THE HIDDEN FACE OF IMMIGRATION DETENTION CAMPS IN EUROPE
INTRODUCTION

1 WHO DO WE DETAIN?
1A Migrants deprived of their liberty: who are they?
1B The best interests of the child and family life in detention
1C European citizens: freedom of movement in jeopardy
1D Asylum in detention
1E Detention of sick migrants
1F And others...

2 WHY DETENTION?
2A Legal grounds for the detention of migrants
2B A policy with high human and financial costs
2C Limited “effectiveness”
2D The real objectives of detention
2E Criminalise to demonise and increase deportation
2F Euphemism used to normalise unjust policies

3 WHERE TO DETAIN?
3A The diversity of migrant detention facilities
3B Official facilities
3C Waiting zones governed by arbitrary rules set by national authorities
3D Invisible facilities, beyond the reach of citizen watch
3E Detention sites are like prisons

4 HOW TO DETAIN?
4A Detention as a measure of “last resort”
4B Contact with the outside world
4C (Lack of) access to information on rights of detainees
4D Privatisation of services in detention centres
4E Detention damages the health of detainees

5 WHAT DEMOCRATIC SCRUTINY OVER DETENTION?
5A (Uncertain) control of detention by a judge and (insufficient) access to legal assistance
5B Independent monitoring bodies
5C Civil society denied a right of oversight
5D Monitoring by the media

CONCLUSION
Since the 1990s, detention has become one of the main tools to manage migrant populations in Europe and beyond. The only reason for such deprivation of liberty is the failure to comply with - generally unjust - rules on border crossing and/or stay. Detention is a permanent cause of violation of migrants' rights. Behind the stated aim of streamlining the management of migratory flows, the institutionalisation of migrant detention leads to the criminalisation of those considered undesirable, thereby fuelling racism and xenophobia.

In this context and within the framework of the campaign “Open Access Now”, this publication aims to shed light on the reality of migrant detention in the area of “freedom, security and justice” which the European Union (EU) claims to be and to provide a tool for citizens to look beyond the often false or incomplete representation given in the news and institutional statements.

The situation is analysed in the light of principles laid down in international and regional treaties on the protection of human rights and fundamental freedoms, but also the European directives governing the detention of migrants.

One of the main findings is a marked tendency to restrict (and sometimes to deny) human rights and fundamental freedoms of detained migrants.

Without approving the purpose or aim of the above-mentioned European directives, the study also identifies gaps between principles laid down in these instruments and the practices in migrant detention camps and, too often, the failure to respect the few provisions likely to be to the benefit of migrants.

For these reasons, we considered that it was important to publicise the findings and analyses produced by civil society organisations which have been campaigning against migrant detention for over ten years. These findings show that these processes to deprive migrants of their liberty not only result in increasing human and financial costs but are also ineffective in achieving their aims.

This publication is organised into five sections: who are the detainees (1. WHO DO WE DETAIN?), stated and real reasons for detention (2. WHY DETENTION?), places where deprivation of liberty takes place (3. WHERE TO DETAIN?), how does it take place (4. HOW TO DETAIN?), as well as the existing forms of democratic scrutiny (5. WHAT DEMOCRATIC SCRUTINY OVER DETENTION?).

For each section, we have attempted as far as possible to illustrate the reality of detention through photos, testimonies, maps as well as figures and key examples.

This publication aims at facilitating public access to information on the detention of migrants in Europe. This tool is also intended for the use of activists, researchers, journalists, teachers and anyone who wants to inform, raise awareness on and fight against the exclusion of migrants, as well as European Members of Parliament ready to engage in the promotion of progressive legal reforms in this field.

INTRODUCTION


The campaign “Open Access Now” was launched in 2011 by the networks Migreurop and European Alternatives. It is run by the following NGOs: Coordination des initiatives pour réfugiés et étrangers (CIRE), League for Human Rights (Belgium), Sea Racism (Spain), Arabes et la Comédie (France), Arci (Italy) and Frontières Rouvrons (Lebanon).

“Open Access Now” calls for unconditional access for civil society and the media to migrant camps, while such places continue to exist. It also demands total transparency on the status and all data concerning the operation of these detention sites, in the name of the right to information of citizens and the right to freedom of expression of detainees.

For more information: www.openaccessnow.eu
Each year, close to 600,000 migrants are deprived of their liberty on the European Union (EU)’s territory for “migratory management” purposes. They are women, men and children detained on the sole ground that they have failed to comply with rules on entry and stay, pending deportation.

They can include anybody found to be in an irregular situation on the territory of an EU Member State who poses “flight risks” (a concept defined very broadly in EU law): asylum seekers and those whose application for protection has been rejected, migrants whose right to remain has expired or who have never enjoyed that right, who sometimes have been on the territory for many years. They can be workers, students, EU citizens, the spouses or parents of EU citizens, sick persons, unaccompanied minors, victims of torture or trafficking, stateless persons, etc.

They may also be people who have been denied access to the EU’s territory at the border. These people are often “contained” in waiting zones in international airports, ports and stations, before being sent back within hours or days following their arrival, sometimes in an expeditious manner, in particular when the deportation measure takes place within the framework of bilateral agreements.

A significant number of those detained are the subject of “readmission” procedures towards another EU Member State where they hold a right of residence.

Numerous migrants are detained – sometimes for long periods of time – despite the fact that, for various reasons, their removal is not possible.
Despite the fact that “in all actions concerning children [...] the best interests of the child should be a primary consideration,” Member States detain minors, both those who are unaccompanied and children with their parents.

This practice represents a clear violation of the principles of family unity and of the best interests of the child, provided for in the European Convention on Human Rights, the EU Charter of Fundamental Rights and the International Convention on the Rights of the Child.

The EU “Return” Directive is ambiguous towards children and families: it refers to these principles but it fails to explicitly prohibit the detention of minors. This failure imposes a heavy toll on migrant families...

In France, despite a recent condemnation by the European Court of Human Rights (ECtHR) for the detention of a family with minor children and instructions issued to the administrative services calling on them to limit the detention of families, children are still detained in administrative holding centres and facilities (Centres d’Opposition et d’Accueil administrative – COAA et CRA). In Mayotte, a French Overseas Department, the situation is alarming: at least 2,575 minors were detained in 2012. According to associations operating in French CRA, approximately a dozen families, including 19 children, were detained during the first four months of 2014.

