

# Bridging the Protection Gap: Immigration Detention and Forced Migrant Destitution

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## Introduction

Asylum and migration has been at the forefront of European Union policymaking for many years, but especially so during the last decade. The gradual enlargement of the Union and the disappearance of internal borders has obliged national governments and EU institutions to fundamentally re-think how refugees and migrants are welcomed into European society. Indeed, these factors have led to a legal restructuring with EU-wide implications.

In the 1999 European Council in Tampere, Finland, EU Heads of State and Government called for the establishment of a *Common European Asylum System (CEAS)*. The Council's call for a EU-wide system to provide international protection to refugees in full accordance with the 1951 Refugee Convention was an important step forward. Since then, the EU has adopted important legislative measures: Directives on Reception Conditions for asylum seekers,<sup>1</sup> on Qualification for becoming a refugee or a beneficiary of subsidiary protection,<sup>2</sup> on Asylum Procedures<sup>3</sup> and the Regulation on allocating member state responsibility for examining asylum applications, i.e. the so-called 'Dublin Regulation'.<sup>4</sup> This stage of EU legal harmonisation on asylum, having ended in 2005, was intended as a first step towards a full CEAS, foreseen to be in place by 2012.<sup>5</sup> Parallel to this process, the Council, together with the European Parliament, adopted the Directive on the Return of illegally staying third-country nationals.<sup>6</sup>

During its growth in the thirty years since its founding, the Jesuit Refugee Service has strived to remain true to its mission – to accompany, to serve and to advocate – in the face of the ever-changing needs of refugees and the forcibly displaced, and the challenges they pose for states. In particular, JRS in Europe has witnessed a marked increase in xenophobic public sentiment towards all categories of migrants, whether they came to Europe in search for a better life or fleeing from persecution. Being close to refugees, and being touched by their realities – in detention centres, city streets, soup kitchens and homeless shelters – has been at the heart of our approach.

It is precisely this 'closeness' that has taught us that despite the EU's efforts to provide common protection standards for migrants and refugees, alarming gaps still remain. There are still glaring discrepancies in the way EU member states meet the needs of asylum seekers and undocumented migrants. In Europe JRS offices are particularly aware of such discrepancies in two areas where migrants are most vulnerable: behind the high walls and barred windows of detention centres, and in cities and towns where migrants live destitute, without access to basic social support and services.

This article will describe two recently published reports that exemplify how JRS has adapted to the ever-growing needs of refugees and the forcibly displaced, in order to respond to the ever-widening gap in protection that exists in EU law and policy on asylum and migration. Both reports depict the realities of refugees and forced migrants who live on the margins of society in Europe.

## Detention in Europe

Migrants are detained throughout Europe in a variety of conditions and legal contexts.<sup>7</sup> Asylum seekers are detained while they await a decision on their application, as are undocumented migrants who are to be returned to their country of origin. Sadly, families and children are detained as well.<sup>8</sup> It is admissible for a state to detain a foreigner, but only under clearly prescribed and narrow legal conditions. A state may detain a foreigner in order to prevent an unauthorised entry into the territory.<sup>9</sup>

A person who enters an EU country and asks for asylum may be detained under limited circumstances: to verify one's identity, to undertake a preliminary interview, to investigate one's intention to purposefully mislead the authorities and for reasons of national security and public order.<sup>10</sup> However a person cannot be detained for the sole basis that s/he is an asylum seeker;<sup>11</sup> and an undocumented migrant should not be detained unless the state is actively prepared to undertake his or her return home.<sup>12</sup> Importantly, if detention is to be used at all, it should occur only as a last resort and in a manner that is proportional and reasonable to the person's situation: the unnecessary and

prolonged detention of any foreigner would not hold up to legal scrutiny.<sup>13]</sup>

The human impact of detention has been observed and documented by a number of institutions and monitoring bodies. Between 2005 and 2009 Members of the European Parliament visited detention centres across Europe, and published reports describing sub-standard conditions they witnessed in some countries.<sup>14</sup> In her former role as Her Majesty's Inspectorate of Prisons, Dame Anne Owers, conducted several inspections of immigration removal centres in the UK and has repeatedly criticised the detention of children, describing it as neither 'exceptional' nor 'necessary'.<sup>15</sup> The Council of Europe described a 'long list of serious problems' with detention centres in their January 2010 report,<sup>16</sup> and the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, has published several reports on detention in Europe, in particularly on the poor conditions of centres in Greece.<sup>17</sup>

