

# GLOBAL **NEXTGEN** INDEX

Protecting the liberty of our next generation, today.

## End Child Detention Scorecard

# **BELGIUM**

Published August 2018 using information compiled between November 2017 – July 2018, based on the most up-to-date reports and analysis available.



## FINAL SCORE

# 49

The Government of Belgium prohibits the detention of unaccompanied children. However, age assessment processes for unaccompanied children are insufficient, which can lead to children being detained with unrelated adults in detention centres.

Children and families are held in “return houses,” which are open housing facilities considered to be alternatives to detention. However, a few families per year have been detained for short periods upon arrival or prior to departure, with a maximum time limit of 48 hours.

The government has now opened a new detention facility adjacent to the Brussels airport to detain families for longer periods. This is a major setback, as the government has not detained children and families in detention centres for more than 48 hours since 2009.

	Belgium	Possible
Treaties	18	20
National laws	5	10
Processing	10	26
Placement	8	12
Rights	13	20
Oversight	3	12
<b>Sub Total</b>	<b>57</b>	<b>100</b>
Points off	-9	-15
Bonus points	+1	+15

### Treaties 18/20

Belgium has ratified five of the six Conventions and Protocols that assist in the protection of children in the context of migration.

**Recommendation:** The Government of Belgium is commended for recently ratifying the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and it is recommended that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is ratified.

### National laws 5/10

Belgian law<sup>1</sup> prohibits unaccompanied children from being placed in detention. However, unaccompanied children can be held in detention centres while they are undergoing age assessment tests, which can take up to 6 working

<sup>1</sup> Art 74/19 Aliens Act 15 December 1980 states that “unaccompanied foreign minors cannot be detained in the places referred to in art. 74/8§2 [detention centres for Aliens that aren’t situated at the border]”.

days. Children undergoing age assessments should be protected from detention. The same Law allows for the detention of families with children if the place is adapted to the needs of families with minor children.<sup>2</sup>

**Recommendation:** The Government of Belgium is commended for protecting unaccompanied minors from detention, however the government is encouraged to extend this protection to unaccompanied children of all ages while they await age assessments. This would reduce the severity of psychological damage experienced in detention by all unaccompanied children. Additionally, the government is urgently encouraged to extend protection from detention to all children, including those accompanied by their family.

## Processing 10/26

Belgium has some processes for integrating migrant children into the community, mainly for unaccompanied children. Informal Best Interest Assessments are provided for unaccompanied children.<sup>3</sup> The centralised Guardianship model is commendably independent from immigration, but there are significant areas for improvement: guardians need more comprehensive training, caseloads need to be manageable and guardians need to be appointed immediately, even during the age assessment procedure when the age of the child is in doubt. Documentation and some translation services are available.

As for children migrating with their families, there is no Best Interest Assessment process within legal procedures to obtain a stay in Belgium, nor in detention decisions. There is no system in place, organised by the authorities, to provide holistic case management. The support provided is fragmented. Documentation for accompanied children depends on their parents' immigration status and documents. Due to a legal amendment of September 2016 there have been significant barriers to accessing legal advice.<sup>4</sup>

**Recommendation:** The Government of Belgium is urgently encouraged to introduce and strengthen processes to ensure child-sensitive migration systems for children migrating with their families. Formal Best Interest Assessment procedures should be introduced for all children, and informed by existing informal processes for unaccompanied children.

## Placement 9/12

Some placement options in Belgium are to be commended for being sensitive to the needs of migrant children. However, the reception of families seeking asylum can involve immigration detention – urgent improvements need to be made to the quality of reception to ensure that small-scale structures are given preference over larger-scale facilities. In August 2018, an immigration detention centre for families opened. Undocumented families with children can be detained in this closed centre if they did not comply with the conditions of the “return houses”. Families ‘at the border’ can be detained if choose not to be placed in an alternative to detention, while border families who pose a security concern will always be detained. The grounds for national security concerns and details of how families are presented with this choice in this situation are unclear at this stage. The family detention facility adjacent to the Brussels airport is a major setback, as the government has not detained children and families in detention centres for more than 48 hours since 2009.

<sup>2</sup> Article 74/9 §1 states that “a family with children that has entered the Kingdom without meeting the required conditions established in articles 2 or 3 [of the Belgians Aliens Act], or whose stay is no longer regular or is irregular, is in principle not placed in a place referred to in article 74/8 §2 [Detention centres for aliens], unless this place is adapted to the needs of families with minor children”.

<sup>3</sup> Unaccompanied minors are systematically referred to the Guardianship Service (Service des Tutelles) and then assigned a guardian that is entrusted with the task of finding a durable solution in accordance with the best interest principle. Guardians are required to provide legal, cultural and psychological guidance until the end of the guardianship – an approach that can be assimilated to an informal BIA.