In Cyprus, where national law authorises the detention of unaccompanied minors and families, unaccompanied children are very often placed in detention following their arrest. Detention of children with adults is a serious concern. In Paphos police station, this promiscuity leads the younger ones to remain in their cells or go to the women’s courtyard when the latter, who have access to it only two hours daily, are absent. In Greece, the Amygdaleza camp is specifically dedicated to the detention of unaccompanied minors. In the Czech Republic, the law authorises the detention of minors aged over 15 years.

It is also important to highlight the frequent detention of fathers and mothers of families, while the rest of the family remains free. The disruption of the family unit can be for long periods: first during detention, then sometimes as a result of the deportation of a family member and the impossibility for the rest of the family who remains in Europe to join the deported parent in the country of origin.

2 “Return” Directive (EC/115/2008), Articles 5, 14(a) and 17.
3 ECtHR, Popov v. France, 19 January 2012.
4 “Detention Context Forms”, Europe regional workshop, International Detention Coalition, Brussels, 27-28 May 2014, information provided by participating NGOs.
5 Ibid.

- **2006**: 
- **2007**: 4006
- **2008**: 364
- **2009**: 587
- **2010**: 973
- **2011**: 1507
- **2012**: 1554

Sometimes European nationals are among the majority of those in EU detention facilities. One of the EU's fundamental principles is the freedom of movement of European citizens within the Union's territory. As a result, Member States can provide for a different - and therefore looser - legal framework for such populations. In the context of national law, the duration of detention can also differ. As a result, Member States can provide for a different - and therefore looser - legal framework for such populations.

**In France, the detention of nationals from Romania and Bulgaria continued in the reported camps in the period 2007 to 2011.**

- **In 2011**, in Italy, Romanians were the third most represented nationality in migrant camps. Italian law authorises the detention of a migrant for a maximum period of one year and does not admit a deportable person to continue living under the same conditions of detention.
- **In 2012**, compared to the previous years, a significant increase in the number of Romanian nationals was observed in France. The proportion of European nationals in EU detention facilities has continued to increase since these two countries became EU members in 2007.

Deportation and a broader detention procedure for European nationals from Romania and Bulgaria is a serious threat to the freedom of movement in the EU. The conditions in which European nationals are detained are not in line with the EU's founding principles, the free movement of citizens from EU Member States across the entire territory.

**European citizens: freedom of movement in jeopardy**

**Source:** ASSFAM, LA Cimade, Forum réfugiés, France terre d'asile, Ordre de Malte, “Rapport sur les centres de rétention administrative (CRA)”, 2012 (available in French only).

**Notes:**
1. ASSFAM, LA Cimade, Forum réfugiés, France terre d'asile, Ordre de Malte, “Rapport sur les centres de rétention administrative (CRA)”, 2012 (available in French only).
2. Medici per i diritti umani (MEDU), Arcipelago CIE, 2013 (available in Italian only).
The detention of asylum seekers is a common practice within the EU and is even systematic in some Member States. In many instances, it has been shown to clearly undermine the right of access to international protection.

Recently adopted EU legislation explicitly authorises the detention of asylum seekers, “when it proves necessary and on the basis of an individual assessment of each case”, and “if other less coercive alternative measures cannot be applied effectively”. This reinforces the climate of suspicion towards asylum seekers.

In 2013, Hungary adopted a law which provides for the detention of asylum seekers. On this basis, 1,762 asylum seekers were detained between July 2013 and March 2014. In Bulgaria, a bill introducing the systematic detention of asylum seekers in specifically designed camps is under discussion before Parliament. In the meantime, half of those detained in the Bushnanzi and Lubimets deportation centres are asylum seekers, in particular Syrian nationals.

In Cyprus, those who successfully register asylum applications are detained if they do not hold valid papers and are kept in detention for several days or weeks. In Malta, asylum seekers who do not hold valid papers – which represents the majority of arrivals – are systematically detained.

In the Czech Republic, asylum seekers are detained “with the obligation to stay” in detention centres for migrants for a maximum duration of 120 days. The Slovak Republic also organises the detention of asylum seekers, in particular in waiting zones located in airports and in detention centres for migrants.

In 2013, Hungary adopted a law which provides for the detention of asylum seekers. On this basis, 1,762 asylum seekers were detained between July 2013 and March 2014. In Bulgaria, a bill introducing the systematic detention of asylum seekers in specifically designed camps is under discussion before Parliament. In the meantime, half of those detained in the Bushnanzi and Lubimets deportation centres are asylum seekers, in particular Syrian nationals.

In France, despite a condemnation by the ECtHR on the absence of an effective remedy for those forced to apply for entry for asylum purposes under an emergency procedure, the French authorities continue to detain and deport applicants during appeal proceedings before the National Court of Asylum.

In border areas such as international airports, many people seeking protection are detained upon their arrival on EU territory. Their situation is generally examined expeditiously, access to legal advice [association, lawyer] is very limited if not impossible. This is the case in Belgium, where asylum seekers at the border are automatically detained while their application is being examined. In France, several thousand people are detained at the border in waiting zones without any possibility of filing an asylum application. Although an exceptional procedure has been established, it is only an application for entry for asylum purposes, the objective of which is not to examine the merits of the application but only to decide whether or not to allow asylum seekers to enter the territory to continue the process of applying for asylum. These people are therefore released with deportation even before their application has been filed and examined by a competent body.

Finally, everywhere in the EU, asylum seekers are detained before being sent back to the Member State through which they entered EU territory, which, pursuant to the Dublin III Regulation, is responsible for their asylum application.
Detention of sick migrants

A large number of cases of sick migrants have been recorded in European detention facilities. This trend should be analysed in the context of the adoption of laws restricting access to stay on medical grounds, according to which the deportation of migrants takes precedence over the right to health.

Their detention poses serious problems given the difficulty of accessing health services in the majority of detention facilities, all the more so in the case of serious diseases.

Various bodies have looked at the issue of access to healthcare in migrant detention centres. In June 2009, the Council of Europe Commissioner for Human Rights expressed concern over the absence of health monitoring and difficulties accessing specialist care in closed centres in Belgium. He urged Belgian authorities to guarantee access to good quality health care comparable to those available outside detention centres. The ECtHR also condemned Belgium for detaining a woman infected with HIV without adopting “all reasonable measures to protect the applicant's health and prevent the deprivation of her health condition” (no official translation).

Beyond these specific categories of detainees, men and women are detained simply because they have exhausted their very limited access to the right to remain or are considered "persona non grata" when they arrive at the EU's door. The detention of these individuals and related violations of their fundamental rights are of equal concern and deserve the same level of attention of both civil society and political representatives.

