

AN ALTERNATIVE TO DETENTION OF FAMILIES WITH CHILDREN

Open housing units and coaches for families with children as an alternative to forced removal from a closed centre: review after one year of operation

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Plate-forme mineurs en exil
Platform kinderen op de vlucht

PREFACE

Since October 2009, families with minors that are required to leave Belgian territory are no longer held in closed detention centres, but are placed in open housing units. This allows them to receive intensive counselling from a so-called “return coach”. At the start of the project, the **Platform ‘Children in Exile’** (*Kinderen op de Vlucht*)¹ decided to create an evaluation that would ensure sustainable implementation of alternatives to detention of children in Belgium. The ensuing report is the result of observations made by two NGOs: Flemish Refugee Action (*Vluchtelingenwerk Vlaanderen*) and Movement for Undocumented Children (*Beweging Kinderen Zonder Papieren*). They have regularly visited the housing units in Zulte and Tubize since May 2009. The findings have been discussed regularly within the Platform ‘Children in Exile’.

This pilot project proves that detention is not necessary in order to collaborate with families towards a successful outcome of their immigration procedure, either return or legal stay. Analysis of the statistics shows that **79% of the families remained in contact with the coach** during their stay in the housing units. That means Immigration Office continued to have access to them, despite the fact the housing units are open. It is, however, important to investigate why some of the families nevertheless absconded from the units and went into hiding. That information could help make further improvements to the project.

The current pilot project is the first alternative to detention of asylum seekers and people without legal stay implemented in Belgium. Furthermore it represents the first step towards a more comprehensive integrated approach to counselling on legal stay and return. This is one of the many important reasons why the project should be warmly welcomed. We have ascertained that open and individual units – in which families can continue to have a private family life - are a good alternative to detention in a closed centre. It is also an alternative to residence in an open collective reception centre. We see this as a **clear humanization of the phase of forced expulsion**. For this reason we advise Immigration Office and the Minister for Migration and Asylum to continue and extend this project.

However, to guarantee the project’s long-term success, the open housing units need to be **integrated into a broader policy** of counselling on legal stay and return from the beginning of the process. We therefore explicitly appeal to Fedasil and the Minister for Social Integration. It is now up to them to implement an **integrated approach to counselling on legal stay and return**, starting at the beginning of the asylum procedure, or as of first contact between the authorities and the person without legal stay. The purpose is to avoid forced expulsion as much as possible. We ask the Belgian authorities to focus their return policy more on “voluntary” return. A system of case work needs to be developed in order that **return counselling – after all procedures for legal stay have been exhausted – can be carried out within the open reception structures**. Forced expulsion may only be set in motion if return counselling fails to lead to a successful return (or to a legal stay). It should then be investigated on a case-by-case basis whether the family should be transferred to one of the open housing units. We urge Minister for Social Integration to develop this system within the reception structure and to cooperate with the Minister for Migration and Asylum. Opportunities for this will certainly arise in the near future as a new **protocol between Fedasil and Immigration Office** needs to

¹ Cf. <http://www.kinderenopdevlucht.be>

be agreed upon. This protocol must regulate case management and possible transfer to housing units of families with minors in irregular stay in the reception structures (illegal families declared indigent according to the Royal Decree of June 2004)². We can accept a model whereby families end up in open housing units after intensive counselling on legal stay and return in the reception structures (and if it has been established on the basis of clear criteria that they have repeatedly failed to cooperate with the counselling process). We expect both Ministers to seize the opportunity to **implement this counselling programme on legal stay and return for other families as well.**

The experience of Immigration Office's return coaches will be of great value. During their first year in the pilot project they encountered a number of sensitive policy issues at first hand. The work of the return coaches already demonstrates some of the benefits of the integrated approach to counselling on legal stay and return. Their experiences are very valuable in view of the organisation of this kind of counselling in open reception structures. We noted that in the cases where coaches offered such counselling, the family's confidence in the work of the return coach increased. This confirms our vision that **counselling on both legal stay and return (whereby the case manager remains consistently aware of possible legal stay options) increases confidence in the case manager's work and causes people to remain available to the authorities.** It is the only way to progress in a meaningful and reliable way towards a sustainable return. Therefore we urge return coaches to focus their work even more on the investigation of legal stay options. The role and responsibilities of return coaches must therefore be defined less ambiguously and must end in 'real' coaching. This comprises an integrated approach of simultaneous counselling on legal stay and return, in order to **empower the family to cope with any possible outcome of their procedure.**

