OUTSOURCING OPPRESSION

## How Europe externalises migrant detention beyond its shores

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KEY FINDINGS

- The European Union (EU), and its member states, externalise detention to third countries as part of a strategy to keep migrants out at all costs. This leads to migrants being detained and subjected to gross human rights violations in transit countries in Eastern Europe, the Balkans, West Asia and Africa.

- Candidate countries wishing to join the EU are obligated to detain migrants and stop them from crossing into the EU as a prerequisite for accession to the Union. Funding is made available through pre-accession agreements specifically for the purpose of detaining migrants.

- Beyond EU candidate countries, this report identifies 22 countries in Africa, Eastern Europe, the Balkans and West Asia where the EU and its member states fund the construction of detention centres, detention related activities such as trainings, or advocate for detention in other ways such as through aggressively pushing for detention legislation or agreeing to relax visa requirements for nationals of these countries in exchange for increased migrant detention.

- The main goal of detention externalisation is to pre-empt migrants from reaching the external borders of the EU by turning third countries into border outposts. In many cases this involves the EU and its member states propping up and maintaining authoritarian regimes.

- Europe is in effect following the 'Australian model' that has been highly criticised by UN experts and human rights organisations for the torturous conditions inside detention centres. Nevertheless, Europe continues to advance a system that mirrors Australia's outsourced model, focusing not on guaranteeing the rights of migrants, but instead on deterring and pushing back would-be asylum seekers at all costs.

- Human rights are systematically violated in detention centres directly and indirectly funded by the EU and its member states, including cases of torture, arbitrary and prolonged detention, sexual violence, no access to legal recourse, humanitarian assistance, or asylum procedures, the detention of victims of trafficking, and many other serious violations in which Europe is implicated.

- Particularly horrendous is the case of Libya, which continues to receive financial and political support from Europe despite mounting evidence of brutality, enslavement, torture, forced disappearance and death. The International Organisation for Migration (IOM) and the UN High Commissioner for Refugees (UNHCR), implement EU policies in Libya and, according to aid officials, actively whitewash the consequences of European policies to safeguard substantial EU funding.

- Not only does the EU deport and push back migrants to unsafe third countries, it actively finances and coercively pushes for their detention in these countries. Often they have no choice but to sign 'voluntary' agreements to be returned to their countries of origin as the only means of getting out of torturous detention facilities.

- The EU implements a carrot and stick approach, in particular in its dealings with Africa, prolonging colonialist dynamics and uneven power structures – in Niger, for example, the EU pushed for legislation on detention, in exchange for development aid funding.

- The EU envisages a greater role for migrant detention in third countries going forward, as was evidenced in the European Commission's New Pact on Migration and Asylum.

- The EU acts on the premise of containment and deterrence, namely, that if migrants seeking to reach Europe are intercepted and detained along that journey, they will be deterred from making the journey in the first place. This approach completely misses the point that people migrate to survive, often fleeing war and other forms of violence. The EU continues to overlook the structural reasons behind why people flee and the EU's own role in provoking such migration.

- The border industrial complex profits from the increased securitisation of borders. Far from being passive spectators, the military and security industry is actively involved in shaping EU border policies by positioning themselves as experts on the issue. We can already see a trend of privatising migrant detention, paralleling what is happening in prison systems worldwide.

INTRODUCTION

In September 2020, the European Commission launched its New Pact on Migration and Asylum.[1] Although it had been in the pipeline for some time, it came only weeks after Moria, one of Europe's largest refugee camps on the Greek island of Lesbos, burned to the ground leaving over 12,000 people without shelter.[2] To call Moria a refugee camp however is deeply misleading – more accurately Moria was a squalid, overcrowded, open air prison. While the EU, and its member states, have regularly been denounced for the appalling prison-like conditions in which asylum seekers are held inside Europe's borders, they tend to evade criticism for their direct role and responsibility in the detention of migrants in third countries (countries outside the European Union). This report seeks to address this gap and join the dots between Europe's outsourcing of migrant detention to third countries and the notorious conditions within the migrant detention centres. In a nutshell, Europe calls the shots on migrant detention beyond its shores but is rarely held to account for the deeply oppressive consequences, including arbitrary detention, torture, forced disappearance, violence, sexual violence, and death.

One of the key pillars of European border policies is externalisation, whereby the EU, and its member states, sign agreements with third countries that, in effect, make them the border guards of Europe. The central premise of border externalisation is containment, meaning that those on the move towards Europe are stopped and contained long before they ever reach Europe's shores.[3] A central element of this containment policy has been the EU and its member states coercion or cajoling of third countries to detain migrants and refugees who may be en route to Europe. Europe has channelled millions of euros to third countries for the construction of detention facilities, the training of prison guards, as well as other forms of direct and indirect involvement in the detention of those on the move. Although no overarching detention externalisation policy exists, over the past three decades, Europe has placed significant pressure on third countries to detain more and more migrants.

Candidate countries wishing to join the EU must implement migrant detention policies as dictated by Europe if their candidature is to be considered. In other cases trade-offs have been negotiated whereby countries that agree to detain more migrants have European visa requirements for their citizens relaxed. While in other cases Europe and its member states seem content to prop up and do business with authoritarian regimes, with very dubious human rights records, in order to keep migrants well outside Fortress Europe. The aforementioned New Pact on Migration and Asylum envisages an entrenchment of existing policies and an even greater reliance on the externalisation of detention going forward, through the establishment of mandatory pre-entry screening procedures outside Europe's external borders.

Our research found that those on the move towards the EU, from Africa, West Asia and Eastern Europe, are routinely detained and held in facilities that are funded, built and resourced by the EU and its member states. It is important to note that the arbitrary deprivation of liberty is often a point of departure which leads to other forms of oppressive control. Those who are arbitrarily detained may be held incommunicado – their whereabouts may be unknown for extended periods of time, meaning that in effect, their detention may amount to forced disappearance. Similarly, while detained, migrants may be denied access to humanitarian assistance or legal recourse, subjected to inhumane treatment or torture, before being forcibly returned to their countries of origin, being forced in to slavery, abandoned in the desert, or killed. Mainstream discourse often tends to ignore the fact that those placed in migration detention are not actually guilty of anything – they have a right to move and to seek asylum and any such detention is entirely arbitrary.

Libya's notorious detention centres, where thousands of migrants are contained as a direct result of Europe's intervention in North Africa, act as a particularly disturbing case in point and reveal the extent to which Europe is prepared to go to keep migrants and refugees outside its borders. In December 2017, Federica Mogherini, then EU High Representative for Foreign Affairs and Security Policy, said: 'I have said many times that our goal is to close the detention centres' in Libya.[4] Actions speak louder than words however, and to date, EU policy and practice, and that of its member states, points in the opposite direction: EU countries fund Libyan detention centres and related projects directly associated with maintaining detention in the full knowledge that those being detained will be held in deeply inhumane conditions. The EU justifies this support by referring to human rights training courses provided to detention staff, or to 'voluntary' repatriation programmes from these centres to 'safe' third countries such as Rwanda, or to the detainees' home country. EU policy is clearly geared towards containment in Libya at all costs irrespective of the horrific human rights violations that occur as denounced by various international organisations. Europe's obsession with containment and return has meant that it continues to work with the Libyan authorities who operate these detention centres, and with the Libyan Coastguard, which detains and imprisons those fleeing Libya by sea.

There is a plethora of terms used to describe the facilities funded by the EU and its member states, from detention centres to accommodation settings to disembarkation platforms, but regardless of the chosen term, the underlying logic is the same – that unwanted migrants who are on the move towards Europe should be detained, contained and returned so that they do not become Europe's problem. Similarly, in this report we have used the terms migrant, refugee and asylum seeker interchangeably however irrespective of the term given, all persons must be guaranteed the right to move, to seek asylum and to live in dignity, and it is the obligation of the host state to uphold these rights.

The expanse of Europe's involvement in detention in third countries is alarming. Beyond Libya, this report details the direct involvement of the EU and its member states in at least 21 other countries, providing funding for the construction of detention centres or related infrastructure, training of detention guards, or through other less direct forms of intervention, such as political pressure to crack down on migration. They all have the same result – increased numbers of people being arbitrarily detained and subjected to gross human rights violations as a direct consequence of European border and migration policies.

They also suggest that though European nations may have formally withdrawn their colonialist hold over Africa and West Asia, there is still a deeply uneven and imperialist power balance between Europe and third countries. This is borne out in Europe's externalisation policies that see European nations and the EU deploying a carrot and stick approach to directly intervene on matters of national sovereignty, including border control and migratory flows. Although leaked documents revealed that many African nations are opposed to European interference in African affairs, they are not negotiating on a level playing field, which means that Africa tends to bow to pressure and give in to European demands in exchange for so-called development aid.

Although the EU uses a language of human rights, shared responsibility and solidarity, it remains just that – empty rhetoric. Europe's border policies are deadly and are based on deterrence and containment at all costs. This report exposes to what extent Europe has already invested in oppressive detention practices in third countries. The New Pact suggests that it also is not likely to shift course in the coming years but rather planning to double down on these policies.

'...authentic cell phone photos and videos substantiate concentration-camp-like conditions in so-called private prisons...'

DETENTION AND EU MIGRATION POLICY

Our earlier Border Wars research has shown that the EU's policies on border security are based on four key pillars:

1. The militarisation of its external borders

2. The development of 'smart borders'

3. Detention and deportation

4. The externalisation of border security and border control to third countries

We examined the first two and the last pillar in the reports Border Wars and Border Wars II, The Business of Building Walls and Expanding the Fortress respectively, highlighting that far from being passive spectators, the military and security industry is actively involved in shaping EU border policies by positioning themselves as experts on the issue. This industry then wins contracts to implement the policies that it helped to shape, thus contributing to an ever-expanding market for border security.
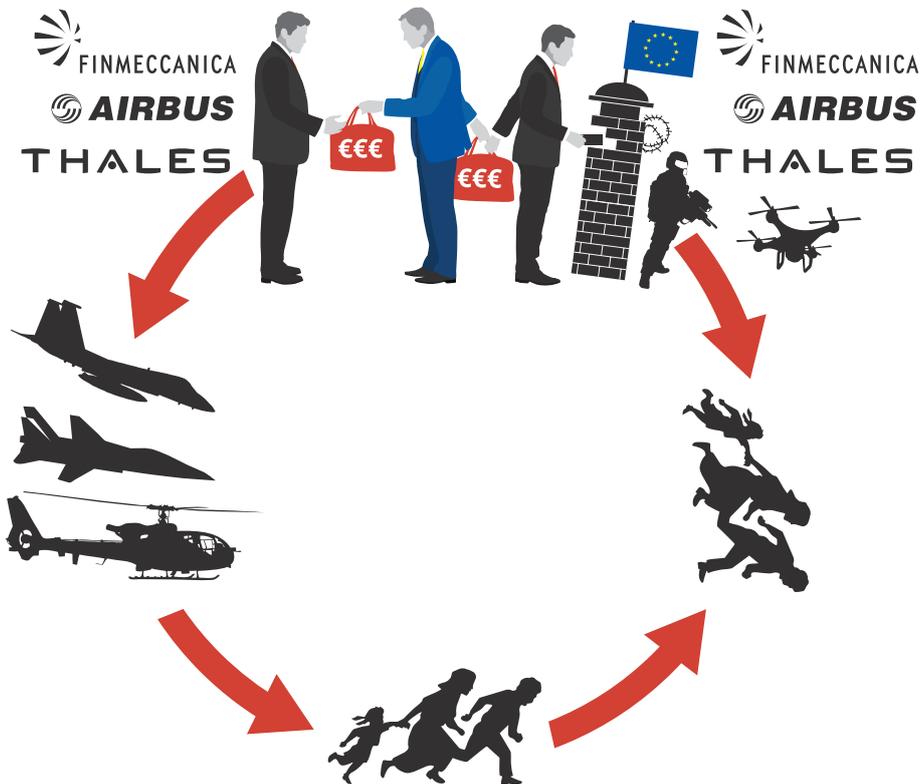
Illustration from TNI's report: Border Wars – The Arms Dealers profiting from Europe's refugee tragedy (2016)

We noted that the main goal of the EU's border externalisation policy is to pre-empt migrants reaching the external border of any EU member state by turning third countries into outpost border guards.[5] To date, our research has largely focused on how EU policies put pressure on such third countries to boost their border security, by building physical, maritime and virtual walls and enhancing military capacity.

This report focuses on the third pillar of the EU's border policies – detention and deportation – and explores its externalisation to third countries.

According to a report published by Migreurop and the Rosa Luxemburg Foundation, *Migrant detention in the European Union: a thriving business,* *'since the 1990s, [detention has been] the preferred method of migrant population management in Europe and beyond. Emblematic of the exclusion of populations seen to be undesirable, migrant detention facilities offer fertile ground for violations of basic human rights'.*[6]

As with the militarisation and externalisation of borders, the EU and its member states have been actively exporting detention as a model for 'migration management' to third countries for decades, in order to keep migrants and refugees firmly outside its borders. In contrast to the externalisation of border security, which is based on many decades of elaborate policy documents, agreements with third countries and funding mechanisms,[7] there is currently no overarching EU policy regarding the externalisation of detention. This report examines the policies that have been rolled out to externalise detention looking, for example, at EU candidate accession countries, which are routinely requested to establish, extend or enhance detention settings in line with 'EU standards', as well as other third countries, where the EU also actively influences detention policies on a case by case basis.[8] Such EU standards include 'the right to legal remedies, the rules of detention procedures, communication with legal advisers, counsellors and persons representing international and non-governmental organisations, material conditions of accommodation, personal development, access to healthcare and measures to ensure order, safety and the protection of migrants in detention.'[9] The European Court of Human Rights, however, has regularly found evidence of states in breach of their own standards with regard to the conditions in which refugees are detained, as well as other substantiated claims that point towards Europe's particularly poor record in this regard.[10] When such standards are not upheld, but rather are regularly violated, within the EU, it would follow that these same standards are unlikely to be implemented in third countries where there is little or no accountability or oversight.