And others...

1 Thomas Hammarberg, "Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium, 15-19 December 2008", 17 June 2009. 2 ECtHR, Yoh Ekale Mwanje v. Belgium, 20 March 2012 (available in French only).

Martine Samba, a 34-year-old Congolese woman living with HIV, was detained in the Temporary Stay Immigrants Centre (CETI) in Melilla before being transferred on 11 October 2011 to the Immigrant Detention Centre (CIE) in Aluche (Madrid). On ten occasions, she requested medical assistance, as shown in the records of the relevant services. In vain. She did not speak Spanish and did not have access to an interpreter. Despite her serious health condition, no analysis was undertaken.

Martine Samba died on 19 December 2011, after 38 days in detention in the CIE in Aluche.

In August 2012, complaints filed by Martine Samba’s mother, Clementine, and the NGOs Sos Racismo Madrid, Ferrocarril Clandestino and Asociación de Le-trados por un Turno de Oficio Digno (ALT0D0) were dismissed by the prosecutor. In January 2014, after the complainants appealed, the investigation was re-opened.
The Schengen Borders Code does not explicitly provide for detention but permits it:

“Member States may decide not to apply this Directive to third-country nationals who: are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State.”

“RETURN” DIRECTIVE (EC/115/2008), ART. 2§2 (A).

However, Member States can also decide that the Directive does apply. In both cases, detention on entry to the territory is possible.

“When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant [for asylum], if other less coercive alternative measures cannot be applied effectively.”

“RETURN” DIRECTIVE (EC/115/2008), ART. 2§2 (A).

To prepare removal:

“Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process... Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.”

“RETURN” DIRECTIVE (EC/115/2008), ART. 15§1.
The first issue related to the relevance of this policy of imprisoning migrants is its cost. Although the proportion dedicated to detention is not specified, the global amount of funds provided by the EU to Member States to manage returns reached 674 million Euros between 2008 and 2013. This figure does not include the amounts spent by each State from national funds.

Italy provides a good illustration: the Lunaria association carried out an investigation into Italian public expenditures related to the fight against “irregular immigration”.

Between 2005 and 2011, the State spent one billion Euros on the detention of migrants. According to official figures available, a large part of these costs relate to Identification and Deportation Centres (CIE).

The use of these funds often results in breaches of fundamental rights and encourages inhuman and degrading treatment.

In parallel to the increase in the budget allocated to detention, public expenditure related to the reception of migrants has decreased (see below against). The Italian Government has prioritised policies aimed at imprisoning migrants over policies of “reception and social integration”. In other European countries, such as Belgium, the budget allocated to the reception of asylum seekers has decreased while that allocated to the removal of migrants has significantly increased.

---

### Immigration: cost of the reception vs cost of the repression

The example of Italy

Public funds invested between 2005 and 2011:

- **“Reception and social integration policies”**
  - (all measures):
  - 123 871 438 € on average per year

- **“Policies on fighting illegal immigration”**
  - (all measures):
  - 247 062 969 € on average per year

- Of which CIE and other migrant detention centres:
  - 144 852 599 € on average per year

Source: Lunaria, “Costi disumani. La spesa pubblica per il contrasto dell’immigrazione irregolare”, 2013

---

2 Lunaria, “Costi disumani. La spesa pubblica per il contrasto dell’immigrazione irregolare”, 2013 (a summary in English is available).
3 Ibidem, p. 63.
“On the basis of the experience gained by police officers concerning existing bilateral agreements with the various countries of origin of migrants, it is to be observed that when “guests” are not deported in the first 40/50 days, in almost every case they have to be released with an order to leave the territory because it is not possible to carry out removal to their country of origin.”

“The increase in the length of detention will not have any positive impact on the effectiveness of deportation, but will generate enormous costs.”

The practice of detaining “non-removable” migrants is not only useless and absurd, but also unlawful since it can be considered a form of arbitrary detention within the meaning of European Convention on Human Rights (ECHR). According to the “Return Directive”, when it appears that a reasonable prospect of removal no longer exists, the person concerned shall be released immediately. However, there is no binding mechanism to enforce this provision, the “reasonable” character of this prospect of removal being left to the discretion of States. The EC deems it sufficient to recommend recording “existing best practices at national level, to avoid protracted situations”. The project “Point of non-return” (see below against) presents portraits of “non-removable” migrants who experienced detention in Belgium, France, Hungary and the United Kingdom.

Michael, aged 35, fled Nigeria for religious reasons. He is non-removable because the Hungarian government cannot identify him without documents and the Nigerian authorities do not allow him to return to the territory. He has been detained for 11 months in Hungary.

Then he is transferred to an open reception centre, but due to serious hygiene problems, he leaves – without permission – to live in Budapest with his family.

2007 He lives in Budapest.
2008 He is arrested and detained for five months and twenty days.
Then he returns to live in Budapest.
2010 He tries to apply for asylum for the third time. He goes voluntarily to an open migrant accommodation centre for unreturnable or undetainable migrants who have exceeded the maximum period of detention allowed by law.

Twelve years in Hungary, still undocumented and unreturnable for administrative reasons.

LESS THAN HALF THE FOREIGNERS HELD IN ADMINISTRATIVE DETENTION WERE DEPORTED IN 2009

Table:

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of foreigners held in detention</th>
<th>Actual deportations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greece</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Spain</td>
<td>20,000</td>
<td>0</td>
</tr>
<tr>
<td>France</td>
<td>40,000</td>
<td>0</td>
</tr>
<tr>
<td>United-Kingdom</td>
<td>60,000</td>
<td>0</td>
</tr>
<tr>
<td>Italy</td>
<td>80,000</td>
<td>0</td>
</tr>
<tr>
<td>Germany</td>
<td>100,000</td>
<td>0</td>
</tr>
</tbody>
</table>

1 COM(2014) 199 final, p. 4
2 Statement from the unitary trade union of Italian police workers (SIULP) following the increase of the maximum length of detention from 6 to 18 months in June 2011 (available in Italian only).
4 MEDU, Arcipelago CIE, May 2013.
How should we understand the meaning of this policy of detention, in view of its exorbitant costs and its very limited effectiveness? The administrative detention of migrants has never been questioned by EU Governments. Over and above its stated goals it is a powerful political tool. In the southern hemisphere, it supposedly deters potential migrants into the EU. In the northern hemisphere, it is used to give the public the impression of an active fight by the authorities to solve the “problem of immigration”, by stigmatising those labelled “enemies”. This has the potential to fuel further racism and xenophobia.

