

Compilation of Reports on the Detention of Undocumented Migrants

Prepared for: United Nations Special Rapporteur on the Human Rights of Migrants

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Migrants Rights International, compiled by Migrant Forum in Asia



Compilation Prepared by:

Migrants Rights International (MRI), a non-governmental organization and global alliance of migrant associations and migrant rights, human rights, labor, religious, and other organizations which operate at the local, national, regional or international level. MRI seeks to advocate for the respect, protection and fulfillment of the full range of human rights of migrants around the world and to foster unity and inclusion of migrant voices at all levels of policy-making. MRI also has consultative status with ECOSOC.

Migrant Forum in Asia (MFA), a membership network of migrant organizations, migrants' rights advocates, trade unions, faith based organizations and individuals working to protect and promote the rights of migrant workers and members of their families. MFA currently has more than 200 members in 16 countries in Asia.
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Introduction

The issue of undocumented migrants in detention has been taken up by many civil society groups and migrants' rights advocates across the world, as states have become increasingly concerned with undocumented migrants entering, living, and working within their borders. The practice of holding undocumented migrants in detention on the grounds that they lack the necessary documents to enter, reside, and/or work in a country has generated significant debate on the grounds of whether or not this is a just and proportionate response to what is usually a minor administrative offence.

States and migrants' rights defenders take different approaches in looking at the dual issues of detention and deportation. For countries of destination, governments simultaneously view migrants as valuable sources of labour and as threats to national security regimes, implementing policies to attract ("desirable") migrants and deter ("undesirable") others. Draconian immigration laws and detention regimes that do not account for the varying conditions under which an individual can become undocumented lead to migrants being arrested and held until such time as their immigration status can be resolved; in most cases, undocumented migrants are summarily deported. Detention and deportation play into dangerous stereotypes that criminalize and marginalize migrant populations, both documented and undocumented, and deny the fundamental right to freedom of mobility.

Migrant workers and those who advocate for their rights challenge the discourse that criminalizes migrants on the grounds of non-discrimination, arguing that state responses should acknowledge the many conditions under which an individual can find him/herself in an undocumented situation, and should take into account the underlying political, social, and economic structures that lead people to cross borders without authorization and/or to choose remain in a country in spite of an irregular situation. Undocumented migrant workers and their advocates call on states to take on a rights-based and gender responsive approach. Rather than cracking down on migrant communities to round up, detain, and deport people, states should seek people-centred solutions that respect individuals and their human rights.

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990) (MWC) addresses issues related to the detention of migrants (including undocumented migrants) in Articles 16 and 17 (box 1).

An important distinction is to be made between those migrants (documented or undocumented) who are detained on criminal charges, and those who are held in administrative detention due to issues of proper documentation. This is highlighted by the requirement in Article 17(3) that those detained for violations with respect to immigration status should be held separately from convicted persons or those pending trial. This distinction is affirmed in 17(8), in which a migrant held on these administrative grounds should not bear any costs associated with his/her detention.

However, in spite of the clear-cut distinction between the types of offences (criminal vs. administrative), the detention of undocumented migrants has a significant impact in that it serves to further the “criminalization” discourse—i.e. imprisonment denotes wrongdoing/criminality, and serves as a mechanism of marginalizing all migrants, as they are pejoratively cast as “illegals” who are threats to their host societies, rather than as important contributors to their countries of destination. This notion feeds into the practices of states that impose severe detention measures as deterrents to would-be migrants, as described in the inputs included in this compilation.

ARTICLE 16 (MWC, 1990)

- (1) Migrant workers and members of their families shall have the right to liberty and security of person.
- (2) Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.
- (3) Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.
- (4) Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.
- (5) Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.
- (6) Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.
- (7) When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:
 - (a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;
 - (b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;
 - (c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.
- (8) Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.
- (9) Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

ARTICLE 17 (MWC, 1990)

- (1) Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.
- (2) Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
- (3) Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.
- (4) During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.
- (5) During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.
- (6) Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.
- (7) Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.
- (8) If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

Reports from Asia

Detention of Undocumented Migrants: The Asian Context

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Reports on Detention from Asia¹

Undocumented Asian migrants, both within Asia and those working in other parts of the world, are subject to arrest and deportation—it is a growing concern for migrants’ communities across Asia. Detained while crossing borders, or arbitrarily apprehended during crackdowns and deportation drives, many lack access to legal representation and are subject to long-term detention without charges.

It is generally assumed that should an undocumented person be detained, that detainee is at fault for his/her irregular status. This is clearly not always so—the reasons for the individual’s undocumented status should be taken into consideration, though such investigations rarely occur. The lack of consideration for the reasons for irregular status is a consistent theme in detention cases, but is not considered thoroughly by states in the development and implementation of policies on detention and deportation. In cases in which individuals have become undocumented through no fault of their own, particularly when it pertains to the actions/inactions of their employers (as is often the case among migrant workers in the Gulf countries), detention is unjustified; detaining migrants should never be the default response to irregular status.

In preparing his report on the issue of the detention of undocumented migrant workers, *Migrant Forum in Asia* respectfully requests that the Special Rapporteur take into account the following considerations:

- (1) In order to address the issue of undocumented workers in detention, it is necessary to look beyond the many issues associated with the (often unacceptable and degrading) conditions of detention, to understand the root causes of irregular migration.
- (2) The specific issues related to vulnerable migrants (including children, victims of trafficking, pregnant women, etc.) should be taken up.
- (3) A thorough understanding of the “mixed migration” phenomenon should be fostered through the SR’s report – i.e. the fact that stringent legal categorizations often cannot neatly capture the migration experience. At different points in the migration trajectory, a migrant can move among the categories of trafficked/smuggled/asylum seeker/economic migrant/documented person/undocumented person. Detention regimes do not account for this fluidity of experience, and have the effect of criminalizing individuals (and, by proxy, entire groups of people) on unjustified grounds.

¹ The section on Asia has been compiled by Migrant Forum in Asia, a membership network of migrant organizations, migrants’ rights advocates, trade unions, faith based organizations and individuals working to protect and promote the rights of migrant workers and members of their families. MFA currently has more than 200 members in 16 countries in Asia.

Israel

Draconian “Infiltration” Law Passed in Israel²

Three weeks ago, on January 9th 2012, the law “Law to Prevent Infiltration” was passed in Israel. The purpose of the law is to deter undocumented migrants (“infiltrators”), asylum seekers and refugees, particularly those entering Israel via Egypt in recent years, through draconian detention measures.

The law comes in response to increases in irregular border-crossings between Israel and Egypt since 2007. The Knesset Research and Information Center cite the following statistics³:

Numbers of infiltrators and asylum seekers in recent years

Year of entry	To end 2006	2007	2008	2009	2010	2011*	Total
Number of infiltrators	1,070	5,005	8,698	4,827	13,686	153	33,439

*From January 1-11, 2011

Distribution of infiltrators by country

	Eretria	Sudan	Other Countries	Total
Number	18,262	7,992	5,586	31,840
Percentage	57.4%	25.1%	17.5%	100%

Up to 31 December 2010, of the 33,439 infiltrators who entered Israel, 26,164 received a 2(a)(5) permit.

Distribution of permit holders 2(a)(5), December 2010

	Eretria	Sudan	Other Countries	Total
Number	16,142	7,029	2,993	26,164
Percentage	61.81%	26.7%	11.5%	100%

According to Amnesty International, “For the past few years, Israel has barred Eritreans and Sudanese asylum-seekers outright from having their refugee claims heard, in blatant violation of the 1951 Refugee Convention, and has only granted refugee status to a handful of the thousands of applicants from other countries.”⁴ As such, refugees may be sent back to places where they might face persecution, torture, or life-threatening conditions before their arguments to that effect are even examined.

The new law is an amendment to the existing “Law to Prevent Infiltration,” passed in 1954. It enables the following:

- 3-year imprisonment (without trial) of asylum seekers and refugees, even if there is no possibility of deportation (this detention can be extended, and can even be indefinite)
- Children whose parents are detained may be subject to the same prolonged detention

²Inputs on Israel for this report furnished by Kav LaOved, Israel (<http://www.kavlaoved.org.il>)

³ <http://www.knesset.gov.il/mmm/data/pdf/me02765.pdf>

⁴ <https://www.amnesty.org/en/news/new-israeli-detention-law-violates-asylum-seekers-rights-2012-01-10>

- Migrants from countries considered “hostile” to Israel, including asylum-seekers from Darfur in Sudan, can be detained indefinitely.
- Judicial oversight of detentions to take place only after 14 days, and to be performed by an administrative court which will not be able to release detainees before the 3-year sentence is carried out, except under extraordinary humanitarian circumstances

This reflects Israel’s uncompromising attitude towards foreigners entering Israel without permits, regardless of whether they are asylum seekers, refugees, or labour migrants. Indeed, the inflammatory use of the term “infiltrators” to describe irregular migrants is an indication of the reception that those crossing the border without documents can expect. All undocumented border crossers are subject to strict legal proceedings without consideration of the circumstances that led them to cross the border. In addition to violating international laws, this law views irregular migrants as de facto “security threats,” denying judicial review and due process. It favours hasty deportations without allowing enough time for the filing of refugee claims.

A plan is now in place for the construction of a new detention centre with a capacity of up to 10,000 people to be built in South Israel.⁵ If approved, this centre will be the primary holding site those caught crossing the border between Israel and Egypt without documents. The proposed project, to be run by Israeli Prison Services, illustrates the priority the Israeli government puts upon security, over human rights. The price of the final stage of the proposal is NIS 630 million (USD 169 million), in addition to NIS 1.5 billion (400 million) already spent.⁶

In 2008, when this law was in Bill form, Kav LaOved, together with 7 other civil society organizations in Israel, released a full report in response to the bill.

⁵ <http://www.ynetnews.com/articles/0,7340,L-4158634,00.html>

⁶ <http://www.ynetnews.com/articles/0,7340,L-4158634,00.html>

הפורום לזכויות פליטים
المنتدى لحقوق اللاجئين
Refugees' Rights Forum



June 2008

Policy Paper: The Detention of Asylum Seekers and Refugees

Executive Summary

This policy document is the product of a protracted work process by the eight main organizations involved in the subject of asylum seekers in Israel.

The document:

- Describes the attitude of the Israeli authorities and courts toward the imprisonment of asylum seekers.
- Reviews the position of international law regarding the imprisonment of asylum seekers, discusses the legal interpretation in such countries as England and New Zealand, and details the position of the UN High Commissioner for Refugees on the subject.
- Presents the position of the Israeli authorities regarding the detention of “subjects of enemy states” and their changing attitude toward these subjects, and clarifies the distinction between the detention of asylum seekers under the Entry to Israel Law and detention under the Prevention of Infiltration Law.
- Presents the new government law to prevent infiltration, which was passed by the Knesset at its first reading in May 2008. The new law enables the imprisonment of refugees for up to seven years, as well as their imprisonment without judicial review for two weeks.
- Details the actions of the authorities with regard to approximately 3,000 asylum seekers from Eritrea who have fled to Israel over the past year.
- Reports on the expansion of Ketsiot Prison and describes the detention of minors in harsh conditions contrary to the Convention on the Rights of the Child.
- Concludes by presenting the organizations’ recommendations to the government of Israel regarding the detention of asylum seekers. These recommendations are clearly mandated given that Israel has signed the Convention relating to the Status of Refugees and the Convention on the Rights of the Child.
- The principal recommendations are: To refrain from detention other than for the purpose of establishing identity, undertaking a preliminary interview, or when the asylum seeker is carrying false documents or has destroyed his documents. Even in these cases, the period of detention should not exceed 7-14 days. The member organizations of the Refugee Rights Forum believe that asylum seekers should not

be discriminated against on the basis of their country of origin or any other distinction during processes relating to the denial of their liberty. The organizations strongly object to the detention of children.

The detention of asylum seekers in the International Convention relating to the Status of Refugees: It emerges from Article 31(1) of the Convention relating to the Status of Refugees that the fact that asylum seekers entered Israel unlawfully cannot in itself constitute grounds for holding them in detention. The convention imposes restrictions, under certain conditions, on the possibility of penalizing a refugee for illegally entering the state in which he requests asylum. According to the accepted interpretation of this article in the convention, and if the conditions stated in the convention are met, the mere fact that a refugee illegally entered the state in which he is seeking asylum cannot constitute grounds for holding him in detention under the general immigration laws of the state. Moreover, in accordance with the accepted interpretation of this article, this prohibition applies not only to persons who have already been recognized as refugees by the state in which they are requesting asylum, but also to asylum seekers whose application for asylum has not yet been determined. Article 9(1) of the Covenant on Civil and Political Rights prohibits arbitrary detention. It is established several times that holding asylum seekers in detention for protracted periods while their applications are examined and while no deportation procedures are underway constitutes arbitrary detention. The imprisonment of asylum seekers in order to deter other asylum seekers from arriving in Israel is also prohibited under Article 3 of the UN High Commissioner for Refugees' Guidelines on Detention.

The detention of asylum seekers in Israeli law: there is no law in Israel regulating the status of asylum seekers and refugees. Recent attempts to enact such a law encountered opposition from Members of Knesset. In legal terms, an asylum seeker in Israel is defined as an "unlawfully present person" or as an "infiltrator." The point of departure of the State of Israel is that a deportation warrant and warrant for arrest will be issued against an asylum seeker present in the country without authorization; the execution of the deportation order will be suspended pending completion of the procedures in his application for refugee status. In accordance with Israeli law, one of the grounds for the release of unlawfully present persons, including asylum seekers, is when the period of detention exceeds 60 days and there is no possibility to execute the deportation order. Rulings of the Supreme Court and the district courts on this matter reflect the principle that a balance must be struck between the interest to deport from Israel unlawfully present persons and their right to liberty. Since the sole purpose of detention is to execute deportation from Israel, in the absence of effective deportation procedures it is inappropriate to continue to hold the person in detention.

The attached document includes detailed discussion of these important aspects, as well as the personal stories of David and Bol, asylum seekers from southern Sudan who describe the conditions of their protracted detention in Israeli prison and their feelings during this difficult period.

The Detention of Asylum Seekers and Refugees

In recent years there has been a substantial increase in the number of asylum seekers arriving in the State of Israel and submitting applications for asylum under the terms of the 1951 International Convention Relating to the Status of Refugees.¹ During the period 2002-2006, an average of approximately one thousand asylum requests were submitted each year. Accordingly to figures from the Population Administration, in 2007 a total of 5,300 people entered Israel without authorization across the border between Egypt and Israel; many of these people have submitted requests for asylum. As the numbers have grown, Israel has begun to take various measures intended to deter asylum seekers from entering Israel, including the imprisonment of many asylum seekers, some of whom are young children or babies.

At present approximately one thousand asylum seekers are being held at Ketsiot Prison, including approximately one hundred children held together with their parents. An additional group of approximately 600 asylum seekers are being held at Ma'asiyahu Prison in Ramle, and a few dozen unaccompanied minors are being held at the Michal incarceration facility in Hadera. Many of the asylum seekers have been held for protracted periods lasting many months.

In view of the importance of the issue of the detention of asylum seekers and refugees, and the ramifications of the authorities' policy on this matter for the most fundamental rights of the asylum seekers, the goal of this policy paper is to examine the changing policy adopted by the State of Israel relating to the detention of asylum seekers and refugees; highlight the ramifications of this policy in terms of the fundamental rights of the asylum seekers; detail the requirements of international law in this respect; and present the position of the Refugee Rights Forum concerning the detention of asylum seekers.

Detention Procedures against Asylum Seekers in Israel: The General Framework

The vast majority of asylum seekers who arrive in Israel enter without authorization via the southern border with Egypt. Of asylum seekers who enter the country lawfully, most do so via the border crossings with a tourist visa that is usually valid for a period of three months; once this expires, they remain in Israel without authorization.

Israel considers such persons to be, first and foremost, unlawfully present in the country. As noted in the previous policy papers, Israel has not enacted any legislation concerning refugees and asylum seekers. Conversely, it has developed a complex system of laws relating to mechanisms for the detention and deportation of unlawfully present persons. The state also employs these mechanisms against asylum seekers.²

The point of departure of the State of Israel is that a deportation warrant and warrant for arrest will be issued against an asylum seeker present in the country without authorization. However, the execution of the deportation order will be suspended pending completion of the procedures in his application for refugee status. This suspension is applied in consideration of the principle of the non-refoulement of asylum seekers; this aspect has been examined in depth in a separate policy paper.

However, a clear distinction may be made between the manner in which the authorities treat two distinct groups of asylum seekers – asylum seekers who were arrested before they contacted the UN High Commissioner for Refugees to request refugee status, and asylum

¹ Convention Documents 65, Vol. 3, p. 5.

² Entry to Israel Law, 5712-1952 (hereinafter – “the Entry to Israel Law), Articles 13-13U.

seekers who contacted the UN High Commissioner for Refugees and requested refugee status before their arrest. As we shall explain below, this distinction is not always reasonable, but it forms the basis for the treatment of asylum seekers by the State of Israel.

The official policy on this matter does not appear in any procedure or other written document, but statements by representatives of the UN High Commissioner for Refugees in Israel suggest that it has been agreed between the Interior Ministry and the High Commissioner. In accordance with this policy, and as a general rule, asylum seekers who have contacted the High Commissioner will not be arrested for as long as their application is being examined. An asylum seeker who has submitted an application receives a document from the UN High Commissioner for Refugees testifying that his³ case is being examined. In the initial phase these documents do not bear the asylum seeker's photograph. According to the guidelines of the Migration Police, a person bearing such a document is not to be arrested; in case of doubt as to the authenticity of the document, the police are to detain the bearer, contact the Commissioner, and release the individual after clarifying his status with the Commissioner. A person bearing a valid document issued by the Commissioner is supposed to be protected against arrest. When the application to recognize the asylum seeker as a refugee is rejected, the asylum seeker is given one month to leave Israel; if he fails to do so within this period, he will be liable to arrest and deportation. An asylum seeker whose application is rejected but who submits an application to the Commissioner to re-examine his case will not be arrested pending completion of the appeals procedures.

By contrast, an asylum seeker who is apprehended by the authorities before he has a chance to contact the UN High Commissioner for Refugees will be arrested. In most cases these are asylum seekers who are arrested along the border, usually after handing themselves over to Israeli security forces in order to request asylum in Israel. Clearly such individuals have not had an opportunity to submit an asylum request, yet despite this deportation orders are issued against them, as well as orders for arrests for an unlimited period. The examination of their application for asylum in Israel takes place while they are in detention.⁴ If the initial screening process has been completed and it has been found that an asylum seeker's application may form the basis for his recognition as a refugee, the asylum seeker is released from detention on the request of the Commissioner. However, a protracted period sometimes amounting to several months may pass before this stage is completed, and during this period the asylum seeker is held in detention.

In accordance with Israeli law, one of the grounds for the release of unlawfully present persons, including asylum seekers, is when the period of detention exceeds 60 days⁵ and there is no possibility to execute the deportation order. According to a Supreme Court ruling, a person is to be released from detention after 60 days if he was not deported by that time, provided that the delay in deportation was not due to a lack of cooperation on his part, and that he does not constitute a danger to state security or to public health or well-being. This provision applies unless there is "a public interest of tangible weight requiring the continued holding of the person in custody for a period not deviating from that which is reasonable."⁶ This rule reflects the principle that a balance must be struck between the interest to deport from Israel unlawfully present persons and their right to liberty. Since the sole purpose of detention is to execute deportation from Israel, in the absence of effective deportation procedures it is inappropriate to continue to hold the person in detention.

³ The masculine form is used in this report for the sake of brevity and ease of reading; the reference is equally to men and women.

⁴ Article 1B of the Procedure Regulating the Processing of Asylum Seekers, 2002.

⁵ Article 13F(A)(4) of the Entry to Israel Law.

⁶ APD 173/03 State of Israel v Salameh, ruling dated 9 May 2005.

The screening procedures undertaken by the High Commissioner invariably last more than sixty days. Moreover, given the increase in the number of asylum seekers in Israel, the Commissioner is currently preoccupied mainly with registering asylum seekers, and in practice engages in very few refugee status determinations (RSDs). As a result, the period of time asylum seekers spend in detention while the Commissioner undertakes screening, which was always protracted, has now become even longer and is effectively unlimited.

Despite this, the Interior Ministry has not ordered the release of asylum seekers who have been held in custody for protracted periods (or asylum seekers who clearly will not be deported within 60 days). The reason for this is that, according to the ministry, these individuals are “failing to cooperate” with their deportation by virtue of their submitting the application; accordingly, the protracted detention cannot constitute grounds for their release.⁷

The state’s position that a person who requests asylum in Israel is considered to be “failing to cooperate” with his deportation is inconsonant with international law. The right of every person to request asylum has been recognized as a basic right,⁸ and the applicability of the principle of non-refoulement to asylum seekers whose application has not yet been determined is also recognized by the Israeli authorities. Determining that the submission of an application for refugee status is tantamount to failure to cooperate, and thus justifies the sanction of unlimited detention, denies the right of a person to request asylum and may also be considered a step intended to deter others from submitting such applications.

It is important to note that Haifa District Court recently disqualified the approach of the Interior Ministry on this matter. Discussing the case of an asylum seeker who was held in detention for a protracted period, the court ruled that since the asylum request proceeding and the appeals proceeding are recognized by the State of Israel as proceedings justifying the postponement of deportation, asylum seekers could not be considered persons failing to cooperate with deportation.⁹ However, despite the fact that the state did not appeal the ruling, the Interior Ministry and the Custody Review Court, which scrutinizes the detention decisions of the Interior Ministry, have continued to treat asylum seekers as persons failing to cooperate with deportation, and hence refuse to release them pending completion of the first stage of the screening proceedings.

A further defect in detention policy relates to the arbitrary nature of the distinction between a person caught after contacting the High Commissioner and requesting refugee status, who is protected against detention pending the completion of the examination of his request, and a person caught before he has contacted the Commissioner, who is detained pending completion of the proceeding. The arbitrary nature of this distinction is particularly evident given the fact that most asylum seekers who have not contacted the Commissioner at the time of their arrest are seized along the border, shortly after crossing into Israel; clearly, they could not yet have contacted the Commissioner. Many asylum seekers turn themselves in at the border and clarify that they are requesting asylum. The consequence is that those who choose to turn themselves in are “punished” for so doing by indefinite detention, while those who choose to evade the security forces on the border and manage to reach Tel Aviv and go to the High Commission are rewarded therefore. This policy encourages asylum seekers not to submit requests in an open manner, immediately after crossing the border, but to attempt to cross it without encountering the authorities. It must be doubted whether the State of Israel has an interest in this outcome.

⁷ Entry to Israel Law, Article 13F(2)(1).

⁸ Article 14(1) of the 1948 Universal Declaration of Human Rights.

⁹ AA (Haifa) 468/07 Lastur v State of Israel, ruling dated 6 November 2007.

Detention for the Purpose of Deterrence

The detention of asylum seekers as undertaken in Israel is inconsonant with international law, since the convention restricts the possibility of punishing a refugee for the mere act of unlawfully entering the country in which he requests asylum.¹⁰ According to the accepted interpretation of this article in the convention, the mere fact that a refugee illegally entered the state in which he is seeking asylum cannot constitute grounds for holding him in detention under the general immigration laws of the state. Moreover, in accordance with the accepted interpretation of this article, this prohibition applies not only to persons who have already been recognized as refugees by the state in which they are requesting asylum, but also to asylum seekers whose application for asylum has not yet been determined.¹¹

According to the convention, refugees who are lawfully present in the country in which they are requesting asylum are entitled to freedom of movement and, accordingly, may not be arrested.¹² According to the accepted interpretation of this article, the prohibition also applies to asylum seekers whose asylum request has not yet been determined.¹³ The Israeli authorities regard asylum seekers who have crossed the border as “unlawfully present persons,” but in accordance with the interpretation of the convention, as emerges from the protocols of the authors of the convention¹⁴ and from the rulings of courts around the world,¹⁵ an asylum seeker is considered, for the purpose of this article and additional articles in the convention, to be lawfully present in the state once he has requested asylum, and not only after the examination of his request has been completed. Accordingly, this provision applies even with regard to asylum seekers who have been held in detention by Israel for protracted periods.¹⁶

In accordance with the guidelines of the UN High Commissioner for Refugees, the basic assumption is that the detention of asylum seekers is inherently undesirable,¹⁷ and may be undertaken only in exceptional cases and as necessary.¹⁸ According to the guidelines and decision of the executive committee of the Commissioner, an asylum seeker may be arrested only when detention is required for the purpose of establishing identity, undertaking a preliminary interview, or when the asylum seeker has destroyed his identifying documents or has used forged documents to mislead the authorities of the country in which he intended to request asylum (if these actions were committed deliberately and with the **intention of misleading or defrauding** the authorities); or in order to protect state security or public order.¹⁹ In accordance with the guidelines, when these goals may be secured without detaining the asylum seeker, he should not be held in detention; each case is to be examined on an individual basis. When detention is necessary, it must be for the shortest possible period.

¹⁰ 1951 UN Convention Relating to the Status of Refugees, Article 31(1).

¹¹ See the New Zealand ruling: Attorney General v E, [2000] 3 NZLR 257, as well as the English rulings R. v Uxbridge Magistrates Court, [1999] 4 All ER 520 [1999], parte Adimi, and Khaboka v Secretary of State for the Home Department, [1993] Imm AR 484.

¹² Article 26 of the 1951 UN Convention Relating to the Status of Refugees.

¹³ J.C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge University Press, 2005), pp. 416-417.

¹⁴ UN Doc.E/AC.32/SR.15.

¹⁵ See the ruling of the Australian Federal Court in Rajendran v Minister for Immigration and Multicultural Affairs, (1988) 166 ALR 619; see also the ruling of the Supreme Court of Appeals in South Africa in Minister of Home Affairs v Watchnuka (2004) 1 All SA 21.

¹⁶ It should be noted the certain rights, such as the freedom of association, are guaranteed under the convention only to persons who have already been recognized as refugees and have received status in the state of asylum (in these cases, the convention uses the term “lawful stay,” as distinct from other cases, when it uses the term “lawful presence.”)

¹⁷ UNCHR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (February 1999), Introduction, section 1 (UNHCR Detention Guidelines).

¹⁸ UNHCR Guidelines, Guideline 3.

¹⁹ EXCOM Conclusion No. 44 (XXXVII), 1986; UNHCR Detention Guidelines, Guideline 3.

Insofar as detention is a means for the execution of deportation, protracted detention in cases when no effective deportation proceedings are being pursued is unlawful.²⁰ International law prohibits arbitrary detention,²¹ and it has been established on several occasions that holding asylum seekers in detention during the examination of their request, in the absence of any deportation proceedings, constitutes arbitrary detention.²² In addition, and as already clarified, the Israeli authorities regard the detention of asylum seekers as a mean of deterring additional asylum seekers from entering Israel; such a purpose is alien to the goal of deportation, cannot justify detention,²³ and is not included in the exceptional cases in which asylum seekers may be held in detention.

The Detention of “Subjects of Enemy States”

The rules and procedures described thus far apply to all asylum seekers in Israel who are not considered “subjects of enemy states.” The latter, however, are subject to different rules that have undergone a number of changes in recent years. The point of departure in examining the requests of asylum seekers from these countries is the decision by the State of Israel, contrary to the obligations imposed on it under the UN Refugees Convention, that asylum seekers from such countries will not be admitted to Israel’s asylum system.

As we have noted in previous policy papers, Israel’s asylum system is regulated by a procedure introduced in 2002. The procedure establishes, among other provisions, that “the State of Israel reserves the right not to absorb in Israel and not to grant permission to be present in Israel to the subjects of enemy states or hostile states – as these shall be determined from time to time by the relevant authorities, and for so long as they hold such status; and the question of their release on bail shall be examined in each case on its own merits, in accordance with the circumstances, in accordance with security considerations.”²⁴ The same policy applied even before it was formalized in the procedure.

During the 1990s, this policy was relevant mainly in the case of asylum seekers from Iraq, whom Israel refused to recognize as refugees and to grant them status as such. Since it was impossible to deport these asylum seekers, both given the danger facing them if they returned to Iraq and due to the lack of diplomatic relations between Israel and Iraq, they were held in detention for protracted periods and, in some cases, for several years. Israel refused to release the asylum seekers on the grounds that, as Iraqi citizens, they presented a danger to state security, despite the absence of any individual evidence of such a danger.

After several petitions were submitted, the High Court of Justice ruled that the authority of detention must be interpreted in a manner that is consonant with its purpose – to execute deportation. When deportation is impossible, release to an alternative to detention should be considered.²⁵ Following this ruling, the Iraqi asylum seekers were released and placed in alternative frameworks to detention in kibbutzim, in accordance with an agreement between Israel and the UN High Commissioner for Refugees. It should be noted that the time, given

²⁰ On this aspect, see the ruling of the European Court of Human Rights: *Chahal v United Kingdom* (1996) 23 EHRH 413, para. 113. Regarding the applicability of this principle to detentions under the Entry to Israel Law, see also the Israeli rulings: H CJ 1468/90 *Ben Yisrael v Interior Minister*, *Piskei Din* 44(4) 149, 151-152; H CJ 4702/94 *Al-Tai v Interior Minister*, *Piskei Din* 39(3) 843 (hereinafter – “the Al-Tai HCJ ruling;”) AAD (Haifa) *Anonymous (Minor) v Interior Ministry*, verdict dated 24 January 2007.

²¹ Article 9(1) of the International Covenant on Civil and Political Rights, Convention Documents 31, 269.

²² For example, see the decision of the Human Rights Committee in Australia in the case of an Iranian asylum seekers who was held in detention for a protracted period during the examination of his application for refugee status: *C. v Australia*, Human Rights Committee Communication No 900/1999: Australia 13 November 2002, CCPR/C/76/D/900/1999.

²³ The Al-Tai HCJ case, see above. See also the UNHCR Detention Guidelines, Guideline 3(iv).

²⁴ Section 6 of the Procedure for the Regulation of the Processing of Asylum Seekers, 2002.

²⁵ The Al-Tai HCJ case, note 20 above.

the very small number of refugees entering Israel who were the subjects of “enemy states,” other countries agreed to absorb refugees to whom Israel refused to grant asylum. As the number of asylum seekers defined by Israel as “subjects of enemy states” grew, other countries were no longer willing to absorb these refugees.

In 2004, Human Rights Organizations discovered that the military was holding asylum seekers from Sudan who had crossed the border into Israel. The asylum seekers had been held at Ketsiot Prison for many months. Their detention was unlawful: no orders had been issued against them; the UN High Commissioner for Refugees or the Red Cross had not been notified of their detention; and they had not been given an opportunity to contact any external body or to turn to the courts. Following the exposure of the unlawful detentions, the Sudanese asylum seekers were transferred to the “civilian” facilities used for the detention of persons unlawfully present in Israel; detention and deportation orders were issued against them. Again, however, they were held in detention for protracted periods, since it was impossible to deport them to Sudan, where their lives would be endangered if they were returned from Israel, and given Israel’s insistence that they could not be recognized as refugees since they were the subjects of an “enemy state.”

The Story of David,²⁶ a Refugee from Southern Sudan

My name is David and I am a Christian from Southern Sudan. I am a member of the Nuer tribe. In my place of residence I worked in a European security firm. IN 1998 the US army bombed a factory in Sudan. I was working as a guard that night. I was shot in the leg, arrested, held in prison in Khartoum, and accused of spying for the US. I was tortured for about one week and did not receive any treatment for my injured leg. After about one week, my leg swelled up badly and I was transferred to hospital. The security in the hospital was not very strict and I managed to escape to Gadarif. I realized that I had to escape from Sudan and in March 1999 I found a way to get to Egypt, where I contacted the UN High Commissioner for Refugees and was recognized as a refugee.

Life in Egypt was very difficult, even for a recognized refugee. Many of the Sudanese refugees suffer harassment from the local population. We cannot get work permits and in any case it is very hard to find work. Despite this, I met a young woman who is also from Southern Sudan and in 2004 we had a son. Making a living became even harder.

In September 2005 a major demonstration began outside the offices of the Commissioner in Mustafa Mahmud Gardens. The United Nations closed the offices and stopped processing applications. At the end of December 2005, Egyptian police came to the site and shot at the demonstrators. Many were killed and injured, and those who were not injured were arrested. I was also arrested. I was released after just one day thanks to my blue refugee’s card. After that employers completely refused to employ Sudanese, and landlords refused to rent out apartments to us. Policemen used to catch Sudanese in the street and beat them. I tried to make a living for my family selling cakes we baked at home, but I realized that we had to leave Egypt, too.

I knew that Israel is a democracy and I thought that it could be a good place for a refugee like me. We decided that I could go there on my own, and then I would find a way to bring my wife and child. In April 2006 I left them at an acquaintance’s home in Cairo and set out for Israel. I walked through the desert for two days until I managed to cross the border. I waited for the Israeli army to find me. The soldiers took me to Ketsiot Prison together with other refugees who arrived over the same period.

²⁶

The refugees’ names have been changed in order to protect their privacy.

I spent nine months (April 2006 through January 2007) in a huge tent in wing 15 of Ketsiot Prison, together with approximately 70 other Sudanese. We had access to three toilets and three showers. We slept on narrow beds and each of us was given two thin blankets that could not protect us against the winter cold of the desert. To keep warm we used to collect the old blankets and clothes that the Palestinian prisoners in the adjacent wings threw into the garbage.

We did not have anything to do. Sometimes the wardens would come and take a few of us to do some work. Those who were chosen to do work did not receive any pay, but they were given a few cigarettes, so those of us who smoked were happy to go to work. Everyone complained a lot that we were being imprisoned for so long with nothing to do, but I was mainly bothered that we did not have access to a telephone. I could not inform my wife that I had arrived safely in Israel. I did not have any money to send her and I did not know how she would get by without money.

Two months after I arrived in Ketsiot some Sudanese from Ma'asiyahu Prison arrived in our tent; others followed. We were told that they came for a meeting with the United Nations. I heard from the new detainees that in Ma'asiyahu Prison there were public telephones, and that some of the detainees even had mobile phones. I saved cigarettes and gave them to one of the Sudanese who was transferred to Ma'asiyahu and asked him to call my wife in Cairo. When he returned to Ketsiot I learned from him that my wife had been pregnant when I left her. This news made me worry even more – a 23-year old Sudanese woman, pregnant, who had to survive in hostile Egypt with a two-year old boy and with no way to make a living. I gathered that she would be due to give birth in December but there was no way I could check this. I gave the telephone number to volunteers from the Hotline for Migrant Workers who visited us and asked them to contact my wife. Unfortunately, the next time they came to visit they told me that my wife's telephone number was disconnected. I could not stop thinking about my family, left without any source of livelihood and without any information about me.

The state justified the protracted detention of the Sudanese asylum seekers – some of whom were held for approximately two years – on security grounds, claiming that they presented a danger. For a long period, the Custody Review Court, the quasi-judicial body that scrutinizes the decisions of the Interior Ministry on the subject of detentions, accepted these claims, particularly in view of the Interior Ministry's promises that the process of deporting the asylum seekers to Egypt was underway. However, as time passed and there was no sign of deportation, and after the state proved unable to show that even a single Sudanese asylum seeker posed any danger, the Custody Review Court began to release Sudanese asylum seekers into alternative detention in the kibbutzim. At first those included in this arrangement were asylum seekers suggested by the UN High Commissioner for Refugees; these were later joined by asylum seekers proposed by the member organizations of the Refugee Rights Forum.

From the beginning of 2006, in order to circumvent the court's willingness to release Sudanese asylum seekers, the Interior Ministry began to replace the detention orders under the Entry to Israel Law (which are subject to review by the court) with detention orders under the Prevention of Infiltration Law,²⁷ which are issued by the military authorities. Emergency legislation enacted in 1954 permits the detention of a person defined as an "infiltrator" for an unlimited period under an order issued by the defense minister, without any procedure and without judicial review. In this manner the state was able to bypass the decisions of the Custody Review Court and to hold hundreds of asylum seekers, whom it terms "infiltrators," for months on end without access to the courts.

