she has met conditions of irregular stay;
2. When the asylum seeker has applied having already received a deportation or an expulsion decision.

Art. 21 of the legislative decree n. 25/2008 adds that the detention is ordered for whom is suspected of crimes and/or committed crimes and offences related to drugs, sexual freedom, illegal immigration, prostitution, exploitation of minors.

As regards the terms of detention, article. 1, paragraph 22, letter l, of the Law n. 94 15 July 2009 brings some crucial changes to the paragraph 5 of the Art. 14 of the legislative decree 286/1998 “Deportation execution”. According to the new law, in case of difficulties in the verification of the identity/nationality, or for the acquisition of documents for the deportation, the detention can be extended again until hundred and eighty days (6 months). This last regulation is addressed in general to irregular migrants, but it also involves also asylum seekers.

3. OVERVIEW OF THE NATIONAL DATA FINDINGS

This section presents the data obtained from interviews with NGOs questionnaire. The following section will present the results of the analysis of these responses.

All of the interviews refer to the same centre, the CIE of Ponte Galeria (Rome), but one (by CIR) refers to the CIE of Gradisca d’Isonzo, at the Italian border with Slovenia.

All the involved NGOs operate as external stakeholders in the centres, except the Red Cross because they manage the CIE in Ponte Galeria. For this reason, some of questionnaire’s items were not applicable to the Red Cross (e.g. “How often does your organisation visit the centre?” or “Does the staff regularly provide information to your organisation about conditions in the detention centre?”).

3.1. Detention facility

The detention centres are C.I.E. (Centro di Identificazione ed Espulsione – Centre for Identification and Deportation) for irregularly staying third-country nationals, foreigners who committed an offence and were previously taken in prison, asylum applicants and people without stay a permit in general.

Detainees are typically visited once or twice per week, or as much as five times a week (by the CIR). Caritas visits the centre(s) only occasionally. The duration of each visit varies from few minutes up to several hours, depending on the requests and on the needs of the detainees.

In most cases the detention centre staff keeps NGOs informed about the conditions in the centres; CIR and Caritas report experiences where they remain uninformed by detention centre staff.

The purpose of the visits is to essentially provide legal, health and psychosocial assistance to detainees. There are no punishment or seclusion rooms in the Ponte Galeria centre, but this is a fact that can be registered only by operators or organisations having the possibility to enter all the rooms in the centres - many NGOs do not have this permission. In the case of the CIE in Gradisca d’Isonzo, we have no information about this point, while for the CIE in Rome we have the direct testimony of the Guarantor for Detainees’ rights of Lazio Region who is allowed to enter the whole centre (we have information also by the Red Cross, but, being the manager of the centre, it could not be taken as an objective source).

3.2. Case awareness

The answers to this point seem to be polarized between two opposite visions: some NGOs are sure that detainees are well informed about their situation, while others are not. But, when asked to give a value (from 1 to 10, with 10

being ‘fully informed’) to the information level, all them – except the Red Cross – do not go over 5 (only “somewhat informed”).

The explanation provided by the Guarantor for Detainees’ rights of Lazio Region, who feels detainees are not so well informed, is the following:

> *The majority of them do not know why they are there. They do not make any connection between staying there and not having a permit to stay […] they are persons who have been living in Italy since they was a child (or also were born in Italy), having Italian as their mother tongue […] persons whose father is Italian but did not register him/her in Italy so they are illegal as well […] many Roma people. In theory they should be informed about the reason for their detention and the perspective of their stay within 24 hours interception, when the Judge confirms their illegal status. But in practice it always happens that the Judge does only an administrative act without any provision of information.*

On the other hand, the Caritas representative says:

> *They are in general quite aware of their conditions: they know they are detained and why. This does not mean that the situation is good. There is in particular a great difference between the situation of those who are just arrived in Italy and those who have been living in Italy for many years, but have been stopped by the police and found without stay permit […] the first ones tend to accept more easily their detention […] the others feel to be victims of a great injustice, since they did not commit any crime so they ask themselves why they must be in prison.*

3.3. Space

Access to the living quarters of the detainees is normally denied to NGO staff. For this reason, the most relevant data come from the Guarantor for Detainees’ rights of Lazio Region, who is allowed to enter each room and observe its conditions. His description of the detention centre is as follows:

> *It looks like a ‘hen-house’: big spaces rounded by iron cages. It is very large but also empty. The furniture is scarce and poor. It is a very desolate place. Each room has at least 6 beds.*

Other interesting remarks come from the Caritas representative, who has been in charge of several investigations about living conditions in detention centres in Italy and beyond:

> *Space, size of the centre and type of organization really make the difference in how detainees are treated. In this sense, if the centres are built up just with the purpose of becoming detention centres for illegal migrants and/or any people living in Italy on irregular basis, living conditions are generally quite good, since spaces have been designed for specific purposes related to this kind of users. If the centres are structures previously used for different purposes and only adapted to the current function, living conditions can be very hard.*

The centres have separate areas for men and women, but the privacy level seems to be insufficient, even though all the NGOs affirm that the centres are not overcrowded. For example, the CIE of Ponte Galeria can contain up to 350 detainees but they try to host less that the maximum in order to be ready to face unexpected arrivals. The mobility in the centre is also very high: people continually come and go.

As regards a possible restriction on how many hours detainees can spend indoors and outdoors, the sleeping quarters are closed after midnight and open at 7 am.

3.4. Routine

The centres seem to be less regulated than expected. Rules concern essentially the fact that the detainees can be visited only in certain moments. Other rules regard security: detainees cannot have potentially dangerous objects with them (such as sharp things or electric wires). They also cannot take food from the outside.

The scarcity of rules is not always associated with a positive evaluation. These are the words by the Caritas representative:

> *Rules are different from one centre to another and impact the lives of detainees in different ways. Once, for instance, I asked an operator how they arranged the use of the football field in Ponte Galeria, and he told me that they "self-managed" it, meaning without any standardized rule or procedure. This implies much discrimination between detainees, because it is impossible to manage those things in the proper way when there are so many people in the centre: abuses are unavoidable when there are no rules and many people inside. Rules – good and right rules – and logistics are necessary for a good management.*

3.5. Detention centre staff

The centres have management staff and police force staff (outside, for security reasons). The interaction between staff and detainees is described as good enough. No kind of discrimination between detainees is reported.

3.6. Safety

Safety does not to be a problem in the detention centres. Sometimes violent episodes occur but without any serious consequences. The causes of fights are mostly due to ethnicity. All of the interviewees agree that these episodes are normal given the place and the circumstances.

3.7. Activities

The scarcity of activities is always reported as a relevant issue for the detainees. Books and computer are rarely available. Sport, education, entertainment and group activities are quite never provided. There is no room dedicated to religious services, so the detainees have to pray in common spaces.