The real objectives of detention
The terms "illegal" is regularly used by politicians and the media to describe migrants who, in the absence of legal channels, reach Europe in an "irregular" way. Terms implying criminality are not used by accident. By defining migrants as a threat, they legitimise unjust laws and practices to the public. Migrants without papers can end up being locked up in camps for migrants, deported and banned from entering EU territory for five years.

As a consequence, anti-migrant policies are legitimised and in turn institutionalise and strengthen this process of criminalisation: criminalisation of migration in several countries of origin and transit in support of the implementation of the European migratory policy (Algeria, Morocco, Tunisia, etc.), introduction of a "criminal offence of illegal entry or stay" in some destination countries (in Italy for example) and imposition of racial profiling practices against migrants across Europe.

This process of criminalisation, which involves both terminology and practices, "manufactures" the irregular status of a migrant, by presenting him or her as an "illegal migrant" or even an invader threatening the well-being of European societies. This legitimises in the public eye an administrative, legal and political system aimed at repressing immigration.

Although the Court of Justice of the European Union (CJEU) considers that the mere fact that a migrant is staying irregularly should not be punished by imprisonment, the detention of migrants is a fact: in cells, deprived of their freedom, they wait for a decision on their fate, often without knowing why they are there.

Is it a crime to flee poverty, war or persecution? Is it a crime to believe in a better future or simply to be denied the renewal of a residence permit?

A Congolese woman (from Democratic Republic of Congo), has been in Belgium for 12 years, she is undocumented and non-removable because of her family links. "In September 2012, I was arrested at work. It was very humiliating; I felt like a criminal. They took me to a detention centre by the airport. All I was told was that unreported employment is illegal in Belgium, but other than that – nothing." Source: "Paroles d’expulsé·e·s", Migreurop, 2011, p. 25 (available in French only)

A Nigerian man, survivor of a fire in the Schiphol detention centre (Amsterdam) in 2005, was deported to Lagos. "Each deportee was personally escorted by three police officers from the country we were being deported from and by medical officers from the Netherlands and France. All the deportees had their hands and feet tied [with a strap linking handcuffs and feet together] and held in a bodycuff [waist and hand restraint]. We were fastened just before arriving in Lagos." Source: "Paroles d’expulsé·e·s", Migreurop, 2011, p. 53 (available in French only)

A Venezuelan man came to Europe as a tourist. He was arrested on his arrival in Madrid, on the grounds that, according to the authorities, he did not have sufficient cash. He was returned to his country of origin. "They took our passports away [from a group of Venezuelan men and woman]. To leave they took us as if we were criminals, with our hands not in cuffs but attached behind our backs. We walked in single file to a bus which took us to the plane. We had to wait until we got to our country to be given our passport back. They said we wouldn’t have a stamp in our passport and that there would be no mark, but when we finally got them back we saw that they had put a big black stamp saying we had been rejected." Source: "Paroles d’expulsé·e·s", Migreurop, 2011, p. 63 (available in French only)

A man from Burundi who fled his country and was detained on four occasions. He has been in France for 13 years, in an irregular situation, but is non-removable for administrative reasons. "I am very shocked by the idea of locking people up just because they do not have any documents. They did not do anything wrong and they are not dangerous. Some people lose everything when they are arrested: their job and their family." Source: pointofnoreturn.eu/en/michel

Is it a crime to flee poverty, war or persecution? Is it a crime to believe in a better future or simply to be denied the renewal of a residence permit?


2. The "offence of illegal immigration", introduced by former interior minister Robert Menard, from the Northern League party, in 2003, was replaced by new legislation on 2 April 2014. However, entering the territory is a violation of a deportation order and remains punishable under criminal law.

Euphemism used to normalise unjust policies

European States use euphemisms to refer to the measures adopted. Romania refers to “public support centres” (Centrul de custodie publica). Turkey – an EU candidate country – went as far as using the term “guest houses”, until it was called to order by the Committee for the Prevention of Torture (CPT) which recommended use of the term detention centres “since the persons held in these centres are undoubtedly deprived of their liberty”.

The use of euphemisms is not limited to the description of detention centres. Terms used by politicians and in laws are also dressed up: the verbs “hold” or “keep” are used instead of detain, “dismiss” instead of deport. This represents a form of denial to avoid taking responsibility for ill-treatment to which detention gives rise.

For these reasons, Migreurop has chosen to use the word “camp” to designate the various premises on which migrants are detained, to which the authorities of numerous States across the world increasingly resort.

1 CPT, “Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture (CPT) from 4 to 17 June 2009”, March 2011, p. 26.

2 Migreurop, “Derrière le mot ‘camp’”, (“Behind the word ‘camp’”), November 2004 (available only in French).
The first detention facilities for irregular migrants – which show “similarities” to those existing today – appeared in the mid-1980s, such as the Aveo centre in the port of Marseille. But their number only started to grow significantly during the 1990s.

In 1992, the French Government invented “waiting zones”, to hold migrants who have been denied entry to the territory and those requesting entry for asylum purposes in airports, railway stations and ports.

In 1993, following the renovation of a former prison for youth offenders, Campsfield House, this facility became the largest centre for the detention of migrants in the United Kingdom. The Government at the time referred to it as a “safe house”.

In Belgium, in the 1990s, several “centres for illegal migrants” were established, such as in Bruges, Merksplas (Anvers) or Voten (Liège).

These detention facilities, referred to by various euphemisms, have a variable nature and form: some – the most official ones – are subject to EU laws; others are not and may even not be subject to any clear regulatory framework; some are even invisible and escape any form of civil society monitoring and any (independent) control over the respect of fundamental rights.
In 2011, the Migreurop network listed close to 300 existing migrant detention facilities throughout the 27 EU countries. If those linked to the EU’s migration policy located in countries outside the EU are added – such as in Ukraine, Turkey or Libya – the number reaches almost 420.

The significant number of detention facilities in EU neighbouring countries is directly linked to the security-based approach to migration adopted by EU Member States. It also illustrates the process of rationalisation of the detention of migrants, that can be seen through the construction of large facilities near major airports: 623 beds in Harmondsworth (United Kingdom), 254 in Poriët Baletë (Roma), Le Mazun Amonor (France) with a capacity of 240 beds and since 2013 a centre with a capacity 250 opened in Menogeia (Cyprus) in the vicinity of Larnaka.