'...executions of countless migrants, torture, rapes, bribery and banishment to the desert are daily events...'

EU – MIGRANT DETENTION AND DETERRENCE

There are many countries involved, and various methods used, in detaining migrants as they journey towards Europe. Some countries have formal detention facilities, while in others detainees are held in police stations or within the national prison system. Various terms are employed to refer to the facilities used to detain migrants, from straightforward 'detention centres' and 'removal centres' to the more opaque 'migrant accommodation centres', 'transit centres', 'temporary holding facilities' and 'reception centres'. According to the Global Detention Project, there is 'a clear trend in many countries to cast deprivation of liberty in a favourable – or, at the very least, less menacing – light' by 'making broad use of "hospitality euphemisms" to characterise detention and deportation practices'.[11]

In many instances, migrants are not officially detained, but in practice have little or no option but to stay in the holding facilities and abide by the regulations of the government and/or international organisations in charge. Many will be returned to their country of origin or moved on to return facilities run by the International Organization for Migration (IOM), such as that in Niger, often without being allowed to exercise their right to seek asylum or continue on their journey towards a safe country. In general, as the United Nations High Commissioner for Refugees (UNHCR) notes, 'the ideal of refugees and asylum-seekers moving freely and staying where and as they choose is seldom realized', with governments often attempting 'a policy of "no services" except to refugees in designated closed camps', which they cannot leave.[12]

The EU acts on the premise of deterrence, namely, that if migrants seeking to reach Europe are intercepted and detained along that journey, they will be deterred from making the journey in the first place. This approach completely misses the point that those trying to reach Europe are most often fleeing violence, including economic and gender based violence, that they have been forcibly displaced from their homes, and that for them migration is their only chance of survival. According to Lena Riemer, a 2018–2019 Fox International Fellow at Yale University,

'the European Union's migration-control policy relies on fortification and deterrence, contributing to massive human rights violations beyond its borders. EU funding supports detention centres ... as part of a global strategy'.[13]

As far as deterrence goes, studies in Turkey have shown that 'the risk of arrest and length of detention appear to be a consideration for people in selecting a route' but importantly, not with regard to whether to make the journey or not, underscoring further that such travel is not capricious but for survival.[14] This fits the general pattern of EU migration policies, not least externalisation: by obstructing certain migration routes, migrants and refugees seek other, often more dangerous, routes and are often driven into the hands of smuggling networks. This increases the risk of violence and death because those not afforded protection will migrate for survival, regardless, and are left with little choice but to embark on more perilous migration routes.[15]

Though there is no general European fund or programme to finance detention-related expenses in third countries, the case studies outlined in this report show a wide array of EU and member states' funding for various aspects of detention, from building detention centres to the development of policies and training of guards. Funding comes from development cooperation funds, pre-accession assistance funding, funds for migration dialogues and processes, the EU Emergency Trust Fund for Africa (EUTF), the Common Security and Defence Policy (CSDP) budgets, the European Neighbourhood (Policy) Instrument, EU–Turkey Deals and national budgets of EU member states.

There is often a total lack of transparency regarding detention centres, both about their existence (see the case study on Tunisia) and about what is happening inside them. Numerous reports of human rights violations are often ignored or denied.[16] On occasion, the EU, or member states, do speak out against these violations, but rarely back this up with action to change course. On the contrary, the EU envisages a greater role for migrant detention in third countries going forward, as was evidenced in the European Commission's New Pact on Migration and Asylum which relies heavily on various forms of detention.[17]
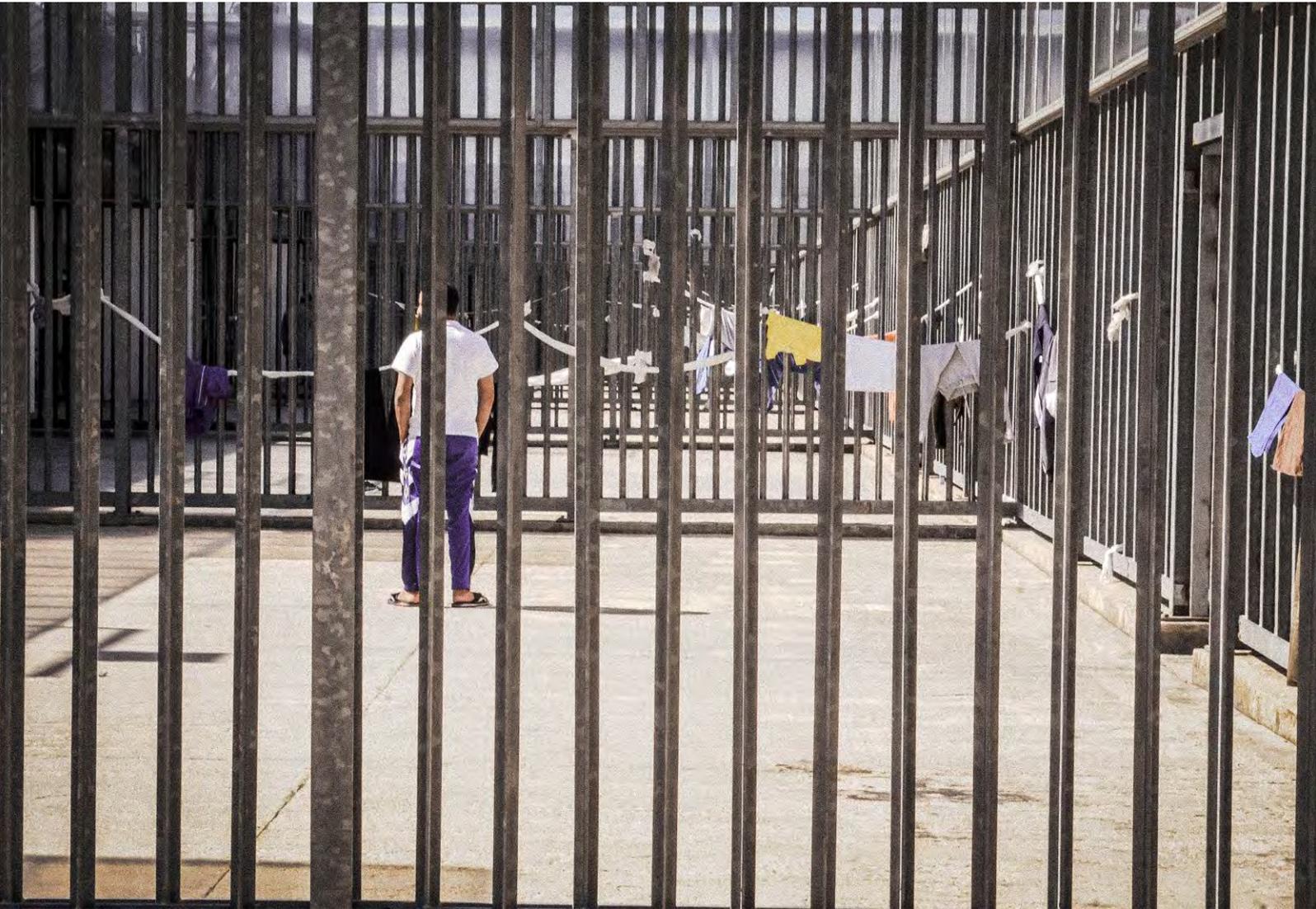
'Soft-spoken Abdul left Darfur in 2016 when he was eighteen. … It would only be in early May 2018 that, in the early hours of the morning, he finally crammed himself into a rubber boat with over 100 people and set off from Khoms, a coastal city east of Tripoli. Their journey was short; the Libyan Coast Guard intercepted the rubber boat after roughly four hours at sea. [When interviewed in mid-July 2018], he was recovering from what he described as torture by the guards in al-Karareem detention center near Misrata, where he had been detained in abysmal, overcrowded and unsanitary conditions for two months. He said guards beat him on the bottom of his feet with a hose to make him confess to helping three men escape.'[18]

OFFSHORE DETENTION

One form of externalising detention is the so-called 'Australian model', where the Australian authorities hold asylum seekers in detention centres that are often located offshore in third countries. It should be noted that Australia also detains asylum seekers in on-shore centres, within Australian territory, but applies a similar logic of keeping asylum seekers locked up in extremely remote locations, only reachable by flight or after several days driving in the desert, making it extremely difficult for rights groups to monitor such facilities. Over the years, leaders in many EU member states have referred to the 'Australian model' as an example that Europe should follow in response to new arrivals.

BOX 1. AUSTRALIA'S OFFSHORE DETENTION

Before examining how the EU is involved in detention in third countries, it is useful to look at Australia's policy of externalisation of migrant detention. It is based on outsourcing refugee detention and locating refugee camps outside Australian jurisdiction. Thousands of refugees, who either arrived to Australia by boat or were intercepted when attempting to do so, were transferred to 'offshore processing centres' on Nauru Island and Papua New Guinea (PNG). Legislative changes were made to remove Australian territories from the country's 'migration zone', eventually placing a blanket ban on anyone arriving to any part of Australian territory by boat from seeking asylum, regardless of their circumstances. In effect, the right to seek asylum in Australia was removed for those who arrived by boat.[19]

Former Australian Prime Minister Kevin Rudd said that 'asylum seekers who come here by boat without a visa will never be settled in Australia'.[20] This policy is enforced through 'Operation Sovereign Borders', a military maritime operation to force or tow refugee boats back towards their points of departure, often in Indonesia or Sri Lanka.[21]

The prison in PNG was closed in October 2017, after the country's Supreme Court ruled that the detention of refugees there was illegal and a breach of human rights.[22] The camp at Nauru was closed in 2018. Many of the detainees at the time of their closures ended up living in limbo, awaiting resettlement, or again in detention in the Australian-funded Bomana Immigration Centre, located outside Port Moresby, PNG's capital.[23] Part of this group was eventually resettled in third countries, including the USA.[24] Others were eventually transferred to Australia, for example for medical reasons. Of the over 4,000 people sent to the camps, by 31 October 2020 there were still 146 living on Nauru and 145 in PNG.[25]

Though Australia claims that its offshore detention policy is a success, the UNHCR and various human rights organisations have repeatedly denounced it as a gross violation of human rights. Under it refugees and asylum seekers were detained and held in inhumane conditions and denied their legitimate right to seek asylum in Australia. Over 2,000 leaked incident reports from the prison on Nauru Island detail countless assaults, sexual abuse, evidence of self-harm, including suicide attempts, child abuse and sub-standard living conditions.[26] In 2015 the UN Special Rapporteur on Torture and other forms of cruel, inhumane or degrading treatment or punishment, Juan Mendez, found that Australia's policies on detention facilities and the treatment of those detained within such facilities amounted to a systematic violation of the Convention against Torture. Similarly, in July 2017 Filippo Grandi, UN High Commissioner for Refugees, released a statement calling for an end to the system of offshore processing,[27] and in February 2020 the Office of the Prosecutor at the International Criminal Court (ICC) wrote that 'the[se] conditions of detention appear to have constituted cruel, inhuman, or degrading treatment … and the gravity of the alleged conduct thus appears to have been such that it was in violation of fundamental rules of international law'.[28]

Despite the ICC and UNHCR heavily criticising the Australian 'model' for breaching international human rights and refugee law, some European politicians continue to advocate for this as the way forward for European border and migration policy.

Apart from the torturous conditions, the 'model' has proved extremely expensive. Off-shore processing costs the Australian government in excess of AUS$573,000 per person detained per year.[29]

THE ROAD TO EUROPE'S EXTERNALISATION OF DETENTION

2004 — In late 2004 the Council of the EU agreed to the principle of 'creating reception camps for asylum seekers' in, and supervised by, countries in North Africa.[30] Following heavy criticism, as well as practical and legal obstacles, and the deteriorating political and security situation in countries across North Africa, the plan was shelved for a decade.

2014 — In November 2014 Germany's interior minister Thomas de Maizière dusted off the plan and proposed setting up 'transit centres' in North Africa, to be supervised by UNHCR, to handle the processing of asylum applications.[31]

2016 — In December 2016, the Austrian minister for foreign affairs, Sebastian Kurz, urged the EU to start applying the 'Australian model', by setting up detention centres in third countries. This was dismissed by the European Commission.[32] However, despite the rejection of Kurz's proposal, Europe was in fact already following in Australia's footsteps at that point and had been aggressively pursuing policies that externalise detention to third countries for many years, albeit not as part of one consolidated externalisation policy.[33] The EU and several member states have frequently sought advice from the Australian government on how to respond to refugees arriving by boat.[34] Australia was also one of eight non-EU-countries to attend the first European Coast Guard Cooperation Network Meeting held in November 2016.[35]

2018 — In 2018 the European Commission revived the idea of offshore processing, culminating in a proposal for 'disembarkation platforms' in Africa, as we describe later in this report.