3.8. Hygiene & Sanitation

Hygienic and sanitation conditions are described as being generally good.

3.9. Medical

The centres offer general health care. Specialised health services are not provided but there are specific conventions with external providers. Detainees can have access to medical services outside the centre when they show serious symptoms of any disease, especially if potentially infectious as AIDS or tuberculosis. Detainees receive medical examinations at their arrival.

Male and female medical staff is available. A common problem is the fact that the staff is not always able to speak to detainees in a language they can understand, and often there are no interpreters or cultural mediators available. This problem is usually resolved by asking other detainees to serve as interpreters.

Regarding health conditions of the detainees, it is very common for them to report very negative psychological impacts. According to some NGO representatives, these feelings are not caused by the centre itself but by the lack of hope and/or the fear of be expelled. Others NGO representatives who were interviewed instead attribute such impacts to the place detainees live in: *a place that makes people get sick*, in the words of the Guarantor for Detainees' rights of Lazio Region, who adds also: *they are in the centre without any sound information and hope, and they do not have anything to do to kill time. The place they live in is very desolate: no trees, no covering to protect them from the sun, only big empty spaces and nothing to do all the time.*

Psychological suffering appears as the most important health related problem. Depression is described as common and even may have led to a number of suicides that occurred in the last year. The lack of hope and certainty about their destiny, together with the desolation of the place they live in, are some of the causes.

Another explanation relates to the previous experience in the prison. As the Red Cross director says. *Many of them come from the prison and do not understand why they cannot be released. Moreover, while in prison their life was full of activities, and in the centre they cannot do anything interesting. They also use to work in prison and earn money, while in the centre they cannot work.*

Past experience in prison has also another aspect related to drug-addiction, as the Caritas representative points out. *Many detainees coming from the prison are drug-addicted and/or very aggressive: their presence catalyses the attention of the whole staff, distracting them from other people needing care and assistance for other reasons. In this way, other detainees develop physical and psychological diseases, but cannot receive the proper help. Often the only way to keep them quiet and to soothe their pain is to give them sedatives.*

3.10. Social Interaction within the Detention Centre

Relations between staff and detainees are described as generally good. Relations among detainees are also seen as good, although often groups are form along ethnic lines. Forms of spontaneous help (detainees who invite others to access assistance services provided by the centre, or helping other in translating when someone cannot speak with operators, or also sharing telephones and other tools) have been frequently noticed.

3.11. Contact the 'Outside World'

Detainees can meet with their relatives but not their friends. They can communicate by phone with anyone.

Detainees are allowed to receive personal visits from: religious persons, UNHCR staff, lawyers and representatives of other NGOs such as "Be Free" and "Differenza Donne" regarding women rights, as well as the NGOs involved in the research.

The presence of freelance lawyers is not always seen as a positive factor. As the Caritas representative points out: *there is always a number of professionals - especially lawyers – profiting from the detainees' situation and giving them false hopes of freedom. Detainees prefer to believe them if they say there is a chance instead of believing NGOs who might say there is no chance at all; all without considering that NGOs do not gain any money from their assistance.*

3.12. Conditions of Detention and Family Relations

Conditions of detention may vary from one centre to another. In the centre of Ponte Galeria children are not admitted. Detainees can have their spouses in the same centre but they have to live in separate quarters.

3.13. Conditions of Detention and Nutrition

The quality of the food is generally good, but some detainees complain about it due to their previous habits. Changes in the detainees' appetite can certainly occur due both to the change of food type and to their condition of detention.

3.14. Conditions of Detention and the Individual

According to all of the interviewees, detention severely affects both the psychological and the physical health of detainees.

Besides the obvious lack of freedom, the sense of failure, lack of future perspective and the lack of activity/work opportunities are reported as being the difficulties faced by detainees. For many of them, detoxification from drug abuse in prison is also a major factor affecting both physical and psychological well-being.

When the NGO representatives were asked to describe the self-perception of detainees, many interested insights were offered. *I see them as anime in pena*, answered the representative of Centro Astalli, using a typical Italian idiom meaning lost, suffering souls; people in torment as they are passing time waiting for something, divided between the memories of their past – and of the terrible events they experienced – and the hope and the fear for the future. This definition can give an effective idea of detainees' vulnerability.

It is remarkable that this definition occurs also in the words of another NGO. The Caritas International representative, who has a long lasting experience in detention centres and in the problems of the detainees, said in fact: *They are anime in pena, suffering persons who do not know where to go and what to do and keep on suffering without finding any solution*.

This idea is more explicit in the words of the Guarantor for Detainees' rights of Lazio Region: *I see them...as weak, unaware and desperate persons, locked up in cages, offended by the deep injustice of a bad world, in which solidarity is dying.*

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

The interviews with the NGOs have provided very interesting insights about the reality of detention in Italy, especially because of their expertise and engagement in the issue, and, because of the richness of their differing points of view. Nevertheless, they all tend to converge on a number of aspects, thus creating clusters of opinions and evaluations.

The most relevant findings of the interviews seem to be the following:

1. Their state of **uncertainty**: in most cases the detainees lack any kind of information about their legal procedure, the real chances of success of their application and the end of their detention;
2. Their state of **neglect**: there are no things to do for them inside the detention centres, except to continue waiting. The Italian detention centres do not provide the detainees any possibility to do something interesting in order to kill time without thinking to their situation in an obsessive way;
3. Their **prison-like state**: although the laws never use the term "detention" but "trattenimento" (a softer expression meaning holding someone back), people in the centres such as CIE are treated as prisoners.

These factors make people detained more and more vulnerable, as time inside the centre passes by. They are directly linked to a structural issue, i.e. that centres are not organised and equipped for long stay. As the Caritas representative pointed out, the existing centres can be good places for short-time stay, while they are surely bad

places for long stay. But they all have been built and organised only for short period of detention, so they cannot provide the detainees with all the services they need. Detention centre staff tries to do their best in tackling the daily challenges, but even the best efforts cannot solve all the problems.

The key-issue seems rather to be an institutional and legislative one: mainly the fact that in Italy the regulation about immigrants has undergone several deep changes in the last years, increasing the punishment for irregular migrants but without upgrading the structures of reception and relevant management systems. Thus, there is a constant gap between what the regulation prescribes and the actual available resources.

These results are fully consistent with NGOs' experience and in particular with Centro Astalli's prior observations as a detention-visiting organisation. All of the NGOs interviewed for this study consider the entire detention system for irregular immigrants in Italy as deeply unequal and oppressive.

