



# Input by civil society to the 2022 Asylum Report

Dear Colleagues,

The production of the *Asylum Report 2022* is currently underway. The annual [Asylum Report series](#) present a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organisations, UNHCR and researchers. To this end, we invite you, our partners from civil society, academia and research institutions, to share with us your reporting on developments in asylum law, policy or practice in 2021 (and early 2022) by topic as presented in the online survey.

Please note that the Asylum Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

All submissions are publicly accessible. For transparency, 2022 contributions will be published on the EUAA webpage. For reference, contributions to the 2021 Asylum Report by civil society organisations can be accessed [here](#), under 'Acknowledgements'. All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the Asylum Report is subject to terms of reference and volume limitations. Contributions from civil society organisations feed into EUAA's work in multiple ways and inform reports and analyses beyond the Asylum Report.

Your input matters to us and will be much appreciated!

\*Please submit your contribution to the 2022 Asylum Report by **Monday, 21 February 2022**.\*





## Instructions

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Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, only include the following type of information:

- ✓ New developments and improvements in 2021 and new or remaining challenges; and
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2021.

Please ensure that your responses remain within the scope of each section. Do not include information that goes beyond the thematic focus of each section or is not related to recent developments

## Contributions by topic

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- 1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)**

In 2021, The Committee against Torture considered the fourth periodic report of Belgium and adopted its [concluding observations](#) on 28 July 2021. NANSEN submitted [an alternative report](#) flagging several important issues which have been echoes in the Concluding Observations:

- the respect of the non-refoulement principle (see CAT Concluding Observations para 25)
- the position of victims of torture in the international protection procedure and
- the quasi systematic detention of asylum seekers at the border (see CAT Concluding Observations para 29).

- 2. Access to information and legal assistance (including counselling and representation)**

- 3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)**





**4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)**

N/A

**5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)**

Asylum applications at the border in Belgium are assessed according to a border and fast track procedure. See [NANSEN, VULNÉRABILITÉS EN DÉTENTION Procédure à la frontière, procédure accélérée, visioconférence](#).

In 2016 the Commissioner General for Refugees and Stateless Persons (hereafter CGRS) launched a project to hold the asylum interviews of people in detention by videoconference. In December 2020, the CGRS announced its intention to extend this project to asylum seekers staying in open reception centres across the country. This practice was however sanctioned the Council of State in a [ruling of December 7th, 2020](#). The Council of State found that interviews by videoconference had no legal base. Following this ruling the Council for Alien Law Litigation (CALL) annulled several decisions taken by the CGRA after an interview by videoconference (see for example [CALL, 5 March 2021 nr. 250 489](#)). The CALL makes a distinction between decisions on the merits of the asylum application and admissibility decisions (in which case videoconference is not necessarily excluded). According to the [CGRS](#), a Royal Decree is being drafted.

**6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)**

Although the number of asylum applications stabilised in 2021, many asylum seekers have been sleeping on the streets over the last months. Particularly in December 2021, images of large groups of destitute people were widespread in the media. Similar problems were





present in previous months too, however. According to Vluchtelingenwerk Vlaanderen, more than 2,000 people have been destitute and sleeping rough over the course of October and November 2021. A large number of them were unaccompanied minors: in September 2021, a consortium of NGOs estimated that there were 500 minors sleeping on the streets every night in Brussels. Following a judiciary procedure launched by civil society including NANSEN, the Belgian State was condemned on 19<sup>th</sup> of January 2022 to abide it's EU and international obligations regarding the reception of asylum seekers.

Informations regarding the increase of the reception capacity in 2021 can be found [here](#), [here](#), and [here](#).

The situation in Belgium triggered a material and personnel support from Europe for the reception of asylum seekers from January. State Secretary for Asylum and Migration Sammy Mahdi and the executive director of the European Asylum Office (EASO), Nina Gregori, [signed an operational plan to this effect on 16<sup>th</sup> of December](#).

**7. Detention of applicants for international protection (including detention capacity – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)**

See [UN CAT Committee Concluding Observation on Belgium](#) regarding quasi systematic detention of asylum seekers.

See also the figures presented by the Immigration Office in June 2021 confirming that 100% of the asylum seekers at the border have been placed in detention (see [here](#), page 4).

**8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decision-making, timeframes, case management - including backlog management)**

**See the asylum instances annual reports (Office des Etrangers, CGRA and Council for Aliens Law Litigation)**

Interviews by videoconference, see above, question 5. This question is on hold until the adoption of a Royal Decree which is being drafted. In the meantime, the [CGRA indicated](#) that interviews by videoconference continue to take place in detention centers when the administration believes they have enough elements for a positive decision.