For many years now JRS staff and volunteers visit and accompany detainees in a number of European countries. They provide social and legal counselling, spiritual guidance and material assistance; in other cases they serve simply as a listener. Our long experience in accompanying detainees has confirmed the reports of official bodies and monitoring institutions: that detention can bring very negative consequences to the individuals who experience it. Long bouts of isolation from family, depression and prolonged confinement contribute to a pattern of physical, mental and spiritual deterioration.<sup>18</sup> This is why we have always advocated for detention to be used only as a last resort, if at all. And in the case of asylum seekers, we believe that they should not be detained whatsoever.

### **Vulnerability in detention**

In June 2010 we published a report that has lent critical weight to the observations others and we have made over the years. The report, *Becoming Vulnerable in Detention*, is the result of an 18-month long project we have undertaken in 23 EU member states in partnership with JRS offices as well as with other organisations.<sup>19</sup> The purpose of this study was twofold: to research how people with special needs cope in detention, e.g. people with medical illnesses, trauma, families, children and the elderly, and to research how detention impacts people at a personal level – in other words, how a person's level of vulnerability is affected in

the environment of detention. Together with our project partners we collected interviews with almost 700 detained asylum seekers and undocumented migrants in 21 EU member states. We asked detainees to tell us about their lives in detention and how it affected them at a personal level. Whereas our other reports have typically focused on the conditions of detention, we wanted to get to the heart of the matter: the human dimension of detention.

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### *The environment of detention deteriorates the lives of almost everyone who experiences it*

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The study reveals two very important findings about life in a detention centre. Firstly, is that people with special needs – such as families, the medically ill, trauma victims – are indeed vulnerable within the environment of detention, and deserve special attention due to the factors they possess. Secondly, however, we found that detention is harmful towards persons who do not possess any officially recognized 'special needs' – people who, before their detention, were relatively healthy. The environment of detention deteriorates the lives of almost everyone who experiences it; and it is important to note that this occurs irrespective of the quality of the living conditions in the centre. In other words, people do become vulnerable in detention, and the negative consequences deepen as detention is prolonged.

The study identifies three levels of vulnerability that are present in the lives of detainees. At the personal level, we see that detention has detrimental consequences to their physical and mental health. Not only is depression and anxiety commonly reported, but also crippling stress, which emanates from the lack of a 'future perspective', or, simply not knowing how detention will impact their lives and which direction they'll need to take after their release. Related to this is the finding that most of the detainees we interviewed knew little about their asylum or immigration case; and they knew even less about when they might be able to be released from detention.

At the social level, we see that detainees' inability to stay in touch with family and loved ones on the outside, and with sources of support such as lawyers and social workers, deepens their level of vulnerability to the harmful consequences of

detention. Actually the most frequent type of social contact detainees have is with a detention centre's staff. In some instances these relations can really help detainees cope through the difficulties of detention, as most staff persons want to do good.

Indeed, our analysis shows that detainees more readily attribute their feelings of 'safety' in a detention centre to the staff, and their 'lack of safety' to co-detainees. But we saw other instances where staff exploited the vulnerability of detainees, and this sometimes led to abuse, especially when language barriers were involved.

At the environmental level we see that the prison-like architecture so typical of detention centres, such as barred doors and windows and high walls, only worsens detainees' sense of personal worth and well-being. One out of every two detainees we interviewed used the word 'prison' or 'prisoner' to describe whatever they were feeling.

The research that was done in Ireland revealed that detainees' lack of information about their asylum cases had a negative impact on their mental health. Some of the detainees we spoke to were unaware of their rights, the details of the asylum procedure or even how to get in touch with a solicitor. This unawareness and the resulting questions deepened their anxiety. 'I have applied for asylum but no one explained me how it works,' said one detainee. '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.'<sup>20</sup>

Detainees live on the margins of society and in the protection gaps created by EU common legal standards that encourage EU member states to race down to the lowest common denominator, rather than to the highest levels of protection. They are behind high walls and barred windows. People living in the community usually never have to come into contact with them.