5. RECOMMENDATIONS AND CONCLUSIONS

Even if Centro Astalli has not been allowed to enter the centre in Ponte Galeria in time to properly conduct the research, several interesting issues have been identified by means of this "reduced" version of the research, i.e. mainly by means of interviews to selected NGOs operating in the detention centres in Italy. These issues are mainly:

a) The state of uncertainty in which the majority of the detainees live, not knowing why they are detained or when they will be released;
b) The lack of activities during their stay in the centre: no work or educational or entertainment opportunity available for them

These two key-issues, the second in particular, appear to be related to a deep gap between the actual resources available (in terms of structures, staff and services) and the constraints imposed by a more and more restrictive law. Furthermore, as it often happens in Italy, there is never enough clarity about the process and the outcome of the asylum/citizenship application, thus increasing the situation of uncertainty.

These issues seem to be relevant and should need more investigation, given a proper framework in terms of accessibility of the centres and of stability of the centres' management.

A general recommendation can be made for policy makers, NGOs' staff and for detention monitors/visitors: *there must be consistency between resources available and constraints imposed by the law; otherwise any subsequent changes will cause further disorganisation of services to detainees.*

This means also restructuring the staff management, introducing more professionals to the staff, establishing tailor-made services for detainees and maintaining a constant effective flow of information between administration, staff and detainees. With regard to the current Italian regulation, this implies a radical change of perspective in running the detention centres, as they were built and organised for different purposes and are not adequate for people staying longer than two months.

Description of the NGOs involved in the research (with regard to the research purposes)

1. CIR – *Consiglio Italiano per i Rifugiati* (Italian Council for Refugees)
The CIR is an NGO dealing with the problem of migration, refugees and asylum seekers in Italy. It periodically issues reports about the situation in Italy, pointing out the various aspects of the Italian government policy on migration. It also provides services to migrants and refugees in particular, offering directly legal and psychosocial assistance at its

main office in Rome and at some centres in Italy, like the CARA/CIE in Gradisca d'Isonzo (Gorizia). In these cases, the CIR uses to work mainly at the CARA centres, going to the CIE only on demand, i.e., if there is a detainee or a group of detainees asking for CIR assistance.

2. Centro Astalli

The Centro Astalli provides a free legal service to people in the centre by offering the possibility to be assisted by specialised lawyers who can assess their situation, and decide if there are the proper conditions to apply to asylum or for other kind of protection.

3. USMI – *Unione Superiore Maggiori di Italia* (Union of Major Superiors of Italy) – Ethnic Mobility and Trade Sector

USMI deals with the problems of "trade victims". The majority of them are women from Nigeria, who come from the streets since they used to prostitute themselves. They are detained in the CIE together with the other kind of people but they represent a peculiar group. In the majority of the cases they do not have the conditions to apply for the asylum with any probability of success, but they do this anyway since they let lawyers convince them that they can. In such cases the procedure often results in a failure and they lose the possibility of make other legal actions and especially that of applying for humanitarian protection, the most appropriate for them.

4. Office of the Guarantor for Detainees' rights of Lazio Region (*Ufficio del Garante dei Diritti dei Detenuti della Regione Lazio*)

The Guarantor verifies and controls the situation in the detention centres of Lazio Region, in order to assess the respect of the detainees' rights.

As regards the CIE of Ponte Galeria for third-country nationals, according to special agreements with the Prefecture of Rome and with the Italian Red Cross (managing the CIE of Ponte Galeria), the Guarantor:

- Checks the living condition of the people in the CIE by means of periodic (weekly) visits;
- Facilitates the relationships between the centre and the health care system, in order to guarantee a proper health assistance to the centre's guests;
- Promotes prevention actions to prevent diseases, in particular HIV and TBC infections;
- Promotes improvements in the overall centre management, in order to ensure a better quality of life for the centre's guests.

5. Italian Red Cross – Provincial Committee of Rome

The Italian Red Cross – Provincial Committee of Rome – currently runs the detention centre of Ponte Galeria, thus providing all the basic services for the entire centre (accommodation, food, health care etc.).

6. Caritas International, *Caritas diocesana di Roma*

Caritas does not currently have a "mandate" in any particular detention centre, but occasionally visits the detention centres in Italy in order to assess the situation of the detainees, to identify the problems and propose improvements. It also takes part in various national and international projects aiming at improving the living conditions of these persons. For example, in the recent past it took part in a very important investigation activity within the "Commissione De Mistura", aiming at gaining an in-depth knowledge of the detention condition of the detainees in all Italian centres.

NATIONAL REPORT: UNITED KINGDOM

By: Jesuit Refugee Service United Kingdom

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1. INTRODUCTION

Historically the UK has a proud tradition of helping asylum seekers, who in turn have contributed much to the culture of this country.[247] In contrast to this notion the present day findings and recommendations of the Independent Asylum Commission[248] serve only to underline the fact that there are serious injustices in the system, and unacceptable hardships being inflicted on these highly vulnerable people.[249] During their numerous hearings the Commission gained 'unique insights into the trials and tribulations of the most vulnerable asylum seekers in the UK.'[250] Immigration detention is a specific area known to impact greatly on the health and well being of many people including the very young, elderly and infirm.

Detention in the United Kingdom is one of the most controversial asylum issues to date. Nearly 30,000 people every year experience immigration detention. Many of those detained have been dramatically affected by their incarceration and their stories paint a disturbing picture.[251]

Within the detention estate the Jesuit Refugee Service-UK visits detainees in a pastoral capacity, striving to enhance the dignity and strengthen their resolve to remain strong in the face of much uncertainty. Outside the estate, the team, working in collaboration with Church and secular organisations, voluntary and governmental, is proactive in defending the rights of refugees by influencing public opinion, lobbying and raising awareness of the plight of asylum seekers caught in the web of asylum procedure. It is as a consequence of our mission to defend the rights of those we serve, in particular those residing in the detention estate, that JRS-UK agreed to take part in the research project DEVAS.

Regrettably, the United Kingdom refused JRS UK personnel permission to interview detainees and staff.
Several weeks after JRS UK made its application to access the client groups essential to the research, it received a decision from the Home Office. Having considered the terms of reference, they could not accede to our request. The

[247] Preface to Asylum Matters Rt Hon Iain Duncan Smith MP 2008
[248] Independent Asylum Commission, Saving Sanctuary, (Primary Report 2008)
[249] Preface to Asylum in Britain A Question of Conscience, Anthony Harvey 2009
[250] The Independent Asylum Commission Sir John Waite, Co Chair of the Commission (2008)
[251] Out of sight, out of mind: experiences of immigration detention in the UK – *BID Bail for Immigration* (2009)

grounds for refusal related to detention estates already being exposed to independent scrutiny by HM Inspectorate of Prisons and other departments, both statutory and non-statutory. It was held that the recommendations from these bodies already addressed the issues that the DEVAS project intended to research. [252]

JRS Europe in tandem with JRS UK wrote several letters to prominent and influential people in the hope that the Home Office decision could be overturned.[253] Dame Anne Owners (HM Inspector of Prisons) approached the Home Office on our behalf arguing that a comparative study may be of value.[254] However, all efforts to overturn the decision were unsuccessful.