In 2011, the Migreurop network listed close to 300 existing migrant detention facilities throughout the 27 EU countries. If those linked to the EU’s migration policy located in countries outside the EU are added – such as in Ukraine, Turkey or Libya – the number reaches almost 420.

The significant number of detention facilities in EU neighbouring countries is directly linked to the security-based approach to migration adopted by EU Member States. It also illustrates the process of rationalisation of the detention of migrants, that can be seen through the construction of large facilities near major airports: 623 beds in Harmondsworth (United Kingdom), 254 in Poriët Baletë (Roma), Le Mazun Amonor (France) with a capacity of 240 beds and since 2013 a centre with a capacity 250 opened in Menogeia (Cyprus) in the vicinity of Larnaka.

In 2011, the Migreurop network listed close to 300 existing migrant detention facilities throughout the 27 EU countries. If those linked to the EU’s migration policy located in countries outside the EU are added – such as in Ukraine, Turkey or Libya – the number reaches almost 420.

The significant number of detention facilities in EU neighbouring countries is directly linked to the security-based approach to migration adopted by EU Member States. It also illustrates the process of rationalisation of the detention of migrants, that can be seen through the construction of large facilities near major airports: 623 beds in Harmondsworth (United Kingdom), 254 in Poriët Baletë (Roma), Le Mazun Amonor (France) with a capacity of 240 beds and since 2013 a centre with a capacity 250 opened in Menogeia (Cyprus) in the vicinity of Larnaka.
Next to this first category of camps, there are various detention facilities located at the borders where EU Governments are not bound by the “Return” Directive. In such places, those detained are people “subject to a refusal of entry [...] or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State”\(^1\). They are detained in such facilities until a decision is made on their request to enter the territory and/or their return to the country of departure is organised. Contrary to statements of the European Commission (EC), migrants detained there do not have access to a level of protection similar to that provided in “official” facilities.

From 2008 to 2012, close to 2.2 million entry refusals were reported at the EU’s external borders\(^2\). Most of those intercepted within this framework were detained for several hours or days, pending the organisation of their return to the country of departure. These people did not benefit from the rights mentioned in the “Return” Directive, such as the right to have an effective remedy.

The surveillance and expeditious deportation of numerous migrants lead them to take risks and use very dangerous maritime routes, resulting in dozens of shipwrecks and hundreds of casualties.

The same applies on the island of Mayotte (French overseas department), where migrants intercepted at sea are brought to the Pamandzi Centre before being sent back to the Comoros Islands. In 2012\(^3\), the European Court of Human Rights (ECtHR) condemned France stating that the exceptional procedures applied in some French overseas territories are contrary to the right to the effective remedy guaranteed by Article 13 of the Convention. The case concerned a migrant returned to the border of Guyana, before the Cayenne Administrative Court had decided on an appeal.

---

2. EC, COM(2014) 199 final, p. 27.
Almost 25,000 billion tons of freight are moved each year via the sea, representing 3/4 of movements worldwide. “Stowaways” are usually disembarked in the port from which they departed, leading to detention for several months without any judicial review.

Controls at the Patras Harbour (Greece), March 2009. © Sara Prestianni

Numerous processes have been set up beyond scrutiny and without any legal basis. In Marseille, from 1964 to 1980, the administration used premises located in the Port of Marseille for illegal deportations of immigrants. The latter were often subjected to illegal interrogations, which the national police or the Frontex Agency used during deportations or returns.

Despite national and European regulatory developments, these practices continue. Today, a multitude of sites are used as places of detention for these survivors until their return to the country of departure (Morocco, Tunisia, Libya, etc.).

Among these locations which are difficult to identify, we should add those used temporarily by transport companies: refrigerated trucks, cargo ships, containers, or even trains or planes or even train compartments, which the national police or the Frontex Agency use during deportations or returns.

Invisible facilities, beyond the reach of citizen watch

1 For example, in 2009, the ECtHR condemned Turkey for the detention of two Iranian nationals deprived of access to the asylum procedure and risking deportation to Iran. ECtHR, Abdolkhani and Karimnia v. Turkey, 22 September 2009.

3
Detention sites are like prisons

In general sites used to detain migrants are very much like prisons. In some cases, these places are in fact prisons holding common criminals.

The “Return” Directive provides that “detention shall take place as a rule in specialised detention facilities”. Member States can also use prison establishments to hold “undocumented” migrants simply for failing to hold valid residence permits. In such cases, migrants must be “separated from ordinary prisoners”. In Switzerland and in some German regions, the authorities detain “undocumented” migrants in their prisons.

According to a judgement issued by the CJEU on 28 April 2011, migrants should not be punished by prison sentences simply for failing to hold valid residence permits. Despite this judgement, some European countries continue to use prisons to hold “undocumented” migrants.

This is the case in Cyprus where people seeking international protection are often sentenced to several months in prison. They are then transferred to administrative detention facilities such as the Menogia, which in many ways looks like a high-security prison: searches, isolation in cells, the right to exercise in a yard limited to two and a half hours per day, difficult access to the telephone and legal advice, etc. The Menogia centre is not an exception. There are numerous camps in Europe which are being operated like prisons.

1 “Return” Directive (115/2008/EC), Art. 16.
2 CJEU, C-61/11 PPU (El Dridi), 28 April 2011.
3 According to the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “prisoners in remand establishments (including high-security establishments) able to spend a reasonable part of the day (8 hours or more) outside their cells” (2013).
### 4A Detention as a measure of “last resort”

According to the "Return" Directive, detention should be an exceptional measure, allowed only when other less coercive measures cannot be applied to carry out a deportation because there is a "risk of absconding" or "the third-country national concerned avoids or hampers the preparation of return or the removal process".

However, in practice, several Member States make systematic use of detention, even though it is clearly defined as a measure of "last resort" in national law and even though national law gives priority to economic sanctions rather than detention (e.g. Spain).

In countries such as France, the police are given a target for the number of people to be deported. This is the case despite the fact that the effective deportation rate is relatively low.

While stating that "any detention shall be for as short a period as possible", the "Return" Directive provides that the length of detention shall not exceed 18 months. Various tactics may be used to prolong this maximum period: In Cyprus, when a migrant is ordered to be released by the Supreme Court, the police arrest him or her at the exit of the court and s/he is placed in detention on the basis of a new deportation order. In Belgium, when a migrant contests deportation, "the clock is reset", which allows for the indefinite extension of detention. The Greek State Council issued an opinion on 20 March 2014 providing for the indefinite extension of the detention of migrants until deportation can be carried out, in the event that the latter have not cooperated in the return procedure or accepted "voluntary" return and there is a risk of absconding.