Aside from the physical building they are kept in, detainees are virtually invisible to the outside world. Around Europe JRS offices have had a long experience with accompanying people in detention, and we have learned a great deal about the realities they face. But in recent years JRS offices have encountered a new reality, one that also has to do with migrants living on the margins and within protection gaps: not in detention centres, but on the streets of our towns and cities.

## Destitution in Europe

Throughout Europe JRS offices accompany migrants who for good reasons cannot return to their countries of origin, and are excluded from social services in the countries where they are living. These persons are living in limbo, in an impasse, without any perspective of what may come next in their lives. Little has been known about the social and legal realities of these destitute migrants: who they are, how they meet their needs and why they stay living in a country despite experiencing extreme poverty.



*Destitute Migrant in European capital*

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In 2007 we published our first report on the phenomenon of *forced migrant destitution*.<sup>21</sup> The report came as a result of JRS offices around Europe who began to encounter migrants living on the streets with little to no social support from the state. They were asylum seekers who were waiting for a decision on their application, or they were 'rejected' asylum seekers, or undocumented migrants who could not be returned to their home country. In other cases we saw that these persons were allowed to remain within the country, not as refugees, nor as legal residents, but as persons with a 'tolerated' status. In all cases they were unable to work, put their children into school, get access to medical care and even access to a regular and healthy diet.

That report was our first step towards documenting the plight of destitute forced migrants in Europe. In March 2010 we published a follow-up to that report entitled, *Living in Limbo*, which revises the research we originally did while adding data from three new countries: Ireland, Spain and Sweden.

In total, the report presents the reality of destitute forced migrants in 12 EU member states plus Ukraine.<sup>22</sup> The report reveals the existence of a large gap in protection for society's most vulnerable migrants; a gap that is often created by state policy and left unattended by EU policymaking.

In the context of our work, the definition of 'destitution' has three critical elements:

- The **lack of means** 'to meet basic needs of shelter, warmth, food, water and health.'<sup>23</sup>
- The **consequence of a state's policy** to systematically exclude certain groups of migrants because of their (lack of) residence status from access to services granted to citizens and other groups of migrants.
- A **cyclical pattern of exclusion from basic and fundamental services and rights**, pushing forced migrants into a downward spiral of destitution.

The study reveals a reality of forced migrants – persons who have come to Europe fleeing from persecution, human rights violations or danger to their health and security – who are unable to get a foot on the ground, to establish a life for themselves and their families because of state's policy that aims to exclude them. And in most cases they are in this situation out of circumstances that are not of their fault: a lengthy asylum procedure that leaves them waiting without a means to be self-sufficient, or an inability to go back to their country of origin because they cannot get the necessary documentation. Destitution raises questions of particular moral and ethical gravity: what do we do with forced migrants who cannot be returned home and become stuck in our countries? What responsibilities do we have towards this category of persons?

### **Destitution as a pan-European human rights problem**

The issue of destitution is also a human rights problem. State parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have agreed to take steps 'with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means' (art. 2.1). While the ICESCR does not contain individually enforceable obligations, article 2.2 of the Covenant expressively commits state parties to ensure that the exercise

of rights enumerated in the Covenant will be without discrimination 'of any kind', such as, *inter alia*, colour, national origin 'or other status.' This non-discrimination rule allows limitations of the enjoyment of social rights only insofar as they might be compatible with the nature of these rights (art. 4). Even if a distinction could be justified with objective reasons, such distinctions should not touch the core of the respective right.<sup>24</sup>

This must be respected in the interpretation and implementation of the relevant national law, especially with regard to: the right to social security (art. 9), the right to an adequate standard of living (art. 11.1) and the right to enjoy the highest attainable standard of physical and mental health (art. 12). To discriminate against person in granting rights derived from the ICESCR would constitute a violation of the International Convention on the Elimination of All Forms of Racial Discrimination. According to the UN committee that monitors this Convention, the ICESCR provides for human rights that states must grant to everyone who is subject to their jurisdiction.<sup>25</sup>