Having liased with JRS Europe it was decided the UK would proceed with the DEVAS research omitting the main subject group: detainees.

The refusal of the Home Office to allow interviews of asylum seekers and irregularly staying third-country nationals, resident within detention, significantly limited the findings and influenced the outcomes of the study within the United Kingdom.

The research was taken from the perspective of Non-Governmental Organisations (NGOs). These NGOs who routinely visit and assess individual detainees within the Immigration Removal Centres (IRCs) will provide descriptive material thus, giving the researcher data to determine which vulnerable groups exist in detention, what the conditions of detention are and how these groups cope with their confinement.

In addition to the above, a legal questionnaire was used to research the existing laws relating to detention in the UK with the intent of examining how these laws indirectly contribute to vulnerability within the person detained.

The research was undertaken over an 18-month period, beginning from 17 November 2008 to March 2010.

Research Participants

For the purpose of this research, focus was restricted to NGOs who responded positively to the invitation, of JRS UK, to take part in this study. It was the intention of the researcher to select a group of NGOs from different professional disciplines (medical, social, child welfare and psychiatric) in order to give the study an inclusive perspective. Eight organisations were approached. However, due to the constraint of workload, only four agreed to take part.

I. The Children's Society (Defend, safeguard and protect the childhood of children via welfare assessments and liasing with the most appropriate service provider). – IRC Yarl's Wood.
II. London Detainee Support Group (To improve the welfare of asylum seekers /immigrants detained) – IRC Colnbrook and Harmondsworth
III. Yarl's Wood Befrienders (Visits and supports women in detention)- IRC Yarl's Wood
IV. CCRJ Churches Together (Bail Circle –and Advocacy) - Nationally

Participants were in contact with the detainees routinely via telephone and email in addition to visiting detention on regular basis.

Detention Centres (selected for research purposes)

The objective was to gather data from a wide distribution of asylum seekers visited by NGOs. In the light of this, three Immigration Removal Centres were selected for the study (IRC Colnbrook, IRC Harmondsworth and IRC Yarl's

[252] Appendix 1 (Letter of refusal/Alan Kittle Director *Home Office* -March 2009)
[253] Appendix 2 (Letters of appeal and their responses-2009)
[254] Appendix 3 (Letter of response- Dame Anne Owners, *HM Inspector of Prisons*/June 2009)

Wood). The resident population consisted of male, female, families and young adults. The latter three categories were housed in a specialist centre, Yarl's Wood.

IRC Yarl's Wood is the main removal centre for women and families. The centre has a bed occupancy of 405 - 284 allocated to single females and 121 given to families. Around 2000 children a year are held in immigration removal centres: Half are in Yarl's Wood, which has been run by a private company, (Serco) since 2007.[255]

IRC Colnbrook (Category B/secure facility) is known to have a high proportion of ex-prisoners co-existing with detainees who 'had proved difficult to control elsewhere (in the immigration estate), these individuals, held for months-sometimes years-in conditions designed for short stays'[256]. Colnbrook 'manages the most challenging and vulnerable detainees in the Immigration estate. The difficulties facing staff are compounded by the increasing length of stay of many detainees and the frustration ensues.' [257]

IRC Harmondsworth has two separate immigration teams. One addressing the fast-track asylum process (a process in which asylum seekers are held in detention while their asylum claims are decided within an accelerated legal schedule), and a smaller team associated with Border and Immigration Agency (BIA) case holders located elsewhere.

Research Instrument and Protocols

The research instrument used for this section of the project was an open ended social questionnaire. The aims and objectives of the study explained, informed consent was obtained from the research participants. In order to determine reliability, the same questions were asked in every interview and responses recorded as accurately as possible, in addition to time given, following each interview, to consider the facts and ensure non-bias.

2. NATIONAL LEGAL OVERVIEW

Administrative detention is regulated by laws that have been passed by Parliament and are directly enforceable in any Court. It is also regulated by guidelines provided by national authorities i.e. guidelines from the Home Office, UK Boarder Agency (UKBA) etc. The Immigration Act 1971, Nationality and Immigration and Asylum Act 2002 are both in force and are national laws.

The law does not distinguish between asylum and other categories. The basis for all immigration detention is the lack of immigration status of the detainee.

There are, however, policies that give further guidance on how to exercise the discretion to detain amongst different types of person, as part of the government's policy to detain asylum seekers where claims can be determined quickly. In practice however there is not enough detention space to achieve this so only around 10-15% of asylum seekers are detained upon arrival under this policy at present.

2.1. Legal Basis

Legislation allows detention in the following cases that apply to all including asylum seekers:

a. Persons seeking entry at ports pending an examination on whether they will be given leave to enter
b. Persons reasonably suspected to be illegal entrants who may be given removal directions

[255] Inside Yarl's Wood: Britain's shame over child detainees - The Independent (April 2009)
[256] Report on an unannounced inspection of Colnbrook IRC (HM Chief Inspector of Prisons 2009)
[257] Report on an unannounced inspection of Colnbrook IRC (HM Chief Inspector of Prisons 2009)

c. Persons found to be illegal entrants pending the setting of removal directions
d. Persons served with a notice of intention to deport or an actual deportation order

Asylum seekers not falling within the above categories cannot be detained but in practice almost all of them do because of their mode of entry and/lack of lawful status.

The general policy or "Enforcement Instruction and Guidance" (EIG)[258] indicates which persons from the above groups merit detention in the exercise of discretion. It will be seen that it states that 'detention must only be used to effect removal, to initially establish a person's identity or basis of claim or where there is reason to believe the person will fail to comply with conditions on temporary admission or release' (55.3.1).

The policy sets out groups of persons whom it would be appropriate to detain in 'very exceptional circumstances.' These are unaccompanied children, the elderly, pregnant women (unless removal is imminent and birth is not going to occur before this), cases of serious medical conditions or mental illness, cases with independent evidence of torture and those with serious disabilities (EIG 55.9).

Conditions necessary to carry out detention during the asylum procedure

There is a special policy called on detention linked to "fast-track" asylum procedures. This allows detention during the process up to the first decision and including appeal (EIG 55.4) even if a person is not identified as worthy of detention under the general policy of detention. The fast-track detention policy thus allows detention regardless of whether an asylum seeker presents an absconding risk. The stated aim is said to facilitate quick processing of claims by holding people in special facilities with interpreters and lawyers on site.