**9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)**





N/A

**10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)**

See on this topic [NANSEN contribution](#) to the consultation organized by the [independent expert Commission](#) tasked by the Government to revise the funding legislation (Loi du 15 décembre 1980 sur l'accès au territoire le séjour l'établissement et l'éloignement des étrangers). The Government agreed on the key features of this reform in December 2021 (see [here](#)).

NANSEN recommends a.o. that the full content of Article 10 of the Directive Procedure be transposed into Belgian law, so that the importance of accurate and up-to-date COI in Belgian law can be ensured. We also recommend to include into national legislation the set of quality standards as it is established by international instruments (EASO, [Country of Origin Information \(COI\) Report Methodology](#), June 2019 and ACCORD, [Researching Country of Origin Information – Training Manual](#), 2013)

**11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)**

- Council for Aliens law Litigation Decision 255.293 para 6.3.1 is making the case of the vulnerability of a family of protection status holder (Greece) putting forward the lack of housing support, lack of access to medical care, school and learning, lack of work and violence and discrimination and considering that the various situations described, which taken separately do not reach a particularly high threshold of seriousness, must be analysed cumulatively.
- [Analysis of recent case law relating to the protection of Victims of feminine genital mutilations](#) under the Geneva Convention show that the after-effects of the cutting and the actual documented risk of re-excision are not taken into consideration to grant international protection.
- [Analysis of recent case law relating to the protection of victims of gang violence in El Salvador](#) show that to some extent the intricacies of corruption and violence in the state apparatus are still misunderstood.
- [Analysis of the application of special procedural needs for vulnerable applicants in detention](#) during the asylum procedure in Belgium show that identification of special





procedural guarantees is problematic and that the scope of the specific measures taken to adapt the asylum procedure and assessment of the protection need of applicants in a vulnerable situation is limited.

**12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)**

N/A

**13. Return of former applicants for international protection**

See NANSEN concerns about [non-returnable former applicants for international protection](#) in general. This is applicable in particular but not only to Afghans given a.o. UNHCR recent [position on return to Afghanistan](#), the Taliban recent take over and the specific situation of religious minorities as the [Hazara's](#) as well as the existing indications regarding the extent of (in)tolerance towards [occidentalization](#). This is of particular interest as in 2021 Belgium [froze the treatment of international protection applications by Afghans since August 2021](#), a policy which is about to end, as the signals multiply that the asylum authorities will not grant subsidiary protection anymore and might not grant the refugee status either in many cases.

See also ECHR decision (Rule 39) of 17 December 2021 regarding the interdiction to return an Uyghur man to Turkey or Marocco (case nr 60405/21 A.P. Vs Belgium)

See also ECJ decision C-921/19 of 10 June 2021 (items 42 and 44) which is fully in line with the ECHR arrest [Singh vs Belgium](#) and the concerns expressed by NANSEN about [the consideration given to documentary evidence in the credibility assessment in Belgium](#).

**14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)**

N/A





**15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)**

N/A

**16. National jurisprudence on international protection in 2021 (please include a link to the relevant case law and/or submit cases to the EUAA Case Law Database)**

See [here](#) the most relevant, comprehensive and up to date databank available (search engine on keywords in Dutch : asiel, subsidiaire bescherming, toekenning, erkenning, weigering, opheffing, vervolging, actor van bescherming, uitwijzing, refoulement, grensprocedure, terugkeer etc).

In complement, see here a selected series of case law flagged by NANSEN for UNHCR attention over the course of 2021.

**Constitutional Court, 25 February, nr. [23/2021](#)**

Judgment of the Loi du 21 novembre 2017 « modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers ». Very worrying analysis of the issue relating to systemic administrative detention of asylum seekers at the border (see items B.3 to B.6 et sq). Interesting analysis on Special Procedural Needs (see items B.46 to B.52). Partial annulation of the provisions of Article 57/5quater (sending of hearing notes) insofar as it concerns the sending of notes simultaneously with the decision for inadmissibility decisions (see item B.58 to B.67). More on third safe country, accelerated procedures, medical examination etc.