We would like to point out that this approach will only succeed if the quality of decisions in asylum and legal stay procedures improves. A forced return is not necessarily legitimate or appropriate in every case where the family is unwilling to enrol in the process of return. The family must feel confident in the quality of their ongoing procedure on legal stay. Belgian asylum, reception and return policies have not yet reached that point. The administrative authorities must make every effort to ensure a **climate of trust and confidence.**³

In this report we compare the experiences of the pilot project to our vision on an integrated approach to counselling on legal stay and return. We make a number of recommendations and highlight several examples of good practice that we encountered. Our goal is to make a good project even better and to strive for a broader policy framework. We are aware of the fact that working with return coaches in open housing units is new to Immigration Office; this evaluation takes that into account. We hope that our evaluation and recommendations will be considered when Immigration Office makes its own evaluation of the project and when the two involved Ministers begin cooperation on an integrated approach to counselling.

² Cf. General Policy Note for Migration and Asylum, 5th November 2009, p. 21, <http://www.dekamer.be/FLWB/PDF/52/2225/52K2225009.pdf>.

³ Cf. Vluchtelingenwerk Vlaanderen "An integrated approach to counselling on legal stay and return during the reception of asylum seekers", December 2008, 2.1.4. (page 7) <http://www.vluchtelingenwerk.be/actueel/nieuwsitem.php?n=431>

EXECUTIVE SUMMARY

Coaching must be introduced at the start of the process and must provide an integrated approach to counselling that begins early in the asylum procedure

We have asked the Belgian authorities to refrain as much as possible from forcibly returning illegal migrants. An integrated counselling service following two tracks (legal stay and return) should be introduced from the start of the asylum procedure, or from the moment a family without legal stay is detained by the authorities. Case managers should not come under the jurisdiction of the administration responsible for forced return of migrants. We ask that the Belgian return policy focus increasingly on “voluntary” return. Forced return should be avoided as much as possible, but if it does take place, the current pilot project is a considerable improvement. In this respect we encourage the Immigration Office to continue and extend this project.

Transfer of families to open housing units

More attention should be paid to the radical nature of an unprepared and sudden transfer to the housing units. The authorities responsible for the transfer play a major role in this. In some cases this is the police. They must therefore be made aware of the pilot project to be able to inform families about their transfer. In any case, the sanctity of the home under law should be respected, meaning the police may not arrest families in their houses without a prior visit or without prior warning. Immigration Office should also provide better information to families ahead of transfer to the housing units. The transfer itself must be carried out in a more humane manner, out of respect for the family and in order to maintain trust between the family and their coach.

Information available to families

- Information about the reason for their stay in the housing units and the course of events while there, is of great importance to the well-being of families
- An interpreter must be available during the intake phase if necessary
- Internet access should be guaranteed to the families as much as possible, preferably inside the open housing units
- Access to all necessary information must be guaranteed; this means more than just information which is "useful" in the context of return

Quality of legal assistance to families

- Return coaches should report any inadequate legal assistance to the designated authorities (the ‘*stafhouder*’ of the legal bar)
- Coaches must clearly inform families of the importance of having a lawyer in their specific situation
- Coaches must have adequate legal training
- Lawyers must be receive training on the pilot project
- The role of return coaches must be clearly defined compared to the role of the lawyer
- Return coaches must maintain contact with the lawyer. If the return coach identifies an opportunity for legal stay in Belgium, he must pursue this together with the lawyer
- Families must be informed about their right to access all relevant documents and decisions in their file

Psychological and social counselling

Case managers should be appointed in the reception structures under Fedasil or from the moment that a family without legal stay is intercepted by the authorities. They must offer psychological and social counselling, thereby helping the family to talk about a possible return or other future options. The purpose of this counselling should, however, not be to persuade the family to return. Immigration Office should also allow return coaches to offer independent external psychological return counselling.

Twin-track counselling

Coaches should always actively investigate options for legal stay. During our research it became clear that families' confidence in the counselling grew in cases where return coaches fulfilled this criteria effectively.

The job of the return coach

- Return coaches need a clear job description that nevertheless provides them with enough flexibility to respond to new developments in the field
- Extra coaches should be hired. The current 3 coaches are insufficient (October 2009). The project also needs extra supporting staff
- Training, supervision, peer consultation and debriefings are needed in order to guarantee optimal professional performance

Project coordination

A full-time coordinator should be appointed to the project.

Evaluation and monitoring of the project

- Immigration Office should evaluate the project and publish a report
- A number of NGOs should be given structural access to the open housing units, similar to structural access to closed centres

Finally we underline the necessity for cooperation between the Minister for Social Integration and the Minister for Migration and Asylum. They should create a broader policy framework for this project.

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Platform Children in Exile
Flemish Childrens Rights Commissioner
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UNICEF Belgium
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Jesuit Refugee Service Belgium
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