Not all asylum cases are simple and can be decided quickly. However, claims involving pregnant women, family cases involving a minor child, unaccompanied minors, persons with disabilities, serious mental health problems or infectious diseases, trafficking victims and torture victims can be complex.

The detention of foreign criminals who are being deported on public order grounds is a stricter policy set out under EIG 55.1.3 and 55.3.A. This suggests that where a person faces deportation due to their criminal offences then release would have to be carefully justified.

Alternatives to detention

Alternatives to detention include reporting and/or tagging.

2.2. Legal proceedings for ordering detention during the asylum procedure

A judicial decision is not required to carry out detention during the asylum procedure. The most competent public authority to order detention during the asylum procedure is the judicial authority. However, there is no automatic judicial review but all detainees regardless of status can apply to an independent immigration judge for bail that involves release to a defined address upon reporting conditions. The immigration judge requires lawful residents to be sureties for the detainee and provide promises of money that will be forfeited to the court if the person absconds.

Detainees can apply to Administrative Court (High Court) for judicial review to challenge the legality of detention but this is not automatic.

[258] Enforcement Instruction Guidance – *Factors influencing a decision to detain* (2009)

2.3. Appeals

There is no requirement for the judicial authority to decide upon negative decisions relating to legal status or the conditions of detention. Borders and Immigration Agency officers make these decisions. This decision can be subjected to administrative law review by a court but only upon application by the detainee and only on the grounds of illegality.

2.4. Case Awareness & Right of information

The Borders and Immigration Agency officers authorising detention have to give their reasons to the detainee on Form 1SR91R. This is required by the EIG policy at 55.6 and must give one or more reasons set out at 55.6.3, which express the grounds for detention set out in the policy. Thereafter there is an obligation to provide monthly detention reviews explaining why detention is continuing. These reviews must be conducted by officers of increasing seniority, in line with the increasing duration of detention.

The detainee may obtain access to an interpreter via their legal representative. The BIA will use interpreters to interview detainees pursuant to their asylum or other claim to remain or in order to process them for travel documents. There is no legal obligation upon the state to neither provide an interpreter in general nor advise the detainee on detention specifically.

2.5. Special Needs

There are regulations that issue guidance for persons with special needs via EIG in addition to the provisions for medical examination set out in the Detention Centre Rules 2001. Those recognised as having special needs are set out below:

- Unaccompanied minors
- Disabled people
- Elderly people
- Pregnant women
- Single parents with children
- Victims of torture and violence
- Traumatized persons
- Families
- Persons with suicidal tendency

Long-term detainees are not recognised as coming under the category of ‘special needs’ nor any other vulnerable group. However, it is always discretionary to detain so the BIA can release on compassionate grounds in any case where convinced.

2.6. Maximum duration of detention

There is no legal maximum duration of detention. Unlimited detention is possible subject to the case law. *R v Governor of Durham Prison ex parte Hardial Singh (1984) WLR 704* held that detention must only be for a reasonable period. There must be realistic prospect of removal within a reasonable period. Where is becomes clear that removal within this timescale is not likely then the detainee must be released. This is a flexible standard that will depend upon each case's specific facts including the behaviour of the detainee, foreign governments, the risk of offending or absconding and other factors. In practice detentions can last several years although this is quite rare. Detention for six to twelve months is not unusual.

2.7. Minimum age for detention

There is no age restriction. The EIG states that unaccompanied children should not be detained in exceptional circumstances and then only overnight (55.9.3) Therefore they should be placed in care with social services agency. Where a person's age is in dispute the case must be referred to the Refugee Council's Children's Panel. The BIA does not commission age assessments but will receive evidence from social services or doctors on this question if it is filed. The BIA will assess such evidence along with their appearance to decide on whether to treat them as an adult and hence detain them of appropriate.

Families and young children can be, and are, detained. The policy EIG (55.9.4) refers to this being on the same basis as other detainees under 55.3. Children detained should be given more reviews of detention (55.8).

2.8. Health Care

Detention Centre Rules (DCR) 2001 set out obligations to assess the health needs of detainees within 24 hours (rule 34) and provide appropriate care for detainees. The medical practitioner, who finds a person's health is being injuriously affected by detention, has suicidal intentions or has been a victim of torture must report this to the manager of the centre (rule35).

2.9. Contact with the outside world

The DCR 2001 provides for visits to detainees in general without specifying categories of visitor (rule 26). A right of correspondence exists. Detainee's who lack funds can be assisted with reasonable cost of postage (rule 27).

2.10. Social Services

There appears to be no legal obligation for the BIA to refer cases to social services. This said, children fall under the jurisdiction of local social services departments. There is no obligation for them to visit all detained children but they may do so if an allegation of neglect is made.

2.11. Legal Aid

There is a legal scheme that allows lawyers to provide free legal advice in immigration and asylum cases on certain grounds.[259] There is no right to a lawyer if one is not willing to act or cannot be found. If the detainee wants representation in a substantive case there is a requirement that the case meet the merits test. Half succeed in passing this test. However, a detainee can receive free legal advice and representation in bail hearings to challenge their detention or judicial review. This is not assessed by a merits test.

2.12. Legal Entity

From the basis of national law, detention centres are run under public law. The Borders and Immigration Agency are responsible for detainees.[260]

[259] Access to Justice Act 1999
[260] Immigration Act 1999

3. OVERVIEW OF NATIONAL DATA FINDINGS

3.1. Case Awareness

Across the spectrum of IRCs represented in this study it was widely reported that sources of information e.g. immigration casework, advice and how to access such information was poor, leaving people anxious and afraid. The official monthly reports, issued by the Home Office, were found to be inadequate, reiterating the same information from month to month with little or no specific guiding principle.

3.2. Space

Access to the living quarters of the detainee's is denied to NGO personnel. As a consequence, no first hand information could be reported. Nevertheless, detainee's experiences were conveyed as, generally positive with good clean sleeping and shower facilities in addition to libraries, sports and educational amenities. However, a common complaint related to heating and ventilation. In most cases detainees were expected to share their sleeping accommodation. Fluctuating room temperatures and poor ventilation has led to poor sleeping patterns.

3.3. Rules

Respondents highlighted that the day-to-day living of detainees was highly regulated and all requests had to go through the appropriate channels. This regularity was perceived as infringing on their right to freedom and the rules were said to feel restrictive.

Detainees believed the complaints procedures were rarely used and when they were used staff did not take them seriously. Others were mistrustful of the procedure and held a deep-seated fear of reprisals, should they complain.

3.4. Detention centre staff

Staff were perceived as having a formal and impersonal relationship with detainees and were seen as the 'enforcer of the rules' whilst others had more positive experiences of staff treating them with respect. Detainees also confided that certain staff members engaged in favouritism, racism, rudeness, arbitrary punishment and verbal harassment.