²⁷

Prevention of Infiltration Law (Offenses and Jurisdiction), 5714-1954.

Four petitions were submitted to the High Court of Justice in April 2006 by the Hotline for Migrant Workers and the Refugee Rights Program at Tel Aviv University.²⁸ The Supreme Court ruled that the state must ensure judicial review of the detention of the Sudanese asylum seekers,²⁹ and one of the judges from the Custody Review Court was appointed a “special advisor the defense minister” with responsibility for examining the detainees on an individual basis and recommending to the military authorities whether or not they should be released. This mechanism also failed to meet the minimum requirements for the judicial review of detention; the body involved has an administrative rather than a judicial character; it is empowered only to recommend, and not to decide; the “advisor” is appointed by the defense minister rather than through a procedure ensuring independence; and no legal imperative is established for his actions.

Despite the inherent defects of the mechanism, the advisor accepted the position of the human rights organizations and ruled that since it was impossible to deport the Sudanese asylum seekers, and given the absence of any evidence suggesting that they presented a danger, they should not continue to be held in detention. His recommendations were adopted, albeit reluctantly, and hundreds of asylum seekers were released.

In the first stage, however, the Sudanese asylum seekers were released into alternative detention in the kibbutzim. Their movement was restricted to the area of the kibbutz, and they could leave only if accompanied by a kibbutz member. This restriction was again imposed on the basis of their status as subjects of an “enemy state” whose release must be conditioned on strict supervision. Asylum seekers from other countries were released without conditions after completing the initial screening stage and could live and work wherever they chose. The Sudanese asylum seekers were later released into alternative detention, under the same restrictive conditions, in moshavim, most of which were interested mainly in securing cheap labor.

In addition to the immediate injury to the liberty and freedom of movement of the asylum seekers, the conditioning of their release on their remaining in a specific situation (and, in practice, in the employ of a specific agricultural employer) led to the “shackling” of the asylum seekers to their employers. Dismissal or resignation would clearly lead to the asylum seeker being returned to detention, at least pending the location of a new arrangement for alternative detention.³⁰ This created fertile ground for exploitation, including late payment of wages, payments below the minimum wage, and the housing of asylum seekers in conditions that were far from appropriate (it must be emphasized, however, that not all employers acted in this manner).

Moreover, the “alternative detention system” meant that the release of the asylum seekers was totally dependent on the actions of the human rights organizations, which identified kibbutzim and moshavim and requested their release.

Within just a few months, however, the “assumption of danger” posed by the Sudanese citizens and the “alternative detention system” both collapsed. From March 2007, the advisor to the defense minister agreed to recommend that asylum seekers also be released for work in hotels in Eilat; their freedom of movement was restricted to the city of Eilat. The presence of a growing community of Sudanese asylum seekers that was free to move within the city limits of Eilat, coming into daily contact with the local population, rendered the claims that they presented a danger to state security unconvincing in the extreme.

²⁸ H CJ 3208, 3270, 3271, 3272/06, 4 Refugees v Head of IDF Operations Division.

²⁹ H CJ 3208/06 et al., decision dated 8 May 2006.

³⁰ It should be noted that the similar shackling of migrant workers was disqualified by the Supreme Court in H CJ 4542/02 Workers’ Hotline et al. v Government of Israel, ruling dated 30 March 2006.

The reality on the ground continued to erode the twin pillars of the “assumption of danger” and the “alternative detention system.” During the period April – July 2007, and to a lesser extent thereafter, the military released hundreds of Sudanese (and other) asylum seekers onto the streets of Beersheva, due to a dispute between the military and the Migration Police concerning the responsibility for their detention, and due also to the shortage of places for detention. Some seven hundred Sudanese asylum seekers were released unconditionally and without any restriction to a given geographical area. The asylum seekers traveled from Beersheva to Tel Aviv, contacted the UN High Commissioner for Refugees, and received documents protecting them against arrest. A situation emerged whereby the decision as to whether a person would be released on the day they entered Israel and remain free, at least, pending the clarification of their application for refugee status, or alternatively would be held in detention, sometimes for months, and eventually released to a restrictive alternative, was dependent solely on the number of imprisonment places available on that day. In this situation, the argument that restrictive conditions were required for the purpose of supervision became nothing less than absurd.

In August 2007, responding to petitions against detention under the Prevention of Infiltration Law, the state agreed to end the use of the mechanism for preventing infiltration. Today, the majority of asylum seekers in detention are held under the provisions of the Entry to Israel Law. However, the Prevention of Infiltration Law is still improperly used during the first few days of the detention of asylum seekers in order to postpone the date of judicial review of the detention.

Since September 2007, the Custody Review Court has begun to release Sudanese asylum seekers without requiring them to remain within a particular geographical area; instead, the asylum seekers are required to provide their address and to report to the police. The Interior Ministry has initiated a proceeding (which has not yet been completed) to transfer asylum seekers released into alternative detention to the “track” provided by the Entry to Israel Law.

As of the time of writing this policy paper, the situation has in some respects been reversed. While in the past asylum seekers from all other countries were released after completing initial screening by the UN High Commissioner for Refugees, while Sudanese asylum seekers were not released at all, today it is the Sudanese who are released, while others continue to be held for indefinite periods.

This situation is the result of the recognition that Sudanese citizens cannot be deported to their homeland, combined with the almost complete cessation of RSD applications due to the growing number of asylum seekers. As noted, the UN High Commissioner for Refugees is currently preoccupied with registering asylum seekers, rather than with screening. Accordingly, detained asylum seekers cannot in practice complete the initial screening process and secure their release. Conversely, in cases involving Sudanese citizens, the Custody Review Court confines itself to ensuring that the UN High Commissioner for Refugees has identified the detained asylum seeker as a Sudanese citizen, and does not require that the asylum seeker pass the first hurdle of recognition as a refugee.

Proposed Law 381 - Prevention of Infiltration, 5768-2008

As far as entry to Israel is concerned, however, yet another change in the treatment of asylum seekers may be imminent. On 19 May 2008, the Knesset passed at its first reading a government proposed law to prevent infiltration. If passed by the Knesset, this proposal will lead to the violation of the basic principles of Israeli law, and to the violation of the provisions of international conventions to which the State of Israel is a signatory.

We shall confine our comments here to those aspects of the proposed law that relate to the duration and conditions of detention of asylum seekers:

1. The proposed law does not make any reference to the detention of minors, children, and babies. Although the district court has established an obligation for minors to be represented before the court,³¹ and although the State Prosecutor's Office has issued a procedure regarding the detention and deportation of minors requiring a briefing by a welfare officer, the terms of which are to be followed,³² the ruling and the procedure are not reflected in the proposed law.
2. The proposed law permits the administrative imprisonment of all persons entering the borders of the State of Israel, including children and minors, without any judicial review for a period of up to 28 days (14 days in accordance with the proposed law, plus 14 days after transfer to the detention track under the Entry to Israel Law).³³
3. The proposed law does not mention any maximum period of detention, thus permitting the imprisonment of asylum seekers for extremely long periods. The chance of release in such circumstances is extremely limited and, in the case of the citizens of enemy states, such as Sudan – totally nonexistent.³⁴
4. The proposed law permits the incarceration of migrant workers and asylum seekers alongside criminal prisoners.³⁵

On 20 May 2008, the State Ombudsman published a report for 2007 which included sharp criticism of the behavior of the state with regard to asylum seekers and refugees. Regarding the detention of asylum seekers, the State Ombudsman chose to note that due to a protracted dispute between the military and the GSS regarding the “danger” posed by all Sudanese citizens, many of these citizens had been held in detention for protracted periods. Since the prime minister and defense minister failed to take action to abolish the “assumption of danger” imposed on these asylum seekers, most of them were held in detention without judicial review and without access to arrangements enabling release on bail. Even after a review instance was created for the detention of asylum seekers, this examined only a minority of the cases of detention of Sudanese asylum seekers, and even these procedures were implemented after a substantial delay.³⁶

Israel's behavior over recent years regarding political asylum for the subjects of “enemy states” is also inconsonant with Israel's obligations. The UN Convention Regarding the Status of Refugees prohibits the discrimination of refugees on various grounds, one of which is their country of origin.³⁷ The principle of non-discrimination, like other principles in the convention, applies not only to persons who have already been recognized as refugees, but also to asylum seekers whose requests have not yet been determined. Accordingly, discrimination against asylum seekers who are the subjects of “enemy states” in detention proceedings is prohibited.

³¹ AA (Haifa) 379/06 Anonymous (Minor) v Interior Ministry (ruling dated 24 January 2007).

³² Procedure for Processing Unaccompanied Foreign Minors, State Prosecutor's Office, draft dated 3 January 2008.

³³ Government Proposed Law – 381, 25 Adar II 5768, 1 April 2008, Article 12C.

³⁴ Ibid., Article 15.

³⁵ Ibid., Article 14.

³⁶ Report of the State Ombudsman, 58B for 2007, Chapter One: “Processing of Applicants for Political Asylum in Israel,” pp. 99, 111-112.

³⁷ Article 3 of the 1951 UN Convention Relating to the Status of Refugees.

Moreover, in accordance with the guidelines of the UN High Commissioner for Refugees, in exceptional cases in which asylum seekers are held in detention, various procedural guarantees are required.³⁸ Among other provisions, the detention of asylum seekers is conditioned on subjection to automatic review (which takes place even if the detained person does not initiate legal proceedings) by a judicial body or an independent administrative body; on the maintenance of periodic review; on the right of the detainee and his representative to be present in the review proceedings; on his right to refute factual findings; and on his right to contact the UN High Commissioner for Refugees and additional organizations.³⁹ The detention of asylum seekers in accordance with the Prevention of Infiltration Law, initially without any judicial or administrative review and thereafter subject to review by a special advisor to the defense minister does not meet the minimum requirements for ensuring fair proceedings in the detention of asylum seekers.

In accordance with the guidelines of the UN High Commissioner for Refugees, one of the exceptional cases justifying the detention of asylum seekers is when they present a danger to state security or to public wellbeing;⁴⁰ as a general rule, their freedom of movement is not to be restricted.⁴¹ The State of Israel initially attempted to argue that all the Sudanese asylum seekers presented a danger; later, it argued that it could not examine which of them presented a danger to state security and which did not and, accordingly, all these asylum seekers should be held in detention or in restrictive alternative detention. However, the convention and court rulings from around the world show that sweeping security claims cannot be made with regard to an entire group of asylum seekers; the authorities must show that a specific asylum seeker presents an individual security threat.⁴²

Eritrean Asylum Seekers – “Shackling” to the Employer and Restriction of Freedom of Movement as Conditions for Release from Detention

Alongside the softening of the detention arrangements concerning asylum seekers from “enemy states,” the arrangements supposedly intended to address the assumption of danger were applied to asylum seekers from additional countries. In the summer of 2007, a significant increase was seen in the number of asylum seekers from Eritrea. Eritrea is not considered an “enemy state,” but it is not possible to return asylum seekers to Eritrea after numerous cases in which asylum seekers deported to Eritrea have “disappeared.”

Although there could be no claim that these asylum seekers presented a danger, the Interior Ministry adopted a similar policy in their regard as it did in the case of asylum seekers from Sudan, with the clear objective of deterring additional asylum seekers from coming to Israel. As in the case of the Sudanese asylum seekers, this policy also led to appalling exploitation of the Eritrean arrivals. The Interior Ministry released Eritrean asylum seekers for work with agricultural employers it identified. One of the conditions of release was that the asylum seeker was not permitted to leave his employer or to leave the area of the moshav. Once again, many of the employers exploited the power they were given, paying sums below the minimum wage, accommodating the asylum seekers in inhuman conditions, and denying them access to human rights organizations.

³⁸ UNHCR Detention Guidelines, Guideline 5.

³⁹ See the ruling of the Canadian Supreme Court disqualifying a mechanism for review that failed to provide the required guarantees for a fair proceeding in the detention of unlawfully present persons, including asylum seekers: *Adil Charkaoui v Minister of Citizenship* [2007] 1 S.C.R. 350, 2007 SCC 9, dated 23 February 2007.

⁴⁰ UNHCR Detention Guidelines, Guideline 3(iv).

⁴¹ Article 26 of the UN Convention Relating to the Status of Refugees. For further detail on this aspect, see the text by footnotes 13 through 16 above.

⁴² See the ruling of the New Zealand Supreme Court in *Zaoui v Attorney General*, Dec. SCCIV 13/2004 (NZ SC, Nov. 25, 2004).

The growing number of complaints also led to the collapse of this system within just a few months. As of the date of publication of this policy paper, Eritrean asylum seekers who are released from detention after being identified as citizens of Eritrea by the UN High Commissioner for Refugees are released without the imposition of conditions “shackling” them to a specific employer in a specific moshav.

Arrest Campaign and Geographical Restriction as a Condition for Release

From the above description of developments, it is not difficult to discern a pattern of inconsistency regarding the detention of asylum seekers. Policy depends mainly on the whims of officials at different levels. In February 2008 this situation reached an absurd level. Following media reports on the distress faced by asylum seekers living in shelters in Tel Aviv,⁴³ and after the prime minister ordered that arrests and deportation be used immediately to tackle the refugee issue, a large-scale campaign was launched to arrest asylum seekers, most of whom held protective documents from the UN High Commissioner for Refugees, contrary to the arrangements applying at the time.

According to the UN High Commissioner for Refugees, the format of these documents was established with Israel’s agreement, and it was agreed that asylum seekers holding such documents are not to be arrested. Despite this, at the end of February 2008 and the beginning of March, the Migration Police raided shelters where hundreds of asylum seekers were living. Most of the asylum seekers were arrested. Those holding documents from the Commissioner were eventually released, but only after each one was identified individually by the Commissioner. As a result, some asylum seekers were left in detention unnecessarily for many week. Those eventually released from detention were placed under a new custody order; one of the conditions of release is that they must remain solely to the north of Hadera or to the south of Gedera (i.e. not in central Israel). As noted, restricting the freedom of movement of refugees (including asylum seekers) is inconsonant with Israel’s obligations in accordance with the convention.

The purpose of these actions, it seems, was to create an atmosphere of intimidation against asylum seekers in Israel. The actions were also intended to address the large concentration of asylum seekers that had developed in Tel Aviv; in the absence of work permits, some of the asylum seekers were living in public shelters in extremely harsh conditions.⁴⁴ The immediate catalyst leading to the arrest of the asylum seekers and the conditioning of their release on their leaving Tel Aviv seems to have been the critical newspaper articles revealing the harsh conditions in the shelters, which seriously embarrassed Israel and depicted its attitude to refugees as apathetic.

Rather than attending seriously to the problems that had emerged, the authorities preferred to take the drastic step of detaining asylum seekers and establishing conditions for release (violation of which will lead to repeat detention) in order to disperse the asylum seekers, thus rendering them less visible and removing them from centers that had led to public and media interest. The move also distanced the asylum seekers from human rights and assistance organizations, whose activities and infrastructures are concentrated in the center of the country.

⁴³ Nurit Werghaft, “Kutchik Moves in on the Refugees,” Ha’aretz, 18 January 2008; Kibriv Kaldatinsa, “Lower Tel Aviv, The Boulevards,” Yediot Tel Aviv, 25 January 2008; Hila Kovo, “The Lowest Place,” Zman Tel Aviv, 25 January 2008; Hagai Matar, “Africa – Israel,” Ha’ir Tel Aviv, 25 January 2008; Yigal Hai and Michal Greenberg, “No Room in Tel Aviv; Refugees Move to Givatayim and Bat Yam,” Ha’aretz, 7 February 2008.

⁴⁴ See the comments by the head of the Population Administration at a meeting of the Knesset Foreign Workers Committee, 26 February 2008: <http://knnesset.gov.il/protocols/data/rtf/zarim/2008-02-26.rtf>.

The expulsion of asylum seekers from Tel Aviv by means of detention and release under geographic restrictions was undertaken on an indiscriminate basis against all asylum seekers encountered by the Migration Police during their raids in Tel Aviv. Even asylum seekers who had found work and were living independently in Tel Aviv were expelled, as were unaccompanied minors and the parents of young children who had already found places in the education system in Tel Aviv.

“Hosting Camp” and the Detention of Children

Until July 2007, minor asylum seekers who entered Israel with their parents were not detained. To this day, the majority of child asylum seekers who arrived with their parents have not been detained and have been placed in the education system. However, in keeping with the capricious approach of the decision makers in these matters, and in response to fleeting media pressure, it was decided at the beginning of July 2007 to establish a detention camp in Ketsiot (referred to by the authorities as “a temporary hosting facility.”) The camp was to be used for the imprisonment of asylum seekers – or “infiltrators,” to use the state terminology – including children.⁴⁵

The detention camp was established immediately, without appropriate preparations or organization. At first, detained children were held together with their mothers in the caravan section of Ketsiot Prison. In October 2007, however, a new compound was established adjacent to the prison, known as the Saharonim facility. This facility includes six wings – large, fenced tent camps four of which hold approximately 800 male asylum seekers, and two of which holds some 200 mothers and children.

The living conditions in the tents, each of which houses 15-20 detainees in a limited space, are far from satisfactory. The facility is situated in a desert region with harsh climactic conditions in summer and winter. During most of the past winter there were no means of heating in the facility, despite the fact that temperatures sometimes fell to -5 degrees Celsius. The detainees did not receive sufficient blankets, and some of the tents leaked when it rained. Only after a petition was submitted against the conditions of detention were means of heating installed in some of the tents, though reports from detainees suggest that in the harsh desert conditions, and in canvas tents, these were not able to overcome the piercing cold. The children held in the facility included small infants, some of whom were born while their mothers were in detention; they, too, were exposed to the extreme cold in the facility.

In the summer Ketsiot is one of the hottest places in Israel. There are no means in the tents for protecting the asylum seekers against the heat. The Israel Prison Service has stated that it is currently working to transfer the detainees to permanent buildings, but these will not be ready before January 2009 (and probably later still).

As if this were not bad enough, the child detainees do not receive psycho-social support, despite the fact that many of them have experienced serious trauma in their country of origin and during their journey to Israel. For many of them, the experience of imprisonment is also liable to have grave ramifications. A single social worker is employed in the Saharonim facility – a uniformed man who does not speak the language of the asylum seekers held in the facility, and who is responsible for some one thousand detainees. The social worker does not provide psycho-social support; his function is confined mainly to arranging meetings between family members held in different wings of the facility, and coordinating the activities of bodies that run various types of activities in the prison.

⁴⁵ See the announcement of the Prime Minister's Office dated 1 July 2008 at the following link: <http://www.pmo.gov.il/PMO/Communication/Spokesman/2007/07/spokedar010107.htm>.

Ketsiot lacks appropriate educational facilities. The children are divided into three broad age groups, in each of which the age difference can be as much as six years. Teachers come to the prison for a few hours a day to run activities. There are no proper classrooms; the children sit in large tents, on plastic chairs around a single table, without educational aids. There is no curriculum, no systematic monitoring of the students' progress, and no real continuity in their studies.

The children are detained without any date being set for their release, and they face constant uncertainty. Their detention is particularly outrageous since, for the present, they cannot be deported from Israel since they are citizens of Eritrea and Sudan. Moreover, their detention is completely arbitrary. Most child asylum seekers who arrived in Israel with their parents were released unconditionally. The only reason why one child is detained and another is not is the date on which he entered Israel – after the establishment of the imprisonment facility for children, and on a day when the facility was not completely full.

The Story of Bol, a Child Refugee from Southern Sudan

My name is Bol. I am twelve years old. I am a Christian from Southern Sudan.

I entered Israel from Egypt in July 2007 together with my parents and my two brothers. We were arrested immediately, and since then we have been waiting at Ketsiot Prison until the United Nations decides whether we are refugees.

For the first three months we slept in caravans. Two months ago they moved all the women and children to other wings where we live in tents. I am in wing number 1 of the women and children.

I sleep on an army bed and cover myself with thin wool blankets. It is very cold at night and it is hard for me to sleep. We sleep in crowded tents and there are no means of heating. The showers we use are the same for boys and girls.

There are no studies here. I do not really know what a social worker or a mental health worker is, but I don't think I have met anyone like that here. The only people I see here are the wardens with their handcuffs and weapons.

The wing we are in is surrounded by two fences. One is white and opaque, the other is an internal metal fence. The floor here is made of concrete and the tents are made of canvas. The wind passes right through them, and that's why I am cold.

I don't have anything to do here. There are two swings but they don't interest me. I just hang around all day. Sometimes I argue a bit with the other children. I really do not like to be here and I would like to be somewhere else. I don't know where because I don't know anywhere in Israel. Since we got here I have not left the wing we are being held in even once.

In January 2008 several human rights organizations petitioned the High Court of Justice, arguing that child asylum seekers should not be detained; alternatively, they argued that the conditions of detention at Ketsiot Prison are not suitable for children.⁴⁶ During the course of the hearings the request not to detain child asylum seekers was deleted, and in February 2008 the petition was rejected. Although the Supreme Court accepted the argument that the conditions of detention included problems demanding immediate attention, particularly in terms of education and protection from the elements, the petition was rejected in view of the state's position that it encountered difficulties preparing for the detention of child asylum seekers within a short period of time. It should be noted that at the time of writing, several months after the grave ruling was given in this matter, there has been no change in the conditions of detention in the facility. The only change that occurred following the petition is the decision by the Israel Prison Service to restrict significantly entry by personnel from the organizations that submitted the petition into the wings in which the asylum seekers are

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HCI 212/08 Hotline for Migrant Workers et al. v Israel Prison Service.

housed. By so doing the authorities are restricting the access of human rights organizations to detainees, denying assistance to hundreds of asylum seekers who require it.

The restrictions imposed by international law regarding the detention of children in general, and child asylum seekers in particular, are stricter than those applying to the detention of adult asylum seekers. Israel is violating these restrictions on a systematic basis. The 1989 Convention on the Rights of the Child establishes that “the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”⁴⁷ These provisions apply to all children, not only asylum seekers.

The guidelines of the UN High Commissioner for Refugees specifically establish that child asylum seekers are not to be detained, and that every possible alternative to detention should be considered.⁴⁸ The Convention on the Rights of the Child also establishes provisions regarding the obligation to provide special protection for child asylum seekers.⁴⁹

In addition to the act of detaining asylum seekers in Ketsiot, including children, Israel is also ignoring its obligation to provide every detainee with appropriate conditions of imprisonment ensuring his dignity, in accordance with Israeli law⁵⁰ and international law.⁵¹ In addition to the general provisions relating to the conditions of detention of all detainees, international law also establishes guidelines defining special conditions for children who have been deprived of their liberty. These include conditions ensuring their dignity and health; sleeping arrangements in small groups; protection of their right to privacy, among other means by enabling them to hold personal items; and ensuring their right to proper psychological development. All these guidelines are violated in the case of the children held at Ketsiot Prison.

In view of the standard of educational services in the facility, it may be determined that the detention of children in Ketsiot also entails the violation of their right to education. Israeli law recognizes the right of every child present within the borders of the state to educational services on an equal basis, even if he and his parents are present in Israel without permit.⁵² International law also requires that education be provided for all children equally and regardless of their status.⁵³

As for the children of refugees, the Convention Regarding the Rights of Refugees requires that refugee children receive the same elementary education as is enjoyed by the residents of the absorbing country. Concerning post-elementary education, the state is obliged to provide the children of asylum seekers with education on the highest possible level and, in any case, at a level not lower than that enjoyed by other foreign nationals present in the country.⁵⁴ Israel

⁴⁷ Convention on the Rights of the Child, Article 37(b). The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, adopted in Resolution 45/113, establish the same provisions; these rules were adopted by the UN General Assembly on 16 December 1990.

⁴⁸ UNHCR Detention Guidelines, Guideline 6.

⁴⁹ Article 22 of the Convention on the Rights of the Child.

⁵⁰ See, for example, H CJ 4634/04 Physicians for Human Rights v Minister of Internal Security (ruling dated 12 February 2007); H CJ 3278/02 HaMoked Center for the Defence of the Individual v Commander of the Israel Defense Forces in the West Bank Area, *Piskei Din* 57(1) 385, 397-398.

⁵¹ Article 10(1) of the International Convention on Civil and Political Rights.

⁵² H CJ 322/87 Ben Shlomo v Interior Minister, *Piskei Din* 33(3) 353, 356; Circular of the Director-General of the Education Ministry, 5760/10(A) dated 1 June 2000. Regarding this right in American law, see the ruling of the US Supreme Court in *Plyler v Doe*, 457 US 202 (1982).

⁵³ See Article 28 of the Convention on the Rights of the Child, which discusses the right of children to education; and Article 2(1), which discusses the right of every child to enjoy the rights set forth in the convention without any discrimination. See also Article 13 of the International Convention on Economic, Social and Cultural Rights.

⁵⁴ Article 22 of the UN Convention Relating to the Status of Refugees.

provides elementary and high-school education for the children of migrant workers present in Israel without permit, on the same standard as it provides for its own citizens, and it undoubtedly also bears an obligation to provide such education for refugee children. Again, this obligation applies not only to children recognized as refugees, but also to those whose requests for asylum are still being examined.⁵⁵

International law also addresses obligations relating to the quality of education to be provided for children held in detention. Among other requirements, such education is to be provided outside the prison facility, in public schools whenever this is possible and, in any case, by professional teachers and in accordance with curricula that are integrated in the general education system of the state. Particular attention is to be paid to the education of foreign children with special cultural needs; illiterate children of children with learning difficulties are entitled to special education; every child is to enjoy access to a library with suitable reading material; and detained minors must be enabled to participate in activities promoting and protecting their health and self-esteem, nurturing their sense of responsibility, and encouraging skills that will help them in society.⁵⁶ As will be readily appreciated, Israel is violating these obligations in a gross manner.

Israeli law recognizes the importance of providing psycho-social support for detained minors.⁵⁷ International law also recognizes this aspect, establishing that the personnel of an imprisonment facility holding children must include educators, consultants, social workers, psychologists, and psychiatrists in sufficient quantity and employed on a permanent basis; that the personnel of an imprisonment facility holding children must undergo training, including child psychology, child welfare, and international standards regarding human rights and the rights of the child; and that as soon as possible after a child is admitted to a detention facility, he should be interviewed and a psychological and social report prepared in his case.⁵⁸ None of these provisions are maintained at Ketsiot Prison.

⁵⁵ J.C. Hathaway, *The Rights of Refugees under International Law*, (Cambridge University Press, 2005), p. 597.

⁵⁶ United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (footnote 47 above), sections 12, 38, 41, and 59.

⁵⁷ CA 6569/05 Ahmad Abu Aliash v State of Israel (ruling dated 24 July 2006); CA 10118/06 Anonymous v State of Israel (ruling dated 30 April 2007).

⁵⁸ United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (footnote 47 above), sections 27, 81, and 85.

Recommendations

As is clearly shown by the above review of Israel's behavior regarding the detention of asylum seekers and refugees, Israel has systematically trampled on their right to liberty. In so doing, Israel has also violated a series of additional basic rights. In view of this reality, the Refugees' Rights Forum presents the following summarized recommendations:

- As a general rule, refugees and asylum seekers should not be detained, otherwise than in exceptional cases when this is essential in order to secure one of the three primary goals in the UNHCR Guidelines: When detention is required for the purpose of establishing identity, undertaking a preliminary interview, or when the asylum seeker has destroyed his identifying documents or has used forged documents to mislead the authorities of the country in which he intended to request asylum (if these actions were committed deliberately and with the **intention of misleading or defrauding** the authorities). Even in these cases, it must be considered whether the purposes detailed in the guidelines can be secured by other means; detention should be employed solely as a last resort.
- Detention mechanisms established in migration laws should not be used to detain asylum seekers allegedly presenting a danger to public well-being or to state security. Insofar as such suspicions exist, the state must use the same legal means as are applied against its residents.
- A maximum period of one to two weeks should be set for the detention of asylum seekers, in exceptional circumstances, in order to secure one of the goals detailed in the first recommendation, and when these goals cannot be secured otherwise than by detention.
- For as long as the current asylum system remains intact and it is impossible to undertake a preliminary interview with an asylum seeker within a few days of arrest, asylum seekers should not be held in detention pending such an interview. Asylum seekers may be detained for a minimal period in

order to obtain their details and transfer them to a body empowered to interview them and consider their asylum request.

- Every asylum seeker should be issued with a document enabling his immediate identification in the case of contacts with enforcement authorities, in order to prevent protracted questioning or detention in order to clarify the identity of asylum seekers and the state of the asylum proceedings in their case.
- Written guidelines must be established, formalized in procedures or regulations, for police officers and other enforcement personnel, detailing the significance of each document held by asylum seekers and the prohibition against their detention.
- An asylum seeker is not to be considered to be “failing to cooperate” with his deportation merely because he requested asylum in Israel. Neither is any sanction to be imposed on asylum seekers as the result of their asylum request.
- Asylum seekers are not to be subjected to discrimination on the basis of their country of origin, or on the basis of any other distinction, in proceedings relating to the denial of their liberty. Different treatment of asylum seekers who are defined as the subjects of “enemy states” or ‘hostile states” shall be considered discrimination.
- Asylum seekers detained for a short period of time for an essential purpose accruing from one of the above-mentioned grounds shall not be detained under the Prevention of Infiltration Law. In any detention procedure the authorities shall ensure due rights, translation, access to representation, periodic review, and the right of appeal.
- Conditions of release shall not be established that restrict asylum seekers in geographical terms or restrict them to a single employer.
- The detention of asylum seekers shall be solely in appropriate conditions ensuring their dignity, and separate from criminal detainees or prisoners.
- International and domestic assistance organizations, human rights organizations, and the UN High Commissioner for Refugees shall be

allowed access to the places of detention of asylum seekers. This must be ensured by enabling the organizations to visit the imprisonment facilities, as well as by enabling detainees to initiate contact with the organizations by telephone. Detainees are to be given information and contact details in their language regarding the various organizations and the UN High Commissioner for Refugees.

- Detained asylum seekers shall be entitled to receive visitors. Asylum seekers whose relatives are being held separately shall be entitled to meet their detained relatives on a frequent basis.
- Asylum seekers shall not be held in detention, even temporarily, in military bases, and their detention shall be conditional on legal documentation permitting detention.
- Child asylum seekers shall not be detained. When children cross the border they are to be held at a special center established to absorb asylum seekers as detailed in the recommendations of the policy paper on the subject of social and economic rights.

The "Refugees' Rights Forum" consists of the eight Human Rights Organizations active in promoting the rights of refugees and asylum seekers in Israel, as well as implementing activities on their behalf. The aim of the group is to work together to find strategies for dealing with changing realities on the ground and on the governmental level. The Forum was established with the assistance of the *New Israel Fund* in order to develop in-depth policy papers which relate to all aspects of refugee protection and rights, including long terms solutions. The Forum's objective is to achieve legislation which addresses the legal and moral obligations that Israel has committed to by signing the International Refugees Convention. These obligations are based on the values of democracy and human rights.

The Association for Civil Rights in Israel (ACRI) is Israel's oldest and largest human rights organization, and is dedicated to protect the entire spectrum of human rights of all people in Israel, the occupied territories, and all places that human rights are violated by the Israeli authorities. ACRI advances human rights through a wide range of legal, public outreach and educational activities.

The Hotline for Migrant Workers is a non governmental, not for profit association, dedicated to protecting the rights of migrant workers and refugees and eliminating human trafficking in Israel. Our activities include providing information, offering consultation services and legal representation, heightening public awareness, and promoting public policy that eliminates modern slavery in Israel.

Physicians for Human Rights-Israel (PHR-IL), established in 1988, is committed to ensuring human rights, and the right to health in particular, for all individuals living in Israel and the Occupied Palestinian Territories. PHR-Israel promotes the equal right to health through advocacy work, legal action, lobby work, awareness raising and publications. In addition PHR-Israel provides medical aid through volunteer clinics.

The Refugee Right Clinic is a legal aid and advocacy program devoted solely to refugees. Situated at the Tel Aviv University Buchmann faculty of Law, the Clinic is devoted to the teaching, researching and practicing of refugee law. Operating since October 2003, the Clinic provides free legal aid to dozens of asylum seekers and refugees every year in a variety of issues. In addition, the Clinic advocates the implementation of a fair asylum policy in Israel.

Amnesty International is an international organization aimed at preventing human rights abuses. ***Amnesty Israel*** is active in ensuring the rights of asylum seekers and refugees in Israel by campaigning on the public, parliamentary and governmental levels. The organization works to educate the public and decision makers in Israel in order to make them stand up to their obligations.

ASSAF – Aid Organization for refugees and asylum seekers was founded in the beginning of 2007 in order to fill a gap in psychosocial assistance to refugees and asylum seekers in Israel. ASSAF provides emergency humanitarian assistance, psychosocial assistance and community empowerment.

The African Refugee Development Center (ARDC) founded in 2004, is a registered non-profit organization established to assist, support and empower the African refugees and asylum seekers in Israel and to promote a humane and fair Israeli asylum policy. ***ARDC*** represents refugee communities from close to ten countries from East, Central and West Africa. ***ARDC*** divides its work between humanitarian and direct service provision, individual casework, advocacy and work to enhance community building among refugees.

Kav LaOved (Worker's Hotline) is a nonprofit non governmental organization committed to protecting the rights of disadvantaged workers employed in Israel and by Israelis in the Occupied Territories, including Palestinians, migrant workers, subcontracted workers and new immigrants. Kav LaOved is committed to principles of democracy, equality and international law concerning human and social rights.

Taiwan

Detention of Migrants In An Irregular Situation in Taiwan

Written by Fr. Peter O'Neill – Executive Director
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Introduction

As of the end of December 2011 there were 425,660 migrant workers in Taiwan. The Taiwan government has a very strict managed migration policy. Migrant workers can only come from Indonesia (175,409), Philippines (82,841), Thailand (71,763) and Vietnam (95,643). Since the end of 2001, the number of female migrant workers in Taiwan has outnumbered the number of male migrant workers. At present there are 260,004 (61%) female migrant workers and 165,656 (39%) male migrant workers.

Migrant workers work in the following sectors:

Manufacturing: 215,271 (50.57%)

Caretakers: 195,726 (45.98%)

Fishermen: 8,670 (2.04%)

Construction: 3,865 (0.91%)

Domestic workers: 2,128 (0.50%)

Migrant Workers in an Irregular Situation

In 1997 the number of migrant workers who entered an irregular situation was 5,508⁷. By the end of November 2011, the number of migrant workers in an irregular situation had increased to 33,202; these workers come from Indonesia (14,132), Vietnam (15,756), the Philippines (2,084), and Thailand (1,230). Previously, the Government of Taiwan published disaggregated statistics of migrant workers in an irregular situation according to gender. These statistics are no longer published. If these statistics were published, they would likely show that the majority of migrant workers in an irregular situation are women who worked as caretakers or domestic workers.

If we take into consideration the data the Government of Taiwan does publish, i.e. gender statistics for each nationality, and we use the same percentage figures for migrant workers in an irregular situation as we do for documented migrant workers, we can estimate that ~65% (21,581) of migrant workers in an irregular situation are women.

Before considering the detention regime in Taiwan, it is necessary to explore the reasons for the dramatic increases in the numbers of migrants in irregular situations. Indeed, it is also important to look at the data on irregularity on a country-by-country basis; why are 16.5% of Vietnamese and 8.1% of Indonesian migrant workers in an irregular situation, compared to only 2.5% of Filipino workers and 1.7% of Thai workers?

Vietnamese migrant workers pay the highest placement fees—as high as US\$8,000—compared to Indonesian, Filipino, and Thai migrant workers who pay as much as US\$5,000.⁸) If Vietnamese migrant workers are not given enough work, or if their rate of pay is too low to pay their debts at home, they have no choice but to enter an irregular situation so they can earn more money to pay off their debts.

⁷ Taiwan Council of Labour Affairs

⁸ Note that the Taiwan government's suggested placement fee is one month's salary – US\$626.