2020 — In 2020, the European Commission published its New Pact on Migration and Asylum, which relies heavily on detaining those attempting to enter Europe in facilities located outside EU jurisdiction for compulsory 'pre-entry screening'.[36]
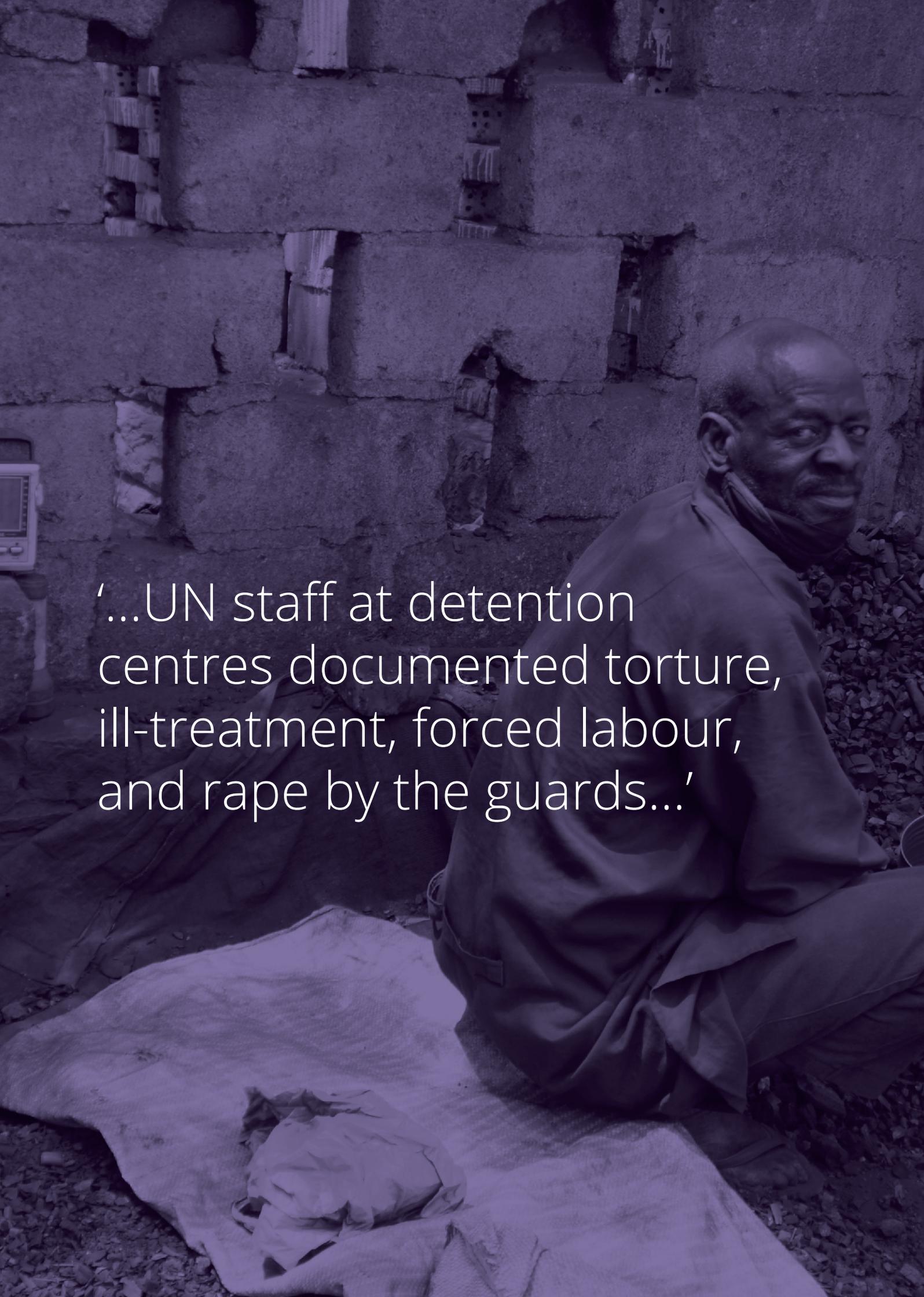
'...UN staff at detention centres documented torture, ill-treatment, forced labour, and rape by the guards...'

EXTERNALISING DETENTION: THE EU AND THIRD COUNTRIES

While not embedded in any concrete policy on detention externalisation, there are clear patterns regarding how the EU and its member states directly influence migrant detention policies and practices in third countries. These include funding the construction of detention centres; funding the implementation of detention-related activities, such as training; and other less direct forms of influence, such as concluding agreements that request or encourage migrant detention.

The EU's role in migrant detention in third countries			
Country	**Funding construction detention centres**	**Detention-related support**	**Other forms of involvement**
Azerbaijan		X	
Belarus	X		
Bosnia and Herzegovina	X		
Egypt			X
Georgia		X	
Jordan			X
Lebanon	X		
Libya	X		
Mauritania	X		
Moldova	X		
Morocco			X
Niger			X
North Macedonia	X		
Senegal			X
Tunisia	X		
Turkey	X		
Ukraine	X		
X *shows major EU involvement, but there may also be less significant forms of involvement*			
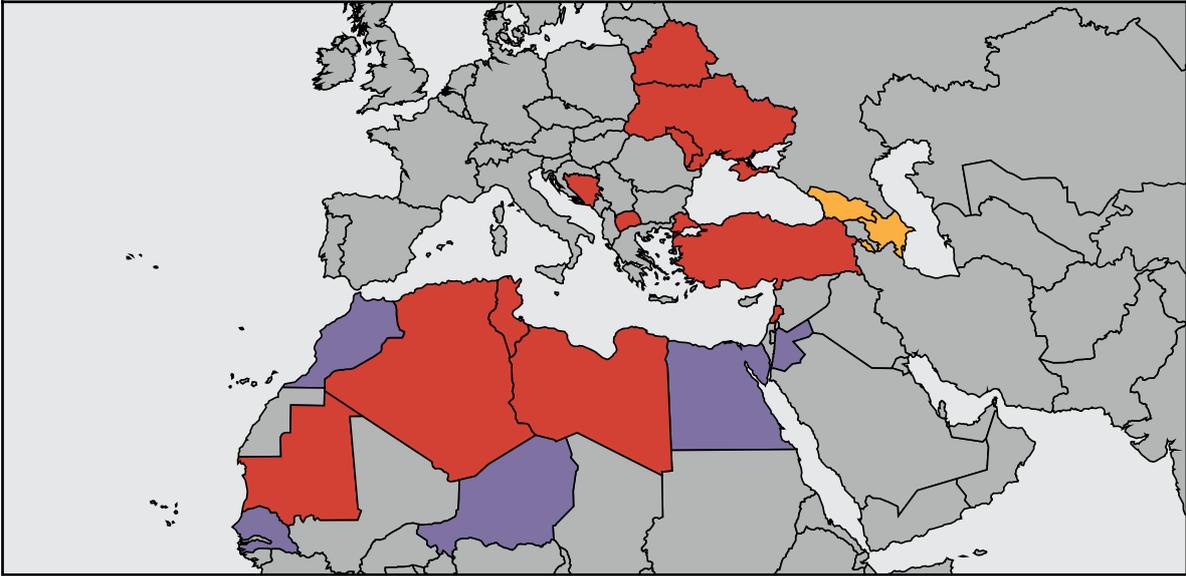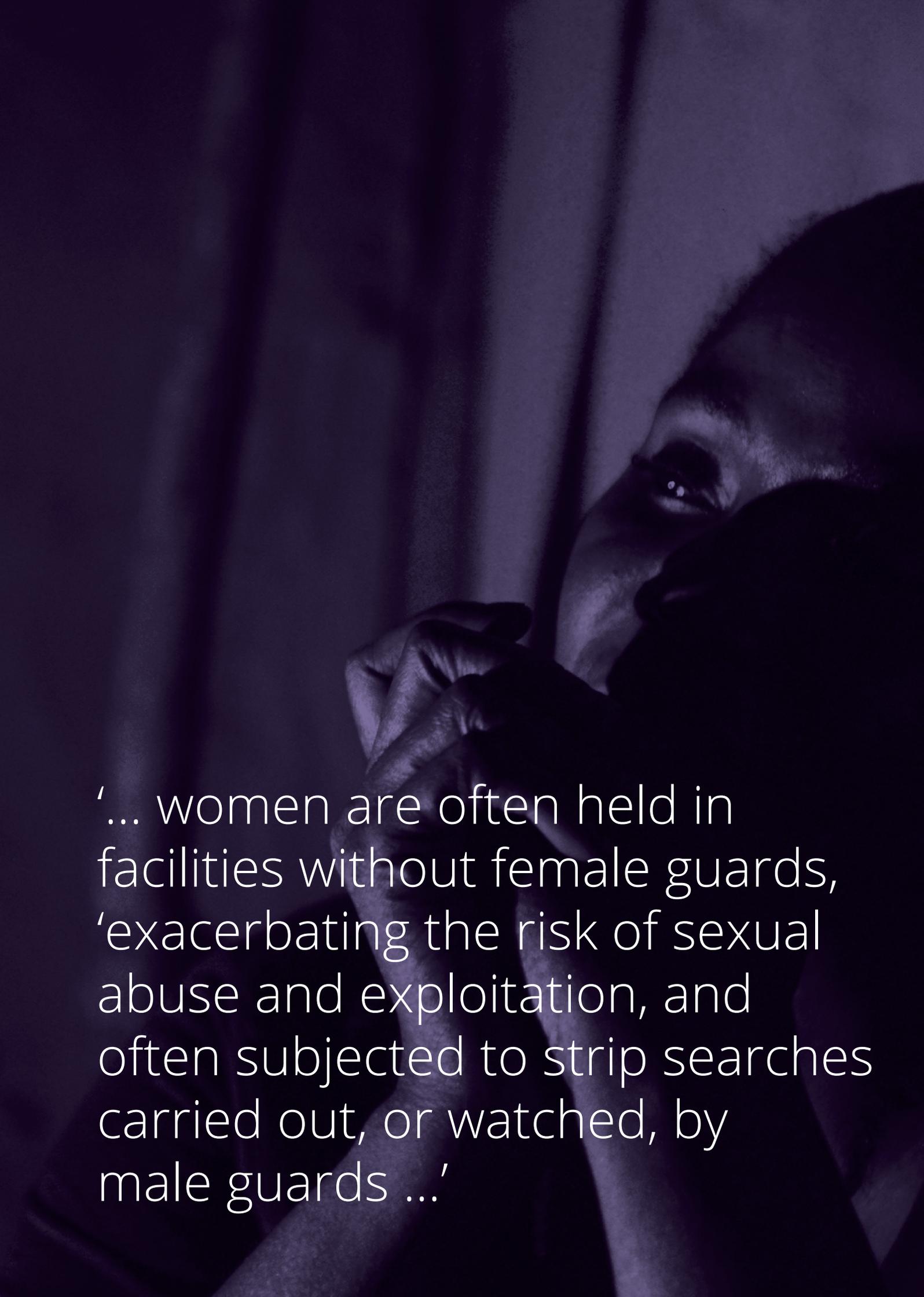
'... women are often held in facilities without female guards, 'exacerbating the risk of sexual abuse and exploitation, and often subjected to strip searches carried out, or watched, by male guards ...'

EU CANDIDATE COUNTRIES
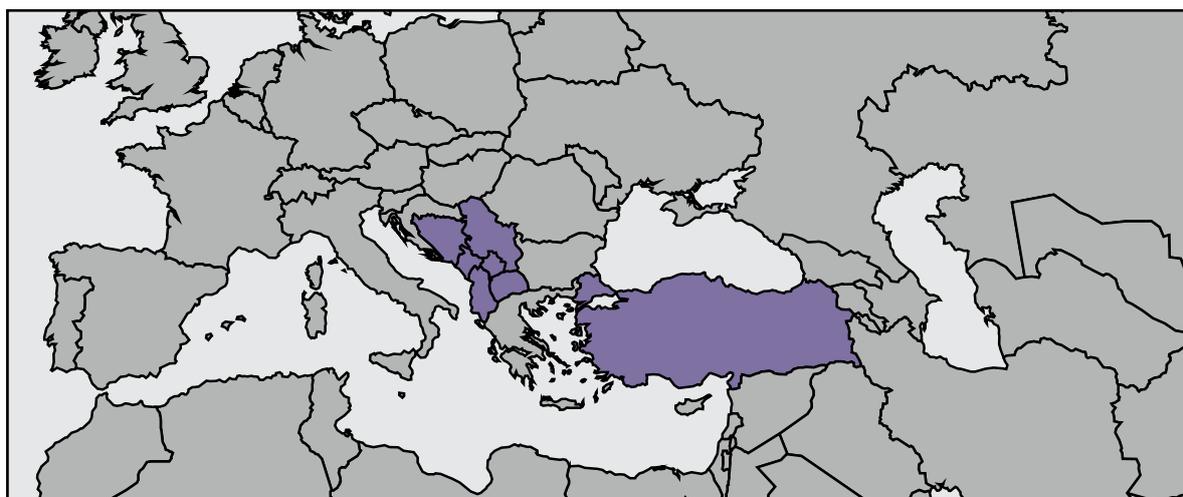
Countries seeking to join the EU have to meet a number of policy requirements. While specific demands are negotiated on a case-by-case basis, there are general guidelines for all candidate countries regarding migration policies. The most important of these relate to strengthening border security, given the open internal borders within the EU, coupled with the strict control of Europe's external borders. Accession to the 1985 Schengen Agreement meant that internal borders between Schengen signatories were brought down and free movement was permitted between signatory states, but externally border security became increasingly controlled and militarised under the logic that this was necessary to counteract the reduced internal border controls. In 2008, the EU issued its rules regarding the detention and return of third country nationals (TCNs) who are not legally resident, whether in an existing EU country or in a pre-accession country. The 2008 Directive states that 'Member States shall issue a return decision to any third-country national staying illegally on their territory'[37] and that 'Member States shall take all necessary measures to enforce the return decision'. After specifying the circumstances under which detention can be used as part of the removal process[38], the Directive states that '[d]etention shall be maintained for as long a period as the[se] conditions [...] are fulfilled and it is necessary to ensure successful removal.'[39] And '[d]etention shall take place as a rule in specialised detention facilities', so not in general prisons and/or together with 'ordinary prisoners'.[40]

Candidate member states can obtain funding, for example under the Instrument for Pre-Accession (IPA), to help them meet EU membership demands, some of which goes towards the construction of detention centres or other detention-related projects, as detailed in the case studies below.