3.5. Safety

The majority of detainees believed that the centres provided secure accommodation and a safe physical environment. However, episodes of sporadic violence were noted with variable causes. Two specific triggers were seen to be, ethnicity and personality clashes.

3.6. Activities

Sport, education, entertainment, group activities (especially for the children), arts and crafts, access to books, computer access and internet together with the provision of prayer rooms and religious services. The respondent perceived these activities, as generally positive although daily routines and rules did interfere on occasion with certain activities.

3.7. Medical care

Access to medical and nursing staff exists for the detainee, but patients were mostly assessed by the nurse. The nurse would arrange for the detainee to be reviewed by a member of the medical staff or he/she would prescribe

simple medication themselves, medication which might alleviate the symptom without addressing the cause. Detainees believed this to be an inhibiting factor and detrimental to their health and well being.

Hospital care is, in theory, available for those who warrant it. However, in practice, detainees have been known to miss their 'out-patient' appointments.

Reportedly, the physical and mental well being of the detainees is seriously affected by detention. Presenting symptoms of the detainees include sadness, irritability, insomnia, stress, confusion, and social withdrawal. They are known to suffer from varying degrees of clinical depression and have suicidal thoughts and tendencies. Access to psychiatric care is variable with treatments generally given in the form of medication. Counselling or psychological services are not always able to meet the demand of the client group.

The above-mentioned symptoms are particularly associated with long-term detention. The system leaves the detainee feeling powerless and uncertain. Some respondents insist on pre-existing conditions worsening in detention, especially victims with a history of torture, rape and persecution.

Detained children were noted to mirror certain aspects of their parent's experience of detention that manifests itself in the child through bed-wetting, loss of appetite and evident weight loss.

3.8. Social interaction within the centre

Relations between staff and detainees are seen to be generally good. However, clashes between ethnic groups can and have erupted, in addition to certain groups choosing to socialise independently of others. This mentality, sometimes, led to isolation of certain individuals who belonged to a minority ethnic group or language.

3.9. Contact with the 'outside world'

The provision of mobile phones; access to the internet; receiving visits from family, friends and NGOs in addition to liasing with their solicitors was received positively.

3.10. Families in the detention centre

Yarl's Wood IRC is the main immigration removal centre for women and families. The findings reveal good, appropriate facilities designed to accommodate the specific client group. In addition to the formal school schedule there are fun activities available for the children on a regular basis, together with the provision of a youth club for the teenagers supervised by youth workers.

Respondents emphasised that the detention regime was ill suited to children. High levels of stress among family members impacted on the general health and well being of their children.

3.11. Nutrition

Described by the detainees, food was unpalatable and the same was believed to be a contributory factor related to weight loss.

4. ANALYSIS OF THE DATA AND CENTRAL THEMES

For reasons above, the data gathered cannot be considered as offering more than a general reference to the entire issue of detention in the UK. Independent of the two remaining social questionnaires, i.e. for detainees and detention centre staff, this study can only provide restricted analyses based on the findings gathered from NGOs in the preceding chapter.

1. *Detention of families with children*

> "Children suffer nightmares, bedwetting and mothers tell me their children's behaviour has changed e.g. they refuse to talk and become withdrawn whilst others become difficult to control…they are angry, confused and very frightened." (*Respondent 06/2009)*

Bedwetting, reluctance to eat, interrupted sleeping patterns attributable to nightmares and wet sheets disclose, from the onset, the detained child's vulnerable state. Additionally, the daily schedule often impinges on the need for children to eat when they are hungry and not when the detention routine dictates causing weight loss and lethargy that in turn affects their concentration.

Parents experiencing confinement, sharing life with strangers who themselves are suffering uncertainty and insecurity have a subliminal, overshadowing affect on children. There, children struggle to make sense of the pervasive atmosphere reeking of fear and anxiety among their parents, who under normal circumstances would represent strength and protection for their child. There is little doubt that detention of children within the asylum estate is seen to have detrimental effects on their mental and physical well being.
The findings of this small study only serve to underline the ongoing psychological and physical problems highlighted in previous studies related to detained children. In a recent study carried out by several royal colleges (paediatrics and child health care, general practitioners and psychiatrists and nursing) it was found that 'detaining children and their families caused significant harm… worsened physical and mental health and expressed worrying levels of trauma and sickness, despite well intentioned staff.'[261]

2. *The mental health impact of detention*

> "Clients feel themselves to be locked in a cycle that just keeps turning round, yet which lacks any sense. Indeterminate length of detention is a form of 'mental torture.'" *(Respondent 01)*

> "In most cases we saw a rapid deterioration of existing latent or not yet entirely crippling PTSD, to clinically often serious levels." *(Respondent 04)*

Headaches, gastric problems, lethargy, loss of appetite, poor concentration, aggressive behaviour, social withdrawal and frustration are frequent in detention. Feelings of disempowerment, frustration, low self esteem, hopelessness, confusion and perplexity are but a few indicators of the detainee's vulnerability in the face of prolonged detention.

Findings gathered have underlined the fact that prolonged detention appears to cause serious psychological damage to detainees whose claims for asylum have been unsuccessful. Patterns emerging are characterised by stages of increasing depression and suicidal thoughts and tendencies. In addition to the above-mentioned findings further contributory factors leading to vulnerability within the general population of detained asylum seekers are as follows:

a. Lack of information about removal process pertinent to the individual
b. Clinical approach of staff and verbal abuse

[261] Child Abuse & Neglect the International Journal – 15 October 2009

c. Insufficient access to medical staff
d. Unwillingness and failure to ensure continuity of medical treatment by obtaining medical information from previous doctors and hospitals
e. Sharing accommodation with unstable characters

Home Office guidelines state that detention is considered unsuitable unless there are exceptional circumstances, as in the case of those 'suffering from serious medical conditions or the mentally ill.'[262]
Despite this directive, the practice of detaining people with physical and mental health conditions in addition to those who show manifestations of developing serious mental health problems continues to undermine government guidelines.

Mental health services are limited and inconsistent, leading to psychological disturbance being treated superficially or in some cases ignored.