<sup>4</sup> <http://www.sdi.be/IMG/pdf/black-book-jpt-fr-def-web.pdf>

**Recommendation:** The Government of Belgium is strongly encouraged to improve placement options and ensure that holistic case management is used to compliment engagement in placement programs. Child detention should never happen, and new structures should not be built to serve this purpose.

## Rights 14/20

Access to rights is variable in Belgium, with considerably more rights afforded to unaccompanied children. Access to education is established in law, although this is difficult to access for families in return procedures and held "return houses." Belgium is to be commended for providing general access to social assistance and health care. However, undocumented families with children can only access emergency health care and social assistance in the form of reception in a "return house" which is available provided that families comply with return processes.

**Recommendation:** The Government of Belgium is commended for efforts to uphold the rights of migrant children to non-discriminatory access to education, and for establishing firewall protections in legislation. However, improvements are needed. The Government of Belgium is strongly encouraged to establish accessible reception and housing, ensure access to social welfare, permit parents to seek employment, and uphold the rights of undocumented children.

## Oversight 3/12

The oversight of immigration detention in Belgium must be improved. The decision to detain a family with children is under exclusive authority of the immigration office. This administrative decision is only subject to judicial oversight in order to evaluate compliance with the law, rather than to consider the individual merits of the case. Moreover, this review is not automatic. Belgium has not yet appointed an independent body to perform regular monitoring and reporting on the running of its immigration detention centres. Certain international and national institutions and organisations are allowed to visit the detention centers for monitoring purposes. Immigration detention statistics are published each year, but provide insufficient details and do not report specifically on children.

**Recommendation:** The Government of Belgium is to be commended on ratifying OPCAT. This score could be improved by setting up a regular monitoring body, implementing OPCAT, improving the judicial control of detention decisions, and by publishing disaggregated detention population statistics on a monthly basis.

## Points off -9/-15

The insufficient age determination techniques for unaccompanied children in Belgium mean that children can be assessed as adults, and detained for long periods of time, contradicting the law that no unaccompanied child should be detained. Belgium both transfers and returns children to territories where they could be at risk of detention. In addition, family unity is often not respected with one member of the family being subject to detention while the rest of the family lives in the community. The new detention facility will detain families for up to a month.

**Recommendation:** The Government of Belgium is strongly encouraged to abolish the detention of children, in law and in practice. Notwithstanding this recommendation, the government is encouraged to end transfer and return practices, and to ensure children undergoing age assessments are not detained with unrelated adults.

## Bonus points +1/+15

Belgian law protects unaccompanied children from detention; however, there is no evidence of any political will to end the immigration detention of all children and their parents. In fact, at the moment facilities are being built to detain entire families.

**Recommendation:** The Government of Belgium is encouraged to abide by international law and standards by preventing the detention of all children, halting the construction of a family detention facility, and strengthen alternatives to detention through the use of holistic and humane case management.

This scorecard has been assessed by the Belgium NextGen Index Committee:

- [Plate-forme Mineurs en Exil](#)
- [Caritas International](#)
- [UNHCR](#)
- [JRS Belgium](#)
- [Ciré](#)
- [Vluchtelingenwerk Vlaanderen](#)

For further information regarding how this score was measured visit <http://next-gen-index.org/>

If you have any questions, please contact the Global Campaign:  
[media@endchilddetention.org](mailto:media@endchilddetention.org)

# Additional Resources & Information

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## Treaties & National Laws

- [Résolution en vue de la ratification du protocole \(OPCAT\)](#)
- [Law 'Pot-Pourri IV, 2016](#)
- Belgian Minister of Justice: [Relevant laws and preventative mechanisms](#)
- [La Constitution Belge](#)

## Directives & Services

- Age Assessment: [L'estimation de l'âge des MENA en question : problématique, analyse et recommandations, 2017](#)
- [Guardianship requirements and guidelines](#)
- Federale Overheidsdienst Justitie: [Guardianship services](#)
- Royal Decree: [Material assistance to foreign minors and their parents, 2006](#)

## Community Integration & Support

- La Plate-forme Justice pour Tous: [Le Livre Noir de la réforme de l'aide juridique, 2017](#)
- [Housing and aid laws](#)
- Asylum Information Database: [Access to the Labour Market](#)
- Flemish Government: [Reception education for non-Dutch speaking newcomers in secondary education](#)

## Infrastructure & Oversight

- Convention on the Rights of the Child: [Report on child detention](#)

## More information:

- [You don't lock up a child. Period.](#)
- [www.mineursenexil.be](http://www.mineursenexil.be)
- [www.caritasinternational.be](http://www.caritasinternational.be)
- [www.unhcr.be](http://www.unhcr.be)
- [www.irsbelgium.org](http://www.irsbelgium.org)
- [www.cire.be](http://www.cire.be)
- [www.vluchtelingenwerkvlaanderen.be](http://www.vluchtelingenwerkvlaanderen.be)