Current candidate member states are Albania, Montenegro, North Macedonia, Serbia and Turkey. Bosnia and Herzegovina and Kosovo are potential candidate member states. Though the negotiating process with Turkey is practically halted, with both Turkey and several EU member states' openly doubting whether it should be resumed, the country has obtained EU funding for the construction of detention centres for migrants (see following pages).

Albania

For some years now the EU's involvement in migrant detention in Albania seems to be limited to saying that its 'one reception centre for irregular migrants in Karrec' needs refurbishment and its security system needs to be upgraded.[41]

Bosnia and Herzegovina

To fulfil part of the EU pre-accession requirements, Bosnia and Herzegovina established a migrant detention centre in Lukavica. This was agreed in 2006, when the Ministry of Security of Bosnia and Herzegovina, the Delegation of the European Commission in Bosnia and Herzegovina and the IOM signed a Memorandum of Understanding.[42]

The EU funded the construction of the euphemistically called 'reception centre for irregular migrants' with €1.2 million from the Community Assistance for Reconstruction, Development and Stabilisation programme (CARDS) in 2008/2009.[43] According to the IOM, the building and the procedures were modelled on the Dutch system.[44]

'Over the main gate fly the flags of Bosnia-Herzegovina and the European Union', according to Darryl Li, a Fellow at Yale Law School.[45] At its opening ceremony in November 2009 Ambassador Dimitris Kourkoulas, Head of the European Commission Delegation to Bosnia and Herzegovina, emphasised that it 'is very important as it is one of the conditions from the Visa Liberalisation Road Map'. The Acting Minister of Security for Bosnia and Herzegovina, Mijo Krešić, thanked the EU and said that its 'Ministry of Security has technically fulfilled all conditions from the Road Map. This Project shows how seriously BiH has approached the issue of irregular migrations'.[46]

As is the case with many third countries cooperating with the EU on migration, it is not only migrants arrested in Bosnia and Herzegovina who are held at the centre but also TCNs who transited the country before entering the EU and have been deported by an EU member state under its Readmission Agreement with the EU.[47]

Within a year of it being opened, the detention centre had already gained a reputation for its poor human rights standards and in 2011, Migreurop documented accounts of migrants who had been held there for more than eight months with no access to a judge or legal support, and had been subjected to violence and theft by guards and policemen. 'Detainees ... are also complaining of being victims of violence (punching, kicking, and beating with truncheons). One of the prisoners reported he had been beaten by a policeman working in the centre, and had many ribs broken. Some are slapped for merely asking a question to a guard'.[48] Later reports show that restricted access to lawyers remained a problem.[49]

During the Covid-19 pandemic, at the end of March 2020 Bosnian authorities violently picked up hundreds of migrants living in an improvised shelter and took them to the new Lipa Camp, which is managed by IOM, mainly with EU funding.[50] At the end of September migrants staying in several UN-run camps were also forcibly taken to the already overcrowded Lipa Camp.[51] The EU condemned this move, stating it 'has consistently made it clear that the emergency facility in Lipa is only a temporary Covid-19 response measure and does not fulfil basic requirements needed to host refugees and migrants in current weather conditions or across winter'.[52] To make matters worse, the camp was destroyed by a fire at the end of December, leaving over a thousand refugees to live in abandoned houses or tents in harsh winter conditions. In February 2021 the camp reopened.[53]

Kosovo

According to the EU, the detention centre in Kosovo needs upgrading, which it said in 2020 'is facing structural issues, mainly relating to improper housing units, a lack of secure areas, a lack of in-house medical facilities and a lack of adequate specialised supervisory staffing to ensure basic rights and needs, especially psycho-social support'.[54]

Montenegro

Montenegro has a detention centre in Spuž,[55] however the EU has made no particular demands regarding its migrant-detention capacity.

North Macedonia

North Macedonia is an important transit country on the Balkan Route and as a candidate member state, the EU has put pressure on it to do more to stop migration. In May 2018 the national parliament adopted the 'Law on Foreigners', which outlined the reasons for detention of refugees, including unaccompanied children, stipulating that they themselves should pay the costs of their detention and removal.[56]

Later that year, media in North Macedonia reported that the EU would finance the construction of a new detention centre in Skopje for irregular migrants, the 'Reception Centre for Foreigners', with a reported €14,57 million.[57] This centre should replace an existing one (Gazi Baba), also in Skopje, where there have been numerous reports of police violence, severe overcrowding and poor hygiene conditions since its opening in 2007.[58]

Almost a year later, a tender was published for building the new centre with 'electronic access control, special fireproof doors, alarms and fire extinguishers, video surveillance [and] protected windows', to be funded from the Instrument for Pre-Accession (IPA II).[59] The tender was closed in September 2019 and as of that date there has been no new public information regarding this project.

Serbia

The EU noted in 2018 that Serbia's one detention centre in Padinska Skela had capacity for 30 persons, with upgrading work in progress to increase the capacity to 'fulfil European standards'.[60] In 2020, it was reported that 'the extension of the detention centre in Padinska Skela is ongoing'.[61]

Turkey

Turkey is a key country for EU border externalisation. Both under the now halted accession process that started in 2005 and the EU–Turkey Deals of 2015 and 2016, the EU has demanded that Turkey act as a buffer and stop migration to Europe. The EU made available significant grants for humanitarian support for refugees in Turkey and for strengthening border security and control.

In 2005, the Turkish government adopted a National Action Plan on Asylum and Migration, which included establishing 'removal centres for illegal migrants'. Since then, according to European Commissioner Johannes Hahn, the EU funded the construction of 14 such centres aimed at expelling refugees from Turkey, with €84 million under the Instrument for Pre-accession Assistance (IPA).[62]

From the money made available for the 2015 EU–Turkey deal, €60 million was spent on the project 'Support to the Implementation of the EU-Turkey Statement of 18 March 2016', which included the construction of another removal centre (in Çankırı) as well as the appointment of new personnel (from psychologists to technical staff) at 21 removal centres.[63] The IOM regularly trains staff at removal centres under other EU-funded projects.[64]

The description of the project 'Support to Turkey's Capacity in Combating Illegal Migration and Establishment of Removal Centres for Illegal Migrants' (2009–2011), funded by the EU with €15 million under IPA, is very clear about the EU's intentions and objectives. Its overall objective is 'to reform the overall system of controlling illegal immigration in line with the EU standards and practices', with the establishment of two removal centres. The description details the shortcomings in Turkey's handling of illegal immigration: 'There is no centre as such devoted to the purpose of controlling the illegal migrants to be removed' and 'there is a deficiency in the institutional capacity to process, keep under control and return the apprehended/readmitted/ to be removed illegal migrants'. It concludes that 'illegal migrants should be accommodated in removal centres pending procedures for readmission to their home countries', because 'a more controlled migration management would reduce the numbers of illegal migrants arriving to Turkey also with the aim of transiting to EU countries'.[65]

There have been many reports of arbitrary detention, abuse and poor conditions in the removal centres, as well as of denying the right to seek asylum and conducting deportations to unsafe countries, including Syria, sometimes by the forced signature of 'voluntary return' forms.[66] In April 2014 the European Court of Human Rights (ECHR) decided that in the case of a Palestinian national detained in Kumkapı Foreigners' Admission and Accommodation Centre pending deportation, there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, because the conditions of detention were unsuitable for a wheelchair user and constituted degrading treatment.[67] The same detention centre was the subject of an ECHR judgment in October 2019 in a case of a mother with three young children, in which it decided that the Turkish government 'had failed to disprove the applicants' allegations that they had been detained in overcrowded dormitories, had rarely been allowed to go outside for fresh air, had constantly been exposed to cigarette smoke from other detainees and had not been given suitable food for children. Such conditions were manifestly adverse even for adults, and had therefore been all the more so for the three applicants who were vulnerable children'.[68]

To conclude:

This section revealed how the EU has firmly made migrant detention a prerequisite for candidate countries wishing to join the Union and has explicitly made funding and other forms of assistance available specifically for the purpose of stemming migrant flows in to the EU. No evidence was found that human rights concerns play any significant part in Europe's engagement with candidate countries on migrant detention. In short, the EU insists on detention infrastructure and actively funds it, but then throws its hands in the air and disassociates itself from such detention once the negative consequences are exposed.
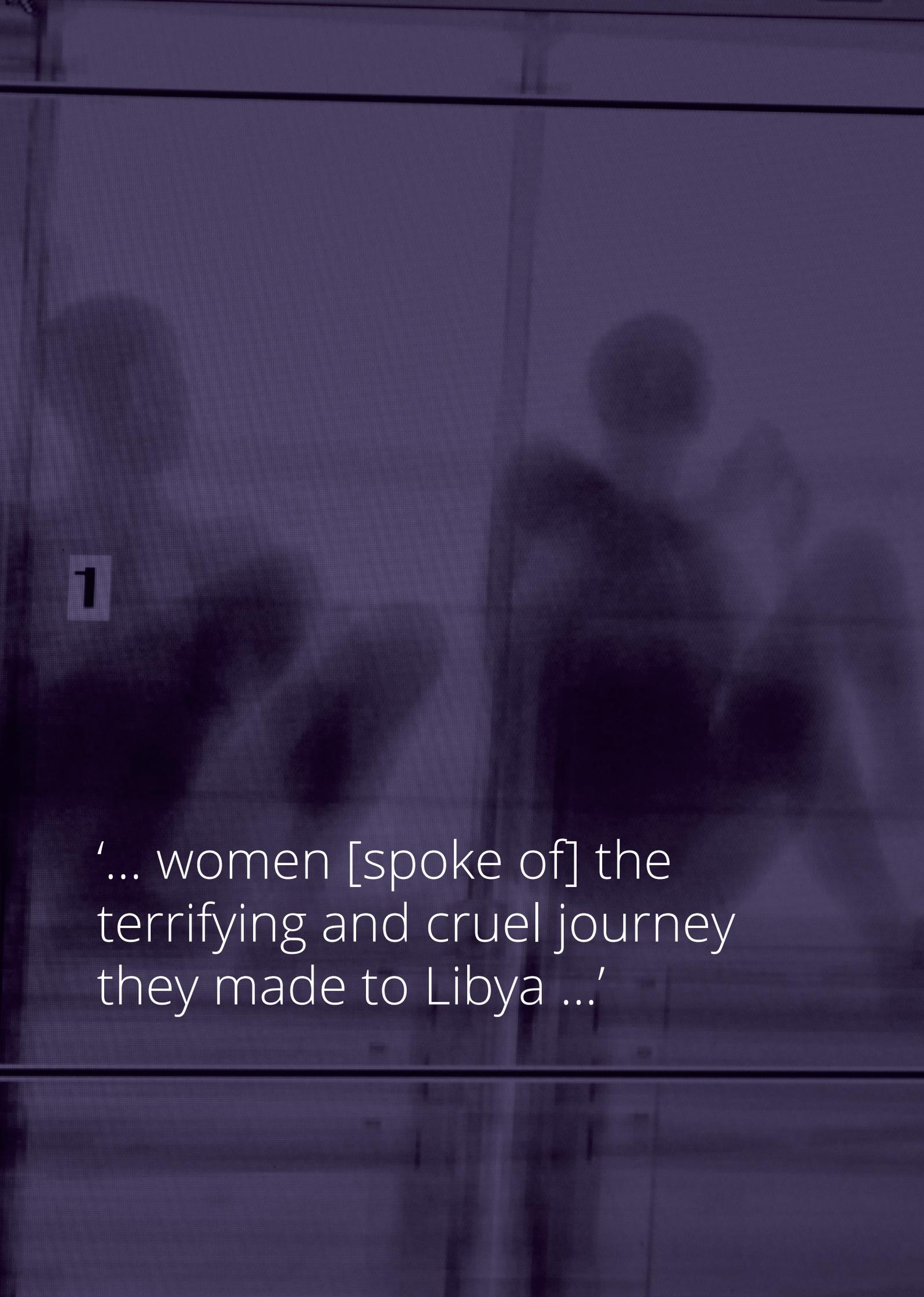
'... women [spoke of] the terrifying and cruel journey they made to Libya ...'