As of January 1, 2012 the Taiwan minimum wage is NT\$18,780 (US\$626). The following deductions are taken from the migrant worker's monthly salary:

- broker's service fee (1st year NT\$1,800; 2nd year NT\$1,700; 3rd year NT\$1,500);
- food and accommodation – maximum NT\$5,000 (average NT\$3,000);
- tax – NT\$1,127;
- health and labor insurance – NT\$500;
- forced savings – NT\$3,000

This totals NT\$9,427 (US\$314). Thus, migrant workers receive only half of their monthly salary as cash in hand. With no overtime pay, sending no money home to the family, and having no money for personal use, it will take a Vietnamese migrant worker ~25.5 months to repay his/her placement fee.

Migrant workers come to Taiwan on a 2-year contract, which can be extended to a third year only if the employer agrees. After 3 years, the migrant worker must leave the country and pay another exorbitant placement fee before returning on another 2-year contract. Since January 19, 2012 migrant workers can work in Taiwan for a maximum of 12 years. However, every 3 years they must leave the country. This system ensures that migrant workers are effectively slaves, indentured to their brokers and employers for 12 years.

In the case of Indonesia, for caretakers and domestic workers it is the Indonesian Government's policy that these workers must take out a bank loan at 20% interest to pay the placement fee in advance before leaving for Taiwan. The loan and interest totals about NT\$100,000 (US\$3,333), and approximately NT\$8,400 (US\$280) is deducted from the worker's salary each month for the first year.

Caretakers and domestic workers are not covered by the Taiwan Labour Standards Law, and therefore do not receive the minimum wage. Their monthly salary still stands at NT\$15,840 (US\$528). This has not increased since 1997. The following deductions are taken from the worker's monthly salary:

- broker's service fee (1st year NT\$1,800; 2nd year NT\$1,700; 3rd year NT\$1,500);
- tax – NT\$950;
- health insurance – NT\$240

Including the bank loan, Indonesian caretakers and domestic workers in their first year have a total monthly deduction of NT\$11,390 (NT\$380). This leaves only NT\$4,450 (US\$148) cash on hand each month, a miserable 28% of the monthly salary. 84.5% of Indonesian migrant workers are caretakers and domestic workers. If they are victims of abuse in the workplace, many of them choose to enter an irregular situation so they can escape the abuse and earn more money.

For Indonesian fishermen⁹, is also the Indonesian government's policy that Indonesian fishermen must take out a bank loan at 20% interest to pay the placement fee in advance before leaving for Taiwan. The loan and interest totals about NT\$100,000 (US\$3,333). Approximately NT\$8,400 (US\$280) is deducted from the worker's salary each month for the first year. Besides taking out the compulsory loan, many fishermen also pay some placement fee in cash ranging from NT\$10,000 (US\$333) to NT\$40,000 (US\$1,333).

⁹ Of the 8,640 migrant fishermen in Taiwan, 82% (7,134) are Indonesian.

Migrant fishermen are covered by the Taiwan Labour Standards Law and receive the minimum wage. Despite the fact that migrant fishermen live on the fishing boat and eat the fish they catch, the Taiwan Government allows the employer to deduct a monthly food and accommodation fee of NT\$2,500 (US\$83). Other deductions taken from the fisherman's monthly salary are:

- broker's service fee (1st year NT\$1,800; 2nd year NT\$1,700; 3rd year NT\$1,500);
- tax – NT\$1,127;
- health insurance – NT\$240

Including the bank loan, an Indonesian fisherman in his first year has a total monthly deduction of NT\$14,067 (NT\$470). This leaves only NT\$4,713 (US\$157) cash on hand each month, or 25% of the monthly salary.

Migrant fishermen work on average 18 hours per day with no day off. According to the labour law they are to work 42 hours per week. They are treated like slaves and receive no overtime pay even for working on their days off. Previously, the largest numbers of migrant fishermen were from Vietnam. Since many of them entered an irregular situation, the Taiwan Government has imposed a ban on Vietnamese fishermen as of May 14, 2004.

Many Indonesian fishermen have entered an irregular situation. We don't know exactly how many, because the Taiwan Government does not publish these statistics. If the Taiwan government puts a ban on migrant fishermen the whole fishing industry would collapse. The government is aware of these notorious abuses and has done nothing to protect the human rights of migrant fishermen. It is scandalous.

The Taiwan government is doing little to change the unjust and scrupulous broker system that places migrant workers in indentured bondage before leaving their home country. The migrant workers' human rights are blatantly abused for all to see. The United Nations and ILO are doing nothing to monitor these abuses, because Taiwan is not a member of these two international bodies.

Justification & Reasons for Detention

Migrant workers in an irregular situation who surrender to the Taiwan National Immigration Agency (NIA) and have with them a valid passport, US\$330 for their penalty, and US\$270 for their plane ticket, are not held in detention centers. This is the government's incentive for migrant workers in an irregular situation to surrender to the NIA. They can also purchase own plane tickets and go themselves to the airport for departure. If their passport has expired, they must be detained in a detention center for 2-3 weeks while the staff of the detention center applies for a travel document from the sending government and books the plane ticket. The migrant worker is driven to the airport by the detention centre staff.

Migrant workers in an irregular situation who are arrested by police must be detained at a detention centre for overstaying their visa and violating the immigration law. The detention centre staff helps the worker to get the passport from the legal employer or broker. If the worker has money to pay the penalty and plane ticket, they can return home within 2-3 weeks. If the worker does not have enough money, s/he is detained until he/she can pay the penalty and plane ticket. If a migrant worker has been detained for 4 months and does not have enough money to pay the penalty and plane ticket, the Indonesian, Philippine, and Thai governments will assist the worker. The Vietnamese government, however, does not provide funds in these cases.

Migrant workers in an irregular situation who have been rescued by the police and are suspected victims of trafficking can be detained in a detention center for up to one month while the arresting office and/or prosecutor collect enough evidence to determine if the worker is a victim of trafficking. Many victims of trafficking are recognized within one to seven days.

If a migrant worker is recognized as a victim of trafficking s/he is transferred to an NGO shelter. The shelter assists the worker in obtaining a temporary resident visa and work permit so s/he can work while serving as a witness in court for the state. The Taiwan government gives a daily shelter subsidy to the NGO, which covers most of the sheltering expenses. If the arresting officer and/or prosecutor determine that the migrant worker is not a victim of trafficking, the worker needs to pay the penalty and plane ticket cost, and can return home.

Smuggled persons are held in detention centers. They are sued by the state for violating the Taiwan immigration law. Cases can take up to 6 months in court. When the case is resolved, they can return home after paying the penalty and plane ticket. Smuggled persons from China may have to wait an extra 6 months until the Chinese government sends a boat to the Taiwan island of Matzu, which is just off the southeast coast of China. Since workers come to Taiwan by boat, they have to return to China by boat.

Detention Regimes, conditions and application of legal safeguards

The National Immigration Agency (NIA) has 7 detention centres in Taiwan for foreigners. Since the early 1990s, the Taiwan Government has allowed NGOs to visit the detention centers to provide counseling and legal aid for the detained migrant workers, and to organize activities for them such as Chinese and English class, craft making, cultural, and religious activities. NGOs have a good working relationship with the directors of all detention centres on the island.

The Taiwan Legal Aid Foundation provides free lawyers for any detained migrant worker who needs legal assistance. It was founded in July 2004 and has 19 branch offices throughout Taiwan. The Foundation is an NGO of over 2,000 lawyers and receives funding from the Judicial Yuan, related government entities, and community groups.

Since 1995, I have been visiting detention centers on a weekly basis to counsel and offer legal assistance to detained migrant workers. The conditions of the detention centers have improved greatly over these years. They are well maintained with good hygienic facilities. The detainees are allowed to exercise twice a week and are taken to the hospital whenever they are sick. Doctors visit the detention centers once a week.

In January 2007, the Hsinchu detention center began to detain migrants in an irregular situation. I was invited to give training to the detention center staff on human trafficking and smuggling. In May that year, the HMISC staff was invited to visit the detainees once a week.

Previously, many migrant workers with court cases were detained for more than one year while their cases lingered in court. Common misdemeanors included the use of forged marriage documents, fake passports, and fake names. NGOs lobbied the government to have these cases expedited in court. In December 2011 the government enacted a new law whereby foreigners cannot be detained for more than 4 months in a detention centre. The government is hoping this will put pressure on the already overloaded court system to finish the cases within a 4 month time period. If after 4 months a case is still ongoing, the foreigner must be allowed to leave the detention center and stay with a relative, friend, or at an NGO shelter. Time will tell if this new law will be effective in expediting verdicts.

Special needs and protection concerns of vulnerable migrants

Migrant workers in an irregular situation with young children cannot be held in detention centers. They can remain with relatives, friends or stay in an NGO shelter while their documents and their child's documents are being processed. Migrant women who are more than 6 months pregnant cannot be detained. They can stay at NGO shelters while their documents are being processed for departure home. Migrant workers in an irregular situation who are victims of an occupational accident and cannot look after themselves can stay in an NGO shelter while their papers are being processed for departure home, and the NGO and LAF assist the worker to file a case against culpable employers for compensation.

Recommended changes

Eradicate penalty for entering an irregular situation

In the 1990s the penalty for entering an irregular situation was NT\$300 (US\$10). About 10 years ago the government increased the penalty to a maximum of NT\$10,000 (US\$330) for any migrant worker who has been in an irregular situation for more than 3 months (for less than 3 months the penalty varies depending on the number of days in an irregular situation). The government said this increase will deter migrant workers from entering an irregular situation. It has had no deterring effect at all. The number of migrant workers entering an irregular situation is increasing everywhere. By increasing the penalty, the government itself victimized the most vulnerable group of migrant workers and used it as a means of gaining more money from the workers.

NGOs have recommended that NIA eradicate the penalty or at least reduce it to the original penalty of NT\$300 (US\$). The NIA is not willing to do this. It costs the NIA NT\$100 (US\$3) to feed one detained migrant worker each day. If a migrant worker doesn't have money to pay the penalty, they are detained for the maximum of 4 months and then can leave the detention center. However, they cannot leave the country until the penalty is paid. The NIA has to use NT\$12,000 (US\$400) to feed one detained migrant worker for 4 months. This is more than the penalty. Where is the logic in that?

Implement the Irish Government's Bridging Visa System

In the last few months, HMISC's Indonesian case workers have come across 2 cases of Indonesian caretakers in the Hsinchu detention center who were reported to the NIA for entering an irregular situation at no fault of their own. For one, the broker did not assist her in renewing her passport, and so both her passport and legal residency expired. HMISC arranged a lawyer to assist her, but she chose to accept the small compensation from the broker and return home to Indonesia. The other case is still under investigation. When the ward she was caring for died, she thought her broker legally transferred her to a new employer, which was not the case.

Last year due to the arduous lobbying of the Migrants Rights Center Ireland, the Irish government introduced what is called the bridging visa, which allows migrant workers who have entered an irregular situation at no fault of their own to apply to have their regular status reinstated.

Some migrant workers enter an irregular situation because of the negligence of either their employer or broker in not following government procedures. In such circumstances the migrant worker should not be criminalized.

Migrant workers in an irregular situation with Taiwanese partners and children

In November 2011, a Filipina migrant worker who had been in an irregular situation for 13 years was arrested and detained in the Hsinchu detention centre. The HMISC's Filipino caseworker counseled the lady and found out she had been living with her Taiwanese partner for 13 years and they had two children aged 12 and 10. I contacted the arresting officer asking him to allow the mother to return home to her children while her papers were processed to return to the Philippines so she could legally marry her partner and return to Taiwan on a spouse visa. I was informed that it would take a couple of weeks for the NIA to decide if they would issue the mother a temporary visa so she could return to her children. The case dragged on and was going nowhere, so I contacted the NIA director's secretary. After being patient for 6 weeks and making my third call to the secretary, I informed him the Taiwan government was violating Article 3 of the UN Convention on the Rights of the Child. That afternoon the Filipino mother was given a 6-month temporary visa and returned to her children.

With this case as a precedent, the NIA should not detain migrant workers in an irregular situation who have Taiwanese partners and children.

Follow-up of cases in detention centers

One year ago the NIA changed its policy, and now it is the responsibility of the detention center staff to follow-up on the cases of migrant workers in detention. (Previously it was the responsibility of the arresting officer.) This new policy has resulted in a more efficient follow-up procedure. However, improvements are still needed. The NIA needs to provide more trained staff at detention centers to do this work, otherwise there will still be cases that fall through the cracks. At the Hsinchu detention center alone, which is one of the smaller detention centers, there can be up to 200 women and 80 men detained with only 6 staff following up the cases. HMISC staff (2 Indonesian cases workers; 2 Vietnamese case workers; 1 Filipino case worker; and director) assists in following up the cases with the arresting officers, courts, legal employers, etc.

Detained migrant workers who have unpaid salaries and other money claims with their legal employers are allowed to call the Council of Labor Affairs' free hotline to seek assistance from the bilingual staff to get their unpaid salaries, tax refunds, and any other money claims. From the reports of the workers, the hotline staff is quite efficient in helping them get their money.

Mental health of detained migrant workers

At the Hsinchu detention center, female migrant workers attend the weekly Chinese, English, and craft classes organized by the Catholic Church. These activities are good for their mental health and stability. Unfortunately the male migrant workers are not interested in such activities. They only have 2 exercise activities a week. This is not enough to release their stress and anxieties. I have asked if HMISC can arrange one exercise activity a week but it has yet to be approved. More exercise for the men would be good for their mental health and stability.

Male and female detainees can attend the religious and cultural activities organized by NGOs such as Ramadan, Thai New Year, Christmas, Lunar New Year, Mother's Day, etc. These activities allow the workers to have fun and relax for at least 2 hours.

Cases in favor of migrant workers

In December 2008 HMISC staff came across 3 Indonesian caretakers detained at the Hsinchu detention center who surrendered to the Hsinchu City NIA because of abuse in their workplace. They were forced by their legal employer to work in his restaurant for 16-18 hours a day with no day off. After working for 6 months they wanted to go home. HMISC helped the workers to be recognized by their NIA officer and prosecutor as victims of trafficking. They were transferred to the HMISC shelter and HMISC assisted them in transferring to new employers.

HMISC used this case to educate the staff of the detention center and NIA officers that documented migrant workers can also be victims of human trafficking. It was the first case whereby documented migrant workers were recognized as victims of trafficking. The employer was sued by the prosecutor for trafficking but was found not guilty by the judge. The workers were allowed to continue to work until the end of their 3-year contracts.

In 2009 HMISC recognized 8 Indonesian caretakers detained in the Hsinchu detention center as victims of trafficking. They had all entered an irregular situation because of abuse in the work place. When HMISC brought these cases to the awareness of the detention center staff they too recognized the workers as victims of trafficking. However, their arresting officers did not recognize them as victims of trafficking so they were deported.

NIA officers and prosecutors are now better trained at recognizing victims of human trafficking. The victims are more speedily transferred to NGOs for sheltering. All migrant workers who left their legal place of employment and entered an irregular situation must leave Taiwan when they either surrender to the police or are arrested by the police.

Conclusion

The NIA is very welcoming of NGOs to enter detention centers and assist the detained migrant workers with counseling and legal aid, as well as to organize activities for the workers. Since we enter the detention centers every week we have regular open communication with the directors and staff of the detention centers. If we hear problems from the workers we discuss them with the senior staff immediately and the problems are handled appropriately. NGOs and detention center staff with much effort over many years have built up relationships of mutual respect, which ensures that migrant workers in detention are treated with respect and dignity.

There are still many problems to be worked on in Taiwan. In 1997 2.2% of the total number of migrant workers entered an irregular situation during that year. Up until November 2011, 3.6% of the total number of migrant workers entered an irregular situation in 2011. The Taiwan government refuses to do any research or analysis on why this is so. It has become an endless cycle of systematic abuse and incompetence on behalf of the Taiwan government. Until migrant domestic workers and caretakers come under the protection of a human rights based law, and the corrupt brokers system and indentured slavery is abolished, the number of migrant workers forced to enter an irregular situation will continue to increase and the detention centers will be constantly strained to detain those arrested by the police.

Middle East & Gulf Countries

Migrants Detained in the Gulf

Many migrant workers from South and Southeast Asia work in the Gulf countries, where exit is controlled and where mobility and permission to work are tied to the employer through the *Kafala* sponsorship system. Not only does this migration management framework allow employers/sponsors to exert enormous control over their foreign employees, it also significantly increases the likelihood that migrants will fall into situations of irregularity through no fault of their own. Should an employer forget (or refuse) to renew his/her employee's work permit, or should an employee flee an untenable situation of exploitation or abuse, irregularity is inevitable for that worker. Due to the fear of being reported as having 'absconded,' which could result in detention and deportation, most workers continue to work under exploitative and unequal work situations—at times, this too can seem like a form of detention. Indeed, whether or not it is the migrant worker's fault that he/she has 'overstayed' his/her authorized period within the country, financial penalties are levied exclusively on the worker prior to departure or deportation.

In many cases, undocumented migrants live underground, in fear of being identified by the authorities and subject to detention and deportation proceedings. For others, because of the *Kafala* system, detention and deportation is the only way they can leave the country. This situation is drawn out in the following paper by Center for Migrant Advocacy.

**Detention of Overseas Filipino Workers in the Kingdom of Saudi
Arabia:
Overview and Case Studies**

January, 2012

Center for Migrant Advocacy

The Center for Migrant Advocacy (CMA) is an advocacy group that promotes the rights of Overseas Filipinos Workers (OFWs) and their families. The Center engages in policy advocacy, information dissemination, networking, capability-building, and direct assistance. Based on our research and work, we have compiled the following overview of the situation faced by OFWs in detention the Kingdom of Saudi Arabia. Saudi Arabia is a particularly relevant case study, as it is the number one destination country for OFWs, while also being the country where workers face some of the greatest challenges and struggles.

This overview is then followed by seven case summaries drawn from the work of CMA staff to illustrate the faces of OFW detention in Saudi and some related policy issues. The first group of cases are specific to the detention of undocumented OFWs, and the second group of cases showcase situations of detention more generally.

Part I: Overview of Overseas Filipino Workers and Detention in Saudi Arabia

A Profile of Overseas Filipino Workers in the Kingdom of Saudi Arabia

The Kingdom of Saudi Arabia is home to more than 1 million overseas Filipino workers (OFWs).¹¹ Of these, an estimated 94,896 are irregular or undocumented migrants.¹² OFWs work in the construction, oil, gas, and petrochemical industries. Many are also working as domestic workers. For almost four decades of Filipino labor migration, Saudi has remained the top destination of OFWs. It also ranks fourth among the destinations of female domestic workers.¹³

Within the OFW population in Saudi, workers can largely be divided into two broad categories: professionals and domestic workers. Though professionals make up approximately 70% of the population, domestic workers experience the majority of the difficulties. As recounted to the Committee on Overseas Workers' Affairs (COWA) by Antonio Villamor, former Philippine ambassador to the country, "70 per cent of Filipinos there are professionals or skilled workers and 30 per cent are low-skilled workers. However, the proportions are reversed when it comes to difficulties and problems, with low-skilled workers, including domestic workers, accounting for about 70 per cent of these and professionals for 30 per cent."¹⁴ The precise breakdown of OFWs in Saudi in terms of status, gender, and profession is outlined in Appendix A.

Government Agencies Supporting OFWs in Saudi: The Philippine government has an Embassy and a labour office in Riyadh, and a consulate and a labour office in Jeddah, as well as an informal labour office in Al Khobar. The labour offices run Filipino Workers Resource Centers, which also function as shelters to distressed female migrants, in each of these cities. The effectiveness of services offered at the Embassy, consulate, and labour offices is assessed throughout.

Detention of OFWs in the Kingdom of Saudi Arabia: Overview

As of December 2010, there were at least 590 Filipinos in detention in Riyadh and Jeddah.¹⁵ This includes OFWs in detention centers, under house arrest or with pending cases in court. This estimate is on the low end, however, since a 2011 report by the Committee on Overseas' Workers Affairs (COWA), *The Condition of Overseas Filipino Workers in Saudi Arabia*, suggests there were 849 Filipinos in detention in Jeddah and Riyadh as of January 2011.¹⁶ A table is included in Appendix B outlining the numerical breakdown of detention cases in Riyadh, excluding Jeddah to provide a profile of detention cases in Saudi Arabia.

Types of Detention Cases:

Cases of detention and or deportation of OFWs in Saudi Arabia may be divided into three broad categories. These are: a) police cases b) labour cases; c) welfare cases.

Police Cases: In police cases, OFWs are detained for committing a crime or violating a law of Saudi Arabia. Detention because of one's irregular status may fall into this category. Other reasons for detention in police cases include blasphemy, immorality, prostitution, theft, drug selling or using, pork selling or using, wine selling or using, homosexuality, harboring of a run-away, illegal assembly, murder, rape, etc.¹⁷ While the Philippine government actively intervenes in death row cases, there is criticism that they are not as actively involved with other cases involving detention.

Labour Cases: Labour cases are those that involve a contract violation on the part of the employer or migrant worker. Violations include non-payment of salary or overtime wages, non-provision of a rest-period, or a dispute over identity and working documents (which the employer often illegally retains for the

¹¹ Department of Labour and Employment (2011). *Report to Congress: Mid-Year Report of the Philippine Overseas Labor Offices, January – June 2011*. Manila.

¹² See note 1.

¹³ Deployment statistics from Philippine Overseas Employment Administration (POEA). www.poea.gov.ph

¹⁴ Committee on Overseas Workers Affairs (2011). *The Condition of Overseas Filipino Workers in Saudi Arabia. Jan 9-13, 2011*.

¹⁵ Department of Foreign Affairs, Office of the Undersecretary for Migrant Workers' Affairs (2010). *Report to Congress: Semi Annual Report of Foreign Service Posts on Assistance to Nationals, July – December 2010*. Manila.

¹⁶ See note 4.

¹⁷ Joseph Henry Espiritu. *The V-Team Kingdom of Saudi Arabia: On Migration handling of distress cases (detention and deportation)*. (2007). Retrieved from <<http://patnubay.com/articles/03.V-Team-Kingdom-of-Saudi-Arabia-on-Migration-Detention-and-Deportation.pdf>>

duration of the contract, but which are also necessary for repatriation of OFWs). In worst case scenarios, labour cases result in the detention of the worker, when the employer brings a separate charge against the worker (such as theft) in retaliation to a worker filing a labour case with the Philippine Overseas Labour Office (POLO).¹⁸ Such scenarios were encountered by CMA in the Beauticians case and the Bobby case, summarized below under Case Studies.

Welfare Cases: Welfare cases include those that involve repatriation for medical reasons, such as physical disability, or repatriation of remains. Cases that involve claiming benefits that an OFW should have received from GOSI, OWWA, Philhealth, etc. also fall into this category. These cases do not involve detention, but highlight problems related to time delays and difficulties experienced at the POLO. As a result of these difficulties, many OFWs attempt repatriation on humanitarian grounds through the Saudi Governor's Office, as opposed to through the POLO (even if the primary issue is a labour issue). An example of such a scenario is outlined under Case Studies, in the Bobby case.

Two Sides of the Problem:

The Saudi Legal System - Detention and Violations of Criminal Procedure: The Law of Criminal Procedure should be followed in all cases of detention.¹⁹ Despite this, procedural violations are common in Saudi Arabia.²⁰ Many foreign workers have been detained for prolonged periods and subjected to ill-treatment.²¹ As the International Federation of Human Rights reported in 2003, migrant workers in Saudi Arabia "are often deprived of the right to defense and of access to their consulate. Moreover, they often remain in detention without knowing the charges laid against them,"²² and, once arrested, migrant workers have regularly been tricked into signing confession in Arabic, a language they may not understand. Such situations confer on the detention of migrants an arbitrary character, and are breaches of their right to security.²³ These breaches are discriminatory, and involve the exploitation and perpetuation of their vulnerability. CMA has encountered a number of cases involving arbitrary detention, violation of criminal procedure, and discrimination, as seen in the Case Studies below.

Neglect by the Philippine Embassy and Philippine Overseas Labour Office (POLO): Though a significant number of the problems experienced by OFWs in detention are related to systemic issues within the Saudi legal system, better intervention by the Philippine government could help mitigate or prevent many of the violations. Often migrants are unaware of their rights related to detention, and some Embassy or consular officers are inadequately enforcing these rights on behalf of OFWs.²⁴ Better knowledge of criminal procedure is needed among migrant workers and among Embassy and consular officials in order to stem these violations. Sufficient legal support is also needed, and lawyers should be provided to migrants in detention as a matter of course. It is the responsibility of embassies and consulates to ensure that proper procedure is followed in every case involving a Filipino.

Detention and Deportation of Migrants in an Irregular Situation:

The Al Khandara Bridge and problems with the Kafala system:

For some OFWs seeking to leave Saudi Arabia, detention is sought out as a ticket home. This is because for many undocumented OFWs detention leading to deportation is their only way back to the Philippines. Seeking this road out, hundreds of runaways and undocumented workers congregate under the Al Khandara Bridge, a rumored easy exit-point, waiting to be picked up by the immigration police for processing and deportation. Some have been waiting to be picked up for years.²⁵

The Al Khandara Bridge is a rumored easy exit-point because, in the past, amnesty was given to Muslims who had come to Saudi to do the Umrah and Hajj and had let their visas expire. Filipinos who absconded made use of this practice as a means to repatriation. They faked their identities, pretending to be Muslim pilgrims, in order to get amnesty and repatriation. This was somewhat effective until 2007, when the government implemented mandatory fingerprinting for OFWs. Now those who go to the Al Khandara

¹⁸ See note 7.

¹⁹ The Royal Embassy of Saudi Arabia. *Law of Criminal Procedure [2001]*. Retrieved from <<http://www.saudiembassy.net/about/country-information/laws/CriminalProcedures2001-1of3.aspx>>

²⁰ Human Rights Watch (2011). *World Report 2011: Saudi Arabia*. Retrieved from <<http://www.hrw.org/world-report-2011/saudi-arabia>>

²¹ International Federation of Human Rights (2003). *Migrant Workers in Saudi Arabia*. Retrieved from <<http://www.fidh.org/IMG/pdf/sa0103a.pdf>>

²² See note 11.

²³ See note 11.

²⁴ See note 7.

²⁵ Politzer, Malia. *For Stranded Migrants a jail stint is the first step towards freedom*. Fri, May 2011. Livemint.com.

Bridge generally have to undergo the normal deportation process, finding that they derive no benefit from being transported to the bridge.

Migrants come to the bridge from all over Saudi Arabia, and often pay huge amounts of money to fixers to transport them to Jeddah. 2000 workers or more are transported to Jeddah each year for 2000 to 5000 SR per head. That is already 4 million to 10 million SR being generated each year by this underground market.²⁶

This practice has been exposed and publicized, yet the Philippine government, embassy and consulate are not clear in explaining to runaway workers that there is no such thing as a backdoor exit. Most of the fixers who take advantage of thousands of Filipinos can be found outside the Philippine Embassy and POLO offices.

Part of the problem is with the Kafala immigration system, which governs the recruitment of foreign employees in many West Asian countries. Under this system, employees cannot leave the country without a “release paper” or exit visa signed by their employer. However by the time an OFW is looking to be repatriated, they have often left their original employer. Some have run away from abusive situations, thereby becoming undocumented workers, and others have been traded or sold by their original employer to another employer, in a form of human trafficking. Regardless of how they became undocumented, for employees without a signed release paper, detention and deportation is often the only way out of the country.²⁷

Deportation Procedures and Detention Conditions for Undocumented Migrants:

If an undocumented migrant is caught by the authorities he/she will be placed in administrative detention in a Jawasat (deportation center) and will wait a maximum of 45 days.²⁸ While the worker waits, the immigration police process the case - establishing their identity and making sure they do not have any debts to their names or charges against them.²⁹

Located across from the Al Kandara Bridge, the immigration detention facility in Jeddah is overcrowded, with approximately 18 barracks that hold 50-100 people each. The number of people waiting to be detained far outnumbers what the center can handle. Consequently some people wait under the bridge months, or even years, before being picked up for processing by the immigration police.³⁰

Part II: CMA cases related to detention of OFWs in Saudi Arabia

The Center for Migrant Advocacy (CMA) has assisted OFWs facing detention in the Kingdom Saudi Arabia - advocating on their behalf and supporting them in their interactions with the Philippine Embassy and with other relevant parties. These cases can be divided into two categories: 1) those facing detention by the immigration police because of their irregular status, and 2) those facing detention for other breaches of Saudi law. Below, examples of both types of cases are summarized and lessons to be taken from them are outlined.

Detention of Migrants in an Irregular Situation:

1. **Bobby³¹: POLO neglect and the benefits of repatriation through the Saudi Governor’s Office on humanitarian grounds**

Summary:

Bobby was an undocumented migrant worker, seeking the help of the Philippine Overseas Labour Office (POLO) in securing unpaid wages from his employer and repatriation. Bobby arrived in Saudi Arabia in May 1997, having entered into a two year contract as a backhoe operator. His employer did not pay his salary and did not send him back to the Philippines after the completion of his contract. Consequently, Bobby filed a case with the Philippine Overseas Labour Office (POLO), who held a hearing and ordered

²⁶ From correspondence with Mr. Joseph Henry B. Espirite, migrant rights advocate with Patnubay.

²⁷ See note 15.

²⁸ See note 7.

²⁹ Migrant Forum in Asia (2011). *Migrant Workers in an Irregular Situation in Saudi Arabia*. Quezon City: MFA.

³⁰ See note 19.

³¹ Note: name has been change to protect confidentiality.

his employer to pay the unpaid salaries and process his exit visa and plane ticket. The unpaid salaries amounted to 24,000 SR. The employer agreed to the terms of the decision, but requested to pay the salary in three installments. The employer made a first payment of 5,000 SR, but never paid the subsequent amounts. Consequently, he still owed Bobby 19,000 SR, as per the amount agreed to at the POLO.

His employer also did not process his repatriation. As a result of the expiration of the contract, and the employer's keeping his travel documents, Bobby became undocumented and had to look for a job illegally in order to survive. He asked for the help of the Philippine embassy and they promised they would help him get the unpaid salaries from his former employer and assist with his repatriation. He kept in contact with several Embassy officials, however they continued to make the same empty promises. Bobby waited years for assistance in securing payment of his owed salaries, but to no avail.

In April 2011, Bobby suffered a stroke and became paralyzed in half of his body. He wanted help with repatriation on humanitarian grounds through the Saudi Governor's Office so that he may return to the Philippines to be with his family. For eight months he again asked the POLO for assistance. Again POLO was unhelpful. He was passed from one labour officer to another, and finally even to the POLO driver. When POLO did contact the Governor's Office on his behalf for assistance with repatriation, they did not specify his health situation, which was the ground on which he was seeking repatriation.

Frustrated with POLO, Bobby contacted a group of volunteers who work with OFWs for help. A local advocate contacted the Saudi Governor's Office, and immediately the Governor's Office called the former employer in for a meeting. Once the employer had been contacted by the Saudi Labour Office, the employer contacted POLO themselves, suggesting that POLO had not made sustained attempts to contact the employer. POLO should have contacted the employer and the Governor's Office, without Bobby having to wait 8 months.

A Common Employer Response: Once the employer was called in by the Governor's Office, they accused Bobby of stealing heavy equipment. This is a common response of employers to labour disputes. Not wanting to pay unpaid salaries, the employer accuses the former employee of theft and files a case against them. In a worst case scenario, this can lead to the arrest of the OFW.

In this case, the volunteer team spoke to the case officer at the Governor's office about the allegations and explained that they could not be true, as there was nothing about a theft in the court decision regarding unpaid salaries. Moreover, the law on criminal procedure specifies that a theft must be reported within 24 hours of its occurrence. If a theft had occurred within 24 hours, it would be in the court decision. Even if there was a police report dated after the decision, it would have to be from a false allegation since Bobby had already stopped working for the employer by that point in time. Therefore the allegations had to be false.

The emara case officer agreed with the volunteer team supporting Bobby, and reprimanded the employer representative for threatening to go to someone more influential. In early January the Saudi case officer said he would assist with Bobby's repatriation on humanitarian grounds as soon as possible.

Analysis:

POLO Neglect: POLO did not assist Bobby adequately in securing unpaid wages from his former employer or with repatriation on humanitarian grounds through the Saudi Governor's Office. He was passed from officer to officer, including the POLO driver, and given empty promises for 8 months after his injury, and for years before that. It was not until a team of volunteers got involved, and contacted the Governor's Office directly, that the case was expedited and his request for repatriation on humanitarian grounds was processed.

Welfare Complaints Expedite Repatriation: This case also highlights difficulties that OFWs have when they attempt to go to the POLO for assistance with repatriation. The delays they encounter are such that many OFWs have taken to contacting the Saudi Governor's Office directly, as Bobby eventually did, and seeking repatriation on humanitarian grounds, instead of trying to have the POLO assist them. This means that complaints are being processed as welfare complaints instead of labour complaints. Many OFWs have found that the Governor's Office is more responsive than their own Labour Office. This is troubling and problematic, especially for OFWs whose complaints fall solely within the parameters of a

labour complaint. It is recommended that POLO improves the assistance offered to OFWs in processing labour complaints and with repatriation.

2. **The Beauticians Case: Inaccessible shelter lead to desperate measures**

Summary:

Three beauticians were working as OFWs in Saudi Arabia. Two of them had not been paid their salaries for one year, and the third had not been paid for two months. After planning for their escape, they ran away from their employer in December, 2011 and filed a labour case with the Saudi Labour Office. After they filed the case against their employer for unpaid salaries, they went to the Philippine shelter in Riyadh looking for refuge. However the queue was so long that they were unable to get in, with many OFWs still in front of them.³²

Retaliation via Theft Charge: Without a place to stay, the OFWs were vulnerable to their employer's retaliation. Outside of the Saudi Labour Office their employer had them illegally arrested. They were picked up in a van by a group of men and transported to the police station where their employer reported them as runaways and accused them of stealing jewelry. They were arrested and thrown in jail.

At this point, the team of migrant volunteers got involved. An advocate intervened and explained that the women were beauticians, not domestic workers. Therefore, they would not have had access to the jewelry their employer claimed they had stolen. The advocate requested that the Embassy post bail for the three women, and assist them in getting their unpaid salaries. The women had contacted Resource Center for help. They expected assistance and access to the shelter. Instead they found themselves in jail.

Analysis:

Overcrowded Shelters: Shelters for OFWs are overcrowded and inaccessible. OFWs planning to leave abusive employers must contact the shelter months in advance. With such a long queue, OFWs in distress have nowhere to go. This makes runaways who have become undocumented even more vulnerable to exploitation. In this case, OFWs seeking refuge ended up being illegally arrested and detained on the basis of a false allegation. There need to be more shelters available to OFWs, especially considering the precarious situation that many undocumented workers find themselves in after running away from their employers. This change needs to be implemented along with more systemic changes to the Kafala sponsorship system, which is discussed below.

3. **Two Runaway Domestic Workers Seek Repatriation: Undocumented workers and the Al Khandara Bridge**

Summary:

Two migrant workers ran away from their employer and went to the Philippine Embassy seeking repatriation. They were leaving an abusive situation. However, when they ran away, there were still people ahead of them in the queue, and they were unable to get in. Even if they were able to advance in the queue, they were told that they needed to have their return plane tickets in their possession to access the shelter. They did not have their original tickets and did not have the money to buy new tickets.

Seeing the difficulty of their situation, someone suggested they go to the Al Khandara Bridge in Jeddah where they would be picked up by the deportation police in order to be repatriated. They would have to pay 1200 SR to be transported to the bridge and some more for the "service". They were told it would be faster to seek repatriation via this backdoor route than to go through the Embassy.