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Added to this, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) enshrines the right to freedom from discrimination on the grounds of, *inter alia*, national origin or 'other status.' As regards EU law, the Reception Conditions Directive lays down minimum standards that member states must adhere to, such as schooling for minors, housing, health care and an adequate standard of living.<sup>26</sup> In cases where an undocumented migrant cannot be removed from a EU member state's territory, that member state must ensure that emergency health care is provided, that minors are granted access to the basic education system and the special needs of vulnerable persons are taken into account.<sup>27</sup>

From our research we see that while no story of destitution is similar, various links can be found that establish destitution as a European phenomenon. There is the link between health and housing: not having a fixed address is an obstacle to

getting healthcare; the inability to receive medical treatment worsens the health conditions of forced migrants who are homeless. There is the connection to work, as poor health is a hindrance to finding and meaningful employment. A crucial element contributing to the downward spiral of destitution is the negative impact it has on a person's mental health.

Poor health and an inability to be self-sufficient puts a great deal of stress upon the forced migrant, who might live isolated in the community, far away from family and untrusting of sources of support. The longer the periods spent in destitution, the more unbearable migrants consider their situation to be and the more likely they experience severe depression or even suicidal ideation. Poor mental health, so common in destitute forced migrants, impedes their ability take language classes or other vocational courses that might improve their chance to integrate into the local community and to be self-sufficient.

In the report's chapter on Ireland readers can learn about the case of Abdul: an Afghani man who came to Ireland in 2005 and applied for asylum.<sup>28</sup> Upon arrival he was placed in a Direct Provision accommodation facility in Cork, where he stayed for three years. During that time he suffered from depression and post-traumatic stress disorder incurred from his experiences in Afghanistan. He was medicated and even hospitalised. He was then transferred to another accommodation facility in County Limerick after having been accused of an incident, which he denied. The new facility was distant from the nearest village leaving Abdul isolated. His mental health problems worsened. He was eventually refused accommodation after having been accused of 'several incidents of violent and threatening behaviour', which he again denied. This left him without assistance from his Community Welfare Officer and also without accommodation. He remained homeless for three months. Finally, with the help of a solicitor, his case at was settled at court and the State granted him access to accommodation – and he was eventually granted refugee status.

The research done in Ireland, with destitute persons as well as NGOs, reveals that Abdul's case is not isolated. Many other forced migrants become destitute in the face of similar circumstances. And in Ireland we see an element that is common throughout the rest of Europe: that NGOs and charity groups take over typical State functions

in order to minimise destitution. Charity groups and NGOs do all they can to help destitute forced migrants. But they have fewer resources than the State, and in the end, it is ultimately the State's responsibility to provide for the basic and fundamental rights of foreigners.



*A place of detention for people seeking asylum*

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## Conclusion

Our reports on detention and destitution in Europe are two recent examples that mark JRS' long tradition of 'closeness' to refugees and the forcibly displaced: people who are on the margins of our society, living within the large protection gaps made by member state policies that aim to exclude, and by EU law that does not attain a high enough standard of protection. But these two reports also demonstrate that it is possible to link field-based research to policymaking at the EU and national level.

The European Parliament and the Council are debating a proposal made by the European Commission to legislatively amend the Reception Conditions Directive. The amendments put forth by the Commission reflect many of the recommendations we have made in *Becoming Vulnerable in Detention*: that detention should be used only in the last resort, that asylum seekers should not be detained during their asylum procedure and that qualified individual assessments should be made in order to determine a person's level of vulnerability and special need.<sup>29</sup> Alongside this we observe that the Commission's proposals also support recommendations we have made in *Living in Limbo*: that member states should grant asylum seekers the same level of social assistance that nationals would receive.