BEYOND EU CANDIDATE COUNTRIES – EUROPE'S AD HOC DETENTION EXTERNALISATION POLICIES

While the EU does have a consistent policy of requiring candidate countries to enhance their capacity to detain migrants en route to Europe, with regard to other countries, its policies are applied on an ad hoc, case-by-case basis. We observed the following patterns from the country examples discussed in this report, where the EU, or its member states, actively encourage and involve themselves in the detention of migrants:

- Funding the construction of detention centres
- Funding or implementing detention-related projects (for example training guards)
- Other forms of involvement (for example through readmission agreements)

1. Funding the construction of detention centres

In at least ten non-EU countries the EU and/or its member states have funded the construction of migrant detention centres, including Bosnia and Herzegovina, North Macedonia and Turkey as described above. Italy has been a forerunner in this regard, having transferred funds to Libya and Tunisia since the early 2000s. In 2006, Spain did the same with regard to Mauritania, where it both funded and undertook the construction of the centre. In recent years the EU has funded or is currently funding new or modernised detention centres in several countries across the Balkans, Eastern Europe and West Asia.
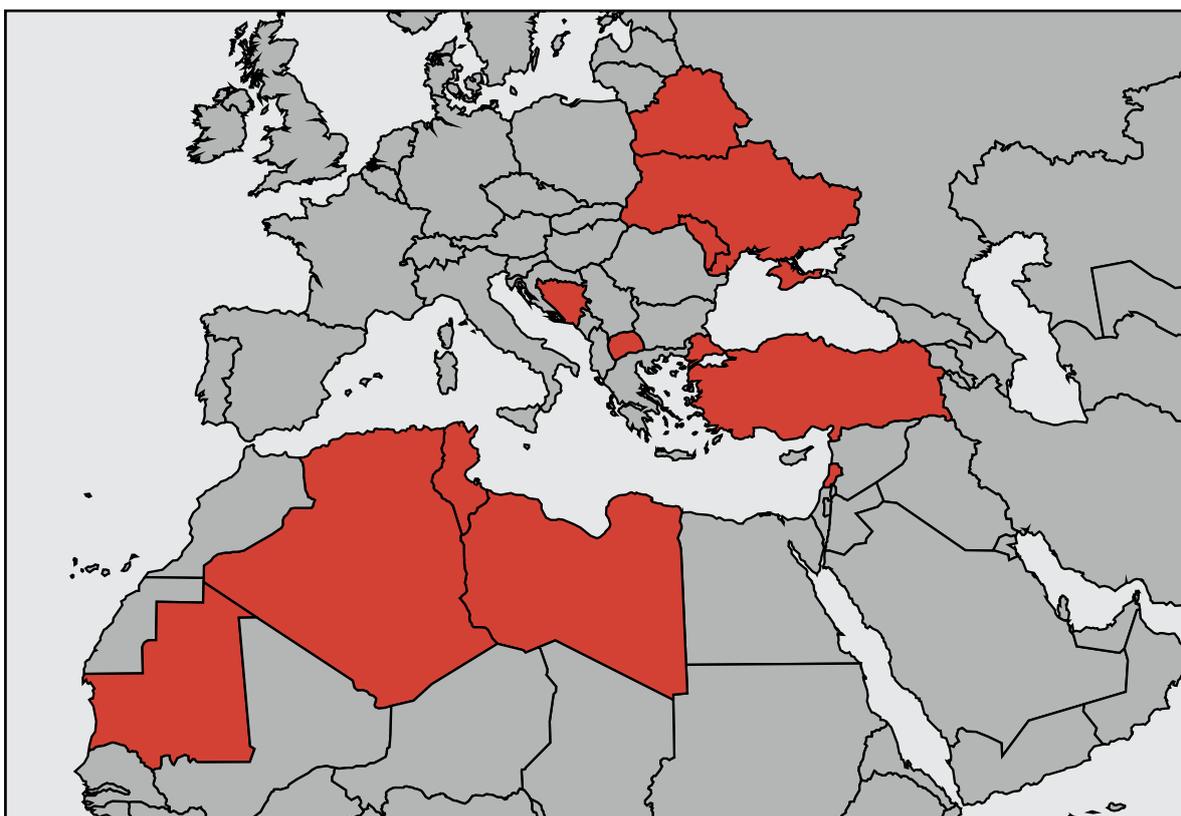
AFRICA

Tunisia

In perhaps the earliest case of European support for the construction of detention centres in third countries, a 1998 agreement between Italy and Tunisia included 500 million lira (about €260,000) for this purpose.[69] This readmission agreement followed the tightening of migrant-labour regimes and the introduction of visa requirements for Tunisians, as part of the strengthening of the EU's external borders in the context of the Schengen Agreement. Until then, Tunisians and others had relatively easy access to Italy for temporary seasonal work, but afterwards were increasingly driven towards irregular migration.[70]

Upon concluding the agreement with Italy, Tunisia did not put an asylum system in place, and therefore no protection was offered to asylum claimants who would previously have travelled from Tunisia to Europe to seek asylum there. They suddenly found themselves stuck in Tunisia, where they could neither seek asylum, nor travel onwards. Since then the government has reportedly opened over a dozen clandestine detention centres, most of which are almost entirely inaccessible to international organisations and NGOs, apart from some confidential visits by the International Committee of the Red Cross (ICRC).[71] According to Vasja Badalič , a researcher at the Institute of Criminology at the Faculty of Law, in Ljubljana, Slovenia, 'irregular migrants '[are] held in secret detention centres whose exact locations remain unknown and had no chance to get access to legal aid and make an asylum claim. Deprived of their basic rights, including the right to seek asylum, the detainees were either forced to pay for their own deportation to their country of origin, or, if they did not have the funds to pay for their flight back home, they were dumped by the Tunisian security forces in the desert on the Tunisian-Algerian border'.[72] In recent years, the use of such secret detention centres seems to have diminished, but there is still a lack of transparency and reports of the use of police stations, prisons and more general (pre-trial) detention centres for the (temporary) detainment of migrants.[73]

Meanwhile, the EU and its member states, in particular Italy and France, continue to return migrants to a country where they are denied their fundamental rights, providing hundreds of millions of euros to Tunisia to stop migration to Europe, even assisting in border patrols to prevent the departure of migrants.[74] Jean-Pierre Cassarino, then Professor at the Robert Schuman Center for Advanced Studies, concluded that it was precisely the interactions with the EU that pushed Tunisian migration policies towards 'a hierarchy of priorities where the drive for operability and security predominates'.[75]

In February 2017 dozens of Tunisian and European human rights and refugee organisations condemned the pressure EU member states put on Tunisian authorities to readmit deported and intercepted migrants, who risk being 'detained and deported in inhumane and degrading conditions'.[76]

Libya

Perhaps the starkest example of European involvement in migration detention in third countries is that of Libya, where again Italy takes a lead role. The early steps of this cooperation were taken largely out of public sight, but reportedly date from 2003. This puts them in the context of Libya's return to the international community after then leader Colonel Gaddafi took responsibility for the 1988 bombing of Pan Am Flight 103 over Lockerbie in Scotland and the friendly relationship between Gaddafi and the former Italian prime minister, Silvio Berlusconi.

A 2003 agreement between the two countries included Italy's provision of border security equipment, as well as funding for the construction of detention centres and deportation flights.[77] While the ties between Italy and Libya were strengthened there was simultaneously a weakening of fundamental rights for refugees. This collaboration continued after the fall of the Gaddafi regime in 2011. In April 2012, the internationally recognised Libyan government concluded an agreement with Italy, which included building and upgrading detention centres. Some months later the Libyan government launched a project to build a new detention camp in Ghat, close to the border with Algeria, which Italy financed with €10 million.[78] In addition, Italy has reportedly been cooperating with, and allegedly funding, several militia groups in Libya, which run their own detention camps and/or trafficking businesses.[79]

Although there is no concrete evidence to suggest that the EU itself has directly funded the construction of detention centres in Libya, it essentially keeps them operational by financing several supporting projects. Although the official EU line is that such projects are to help improve conditions for detained refugees, they legitimise the continued existence of the detention centres and their role in the EU's externalisation policies. To give one example, a project called 'Supporting protection and humanitarian repatriation and reintegration of vulnerable migrants in Libya', which is implemented by the IOM, received €19.8 million from the EUTF to 'ensure minimum decent living standards in targeted detention centres' and 'improve and scale up voluntary humanitarian return (VHF) and reintegration'.[80] In interviews with Human Rights Watch, staff from international humanitarian organisations based in Libya 'expressed concern that humanitarian assistance to detainees in official detention centres, vital as it may be, served to prop up a system of abusive, arbitrary detention and provide a fig leaf for EU migration control policies'.[81]

The EU and its member states justify their involvement in Libya's detention system as trying to prevent refugees from setting out on dangerous journeys towards Europe. However, as we saw extensively in earlier research, closing off possibilities on one migration route just pushes desperate refugees to other, often more dangerous, routes and into the hands of criminal smuggling networks. Moreover, many of those networks in Libya are run by the same authorities and militias that are responsible for migrant detention and the appalling circumstances in Libya's detention centres.[82] The reality for refugees is best explained by Giulia Tranchina, a UK solicitor representing an Eritrean boy who escaped from torture in one of Libya's detention centres: 'European governments, in our name, with our taxpayers' money, are paying Libyan authorities, militias and army generals to continue detaining and torturing refugees on our behalf, to make sure they don't get to Europe'.[83]

Apart from detention centre related funding, the EU funds the training of the Libyan Coast Guard to intercept refugees and take them back to Libya, where they usually end up in detention. The

coast guard, which comprises personnel from the internationally recognised government as well as members of several militias, often cooperates with traffickers or is itself directly involved in people smuggling.[84] This leads to situations where migrants and refugees pay smugglers to go to Europe, only to be picked up by the, sometimes pre-alerted, coast guard and detained in Libya, having to pay again to be released and make another attempt to cross the Mediterranean.[85] The EU and some member states, primarily Italy, pour money into all actors in this horrific cycle—the internationally recognised government with its brutal human rights record and various militia groups, and, by extension, the smugglers and traffickers among or cooperating with them.[86]

There have been numerous reports on the appalling conditions and treatment of migrants and refugees in detention centres in Libya. Many human rights and refugee support organisations have repeatedly underlined European responsibility for the development and continuing existence of this situation. Although greater attention has been paid to this situation in recent years, such criticism actually dates back many years. In 2006 Human Rights Watch wrote that 'migrants, asylum seekers and refugees reported numerous violations during their detention at a variety of facilities in Libya, including beatings, overcrowding, sub-standard conditions, not having access to a lawyer, and having limited information about pending deportation'.[87]

As an investigation by Associated Press found 'the misery of migrants in Libya has spawned a thriving and highly lucrative web of businesses funded in part by the EU', where 'huge sums of European money have been diverted to intertwined networks of militiamen, traffickers and coast guard members who exploit migrants'. This has led to torture, extortion and other violations of migrants held in detention centres, with EU funding, as well as detainees' disappearances, possibly sold into slavery or to other traffickers. Official documents show that the EU was well aware of the risks of outsourcing the treatment of migrants to Libya, warning that its support might lead to more human rights violations in detention centres.[88] Despite this knowledge, it continues to support Libya both politically and financially and has not moved an inch in response to the mounting calls that Europe immediately withdraw such support. On the contrary, during the course of 2020 the EU and its member states, in particular Italy and Malta, continued to increase cooperation with and support to the Libyan authorities. Under military Operation Irini, which replaced Operation Sophia, the EU provides information on migrant rafts to the Libyan Coast Guard, enabling it to return refugees to the detention centres in Libya.[89] The EU will repeat time and again that its support of the Libyan Coast Guard is to ensure that lives are saved at sea, although it doesn't seem too bothered when those same lives are pulled back to Libya where they will almost certainly be arbitrarily detained, tortured, and subjected to other gross human rights violations.

Mauritania and Senegal

During the mid-2000s, stricter border controls were introduced in Morocco, in particular with regard to the Spanish controlled enclaves of Ceuta and Melilla located on the African continent. This led to more migrants taking the significantly longer and more dangerous route from West Africa to the Canary Islands by sea. Many of those sea journeys started in Senegal and Mauritania, so Europe, in particular Spain, shifted focus from North to West Africa.

Spain pressured Mauritania to take measures to strengthen border security and controls, and introduced joint sea patrols.[90] A 2003 Agreement on Immigration between the two countries

stipulates that Spain could request Mauritania to readmit Mauritian and TCNs who were presumed to have travelled through Mauritania on route to Spain.[91]

As part of this pressure, Spain funded the establishment of Mauritania's only migrant detention centre, a former school, in Nouadhibou. It was opened in April 2006. According to Mauritian officials, they ran the centre at the express request of the Spanish government. From the outset, there were frequent reports of overcrowding, unhealthy conditions, abuse and no access to medical care, legal counsel or interpreters.[92] The centre was closed in 2012,[93] after which a police station in Nouakchott was used to detain those attempting to migrate from West Africa. This seems to be a return to the pre-2006 situation, when apprehended migrants were mostly detained at police stations.[94]

Senegal has no dedicated migrant detention facilities, but there has been an increase in the number of migrants detained at police stations and in existing prisons, including ones for women and minors, since signing several bilateral agreements with EU countries, aimed at cooperation to stop irregular migration.[95] In February 2020 it became clear that Frontex wanted to conclude a status agreement with Senegal, as part of its Operation Hera, to continue sending back migrants picked up in the Atlantic to Senegal. Senegal is the only third country for which this possibility exists, according to Frontex.[96] The Italian Association for Juridical Studies on Immigration (ASGI) and other NGOs warned about the risks of pushbacks in this context.[97]

With other migration routes, such as through Morocco, increasingly closed off, in 2020 there was a major rise in the number of refugees and migrants trying to reach the Canary Islands, after years of hardly any attempts to use this particularly dangerous route, during which boats may be at sea for up to ten days. Spain then worked on increasing deportation flights and reinforcing police cooperation with countries of origin and transit.[98] During a visit to Senegal at the end of November, the Spanish Foreign Minister Arancha Gonzalez Laya promised to increase police presence in Senegal to work against migrant smuggling and to send extra patrol vessels and a maritime observation plane.[99] Such measures again show that the emphasis is being placed, not on guaranteeing the right to seek asylum and access to international protection, but to deter and push back would-be asylum seekers at all costs.