While considering their options, the workers got jobs illegally to support themselves. They were not well paid, and eventually their under-the-table employer slashed their salaries in half, telling them that there was nothing they could do about it because they had no visas. When the workers contacted the volunteer team they were seriously considering going to the bridge, as help from POLO was not forthcoming. The shelter seemed inaccessible and they were desperate to return home.

Analysis:

Inaccessible Shelters and Retention of travel documents: Beyond making a reservation, to be able to access a shelter you need to have a return ticket to the Philippines in your possession. Although this

³² Cases are prioritized according to urgency and on a first come first serve basis, with preference being given to documented workers who have left their employers within the last 72 hours.

ticket is issued before OFWs arrive in Saudi Arabia, it is often held by the Saudi employment agency or by the employer (along with the OFW's other papers and travel documents).

Retention of passports and other travel documents by employers or sponsors is not permitted. However, in practice many, if not most, employers keep these pieces of identification in their possession. This means that when a worker runs away they cannot continue to work legally, but they also cannot return home.

This precarious situation is made worse by the fact that runaway OFWs need a return plane ticket to access a Resource Center shelter. Through this requirement, the Philippine government is in effect perpetuating the workers' already vulnerable situation, causing them to take drastic measures for repatriation, such as looking to be picked up by the immigration police.

4. Luigi: "Backdoor deportation" and problems with the kafala system

Summary:

OFW Luigi was an undocumented migrant in Saudi Arabia when he contacted CMA in 2006. Luigi had left for Abha in August 2002 to work as a dental technician. After four months he was advised to seek employment elsewhere, as business was not going well. He found new employment in Riyadh and prepared to enter into a new work contract. However, his original employer asked for 9,000 SR for his release, which his new employer was unable to pay.

For the next three years his status was in limbo, with work off and on. With no money and family back home to support, he became unable to endure this situation, and so he wrote to the former Vice President for help. In response, the Philippine Embassy in Riyadh escorted him to Jeddah instead, telling him Jeddah provided a backdoor exit. This should never have been a recommendation of an Embassy official, and speaks to the significant difficulties faced by OFWs in an irregular situation seeking repatriation.

By October, 2006 CMA intervened and wrote to the POLO requesting their assistance with the repatriation of Luigi. They asked that the POLO negotiate on his behalf with his Abha employer so that he may be given an exit visa and have his passport returned. Alternatively, CMA requested that the POLO arrange for his repatriation.

The POLO replied that they had already attempted to contact the former employer, but to no avail. They explained that since the sponsor is the only one who can secure an exit visa for an OFW, it would be very difficult to help him with repatriation via normal channels. Moreover, even if the original employer would cooperate, a significant amount of money would be necessary to pay for his penalty as a result of years living with an expired Iqama (resident Permit). Finally, if they chose to file a labour case at the Ministry of Labor Office in Abha, 649 km from Jeddah, travelling to Abha would be a significant problem. He would not be allowed to ride public transportation, for lack of a valid Iqama and private transportation would be too risky.

Therefore, the POLO offered to assist with Luigi's repatriation through the "backdoor". This involved a fraudulent deportation, wherein a sum of money was paid to officials in the immigration department in connivance with officials at the deportation area to make it appear as if Luigi was apprehended as a holder of an expired "Umbrah" visa. His name was also changed to a Muslim name on travel documents issued for him.

Although he was deported at the cost of the Saudi government, funding for the "grease money" to be paid to assisting officials came from solicitation; while the fine for overstaying the false visa, and the money for the ticket from Manila to Cebu were covered by the Assistance to Nationals Funds of the Department of Foreign Affairs. Ultimately CMA assisted in securing a "backdoor visa" as a realistic and expedited way for Luigi to be repatriated, without going to the Al Kandara Bridge and trying to get picked up by the immigration police.

Analysis:

This case points to significant problems with practices of the Kafala sponsorship system and with repatriation of migrant workers in an irregular situation. Foremost, the practice whereby an employer keeps an OFW's travel documents for the duration of their contract needs to be ended. This gives employers too much power over their employees, and can endanger OFWs who are unable to reclaim their travel documents. In this case, it caused a "backdoor" deportation to be more viable than getting an exit visa from the former employer. Circumstances that make a "backdoor" deportation easier than pursuing deportation via legitimate channels need to be seriously reformed.

The necessity of reform is even more marked for migrant workers who have run away from an employer, or absconded. These workers face an even more precarious situation, as their employer will generally have reported them to the immigration authorities, forcing them even further underground.

Other Cases of Detained Migrants

In this section some general cases of migrants in detention are summarized. These cases are not limited to undocumented migrants, but provide a general overview of some other faces of detention of OFWs in Saudi Arabia.

1. Dondon Lanuza: A study in prolonged detention and the *tanuzul*

Summary:

Rodelio “Dondon” Lanuza is an overseas Filipino worker (OFW) who was working in the Kingdom of Saudi Arabia as an architectural engineer. While working in Saudi, he was charged with the murder of Mohammad Al-Qathani and sentenced to be beheaded (though he claims the killing was in self-defense, in response to attempted sodomy). Dondon has been imprisoned in the Dammam Reformatory Center since August 2000, waiting for his sentence to be carried out or forgiveness from the Qathani family.

Forgiveness is an alternative to capital punishment under Sharia law, which states that a sentence may be avoided if the victims’ heirs (his children and parents) execute an act of forgiveness, known as a *tanuzul*. Al-Qathani’s son is too young to issue the *tanuzul* thus the execution is on hold until the son reaches the age of majority in a few years’ time. A breakthrough came in Feb 2011 when Al-Qathani’s father verbally agreed to forgive.

The Philippine Embassy in Riyadh has remained involved in this case. In 2008 they approached the Eastern Reconciliation Committee regarding Dondon’s case and were given recommendations on how to move forward. The Office of the Undersecretary for Migrant Worker Affairs (OUMWA) also called for the assignation of a senior diplomat familiar with Sharia law to Dondon’s case, and when the concerned departments and offices failed to expedite the resolution of this case, issued letters to the former President to plead for her direct intervention.

Despite attempted diplomatic interventions, Dondon’s family are presently raising the blood money themselves through solicitation letters and online appeals. It is hoped that with sufficient blood money the Qathani family will issue the *tanuzul* for Dondon’s release.

To help the family in this regard, in July 2011 CMA contacted the Undersecretary for Migrant Workers Affairs seeking an official communication from the government stating the status of Dondon’s case, including reference to blood money. This came at the request of many potential donors seeking confirmation through official communication before making a contribution. However OUMWA did not respond to the CMA’s request due to the sensitivity of the case and negotiations are ongoing.

Analysis:

Prolonged imprisonment and the threat of execution is not an uncommon predicament for OFWs detained in Saudi. Another notable case of an OFW facing prolonged imprisonment and the threat of execution includes that of Sarah Dematera, who killed her employer’s wife in self-defense. While Dematera was able to escape capital punishment by being issued a *tanuzul* following negotiations and the exchange of blood money, Dondon’s fate is still unclear after over a decade of waiting.

2. Juan³³: a study in prolonged detention as a result of the neglect of duties of the Philippine Embassy and the Department of Foreign Affairs

Summary:

Juan was arrested June 7, 2005 in Saudi Arabia for the murder of his housemate and fellow OFW, Robert Ali. Robert and Juan were both working at Saudi Catering and Contracting and were living in the same accommodations. Though Juan claims his innocence, arguing that Robert died from natural causes (a heart attack) during the course of an argument, he is accused of murder and awaits trial. Robert’s body has been repatriated, and the siblings of Robert are asking for 90,000 Saudi Riyals to forgive Juan for the death of their brother.

³³ Note: names have been changed for confidentiality.

CMA intervened in the case three years after Juan was arrested and found that there were significant miscarriages of justice by the DFA. Below some concerns are summarized.

Analysis:

Violations of criminal procedure and the Embassy's neglect can be found on a number of fronts:

1. Three year delay: Securing Special Power of Attorney (wakalah) took the DFA almost three years. The case could have been resolved earlier, and Juan potentially released from jail, if the DFA had taken the necessary steps earlier.
2. No mediation: In three years, the DFA made no apparent progress on the case. Although both families attempted to contact the DFA to have them act as a mediator in negotiations, the DFA did not respond. It was only when CMA intervened three years after Juan was arrested that the DFA set up an initial meeting between the families for mediation and negotiation.
3. No hearing: Within the same three years there had not been a court hearing. At a meeting with CMA representative, Annaliza Navarro, on May 8, 2008, the DFA explained that there had not been a court hearing because Saudi Court required the family of Robert to attend the hearing. Yet, the DFA also admitted that the Special Power of Attorney granting authority to the Philippine Embassy in Riyadh to appear on behalf of the Ali family had already been granted. This left the question about the hearing unanswered.
4. Failure to investigate: The Philippine Embassy also failed to investigate the case and look into the evidence and statements provided by witnesses, including the following:
 - Juan claims that the medical report proves his innocence, as it clearly states that Robert died of natural causes. The Philippine Embassy has a copy of this report, as it would have been presented to them when Robert's body was repatriated. Yet it is not written anywhere in the DFA's reports related to Juan's case that Robert died of natural causes.
 - Although one of the Embassy's reports states that a friend of Juan, Art Diaz, relayed a message from Juan to the Embassy that he did not kill Robert and that Robert died of a heart attack, this information was not acted on.
 - It is not written in any of their reports that the Embassy conducted an investigation on the premises or that they tried to talk with the employer. Most of their information is second hand.
5. No lawyer: Although it is indicated in a report from the DFA received by Maria (Juan's wife) that the DFA advised the Philippine Embassy in Riyadh to disburse \$8000USD to hire the services of a lawyer for Juan, this was not done.

Outcome:

With the help of CMA, on May 8, 2008 Maria met with the Ali family to attempt to negotiate for a settlement, however nothing was reached. The same day the DFA confirmed that they would finally hold a first mediation session.

On May 10, 2008 there was finally a court hearing, three years after Juan was arrested. The judge chose to postpone the hearing for three months until the Ali family issued a statement of their demands, either granting forgiveness or asking for blood money.

In the meantime the DFA held a mediation session. The Ali family asked for 90,000 to issue a letter of forgiveness. Maria chose to raise the funds and comply in order to secure her husband's release, although she maintains his innocence. At the end of CMA's involvement, Maria had demanded a copy of the medical report stating that Robert died of natural causes in order to help redeem her husband's honour. Maria is frustrated that the DFA proceeded as though presuming her husband's guilt, failing to offer him proper representation or facilitate negotiations.

3. Julian Camat, Napoleon Abdullah Fabregas and Hermilo Ramos, and Manuel Fernandez:
Wrongful imprisonment and Embassy/Consulate neglect

Summary:

Julian Camat, Napoleon Abdullah Fabregas, Hermilo Ramos and Manuel Fernandez suffered grievous human rights violations in Jeddah, Kingdom of Saudi Arabia. They were charged and convicted in 2002 for stealing office equipment from their employer, and were sentenced to one and a half years imprisonment. Four years and four months later, they were repatriated, staying in detention three years beyond the completion of their sentences.

Engr. Abdullah ali Sabig, former member of the National Commission for Human Rights, said they remained in jail after completing their sentences because of a series of legal mistakes and lapses. These included: 1) they were not informed of the proceedings in writing and in language they understood; 2) the court issued a civil verdict and never issued a verdict on the private case filed by their employer for the losses incurred by the theft.³⁴

These errors should have been caught by the Philippine Embassy. However, the Embassy failed to adequately represent the OFWs, continuing to negotiate with the complainant to settle the case when the OFWs had already chosen to appeal the decision on the grounds of their innocence. Ultimately, it was Sabig together with Patnubay and CMA who took on their case, winning an acquittal and assisting with their repatriation.

Analysis:

Violations of criminal procedure and the Embassy's neglect can be found on a number of fronts:

1. *Confessions not in their language:* Their failure after the 2002 criminal investigation to contest the charges on the grounds that the confessions signed were not translated to a language the accused understood. The confessions signed were in Arabic and there was no translator present. This issue was not raised until Sabig intervened.
2. *Slow response:* The Embassy failed to assist with the case throughout. When Sabig became involved as the defendants' representatives, the Embassy was similarly unresponsive, taking 1 year and 3 months to authorize Sabig to represent them.
3. *Ignoring the OFWs' claims of innocence:* Since May 2005, the Embassy's track was appealing to El Khoreiji to forgive them and waive their claims, despite the OFWs already appealing their innocence. When the OFWs finally secured the representation of Sabig, they successfully appealed, and were acquitted, released and repatriated, without paying the company's claims or waiving their own claims against the company. This suggests that the Embassy was providing inadequate legal representation from the outset.

This case highlights procedural failings on the part of the Saudi legal system, and failings on the part of the Philippine Embassy to represent their OFWs.

Conclusion:

Detention of Migrants Generally: OFWs detained in Saudi Arabia face a number of challenges that arise out of the Saudi legal system. Procedural violations are common and many OFWs have been detained for prolonged periods; subjected to ill-treatment; and forced to sign confessions in Arabic. Such situations confer on the detention of migrants an arbitrary character, and are breaches of their right to security. These breaches are discriminatory and exploit and perpetuate their vulnerability.

Though a significant number of the problems experienced by OFWs in detention are related to systemic issues within the Saudi legal system, better intervention by the Philippine government could help mitigate or prevent many of the violations. On more than one occasion the Embassy and Labour Office have failed to provide OFWs with proper legal representation or access to mediation, have failed to address their cases in a timely manner, and have even failed to listen to the OFWs, pursuing a course of action that is out of sync with their demands. Such neglect perpetuates miscarriages of justice.

Detention of Migrant Workers in an Irregular Situation: OFWs in an irregular situation face unique struggles in relation to detention. They often seek out detention as a means to repatriation. The struggles faced by migrants in an irregular situation highlight shortcomings of the POLO, problems with the kafala sponsorship system, and the inadequacy of the resources and services available to undocumented OFWs, such as shelters. The proliferation of migrants seeking repatriation on humanitarian grounds through the Saudi Governor's Office, and of migrants seeking repatriation through detention and deportation via the Kandara Bridge, suggest that the POLO's response to labour complaints and to requests for assistance with repatriation is inadequate.

Ultimately, the Philippine government needs to increase assistance to OFWs in detention and take measures to prevent detention of migrants in an irregular situation by increasing the resources and support available to them.

³⁴ Al-Saadi, Samir. *Filipino Workers Jailed Beyond Sentence, to be Freed*. Jan 2007. <www.arabnews.com>.

Appendix A:

1. Estimated Number of Overseas Filipinos			
Kingdom of Saudi Arabia	Male	Female	Total
a. Permanent Migrants	-	-	0
b. Temporary Migrants	998,446	483,739	1,482,185
c. Irregular/Undocumented Migrants	(estimate)		94,056
TOTAL			1,576,241

* From Report to Congress. See note 5.

2. Profession/Skill	Male	Female	Total
Professionals <i>Engineers, nurses, software developers, geologists, soil experts, architects, bankers, professors/teachers, scientist, doctors, pharmacist, other PRC-licensed individuals</i>	168,874	148,202	317,076
Highly Skilled <i>Laboratory technicians, cooks, chefs and other construction related workforce such as carpenters, welders, painters, steel and tile fixers, plasterers, plumbers, pipe fitters, etc.</i>	441,716	42,988	484,704
Semi-Skilled <i>Electric/mechanic assistants, glass cutters, assistant cooks, waiters and kitchen helpers, washers and pressmen, gardeners</i>	253,915	52,353	306,268
Labour <i>Cleaners, guards and watchmen, construction workers and other types of laborers</i>	99,178	61,337	160,515
Domestic Workers <i>Nannies and household helpers</i>	34,763	178,859	213,622
TOTAL	998,446	483,739	1,482,185

* From Report to Congress. See note 5.

Appendix B: Detention cases in Riyadh

3. Number of Filipinos in detention centers, under house arrest or with pending cases in court			
Breakdown by status	Male	Female	Total
Convicted and serving sentence	107	29	136
Awaiting trial/On trial/Under investigation	105	158	263
For deportation	28	-	28
Breakdown by Nature	Male	Female	Total
Alcohol-related cases	52	7	59
Immorality	71	151	222
Drug-related offenses	37	2	39
Theft/Embezzlement	59	14	73
Bribery	1	-	1
Physical Injuries	2	3	5
Falsification	4	2	6
Arson	1	-	1
Witchcraft	-	5	5
Capital Punishment Cases	13	3	16

* From Report to Congress. See note 5.

Reports from the United States

Report to the United Nations
Special Rapporteur on the
Human Rights of Migrants:

Detention of Migrants in the United States

Submitted January 30, 2012

Submitted by



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Executive Summary

1. International law recognizes that while the United States has the power to control immigration that authority is limited by its obligations to respect the fundamental human rights of all persons. In designing and in enforcing its immigration laws, the rights to due process and fair deportation procedures, seek and enjoy asylum from persecution, freedom from discrimination based on race, religion, or national origin, freedom from arbitrary detention, freedom from inhumane conditions of detention, and other fundamental human rights must be protected.
2. The United States' immigration detention system is riddled with systemic failures to protect human rights. The system has evolved with no regard to international human rights standards and is based on a penal model of corrections which fails to address the needs of a population detained for civil status violations. The reliance on detention reflects broader trends in the United States relating to racial discrimination, mass incarceration, and the criminalization of migration.
3. We welcome the recent efforts of the United States to begin to acknowledge some of the concerns with human rights violations resulting from the immigration detention system. Nonetheless, serious human rights violations continue and progress toward reform has been slow, still failing to address the need to diminish the numbers of detained migrants, reduce the government's reliance on detention, and halt the dramatic expansion of detention facilities around the country.
4. **Key concerns** on the human rights of migrants in detention in the U.S. include:
 - The right to due process and access to legal counsel
 - Verbal and physical abuse, including sexual assault and violence, against migrants in detention particularly women, transgender, and LGBT migrants.
 - Lack of access or inadequate medical care, including medication and treatment especially for migrants with chronic illnesses such as diabetes and heart conditions.
 - Cruel and excessive use of solitary confinement against detained migrants, often for speaking out against unjust practices and conditions.
 - Prolonged detention of migrants awaiting to resolve their immigration status, and who are subject to mandatory detention
 - Frequent transfer of detained migrants to facilities in isolated areas far away from their families and community support networks.
5. **Overall trends** in U.S. domestic policies and practices that impact the human rights of immigrants subject to detention include:
 - Expansion of immigration enforcement programs that encourage and mandate the collaboration by local law enforcement and other agencies in identifying and reporting anyone suspected of being a non-citizen eligible for removal incentivizes racial profiling and other forms of discrimination.
 - Over-reliance on detention, albeit "civil" in nature, to address the government's stated need for compliance of court-issued Notice to Appear.

- Increased reliance on private prison corporations for the management and operation of immigrant detention centers, which have played a significant role in advocating for punitive policies that criminalize migration and increase the numbers of people subject to detention and deportation.

I. Recommendations on national policy

6. The U.S. government should diminish the number of overall detention beds and significantly reduce reliance on detention to ensure compliance with government-issued Notice to Appear. We urge a serious consideration and commitment to the expansion of community-based alternatives to detention.
7. The Department of Justice should revise its June 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to apply the guidance to state and local law enforcement agencies, to eliminate the loopholes created for national security and border searches, to include religion and national origin as protected classes, to cover surveillance activities and to make it enforceable in a court of law.
8. The Department of Homeland Security should terminate the 287(g) program and all other federal immigration enforcement programs that rely on state and local criminal justice systems, including the Secure Communities Initiative and the Criminal Alien Program.
9. Further investigation is needed to determine the scope and scale of verbal and physical abuse, including sexual abuse and violence, in detention centers across the U.S., particularly its impacts on women, transgender and LGBT migrants.
10. The Obama Administration must take concrete steps to bring the U.S. into compliance with its obligations under international human rights law, which prohibits arbitrary detention.
11. The Obama Administration should put an end to all laws mandating the detention of non-citizens, including asylum-seekers and long-term residents with strong community ties in the U.S.
12. The U.S. government must allow for independent oversight and institute enforceable mechanisms for accountability.

II. Background and Framework

A. Scope of International Obligations

13. Pursuant to the International Covenant on Civil and Political Rights (ICCPR), non-citizens in the U.S. have a right to **due process and fair deportation procedures**,¹ including international standards on proportionality.²

14. Non-citizens also enjoy the right to **freedom from discrimination** under article 2 of the ICCPR and the obligations imposed by the Convention on the Elimination of all forms of Racial Discrimination (ICERD).³
15. Both the Universal Declaration of Human Rights and the ICCPR guarantee the right to **liberty and security of person**,⁴ freedom from **arbitrary arrest or detention**,⁵ and are entitled to **prompt review of their detention by an independent court**.⁶
16. Non-citizens who are detained have a right to **humane conditions of detention**.⁷
17. **Detention of refugees and asylum seekers** should be avoided when possible; if refugees and asylum seekers must be detained, adequate safeguards should be in place to avoid arbitrary detention.⁸ The United Nations High Commissioner for Refugees has made clear that asylum seekers should be detained only as a last resort and with guarantees against arbitrary detention.⁹
18. Regardless of immigration status, individuals in the U.S. have a right to **family unity**.¹⁰ In interpreting the obligations of the ICCPR, the Human Rights Committee has explicitly stated that family unity imposes limits on the power of States to deport.¹¹

B. Legislative and Policy Framework

19. In the United States, Congress holds the authority to make the laws that govern admission, protection, and removal of non-citizens. Federal immigration law, however, must be understood in its context within the U.S. tripartite system of government. The Executive branch agencies, including the Department of Homeland Security, the Department of Justice, and the Department of State, promulgate regulations that directly govern the application of U.S. immigration law. Myriad public and internal policy guidance spells out how the U.S. immigration system operates in practice. Federal courts also play a role in providing a final review of individual decisions made in removal proceedings in administrative courts.
20. Federal immigration law in the U.S. continues to be based on the Immigration and Nationality Act of 1952 (INA)¹². Reforms to the INA were made in 1965, which amended the INA to set a permanent annual worldwide level of immigration divided into categories for family-related immigrants, employment-based immigrants, and diversity immigrants. Refugees were excluded from these numerical limits; the Refugee Act of 1980 defines the U.S. laws relating to refugees.¹³
21. In 1986, Congress enacted the Immigration Reform and Control Act (IRCA) to toughen sanctions against employers who hired undocumented persons and limit access to federally funded welfare benefits.
22. The Immigration Act of 1990 substantially expanded the “aggravated felony” category of deportable crimes, first added to the INA in 1988.¹⁴

23. In 1996, the Antiterrorism and Effective Death Penalty Act¹⁵ and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)¹⁶ added additional crimes to the aggravated felony ground for deportation and reduced the term of imprisonment threshold requirement to one year,¹⁷ **drastically increasing the number of people subject to prolonged and indefinite detention.**
24. The IIRIRA also created a new “expedited removal” system for arriving aliens without proper documentation for admission¹⁸ which has resulted in the routine detention of arriving asylum seekers and the summary expulsion of 111,000 people in 2010 alone.¹⁹
25. The USA PATRIOT Act of 2001,²⁰ passed just weeks after the 9/11 terrorist attacks, and the REAL ID Act of 2005²¹ expanded the class of individuals who are inadmissible to the U.S. for having provided “material support” to terrorism.
26. The Department of Homeland Security (DHS) was created in 2003 as part of federal agency reform following the 9/11 terrorist attacks, shifting immigration enforcement into the arena of anti-terrorism policy. The Immigration and Naturalization Service (INS) was replaced with three different agencies within DHS: U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE).
27. Federal law gives the Department of Homeland Security, including both ICE and CBP, the authority to apprehend and detain aliens under the Immigration and Nationality Act (INA) §232 (Detention of Aliens for Physical and Mental Examination), §235 (Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing); §236 (Apprehension and Detention of Aliens; §236A (Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review), and §241 (Detention of Aliens Ordered Removed) and by corresponding federal regulations.
28. Because immigration is a matter of federal law, state and local governments in the U.S. have historically played a very limited role in immigration enforcement. Recent policies, however, have attempted to expand responsibility for enforcing civil immigration laws to state and local police through formal DHS programs, such as the 287(g) program, the Criminal Alien Program (CAP), and Secure Communities,²² and informal cooperation between immigration authorities and public safety officials.
29. During the booking process, Secure Communities, an immigration enforcement initiative launched by ICE in March 2008, allows the fingerprints of arrestees to be automatically checked against DHS’ civil immigration databases in addition to the Federal Bureau of Investigation’s (FBI’s) criminal databases. Secure Communities and related programs incentivize racial profiling and pre-textual arrests by state and local police—agents know that when they arrest individuals, those individuals’ immigration status will be checked when they are fingerprinted.²³ This is supported by data analyses done by researchers at the University of California, Berkeley which demonstrate that Latinos are disproportionately targeted by the program and that approximately 3,600 U.S. citizens have been arrested by ICE through Secure Communities.²⁴ ICE’s own data demonstrate that, for example between

the program's inception and June 2010, 79% of the people deported due to Secure Communities are non-criminals or were picked up for lower level offenses, such as traffic violations.²⁵ Recently, through FOIA litigation, it has been uncovered that DHS acted improperly in presenting the Secure Communities program to local communities, Congress, and the public—particularly those communities that expressed a desire to opt out of the program.²⁶ This has resulted in reviews of Secure Communities by the DHS Office of the Inspector General as well as the Government Accountability Office.²⁷

30. Individual states, notably Arizona and Alabama, have enacted immigrant enforcement laws that impact the human rights of non-citizens in the United States. In some cases, other states have laws which, while facially neutral, primarily target undocumented migrants. These laws that lead to more arrests and detentions of people suspected of civil immigration status violations, including U.S. citizens who are suspected of such violations based primarily on race or national origin. The Arizona immigration law will be before the United States Supreme Court this term.²⁸ The Court's decision will have a tremendous impact on current and future state immigration laws.

III. Promotion and Protection of Human Rights on the Ground

A. Scope of Migrant Detention in the United States

31. The U.S. immigration detention system is an enormous and growing operation which has become a cornerstone of immigration enforcement in the United States. The Department of Homeland Security reports that in 2010 517,000 foreign nationals were apprehended; approximately 363,000 foreign nationals were detained by ICE; 387,000 foreign nationals were removed from the United States; and 476,000 foreign nationals were returned to their home countries without a removal order.²⁹
32. Detention is widely used by Immigration and Customs Enforcement (ICE) for people apprehended on suspicion of civil immigration status violations in the U.S. interior³⁰ and by Customs and Border Protection (CBP) for people apprehended at or within 100 miles of the United States' borders with Mexico or Canada or at ports of entry.³¹
33. While both ICE and CBP operate within the Department of Homeland Security, they have separate command structures. CBP has remained largely impervious to the limited progress made toward securing oversight of conditions for people in ICE custody and understanding of the numbers of people detained under CBP authority and the conditions under which they are detained is limited.
34. CBP is a large and growing security apparatus. The Department notes that: “[o]ver the past two years, CBP has dedicated unprecedented manpower, technology and infrastructure to the Southwest border. The Border Patrol is better staffed now than at any time in its 86-year history having doubled the number of agents from 10,000 in FY 2004 to more than 20,500 in FY 2010. In addition to the Border Patrol, CBP's workforce of more than 58,000 employees also includes more than 2,300 agriculture specialists and 20,600 CBP officers at ports of

entry.”³² CBP has requested over \$11.8 billion for the upcoming fiscal year, an increase of over \$300 million from the previous year.³³

35. Customs and Border Protection (CBP) reports that on a typical day, 1,903 people were apprehended at and in between the ports of entry for illegal entry.³⁴ CBP coordinates border security operations closely with the U.S. Department of Defense and other federal agencies, using myriad defense technologies and strategies that have resulted in a militarized U.S.-Mexico border.³⁵ According to the Department of Homeland Security, “[t]he number of Border Patrol apprehensions declined 61 percent from 1,189,000 in 2005 to 463,000 in 2010. The decrease in apprehensions between 2005 and 2010 may be due to a number of factors including changes in U.S. economic conditions and border enforcement efforts. Border apprehensions in 2010 were at their lowest level since 1972.”³⁶
36. U.S. National Guard troops have been deployed to the Southwest border during much of 2010 and 2011.³⁷ Their mission clearly focuses on monitoring the border for illegal crossings.³⁸
37. The number of beds available for detention in Immigration and Customs Enforcement (ICE) custody has nearly doubled in the past seven years, from 18,000 beds in 2004 to 33,400 in 2011.³⁹ The number of people who pass through the ICE detention system nearly has doubled from 209,000 in 2001 to 392,000 in 2010.⁴⁰ Approximately 2,700 new beds have been added to the system since July 2009.⁴¹
38. At the same time, the United States has failed to adequately fund or use alternatives to detention, despite findings that alternatives to detention cost significantly less⁴² and “yield 93 percent to 99 percent appearance rates before the immigration courts.”⁴³
39. Federal expenditures on ICE detention have grown 134% in the past seven years, from \$864 million to \$2.02 billion.⁴⁴ The Obama Administration’s FY2012 request would amount to expenditure of \$5.5 million per day on ICE detention.⁴⁵
40. The private prison industry has played a significant role in the growth of these budgets by advocating for the expansion of immigration detention and enforcement policies at the federal and state levels. A 2011 report by Detention Watch Network notes that “[a]lthough private corporations have long exercised influence over detention policy in a variety of contexts, a recent accumulation of evidence indicates that the main contractors involved in the explosive growth of the immigration detention system have been involved in heavy lobbying at the federal level.” The report finds that [i]n 2009 ICE had an adult average daily population (ADP) of 32,606 in a total of 178 facilities. Of these, 15,942 detainees – or 49% – were housed in 30 privately-operated detention centers.”⁴⁶
41. Mandatory detention laws enacted in 1996 have contributed to the skyrocketing growth of detention as an immigration enforcement tool. Sixty-six percent of the 31,075 people detained on September 1, 2009, were subject to mandatory detention.⁴⁷

42. At the same time, ICE fails to exercise discretion to release those people not subject to mandatory detention laws.⁴⁸ Indeed, ICE increasingly relies on detention as the only way to guarantee appearance for hearings despite the availability of alternatives to detention.
43. In addition to people detained by immigration authorities, state and local law enforcement agencies detain thousands of individuals each year under ICE “detainers.” Detainers are requests by ICE to a law enforcement agency to detain the named individual for up to 48 hours (excluding Saturdays, Sundays, and holidays) in order to provide ICE an opportunity to determine the person’s immigration status. While law enforcement agencies are under no obligation to honor these requests, detainers routinely result in extended detention of people suspected of being noncitizens in the United States.⁴⁹
44. Finally, increasing numbers of people are imprisoned following convictions for criminal charges relating to immigration. Federal prosecution of immigration-related crimes, including illegal reentry into the United States following deportation, has skyrocketed in recent years. Border enforcement programs such as *Operation Streamline* deepen the crisis of criminalization by subjecting migrants apprehended at the U.S.-Mexico border to criminal prosecution and sentencing *en masse* through a fast-track process, which undermines due process rights at every step.⁵⁰ Under this program, migrants who have been deported and get caught re-entering the country are prosecuted with felony charges with a maximum sentence of 20 years. According to the Transactional Records Access Clearinghouse, “the data show that prosecutions of this type are up 135 percent from levels reported in 2006,” and “reentry of deported alien” (Title 8 U.S.C. §1326), was the lead charge recorded in the prosecutions of 1,844 immigration matters filed in U.S. District Court during September 2011 alone.⁵¹ A report by the U.S. Sentencing Commission revealed that over half of all people sent to federal prison for committing felony crimes in 2011 were Hispanic.⁵² The report attributed the increase of Hispanics in prison to an increase in prosecution for immigration-related crimes.⁵³
45. Similar trends can be observed at the state level, where immigration-related crimes such as identity theft or failure to carry immigration documents are frequently prosecuted. While the migrants in custody following these criminal convictions are not in ICE or CBP custody, the increase in prosecutions reflect a growing trend toward the criminalization of migration itself by the United States.⁵⁴
46. Detention of families in the United States continues to be of concern.⁵⁵ In August 2009, the U.S. government announced it would cease to detain immigrant families at the T. Don Hutto facility in Taylor, Texas, and continue to detain families only in small numbers at the Berks Family Residential Shelter in Berks, Pennsylvania. Although a detention center, Women’s Refugee Commission visits found that conditions at the Berks facility greatly differed from other detention facilities and was, as a whole, much more of a shelter-like facility than the penal, punitive nature of other immigration detention centers. According to the Women’s Refugee Commission, in Fall, 2011, the Department of Homeland Security announced that the Berks facility would close due to technical reasons and issued a request for proposals for a new facility to be located closer to the border. Advocates understand that this new facility, like Berks, would be used primarily for families who are unwilling or unable to provide any

connections in the community and would otherwise be homeless. We believe the needs of these families would best be met through the use of community support programs that would provide social and legal services, provide access to medical services, and provide shelter to these families. Community support programs or community sponsored release from ICE custody remains the most humane and cost-effective means for immigrants who do not have their own ties and support in the community but who should also not be detained in ICE facilities.

47. While some improvement to the treatment of unaccompanied children detained in the United States has been seen, continued concern exists. The Women's Refugee Commission's 2009 report on the screening and detention conditions of unaccompanied children who enter the U.S. found numerous problems on both fronts. Despite the passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) as well as provisions in the Flores Settlement, advocates continue to be concerned about the conditions of Office of Refugee Resettlement (ORR, within the Department of Health and Human Services, DHHS) facilities as well as the conditions of holding rooms and cells in Customs and Border Protection (CBP, within DHS). Implementation of TVPRA-mandated training and screening has been slow and the Women's Refugee Commission has been unable to gain meaningful access to CBP Border Patrol stations.⁵⁶

B. Right to Freedom from Discrimination based on Race, Religion, or National Origin

48. **Racial discrimination** in law enforcement and the administration of justice continues to be a significant problem in the United States. As the Committee on the Elimination of all forms of Racial Discrimination stated in its concluding observations to the United States' most recent report on compliance with the Convention: "[t]he Committee reiterates its concern with regard to the persistent racial disparities in the criminal justice system of the [United States], including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, allegedly due to the harsher treatment that defendants belonging to these minorities, especially African American persons, receive at various stages of criminal proceedings (art.5 (a))."⁵⁷ As the U.S. government continues to expand the role of local law enforcement agencies in the enforcement of immigration laws and policies, these formal and informal partnerships incentivize racial profiling by using the state criminal justice system to target perceived foreigners and to channel them into the immigration enforcement system.⁵⁸
49. U.S. detention law patently discriminates against immigrants and undermines fundamental prohibitions on discrimination as well as well-founded due process principles under the Constitution and the U.S. international legal obligations.⁵⁹ In 2003 the court heard *Demore v. Kim*, which challenged the constitutionality of the INA provision that permits the mandatory detention of certain ex-offenders. The majority of the justices ignored jurisprudence related to freedom from bodily restraint and instead focused on prior immigration-related precedent and said, "In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." This discriminates

against all non-citizens in the U.S. and is thus prohibited discrimination based on national origin.