**Council of State, 3 December 2020, nr. [249 122](#)**

Exclusion and non-refoulement clauses. The Council of State confirms the CALL's reasoning according to which the CGRS does not have to analyze the question of inclusion if the person can be excluded from protection. The Council of State also confirmed the CALL's decision that a non-refoulement clause taken by the CGRS along with a decision of exclusion of refugee status or refugee protection is only an opinion and cannot be appealed along with the CGRS' decision. A separate appeal must be filed in case of a return decision. According to the Council of State, such an appeal is effective in the sense of article 13 ECHR and article 47 of the EU Charter. The arrest is available [here](#).

**CALL 24 February 2021, nr. [249 784](#) ; CALL 25 February 2021, nr. [249 930](#) ; CALL 11 March 2021, nr. [250 868](#)), CALL 29 March 2021, nr [251 766](#)**





The CALL considers the protection and assistance provided by UNRWA to Palestinian refugees in Gaza and Lebanon to be no longer effective. According to the CALL the deterioration of the operating conditions of UNRWA in the Gaza Strip and Lebanon has reached such a level that, even if this agency has not formally ceased all presence, it finds itself, in practice, faced with operational difficulties so serious that the Palestinian refugees can no longer, in a general manner, count on its protection or assistance in this field of operations. Consequently, the CALL automatically recognizes Palestinian refugees from Gaza and Lebanon who are registered with UNRWA or received UNRWA assistance as refugees applying article 1D of the Refugee Convention.

**CALL 30 April 2021, nr. [253 776](#)**

**Violence against women.** The CALL granted the refugee status to a Turkish woman who feared the family of her ex-husband in Turkey, after she divorced him in Belgium. The CALL considered her fear well-founded, observing that *“femicides and honour killings in Turkey highlight the inadequacy of state measures against violence against women and call for caution”*.

**CALL 31 August 2021, nr. [259 842](#)**

**Status holder in Greece** – admissibility of an ulterior asylum claim. The CALL considered that the CGRS insufficiently examined the life conditions of the asylum seeker in Greece and didn't take into account the vulnerable profile of the applicant established by several medical and psychological attestations. The CALL annulled the decision of non admissibility taken by CGRS. In two similar judgements nr. [260 192](#) and [260 134](#), concerning ulterior asylum claims in which NANSEN intervened the CALL also annulled the decision of the CGRS.

**CALL 7 September 2021, nr. [260 333](#)**

**Exclusion clause for applicant who married and had sexual relations with his wife when they were both minors.** Article 1F is an exceptional provision with serious implications, and so should be applied with utmost caution. In light of this, the Council held that the applicant does not fall within the scope of Article 1F and due to the fact that his identity and nationality are not disputed and it has already been established that he has a well-founded fear of persecution in the event of return to Syria, he must be recognised as a refugee in accordance with Article 1A of the Refugee Convention and Article 48(3) of the Law on Aliens.

## 17. Other important developments in 2021

"The Belgian Aliens Act has been amended no less than 109 times since 1980. And of these 109 amendments, 40 have been made in the last 6 years. The current government has therefore set up a Commission (see above) to improve the readability of the Aliens Act, preserve legal certainty and avoid discrepancies in the text". A broad consultation of civil society was organised in 2021, in which around 90 civil society organisations took part among which NANSEN. Our contribution is available [here](#). The highlights include mending the legislation as to establish a residence rights for stateless persons, the issue of quasi systematic detention of asylum seekers at the border, the credibility assessment and its relation to the benefit of the doubt; the limited use of the specific procedural







needs, and the need for quality standards regarding the preparation and use of Country of Origin Information.

Since the Taliban took over power in Afghanistan, there have been many questions, first about evacuation and then about (potential) residence applications and procedures of Afghans who are still in Afghanistan or who are already in Belgium. See [here](#) the most up to date and comprehensive overview available (updated last 11.01.2022)

The impact of Brexit on the legal position of UK nationals and their families is also important to mention. See [here](#) an overview of the consequences of the Brexit in terms of right of residence, target group determination for Flemish civic integration, international family law, social rights and medical care, asylum seekers and the Dublin III Regulation, and other areas (access to Flemish education and British driving licences).

## References and sources

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**18. Please provide links to references and sources and/or upload the related material in PDF format  
(see hyperlinks above)**

Unfortunately we have no availability enough to recapitulate all the hyperlinks used in this document in a comprehensive list of reference and sources.

**19. Feedback or suggestions about the process or format for submissions to the Asylum Report**  
Please consider giving

## Contact details

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**I accept the provisions of the EUAA [Legal and Privacy Statements](#)**