Sudan

Apart from the aforementioned countries, the EU also came close to funding detention in Sudan, one of its most controversial partners in migration cooperation. In 2016, German bilateral agency, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) began implementing the six-year Better Migration Management (BMM) project, which covers the Horn of Africa, including Sudan. The project is funded with €40 million from the EUTF and €6 million from the German Federal Ministry for Economic Cooperation and Development (BMZ), and includes supplying equipment and training for border security and control to the countries involved (Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Uganda). Part of the BMM project included the construction of two reception centres with custody rooms in the Sudanese border cities of Gadaref and Kassala,[100] although this part of the plan was eventually abandoned. Nevertheless, there were other forms of EU migration cooperation with Al-Bashir's dictatorial regime, which led to increased detention of refugees in Sudan.[101]

EASTERN EUROPE

Belarus

In July 2016, the European Commission announced in its Annual Action Programme for Belarus that it would provide €7 million from the European Neighbourhood Instrument for 'the construction and/or renovation of several temporary migrants' accommodation centres' for 'between 30 and 50 irregular migrants per centre at a time', where 'all centres will have closed and open-type facilities'. The Action Programme includes training on the management of these centres. The IOM will implement the whole programme.[102]

The State Border Committee of Belarus already had a total of 21 holding cells, four to hold 8–19-persons and 17 to hold 2–5-persons along the border as part of the detention apparatus. However, because the cells were often overcrowded, detained migrants would sometimes be handed over to the Ministry of the Interior, which locked them up together with persons in remand custody.[103] Statewatch noted that the European Commission barely mentions the authoritarian nature of the government of the dictator Alexander Lukashenko, though it does acknowledge that 'Belarus perceives the question of irregular migration from a purely security perspective'.[104] The same critique could equally be levelled at Europe's approach to immigration given its increasingly securitized immigration agenda, as evidenced in our Border Wars research to date.

Investigative journalist Christian Jakob wrote that the refugees locked up in the detention centres are mainly from war or conflict zones, such as Chechnya, Syria and Ukraine. The EU's main goal in the cooperation with Belarus is the readmission of migrants turned away from the EU, in particular at its border with Poland, whose harsh stance on immigration is widely known. In return, the EU would relax visa requirements for Belarusians.[105]

The construction/renovation of the prisons is part of the four-year project 'Helping Belarus Address the Phenomenon of Increasing Numbers of Irregular Migrants', which also involves UNHCR and the Belarus Red Cross Society. The project eventually started in October 2018.[106] That same month the IOM announced that two centres, for up to 200 people each, would be built at Lida and Navapolatsk. Despite the EU's official emphasis on compliance with human rights, Zeinal Gadzhiyevm, the head of the IOM Mission to Belarus, went no further than saying they 'hope [government of Belarus] will comply with international standards'.[107]

The project launch was accompanied with statements by the EU and the Belarusian authorities about how it would benefit the rights of migrants and refugees.[108] The harsh reality was revealed by the investigative research group Danwatch, which exposed the inhumane treatment of migrants by the Belarusian border authorities, including pushbacks of Chechen refugees to Russia and extremely violent treatment of perceived irregular migrants by armed border guards. While the State Border Committee said it acts 'in strict accordance with the law', legal experts and NGOs were shocked by videos of some incidents. *'If this is how Belarusian border police act against migrants, then the EU and its member states are equipping a regime that showcases its "shoot first, ask later" control practice against migrants and refugees',* said Martin Lemberg-Pedersen, associate professor in Global Refugee Studies at Aalborg University. In this context he called the EU's persistent rhetoric of fundamental rights, while equipping regimes that habitually violate human rights, 'an awful lot like window dressing'.[109]

As part of an earlier EU-funded project 'Strengthening surveillance capacity on the green and blue border between Belarus and Ukraine' (SURCAP, 2012–2014), also implemented by the IOM, border guards from Belarus and Ukraine went on study visits to detention centres in Italy[110] and Portugal.[111] In February 2018, the IOM also organised a study visit to detention centres in Albania and Macedonia for Belarusian border guards, once again funded by the EU.[112]

Since May 2020, there have been huge protests against the dictatorial regime of President Lukashenko amid charges of fraudulent presidential elections. The largely peaceful demonstrations were met with violent repression and arrests. While the EU has denounced the actions of the Belarus authorities and refuses to recognise Lukashenko as president after the rigged elections, cooperation on migration continues. On 1 July 2020, a readmission agreement between the EU and Belarus entered into force, under which Belarus is obliged to take back not only its own irregular nationals from the EU, but also TCNs who transited through the country before entering the EU.[113]

Moldova

Moldova has a 'Centre for Temporary Detention of Foreigners' in its capital Chisinau. It was opened in 2009 and built with funding from the EU and the Finnish Ministry of Foreign Affairs. International representatives visited the centre in 2014, while they were attending an 'Expert Meeting on Detention' from the Eastern Partnership Panel on Migration and Asylum, an EU-funded, IOM-run project in which EU member states and non-EU Eastern Europe countries participate.[114]

In September 2018 Moldovan authorities detained and on the same day deported seven Turkish high-school teachers who had applied for asylum. This was apparently at the request of the Turkish government, which suspected them of links with the Gülen movement. After their deportation, which was protested by human rights organisations, they were sentenced to long prison sentences in Turkey.[115] Their families, who remained in Moldova, were later informed that their asylum applications had been rejected. The ECHR unanimously ruled that Moldova had violated article 5 § 1 (right to liberty and security) and article 8 (right to respect for private and family life) of the European Convention on Human Rights, writing that 'having regard to the volume of evidence pointing in the same direction and to the speed with which the Moldovan authorities acted, the Court concludes that the applicants' deprivation of liberty … was neither lawful nor necessary … nor devoid of arbitrariness. Depriving the applicants of their liberty in this way amounted to an extra-legal transfer of persons from the territory of the respondent State to Turkey which circumvented all guarantees offered to them by domestic and international law'.[116]

While it is not yet a pre-accession country, Moldova is developing an increasingly close relationship with the EU and hinting at future accession.[117] In November 2020, the pro-EU candidate Maia Sandu, won the presidential elections. Official EU accession status will probably lead to EU demands for compliance in the field of migration policy, including detention.

Ukraine

Ukraine has been one of the key target countries for the EU's efforts to externalise the detention of migrants, where tens of millions of euros of European money has funded border security measures and the construction of detention centres. Since 2007 it has also been an important cooperation partner for Frontex, which in 2019 extended its cooperation with the State Border Guard Service of Ukraine for another three years.[118] According to a high-ranking UNHCR official, Ukraine extended the maximum detention period from six months to one year in early 2012, after Polish officials on study trips advised them to do so to deter irregular border crossings.[119]

For many years there have been critical reports about the detention of migrants in Ukraine, with Human Rights Watch stating in 2005 that 'Migrants and asylum seekers are routinely detained in appalling conditions; subjected to violence, robbery, and extortion; denied legal assistance; and in some cases sent back to countries where they face persecution and torture', even concluding that the detention conditions may 'amount to cruel, inhuman or degrading treatment, in violation of numerous international human rights treaties to which Ukraine is party'. As an incentive for Ukraine's treatment of refugees, Human Rights Watch highlighted the 'continuing pressure on Ukraine from the EU to assist in migration management and border enforcement'.[120]

Despite this criticism, the IOM began implementing the project 'Capacity Building of Migration Management – Ukraine', in 2005, with €6.5 million EU funding. This project included refurbishing and equipping seven detention facilities. Although the physical structures where migrants were held were referred to as 'Migration Accommodation Centres' and 'Temporary Holding Facilities', in effect, they were detention centres and detainees were deprived of their liberty, not merely 'accommodated'. In 2010 a readmission agreement signed between the EU and Ukraine in 2008 came into effect. This provided the legal basis for these detentions and through which financial support was made available. Under the terms of the agreement, 'Ukraine is expected to receive a considerable number of irregular migrants from third countries who managed to enter the EU's territory from Ukraine, having used Ukraine as a transit country'.[121] Refugee Rights Europe (RRE) and the End Pushbacks Partnership (EPP) concluded in a 2020 report that there are frequent pushbacks from Slovakia and Hungary, where '[p]eople seeking to enter the EU from Ukraine are typically intercepted by police officers operating at the border to Ukraine, who routinely ignore requests for asylum. Individuals therefore keep being readmitted to Ukraine without an opportunity to claim asylum in the EU'.[122]

Under the Aeneas Programme, which provides 'financial and technical assistance to third countries in the area of migration and asylum (2004–2006)' – an early EU programme aimed at externalisation of migration policies – the International Center for Migration Policy Development (ICMPD) received €2.3 million for technical support to Ukraine to control irregular migration. This included the construction of five more 'Temporary Holding Facilities' and the equipping of another eight.[123] After 2007, the EU made available the largest sum from the European Neighbourhood and Partnership Instrument (ENPI): €35 million to the Ukrainian State Border Guard Service and the Ministry of the Interior through the READMIT (Re-admission related assistance and EUBAM flanking measures) programme, to build their capacity to deal with irregular migrants as an aspect of the EU–Ukraine readmission agreement, which also foresaw the forced return of TCNs who had travelled through Ukraine to the EU. This again included the building and upgrading of migrant

detention centres, even while the EU acknowledged that 'conditions in detention centres have been heavily criticized by the Council of Europe's Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) as well as by a number of human rights organisations'.[124]

The EU was very involved in the details of the detention centres. In 2009/2010, for example, it invested in supplying modern perimeter security systems for two detention centres in Rozsudiv and Zhuravichi to 'prevent migrants from escapes'. The centre in Zhuravichi also received a 'tourniquet system with registration cards for migrants, electronic door locking system, security window tapes and bars for dormitories' to 'ensure security of staff working in the centres and facilitate management of possible mass conflicts'.[125] This was part of the project 'Capacity Building and Technical Support to Ukranian Authorities to Effectively Respond to Irregular Transit Migration' (ERIT), run by the ICMPD from 2008 to 2010. The total EU contribution to this project was €1.7 million.

As always, the EU maintained that one of the main objectives for investing in detention centres was to improve conditions for detained refugees. This was roundly contradicted in a 2010 Human Rights Watch report. Though the report noted some improvements since 2005, it concluded that 'serious problems in migration detention remain including ill-treatment, lack of access to the asylum procedure for detainees, detention of children, co-mingling of men with unrelated women, co-mingling of children with adults, corruption, and the arbitrary and disproportionate use of migrant detention in general.' Again pointing to 'the money the EU has poured into re-enforcing Ukrainian border controls and boosting its capacity to apprehend, detain, and deport irregular migrants', Human Rights Watch asked the European Commission to 'consider reprogramming funds for the construction of new detention centres in Ukraine in favour of funding that will improve Ukraine's capacity to provide greater protection for asylum seekers and refugees and more humane treatment for migrants'.[126]

A report in Der Spiegel in February 2015 showed that the situation had not improved. *Migrants and refugees who had been locked up talked about overcrowded prisons and camps with very poor hygiene conditions where they were beaten, tortured with electric shocks, forced to sleep on the floor and deprived of food.*[127] On the other hand, there were stories of unused capacity, with many detention centres being at least half empty most of the time, and a lack of funding to keep them all running. In June 2020, the ECHR decided that the detention (pending expulsion) of an Afghan national in Ukraine violated the European Convention on Human Rights, because the Ukrainian government had failed to prove 'that he had actually been informed, in a language he understood, of the legal reasons for his detention in Ukraine, and of the proceedings concerning his detention. Nor have they submitted any records showing that he had been informed of his associated rights and had effectively waived them'.[128]

Despite this, at the inauguration of one of the EU-funded detention centres at Martynivske, in December 2015, the European Union Advisory Mission (EUAM) Ukraine stated that 'provision of sufficient adequate detention facilities for migrants is now more urgent than ever'.[129] In April 2019 the Ukrainian State Border Guard Service reported a sharp increase in the number of detained migrants, mostly apprehended at borders with EU countries.[130]

WEST ASIA

Jordan and Lebanon

As countries bordering Syria, Jordan and Lebanon have jointly hosted over 3 million refugees from the war-torn country. While in general they have provided a degree of shelter, there have been reports of detention and deportations of Syrian refugees, including unaccompanied children.[131]

Like many other countries, Jordan has no dedicated migrant detention centres, but uses general prisons and police cells to hold refugees. In addition, the Global Detention Project notes that, 'some experts have also qualified Jordan's refugee camps as de facto detention centres because of the severe restrictions on freedom of movement imposed on the refugees'.[132] The EU and Jordan signed a mobility partnership in 2014, which included a provision to start negotiating a readmission agreement.[133] These negotiations have not reached an agreement, but if they do such agreements often lead to more detentions of returned third country nationals.[134]