A report by HM Inspectorate of Prisons in 2008 on Harmondsworth IRC found there was no mental health needs assessment to identify the level of need for the primary mental health services; the only primary mental health care was provided by General Practitioners.[263]

> "Many Anglican chaplains serve the spiritual and emotional needs of asylum seekers within detention centres. They have seen the scars, both figuratively and literal, left by torture and abuse on people, who are currently deprived of liberty, even though they have broken no laws and pose no threat to society." Dr Rowan Williams *(Archbishop of Canterbury)*

> "Libyan: Persecution as a result of conversion to Christianity from Islam. Client diagnosed as having 'Post Traumatic Stress Disorder (PTSD)'. Client reported as being tearful when recounting history of imprisonment, beatings, suspension from wrists and instrumental rape. On arrival in the UK he was detained 2008. Attempted overdose-hospitalised then *returned* to detention centre. Was assaulted by Muslims whilst detained and separated. Laceration to head required stitches then transferred to another detention centre. Antidepressant medication prescribed. Presented as highly anxious during telephone conversations during attempts to halt removals."
> *(Respondent 05)*

> "There is a glaring absence of mental health diagnostic and therapeutic skills in the immigration statutory sector as a whole, and specifically in its detention establishment." *(Respondent 06)*

The United Nations High Commissioner for Refugees (UNHCR) believes that mechanisms to identify torture and violence are required at the earliest possible stage in the asylum procedure, and specialist medical staff and organisations should undertake treatment of such persons.[264] However, the Home Office states that it is not for the Boarder and Immigration Agency (BIA) to judge and only where appropriate will the BIA advise the claimant of the existence of such help.

In the report, *Deserving Dignity,* the Commission concluded that all those who seek asylum in the UK deserve to be treated with dignity over which mere administrative convenience must never prevail; and recommends that urgent action is taken to remedy situations where the dignity of those who seek sanctuary is currently compromised, particularly in the treatment of those who are detained, or women, children, torture survivors, those with health needs.[265]

[262] Medical Foundation for the Care of Victims of Torture (2004) *Harm on removal: Excessive force against failed asylum seekers*
[263] HM Inspectorate of Prisons (January 2008) *An Inspection of Harmondsworth Immigration Removal Centre*
[264] Medical Foundation for the Care of Victims of Torture (2004) *Response to the implementation of Reception Directive*
[265] Independent Asylum Committee – *Deserving Dignity* (2008)

5. CONCLUSIONS AND RECOMMENDATIONS

There are a number of external factors that indirectly impact on the life of the asylum seeker detained. This impact can be seen as a contributory factor towards vulnerability.

No right to legal representation makes serious demands on an already traumatised person, thus exacerbating their fragility in the face of removal. The fast-track system leaves little time for the detainee to gather evidence to support their claim for asylum. The detention of recognised vulnerable groups (torture victims and children), despite recommendations to the contrary, are detained, exacerbates vulnerability and causes unnecessary suffering.

Internal factors that directly impact on vulnerability range from lack of information, in particular information related to removal orders, to evidence of sporadic violence that keeps the detainee on heightened alert. This state of alert impinges on their ability to relax and interferes with their need to relate to others, often resulting in an increasing sense of isolation. Many detainees continue to live out of fear in uncertainty, which in turn increases levels of anxiety and adding to their vulnerable state.

Indefinite detention appears to cause serious psychological damage. Patterns emerging are characterised by increasing stages of depression, which all too frequently lead to suicidal thoughts and tendencies. Recent studies have found a clear correlation between 'prolonged detention' and mental illness.[266] This fact alone calls into question the ethical and moral issues surrounding indefinite detention here in the UK.

Supporting this argument one can only conclude that mandatory detention of asylum seekers is an excessive response that arbitrarily denies people of certain human rights; prolongs and exacerbates the trauma they have experienced before and during flight; denies them the possibility and security of normal family life; impairs their successful resettlement; and severely affects their metal health and well being.[267]

To conclude, one of the most vulnerable groups, highlighted in this report, are children. In a recent study (*Child Abuse and Neglect the International Journal)* eleven children aged between 3 and 11 years old, were seen by a clinical psychologist. All eleven had symptoms of depression and anxiety since being detained. All of these children presented as being confused and frightened by the detention setting and eight had developed severe emotional and behavioural problems.[268]

Children are impressionable, sensitive and unremarkably intuitive. They are often bewildered in the light of experiencing their parent's treatment during detention. Their experience of detention remains a cause of grave concern for many organisations, statutory and non-statutory alike, who continue to campaign on behalf of this vulnerable group.

Immigration detention is intrinsically damaging and detrimental to children and can never be in their best interest. Children and families continue to suffer deteriorating mental and physical health in detention.[269]

The House of Commons Home Affairs Committee documented 'that the improvements at Yarl's Wood are tackling the symptoms of the problem rather than the cause and that sustained improvements in the treatment of children in the immigration system will be as a result of reform to the overall asylum process. Focussing on the undoubted, very visible, improvements at Yarl's Wood alone does not address the wider issues.'[270]

[266] Prolonged Immigration Detention Puts Detainees At Higher Risk – Medical Journal of Australia (2009)
[267] Public Health Association of Australia Inc (2005) *Asylum Seekers-Mandatory Detention*
[268] Child Abuse and Neglect-*The International Journal* (October 2009)
[269] Amanda Shah, Assistant Director of Policy (Bail for Immigration Detainees)
[270] House of Commons Home Affairs Committee *The Detention of Children in the Immigration System* – First Report of Session 2009-10/HC73

Using the findings gathered from NGOs for this study, and based on its ongoing experiences from its accompaniment and service towards detainees, JRS UK endorses the following recommendations made by the International Detention Coalition[271]:

- The detention of refugees, asylum seekers should be avoided.

- Vulnerable groups, including children should not be placed in detention.

- Alternatives that ensure the rights, dignity and well being should be considered and pursued before detention. Alternatives include, such as supervised release, regular reporting requirements, posting bail or community management.
- Governments should, in compliance with international and regional human rights standards, only detain in circumstances where alternatives have been assessed as insufficient and only as a last resort.

- Detention should be for the shortest possible time. There must be limits on the length of detention, ensuring no one is subject to arbitrary or indefinite detention.