50. Immigration enforcement programs known collectively as ICE ACCESS provide an “umbrella of services” for state and local law enforcement agencies to cooperate with federal immigration authorities.⁶⁰ These programs, including the 287(g) program, the Criminal Alien Program, and the Secure Communities program, all have drawn substantial criticism for engendering racial profiling practices.⁶¹
51. In some cases state and local authorities enforce immigration law without any formal training or agreement, relying on informal processes for reporting anyone suspected of being non-citizens over to the Department of Homeland Security. For example, some local law enforcement agencies are reported to call ICE or CBP officers to interpret in routine traffic stops.⁶²
52. The United States does attempt to investigate allegations of local law enforcement practices targeting migrants,⁶³ including an investigation by the U.S. Department of Justice Civil Rights Division into allegations of racial discrimination by the Maricopa County, Arizona, Sheriff’s Office.⁶⁴ Such oversight should be encouraged and expanded.
53. An October 2010 report documented a lack of access to religious services in two adult immigration detention facilities in Arizona.⁶⁵ Although ICE officials at both facilities contended that religious services were available for different faiths, including Islam, Muslim detainees in both facilities reported that they had never been told about such services. One woman had asked a chaplain whether Muslim services existed, and he told her he knew of none.⁶⁶

C. Right to Due Process and Fair Deportation Procedures

54. While U.S. law provides that aliens in removal proceedings have “the privilege of being represented,” legal representation must be “at no expense to the Government.”⁶⁷ The United States’ failure to ensure that all non-citizens have access to legal representation during their expulsion hearings, and by extension, to fair proceedings, violates ICCPR article 13.
55. Nationwide, Approximately 84% of detained cases were unrepresented.⁶⁸ According to a report of the American Bar Association, there is “strong evidence that representation affects the *outcome* of immigration proceedings.”⁶⁹ The findings of the New York Immigrant Representation Study echo the ABA’s observation:
 - Represented and released or never detained: 74% have successful outcomes.
 - Represented but detained: 18% have successful outcomes.
 - Unrepresented but released or never detained: 13% have successful outcomes.
 - Unrepresented and detained: 3% have successful outcomes.⁷⁰
56. The New York Immigrant Representation Study made the following finding: “By every measure, the number of deportations and removal proceedings has skyrocketed over the last

decade. Between 2000 and 2010, the number of removal proceedings initiated per year in our nation's immigration courts increased nearly fifty percent, totally over 300,000 last year. During that period, the representation rate of respondents in removal proceedings has remained relatively constant and abysmally low. Correspondingly, the actual number of unrepresented respondents has virtually doubled."⁷¹ The study notes that lack of representation is particularly acute for detained people: "A striking percentage of detained and nondetained immigrants appearing before the New York Immigration Courts do not have representation. The greatest area of need for indigent removal defense is, however, for detained individuals. In New York City: Sixty percent of detained immigrants do not have counsel by the time their cases are completed."⁷²

57. Geographic isolation compounds the inability of people in detention to access legal assistance. Human Rights First has noted that "as DHS and ICE expanded immigration detention, they repeatedly chose to detain asylum seekers and other immigrants in areas that are not near pro bono legal resources, the immigration courts, or U.S. asylum offices."⁷³
58. Approximately 28 percent of detainees are held at facilities where there is no free legal service provider.⁷⁴ Even the provision of information about legal rights is limited; nearly 25 percent of all detainees are held at facilities where they receive no information about their legal rights from attorneys or legal services providers.⁷⁵ The staff time and travel costs for legal service providers provide a significant barrier to reaching and representing individuals held in geographically remote areas.⁷⁶ Further compounding these issues is limited access to phone calls to attorneys. Seventy-eight percent of the facilities holding immigrants prohibit private calls between attorneys and clients.⁷⁷ Many facilities require legal aid organizations to register in order to receive calls from detainees, as well as maintaining an account with funds to cover the cost of the calls.⁷⁸ When individuals are transferred between facilities, they may end up at a facility where the legal aid organization they worked with is not listed to receive calls and the individual may not have funds to pay for a call.⁷⁹
59. Frequent transfers between detention centers further undermine access to counsel and to fair deportation proceedings. According to the New York Immigrant Representation Study, "ICE transfers almost two-thirds (64%) of those detained in New York to far-off detention centers (most frequently to Louisiana, Pennsylvania, and Texas), where they face the greatest obstacles to obtaining counsel. Individuals who are transferred elsewhere and who remain detained outside of New York are unrepresented 79% of the time."⁸⁰
60. The immigration justice system lacks procedural safeguards for detained people with mental disabilities who face the possibility of deportation.⁸¹ Approximately fifteen percent of the total immigrant population in detention is comprised of individuals with mental disabilities.⁸² "[I]mmigration courts have no substantive or operative guidance for how they should achieve fair hearings for people with mental disabilities."⁸³ "[I]n many cases the ICE attorney prosecuting the case did not inform the judge when a non-citizen facing deportation had a diagnosed or suspected mental disability—even when one had been previously adjudged by a criminal court—which clearly compromised the non-citizen's ability to understand proceedings."⁸⁴ "In other cases, ICE attorneys refused or neglected to perform competency evaluations and to supply information from evaluations to the court—even when the court

ordered them to do so.”⁸⁵ As a result, “legal permanent residents (LPRs) and asylum seekers with a lawful basis for remaining in the United States may have been unfairly deported from the country because their mental disabilities made it impossible for them to effectively present their claims in court. Some US citizens with mental disabilities may have been deported to countries they do not know, and some of these people have not been or cannot be found.”⁸⁶

61. Detention undermines individuals’ ability to raise defenses to deportation that may be available. Detention also undermines individuals’ will and ability to pursue appeal.⁸⁷ Faced with the prospect of indefinite detention pending the outcome of removal hearings, detainees often agree to “stipulated removal orders” in which they accept an order of deportation without access to an attorney or an appearance before an immigration judge.
62. A September 2011 report found that over 160,000 people have been deported under these stipulated removal orders over the past decade.⁸⁸ The interplay between detention, stipulated removal, and the deliberate attempt to forestall applications for relief from removal is illustrated by the following e-mail from an ICE official obtained through the researchers’ Freedom of Information Act request:

“Please, please, please . . . encourage the agents to work harder on the stipulated orders of removal. . . . It is really important for the agents to push for stipulated orders of removal. . . . Most of the [lawful permanent residents] who get out of jail are willing to take an order just to get out of jail sooner (that is until the judge encourages them to get a lawyer).” —Email message from M. Meymariam to various recipients.⁸⁹

63. Unrepresented people in detention face serious barriers to presenting a defense to their removal. Law library access often is minimal or restricted.⁹⁰

D. Right to Liberty and Security of the Person and Freedom from Arbitrary Detention

64. The United States’ detention system lacks three critical elements which are necessary to meeting its obligations under international human rights law: an individualized assessment and process to challenge all custody decisions, robust case management tailored to individual needs, and access to legal and support services. This failure has resulted in the arbitrary detention of thousands of migrants in violation of ICCPR articles 9(1) and 9(4).
65. U.S. law imposes mandatory detention without an individualized custody determination by a court in a broad category of cases, including arriving asylum seekers⁹¹ and non-citizens convicted of certain crimes,⁹² and certain refugees awaiting adjudication of their applications

for permanent residence.⁹³ These categorical detention determinations violate norms of proportionality and non-discrimination.⁹⁴

66. Individuals subject to mandatory detention in the United States are not entitled to a bond hearing before an immigration judge⁹⁵ or to independent review of their custody determination by a court.
67. All migrants in detention in the U.S. are detained without an individualized assessment as to need to detain. The U.S. lacks a process or tool that standardizes decision making as to restriction of liberty, leaving individual officers to make decisions informed by their own intuition. Rather than making informed decisions for each and every individual the government intends to restrict liberty, the burden usually falls to the individual migrant to make the case as to why he is eligible for release.
68. The U.S. is bound by human rights law to demonstrate by clearly articulable facts why it is necessary to restrict any person's liberty. In making these individualized determinations, the U.S. is bound by the principles of necessity and proportionality and must show why any less restrictive means of control migration will not suffice in the particular individual's situation before it can resort to detention. The guarantee of this fundamental process before a person is denied liberty does not exist in the U.S. rendering all detention, including mandatory detention, arbitrary.
69. Arriving asylum seekers in expedited removal proceedings are subject to mandatory detention and may not be released while awaiting their initial "credible fear" review to determine whether they may apply for asylum before an immigration judge.⁹⁶ Following determination of credible fear, asylum seekers may be released on parole pending their asylum hearings before an immigration judge or while on appeal, but if the detaining authority (ICE) denies parole, the asylum seeker is prevented under regulations from having an immigration court assess the need for his continued custody.⁹⁷ ICE revised its parole guidelines effective January 2010.⁹⁸
70. In terms of less restrictive measures to control migration, the U.S. lacks robust alternatives to detention. As found in a recent report by Lutheran Immigration and Refugee Service, the U.S. government's approach has focused on security at the expense of other goals, casting shadows on the program's operations.⁹⁹
71. *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy*, reviews the U.S. government's attempts to implement alternatives to detention programs and reveals five overarching structural challenges that must be overcome:
 - an overreliance on detention as an approach to immigration enforcement,
 - the lack of individualized risk assessments to determine who needs to be detained or otherwise supervised to ensure appearance and removal,
 - absence of necessary data indicators and the mechanisms to collect and report those indicators to evaluate the use of detention and alternatives,

- absence of a robust case management system with referrals to appropriate social services, and
- insufficient access to legal and social services.¹⁰⁰

E. Right to Humane Conditions of Detention

72. People detained on civil immigration status violations are held in over 250 jails, prisons, and secure detention centers around the United States,¹⁰¹ operated variously by ICE, state and local governments, and private prison corporations.¹⁰² People apprehended by CBP often are detained in short-term custody facilities which hold people for less than 72 hours.

1. Detention by Immigration and Customs Enforcement (ICE)

a. Reliance on a Penal Model of Detention

73. Reliance by ICE on a penal model of detention is inappropriate for people detained on allegations of civil status violations and must be ended. Virtually all people detained by ICE are held in correctional facilities or prison- or jail-like settings,¹⁰³ which fail to adhere to guarantees in ICCPR articles 10(1) and 10(2)(a).¹⁰⁴

74. As Dr. Dora Schriro explained in her 2009 report: “With only a few exceptions, the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons. ICE relies primarily on corrections incarceration standards designed for pre-trial felons and on correctional principles of care, custody, and control. These standards impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population.”

b. Lack of Appropriate and Enforceable Standards for Detention Facilities

75. Although the United States has adopted detention standards, the standards are not legally enforceable. In addition, they are based on a penal correctional model inappropriate for civil detention and have significant deficiencies in monitoring and oversight, little transparency, and no consequences for non-compliance with standards.¹⁰⁵ Contracted facilities are rated on the standards, but failure to meet standards carries no penalty.

76. People detained by ICE wear prison uniforms, are regularly shackled during transport and in their hearings,¹⁰⁶ are held behind barbed wire,¹⁰⁷ and may be locked in their cells up to 18 hours each day.¹⁰⁸

77. Because of the penal nature of the facilities, detained people routinely are subject to degrading conditions¹⁰⁹ The most basic needs of transgender detainees are rarely met. Transgender detainees are routinely denied gender-appropriate undergarments and are often denied any privacy in communal showers and toilet facilities. Low-cost solutions like shower

curtains are rarely implemented. Medically-necessary hormone therapy is dramatically reduced or eliminated, resulting in rapid body changes.

78. People in detention often face barriers to communicating with their family, counsel, or other support systems.¹¹⁰ Depending upon where they are detained, they may not be permitted contact visits with family.¹¹¹
79. Immigrants in detention may be held for prolonged periods of time without access to the outdoors.¹¹²
80. Appropriate psychological and medical services for torture survivors are universally unavailable.¹¹³
81. People detained on allegations of civil immigration status violations routinely are commingled with individuals convicted in the general criminal justice system.¹¹⁴
82. Reports of poor food quality and limited amount of food are common.¹¹⁵ Both state-run and private detention centers often rely on income from commissary charges including additional food, additional clothing, stationery, toiletries, and telephone cards.¹¹⁶
83. The Women's Refugee Commission conducted site visits of Arizona detention facilities in 2010 and concluded that "[c]onditions and amenities described by ICE and facility staff during our tours were refuted by the women we spoke to—most specifically, access to medical care and religious services, recreation and the legal library were either impossible, or not nearly as frequent as we had been told. Detainees also reported difficulties in filing grievances. Our findings indicate that the facilities are in violation of both the 2000 National Detention Standards and the 2008 Performance-Based National Detention Standards (PBNDS) in several critical areas."¹¹⁷
84. Use of solitary confinement is, sometimes for prolonged periods of time, is permitted and routine. Of particular concern is the practice of placing transgender people in solitary confinement, known as "administrative segregation," citing safety concerns. Transgender people may be placed into "administrative segregation" without any individualized assessment or may face administrative segregation after being attacked or expressing fear for personal safety. One transgender woman, Ana Luisa,¹¹⁸ was placed in administrative segregation after being assaulted by a male detainee in a bias attack. Ana Luisa, rather than her assailant, was placed in solitary confinement after this attack, further victimizing her.
85. Administrative and disciplinary segregation, both used in ICE detention facilities, mirror punitive forms of solitary confinement imposed in the penal context.¹¹⁹ Detained people are confined alone in tiny cells for up to twenty-three hours a day. Phone privileges, access to legal counsel, and recreational time are often restricted or completely denied. Freedom of movement can be so severely limited that even trips to the bathroom may require shackles and a staff escort. Making matters worse, when such detainees express depression or hopelessness from this extreme isolation, they are often placed on suicide watch, which can

mean further limitations on their privacy and freedom of movement. Once in administrative segregation, it becomes extremely difficult to get out.

86. In 2009, ICE announced plans to reform the immigrant detention system, but thus far there has been extremely limited progress toward a shift to non-penal facilities.¹²⁰ Human Rights First notes one challenge to reform: “[a]lthough U.S. immigration officials have repeatedly emphasized that facility safety and security are priorities of detention reform, and multiple studies demonstrate that the planned reforms can actually help improve facility safety, the ICE union has raised concerns about the reform’s impact on officer and detainee safety” [citations omitted].¹²¹

c. Lack of Appropriate Access to Medical and Health Care

87. Highly publicized and tragic cases illustrate a systemic disregard for the rights to necessary medical care in detention, humane conditions of detention, and treatment respecting basic human dignity. Between 2003 and December 2011, ICE reported 127 deaths of non-citizens in their custody.¹²² Shocking reports of the United States’ failure to screen for illness and failure to provide care to ill or injured persons in its custody abound.¹²³

“One detainee, a legal permanent resident, had been diagnosed with bipolar disorder, post-traumatic stress disorder, and severe depression prior to her detention. Her mental health issues were not diagnosed when she was first detained by ICE in August, 2006, and during her 18-month detention her mental illness continued to go undiagnosed and untreated. Guards at the South Texas Detention Center ridiculed her by telling her she was not truly sick, she was faking her illness, that she had no rights in the United States, and that she would be deported to Mexico.”¹²⁴

“Even though I was showing many symptoms, no one offered me any medical attention. [...] I was so sick that I was delirious, vomiting, had no appetite, a strong head ache, fever, I was very cold, and I had a cold sweat. In my cell there are more than forty people who are sick. As far as I know, no one in my cell has had a blood test or any lab testing done.”¹²⁵

“When I came to this detention center, no one gave me a medical examination. I informed them that I had leukemia and diabetes, but up to this point, I have not received treatment for my cancer nor my diabetes. I have never had a blood test for my diabetes, and I’m only given a blood sugar test once a month.”¹²⁶

88. The Women’s Refugee Commission has documented many instances of delayed or denied medical care. Women in one Arizona facility reported “that medical treatment was often degrading: they are frequently told by medical staff that they are criminals who are not entitled to care; other detainees are used as interpreters, including during mental health consultations; medical staff deny their complaints of depression or anxiety and refuse them medication for these conditions, even when they had been receiving treatment at a previous facility.”¹²⁷

89. The Florida Immigrant Advocacy Center reported that, “Conditions of medical care have been deteriorating, funding is inadequate, detention is not cost effective, ICE oversight of detention facilities is lacking, detention facility staff often treats detainees cruelly, detainees are transferred in retaliation, and essential healthcare is often delayed or denied.”¹²⁸
90. A March 2011 report by the Department of Homeland Security’s Office of Inspector General reports that while the ICE Health Services Corps serves as medical authority for ICE, deficiencies call into question the effectiveness of care, particularly regarding provision of mental health care. The OIG reports that IHSC staffs only 18 of the approximately 250 facilities holding people in ICE custody, resulting in limited oversight and monitoring, and that even in those facilities which they staff, effectiveness is limited by persistent staff vacancy rates. The report finds that facilities were not always capable of providing adequate mental health care to ICE detainees.¹²⁹ Detention facilities lack the capacity to provide adequate care for the increasing number of people in detention and struggle to fill open medical positions.¹³⁰
91. Medical and mental health issues are exacerbated by the lengthy and indefinite periods of detention endemic in the immigration detention system. Many people in ICE custody are held in county jails or other facilities designed for short-term stays by people in pre-trial criminal custody. These facilities lack the screening, protocols, personnel, and facilities to deal with people detained by ICE whose average length of stay is over 30 days.¹³¹

d. Sexual Abuse of Migrants in Detention¹³²

92. Sexual abuse of migrants in detention is a problem of serious concern. Over 200 reported complaints of sexual abuse have been filed by immigrant detainees in the past five years,¹³³ which advocates believe reflect a fraction of the problem.¹³⁴
93. Women make up 9 percent of the immigration detention population.¹³⁵ Some of these women are “victims of trafficking, survivors of sexual assault and domestic violence, pregnant women, and nursing mothers.”¹³⁶ Human Rights Watch has identified “more than 15 separate documented incidents and allegations of sexual assault, abuse, or harassment from across the ICE detention system, involving more than 50 alleged detainee victims.”¹³⁷ These figures likely understate the extent of sexual harassment and abuse in ICE facilities, as people in detention “face a range of obstacles and disincentives to reporting, from a lack of information about rules governing staff conduct, to fear of speaking out against the same authority that is seeking their deportation, to trauma from the abuse in detention and possibly from violence and other abuse they have previously suffered in their countries of origin.”¹³⁸
94. The Bureau of Justice Statistics collects data on sexual abuse in custodial settings. But its data on ICE detainees are limited to facilities that are “run by or exclusively for” ICE, and therefore exclude “sexual violence, abuse, and harassment of immigration detainees in the hundreds of jails and contract facilities in which ICE rents a portion of the bed space. This is a notable omission, both because of the number of such facilities used by ICE and because the rates of substantiated sexual violence are four to five times higher in state prisons, local jails, and privately operated jails, than in federal prisons, according to the 2006 BJS

survey.”¹³⁹ “Department of Homeland Security, the agency in charge of immigration detention, is not mandated under law to publish data on sexual violence, and has not done so.”¹⁴⁰

95. The ACLU reports disturbing accounts of rape of women detained by ICE. An excerpt from one woman’s account states:

He hurriedly shoved anything that was on the floor of the front area of the van and motioned for me to lay down on my back. I refused. When he saw that I wasn’t going to cooperate, he went to the back of the van. He pushed my things off the seat in the cage inside the van and gestured for me to get back in. I complied. He followed me into the van. I told him I would report him if he continued to touch me and he pushed me into the van. I was crying and I thought it was the end of my life. I thought he was going to kill me. I thought I should have stayed in my home country if my life was going to end like this because at least I would have had more time with my children. He got in the cage with me and started unzipping his pants and pulling off my clothes. He exposed himself to me. He was angry that I would not take off my clothes. I kept yelling, saying that if he didn’t stop I would tell someone.¹⁴¹

96. “Although federal law now criminalizes sexual contact between guards and detainees, the prohibition on such conduct is far from clear at the facility level. Advocates report that detainees sometimes deny knowledge of sexual misconduct at their facility, but will refer to ‘alliances’ between detainees and guards based on sexual relationships.”¹⁴²

97. While United States’ federal law, known as the Prison Rape Elimination Act (PREA), is in effect, recently proposed rules which would exempt immigration detention facilities from PREA have raised serious concerns. Despite Congressional intent of the 2003 Prison Rape Elimination Act to apply to all types of confinement, including confinement of immigrants in immigration detention, the rules proposed by Attorney General Eric Holder in June 2011 explicitly stated that they would not be applied to immigration detention. Justifications for this exclusion included that the U.S. Department of Justice cannot create rules for the U.S. Department of Homeland Security (the federal department with jurisdiction over immigration detention) and the Department of Health and Human Services (which has jurisdiction over the custody of unaccompanied alien children), as well as that the Department of Homeland Security already has its own policies to prevent sexual assault in detention. Ongoing advocacy around this issue has pushed for inclusion of all immigration detention in the Department of Justice’s final rules, which have been finalized but not yet released.¹⁴³

98. “Sexual harassment receives sparse and inconsistent treatment in current ICE materials. In some instances, the definition of sexual harassment is limited to actions or communications ‘aimed at coercing or pressuring a detainee to engage in a sexual act.’ This fails to encompass egregious acts of harassment—humiliating comments of a sexual nature or unnecessary viewing of detainees while they undress—that are not directed towards instigating a sex act.”¹⁴⁴

99. “In spite of the non-criminal nature of immigration detention, ICE has adopted a policy that imposes few limitations on guards’ authority to search detainees and, consequently, opens up unnecessary opportunities for abuse of that authority. To conduct a pat-down search of a detainee, a guard need not meet any threshold of suspicion of contraband; it is contemplated that these searches will be conducted routinely. ICE insists this policy is necessary to give facilities flexibility in maintaining security. Currently, although crossgender strip searches are only permitted in emergency situations, no restriction is placed on cross-gender pat searches. However, ICE has said that the new detention standards will prohibit cross-gender pat searches and will allow trans-gender detainees to select the gender of the guard searching them.”[citations omitted]¹⁴⁵
100. Although there have been documented incidents of sexual assaults of people in detention during the course of transportation, ICE transportation policies are insufficient to protect against sexual assault. “Despite appeals from advocates that the transportation standard be amended to require that a female guard be present during transportation of female detainees, the existing standard has only required that transporting guards call in the time and mileage they spend transporting a female detainee. ICE has announced that the new standard will prohibit a single guard from transporting a single detainee of the opposite sex, but will not require the presence of a guard of the same-sex unless it is expected that a search of the detainee will be conducted during the transport.”¹⁴⁶
101. Frequent transfers of people between detention centers increase the likelihood that sexual abuse will remain unaddressed.¹⁴⁷ While ICE has announced its intent to implement a new transfer policy, that policy is not yet publicly available.
102. Lesbian, gay, bisexual, and transgender people face sexual and other abuse while in immigration custody. “Heartland Alliance’s National Immigrant Justice Center (NIJC) filed 13 complaints in April 2011 with the Department of Homeland Security’s (DHS’s) Office of Civil Rights and Civil Liberties and Office of Inspector General demanding that the Obama administration investigate abuse allegations and take action to protect lesbian, gay, bisexual, and transgender (LGBT) immigrants in DHS custody. The 13 complaints describe violations including sexual assault, denial of medical and mental health treatment, arbitrary long-term solitary confinement, and frequent harassment by officers and facility personnel... In October 2011, NIJC filed with the government four additional complaints of abuse against detained LGBT immigrants, bringing the total number of complaints to 17 since April 2011.”¹⁴⁸ Members of Congress recently called for an investigation into these allegations.¹⁴⁹
103. Transgender women in particular face an increased risk of rape and sexual violence when confined with male detainees. Because the immigration detention system often uses local jails to house detainees, immigrants with low-level or no convictions are often housed alongside violent and dangerous felons. One transgender woman, Josefina¹, was housed with convicted male sex offenders after she was detained following a minor shoplifting conviction. Sexual violence against transgender detainees is an even graver problem given

¹ For confidentiality reasons, individual names have been changed. Immigration Equality, a national organization that advocates for the rights of gay, lesbian, bisexual, transgender, and HIV positive immigrants, has either conducted an intake with these individuals or directly represented them in their immigration cases.

the Department of Justice's recent stance that the Prison Rape Elimination Act Of 2003 does not apply to immigration detention centers.¹⁵⁰ Transgender detainees who are suspected of civil immigration status violations therefore receive fewer procedural safeguards against rape than do convicted felons in federal prisons.

2. Detention by Customs and Border Protection

104. Conditions of detention of migrants by Customs and Border Protection, particularly near the U.S.-Mexico border, are of urgent concern. CBP apprehension and detention policies and practices lack transparency and accountability at both the local and federal levels.

105. Migrants, including minor children, apprehended by CBP often are detained in short-term custody facilities which hold people for less than 72 hours.¹⁵¹ There is little access into these short-term detention facilities operated under Customs and Border Protection authority, and what insight we have into detention conditions comes largely from those formerly detained by Border Patrol. Between 2008 and 2011, the organization No More Deaths conducted interviews with nearly 13,000 people who had been in Border Patrol custody. Their findings reveal patterns of disregard for the most basic human rights of people in Border Patrol custody, including:

- Border Patrol agents denied food to 2,981 people and gave insufficient food to 11,384 people. Only 20 percent of people in custody for more than two days received a meal.
- Agents denied water to 863 people and gave insufficient access to water to 1,402 additional people. Children were more likely than adults to be denied water or given insufficient water. Many of those denied water by Border Patrol were already suffering from moderate to severe dehydration at the time they were apprehended.
- Physical abuse was reported by 10 percent of interviewees, including teens and children. The longer people were held in custody, the more likely they were to experience physical abuse.
- Of the 433 incidents in which emergency medical treatment or medications were needed, Border Patrol provided access to care in only 59 cases—86 percent were deported without necessary medical treatment.
- The most commonly reported forms of inhumane processing center conditions were overcrowding (5,763 reports), followed by unsanitary conditions (3,107), extreme cold (2,922), and extreme heat (2,349).¹⁵²

106. One person reported that she was not provided food for the first three days she was in Border Patrol custody and that she was told to drink water out of the toilet if she was thirsty.¹⁵³

107. The GEO Group, and other privately contracted transportation buses are utilized as virtual detention centers where individuals are held until the bus departs.¹⁵⁴

F. Right to Seek Asylum from Persecution

108. Inconsistent with the United States' obligation under the Convention relating to the Status of Refugees, article 31, paragraph 1, detention of asylum seekers penalizes asylum seekers and deters them from seeking asylum in the United States.¹⁵⁵ Immigration regulations require that ICE detain individuals requesting asylum at a port of entry until an initial screening of their asylum claim, called a credible fear review, is conducted. While ICE claims these screenings are conducted within 2 weeks, some individuals have had to wait several weeks or even months for a screening.¹⁵⁶
109. Detention of asylum seekers "risks re-traumatizing those who are already in a psychologically frail state,"¹⁵⁷ creates barriers to establishing eligibility for asylum by limiting access to counsel and to evidence in support of their applications,¹⁵⁸ and can serve as a deterrent to pursuing a claim.

G. Right to Family Unity

110. In violation of ICCPR article 23 and article 17, the U.S. immigrant detention system contravenes the United States' obligations to protection family unity. Family unity cannot be considered in mandatory detention cases, and the United States routinely fails to consider family unity when making discretionary detention decisions. Transfer of people to facilities far from family members has increased sharply in the last decade.¹⁵⁹
111. According to the Applied Research Center's 2011 report *Shattered Families*: "In fiscal year 2011, the United States deported a record-breaking 397,000 people and detained nearly that many. According to federal data released to ARC through a Freedom of Information Act request, a growing number and proportion of deportees are parents. In the first six months of 2011, the federal government removed more than 46,000 mothers and fathers of U.S.-citizen children. These deportations shatter families and endanger the children left behind."¹⁶⁰
112. "ICE does not protect families at the time of apprehension. ICE and arresting police officers too often refuse to allow parents to make arrangements for their children. Existing ICE guidelines are largely outdated and insufficient for the current immigration enforcement context in which ICE has shifted from high-profile raids to more-hidden and devolved forms of enforcement that operate through local police and jails and smaller-scale ICE enforcement actions."¹⁶¹
113. "ICE detention obstructs participation in CPS plans for family unity. ICE consistently detains parents when they could be released on their own recognizance or expand the use of community-based supervisory programs. Once detained, ICE denies parents access to programs required to complete CPS case plans. Due to the isolation of detention centers and ICE's refusal to transport detainees to hearings, parents can neither communicate with/visit their children nor participate in juvenile court proceedings. Child welfare caseworkers and attorneys struggle to locate and maintain contact with detained parents."¹⁶²

114. Parents detained in ICE facilities may sometimes be involved in complicated child custody disputes. These parents, however, are unable to participate—either telephonically, by video, or in person—in family court hearings and therefore are unable to fight for their parental rights.¹⁶³ “In some cases this was because child welfare workers or their public defenders were not communicating information about custody proceedings to them in time for them to participate. In other cases, women knew about family court dates but did not know they could ask to participate from detention or had requested access by video or telephone but had been denied.”¹⁶⁴
115. In addition to obstructing participation in ongoing child protection or custody cases, the ICE detention itself too often forms the basis of child protection claims, resulting in placement of children in foster care and even termination of parental rights. “Whether children enter foster care as a direct result of their parents’ detention or deportation, or they were already in the child welfare system, immigration enforcement systems erect often-insurmountable barriers to family unity.”¹⁶⁵
116. The Applied Research Center found that: “[i]n practice, however, when mothers and fathers are detained and deported and their children are relegated to foster care, family separation can last for extended periods. Too often, these children lose the opportunity to ever see their parents again when a juvenile dependency court terminates parental rights.”¹⁶⁶

I have a Mexican immigrant client detained by ICE for a year. She was a [domestic violence] victim and the police got involved and that’s when they found out that she was undocumented and so they had to go ahead and detain her. Eventually, they released her and permitted her to stay here in the U.S. based on a Violence Against Women Act visa. But the fact that she was detained by ICE was enough to push the kids into foster care.¹⁶⁷

117. ICE enforcement practices resulting in detention, particularly cooperation with local law enforcement, have undermined family unity:

A 34-year-old Ecuadoran woman named Maria who has lived in Minneapolis, Minnesota, for almost a decade was pulled over by a state police officer as she drove her daughter to school one morning. The Minnesota Department of Public Safety has signed a 287(g) agreement with ICE, and when Maria rolled down her window, the officer asked her for her papers. Because she is undocumented, she had no driver’s license, so the officer arrested her. Before taking her to the station, the police officer said that she could call someone to pick up the girl, but Maria told the officer that she had no family in the area. When the officer told her that the only other option was to call CPS, Maria called her elderly landlady who agreed to take the girl. Maria was soon detained by ICE and moved over 1000 miles away to the Hutto women’s detention center in Texas. A few days later, Maria’s former boyfriend, who was the girl’s father and who had abused Maria for years, arrived at the caregiver’s house and took his daughter away.¹⁶⁸

118. Mandatory detention laws have also been found to undermine family unity. Again, the Applied Research Center:

While our research did uncover instances in which ICE agents used their discretion to release parents with children in foster care, most were among the shockingly low 16% of detainees with legal representation or were among a very small number of parents whose caseworker actively contacted ICE to ask for their release.

Without a broader basis for relief, many families will continue to be separated by detention and deportation. For some parents, ICE discretion offers little hope because their detention and deportation is mandatory based on federal law. Mandatory detention and deportation means that even immigration judges are denied the prerogative to release detainees or cancel an order of removal. Immigrants convicted of a broad category of charges are subject to mandatory detention and deportation. Others are detained for extended periods because ICE officers believe that if they were released while waiting for the decision of an immigration judge, they would flee. However, immigration attorneys as well as parents interviewed for this report made it very clear that parents with children in foster care are categorically a low flight risk because their primary concern is almost always to regain custody of their children. Few parents would leave town without their sons and daughters.¹⁶⁹

119. Customs and Border Protection practices also violate obligations to ensure family unity. According to research conducted by the organization No More Deaths, which conducted interviews from Fall 2008 to Spring 2011 with 12,895 individuals who were in Border Patrol custody, “Border Patrol deported 869 family members separately, including 17 children and 41 teens.”¹⁷⁰
120. Visits by non-detained family members are limited by facility rules. In one survey of attorneys, 81% reported that clients expressed difficulty in calling or visiting with family. Facilities often restrict visits to video only and limit the time of visits to 10 minutes.¹⁷¹

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² *Report of the Special Rapporteur on the Human Rights of Migrants*, *supra* note 1, ¶ 10.

³ ICERD, art. 1, ¶ 2 (providing for the possibility of differentiating between citizens and non-citizens); *but see* CERD, Gen. Rec. 11 (noting regarding the rights of non-citizens, art. 1, ¶ 2, must not detract from the rights and freedoms recognized and enunciated in other human rights instruments and “must be construed so as to avoid undermining the basic prohibition of discrimination”); Gen. Rec. 30, at ¶ 2 (noting that “Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim”).

⁴ Universal Declaration of Human Rights (UDHR), art. 3, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948); ICCPR, *supra* note 3, art. 9.

⁵ UDHR, *supra* note 4, art. 9; ICCPR, *supra* note 1, art. 9(1) (stating no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law); *id.* art. 9(2) (guaranteeing that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him); *id.* art. 9(4) (requiring that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful). *See also* UNHRC, Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, ¶ 67, U.N. Doc. A/HRC/10/21 (Feb. 16, 2009) (reminding states that the legality of detention must be open for challenge before a court and 2); UNHRC, Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, ¶ 52, U.N. Doc. A/HRC/7/4 (Jan. 10, 2008) (reminding states of the right of the detained to a prompt review).

⁶ ICCPR, *supra* note 3, at art. 9(4).

⁷ ICCPR, *supra* note 1, art. 7 (stating that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment); ICCPR art. 10(1) (requiring that all persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person); *id.* art. 10(2) (requiring that accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons).

⁸ UNHCR, Exec. Comm., *Detention of Refugees and Asylum Seekers, Conclusion No. 44 (XXXVII)* UN Doc. A/41/12/Add.1 (Oct. 13, 1986) (stating that “in view of the hardship which it involves, detention should normally be avoided” and sets out the limited accepted bases on which the detention of refugees or asylum-seekers may be justified, namely: to verify identity; to determine the elements of the claim; to deal with cases where refugees have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order. Those detained must have access to either an administrative or judicial review, an essential safeguard against arbitrary detention). *See also*, UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, Feb. 26, 1999.

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(stating that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence . . .”).

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⁹⁷ See HUMAN RIGHTS FIRST, RENEWING U.S. COMMITMENT TO REFUGEE PROTECTION: RECOMMENDATIONS FOR REFORM ON THE 30TH ANNIVERSARY OF THE REFUGEE ACT (Mar. 2010) at 10 (noting that while Immigration Judges can review ICE’s custody decisions for other immigrant detainees, they are precluded under regulatory language from reviewing the detention of “arriving aliens,” a group that includes asylum seekers who arrive at airports and other U.S. entry points under regulations located primarily at 8 C.F.R. § 1003.19 and § 212.5, as well as § 208.30 and § 235.3). See also U.S. Comm’n on Int’l Religious Freedom, ICE Parole Guideline is an Important First Step to Fix Flawed Treatment of Asylum Seekers in the United States (Dec. 23, 2009) (noting low rates of release on parole and citing that New Orleans released only 0.5 percent of asylum seekers, New Jersey less than four percent, and New York eight percent following a finding of credible fear), available at http://www.uscirf.gov/index.php?option=com_content&task=view&id=2891&Itemid=126.

⁹⁸ U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, News Release: ICE issues new procedures for asylum seekers as part of ongoing detention reform initiatives (Dec. 16, 2009), available at <http://www.ice.gov/pi/nr/0912/091216washington.htm>.

⁹⁹ See Lutheran Immigrant and Refugee Service, *Unlocking Liberty*, Oct. 2011. Available at <http://www.lirs.org/atf/cf/%7Ba9ddba5e-c6b5-4c63-89de-91d2f09a28ca%7D/RPTUNLOCKINGLIBERTY.PDF>.

¹⁰⁰ See Lutheran Immigrant and Refugee Service, *Unlocking Liberty*, Oct. 2011. Available at <http://www.lirs.org/atf/cf/%7Ba9ddba5e-c6b5-4c63-89de-91d2f09a28ca%7D/RPTUNLOCKINGLIBERTY.PDF>.

¹⁰¹ See NAT'L IMMIGR. L. CTR., ACLU OF S. CAL., AND HOLLAND & KNIGHT, A BROKEN SYSTEM: CONFIDENTIAL REPORTS REVEAL FAILURES IN U.S. IMMIGRANT DETENTION CENTERS 4 (2009) [*hereinafter* A BROKEN SYSTEM].

¹⁰² See *e.g.*, DETENTION WATCH NETWORK, ABOUT THE U.S. DETENTION AND DEPORTATION SYSTEM, available at www.detentionwatchnetwork.org/aboutdetention.