The EU has taken a more active role regarding migrant detention in Lebanon. In 2009/2010 it funded the project 'Strengthening Reception and Detention Capacities in Lebanon (STREDECA)' with €499,977 from EuropeAid, with donations from France, Italy, the Netherlands and Switzerland.[135] The project, which aimed 'to contribute to Lebanon's capacities to manage its mixed migration flows post interception and/or apprehension', was implemented by the ICMPD, which saw it as 'a test project for future actions in other Arab countries'. The project included 'a plan for a new detention centre' to replace the existing overcrowded, insalubrious underground one.[136]

In August 2016 the new and improved General Security Detention Centre in Beirut was opened, possibly with EU funding, with a capacity to hold 768 persons.[137] Not all apprehended refugees end up in this centre, as Lebanon also uses some of its existing prisons to detain migrants. The Global Detention Project concluded in 2020 that in Lebanon the 'legal framework [for detention] is unclear and inadequate, resulting in arbitrary detention'. Many refugees face prolonged remand custody, remain in detention after serving criminal sentences, and are not granted access to procedural safeguards to ensure a fair trial. 'Reports indicate that refugees are often arrested when trying to renew their residence permits, during routine or checkpoint controls, or during raids led by the Lebanese army at unofficial refugee camps'.[138]

In July 2014 the Lebanese Center for Human Rights held a sit-in in solidarity with the migrants and refugees detained at this General Security Detention Center, calling for its closure and an end to 'using administrative detention as a method of torture against migrants, asylum seekers and refugees'.[139] Earlier, the Lebanese human rights organisation Alef – Act for Human Rights had warned that detained Syrian refugees *'are subjected to the systematic torture and ill-treatment that all prisoners and detainees in Lebanon face. Torture is practiced during arrest, during investigation, and during detention'.[140]*

2. Funding or implementing detention-related projects

In addition to funding the construction of detention centres, the EU and its member states sometimes fund and/or implement detention-related projects, such as training and workshops. Azerbaijan and Georgia are two such examples.
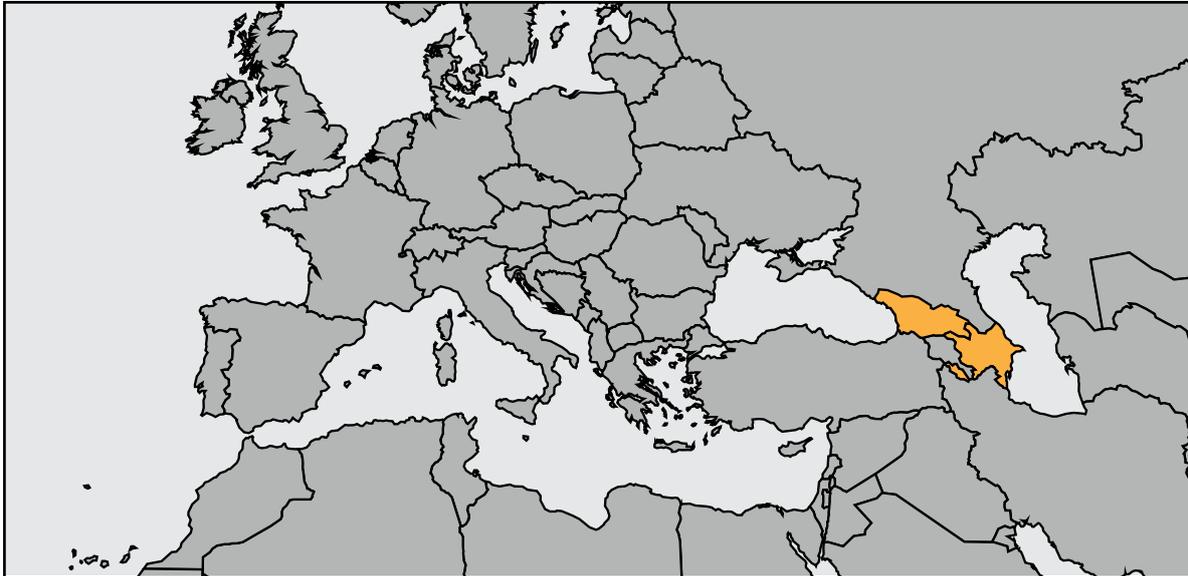
Azerbaijan

Since at least 2012 the EU has emphasised the need for immigration detention in Azerbaijan. In the context of the project 'Support to the professional development of the staff of the State Migration Service of the Republic of Azerbaijan' (funded with €1.05 million from the European Neighbourhood Policy Instrument) the EU wrote that 'their importance will grow along with the increasing phenomenon of illegal migration in Azerbaijan'.[141] The project, which was led by immigration authorities from the Netherlands, and assisted by those from Latvia and Romania, included several training sessions for the staff of the detention centres in Baku and Yevlakh.[142] While the Azerbaijani authorities publicly pride themselves on what they perceive as the good conditions and treatment of detained migrants, there are reports to the contrary. For the centre in Baku, for example, it was reported in September 2019 that five Indian nationals held there were subjected to abuse and denied food for several days.[143]

One of the objectives of another project, 'Supporting The Establishment Of Effective Readmission Management In Armenia, Azerbaijan And Georgia', was to 'build capacity in Azerbaijan for the management of migrant accommodation centres'. The project was implemented by the IOM, with support from immigration authorities from Poland and, again, the Netherlands.[144] Funding came from the EU, and co-funding from the IOM Development Fund and the Swiss Agency for Development and Cooperation (SDC). The project included study visits to detention centres in Poland and Belgium and a training in 'interviewing techniques' by experts from the Ministry of Security and Justice of the Netherlands.[145]

Georgia

In October 2014 the Migration Department of the Georgian government opened a detention centre in Tblisi, called the 'Temporary Accommodation Centre'. In his opening speech, Prime Minister Irakli Garibashvili said that the centre is part of leaving behind its earlier 'chaotic and totally incomprehensible' migration policy and would help Georgia obtain a visa-free regime with the EU.[146]

The EU had promised Georgia that, with the right reforms to its migration policies, Georgians would be able to travel more freely to EU countries.[147] One of the requirements under this 'Action Plan on Visa Liberation' was the 'provision of adequate infrastructure (including detention centres) ... to ensure ... effective expulsion of illegally staying and/or transiting third country nationals'.[148] This Action Plan was presented to the Georgian authorities in February 2013 and nine months later, in the first progress report on the implementation of this Action Plan, the EU pressed Georgia to 'accelerate the work on the temporary accommodation centre for irregular migrants'.[149]

When Georgia was deemed to have met the EU's requirements, it was rewarded in March 2017 by being added to the EU list of third countries whose nationals are exempt from visa requirements.[150]

As well as EU insistence on building a detention centre in Georgia, it also funds several projects which include migrant-related activities, such as the following two examples:

Reinforcing the Capacities of the Government of Georgia in Border and Migration Management (More-for-More), and Sustaining Border Management and Migration Governance in Georgia (SBMMG). Implemented by IOM – 2013–2017 (More-for-More) and 2017–2020 (SBMMG).

This project has included two training sessions for officers by a director of a Dutch detention centre on managing such centres[151] and a workshop with presentations on the same topic by experts from several EU member states.[152]

Enhancing Georgia's Migration Management (ENIGMMA) and Sustaining Migration Management in Georgia (ENIGMMA 2). Implemented by ICMPD – 2013-2017 (ENIGMMA) and 2017-2020 (ENIGMMA 2).

This project included training on the legality of detention,[153] a lecture on migrant detention for the Georgian Bar Association[154] and a workshop 'Migration and Refugee Law' for judges, in which EU standards for detention were discussed with Austrian experts.[155]

3. Other forms of involvement
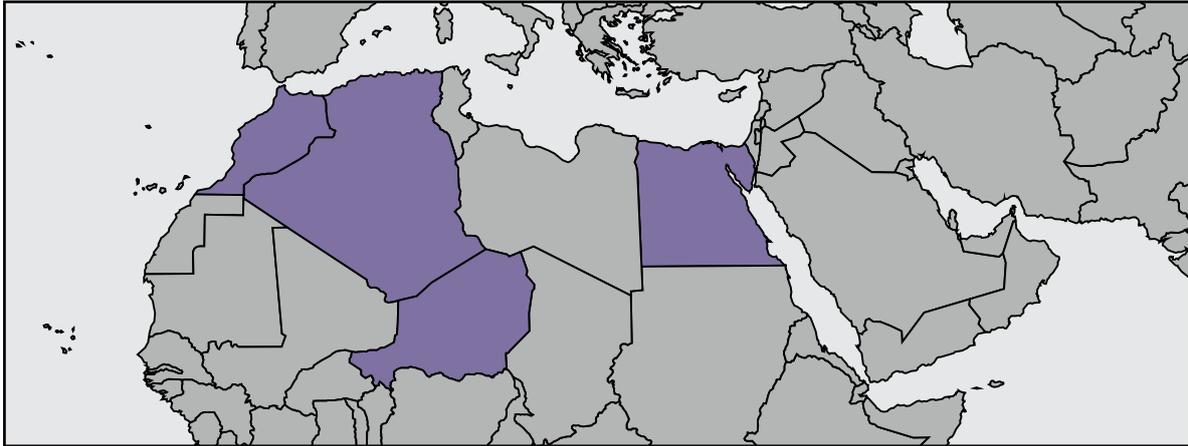
There are also various examples of readmission agreements between the EU (or one or more of its member states) and third countries that act as a driving factor for the detention of migrants. Many such agreements not only include the return of nationals from the relevant third country, but also the deportation of TCNs who are presumed to have transited that country on their way to Europe. These TCNs often end up in detention, awaiting deportation to their country of origin.

There are also so-called 'working arrangements' between Frontex and non-EU-countries. Their contents differ, but several include an agreement along the lines that the parties 'may explore possibilities to develop cooperation in the field of Frontex coordinated (joint) return activities in accordance with their respective legislation as well as promote the active facilitation and participation of the competent authorities of [the third country] in such activities'.[156] Such working arrangements have been concluded with Balkan countries, Turkey, Cape Verde and Nigeria.

EU Readmission Agreements (EURA) and Frontex working arrangements (on return)[157]		
	Year of agreement	
Third country	EU	FRONTEX
Albania	2006	2009
Armenia	2014	
Azerbaijan	2014	
Belarus	2020	
Bosnia and Herzegovina	2008	2009
Cape Verde	2014	2011
Georgia	2011	
Hong Kong	2004	
Kosovo		2016
Macao	2004	
Moldova	2008	
Montenegro	2008	2009
Nigeria		2012
North Macedonia	2008	2009
Pakistan	2010	
Russia	2007	
Serbia	2008	2009
Sri Lanka	2005	
Turkey	2014	2012
Ukraine	2008	

The Council of the European Union has authorised the Commission to negotiate with some other countries (Algeria, Belarus, China, Jordan, Morocco, Nigeria and Tunisia), but these have not led to readmission agreements to date.[158]

In some countries the EU has readmission agreements that are conditional on the completion of EU projects, such as building detention centres in Bosnia and Herzegovina, North Macedonia, Turkey and Ukraine or detention-related projects in Azerbaijan and Georgia. There are also countries with which the EU does not yet have a readmission agreement, but which intensified their migrant detention capacities and measures on the basis of agreements with the EU and/or member states. Egypt is one such example.

The EU's involvement in migrant detention in third countries takes various forms from direct engagement through funding to pressing for the establishment of detention centres by making this a prerequisite for accession talks or for visa liberalisation. According to Bill Frelick (Human Rights Watch), Ian M. Kysel (ACLU of Southern California) and Jennifer Podkul (Kids in Need of Defense), border 'externalization can also increase demand for both third country resources for and interest in apprehension of migrants, and this, in turn, can increase the likelihood of apprehension and both the likelihood and the duration of detention'.[159] In Niger, for example, the EU has pushed for new legislation that leads to more detention, in exchange for funding.