[271] The International Detention Coalition is a coalition of detention visiting and advocacy organisations from around the world. For more information, visit their website: http://idcoalition.org

Profile of the DEVAS project partners

Caritas ÖSTERREICH	**Caritas Austria's** mission is to accompany people in difficult conditions, including refugees and migrants. In the field of refugee protection, Caritas Austria offers social assistance and housing, provides legal advice and is engaged in integration programs. www.caritas.at
JRS accompany - serve - advocate	**JRS Belgium** visits asylum seekers and migrants in five detention centres, offering support and legal counselling. As part of its advocacy work, JRS Belgium is involved in different networks to lobby against the detention of families and children. www.jrsbelgium.org
BULGARIAN HELSINKI COMMITTEE	**The Bulgarian Helsinki Committee** promotes respect for the human rights of every individual by means of advocacy and monitoring the civil rights situation in Bulgaria. The committee reports on human rights violations with a special emphasis on the rights of ethnic and religious minorities, refugees and asylum-seekers. www.bghelsinki.org
ΣΥΜΦΙΛΙΩΣΗ UZLAŞMA RECONCILIATION	**Symfiliosi** is a non-profit, non-governmental, non-partisan organisation based in Cyprus. Its mission is to actively engage Cypriot society in a dialogue on reconciliation between the two larger communities of Cyprus, Turkish-Cypriots and Greek-Cypriots, with the aim of promoting a culture of reconciliation, peace, democracy and cooperation. The organisation also has a keen interest in the integration of migrant communities.
association for integration and migration	**The Association for Integration and Migration** is based in the Czech Republic. Its primary mission is to provide legal, social and psychological assistance to those applying for asylum in the Czech Republic. They help asylum seekers to solve problems that may occur during the asylum procedure and also regularly visit asylum seekers at refugee facilities. www.uprchlici.cz
Eesti Pagulasabi THE ESTONIAN REFUGEE COUNCIL	**The Estonian Refugee Council's** main objective is to ensure that persons coming to Estonia in need of international protection are treated in accordance with international standards and receive suitable protection.
JRS accompany - serve - advocate	**JRS Germany** provides legal, social and pastoral support in detention centres in Berlin, Eisenhüttenstadt and Munich (almost 2500 individuals per year). JRS Germany is a member of the Berlin Commission. www.jesuiten-fluechtlingsdienst.de
GREEK COUNCIL FOR REFUGEES	**The Greek Council for Refugees (GCR)** is the only Greek NGO that deals exclusively with refugees and asylum seekers living in Greece. GCR provides assistance to refugees by means of counselling, social services and the implementation of special projects for the solution of their problems, such as their adaptation to their social environment, and securing the means for their livelihood. www.gcr.gr

Hungarian Helsinki Committee	**The Hungarian Helsinki Committee (HHC)** monitors the enforcement of human rights, provides legal assistance to victims of human rights abuses falling, and informs the public about rights violations. The main activities of HHC focus on protecting the rights of asylum seekers and foreigners in need of protection, and monitoring the human rights performance of law enforcement agencies and the judicial system. http://helsinki.hu
JRS accompany - serve - advocate	**JRS Ireland** provides psychosocial support service to women detainees. Through its project *Community Links*, JRS Ireland offered an education employment and cultural services. It also organises intercultural events, and training for teachers on immigration and human rights. www.jrs.ie
JRS accompany - serve - advocate	**JRS Italy (Centro Astalli),** with the support of UNHCR, provides a wide range of health services and social services to refugees, and support to victims of torture. The office organises a yearly project in the schools to promote better understanding of the migrants issue. www.centroastalli.it
CARITAS LATVIJA	**Caritas Latvia's** mission is to promote the Caritas Network among the Catholic population in Latvia, as well as to serve and assist the socially deprived part of the population of Latvia, which includes working with migrants and refugees. Since 2005 Caritas Latvia has joined the Equal Project "Step by Step" initiated by the Office of Citizenship and Migration Affairs in Latvia. www.caritas.org/worldmap/europe/latvia.html
caritas	**Caritas Vilnius** serves people in need in the Archdiocese of Vilnius, Lithuania. Amongst others, Caritas Vilnius organises measures for the integration of refugees and migrants in the local community. www.vilnius.caritas.lt
JRS accompany - serve - advocate	**JRS Malta** visits detainees in three detention centres, offering legal, social and pastoral services to detainees. JRS Malta conducts work with cultural mediators and social psychologists, in order to better communicate and learn from the traumatic experiences of migrant women who are residing in Malta. www.jrsmalta.org
VluchtelingenWerk Nederland	**The Dutch Refugee Council (Vluchtelingenwerk Nederland)** is a non-profit organization representing the rights and interests of refugees and asylum seekers for over 25 years. Working with 29 regional branches and over 8000 volunteers, the Dutch Refugee Council provides practical support for refugees during the asylum procedure, naturalization, and integration into Dutch society. www.vluchtelingenwerk.nl

	Caritas Poland runs three Centres of Support for Migrants and Refugees located in Białystok, Lublin and Zgorzelec. Support is offered for recognised refugees, asylum seekers, persons under subsidiary forms of protection, migrants, repatriants, and mixed marriages. They offer psychological support, legal counselling, social support and social integration activities. www.caritas.pl
	JRS Portugal provides a number of services for marginalised migrants, such as temporary accommodation, health services, psychological and cultural support. They provide psychosocial services in the detention centre in Oporto and raise public awareness to promote integration of migrant communities. www.jrsportugal.pt
	JRS Romania provides temporary accommodation, as well as legal, psychological and medical assistance, to migrants in Romania. They organise cultural integration workshops and inter-religious events on a regular basis. JRS Romania volunteers visit the detention centre in Bucharest once a week. www.jrsromania.org
	Caritas Slovakia is a Catholic relief, development and social service organisation. Its activities are focused on poverty and social inequality, migration, asylum in Slovakia. www.charita.sk
	JRS Slovenia, with around 20 volunteers, visits the open centre for asylum seekers in Ljubljana four times a week, where they organise different activities, cultural events and workshops. They also visit once a week the detention centre in Postojna. www.rkc.si/jrs
	The Spanish Commission for Refugee Aid (Comisión Española de Ayuda al Refugiado) is a Spanish independent and non-governmental organisation founded in 1979 in order to protect the right to seek asylum. Its main goals are to provide legal and social assistance to refugees and migrants and to advocate for the interests of asylum seekers. www.cear.es
	JRS Sweden organises visitor groups to provide support to detainees, and connects them to legal services and relatives, and mediates between detainees, the police and the Swedish migration board.
	JRS UK staff and volunteers work in coalition to undertake lobbying and campaigning work on destitution and detention issues. Up to ten volunteers visit approximately 40 to 60 detainees a week, also liasing with health professionals and legal advisors. www.jrsuk.net

The DEVAS project is coordinated by
JRS-Europe in partnership with:

Caritas Austria
JRS-Belgium
The Bulgarian Helsinki Committee
Symfiliosi (Cyprus)
The Association for Integration and Migration (Czech Republic)
The Estonian Refugee Council
JRS-Germany
The Greek Council for Refugees
The Hungarian Helsinki Committee
JRS-Ireland
JRS-Italy (Centro Astalli)
Caritas Latvia
Caritas Vilnius
JRS-Malta
The Dutch Refugee Council
Caritas Poland
JRS-Portugal
JRS-Romania
Caritas Slovakia
JRS-Slovenia
The Spanish Refugee Commission
JRS-Sweden
JRS-United Kingdom

JRS
Jesuit Refugee Service-Europe

www.jrseurope.org
www.detention-in-europe.org

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