Also that they should be granted entry into the labour market no later than six months after they have applied for protection and that health care should be provided to them in the same way as to nationals.<sup>30</sup>

As of this writing, negotiations between the European Parliament and the Council on the aforementioned proposals are stalled. Member states are reluctant to adopt better common standards of protection, especially those that would entail, in their view, higher costs. The European Parliament occupies an important role as they have equal decision-making status when it comes to EU lawmaking on asylum.<sup>31</sup> In any case, the EU has already agreed to develop high common standards of protection: there just needs to be a stronger display of political will.<sup>32</sup>

While the EU institutions are debating how to improve asylum laws, member states are in the process of transposing the EU Return Directive into their national law. The manner in which member states do this bears significant implications for the way detention is carried out for undocumented migrants who are to be returned to their countries of origin. Positively, the Return Directive provides that detention should only be used ‘unless other sufficient but less coercive measures can be applied effectively.’<sup>33</sup>

The Directive’s most controversial aspect is in its provision for the maximum time length of detention: it sets a maximum limit of six months, but leaves member states the possibility of extending it for another 12 months. As shown in *Becoming Vulnerable to Detention*, prolonged detention, even after one month, leads to severe physical and mental health consequences. We would not want member states to increase the length of detention for migrants who are to be returned. Instead we encourage member states to decrease their reliance on detention altogether, and to develop policies that would be less coercive for migrants while attending to the migration policy interests of the state.<sup>34</sup>

People who are in detention and who are destitute are not voiceless. Indeed, despite the gravity of their circumstances, their voices remain strong and willing to speak. And the measure of their personal sense of dignity remains undimmed despite the adversities they face. But the voices of forced migrants remain largely unheard, because they are behind walls or living invisibly on the streets. They

are ‘the other.’ That is why we, as JRS in Europe but also as an international body, write these reports: to document their testimonies, on paper, so we can transmit them to the broader world. We can take their voices to policymakers in Dublin and Brussels, to NGOs all over Europe, to the UN in Geneva, to medical practitioners and social workers, lawyers and to concerned citizens.

For the last thirty years the ability of JRS to speak about the situations of detention and in destitution, and our ability to undertake effective advocacy with decision-makers, has depended on our close proximity to refugees and the forcibly displaced. And thus it will continue to be so for as long as necessary.

## Notes

1. COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
2. COUNCIL DIRECTIVE 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.
3. COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.
4. COUNCIL REGULATION (EC) No 343/2003 of 18 February 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.
5. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 June 2008 – Policy Plan on Asylum: An integrated approach to protection across the EU [COM(2008) 360 final – not published in the Official Journal]
6. 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
7. For more information on detention in Europe, see [www.detention-in-europe.org](http://www.detention-in-europe.org), and, [www.globaldetentionproject.org](http://www.globaldetentionproject.org).
8. In 2008 Belgium ended the detention of migrant families with children and developed a policy to accommodate them in social housing. For more information see: Verbauwheide, *Alternatives to detention for families with minor children – The Belgian approach*, [http://www.eutrio.be/files/bveu/media/source1854/documents/WVS\\_I\\_-\\_Discussant\\_I\\_Mr\\_Verbauwheide\\_-\\_Alternatives\\_for\\_detention\\_for\\_families\\_with\\_minor\\_children.pdf](http://www.eutrio.be/files/bveu/media/source1854/documents/WVS_I_-_Discussant_I_Mr_Verbauwheide_-_Alternatives_for_detention_for_families_with_minor_children.pdf).
9. This is expressed in Article 5(1)(f) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), but within a prescribed framework: ‘Everyone has a right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ... the unlawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom an action is being taken with a view to deportation or extradition.’ Detention in this context, however, must still remain well within the confines of necessity, reasonability and proportionality.
10. UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers

(February 1999), guidelines 3(i- iv).