The Directive makes "voluntary return" a priority. In practice, very few migrants have access to this measure. Sometimes presented as an alternative to detention, NGOs criticise "voluntary returns" as merely another tool to serve detention and deportation policies.
Relationships between detainees and their close families and friends is heavily restricted: limited visits (only on certain days of the week), duration of visits (they can be limited to 30 minutes), modalities (through panels, without any intimacy, under the watch of prison guards), restrictions on giving items to detainees. In some centres, the high number of detainees further limits the possibility of visits, which sometimes turn out to be impossible due to the high number of visitors.

In the United Kingdom, where management of the majority of the facilities is entrusted to private companies, visits are authorised but taking notes is prohibited. The control of the visitor can go as far as fingerprinting and taking photos. In numerous cases, detainees do not have access to their mobile phones nor to the Internet and have to make calls, without any confidentiality, from telephone booths – the availability of which in terms of number and hours is often limited.
Lack of information on the reasons for detention and their rights is the norm.

Their administrative situation, rights and possible remedies are often explained to detainees in a language they do not understand. Where the rules on the operation of a centre are provided in writing, they are rarely available in the language spoken by the persons concerned.

In many cases, detainees do not know that they can contact NGOs for support, since the management of the centres rarely brings such information to their attention. In many countries, detainees do not have access to all documentation concerning the deportation procedure. Furthermore, they are generally not informed in advance of the date and time of deportation and they do not have the opportunity to contact their families in the country of destination to arrange to be collected from the airport.

In the majority of centres, there are no protocols to detect victims of trafficking, vulnerable persons or more generally those who may benefit from international protection.
The detention industry is increasingly looking to the privatisation of the management of migrant detention centres. The United States provides an example of the symbiosis which can exist between this industry and the tightening of legislation likely to result in more “clients” and increased profits.

In the European Union (EU), privatisation was pioneered by the United Kingdom where the State controls only part of the centres. The rest is entrusted to private companies, from construction and maintenance, to access to healthcare, accommodation social services and security. Under contracts with the UKBA agency, which is under the Home Office, the companies G4S and Serco each manage three centres and the G4S group, which is strongly implanted in the United States, manages one.

In Germany, several regions have paved the way for privatisation by concluding contracts with European Home-care (detention centres and waiting zones in the airports of Dusseldorf and North-Rhine Westphalia) and B.O.S Security and Service (detention centre in Eisenhuttenstadt).

In other EU countries, administrative files on migrants in an irregular situation remain under the responsibility of the police authorities, while the material management of detention premises is increasingly entrusted to private companies. In France, the group Bouygues participated in the construction of several centres (Lyon, Marseille, Nîmes, Rennes) within the framework of the “public-private” partnership (PPP).

These various trends reveal a logic of industrialisation, which resembles that taking place in the prison system. In some cases, the same companies are concerned, such as G6sp in France. The process opens the door to companies looking to increase their profits without concern about human rights and protection of the persons concerned.

In 2010, the Greek government used the argument of job creation to justify the opening of new detention centres. The establishment of thirty centres, each intended to employ 1000 persons, was trumpeted in the media.

In April 2010, a Kenyan man dies in the Harmondsworth detention centre. His health had been seriously neglected.

October 2010: A Colombian man is severely injured during deportation by G4S guards.

October 2011: Two men die of heart attacks. An investigation concludes that employees neglected the first victim. The death of the second man was unexplained.

February 2011: 94 women detained in Yarl’s Wood go on hunger strike to protest against the length of their detention and the inhuman treatment inflicted by guards employed by Serco. The guards use violence to quell the rebellion.

February 2013: Alois Dvorzac, an 84-year old Canadian man with Alzheimer’s disease dies while handcuffed at Harmondsworth Centre.

400 allegations of physical assault and racist violence committed by private security guards during deportations. (Medical Justice, 2008)

The majority of these complaints were made by asylum seekers, between 2004 and 2008. 100 complaints were received for alleged assault, 49 for sexual assault, etc. Two thirds of complaints concern Yarl’s Wood and Harmondsworth. 24% of them concern G4S.

773 complaints are filed by detainees against G4S, including 48 for assault.

2011: Two men die of heart attacks. An investigation concludes that employees neglected the first victim. The death of the second man was unexplained.

2013: Allegations of sexual assault committed by guards in detention centres are increased.

2014: A Nigerian detainees dies in the Yarl’s Wood Centre.

400300
Capacity of the detention centre

2006
2010
2011
2015?

Privatisation, Scandals and Economic Competition in Migrant Detention Centres in the United Kingdom

Sources: Global Detention Project, Home Office, Her Majesty’s Chief Inspector of Prisons, websites of G4S, Mitie, Serco, Geogroup and Tensco.
Detention damages the health of detainees

In a report on Greece, Médecins Sans Frontières highlighted respiratory problems linked to exposure to cold, overcrowding and the lack of treatment for infections; skin diseases such as scabies, bacterial and fungal infections resulting from overcrowding and unsanitary conditions; gastrointestinal problems caused by poor diet, lack of exercise and high stress levels; musculo-skeletal problems due to the lack of space and exercise and an uncomfortable environment. There are also sick persons whose treatment is interrupted when they are placed in detention.

Detention and degrading and humiliating treatment experienced by migrants also have a clear impact on mental health: post-traumatic stress, depression, anxiety, fear and frustration. The deprivation of liberty exacerbates pre-existing traumas and contributes to acts of self-mutilation and suicide attempts.

In 2009 and 2010, over a third (37%) of migrants detained in Greece suffered psychological problems caused by detention. Despite this, in Greece and elsewhere, the vast majority of centres do not provide psychological assistance.

Whether in communal spaces or in cells (in which the number of detainees is rarely less than six), day and night, detainees live in close proximity to many others. The total lack of privacy also has an effect on their mental health.

In this context, improper use of psychotropic drugs is a method used to control detained populations. According to estimates by the NGO Medici per i diritti umani (MEDU), 90% of detainees receive such drugs in the via Corelli centre (Milan), 66% in Bologna and 80% in Trapani Milo.
5 WHAT DEMOCRATIC SCRUTINY OVER DETENTION?

5A (Uncertain) control of detention by a judge and (insufficient) access to legal assistance

Under Article 6 of the European Convention on Human Rights (ECHR), everyone is entitled to a hearing by an independent and impartial tribunal.