¹⁰³ SHRIRO, *supra* note 53 at 2.

¹⁰⁴ ICCPR, *supra* note 1, art. 10(1) (guaranteeing that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person); *id.* art. 10(2)(a) (providing that accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons).

¹⁰⁵ Brittney Nystrom, Senior Legal Advisor, National Immigration Forum, Written Testimony before U.S. House of Representatives, House Homeland Security Committee, Border, Maritime, and Global Counterterrorism Subcommittee, "Moving Toward More Effective Immigration Detention Management," Dec. 10, 2009, available at <http://chsdemocrats.house.gov/SiteDocuments/20091210105703-50708.PDF>.

¹⁰⁶ The Advocates for Human Rights regularly represents people detained in Minnesota and has observed that people routinely remained shackled when appearing before the Immigration Judge.

¹⁰⁷ See Human Rights Advocates, Submission to the Human Rights Council, 11th Session, Agenda Item 3: Rights of Migrants.

¹⁰⁸ Visit by The Advocates for Human Rights to Ramsey County Adult Detention Center, 2011 (notes on file with author).

¹⁰⁹ See *e.g.*, American Civil Liberties Union of Georgia, Letter to the Inter-American Commission on Human Rights, "Submission re. Racial Profiling in Gwinnett and Cobb Counties, Georgia, and Conditions of Detention at Stewart and Irwin County Detention Center," Mar. 28, 2011, at 5 (reporting that detainees were given dirty underwear at the Irwin County Detention Center). Available at <http://www.acluga.org/ACLUofGeorgia-submissiontoIACHR.pdf>.

¹¹⁰ See, *e.g.*, KATHERINE FENNELLY AND KATHLEEN MOCCIO, U. OF MINN. HUBERT H. HUMPHREY INST. OF PUB. AFFAIRS, ATTORNEYS' PERSPECTIVES ON THE RIGHTS OF DETAINED IMMIGRANTS IN MINNESOTA (Nov. 2009).

¹¹¹ County jails holding immigrant detainees in Minnesota have "video visits" with family members, where detainees see and speak with their family members via closed circuit television.

¹¹² County jails, designed for short periods of detention, do not necessarily have outdoor recreation facilities. The Ramsey County Adult Detention Center in St. Paul, Minnesota, for example, has no outdoor recreation access. People in detention have very limited access to a small room with window near the high ceilings which can be opened to let fresh air into the room.

¹¹³ See Dana Priest & Amy Goldstein, *Caught Without Care*, THE WASH. POST, May 13, 2008 (reporting that suicide is the most common cause of death among detained immigrants with 15 of 83 deaths since 2003 the result of suicide and stating, "No one in the Division of Immigration Health Services (DIHS), the agency responsible for detainee medical care, has a firm grip on the number of mentally ill among the 33,000 detainees held on any given day, records show. But in confidential memos, officials estimate that about 15 percent -- about 4,500 -- are mentally ill, a number that is much higher than the public ICE estimate. The numbers are rising fast, memos reveal, as state mental institutions and prisons transfer more people into immigration detention"). See also PHYSICIANS FOR HUMAN RIGHTS, BELLEVUE/NYU CENTER FOR SURVIVORS OF TORTURE, FROM PERSECUTION TO PRISON: THE HEALTH CONSEQUENCES OF DETENTION FOR ASYLUM SEEKERS (2003), available at <http://physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf>.

¹¹⁴ A client of The Advocates for Human Rights seeking asylum from Ethiopia and being treated for depression and Post-Traumatic Stress Disorder, was detained for over one year in the Ramsey County Adult Detention Center in St. Paul, Minnesota, following her asylum hearing in front of an immigration judge. While detained, she never saw the outdoors and was co-mingled with the general convicted population because the facility with which ICE contracts lacks the facilities.

¹¹⁵ See, *e.g.*, Georgia Detention Watch, Report on the December 2008 Humanitarian Visit to the Stewart Detention Center, at 5-6. Available at http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf; letter from IRATE & First Friends to the author summarizing key complaints received by volunteers during their visits with people detained in New Jersey, Jan. 26, 2012, on file with author.

¹¹⁶ See e.g., John E. Dannenberg, Prison Legal News, “Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks,” available at

[https://www.prisonlegalnews.org/\(S\(34xg4h553u305v453i4j5u45\)\)/23083_displayArticle.aspx](https://www.prisonlegalnews.org/(S(34xg4h553u305v453i4j5u45))/23083_displayArticle.aspx); Center for Constitutional Rights, <http://ccrjustice.org/learn-more/faqs/factsheet--corporate-exploitation-and-prison-system>; letter from IRATE & First Friends to the author summarizing key complaints received by volunteers during their visits with people detained in New Jersey, Jan. 26, 2012, on file with author.

¹¹⁷ Women’s Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, Oct. 2010, at 5.

¹¹⁸ Immigration Equality, a national organization that advocates for the rights of gay, lesbian, bisexual, transgender, and HIV positive immigrants, has either conducted an intake with these individuals or directly represented them in their immigration cases.

¹¹⁹ See, e.g., Georgia Detention Watch, Report on the December 2008 Humanitarian Visit to the Stewart Detention Center, at 6. Available at http://www.acluga.org/Georgia_Detention_Watch_Report_on_Stewart.pdf.

¹²⁰ U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, Press Release: ICE Announces Major Reforms to Immigration Detention System (Aug. 6, 2009), available at

<http://www.ice.gov/pi/nr/0908/090806washington.htm>; U.S. Dept. of Homeland Security, Immigr. and Customs Enforcement, Fact Sheet: ICE DETENTION REFORM: PRINCIPLES AND NEXT STEPS: Sec. Napolitano Announces New Immigration Detention Reform Initiatives (Oct. 6, 2009), available at http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf.

¹²¹ Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System – A Two-Year Review*, 2001, at p. 22.

¹²² Immigration and Customs Enforcement, List of Detainee Deaths Since October 2003, available at <http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf>

¹²³ Nina Bernstein, *Hong Kong Emigrant’s Death Attracts Scrutiny of U.S. Detention System*, N.Y. TIMES, Aug. 13, 2008 (reporting that “[i]n April, [Hiu Lui] Ng began complaining of excruciating back pain. By mid-July, he could no longer walk or stand. And last Wednesday, two days after his 34th birthday, he died in the custody of Immigration and Customs Enforcement in a Rhode Island hospital, his spine fractured and his body riddled with cancer that had gone undiagnosed and untreated for months.”). See also Katherine Fennelly and Kathleen Moccio, U of Minn. Hubert H. Humphrey Inst. Of Pub. Affairs, “Attorneys’ Perspectives on the Rights of Detained Immigrants in Minnesota,” (Nov. 2009).

¹²⁴ Texas Appleseed, *Justice for Immigration’s Hidden Population: Protecting the Rights of Persons with Mental Disabilities in the Immigration Court and Detention System*, Mar. 2010, at 25. Available at http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=313&Itemid.

¹²⁵ New Orleans Workers’ Center for Racial Justice, *Detention Conditions and Human Rights Under the Obama Administration: Immigrant Detainees Report from Basile, Louisiana*, 2009, at p. 10-11. Available at <http://www.nowcrj.org/wp-content/uploads/2009/07/detention-conditions-report.pdf>.

¹²⁶ New Orleans Workers’ Center for Racial Justice, *Detention Conditions and Human Rights Under the Obama Administration: Immigrant Detainees Report from Basile, Louisiana*, 2009, at p. 10-11. Available at <http://www.nowcrj.org/wp-content/uploads/2009/07/detention-conditions-report.pdf>.

¹²⁷ Women’s Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona*, Oct. 2010, at 5.

¹²⁸ Florida Immigrant Advocacy Center, *Dying for Decent Care: Bad Medicine in Immigration Custody*, Feb. 2009, at 27. Available at <http://www.fiacfla.org/reports/DyingForDecentCare.pdf>. See also Human Rights Watch, *Detained and Dismissed: Women’s Struggles to Obtain Health Care In United States Immigration Detention*, Mar. 2009, at 29 (finding that appropriate treatment was often delayed or denied and that detainees sometimes were denied healthcare request in retaliation). Available at <http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed>.

¹²⁹ U.S. Dept. of Homeland Security, Office of Inspector General, “Management of Mental Health Cases in Immigrant Detention,” at 1. Available at http://www.oig.dhs.gov/assets/Mgmt/OIG_11-62_Mar11.pdf. See also, Nat’l Immigration Forum, *The Math of Immigrant Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, at 5. Available at <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf>.

¹³⁰ Physicians for Human Rights, *Dual Loyalties: The Challenges of Providing Professional Health Care to Immigration Detainees*, Feb. 2011, at 5. Available at https://s3.amazonaws.com/PHR_Reports/2011_DualLoyalties_Final_3_24_2011_opt.pdf.

Report to the United Nations Special Rapporteur on the Human Rights of Migrants
Detention of Asylum Seekers and Immigrants in the United States

¹³¹ See Detention Watch Network, “Tracking ICE Enforcement,” at <http://www.detentionwatchnetwork.org/node/2382>.

¹³² See Submission by Just Detention International filed with the Special Rapporteur for the Human Rights of Migrants for additional information.

¹³³ See American Civil Liberties Union website <http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities> (detailing findings of a Freedom of Information Act request relating to complaints of sexual abuse). See also, Carrie Johnson, “Immigration Detainees Seek Prison-Rape Protection,” Nat’l Public Radio, Dec. 13, 2011. Available at <http://www.npr.org/2011/12/13/143638236/immigration-detainees-seek-prison-rape-protection>.

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¹³⁵ Human Rights Watch, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, Aug. 2010, at 3. Available at <http://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf>.

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¹⁴¹ American Civil Liberties Union website, posted Oct. 16, 2011, available at <http://www.aclu.org/immigrants-rights/sexual-abuse-immigration-detention-raquels-story>.

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¹⁴⁹ Jan. 4, 2012, letter from Members of Congress to the U.S. Government Accountability Office, at http://polis.house.gov/UploadedFiles/010512_GAO_Detention_Letter.pdf.

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¹⁵⁴ Adam Borowitz, *Wackenhut Worries: A Company with a Sketchy Record has Quietly Taken Over Deportation Duties from the Border Patrol*, THE TUCSON WEEKLY, May 2, 2007.

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¹⁵⁶ The Constitution Project, *Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings*, 2009, at 17. Available at <http://www.constitutionproject.org/pdf/359.pdf>

¹⁵⁷ See, e.g., Barbara A. Frey and X. Kevin Zhao, "The Criminalization of Immigration and the International Norm of Non-Discrimination: Deportation and Detention in U.S. Immigration Law," XXIX Law and Inequality: A Journal of Theory and Practice 2, Summer 2011, at 302-3.

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¹⁵⁹ TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, HUGE INCREASE IN TRANSFERS OF ICE DETAINEES (2009), *available at* <http://trac.syr.edu/immigration/reports/220/> (finding that the number of detainees that ICE has transferred each year has grown much more rapidly than the already surging population held in custody by the agency, with over 50% of detainees transferred at least once and nearly 25% of detainees transferred multiple times while detained).

¹⁶⁰ Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Nov. 2011, at 5. Available at www.arg.org.

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¹⁷¹ See, e.g., KATHERINE FENNELLY AND KATHLEEN MOCCIO, U. OF MINN. HUBERT H. HUMPHREY INST. OF PUB. AFFAIRS, ATTORNEYS' PERSPECTIVES ON THE RIGHTS OF DETAINED IMMIGRANTS IN MINNESOTA (Nov. 2009) at 13-14.

Reports from Europe

Compilation of Resources from Migeurop

www.migreurop.org

The following reports on the detention of undocumented migrants are from Migreurop, and can be accessed at the links provided.

Bibliographie sur l'enfermement des étrangers

Bibliography of resources on the detention of undocumented migrants, accessible through:

<http://www.migreurop.org/rubrique295.html?lang=fr>

Contrôler et filtrer : les camps au service des politiques migratoires de l'Europe.

Article publié dans M-C Caloz-Tshopp et V. Chetail (dir), *Mondialisation, Migrations, Droits de l'homme*, Bruylant, Bruxelles, 2007, accessible through <http://www.migreurop.org/IMG/pdf/CR-ISS-RUIGfev06.pdf>

Europe's Murderous Borders

Migreurop 2009 Report on the violation of human rights at borders, accessible through

<http://www.migreurop.org/IMG/pdf/Rapport-Migreurop-nov2009-en-final.pdf>

For its first Annual report on the violation of human rights at borders, Migreurop has chosen to maintain the four symbolic poles of the misdeeds of the policy enacted by the European Union in the field of immigration and asylum. The Greek-Turkish border, the Calais region in north-western France, that of Oujda in eastern Morocco and the island of Lampedusa in the far south of Italy, are as many stops, more or less lengthy, sometimes definitive, in the odyssey of thousands of people who, every year, by trying to reach Europe, seek to escape the fate that they have been dealt through chosen or forced exile.

Illegal deportations at the Greek-Turkish border

Oujda : Buffer zone between Morocco and Algeria, airlock to Europe

Calais and North of France : roving zone, England doors

Lampedusa, sentinel's Island of Europe

European borders: controls, detention and deportations

Migreurop, « *European borders: controls, detention, deportations* », 2009-2010 report, 128 pages, accessible through <http://www.migreurop.org/IMG/pdf/rapport-migreurop-2010-en - 2-121110.pdf>

For its second annual report on the European borders, Migreurop has chosen to emphasize three main steps of the fights led by the authorities against the candidates to migration : the controls of their movements, detention and deportation.

Based on evidences from fact finding missions, the report gives dramatic examples of this war against migrants which implies a general decline of the law protecting the freedom and integrity of human beings.

Denouncing the « externalization » process of the European union migratory policy, Migreurop shows how third countries are obliged, through the threat of the reconsideration of cooperation agreements and

³⁵ Compilation on European developments furnished by Platform for International Cooperation on Undocumented Migrants (PICUM) and Migreurop

development aid, not only to readmit the migrants chased from Europe, but also to keep them on their own territory from travelling towards its doors.

From Calais area in France to the edge of Turkey and the Adriatic sea, from the surroundings of Gibraltar to the Sahel Saharan desert and the new member states of eastern Europe, a subcontracting of migratory control is carried out in series, sometimes very far away from the Union but also within its territory, especially when it deals with sending asylum seekers from country to country considered as unwanted. A large population of exiles, from both sides of the European borders, is subjected to arbitrary incarceration, wandering, and the constant humiliation of a hostile environment.

While for the first time since its beginning, the Frontex agency displays its rapid intervention military teams to face the “massive flow” of migrants at the Greek border as if they were dangerous enemies, the Migreurop report, strongly recalls that the right, admitted by international treaties, to leave a country and ask for protection from another, loses its meaning if the candidates to emigration or to asylum are put under house arrest or held up on their way.

« Aux bords de l'Europe : l'externalisation des contrôles migratoires »

rapport Migreurop 2010-2011, accessible through <http://www.migreurop.org/IMG/pdf/Migreurop-rapportoct2011.pdf>

Pour cette troisième édition de son rapport annuel, le réseau Migreurop poursuit son évaluation critique de l'externalisation des politiques migratoires mises en place par les gouvernements de l'Union européenne et de ses effets sur les populations. Si ce processus comporte des aspects très divers, allant de l'attribution restrictive des visas aux opérations de l'agence Frontex en passant par les accords de réadmission, ce rapport, rédigé sur la base d'enquêtes originales, est consacré à l'étude de deux visages assez méconnus de la soustraction des contrôles migratoires aux portes de l'Europe et même bien au-delà.

Dans une première partie, élargissant les investigations menées précédemment en Turquie, on s'intéresse plus particulièrement à la frontière orientale de ce pays avec l'Iran, dans une région marquée par de nombreuses arrivées d'émigrants en provenance des pays voisins, mais aussi du reste de l'Asie et d'Afrique. En quête de protection ou de paix civile, la majeure partie de ces hommes, femmes et enfants sont exposés à des traitements inhumains aussi bien de la part des passeurs que des autorités turques, qui les arrêtent et les placent dans des geôles. Les personnes qui ne sont pas renvoyées vers l'Iran sont assignées à résidence à Van – ville proche de la frontière – et doivent faire face à un système d'asile temporaire mais interminable en fait, très humiliant et source de multiples formes d'oppression, notamment pour les femmes. En prévision de l'adhésion de la Turquie à l'Union, les autorités européennes demandent au gouvernement de ce pays d'améliorer les conditions d'existence de ces exilés, en construisant des centres d'accueil et de rétention, lesquels s'apparentent malgré tout à des lieux de mise à l'écart et de privation de liberté.

La deuxième partie, divisée en quatre chapitres, montre les diverses facettes du traitement réservé aux « passagers clandestins » à bord des bateaux de la marine marchande et dans les ports maritimes au départ comme à l'arrivée, à partir d'observations et interviews dans une vingtaine de sites portuaires autour de l'Europe. De la prévention à la capture et à l'enfermement puis au renvoi, le régime appliqué à ces passagers demeure discret, opaque et peu respectueux des droits de la personne humaine.

L'application de nouveaux plans de sûreté de plus en plus contraignants et sophistiqués se traduit par un transfert de la responsabilité des États à des sociétés privées, tant pour les contrôles à terre ou en mer que pour la prise en charge des passagers interceptés. Par divers moyens pas toujours légaux, sous la menace financière d'assureurs tout-puissants, l'enjeu est d'empêcher à la source le départ de ces migrants, ou à défaut de créer pour les différents acteurs (armateurs, marins, autorités portuaires) l'obligation de les renvoyer soit vers leur pays d'origine, soit vers les ports d'où ils proviennent. Le

rapport montre ainsi un autre aspect de l'enfermement des étrangers dans des lieux difficilement accessibles, sur les navires et dans les ports, ces derniers espaces soustraits au regard du public venant en quelque sorte compléter la cartographie que Migreurop propose des camps d'étrangers en Europe et dans les pays méditerranéens.

CIE, Derechos Vulnerados

Informe Migreurop Espana (Andalucia Acoge, APDHA, CEAR, SOS Racismo, ACSUR), available through <http://www.migreurop.org/IMG/pdf/CIE-rapport-MigreuropES.pdf>

La organización euroafricana reclama el cierre de estos centros y, entre tanto, exige una ley orgánica que regule su funcionamiento

“Personas privadas del derecho a la intimidad, a la asistencia jurídica, a la integridad moral y a la propia dignidad”, esta es la principal conclusión del Informe CIE, Derechos Vulnerados que ha sido presentado esta mañana en Málaga por la red euroafricana Migreurop con motivo de la Semana por los Derechos Humanos y del Día Internacional del Migrante, que se celebra el próximo domingo 18 de diciembre. El informe es fruto del trabajo realizado durante el año por la organización dentro de la iniciativa Migreurop España y que ha contado con la visita a cuatro centros, concretamente a los de Málaga, Algeciras, Madrid y Barcelona.

Las conclusiones del documento evidencian que las personas que se encuentran internadas en los CIE deberían estar en centros especiales sin carácter penitenciario y tener mejores condiciones que los presos, ya que no han cometido ningún delito, sino una falta administrativa como es no tener la documentación en regla. No obstante, aseguran, “la realidad es que estas personas están encerradas en verdaderas cárceles con condiciones muy inferiores a las que tienen en los centros penitenciarios y se encuentran privadas de derechos fundamentales tales como el derecho a la intimidad, a la asistencia jurídica, a intérprete, a la integridad moral, a la confidencialidad, y en algunos casos, como en el del CIE de Algeciras, al derecho a la dignidad con la práctica del desnudo integral previo al ingreso en el centro”.

Las organizaciones miembro de Migreurop recuerdan que los internos tienen únicamente restringido por ley su derecho ambulatorio, por lo que consideran “inaceptable” que se les prive del resto. Por ello, Migreurop reclama el cierre de estos centros, muchos de los cuales –centros de Málaga y Algeciras- no reúnen las condiciones mínimas de habitabilidad. Mientras tanto se produce el cierre, apuntan, “es prioritaria la aprobación de una ley orgánica que regule el funcionamiento de los CIE, para que no se produzcan más atropellos a los derechos de las personas”, regulación que ha sido respaldada ya por más de 40.000 firmas y 400 entidades en una reciente campaña. Durante su intervención, las organizaciones destacaron otras cuestiones no menos relevantes como el escaso o nulo control judicial de estos centros, las notables deficiencias en sistemas de evacuación y prevención de incendios, la designación de los internos por un número en lugar de por su nombre y apellidos y la ausencia de cámaras en parte de las instalaciones, que impiden fiscalizar la actuación de los funcionarios y prevenir actividades ilegales, denunciadas en numerosas ocasiones por las personas que han pasado por estas instalaciones.

Ante las evidencias que plantea el informe, las organizaciones solicitan que se prohíba la detención de personas en lugares que no tengan la consideración legal de CIE, como en el caso de Tarifa, el acceso regular de las organizaciones sociales para fiscalizar su funcionamiento, la comunicación con el exterior a través de teléfonos públicos y móviles de su propiedad, una asistencia médica y social independiente, visitas en condiciones de dignidad e intimidad, mecanismos para prever malos tratos y transparencia y control de estos centros por parte de la autoridad judicial.

Migreurop Country Reports

Germany – http://www.migreurop.org/IMG/pdf/Allemagne-fiche_longue-F-FR-2.pdf

Spain – <http://www.migreurop.org/article1994.html?lang=fr>

Cyprus – <http://www.migreurop.org/article1993.html?lang=fr>

Belgium – <http://www.migreurop.org/article1991.html?lang=fr>

Malta – <http://www.migreurop.org/article1990.html?lang=fr>

Greece – <http://www.migreurop.org/article1989.html?lang=fr>

Bosnia Herzegovina – <http://www.migreurop.org/article1988.html?lang=fr>

Poland – <http://www.migreurop.org/article1987.html?lang=fr>

Turkey – <http://www.migreurop.org/article1986.html?lang=fr>

Slovenia – <http://www.migreurop.org/article1588.html?lang=fr>

Fortress Europe sets its ramparts further out

The EU's expulsion machine

by Alain Morice and Claire Rodier

Le Monde Diplomatique, juin 2010 <http://www.monde-diplomatique.fr/2010/06/MORICE/19190>

A new detention centre at Le Mesnil-Amelot on the periphery of Paris's Charles de Gaulle airport (postponed at the last minute) was to be part of the ever-growing expulsion machine; control of migrants is now coordinated at European level by deals that shift the surveillance of frontiers towards the East and South. The cost in human lives is rising

The world's democracies unanimously welcomed the fall of the Berlin Wall as a victory for freedom 20 years ago; article 13 of the 1948 Declaration of Human Rights - "Everyone has the right to leave any country, including his own" - would finally be upheld. The Council of Europe congratulated itself in 1991 that "political changes now allow for free movement throughout Europe, which is a fundamental condition for the survival and development of free societies and flourishing cultures." It was not long before the fallout from this freedom frightened Europeans. Initially, it was stressed that, "the right to free movement as set out by international conventions does not imply the freedom to settle in another country". There was concern about "the spectacular rise in the number of asylum seekers in western Europe and some central European countries who have been tempted to use the Geneva Convention to bypass immigration restrictions" (1).

New fronts appeared at the end of the cold war and along them, ramparts real and virtual were thrown up, all formidable. In the East, the EU negotiated enlargement in return for a commitment by new member states to control their borders. Every state had to build its own Berlin Wall. For countries around the Mediterranean, the 1999 European summit at Tampere had already advocated "regional cooperation between EU member states and neighbouring third countries in the fight against organised crime", including people trafficking.

Migrants are called stowaways or victims, but are severely reprimanded as soon as they help each other, as though they were people smugglers. They have now become the target of a discourse that justifies combating them to help them. The summit of heads of state at Seville in June 2002 made the fight against illegal immigration the EU priority in its negotiations with neighbouring countries.

As a result, Old Europe, considering itself unable to control its borders, has scorned existing international accords, and set out to unload this task onto migrants' countries of origin or transit. The research network Migreurop has popularised the term "outsourcing", borrowed from economics, to describe these obstacles to the free movement stipulated by international treaties.

The external borders of the Schengen area (see main map) now benefit from a second, outer perimeter, which depends on the collaboration of third countries. Called the "external dimension of immigration and asylum" policy by the 2004 Hague programme (2), outsourcing has many ideological excuses. In reality, its purpose is to transfer border controls to non-European states within a partnership that is as opaque as

it is unfair. But the leaders of the 27 EU countries see it as their duty to present the matter as the concerted management of immigration flow.

Outsourcing means putting in place a flexible system that consistently moves a little further away from the EU's borders, through expatriating controls and subcontracting the fight against illegal immigration. What is lost is the right to asylum - although all EU countries have committed themselves to respecting it by ratifying the Geneva Convention on refugees - and the right to leave "any country including one's own", found in several international treaties.

As early as the 1990s, the EU sent technical advisers abroad, especially to EU accession countries, to block migration at source. A network of immigration liaison officers was formally established in 2004 with the objective of "helping to prevent and combat illegal immigration, return illegal immigrants and manage illegal immigration". Immigration was labelled illegal before it happened. The main task of these liaison officers has been to assist local authorities in verifying the validity of travel documents in airports, which can lead to the sovereignty of the country of departure being flouted.

Strong deterrent

In 2001 an EU directive established a system of financial sanctions against haulage contractors found guilty of moving people whose passports or visas were invalid. These sanctions are a strong deterrent, with fines of up to \$630,000, and the return of any intercepted people being billed to the company. They force staff without special training to carry out pre-boarding screening of travellers. This privatisation of controls reduces screening on arrival. It has serious consequences where it affects the departure of asylum seekers in need of protection. In principle, their lack of papers or visas cannot be held against them once they have arrived in the host country - if they can reach it. In August 2007 seven Tunisian fishermen were found guilty and imprisoned by an Italian judge for abetting illegal immigration. Their boats were confiscated. They had rescued a small craft that was sinking and transported its passengers to the closest port, Lampedusa in Sicily, as stipulated by maritime law (3).

Since 2005 the EU agency Frontex has coordinated interceptions between the coast of Africa and the Canary Islands, and in the Strait of Sicily. Last year the Spanish prime minister José Luis Zapatero congratulated himself on having halved the number of illegal arrivals in Spain by sea. But mortality rates among migrants, at sea or in the desert, have not fallen (see small maps, bottom of page). Reinforced departure barriers certainly force migrants to turn to circuitous, and more dangerous, routes. Nobody knows how potential asylum seekers are identified during Frontex interventions, although this identification is theoretically mandatory under European norms. The decentralisation symbolised by Frontex takes place beyond any democratic oversight, and it also enables European countries to evade the obligations that apply to their territory because of commitments made to fundamental rights.

The outsourcing of border controls runs through the global partnership with countries of origin and transit consecrated by the European Pact on Immigration and Asylum concluded between the 27 members in 2008. The pact was initiated by France, which at the time held the EU presidency and had made the fight against uncontrolled immigration its pet subject. In the name of "synergy between migration and development", the treaty obliges the countries from which migrants come, or through which they pass, to become border guards. They are compelled to protect Europe's boundaries in exchange for financial or political compensation.

The advanced status that Morocco was granted by the EU in 2008 rewards a country that did not stint in its efforts in migration management. In autumn 2005 some 20 sub-Saharan migrants trying to cross the Spanish-Moroccan border fence at Ceuta and Melilla died from falls, suffocation or bullets fired by the Moroccan army (4). This and the ensuing deadly relocations into the desert beside the (closed) Algerian border had extensive media coverage arranged by the Moroccan government, anxious to show its zeal. The tragedy off al-Hoceima in northeast Morocco on 28 April 2008 had less press coverage: some 30 people, including four children, drowned after their rubber craft was - according to witness statements - deliberately pierced by the police. No independent enquiry has been able to shed light on this.

The readmission agreements signed with neighbouring countries are a key element. To be able to expel from European soil a foreigner whose residence papers are not in order, he must be recognised by his country of origin or the last country he passed through. European states are aware that third countries

see little interest in accepting the return of their citizens and even less the return of migrants who merely transited. They have therefore thrown themselves into a never-ending cycle of deals, which has led to corruption and a general decline of rights in Senegal, Ukraine and some Balkan states (5).

The right to asylum is a direct victim of the war of the EU and its member states against asylum seekers. Those who might be eligible for refugee status are deprived of the possibility of demanding it by being repulsed or retained in buffer countries, tasked to protect Fortress Europe. The EU pretends to believe, in the name of burden sharing, that the asylum seekers it no longer wants to accept will be hosted in good conditions by allies whose cooperation it has bought. It encourages xenophobia against people resented and forced to live precariously in countries that have neither the logistical capacity nor the political will to integrate refugees.

The EU has also encouraged - and financed - the development of retention camps. Since 2004, these have been built in the Ukraine, which has at least signed the Geneva convention on refugees. That is not the case with Libya, where the ill-treatment of migrants and refugees is well documented. And yet, since May 2009, Italy has been driving immigrants' boats back to the Libyan authorities, violating international maritime law and the principle of no return, which makes it illegal to return persons who might require protection (6).

Co-development myth

These are principles that the EU must uphold as part of its commitment to fundamental rights. Yet the violations were perpetrated by a member state without provoking any reaction. In July 2009 the European Commission suggested to Libya that it cooperate in an effort to create a joint balanced management of migration, while the UN High Commissioner for Refugees (UNHCR) offered to act as a mediator for a humanitarian management of detention centres.

The EU's partnership with third countries not only violates the rights of refugees but seriously threatens a fundamental freedom: that of being able to come and go. The concept of co-development, which might seem generous in associating migration with development, aids this decline. Officially, border security issues are only a part of co-development, but in reality they are predominant: many of the measures planned and monies promised concern the fight against illegal immigration (illegal as viewed from the incoming side). This April the president of Mali, having listened to his diaspora, protested against migrants being systematically escorted back to the border.

The co-development discourse makes unilateral European decisions palatable for populations suddenly described as "players in their own development", and propagates the idea, not just in Europe but also at the points of departure, that the development of countries of origin will halt illegal immigration. In fact, a country's economic takeoff encourages its population to be more mobile. And as for aid, this is often misappropriated by leaders. But it is an efficient trick because these countries do lock down their borders and transform themselves into prisons for their own nationals to carry out screening work.

These are the results of the cooperation between Spain and some of its African neighbours: in Algeria and Morocco, illegal emigration is a crime punishable by law, while in Senegal it is punished de facto. Locals are not fooled by this reverse blockade. As the Senegalese daily *Le Soleil* put it on the eve of the 2006 EU-African conference in Rabat, outsourcing means that Europe is closing our borders.

Translated by Tom Genrich

Alain Morice is an anthropologist with the CNRS, Paris; Claire Rodier is a lawyer with Gisti and vice-president of Migreurop

(1) Conclusions of the fourth conference of European ministers in charge of immigration, Luxemburg, 1991.

(2) Five-year plan establishing the EU's priorities. See "The Hague Programme : strengthening freedom, security and justice in the European Union" (PDF).

(3) See Philippe Rekacewicz, "Migrations, sauvetage en mer et droits humains", *Visions cartographiques*, 27 September 2009.

(4) See Behzad Yaghmaian, "At the gates of paradise", Le Monde diplomatique, English edition, September 2007.

(5) See "Open letter about readmission agreements", Migreurop.

Report on Italy (PDF) by the Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) of the Council of Europe, 28 April 2010.

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"The encampment" in Europe and around the Mediterranean Sea

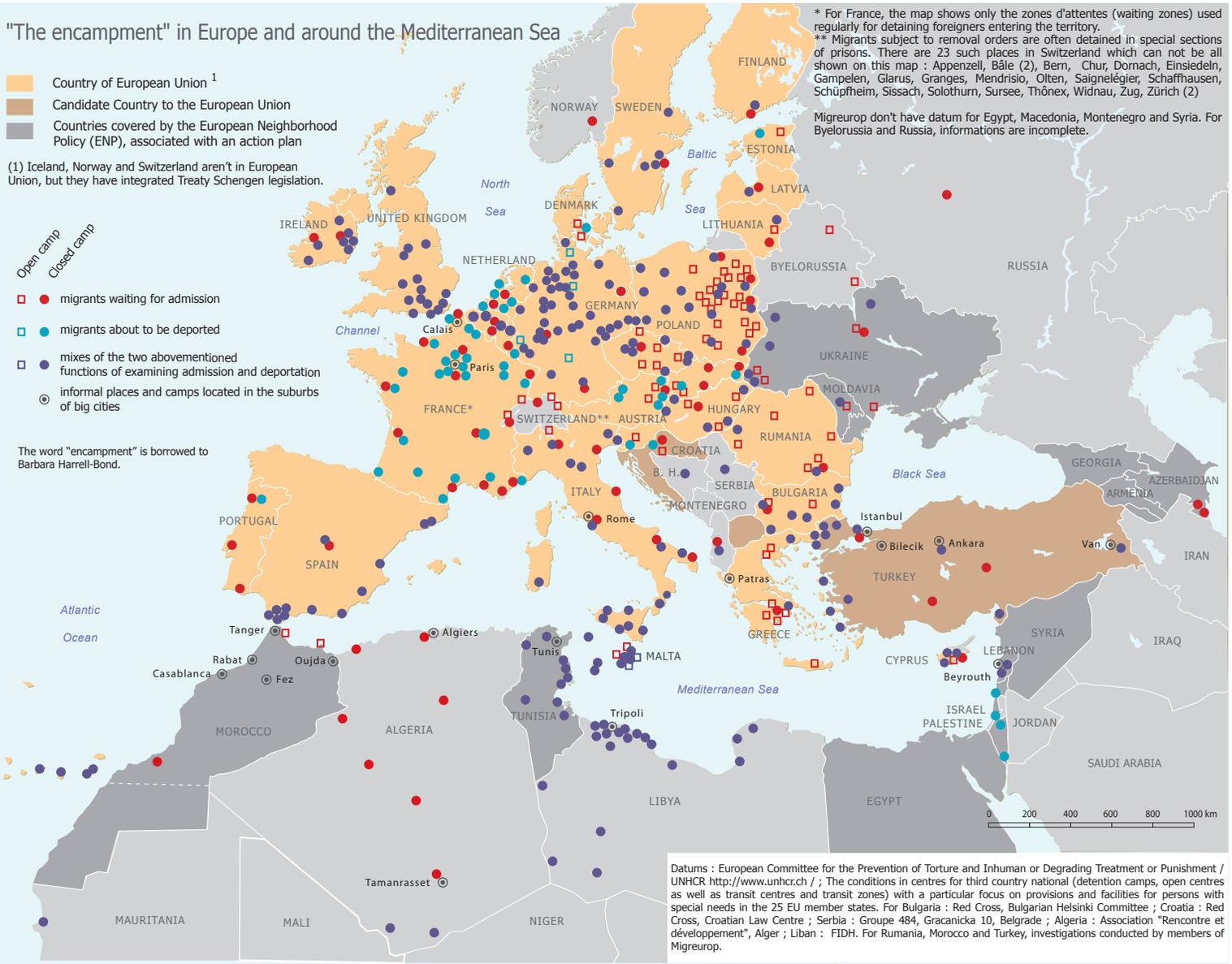
- Country of European Union ¹
- Candidate Country to the European Union
- Countries covered by the European Neighborhood Policy (ENP), associated with an action plan

(1) Iceland, Norway and Switzerland aren't in European Union, but they have integrated Treaty Schengen legislation.

Open camp
Closed camp

- migrants waiting for admission
- migrants about to be deported
- mixes of the two abovementioned functions of examining admission and deportation
- informal places and camps located in the suburbs of big cities

The word "encampment" is borrowed to Barbara Harrell-Bond.



* For France, the map shows only the zones d'attentes (waiting zones) used regularly for detaining foreigners entering the territory.
 ** Migrants subject to removal orders are often detained in special sections of prisons. There are 23 such places in Switzerland which can not be all shown on this map : Appenzell, Bâle (2), Bern, Chur, Domach, Einsiedeln, Gampelen, Glarus, Granges, Mendrisio, Olten, Saignelégier, Schaffhausen, Schüpfheim, Sissach, Solothurn, Sursee, Thônex, Widnau, Zug, Zürich (2)

Migreurop don't have datum for Egypt, Macedonia, Montenegro and Syria. For Byelorussia and Russia, informations are incomplete.