11. EU Asylum Procedures Directive, article 18(1), 'Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.'
12. EU Return Directive, article 15(1), 'Any detention shall ... only be maintained as long as removal arrangements are in progress and are executed with due diligence.'
13. The UN Working Group on Arbitrary Detention (WGAD) has consistently upheld the principle of proportionality. In their report of 24 October 2002, the WGAD stated that 'any deprivation of liberty must be proportionate to the aims pursued and a fair balance shall be struck' (para. 12) between the interests of the state and of the fundamental right to liberty of the person. On 18 January 2010, the WGAD said, 'If there is to be administrative detention, the principle of proportionality requires it to be the last resort' (para. 59).
14. For more information see the 2008 study by consultancy firm STEPS 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*. Malta has received particular attention from MEPs for the poor state of its detention facilities: see 'MEPs "disgusted" by detention centres', *Times of Malta*, 25 March 2006.
15. HM Inspectorate of Prisons report on an inspection of Yarl's Wood Immigration Removal Centre, 9-13 November 2009, p.5. For more information on the inspections carried out by HM Inspectorate of Prisons, go to <http://www.justice.gov.uk/inspectors/hmi-prisons/immigration-removal-centre-inspections.htm>
16. 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.
17. Report by Thomas Hammaberg, Commissioner 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](http://www.coe.int/t/commissioner/Default_en.asp)
18. Several scientific studies in recent years have found correlations between detention and depression, anxiety and suicidal ideation. For examples see the footnotes on p. 20 of *Becoming Vulnerable in Detention* (JRS-Europe, 2010).
19. JRS-Europe, *Becoming Vulnerable in Detention*, 2010, p. 415, can be downloaded on [www.jrseurope.org](http://www.jrseurope.org) and [www.detention-in-europe.org](http://www.detention-in-europe.org). The report is the final result of the 'Detention of Vulnerable Asylum Seekers (DE VAS)' project, co-financed by the European Commission under the European Refugee Fund.
20. Quote from a detainee interviewed in Dochas Centre, a prison for women that is part of Mountjoy Prison, p. 242 of *Becoming Vulnerable in Detention*.
21. JRS-Europe, *We Are Dying Silent*, available for download at [www.jrseurope.org](http://www.jrseurope.org), 2007. The publication of the report was supported with a grant from the Network for European Foundations through the European Programme for Integration and Migration.
22. JRS-Europe, *Living in Limbo*, 2010, p. 160, available for download at [www.jrseurope.org](http://www.jrseurope.org). Its publication was supported with grant from the Network for European Foundations through the European Programme for Integration and Migration.
23. Hannah Lewis, *Destitution in Leeds: The experiences of people seeking asylum and supporting agencies*. York 2007 (The Joseph Rowntree Charitable Trust), p. 11.
24. See Joan Fitzpatrick, *The human rights of migrants*. In: T. Alexander Aleinikoff and Vincent Chatal (eds.), *Migration and International Legal Norms*, The Hague et al. 2003, pp. 169-184.
25. The UN Committee for the Elimination of All Forms of Discrimination, General Recommendation 30: Discrimination against non-citizens. UN Doc. CERD/C/64/Misc. 11/rev.3, 12 March 2004.
26. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
27. 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.
28. JRS-Europe, *Living in Limbo*, case studies from Ireland, p. 38.
29. COM(2008) 815, Commission proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down minimum standards for the reception of asylum seekers, article 8 (detention).
30. *Ibid.*, recital 11 and article 17, recital 14 and article 15, and article 9, respectively.
31. Formerly known as the 'co-decision procedure', and now as the 'ordinary legislative procedure' after the adoption of the Lisbon Treaty, this procedure is based on the principal that neither the European Parliament nor the Council may adopt legislation without the other's assent. For more information see: [http://ec.europa.eu/codecision/index\\_en.htm](http://ec.europa.eu/codecision/index_en.htm).
32. In March 2010 the EU reaffirmed its commitment to a *Common European Asylum System* of high protection standards in its adoption of the 'Stockholm Programme', which sets out the EU's priorities in the areas of justice, freedom and security for the period of 2010-14. For more information see: [http://europa.eu/legislation\\_summaries/human\\_rights/fundamental\\_rights\\_within\\_european\\_union/jl0034\\_en.htm](http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/jl0034_en.htm).
33. EU Return Directive, article 15(1).
34. For more information on alternatives to detention see: JRS-Europe (2008), *Alternatives to Detention of Asylum Seekers: Working paper*, [http://www.detention-in-europe.org/images/stories/jrs%20europe%20paper\\_alternatives%20to%20detention.pdf](http://www.detention-in-europe.org/images/stories/jrs%20europe%20paper_alternatives%20to%20detention.pdf).

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