This means that detention must be based on a written document issued by the judicial or administrative authorities and that EU Member States must put in place a mechanism for automatic judicial review or enable migrants to request review of the legality of detention by a judge. This review must take place in the shortest time possible after the beginning of the detention period.

However, in many countries judicial control is not guaranteed. Judicial review is not systematic and systems vary greatly from one country to another: no review on a judge’s own motion, intervention subject to migrant’s initiating request (Cyprus, Belgium); judicial authority without expertise in immigration law (Italy); no review (Croatia, Bulgaria). Migrants cannot be assured that the legality of their detention will be reviewed by a judge, since this essential protection is emptied of meaning in practice.

One of the main obstacles to review is the difficulty in accessing legal assistance and the possibility of contesting detention and the deportation decision. According to the applicable texts, detained migrants must systematically receive information on their rights and in particular the right to an effective remedy (in law and practice) to enable them to contest decisions on detention and deportation. In order to exercise this right, they must have access to free legal advice and/or representation and, where necessary, an interpreter.

Examples of violations of these protections are numerous. They can be summarised as follows [the list is non-exhaustive]:

→ Total absence of information or lack of knowledge of these rights: absence of documents concerning the rights and duties of detainees (Italy); lack of translation of this document (Bulgaria); documents translated but provided to detainees without any explanation (Spain).

→ Inadequate or inexistent system for legal assistance: a list of lawyers is available but not displayed (Italy); restricted access to lawyers (Bulgaria) and restrictions on designation of a second lawyer in case of problems with the first (Belgium); insufficient access to advice due to a lack of appropriate staff (Croatia).

→ Material problems: State does not cover costs of interpretation (France, Italy); confidentiality of exchanges not guaranteed and limited time with legal assistance (Italy).

According to the ECJ, the number of requests is below that it would be if detainees could exercise their rights, mainly because migrants are not always informed of their rights in a language they understand and legal assistance is not always effective. Furthermore, only ten Member States provide for appeals to automatically suspend deportation. There is therefore a major risk that migrants are deported before a judge has issued a decision.

Although as a measure of last resort there is the possibility of going before the European Court of Human Rights to request the emergency suspension of a deportation order (Rule 39 of the ECHR Rules), the difficulties listed above cast serious doubt on the effectiveness of this remedy in practice and the means migrants have at their disposal to activate it.

Condemnation by the ECtHR in the case of M.A. v. Cyprus

The Court concluded that Cyprus had violated Article 13 (right to an effective remedy) of the European Convention on Human Rights combined with Article 2 (right to life) and Article 3 (prohibition on torture and inhuman or degrading treatment) on the grounds of the absence of an effective appeal system to challenge deportation decisions and Article 5 §§ 1 and 4 (right to liberty and security) on the grounds of the illegality of any period of detention without access to a procedure to seek an effective remedy. The Court also took into account the absence of suspensive effect of appeals to the Supreme Court, the length of legal proceedings, the absence of legal aid and the limited scope of judicial review by the Supreme Court.
Independent monitoring bodies have been put in place at the international and national level (United Nations Subcommittee on Prevention of Torture – SPT – and the National Preventive Mechanisms – NPM) and the regional level (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – CPT) within the Council of Europe and the UN human rights system.

The SPT and the CPT are in charge of preventing torture and other ill-treatment in all sites of deprivation of liberty. To this end, they have unlimited access to these sites, conduct visits, monitor detention conditions, can conduct confidential interviews with detainees and staff at the centres and on the basis of observations, initiate dialogue with States. The reports of visits are not published unless requested by the State concerned.

The CPT’s mandate is also to ensure review and monitoring of detention conditions and underline standards which must be respected in such places (cf. 19th annual report published in 2009).

State parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) are obliged to establish independent National Preventive Mechanisms (NPM). They must be given sufficient resources to undertake regular visits in order to produce reports and recommendations, follow the process of drafting of laws and regulations and propose concrete reforms and preventive measures. The reports of the visits undertaken by the NPM are not made public but their annual activity reports are published.

Within the EU, 23 of the 28 Member States have ratified the Protocol. All of them have established NPM, except Italy and Romania.

In November 2013, participants in the various European NPM met in Strasbourg to support a proposal aimed at the clarification by the Council of Europe of rules concerning the detention of migrants applicable in Council of Europe Member States in a single document. In a communication issued on 29 March 2014 on the European return policy, the European Commission expressed support to this initiative.

The standards of the CPT, often cited in the jurisprudence of the ECtHR concern first and foremost access to fundamental rights for all detainees: right to a lawyer, right to a doctor, right to inform a member of his or her family or a third-person that s/he is detained and the right to be informed in a language understood by the person detained.

All detention must be based on a written and individual decision, a file must be kept on each detainee, the right to an effective remedy must be respected and provision must be made for regular review of the legality of detention by an independent body.

According to the CPT, it is inappropriate to detain migrants in prisons or in conditions that are more restrictive than those of common law prisons. Detention must be a measure of last resort. When detention is inevitable, restriction and security measures must be minimal: free movement within centres, unrestricted contact with the outside and right to visits.

Between 20 May 1990 and 27 March 2014, 355 visits were conducted by the CPT. The reports of 306 of these visits were made public. In 34 countries, including 26 within the European Union, migrant detention sites were visited, representing a total of 120 visits.

Countries in which the CPT most often focused on administrative detention include Greece (9 visits including migrant detention facilities) and Spain (8 visits), followed by Germany, Bulgaria, the Netherlands, Malta and Turkey (6 visits).

In these 34 countries, the CPT therefore undertook on average, one visit to migrant detention centres every 3 and a half years. (Source: CPT)
Many NGOs in the EU and at its borders have called for a right of oversight in migrant detention centres. The type of public vigilance that associations demand is complementary to the right of access of national and EU members of parliament and of certain national human rights bodies, as well as to the preventive monitoring undertaken by independent monitoring bodies (see 2).

EU directives governing the detention of migrants provide for a right for NGOs to visit detention facilities. Although these visits can be made subject to authorisation, limits to access can only be imposed in exceptional cases, and provided that access is not thereby severely restricted or rendered impossible.

In this regard, it should be recalled that since 2009 the European Parliament has been calling on Member States to guarantee civil society a legal right of access to places of detention of migrants without any legal or administrative obstacles, so that their presence in detention centres is based on full legal recognition.