Datums : European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment / UNHCR <http://www.unhcr.ch/> ; The conditions in centres for third country national (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. For Bulgaria : Red Cross, Bulgarian Helsinki Committee ; Croatia : Red Cross, Croatian Law Centre ; Serbia : Groupe 484, Gracanicka 10, Belgrade ; Algeria : Association "Rencontre et développement", Alger ; Liban : FIDH. For Rumania, Morocco and Turkey, investigations conducted by members of Migreurop.

CALL FOR THE CLOSURE OF CAMPS FOR MIGRANTS, IN EUROPE AND BEYOND

In member states of the European Union, as well as in neighboring countries (Libya, Morocco, Turkey, Ukraine) and beyond (Mauritania, Lebanon), the presence of an ever increasing number of zones of detention conceals policies and practices contrary to international commitments which some of these states are bound to (the United Nations Convention relating to the Status of Refugees, the International Convention on the Rights of the Child, etc.). In Cyprus, Greece, Italy, Malta, migrants are automatically placed in detention, whatever their humanitarian and/or legal situation is, including those rescued or intercepted at sea after long journeys.

Whatever name we may give them¹, these camps for foreigners have become a prized tool to manage migrant populations. People are detained without trial or sentence, in prison-like conditions, sometimes even confined in cells. Such detention sanctions those who did not respect laws relative to border crossing or length of stay in a country, though these can be contrary to international laws, for instance in the case of the protection of refugees. In some cases, mistreatment and physical or psychological violence are commonplace. Frequent incidents (riots, hunger strikes, voluntary fire), with sometimes tragic consequences (suicides, deaths), serve to show how inappropriate the detention system is for the people it targets.

The proliferation of camps has come hand in hand with an increase in the length of detention,² which often exceeds the time required to organize deportations. Behind the official objectives stated (rationalization of migration management), the institutionalization of the detention of migrants is part of a deterrence policy which criminalizes those considered undesirable. This policy, which runs contrary to democratic principles, comes with exorbitant costs: not only at a human level, but also with regards to the police and administrative forces it mobilizes, which it is estimated exceeds several billion Euros for EU member states³.

Since 2002, the Migreurop network endeavors to document and denounce the consequences of the EU migration policies, first and foremost with regards to the confinement of migrants⁴. In 2004, its members called for a collective action *against the creation of camps at the borders of Europe*⁵. Since then, numerous reports have been issued by UN agencies, by the CPT (European Committee for the Prevention of Torture), by the Council of Europe Commissioner for Human Rights, by parliamentary missions, by international organizations or NGOs.

¹ The camps we refer to include « closed camps » or « centri di identificazione ed espulsione », but also of « waiting zones », « transit centers », even « reception centers ».

² The « return directive » adopted by the European Council in December 2008 allows for detention stretching up to 18 months.

³ In 2008, « the annual cost of deportations carried out in France are estimated at a cost of more than 700 million Euros at least ». Migreurop (2009) *Atlas des migrants en Europe. Géographie critique des politiques migratoires*, Paris, Armand Colin, p. 91.

⁴ See Migreurop's map « *Encampment* » in Europe and in Mediterranean area,

<http://www.migreurop.org/rubrique266.html> Carte des camps

⁵ <http://www.migreurop.org/article656.html>

The reports and field observations all conclude that the detention of migrants leads by its very nature to the violation of human rights: in the first instance on the freedom of movement, but also a right to asylum, the right of respect for private and family life, the right to protection against inhuman or degrading treatments, or rights specific to vulnerable people such as children. In 2007, a report solicited by the European Parliament stated that: *“The deprivation of freedom and the conditions in detention centres create or aggravate psychological or psychiatric disorders. (...) Depriving children of their freedom can however have a particularly harmful impact on these children and lead to the onset of psychological disorders in the short or long-term”*⁶.

Very often, no effective judicial control is exercised in practice with regards to confinement, although infringement of individual liberties are at stake.

The large-scale confinement of migrants which has been developed in the framework of European asylum and immigration policy proves to be ineffective in relation to its supposed objectives of “controlling migration flows”. It is incongruous to attempt to resolve the issue of so-called “irregular” migration from a security angle. Participating to the stigmatization of migrants as “guilty”, and propagating the idea that to exercising one’s right to circulate freely is a crime, it is at the roots of recurrent violations of human rights and serves to feed racism and xenophobia.

Migreurop demands that governments of EU member states and its neighboring countries to stop resorting to detention as a tool for controlling migration flows, and calls for civil society to oppose the system of detention of migrants.

April 2010

Summary of problems identified in detention zones for migrants

Certain issues are repeatedly highlighted in the reports issued by different organisations or observatory missions in camps where migrants are detained.

In January 2008, the summary report of the **UN Working Group on Arbitrary Detention**, based on field missions reports carried over the previous months, gives a very clear overview of the main issues faced in zones of detention, and of the subsequent violation of human rights they entail*:

- lack of a legal framework, whether it be for immigration and asylum procedures, or with regards to detention if the case may be;
- the use of detention without any judicial procedure, for identification procedures only or to act as a deterrence tool;
- the disproportionate length of detention, with sometimes no official time limit attached to it;
- the detention, in certain countries, of asylum seekers, of minors, of sick and handicapped people;
- the « trying » and « deplorable » conditions some migrants are sometimes faced to.

Other matters of serious concern should also be mentioned, such as the frequency of specific mental or health problems, especially psychiatric problems, which many detained migrants are suffering from, whatever country or detention conditions they find themselves in.

* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/100/92/PDF/G0810092.pdf?OpenElement>

⁶ 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”*, IP/C/LIBE/IC/2006-181, dec. 2007

Compilation of articles from PICUM (Platform for International Cooperation on Undocumented Migrants)

www.picum.org

The following is a compilation of news articles, collected over the past year by PICUM, on the detention of migrants in Europe.

Austria

“New legislation allows detention of any asylum seeker, also legal residence not secured”

New Austrian legislation that entered into force on 1 July 2011 permits the detention of any newly arrived asylum seeker for up to 120 hours, and for up to 148 hours under certain circumstances. This so called “Mitwirkungspflicht” allows for the detention of anyone on arrival, including children or other vulnerable groups. This sixth change of the Austrian Alien’s Law within a period of two years also introduced more restrictive rules concerning legal migration and stay. For example, German language skills need to be proven before entry and an 18-month entry ban can be introduced if migrants on a temporary residence permit miss the deadline for prolongation of their residence permit. Security of stay is basically being made redundant through the possibility of putting into place extradition orders, for example if the financial situation of legally residing migrants is proved to be insufficient to sustain them. Furthermore residence bans can be introduced for administrative offences, such as crossing a red traffic light. Source: SOS Mitmensch, 1 July 2011 <http://www.sosmitmensch.at/stories/3205/>; Asylkoordinat, 1 July 2011 http://asyl.at/fakten_1/asyl_2011_07.htm; <http://vimeo.com/26770533>

“Detention and deportation of families sparked a heated debate”

In October 2010, the detention and deportation of 8-year old Kosovar twins with their father, and the attempted deportation of a 14-year old Armenian girl, who the police tried to arrest at school, sparked a debate on the detention of children in Austria. A platform founded by Caritas Austria, Amnesty International, SOS Children’s Village, Diakonie and supported by numerous other Austrian NGOs, started to collect signatures for a petition against the practice of keeping families in detention prior to their deportation from Austria. Until the end of January more than 115.000 people have signed this petition entitled “Against injustice: Children do not belong into prison” online. Sources: Der Standard, 7 October 2010 <http://derstandard.at/1285200257104/Zwillinge-und-Vater-wurden-abgeschoben>

Belgium

“Centre for Repatriation of Failed Asylum Seekers”

The Belgian Federal government works on a pilot project to start up a Centre for the Repatriation of Failed Asylum Seekers, which is said to open in Autumn of 2011, somewhere around Brussels and with a capacity of 70 people, targeted for those from the Balkans. If the project is successful additional centres can be started for more broad groups of migrants. Up to now all failed asylum seekers are housed in regular asylum centres and the government wants to separate failed asylum seekers from those currently in a procedure, in order to speed up repatriation. Source: Deredactie.be, 27 July 2011 <http://www.deredactie.be/cm/vrtnieuws/binnenland/1.1075772>

“Six million Euros spent on forced repatriations”

Belgium spent more than six million Euros to enforce repatriations in 2010, with an average of two persons expelled per day. Included in the amount are the airline tickets for both the deportees and the police escort who receive a bonus for taking part in such operations. The total number of deportations carried out in 2010 was 8,780, which includes forced and voluntary repatriations and refusals of entry at border points of entry. Source: [Migration News Sheet](#), May 2011

“Families with children can again be put into detention”

The Belgian Minister for Migration, Melchior Wathelet, announced that undocumented families with children living in Belgium can again be placed into detention at the closed centre 127 bis in Steenokkerzeel. Wathelet announced the construction of 34 housing units on the premises of the detention centre for hosting such families. A few years ago a previous minister prohibited families being put into closed detention centres and instead provided for open facilities for repatriation. The reason behind the change in policy is the apparent disappearance of a number of families who fled the complex in order not to be expelled from Belgium. Source: [Het Belang van Limburg](#), 4 May 2011

“Protests before Belgian ‘Frontex flight’”

On 27 April 2011 a group of demonstrators protested at Brussels Airport against the deportation of a group of 60 Congolese failed asylum seekers. A day after, a group of protesters were arrested at the Belgian detention centre in Steenokkerzeel as they blocked the entry gate of the facility to voice the same protest. Source: HLN.be, [27 April 2011](#) and [28 April 2011](#)

Incidents in Steenokkerzeel retention centre

In Belgium, incidents occurred on 20 February in the Steenokkerzeel 127bis detention centre. During the day, several associations demonstrated in front of the centre in solidarity with detainees on hunger strike since the week before. Asylum seekers who wanted to denounce their detention conditions started a fire, some threatening to hang themselves, others climbing on the roof. On Sunday evening, about thirty detainees were evacuated to other centres of Merksplas, Vottem and Bruges. The local police declared there were no injuries. Source: [RTBF](#), 21 February 2011

Bulgaria

“Two new detention centres”

Two centres for irregular migrants in the villages of Liubimetz and Pastrogor will be ready to function in the middle of February, said the Bulgarian Interior Minister Tzvetan Tzvetanov during a press -conference on 24 January 2011. The centres are part of the new national strategy to face irregular migration pressure from Turkey. Source: [BNT](#), 24 January 2011; [Actualno](#), 24 January 2011

Cyprus

“KISA accuses police of brutality against detainees”

After receiving a series of complaints, KISA has established that there has been an outbreak of police brutality against migrant detainees in almost all towns in Cyprus. From contacts with family members and migrant detainees who had been victims of this brutal police violence, it seems that the incidents of attacks tended to be in retaliation to the detainees’ protests against their living conditions while in detention and the state’s attempts to deport them. KISA believes that none of the detainees’ protests or actions were in any way aiming to harm other individuals, nor did they require such a disproportionate and violent punishment. KISA condemns all the incidents that have taken place in the detention centres around Cyprus, and urges the authorities to take all appropriate steps to ensure that the rights of all detainees are fully respected. Read the full press release: <http://www.euromedrights.org/en/news-en/member-releases/10046.html>

“Irregular migrant dies in police cell”

A 28-year old man from Georgia died whilst in detention at Lakatamia police detention. The man was identified as Demetris Maisuradze and had been detained since August on the basis of being an irregular migrant. MP Ionas Nicolaou has condemned the tragedy and denounced the conditions in which irregular migrants are detained as such facilities are meant for temporary short-term detention and not for long periods of time. A police spokesman rebutted the claim saying the facilities were built a year ago based on given standards of the European Council. Another man died in September 2010 in Limassol police cell. Source: <http://www.cyprus-mail.com/police/man-found-dead-lakatamia-police-cell/20111018>

Denmark

“Detention of unsuccessful asylum seekers”

Michala Clante Bendixen, from Refugees Welcome, has published a report on the obstacles that exist to deportation in Denmark. The report focuses on asylum seekers whose application has been unsuccessful and for varied reasons cannot return home thus falling into limbo which sometimes means they are detained for extended periods of time sometimes up to 15 years. The author investigates the human and economic consequences of long-term detention. A case study focuses specifically on the impact of long-term detention on children. View the complete report [here](#). Source: Migreurop, 10 November 2011, [visAvis](#)

France

“Daily violence in Mesnil-Amelot retention centre”

In France, the Mesnil-Amelot detention centre experienced an escalation of daily violence during the week of 4 February 2011. An Algerian was deported despite injuries due to resisting to two previous deportation attempts in the previous days; a Moroccan was deported despite having swallowed razor blades; a detainee was taken for deportation although hospitalized for self-inflicted injuries but then brought back to the detention centre following the reaction of passengers in the plane. In the same centre the same week, the NGO CIMADE met three young men saying they are minor, one of them terrified and

refusing to eat, and two other detained persons, one denounced by the Post Office and another one arrested while filing a regularisation request. Source: [Cimade](#), 4 February 2011

“Daily violence in Mesnil-Amelot retention centre”

In France, the Mesnil-Amelot detention centre experienced an increase of daily violence during the week of 4 February 2011. An Algerian was deported despite injuries due to resisting two previous deportation attempts in the previous days; a Moroccan was deported despite having swallowed razor blades; a detainee was taken for deportation although hospitalized for self-inflicted injuries but then brought back to the retention centre following the reaction of passengers in the plane. In the same centre in the same week, the NGO La Cimade met three young men saying they are under the age of 18, one of them terrified and refusing to eat, one denounced when he went to the Post Office and another one arrested while filing a regularisation request. Source: [Cimade](#), 4 February 2011

“13 month old baby in detention centre in Lyon”

Following ten days in a detention centre in Lyon and despite external mobilisation for their cause, a Kosovar couple and their 13-month old baby were deported back to Pristina. The couple was afraid to return as the husband has been threatened by the wife’s family who has not consented to the marriage. The father had been granted a permanent work contract but failed to send the documents on time for his claim to be accepted and their asylum application was rejected on the bases it was “unspontaneous, confusing and not very credible”. Source: [Le Parisien](#), 13 January 2011; [Le Parisien](#), 20 January 2011

WEB DOCUMENTARY / "La machine à expulser"

This web documentary by Julie Chansel and Michaël Mitz is published on Canal Plus website and describes the French deportation system. It relates to the 25 French retention centres, among which 11 accommodate families and children, before their expulsion. It shows testimonies of "detainees", evokes "policy of figures", questions "administrative fierceness" and reveals an absurd system which has dramatic human consequences. Source: [TERRA](#)

“Undocumented migrant jumps from 4th floor when police knock on the door”

An undocumented woman jumped from the 4th floor on 25 May when the police knocked on her apartment door to arrest another undocumented man, who wasn’t in the apartment at that time. She arrived at the hospital in serious condition and was put in an artificial coma. Source: [France3](#), 25 May 2011

“La Cimade’ describes how EU law impacts the French expulsion system”

On 25 May 2011, the French NGO “La Cimade” reported on recent developments in European Union policy and recent cases of the Court of Justice of the European Union which affect French policies on expulsion of undocumented migrants. Taking into account the implementation into French law of the EU “Return” directive and the ECJ case “El Hassen Dridi” of 28 April 2011, La Cimade described how French laws on expulsion are limited. Read the full entry [here](#).

“Deportation quotas and new immigration law in France”

During the summer of 2011, the number of deportations of foreigners in irregular situations has increased according to the French Ministry of Interior, which aims now at reaching 30,000 deportations for 2011. The new Law on immigration, voted in May 2011, and whose implementation decrees were published on 18 July 2011, has notably introduced new instruments, including an administrative retention delay of 45 days against 32 before (the administration would then save time to obtain consular laissez-passer from the origin countries) and a delay for the Magistrate of liberties and retention, when a foreigner is hold in a retention centre, of 5 days against 2 before. The text has also filled in a law gap which allowed, since the end of 2010, undocumented migrants to obtain a cancellation of the deportation because of the non-implementation of the European Directive on return. Source: [France Soir](#), 28 July 2011

“The Archbishop of Rennes, Dol and Saint-Malo denounces the detention of children”

The Archbishop of Rennes, Dol and Saint-Malo, Pierre d’Ornellas, has urged for detention practices to respect the rights of the child and be in line with France’s commitments under the UN Convention on the Rights of the Child. During August 2011, eight children were detained with only one of their parents or siblings, as other family members were absent at the time of arrest. “Certainly, these eight children were released. But why put them through this system of arrest and imprisonment? Why, for a time, break their family ties? Why risk hurting them psychologically,” said Pierre d’Ornellas, Archbishop of Rennes, Dol and St. Malo, saying it was urgent to find and implement a way of accommodating undocumented children and their families that is consistent with the Convention on the Rights of the Child, ratified by France. Source: [Ouest France](#), 31 August 2011

Germany

“Assessing deportation and custody prior to deportation from a human rights perspective”

In a policy paper published in March 2011 the German Institute for Human Rights (Deutsches Institut für Menschenrechte) assesses the planned implementation of the directive 2008/115/EC of the European Parliament “on common standards and procedures in Member States for returning illegally staying third-country nationals” and the practice of custody prior to deportation in Germany from a human rights perspective with special focus on undocumented and unaccompanied minors. The paper argues that a maximum period of custody prior to deportation of 18 months always violates the principle of proportionality and leads to excessive burdens for the detainees, especially vulnerable groups such as minors, pregnant women and sick persons. It has been proven that detainees suffer from custody, become physically and psychologically ill. Unaccompanied minors represent a special case, since they are additionally protected by the UN Convention of the Rights of the Child. From a human rights perspective, however, children should be protected and alternative care should be provided by child protective services to respect the best interests of the child. The respect of the child’s best interests is not compatible with the custody prior to deportation. The Institute’s policy advice is, therefore, to considerably reduce the maximum length of custody prior to detention for adults and not to allow such custody for unaccompanied minors at all. Source: [German Institute for Human Rights](#), March 2011.

“NGOs criticize police response around Oury Jalloh trial and call for international monitoring of the case”

Human rights organizations have criticized the rigid police response against activists of the “Initiative in Remembrance of Oury Jalloh” on 11 August 2011. The leader of the remembrance initiative Mouctar Bah, who is also a holder of the human rights medal, was pushed on the floor and handcuffed by police when asking “Where is the dead body of Oury Jalloh? How did the fire break out?” The activists gathered in front of the Regional Court in Magdeburg to ask for the monitoring of the trial of Oury Jalloh, an asylum seeker who burned to death in police custody in 2005. This request is based on concerns expressed by observers since important documents of proof, such as testimonies by the police officers present on that day, disappeared and then reappeared in the second instance trial with changes introduced into the files. Ms Fanny Dethloff, Chair of the National Ecumenical Consortium Asylum in Church and a PICUM Board member, said, “These police approaches are a clear statement to those who still believe in democracy and human rights in Germany. We need international support in the monitoring of the trial on Oury Jalloh’s death.” Source: [Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche](#), 23 August 2011

Greece

“HRW denounces the “EU’s Dirty Hands”

In a report entitled “The EU’s Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece”, Human Rights Watch (HRW) reveals the “inhumane and degrading conditions” to which Frontex exposes migrants in detention in Greece. The report is based on interviews with 65 migrants, refugees, and asylum seekers in Greece in November 2010, December 2010 and February 2011 during the deployment of the first rapid border intervention team (RABIT) along the Greek-Turkish border in the Evros region, and with Frontex and Greek police officials as well as field visits in detention centres. Following this investigation, HRW denounced violations of human rights amounting to detention in “inhuman and degrading conditions” concerning overcrowding, poor hygiene, and the detention of unaccompanied children with adults. HRW highlighted that its revelation over Frontex’s responsibility did not release the Greek authorities of their duty to remedy the situation over detention conditions. Concerning the upcoming reforms of Frontex, HRW welcomed them as “a start” but that they would fail to hold Frontex accountable for breaches of human rights and EU law. Frontex issued a [statement](#) in response to release of report welcoming the comment but expressing their commitment to human rights and highlighting their reform process. Please download the HRW report [here](#). Source: [Human Rights Watch](#), 21 September 2011; [Migrants at Sea](#), 22 September 2011

“MSF report on medical problems faced by detained migrants”

On 6 June 2011, Médecins Sans Frontières (MSF) released a report in which it highlights the inhumane living and hygiene conditions experienced by migrants detained in detention facilities in Evros, Greece. The report reveals that more than 60% of health problems experienced by detained migrants are “directly caused by or linked to the degrading conditions in which they are being held”. The MSF investigation also shows that the majority of migrants were healthy when they arrived and became ill during their detention. MSF concludes by urging the Greek authorities to address these health risks and ensure “dignified living conditions in detention centres”. In March 2011, the Ministry of Health took over the activities of MSF but the international humanitarian organisation continues parallel activities. Source: [MSF](#), 6 June 2011

“Opposition to the Construction of New Detention Centres for Undocumented Migrants in Evros”

Government plans to build three new detention centers for undocumented immigrants in the Greek northern prefecture of Evros have come up against strong resistance from local authorities. Mayors from several municipalities in Evros criticised the project, highlighting the fact that the prefecture already has two facilities for migrants and accommodates dozens more in police detention cells. In a written statement, a regional committee made up of local authority officials and advisers also underlined a lack of information from the central government regarding these new detention centres for undocumented migrants. The prefecture of Evros also witnesses the controversial planned construction of a wire fence along a 12.5-

kilometer stretch of the Greek-Turkish border, aiming to slow the influx of would-be migrants entering Greece irregularly. Source: Ekathimerini.com, 31 May 2011

“Fire in detention centre resulted in the injury of 7 minors”

Amygdaleza detention centre burst into flames on 6 November 2011 and as a consequence seven irregular minor immigrants, Palestinians, Algerians and Libyans, were transferred to Attikon Hospital in Athens. Five of them had respiratory problems and two were burnt but all of them were finally out of danger. Police speculated that immigrants set fire on their beds and mattresses as a sign of protest about their detention and the fact that they were about to be deported. Source: [To Vima](http://ToVima.com), 6 November 2011; [Eleutherotypia](http://Eleutherotypia.com), 6 November 2011

Hungary

“New HHC report documents unlawful detention of children in 2010”

Hungarian Helsinki Committee (HHC) has released a report on Hungarian immigration detention practices based on the findings of monitoring visits to "temporary" immigration jails throughout Hungary in 2010. The report, “Stuck in Jail”, found that two unaccompanied children were held in immigration detention in 2010 despite it being explicitly prohibited by the Aliens Act. Since 24 December 2010, amendments to the law have come into force, including the permission of immigration detention of minors and families for 30 days. The HHC urges that children never be detained for reasons related to their immigration status, irregular entry or stay as well as persons whose exact age cannot be assessed properly, as the current detention facilities and regimes are inappropriate for children. Download the report (EN) [here](#). Source: [Hungarian Helsinki Committee](http://HungarianHelsinkiCommittee.org), 13 April 2011

Ireland

“IRC calls the Irish Government to stop degrading deportation practices”

On 15 December 2010, 34 Nigerian nationals and a two-year old Irish citizen child were put on a Frontex deportation flight at Dublin Airport. The eight women, 13 children, and 14 men endured long delays, inadequate food and limited access to sanitary facilities until their deportation was aborted in Greece and they were returned to Ireland. The Irish Refugee Council has called on the Minister for Justice and Law Reform to establish an independent enquiry into the conduct of this deportation and stop all deportations until this enquiry has been completed. More information on how you can help [here](#).

Italy

“Amnesty International raises concerns over accommodation of children in Lampedusa”

Amnesty International visited the Base Loran centre on 31 March 2011. At the time the centre accommodated male children and some vulnerable adults. A number of children to whom delegates spoke complained that they had been subjected to bullying by older children; some mentioned very limited contact with family members. The children appeared to have been given no adequate information about their future, leading to fear and anxiety. Whilst Amnesty International delegates were onsite they observed an outbreak of fighting amongst a group of boys that resulted in at least one child sustaining a black eye. Although the delegation was unable to confirm the ratio of staff to children at the centre, there did not appear to be adequate supervision of children’s welfare. Amnesty International was also concerned that adults and children were accommodated together at Base Loran. Source: [Amnesty International](http://AmnestyInternational.org), 21 April 2011

“New law decree extends detention of irregular migrants to 18 months”

The Italian government coalition lost both the last administrative elections and the battle over a symbolic referendum in the last months and fearing to lose the support of the extreme-right party Lega Nord, has approved a new law decree on 16 May 2011 that extends detention of irregular migrants in identification centres for up to 18 months. This is the maximum allowed by the EU “Return Directive”. The decree also includes the forced deportation of all irregular migrants, including European citizens that have committed a crime. Civil society organisations and the political opposition have labelled the measure as outrageous and useless. In fact, while violating even more migrants’ human rights, it will not help in raising the number of expulsions, because as Italian Refugee Council Director, Christopher Hein explains, the identification process is done in the first months and if the person is judged “non-removable”, she or he will remain so till the end of the detention. Source: [La Repubblica](http://LaRepubblica.com), 16 May 2011

“Journalist visits detention centre despite Government’s attempts to forbid it”

Italian journalist Raffaella Cosentino managed to obtain a press permit to visit the temporary Identification and Expulsion Centre of San Gervasio in Potenza, Italy, despite the government's measure forbidding entrance to such centres to the press. Inside the Centre around 60 Tunisians, waiting to be repatriated, have been kept in isolation. No communication is allowed, let alone seeing a lawyer. The Centre became a reclusion centre despite being instituted as reception centre in April 2001.

Journalist Cosentino managed to get a video made by the migrants. It portrays the reality of such centres, with fights, beatings by police officers and attempts to escape the centre's high walls. The video is available [here](#). Source: [La Repubblica](#), 10 June 2011

“Tension in detention centres results in suicide attempts”

On 2 June 2011, 28 Tunisians attempted suicide in Lampedusa Island detention centre. Some swallowed blades, pieces of iron or glass, others cut their veins. The island hosts no hospital but a health centre where the injured were brought for first aid assistance. Those injured worse have been brought by helicopter to the hospitals of Palermo and Agrigento. The happening followed the repatriation of 35 people to Tunisia. Tension in the island remains high as the reception centre became a detention one where people are kept waiting without legal basis.

Source: [Fortress Europe](#), 3 June 2011

“Doctors Without Borders disapproval of government’s decision to extend detention of irregular migrants to 18 months”

Doctors Without Borders stated its disapproval on the Italian government’s decision to extend detention of irregular migrants to 18 months stating that the consequences of such a decision on migrants’ physical and mental health conditions is worrying. After visiting some of the identification and detention centres in Sicily, Doctors without Borders have called upon the closure of two centres: Kinisia and Palazzo San Gervasio where detention conditions were found to be unacceptable. Medical services are reported to be insufficient, with electricity and access to water often lacking. Source: [La Repubblica](#), 17 June 2011

“Terres des Hommes denounces the detention of children in Lampedusa”

An enquiry by Terres des Hommes has found that there are more than 260 children being detained at the former NATO base, Loran, on Lampedusa Island, in Italy, even though its maximum capacity is 180. There are also about a dozen young adults detained among the children. The children have been detained for 30-35 days without yet being appointed a guardian, having only been “identified”, and so are in a situation of legal limbo. They are unable to leave the camp so are effectively imprisoned and are unable to communicate with the outside world as they are no telephone booths in the camp. 5 euro telephone cards are being distributed every 10 days, but this is insufficient because there are few mobile telephones in the centre. There are also more than 80 children being detained in the Contrada Imbriacola detention centre. They are being detained even though none of them have been issued a detention or expulsion notice. Source: [Carta.org](#), 22 June 2011

“Italian Immigration Return Decree becomes law”

On 2 August 2011, with the final vote of the Senate, the law decree on repatriation entered into force, despite the entire opposition voting against. It introduced the extension from 6 to 18 months of the detention of irregular migrants in the CIE (Centres for Identification and Expulsion) and the immediate expulsion from the country for irregular immigrants considered a danger to national security or to public order. The term for repatriation was also extended from 5 to 7 days. Minister of Home Affairs, Roberto Maroni, stated that the law decree was meant to transpose EU legislation on free movement of citizens and repatriation of irregular migrants. Source: [La Repubblica](#), 2 August 2011

“Protests and strikes in Apulia region”

Apulia region in Italy has faced moments of utmost distress between major protests and strikes in the early days of August 2011. In the Salento area, irregular migrants went on the first self-organized strike, leaving the tomato fields without workforce. At the Cara Identification and Expulsion Centre in Bari, undocumented migrants started a serious revolt which reached the main roads in the city and hampered train traffic. They protested against the lack of regularization of their status after having spent more than half a year in the Cara Centre. Source: [La Repubblica](#), 31 July 2011; [La Repubblica](#), 1 August 2011; and [La Repubblica](#), 1 August 2011

“MEP Wikstrom visits Trapani’s CARA and CIE”

Following her visit to the ‘Salinagrande’ CARA (Centre for Asylum Seekers) and the CIE (Centre for Identification and Expulsion) in Trapani, and Emergency’s venue in Palermo, Swedish MEP Cecilia Wikstrom reported on the situation of the detention centers. MEP Wikstrom condemned the miserable conditions in which asylum seekers are kept at the CARA, a crowded centre where hygienic facilities were severely lacking and where 233 asylum seekers wait to be granted political refugee status. The CIE in Trapani received more positive the comments. Emergency’s model in Palermo was highly regarded and proposed as an example to be exported in the rest of Europe for the care of refugees and displaced persons. Source: [La Repubblica](#), 26 November 2011

“Investigation sheds lights on conditions in which children are detained in Lampedusa”

A report by Fabrizio Gatti, of the Italian newspaper L’Espresso, has denounced the conditions faced by unaccompanied children and children with their families face in the detention centres of Lampedusa, Italy, the island that became the main

entry door into Europe for irregular migrants following the revolts in Northern Africa. Hundreds of children of all ages are detained in inadequate and overcrowded infrastructures in breach of national and international law. They lack medicines, children products and care. Some have already been victims of violence during the increasingly frequent riots between newly arrived migrants and police in the centres. Source: [L'Espresso](#), 9 September 2011

“151 undocumented migrants found along the coast of Puglia and international observers requests’ denied to meet them”

The United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and Save the Children have expressed their worries as they were denied access to visit the 151 Egyptian undocumented migrants, among them, 70 children and 68 adults, found by the Italian Guardia di Finanza on the night of 23 October 2011 nearby the coast of Apulia region, Italy. The 70 children have been sent to different reception centres in Campania and Sicily, whereas all adults were repatriated the following day, 24 October 2011 with a charter flight from Puglia region. The President of Apulia region, Nichi Vendola, spoke against such repatriations and expressed his concern to the authorities that denied international observers such as UNHCR, IOM and Save the children to meet the migrants and ensure that their rights were guaranteed. His appeal went unheard. Source: [La Repubblica](#), 24 October 2011 and [La Repubblica](#) 25 October 2011

“3,592 Tunisians expelled since beginning 2011”

Fortress Europe has documented and reported 3,592 forced repatriations to Tunisia and 965 to Egypt since the beginning of 2011. Such repatriations often occur after an exceptionally long detention period without legal authorities’ authorization and without giving the migrants the chance to meet a lawyer or the staff of International observers. In Italy, detention conditions within the CIE (Centre for Identification and Expulsion) remain difficult, often failing to meet migrant’s rights. Attempts to escape the CIEs have decreased over time with punishments becoming harsher. Source: [Fortress Europe](#), 1 November 2011

“Journalists expelled from the Centres of Identification and Deportation (CIE)”

The Interior Minister, Roberto Maroni, has decided to expel journalists from centres of identification and expulsion. Although a ministerial letter circulated on 1 April 2011 did not alert many, it banned all press agencies from entering the CIEs. Warning has been expressed that this would mean going back ten years when journalists were not allowed to enter CPTs ‘Centres of Temporary Permanence as they were known. The only method of communication between detainees and the outside world is by mobile phone but it is increasingly more difficult, since detainees’ mobile phones are confiscated whilst in detention. Source: [Fortress Europe](#), 2 May 2011

Malta

“Commissioner for Human Rights criticizes detention of migrants in Malta as ‘irreconcilable with human rights standards”

Thomas Hammarberg, Council of Europe Commissioner for Human Rights, has said that he considers the policy of mandatory administrative detention for arriving migrants as irreconcilable with human rights standards. While praising the Maltese authorities’ long-standing efforts to rescue irregular migrants at sea, Maltese authorities should, he said, implement alternatives to detention and make effective remedies to challenge detention available to migrants. He expressed particular concern regarding the detention of vulnerable adults, families with children and unaccompanied children. His report, released on 9 June 2011, follows a visit to Malta in March 2011. The Ministry of Home Affairs has responded that the recommendation for Malta to consider alternatives to detention is not feasible in the local context. Download the report (EN) [here](#) and the Maltese government’s reply (EN) [here](#). Source: [Council of Europe Commissioner for Human Rights](#), 9 June 2011; [The Times of Malta](#), 9 June 2011

“Riots at Safi detention centre for extension of detention to 18 months”

Protests degenerated into riots by asylum seekers inside Malta’s closed detention centre in Safi were quelled by the police using tear gas on 16 August 2011. Migrant detainees were protesting after their claims for protection were rejected at the appeals stage, with the result of having their detention extended from 12 to 18 months. The event is symptomatic of the arbitrary policy of detention that is heavily criticised by the Council of Europe’s human rights commissioner. Source: [MaltaToday](#), 16 August 2011

“Compensation to 2 Somalis Forcibly Repatriated to Libya in 2004”

In 2004, two Somali men, Mr Abdulle and Mr Nur, feeling Libya whose boat had been intercepted and taken to Malta were placed into police custody, denied the opportunity to apply for asylum and access to interpreters. After twenty days in detention, the two men with others were forcibly deported back to Libya. Upon their return to Libya there were imprisoned, beaten and tortured for week before being transferred to another prison whilst waiting for their trial three months later during which no interpretation was given. They were sentenced to 1 year in prison during which torture was practiced, in 2005 there abandoned in the desert for 14 days without food or water and were eventually rescued by Bedouins. In 2006 they found their

way back to Libya and attempted to get back to Malta. Upon their arrival, they filed a complaint against the Minister for Justice and Home Affairs and the Principal Immigration Officer. The Constitutional Court of Malta decided on 29 November 2011 that fundamental human rights of Mr Abdulle and Mr Nur had been violated and they were awarded €10,000 each in compensation. Read the Court decision [here](#) (Maltese). Source: [Times of Malta](#), 30 November 2011; [Migrants at Sea](#), 1 December 2011

Netherlands

“Temporary stop of repatriations to Libya”

The Dutch Minister for Immigration has decided that for the time being and for at least the next six months, Libyans that failed the asylum procedure are not to be repatriated to their home country. During this period they keep the right to shelter, but can still be sent into detention centres. The number of Libyans in this particular situation is estimated at around 70. Source: [NU.nl](#), 6 April 2011

“Government aims to crack down on undocumented Moroccans”

The Dutch government wants to use all diplomatic channels for a quicker future repatriation of undocumented Moroccan migrants in the Netherlands. The Dutch Immigration Minister proposes the exchange of fingerprints to speed up their return. The Dienst Terugkeer & Vertrek (The Service Return & Departure) states there are still 150 Moroccans waiting to be returned. Source: [De Telegraaf](#), 11 February 2011

“Repatriations to Syria temporarily on hold”

The Dutch Minister for Immigration, Gerd Leers, has announced that for the time being failed asylum seekers from Syria will not be returned to that country amidst the violent unrest, because it is hard to properly assess the safety and security of citizens in Syria. The Immigration and Naturalisation Service (IND) will not take any decisions on requests for asylum of Syrians for a period of at least six months. Source: [Elsevier](#), 29 June 2011

“Irregularity not justification for detention”

Answering to questions of some Dutch MEPs, the European Commission has replied that irregularity is not a sufficient ground for imprisoning irregular migrants. The Dutch government had proposed to start handing out fines or short jail sentences to irregular migrants, before being expelled from the country. This comes within a context where the Netherlands is trying to criminalise irregularity. The European Commission responded that this proposal is against EU legislation. This reassured the Dutch opposition that the government's plan will not be able to go ahead liked planned by Gerd Leers, Dutch Minister of Immigration and Asylum. Source: [Trouw](#), 21 September 2011; and [Trouw](#), 22 September 2011

“Dutch Detention Boats lose permit”

Since the beginning of September 2011 several ‘detention boats’ which are being used to detain irregular migrants have lost their permit. The boats are currently in port in the Dutch town of Zaandam. Because of the expiration of the permit - according to a Dutch law on spatial planning - the people on this boat are now staying in an illegal detention centre and would have to be transferred. However, the local government has tried to extend the permits of the boats, though several politicians do not agree. This deadlock and the uncertainty for the migrants in this particular detention centre provoked several protests on Saturday 10 September 2011, some supported by local politicians. Source: [SP.nl](#), 9 September 2011; [Ravagedigitaal.nl](#), 10 September 2011

“Amnesty laments strict detention of failed asylum seekers”

Amnesty Netherlands has filed a [note](#) suggesting alternatives for the current system of detention, which it considers to be too strict and unfair. In 2010, the Dutch lower chamber asked for an alternative detention regime, but the Minister of Immigration, Gerd Leers, has so far not acted on this request. The alternatives include a reporting requirement or an electronic ankle band. Amnesty points to positive examples of good practices in other countries that could be implemented in the Netherlands as well. Source: [Amnesty International](#), 11 October 2011; [nieuws.nl](#), 11 October 2011

“Return for unsuccessful asylum seekers”

According to Dutch legislation, if an asylum application is unsuccessful asylum seekers should leave the Netherlands within four weeks. When preparing their return, it is important that people are informed so they can make choices. The book written by Diana Geraci titled 'Bewogen Terugkeer' (Moved Return) is aimed at supervisors of (unsuccessful) asylum seekers and undocumented migrants. Through an analysis of practical examples, the book provides an investigation into the complexity of this decision-making process and the need to address the psychosocial aspects during the preparation. The book is only available in Dutch, click here to view online version http://www.pharos.nl/uploads/site_1/Pdf/Bewogen_terugkeer-bijlage.pdf Source: [Pharos](#)

Portugal

“Cape Vert Ministry of Interior visits Portuguese temporary housing centres for irregular migrants”

In December 2010, Cape Vert’s Ministry of Interior, Mr. Lívio Lopes, paid a four-day visit to Portugal in order to learn more about the Portuguese experience with temporary housing centers for irregular migrants. The European Union (EU), said Lopes, will probably provide financial assistance for the building of such centers in Cape Vert as a means to accommodate returned migrants. Source: [ASemana](#), 9 December 2010

Norway

“Proposal for detention for failed asylum seekers”

The Norwegian government had previously discussed opening separate detention facilities for failed asylum seekers waiting to be deported to separate them from those with pending asylum applications. However, the Secretary of State, Paul Lønseth, has declared that this option will be too expensive and so it was decided to focus on improving existing forced and voluntary returns strategies instead. It is noted that forced returns will reach peak levels in 2011 with already 3,000 people having been deported between January and August 2011. Source: Migreurop, 15 September 2011; [Aftenposten](#), 15 September 2011

Spain

“ECHR asks the Spanish government not to expel 13 Saharawi to Morocco”

The European Court of Human Rights (ECHR) has decided to implement Article 39 of the Regulation to ask Spain to temporarily suspend the expulsion order of 13 Saharawi, enacted by the Spanish National Court. 13 Saharawi citizens arrived by boat to Fuerteventura on 5 January 2011 and requested political asylum claim which was denied. The ECHR has justified its request based on the reason that if they were deported back to Morocco they would face problems with the Moroccan authorities because of their ethnic origin. Source: [El Público](#), 1 February 2011; [El País](#), 2 February 2011

“A judge reminds the government that the expulsion of immigrants "is not a law of the State", but an provision which can be implemented in varied ways”

A judge in Madrid has issued a ruling in which reminds the Government that the expulsion of immigrants “is not a fundamental right of the State but a measure adopted legislatively and that may well vary in its regulation”. The ruling responds to a request from the Foreign Police Brigade filed on 18 March 2011 for the detention and expulsion of a young migrant, Jabrán S., who could not prove he had a legal right to reside in Spain. The judge said too often the authorities directly see detention as the only measure ignoring the specificity of each case as well as other legal measures available such as confiscation of passport and regular contact with police authorities. Jabrán has been released and granted residency under the programme ‘Messengers of the Peace’ having been able to prove his 6-year residency having arrived in Spain as an unaccompanied minor. Source: [Europa Press](#), 23 March 2011

“Irregular migrants with children will not be deported until their children have finished their academic course”

According to approved changes in the immigration law by the Spanish government on 18 April 2011, irregular migrants with children enrolled in school in Spain may not be expelled from the country until the end of the academic year unless the other parent has legal residency in Spain and can take care of them. This amendment is based on a similar rationale that sick people and pregnant women who arrive irregularly in Spain cannot be repatriated to their countries of origin if the trip is a risk to their health, pregnancy or the baby. In the reformed law, upholding European standards, detention would be limited to 60 days or until the case has been addressed and a decision has emerged. Source: [El Día](#), 20 April 2011

“Criticism that the Center for Foreigners in Murcia looks like a prison”

The Center for Foreigners (CIE) of Murcia needs revision. This is what emerged from the last report by the Ombudsman office, María Luisa Cava, presented to the Congress of Deputies and criticizing some of the shortcomings of these facilities that receive, among other, immigrants arriving in small boats to the coastal region. She explained that although the facility meets the parameters, it "resembles excessively prison facilities". As main conclusions, Cava highlights the need to extend surveillance to all agencies "to ensure the rights of inmates and officers". She also requested that migrants have free access to the cells and toilets, and can make use of the latter at night without having to notify the escrow agent. Source: [La Verdad de Murcia](#), 12 April 2011

“The Government of Catalonia hopes to implement new strategy to reduce the number of undocumented migrants in prison in Spain”

Through a new order of the Justice Department, The Government of Catalonia hopes to reduce the number of undocumented migrants in prison in Spain. At the moment undocumented migrants make up 36% of prisoners in Spain. The

new strategy offers two options: firstly undocumented prisoners can serve their probation period in their own countries after serving half their sentence in Spain or they can be transferred to a prison in their home countries directly. The latter would most likely be refused by the prosecutor due to the poor prison conditions in many developing countries. The aim is to save money on accommodating foreign prisoners who once they are freed will be arrested by the Immigration authorities and detained until they are deported. Overall, this new strategy causes much debate and criticism from lawyers who condemn the double detention of undocumented prisoners, first for the crime they committed and then whilst waiting to be deported. The new order will come into force on 15 September 2011 and the new law permitting deportation to replace sentences of less than 6 years, reflect the government's support for such a measure. Source: [Público](#), 2 September 2011

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A judge in Madrid has issued a ruling in which it reminds the Government that the expulsion of immigrants “is not a fundamental right of the State but a measure adopted legislatively and that may well vary in its regulation”. The ruling responds to a request from the Foreign Police Brigade filed on 18 March 2011 for the detention and expulsion of a young migrant, Jabrán S., who could not prove he had a legal right to reside in Spain. The judge said too often the authorities directly see detention as the only measure ignoring the specificity of each case as well as other legal measures available such as confiscation of passport and regular contact with police authorities. Jabrán has been released and granted residency under the programme ‘Messengers of the Peace’ having been able to prove his 6-year residency having arrived in Spain as an unaccompanied minor. Source: [Europa Press](#), 23 March 2011

“Marches in different cities against immigration detention centres”

On 18 December 2010, various social organizations, NGOs and groups marched in Barcelona, Madrid, Valencia, Malaga, Motril, Granada and Algeciras, to ask for the permanent closure of Foreigners Internment Centres (Centros de Internamiento de Extranjeros (CIEs). Organizers stated that “CIEs are real prisons where immigrants who have not committed any crime are imprisoned just for not having the required documents for residing and working in Spain”. Source: [tribunalatina.com](#)

“Conditions of Madrid's detention centre”

The NGO Pueblos Unidos, a PICUM member, published the report “100 ventanas a 5.000 vidas truncadas” (“100 Windows on 5,000 Lives Cut Short:”) on the conditions of the Alunche detention centre for migrants in Madrid. While the report acknowledges some improvements in the offer of services to detainees, it also denounces the lack of protection of different rights, such as the right to interpretation and information, to health care and to access to effective judicial remedies. Full report only in Spanish at: <http://www.pueblosunidos.org/cpu/boletines/InformeCIE2010.pdf>

“Court orders the Ministry of the Interior to open immigration detention centres to NGOs”

For the first time, a judge ordered the Ministry of the Interior to open the door to NGOs of the Foreigners Internment Centre in Madrid, the biggest of Spain, and to entitle NGOs to visit detainees. The judge's decision outlines that the Director of the detention center must take the necessary steps to allow the NGOs to “visit, communicate and assist” those that make the request in compliance with Article 62bis of the Spanish law on aliens. More info at: [El Mundo](#), 20 January 2011

Sweden

“Public debate and protests against asylum policies continue”

The UN Committee against Torture has criticised the Swedish Migration Board and Migration Court on several occasions for making misjudgements in risk assessments before deportations. A representative from the Migration Board responded that follow-up activities after executed deportations are not within the remit of its responsibilities, a statement that was criticised by Amnesty International among others. According to an Associate Professor in paediatrics who was a speaker in the Swedish Forum for Human Rights in Stockholm, recent high-profile deportations are a consequence of the reformulation in the asylum law four years ago, when the term “humanitarian grounds” was replaced by “particularly distressing circumstances” as ground for asylum in Sweden. The speaker stressed that when implementation of policies are forwarded from politicians to authorities who pass them on to courts, human rights are easily violated. The Director of Legal Affairs at the Migration Board confirmed that legal interpretations often contradicts a general sense of justice, which is why many deportations have led to lengthy public debates. He also emphasized that the authorities need to apply the law. Asylum refusals and deportations have been given regular attention and often caused public protests. 40 protesters tried to stop a deportation of Iraqis in Gothenburg, and described a public manifestation outside the Migration Board in Helsingborg in the south of Sweden, motivated by the fatal consequences caused by misjudgements by the Board previously.

Source: [Nyheter24](#), 22 November 2011; [Fria Tidningen](#), 18 November 2011; [Göteborgsposten](#), 23 November 2011; [Helsingborgs Dagblad](#), 23 November 2011

Switzerland

“Conditions for migrants in administrative detention worse than for condemned criminals”

The National Commission for the Prevention of Torture visited three of the 28 administrative detention centres where many undocumented migrants are waiting to be deported and judged their detention conditions sometimes more severe than those faced by sentenced criminals. Elisabeth Baumgartner, vice-president of the Commission, said that the lack of space and the impossibility to go out are considered issues that become violations if the period of detention lasts more than two weeks as it often happens. The pressure they have to bear is too high, because they have no idea of what will happen to them. In such conditions, she said, she would expect even more aggressions in the centres. Source: [Le Courrier](#), 9 September 2011

“Immigration detention”

Michal Flynn and Cecilia Cannon from the Global Detention Project published in October 2011 a report entitled “Immigration Detention in Switzerland: A Global Detention Project Special Report”. This report provides a clear outline of detention practices and conditions in Switzerland. The situations vary with some centres having a ‘good reputation’ for their humane conditions but still many receive increasing criticism particularly on issues of arbitrary and punitive detention regimes, excessive use of force and proportionality of sanctions imposed for violations of the foreigners law. Click [here](#) to view the report.

United Kingdom

“Government pledges and court ruling on the detention of children”

A high court judge has ruled that two mothers and their children were unlawfully detained at Yarl's Wood immigration centre, with one of the mothers detained there for up to 17 days. The decision brings a new urgency to the government's pledge to end the detention of children in immigration centres by May 2011. In the ruling, it was acknowledged for the first time that detention could seriously damage children. Upon arrival all the children became sick with diarrhoea and vomiting. One of the children, aged eleven at the time, has been diagnosed with post-traumatic stress disorder. Under the government's new proposal, rejected asylum-seeking parents would remain in custody but their children would be assigned to “minders” so that the children would be able to move about freely. Source: [Migration News Sheet](#), January 2011; [Guardian](#), 11 January 2011

“Immigration agency breaks Clegg's pledge by detaining child”

The UK Border Agency (UKBA) has apologised for holding an 11-year-old girl in an immigration removal centre on Christmas Day in defiance of a pledge by the Coalition Government to end such cases. The child was detained overnight with her mother and adult sister at Tinsley House near Gatwick Airport after being refused admission to Britain. They were deported on Boxing Day. The incident, disclosed to The Independent, has infuriated ministers because they had promised to end child detention for immigration purposes by Christmas.

Source: [The Independent](#), 3 February 2011

“Report Released on Immigration Bail Hearings”

Over a period of eight months, 18 observers travelled to attend 115 immigration bail hearings at four courts throughout the UK. The systematic observations demonstrated that there is an overarching issue of lack of due process, underpinned in many cases by a culture of disbelief. Overall, the survey showed that the bail system is fundamentally flawed in terms of providing a fair hearing and that is leaving aside the question of whether a state should have the right to impose administrative detention. The report highlights clear differences between practices at the different centres, as well as between different judges, and the frustrations and repeated unfairness of the process as experienced by the lay people in the courts, be it the observers, their families, sureties or other detainees. Source: [Campaign to Close Campsfield](#), 2011

“New process for return of families includes ‘pre-departure accommodation’”

Further to the Coalition government's promise to end child detention in May 2010, a new process has been unveiled for the return of families. Families who refuse to depart from the UK may be held in ‘pre-departure accommodation’ for up to 72 hours, or in ‘exceptional circumstances’, up to a week. The Government has assured that the centre, a converted special needs school near Gatwick, will be family-friendly and only used as a last resort as advised by an Independent Family Returns Panel, which will take into account the welfare of children. However, families will not be free to come and go, and the centre will have 24-hour security and a 2.3 metre high perimeter fence. Some civil society organizations have expressed concern that this ‘pre-departure accommodation’ is therefore still essentially detention, and will still have significant negative effects on children. As its use is based on the same justifications as detention (refusal to cooperate with return), there is also a risk that it will be used routinely, rather than as a measure of last resort. Its inclusion in the new process demonstrates that the government has failed to properly examine the alternatives to secure facilities for the removal of families. Source: [UKBA](#), 28 February 2011; [Migrant Rights Network](#), 10 March 2011; [The Guardian](#), 10 March 2011

“Children detained in “degrading” conditions at Heathrow Airport”

Children are still being held overnight in "degrading" and "wholly unsuitable" conditions at London's Heathrow Airport, a watchdog has warned. The airport independent monitoring board (IMB) found that the airport's detention rooms had poor ventilation, no natural light and inadequate washing facilities. In 2010, more than 15,000 people, many of them children, were detained by immigration staff at the airport, according to the report. Furthermore, the watchdog has denounced the lack of progress over the year since the conditions were highlighted in their previous report. "The UK Border Agency has again failed in its duty to treat everyone in its care in Heathrow holding rooms with decency," the report said. "In our last report we drew attention to the wholly unsuitable conditions in which men, women and children were held. There has been no change: they are still held in these conditions and still for too long. Lack of change is unacceptable on grounds of humanity."

Source: [BBC News](#), 18 April 2011

“High Court rules detention of mother unlawful”

A High Court judge ruled immigration officials acted unlawfully in their handling of the case of a mother who was detained for almost a year and separated from her three children. The children were already in foster care as the mother, who is a Jamaican national, had served a prison sentence for drugs offences before being detained for immigration reasons. But while detained, the UK Border Agency (UKBA) decided to deport her and her three children. As she was detained, it was impossible for social workers to assess the impact of the move on their welfare or her parenting ability. In his judgment Mr Justice Blair ruled that her detention between May and September 2010 had “become unreasonable” and unlawful. Source:

[Children & Young People Now](#), 20 April 2011

“Immigration Bail Hearings: A travesty of Justice? Observations from the public gallery”

For years, among those who are familiar with or have encountered the system of immigration courts in the United Kingdom, stories have been commonplace about unfairness or lack of due process. Trained lawyers have expressed concern, for example in the report “A Nice Judge on a Good Day” recently published by Bail for Immigration Detainees. As such they have no other vested interest other than that of wishing to see justice done. This report gives an account of the systematic study they have carried out in observing 115 bail hearings and what they have found. Read the full research can be read [here](#).

Source: [Detention Forum UK](#), 15 March 2011

“Rejected asylum seeker faces deportation back to a country where she was harassed and branded because of her sexuality”

A Ugandan woman who was branded with a hot iron in her home country as a punishment for her sexuality, is facing forced removal from the UK, despite that deputy prime minister said that the coalition had ended the practice of deporting people to countries where they face persecution because of their sexual orientation. Betty Tibikawa, 22, who is detained in Yarl's Wood immigration removal centre in Bedford, is awaiting removal directions after her asylum claim was refused. Human rights organisations have consistently documented abuses against gay men and lesbians in Uganda and say that it's one of the most dangerous countries in the world for gay people. Tibikawa had just finished high school and was due to go to university in Kampala when she was attacked by three men who taunted her about her sexuality. They pinned her down in a disused building and branded her on her inner thighs with a hot iron. They left her unconscious and when she finally managed to get home she was confined to bed for two months. An independent medical report has confirmed that her scars are consistent with being branded with a hot iron. Source: [The Guardian](#), 21 May 2011

“Deportee slashes his throat as he was being deported from Gatwick airport”

An irregular migrant slashed his throat in a plane that was about to take off and deport him to Kingston, Jamaica. The flight was postponed and the man received treatment in hospital. A UK Border Agency spokesman said an investigation was being launched into how the man was able to inflict the "superficial injuries" on himself, says The Guardian. The person is reported to be alive and there is no indication of him having been deported since 20 June 2011. Source: Migreurope; [The Guardian](#), 20 June 2011

“Children's Society warns of the dangers of detaining children”

‘What Have I Done? The experiences of children and families in UK immigration detention’, examines the experiences of 32 families detained prior to the coalition’s pledge, in May 2010, to end the immigration detention of children. The research emphasises the importance of safeguarding issues around the use of immigration detention and the impact on children’s physical and emotional health. The Children's Society is concerned that the UK Border Agency’s new pre-departure accommodation could replicate some of the damaging experiences highlighted in the report. For example, families can still be held for up to a week in ‘exceptional circumstances’. The Children's Society’s Chief Executive, Bob Reitemeier, said: 'It remains to be seen how exactly the new arrangements will be used.’ Questions about the potential impact on children of separating families during the returns process also remain. For more news on the continued use of child detention in the UK, see PICUM bulletins [28 March 2011](#), [27 April 2011](#), [23 May 2011](#). Download the report (EN) [here](#). Source: [The Children’s Society](#), 11 May 2011

“Last resort or first resort? New study reveals detention of migrant families served no purpose”

A research paper published by Bail for Immigration Detainees (BID) and the Children's Society has found that, in the majority of cases, the detention of families with children served no purpose. The study focused on 82 families with 143 children who were detained in the UK during 2009. 61% of these families were eventually released. The study highlighted that in a considerable number of cases, families were detained when there was little risk of them absconding, their removal was not imminent, and they had not been given a meaningful opportunity to return voluntarily to their countries of origin. Moreover, in many cases, there were legal and health barriers to return these families to their countries of origin during the time they were detained. The report recommends that children and their families should not be detained for the purposes of immigration control and that after being informed that an immigration or asylum application has been refused, parents should be offered a reasonable amount of time to consider their options, including voluntary return. Download the report (EN) [here](#). Source: [ECRE Weekly Bulletin](#), 17 June 2011

“Deaths in detention”

On 2 August 2011, it was reported that a detainee facing deportation at Campsfield detention centre in Oxford had killed himself. Fellow inmates denounced the psychological pressure suffered when one is announced he would be deported. This new incident comes amid discussion over detention conditions and another two deaths which both took place in the last month at Colnbrook Immigration Removal Centre. It is within this context, that the Institute of Race Relations (IRR) raises the issue of how detention centres are run, by whom and what their exact purpose is? The IRR concludes by denouncing the lack of information on these deaths and calling for the Home Office and its contractors to be held accountable so “such deaths are not forgotten by the passage of time”. Source: [The Guardian](#), 2 August 2011; [IRR](#), 4 August 2011

“'Inhumane' act of taking deportation reserves to airport condemned”

The chief inspector of prisons has condemned the immigration authorities for “a distressing and inhumane practice” of taking detainees to the airport as “reserves” for others being deported. Nick Hardwick says the “objectionable practice” by overseas escort staff at the G4S-run Tinsley House removal centre at Gatwick airport should stop immediately. Detainees were not told if they were a reserve. Consequently, some detainees, after preparing to return to their country of origin and experiencing associated distress, were returned to detention from the airport. Staff said that some detainees were returned to a different immigration removal centre and expressed concern about the impact of this on them.” Defending the practice, a UK Border Agency spokesman said: “Preparing more foreign nationals for removal than there is space for makes best use of taxpayers' money.” Source: [The Guardian](#), 26 July 2011

“Landmark ruling that immigration detention of a man suffering from mental illness was inhuman or degrading treatment”

In a landmark decision on 5 August 2011, the High Court ruled that the Secretary of State for the Home Department, through the UK Border Agency, unlawfully detained a man with severe mental illness for a period of five months between April and September 2010 and that the circumstances of his detention at Harmondsworth immigration removal centre amounted to inhuman or degrading treatment in breach of article 3 of the European Convention on Human Rights (ECHR). The Court found that the detention of the Claimant, “S” was unlawful from the outset, because when his detention was authorised he had been served a deportation order and breached the UK Border Agency’s detention policy, in that the officials responsible for authorising detention failed to understand and take into account the evidence of S’s mental illness. Furthermore, it ruled that by detaining S, and continuing the detention despite the deterioration in his condition, the UKBA breached both its negative (“to refrain from inflicting serious harm on persons within their jurisdiction”) and positive (“to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment”) obligations under the ECHR. Source: [Bhatt Murphy Solicitors, Press Release](#), 5 August 2011

“Government hopes to decrease numbers of foreign national prisoners by sending them home-without their consent”

Many countries have prisoner transfer agreements with one another; Britain is reported to have such agreements with over a hundred countries and in 2009, 41 prisoners were removed under such arrangements. Some countries have older agreements which stipulate that the prisoner must either request the transfer or agree to it while some newer arrangements do not require prisoner’s consent before transfer. There is a new legislation which is working its way through the Nigerian government which will remove the requirement for prisoners’ consent from its transfer rules. The Institute of Race Relations discusses the implications of such legislation and what it will mean for the rights of those in the UK now, who have been living there decades, the impact of access to justice, and the concern that instant deportation may be a factor for those that have strong human rights reasons for staying. Source: [Institute of Race Relations](#), 4 August 2011

“Guantanamo Bay firm to run detention centre in Scotland”

A firm who run part of the Guantanamo Bay prison camp have won the contract to manage Dungavel immigration removal centre, which is located in Scotland and operated by the UK Border Agency. The firm also manages private jails in the US

and has been connected to allegations of human rights abuses, sexual assault and negligence. After a series of scandals involving rioting, racism and assault, they lost a contract to run immigration centres in Australia. The company will take over the running of Dungavel in September 2011 for five years with a contract that is worth £25 million. Source: [The Daily Record](#), 15 August 2011

“Northern Ireland detention center opens”

Larne House, the first detention center in Northern Ireland opened in July 2011. As noted in [PICUM's October 2010 Newsletter](#), the Larne House will hold 21 men and women before they are removed from the UK. Before the building of the center, detainees were held in prisons. After much criticism of the practice, immigrants were then held in temporary police custody in Northern Ireland before being moved to detention centers in the UK. Source: [Belfast Telegraph](#), 5 July 2011; [Institute of Race Relations](#), 14 July 2011

“In the past year the UK Border Agency has paid a total of £14.2 million in compensation claims”

The UK Border Agency (UKBA) recently released its annual report for 2010/11 and it showed that it paid a total of £14.2 million last year in compensation, legal costs and ex gratia payments, up almost £2 million on the previous year. This included payments to families who were unlawfully detained and removed, as well as £175,000 in compensation to an asylum seeker who was unlawfully detained and injured while in custody. Legal costs alone topped £7.7 million in just over 1,000 cases, compared with £3.8 million for 691 cases in 2009/10. Source: [The Independent](#), 15 August 2011

“Prisons inspector raises concerns about “children’s unit” in detention centre”

The chief inspector of prisons, Nick Hardwick, has raised concerns about the children's unit at Tinsley House removal centre at Gatwick airport, which has been refurbished and is due to reopen shortly. "It was anticipated that children would normally be detained for less than 72 hours, but they could be held for up to a week with ministerial authority," says the inspection report, published on 26 July 2011. The inspectors were told that two types of family might be held at Tinsley House: those detained from aircraft and awaiting a flight back to their home countries, and families judged "unsuitable" for the new pre-departure accommodation (for more information see PICUM bulletins June 29 2011, 27 April 2011, 28 March 2011, 23 May 2011). "These plans to hold children sit uneasily with the government's commitment to end child detention for immigration purposes," promises the report. A UKBA spokesman confirmed that the Tinsley House family unit is to be used for families intercepted at the border and "in rare cases" for "criminal and other high-risk families who cannot be safely" held in the new pre-departure accommodation. Source: [The Guardian](#), 26 July 2011

“Scottish campaigners accuse UK Government of breaking promise with new detention centre for families”

Families in Scotland facing deportation will be taken to Pease Pottage, in Sussex, for up to a week while they await deportation, from 2 September 2011. Although the UK Government has ended child detention at Dungavel, in Scotland, and Yarl's Wood, in Bedfordshire, they have continued to be held at Tinsley House, also in Sussex. Campaigners say the launch of the new centre demonstrates that Westminster has no intention of stopping locking up youngsters. Robina Qureshi, director of Positive Action in Housing, which supports families going through the asylum process, said: "The fact is the coalition government has said they would end child detention. Now they are opening Pease Pottage with all these amazing state-of-the-art facilities, but that does not get away from the fact they are still locking up children." The Scottish National Party has also criticised the Home Office's failure to end child detention. However, a spokesman for the Scottish Liberal Democrats defended the new system, highlighting that the charity Barnardo's is involved with the accommodation. Barnardo's involvement has itself been the subject of much criticism by advocates for children's and migrant's rights. (See PICUM Bulletins 29 August 2011, June 29 2011, 23 May 2011, 27 April 2011, 28 March 2011- add links). Source: [The Scotsman](#), 29 August 2011; [The Guardian](#), 23 August 2011

“Deportations, Removals and Voluntary Departures from the UK”

The Migration Observatory has published a briefing, by Dr Scott Blinder, entitled: “Deportations, Removals and Voluntary Departures from the UK”. It examines the number of people deported or removed from the UK and those departing voluntarily after the initiation of enforced removal. It further examines the method, cost, and to the extent possible, the grounds for their removal and their nationalities. It raises four key points: 1) In 2010 there were 39,030 foreign nationals removed from within the UK under immigration law—or departing under threat of such removal—an increase of 3% from 2009. 2) Increases since 2005 in detected deportations come from improved data collection on “unnotified voluntary departures” of people due for enforced removal. 3) Removals of asylum applicants and their dependents declined from 18,280 in 2006 to 9,850 in 2010. 4) The UK Border Agency paid more than £28 million for removal flights in the financial year 2009-2010 and pays an estimated £11,000 for each enforced removal of a rejected asylum applicant. Download the report (EN): [here](#). Source: The Migration Observatory at the University of Oxford, 6 September 2011

“People removed from the UK racially abused by private security officers”

According to two new reports issued by Her Majesty's Inspectorate of Prisons for England and Wales (HMI Prisons), private security officers showed “a shamefully unprofessional and derogatory attitude” during the removal process from the UK.

This included “unprofessional comments by some escort staff, including swearing and stereotyping of detainees according to nationality” and inappropriate use of force by placing people in handcuffs for long periods of time although no evidence of resistance or violence was given. Inspectors drew these conclusions after accompanying removal flights to Jamaica and Nigeria in March and April 2011. They also reviewed records of previous flights. The flights were chartered by the UK Border Agency and the private security firm G4S provided the guards. Jonathan Ellis, Director of Advocacy at the British Refugee Council, said "This is unacceptable. It is a clear case for a review of the removals process." Download the reports [here](#). Source: ECRE Weekly Bulletin, 9 September 2011

“Health in detention highlighted in new Medact report”

Medact have released a new report entitled “Preventing Torture- the role of physicians and their professional organisations: principles and practice”. The report considers how professional medical bodies can more effectively work towards eliminating torture, both through the support they give their members, and in their response to medical complicity. Medact finds clear evidence that there is still much to be done both to protect medical professionals who expose cases of torture, and to prevent medical complicity in it. This report is part of a 'work in progress' to address this unacceptable situation. The section covers five countries, including the UK, where it focuses on health provision in immigration detention. In particular, it discusses the inability of medical services in detention/removal centres to recognise, report and act on signs of torture. It also discusses their inability to deal with the range of physical and psychological illness due to a lack of capacity or expertise. The report points to the recent death of Jimmy Mubenga caused by private security firm G4S during an attempted removal to illustrate that injuries suffered by immigration detainees are inadequately documented and reported. Download the report (EN): [here](#) Source: Refugee Health Network, 19 September 2011 ([Here: login required](#))

“The European Convention of Human Rights faces some constraints if the Home Secretary is successful in proposed changes”

At the Conservative Party Conference on 4 October 2011, UK Home Secretary, Theresa May announced plans to tighten the immigration rules making it easier to deport foreign nationals who have settled and started families in Britain. She argues that interpretation of the European Convention of Human Rights (ECHR), in particular Article 8, has been overarching and is preventing the deportation of convicted criminals and undocumented migrants. Under Article 8, the right to respect an individual’s private and family life is recognized. The Home Secretary argues that use of this article has been abused by many and would like to change the immigration rules to make it clear that foreign nationals can be deported even if they have started a family. A statement disputed by MRN as only less than one hundred occasions (0.18% of all cases) of deportation cases challenged on the basis of Article 8 were successful. Also included in the new rules would be removal based on if the individual is not able to support themselves or find a home. Source: [The Independent](#), 4 October 2011; [BBC](#), 4 October 2011; [Migrant Rights Network Blog](#), 4 October 2011

“Nigerian asylum seeker assaulted in front of her children during deportation process”

Faith, a rejected asylum seeker, was assaulted in front of her three children on a plane leaving the UK and destined for Italy. Faith had been taken to a pre-departure facility at Pease Pottage, West Sussex, with her three children, aged four, six and eight following a raid in their home in Birmingham by uniformed officers at 5.30am on 19 September 2011. This occurred despite a government promise to end the detention of children in the UK, a promise the government should admit they have broken according to Emma Ginn, coordinator of the charity Medical Justice. The incident occurred on 22 September 2011 during the first attempt to deport Faith and her three children back to Italy where she had been living before going to the UK after having faced persecution by her family and local community members. The officers started beating her which resulted in her spitting blood; the pilot ordered the eight escorts to take the family off the plane. Two further attempts were made to deport her to Italy on 20 September but the flight was full and on 26 September 2011 the family lawyer intervened by obtaining a judicial review in the high court citing the pending case about forced removals to Italy. Following the three failed attempts of deportation, the family was freed and returned to their home in Birmingham. The Home Office refused to comment but have confirmed that an investigation for serious misconduct complaint has been initiated. Source: [The Guardian](#), 3 October 2011

“Campsfield House criticized”

A [report](#) released in July 2011 by HM Chief Inspector of Prisons following a surprise inspection in May 2011 to Campsfield House immigration removal centre, in Oxfordshire, shows it failed to improve on recommendations made following inspection in 2009. The concerns focused on the centre’s health care and educational facilities which did not meet required standards. Bob Hughes, from the Close Campsfield Campaign, reiterated that the changes would not be enough as the objectives of the facility was to show the ‘toughness’ of the system and that would not change. Source: [BBC News](#), 5 October 2011

“Continued child detention and lack of appropriate monitoring on use of detention and restraint revealed”

A Freedom of Information request by the [Children's Society](#) has revealed that in a four-month period between May and August 2011, almost 700 children were detained in the UK, despite a government pledge in May 2010 to end the immigration detention of children. The Children's Society also found that the Home Office is not sufficiently monitoring these cases, as they are not collecting information on the length of the detention of these children or why they were detained in the first place. Concerns have also been highlighted by [HM Inspector of Prisons](#) in regards to the monitoring of those detained at port following the unannounced inspections of three Heathrow Terminals. The governments proposed alternative to detention "pre-deportation accommodation" also remains highly contested ([The Guardian](#), 17 October 2011; See also PICUM Bulletins 26 September, 29 August 2011, 20 June 2011, 23 May 2011, 27 April 2011, and 28 March 2011- Add links). Another freedom of information request, by [CYP Now](#), revealed a lack of rigorous monitoring of cases where restraint is used against children prior to deportation. The Home Office responded that there were no recorded instances of restraint before 2009, although figures released in parliament in October 2010 showed that restraint was used 13 times between March 2008 and February 2010 to get children onto return planes.

Source: [Children's Society](#), 17 October 2011; [CYP Now](#), 18 Oct 2011; [The Guardian](#), 16 October 2011; [The Guardian](#), 17 October 2011

"Irregular migrant dies on Eurostar"

A 22-year old Albanian irregular migrant whom had seen his entrance refused to the UK falls to death from Eurostar during a voluntary return back to mainland Europe. The British Transport Police (BTP) is not considering the death as suspicious although grave concerns have arisen as to security aboard if somebody can exit the train whilst it is going at high speed.

Source: [BBC News](#), 18 October 2011

"High Court rules on the detention of a man suffering from mental illness"

The High Court ruled on 26 October 2011 that the UK Border Agency had unlawfully detained a man with severe mental illness between 21 June and 7 October 2011. As well, it noted that the circumstances of his detention at Harmondsworth immigration removal centre between 4 July and 6 August 2011 amounted to inhuman or degrading treatment and in breach of article 3 of the European Convention on Human Rights (ECHR). Source: [Asylum and Refugee Network](#), 3 November 2011; [Bhatt Murphy Solicitors](#), 31 October 2011

"Larne Policing Board set to make money off of the detention center in Northern Ireland"

Before the Larne detention center in Northern Ireland opened in July 2011 (see PICUM News Bulletin 29 August 2011- link) it had been hoped that revenue generated by the lease of a portion of the station by the Policing Board to the UK Border Agency would be invested back into policing in the city of Larne. At this point it is uncertain how much will be paid to the Policing Board however with annual operating costs for the center reported to be around GBP 1,479 million, it is expected that any amount raised through the rental would make a difference in the local policing budget. Now, four months after the first detainees arrived in town, apparently the matter of how much will be paid to the Policing Board is still not known.

Source: [Larne Times](#), 29 November 2011

"Organization states that refused asylum seekers face torture upon return to the DRC"

In a report by Justice First, a human rights organization which looked at the cases of 17 adults and nine children removed from the UK between 2007-2011, a number of the returnees faced persecution upon their return to the Democratic Republic of the Congo (DRC). The report notes allegations of beating, arrest and imprisonment, rape and sexual abuse. The report states that the UK Border Agency uses information that is out of date for the DRC, for example, the operational guidance note is from 2008. As well the report highlights the UK's failure to monitor the fate of people forcibly returned to conflict zones such as the DRC where cases of torture are well documented. Source: [The Guardian](#), 25 November 2011; ["Unsafe Return"](#), 24 November 2011