In parallel, as long as administrative detention exists, many NGOs have been calling for a right of oversight on systems for detaining migrants, including:

- transparency: access to information and data on the existence and operation of places of detention.
- an unconditional right of access to places of detention: to be able to enter, without prior authorisation, all premises and communicate with those working in the centres as well as individual and groups of detainees, in a confidential manner.

This access is different from the right to visit migrants deprived of liberty and to the right of NGOs to accompany parliamentary visits or to sign agreements with the responsible institutions or managing bodies in order to provide legal assistance or other “services”.

The aims of such public vigilance combine the dissemination of independent information on the reality of detention and its consequences with a role of alert and denunciation of violations of the rights of detained persons.

Until today, on EU territory and at its borders, the right of oversight of civil society on places of detention remains very limited: lack of response or unsatisfactory responses to requests for figures, silence in the face of requests for access to centres or explicit refusals on dubious grounds or without any justification at all.

According to the EC, the transposition of Article 16§4 of the “Return” Directive – on the right of access of international and non-governmental organisations – remains problematic in seven Member States, while practices are not conform in four other member States. Beyond the legal framework, it is important to note that when access is granted, NGOs’ right of oversight is strictly controlled by the role they are allowed to perform (social assistance, legal aid etc.), by restrictions on movement, the omnipresence of the police or prohibitions on communicating with detainees.

In relation to access to information, the European Commission itself notes that “little quantitative data was systematically collected at Member State level... For example, data on basic parameters such as average length of detention, grounds for detention, number of failed returns, and use of entry bans proved to be available in only a limited number of Member States. Moreover, common definitions and approaches concerning data collection are frequently absent, impacting on the comparability of such data across the EU”.

For NGOs which have long been denouncing the opacity surrounding places of detention of migrants and the difficulties in obtaining data on their operation, these observations of the EC raise questions. In December 2013, the EC referred back to the regulation on community statistics on migration and international protection in which there are no statistics on these issues (number of detainees, men, women, children, average length of detention, etc.). Is this recent communication on EU return policy a sign that the EC is finally recognising the lack of transparency?
Access to journalists is refused – most often implicitly – on an almost systematic basis throughout the EU and at its borders, including when media request authorisation to accompany parliamentarians and/or NGOs.

Many journalists and NGOs have called for the principle of access for the media to places of detention of migrants to be inscribed in EU and national legal texts, in order to allow spontaneous access, without prior authorisation or accreditation and without discrimination between national and international journalists. They also claim total editorial freedom and an absence of control of written articles within the framework of this “free access”.

This would re-establish journalists’ role in democratic vigilance and ensure respect for the right of EU citizens to know what happens inside premises established in their name, as well as the right of detainees to communicate with the outside world.

In Italy, following public mobilisation in the LasciateCIEntrare campaign and complaints filed against obstacles to access of journalists to identification and expulsion centres (CIEs), in 2013, two journalists were authorised to produce the first documentary filmed inside these sites. The objective of the documentary “L’Ultima frontiera” is to show, through the eyes of the security forces involved in managing these centres and those of the detainees, the absurdity of the system of detention, its ineffectiveness and the injustices and violations of human rights, of which thousands of migrants are victims.

A poignant illustration of the role that the media can and wants to play and which the authorities persist in hindering.

In April 2011, in Italy, a ministerial circular was issued prohibiting all access to identification and Deportation Centres (CIE) and Reception Centres for Asylum Seekers (CARA) for the press and NGOs, on the grounds of the situation of emergency created by arrivals of migrants from countries affected by the “Arab Spring”, with the exception of several international organisations listed in the circular (United Nations Office of the High Commissioner for Refugees, International Organisation for Migration, Italian Red Cross, Amnesty International, Medecins Sans Frontieres, Save The Children, Caritas).

Following strong mobilisation of the press and civil society under the banner LasciateCIEntrare (Let us in) and a change in government, the circular was annulled in December 2011. The pre-existing system – far from satisfactory and characterised by broad discretion – was re-established.

In Italian law, the only places where journalists can be guaranteed protection are those under the control of the Police, military and frontier. However, two journalists had already filed complaints and the administrative court of Latium issued a decision in May 2012 emphasising that “although there is not free access to detention centres, it must be regulated [and] it is clear that the exclusion of the press cannot be absolute (for all centres and for indeterminate periods) and without justification” (decision of the Regional Administrative Tribunal (TAR) of Latium, n. 4538 18/06/2012). According to the reasoning of the judgement, the circular is in violation of Art. 11 of the Charter of Fundamental Rights of the European Union and the public administration had exceeded its powers.
CONCLUSION

In summary: a hugely costly system, which breaches the fundamental rights of migrants, criminalising them, often lacking effective legal safeguards, sheltered from the public eye, subject to few restrictions, over which democratic scrutiny and that of independent bodies is at a minimum, with mediocre results in terms of the stated objectives: this is the picture of administrative detention of migrants at the beginning of the 21st century, as documented by NGOs.

Yet, the European Union and its Member States are far from drawing the necessary conclusions to these findings. Worse, proclaiming themselves “managers” of migratory movements, they persist in using detention to hinder freedom of movement, as guaranteed by international law. Furthermore, they continue blindly to justify its legitimacy despite all the evidence.

The evidence: After six years of implementation of the “Return” Directive, the only EU text establishing standards in this area, the European Commission, in a report evaluating its application, welcomes the fact that “all Member States now generally accept the... policy objectives” including “respect for fundamental rights” and “fair and efficient procedures”. However, in the same report, the Commission explains that it encountered “major difficulties” collecting basic data, such as the average length of detention or the grounds for detention invoked in Member States – demonstrating its very limited knowledge of the issue. It also reveals that it had to react to “striking cases of inhuman detention conditions”, thereby recognising that grave violations of human rights are committed and remain unpunished at the national level. In other words, the European Commission unreservedly supports a system which it admits to know little about, despite the seriousness of its consequences.

Is it therefore surprising that there are regular revolts (riots, fires, demonstrations) and gestures of despair (hunger strikes, suicide attempts, acts of self-mutilation) in these places of detention of migrants? In the face of a denial of justice, arbitrariness, deprivation of contact with the outside world and the silence of the authorities, these acts are often the only means of expression of those detained. They speak of their suffering, their incomprehension and their refusal to be deprived of liberty on the sole ground that they do not find themselves on the “right side” of the border.

As long as camps for migrants exist, we have to be the vigourous spokes persons of this refusal. Members of the Open Access Now campaign ask governments of the EU Member States and of its neighboring countries to stop use of detention to purposes of immigration control.