Algeria and Morocco

As transit countries, Algeria and Morocco also play a role in preventing migration towards Europe. Their approach is less focused on the (long-term) detention of migrants than on (sudden) mass arrests of groups of migrants, followed by swift deportations. Morocco is an important EU migration partner country, for which its border security and control measures has received hundreds of millions of euros.[160] In June 2013, Morocco and the EU signed a Mobility Partnership, setting out a series of political objectives and possible initiatives for 'migration management', including for 'combating illegal immigration'.[161] Morocco does not appear to have any dedicated migrant detention facilities, but does lock migrants up in police stations, military barracks and sometimes at ad hoc sites. A more common and longstanding procedure is that the authorities make sudden mass arrests of irregular migrants and immediately deport them to the desert in no-man's-land between borders.[162] The arrests seem to be increasingly random, with Moroccan police even rounding up registered refugees, under growing pressure from Spain to strengthen border security and control.[163]

In recent years human rights and refugee rights organisations have criticised Algeria's practice of deporting thousands of refugees to its borders with Mali and Niger, forcing them to walk across the border and leaving them in the Saharan desert or handing them over to authorities of the neighbouring countries.[164] These deportations are often preceded by mass arrests, short stays in detention centres, where migrants and refugees are sometimes beaten, and trials where their rights are denied.[165] In a few weeks from the end of September 2020 Algerian security forces arrested, detained and deported over 5,000 migrants from 22 African countries and Pakistan to Niger or into the desert, sometimes separating children from their families.[166] Algeria has fewer ties regarding migration with the EU and its member states than Niger or other North African countries.[167] Yet, as the humanitarian activist network Alarm Phone Sahara points out, after these mass expulsions, the country 'positions itself as a reliable guardian for the border regime

of the EU states'.[168] The EU did not publicly address Algeria's arrest and deportation practices, rather seeking the country's cooperation on migration, in particular in attempting to establish a disembarkation platform that at the time of writing had not yet been built.[169]

Egypt

Egypt has no dedicated migration detention centres, but uses police stations and prisons to jail migrants and refugees. Despite its authoritarian regime and numerous human rights violations, the country is an important EU partner in stopping migration towards Europe and in relation to security cooperation with Germany. This has resulted in the criminalisation of migration, increased detention of migrants and refugees, including many Syrians fleeing the civil war, in overcrowded facilities with poor sanitary and health conditions and acts of violence against migrants, including shooting at them.[170]

Sudanese refugees deported from EU member states and Israel have reportedly been held in transit at Cairo International Airport before being returned to Sudan.[171] Before and after the fall of dictator Omar al-Bashir, there have been repeated reports of the violence and abuse suffered by refugees upon being returned to Sudan.[172] Several EU member states, including Belgium, Italy and Germany, have cooperated with Sudanese police and security forces to identify Sudanese refugees in order to deport them, and have trained them in border security and control issues. In November 2020 the Chiefs of Staff of the Egyptian and Sudanese armed forces discussed closer cooperation, including on the issue of border security.[173] There have also been reports of deportations from Egypt to other unsafe countries, such as Eritrea and Syria, even of refugees registered by UNHCR and thus deserving of international protection.[174]

The €3 million project 'Enhancing migration management through institutional support', part of the action 'Enhancing the Response to Migration Challenges in Egypt (ERMCE)' funded by the EU with €60 million from the EUTF, 'envisages supporting the objectives of the National Strategy for combating and preventing illegal migration' including 'developing policy and institutional frameworks related to irregular migration'.[175] Though a 2016 Egyptian anti-smuggling law officially aimed to decriminalise irregular migrants and focus on human traffickers, the Egyptian authorities acknowledged that detention (for extended periods) and deportations would still be possible because of other 'crimes', such as illegal entry to or exit from Egypt, or on an administrative basis.[176] The new law was drawn up by the National Coordinating Committee for Combatting and Preventing Illegal Immigration (NCCPIM), which receives ongoing support from IOM.[177]

Niger

Niger, one of the world's poorest countries, has become one of the main focus countries for EU border externalisation policies, receiving funding and coercive political pressure from Europe to stop onward migration. The focus of this funding and pressure is the northern city of Agadez, which has long been a key transitory point for migrants and refugees travelling towards North African countries and Europe.[178]

A 2019 report by the Global Detention Project on detention in Niger shows that European pressure to crack down on migration has led to increased migrant detention, even when the EU (or member states) are not directly involved in the process of detention: 'Niger's controversial 2015 anti-smuggling legislation, passed following intensified financial and logistical support from

the EU, provides for the detention of people who may be victims of trafficking and criminalises smuggling and other migration activities', and 'The pressure on Niger to stem migration has led to an increase in the number of people arrested or detained for migration-related issues'.[179]

While little is known about the number of detained refugees, or the migrant detention infrastructure and conditions in Niger, UN Special Rapporteur for the Human Rights of Migrants, Felipe González, warned that the implementation of the 2015 anti-smuggling law No. 36 'has resulted in the criminalisation of all migration [north of Agadez]' and that 'the law allows the detention of migrants subject to illicit trafficking, without specifying the reasons for this detention'. He also described how this worked in practice: 'During my visit to Agadez and Niamey, most migrants, amongst them minors, stated having been victims of arbitrary arrests and/or corruption by the official authorities. While being in detention, which lasted often up to several days, none of them, including children, received access to legal aid and/or legal representation'.[180]

Under the new law, Joint Investigation Teams, made up of Nigerien, French and Spanish authorities, became operational, and Nigeriens received EU training as part of its 'support for enforcement of anti-migrant smuggling legislation'.[181] The CDSP mission 'EUCAP Sahel Niger' provided training sessions at its new office in Agadez, and the EU praised Niger for its 'application of stricter measures to control irregular migrants going to Libya or Algeria', its actions against smuggling and the increasing return of irregular migrants to Agadez.[182]

In 2018 the Netherlands and Germany funded a new mobile border control force, the Compagnie Mobile de Contrôle de Frontières (CMCF), under a Memorandum of Understanding with EUCAP Sahel Niger. This 250-strong unit should strengthen the capacity of border security to combat trans-border criminality and irregular migration, 'in particular in the border areas where the traditional structures of the State are not permanent'.[183] The IOM is involved in building the barracks for this new police force.[184] The officers were trained by Dutch Military Police (Marechaussee) and Belgian Special Forces, as well as trainers from France, Germany, Portugal, Frontex and the European Gendarmerie Force (EUROGENDFOR).[185]

Apart from the EU's involvement in Nigerien authorities criminalising migrants and combating migration, the migrant accommodation offered blurs the line between shelter and detention. The IOM runs six transit centres in the country (the one in Agadez was funded by the Italian Ministry of Interior), that accommodate migrants who are stranded in Niger or have been expelled from Libya or Algeria.[186] Although the IOM says 'migrants can leave at any time', 'the main condition for accommodation in the centres is a willingness to voluntarily return home.'[187] This essentially means giving people no choice but to cooperate 'voluntarily' in order to get much-needed help, including for basic survival. Such conditions perpetuate the myth of so-called 'voluntary return', which in reality is blackmail and the stories told by those who do 'voluntarily' return are used to try to deter other potential migrants.[188]

Following his visit to Niger in October 2018, the UN Special Rapporteur said: *'In recent years, the situation of migrants in the country has worsened as a result of migration policies and agreements adopted by Niger with other countries, especially the EU, which are resulting in violations of the human rights of migrants through their criminalization, harassment, arbitrary arrest and detention, and forced returns'.[189]*

'... they were exposed to physical violence at the hands of smugglers and the military. They were raped or sexually abused. Some were beaten up. In detention centres, they were repeatedly kicked in the abdomen. Some were burned in the genital area.'[190]

ON THE HORIZON –
DISEMBARKATION PLATFORMS

After earlier attempts to establish offshore processing facilities (the 'Australian model' described earlier), in 2018 the European Commission presented a clear proposal for setting up 'disembarkation platforms' in third countries, building on a 'Proposal to the European Union for a Regional Cooperative Arrangement Ensuring Predictable Disembarkation and Subsequent Processing of Persons Rescued at Sea' by the IOM and UNHCR. In short, the EU proposed that refugees picked up at sea would be brought to 'reception centres' – leaving the language sufficiently vague as to whether these would be 'open' or 'closed' – 'in EU territory and potentially elsewhere', with the EU having a clear preference for countries in North Africa. The proposal states that 'those rescued-at-sea would be disembarked promptly and transported to State-operated reception centres', where 'all will undergo immediate biometric registration'. Their cases would then be processed, although the proposal does not make explicit whether these centres would be in EU member states or externalised to locations outside the EU. 'Solutions would include third country resettlement and humanitarian admission, in addition to family reunification, local solutions where possible as well as voluntary repatriation and reintegration in their home country, as appropriate'. The option of 'voluntary return', the IOM showpiece, is mentioned several times.[191]

The European Commission 'Non-paper on regional disembarkation arrangements' is in some respects clearer, stating that, 'to avoid creating pull-factors, it should be ensured and clearly communicated that resettlement possibilities will not be available to all disembarked persons in need of international protection. Resettlement should remain only one of the possible solutions for such cases, and not limited to Europe. Those who are not entitled to international protection should, in principle, be returned based on the applicable existing national legal framework and in respect of international law whilst giving privilege to voluntary return solutions. Measures could be developed to prevent persons who have been returned from re-entering the third country in question.'[192]

As always, the EU paints positive picture of cooperation, peppered with hollow phrases about human rights, and the promise of 'more political, operational and financial support in view of establishing regional disembarkation arrangements in close cooperation with partner third countries, UNHCR and IOM'. The European Commission mentions in this regard 'reception facilities', 'development of biometric registration' and 'support for returns', and eventually a path towards engagement with partner countries.[193] In its view these would mostly be Northern African countries, while some member states, such as Italy, looked further south towards Mali and Niger.

Although many non-EU-countries have either willingly followed or bowed to European pressure to follow the EU's wishes on other elements of migration control, including boosting border security, at the time of writing, no North African countries were open to the idea of hosting disembarkation platforms.

The Moroccan government rejected the idea outright, with a spokesperson telling the press: 'The creation of reception centres for migrants is only an attempt to externalize the problem and is

not a solution.' He added that 'Morocco has chosen to defend a humane and multidimensional approach to the migration issue'.[194] Algerian Prime Minister, Ahmed Ouyahia, said that 'Algeria does not accept to be a centre for the detention of African migrants for the interest of Europe'.[195] Tunisia, Egypt and Libya (the internationally recognised government) have been equally dismissive of the Commission's proposal.[196]

In February 2019, a 'common African position paper' from the African Union (AU) was leaked to The Guardian, clearly rejecting the Commission proposal, arguing that it would establish 'de facto detention centres' on African soil, breaking international law. An AU official commented: 'African capitals worry that this plan will see the establishment of something like modern-day slave markets, with the "best" Africans being allowed into Europe and the rest tossed back – and it is not far from the truth'.[197]

While some of the comments about the consequences of the EU proposal for migrants and refugees and on human rights seem genuine, many ring hollow when they come from authoritarian governments that otherwise show scant regard for human rights and the wellbeing of migrants and refugees. A likelier reason for their objections is the prospect of ending up with many migrants and refugees in their own territories, unable to either let them cross to Europe, or deport them to their countries of origin or another transit country.

Human rights and refugee support organisations denounced the Commission proposal. 'The only thing European states appear to have agreed on is to block people at the doorstep of Europe regardless of how vulnerable they are, or what horrors they are escaping', said Karline Kleijer of Médecins Sans Frontières (MSF).[198] A study by law professors Anuscheh Farahat and Nora Markard concluded that sending refugees back to unsafe countries, like most countries across North Africa, would violate obligations under international law; and that 'where EU member states would be violating their own obligations when disembarking rescuees in unsafe places, they can also be held responsible ... when calling upon third country authorities to achieve this effect'.[199]

The Commission reacted to the outright rejection of the plan by African countries by peddling back. Then Commission President Jean Claude Juncker said, during a visit to Tunis in October 2018, that there were no plans to set up migrant camps in North Africa. However, the remark by a Commission spokesperson a few days later that the EU prefers the term 'regional disembarkation arrangements' indicates that it might be more a question of rephrasing than of abandoning the whole idea.[200] Post-Brexit, the UK government explored many draconian, and often unrealistic, measures to deter and stop migration, including building detention camps in Moldova, Morocco and Papua New Guinea, to process asylum applications for migrants that have already arrived in the UK.[201] It seems very likely that similar proposals will be presented again in the future, also by the EU.

The leaked African Union document affair underscores the colonialist dynamics at play in Europe's engagement with African nations although it is rarely labelled as such. Europe often calls the shots in its dealings with Africa, and although Africa might not agree, that would seem almost entirely irrelevant. The playing field for negotiations between the two continents is uneven. Europe continues to yield political power and dangles a carrot in the form of development aid and trade agreements, while simultaneously waving a stick at Africa if it fails to play ball. Until such time as

these uneven colonialist power structures are toppled, it is likely that similar such revelations will continue to emerge and tensions will remain regarding Europe's interference in African affairs.

One of the main points of the new Pact on Migration and Asylum, proposed by the European Commission in September 2020, is pre-entry screening for migrants apprehended at unauthorised border crossings, migrants disembarked after being intercepted at sea, and irregular migrants apprehended within an EU member state. They will have to wait at an external border facility, possibly in detention, until their cases are processed.[202]

ROLE OF INTERNATIONAL ORGANISATIONS

Many EU-funded projects related to detention in third countries are implemented by international organisations, such as the IOM and the International Centre for Migration Policy Development (ICMPD). In some cases, UNHCR or NGOs are also involved. This is problematic: although the involvement of such organisations may help to improve conditions while in detention, it also legitimises such detention, serves to support repressive EU and national policies, and creates a financial dependence on cooperating with the EU, which often funds this international presence.

The IOM is an intergovernmental organisation, established in 1951, and since 2016 it has been working under the auspices of the United Nations as the UN Migration Agency. As seen in the various case studies, it is by far the most important contractor for EU-funded projects regarding detention in third countries. This comes as no surprise. In our earlier report Expanding the Fortress on EU border externalisation policies, we identified the IOM's key role in their implementation:

'In practice IOM works on the basis that states have the sovereign right to control their borders and to decide on (non-)entry of foreigners. It offers a 'technical approach' to borders, framed in 'depoliticized language of management'. This however denies the political nature of borders, which 'continue to produce hierarchies of access to citizenship', where certain, privileged people can travel free and settle where they want, whereas others are denied this.'[203]

With this, as Julien Brachet, a researcher at the Institut de Recherche pour le Développement (IRD, University of Paris), writes, the IOM has become 'one of the leaders of [the] increasingly global and permanent system of surveillance and control – or 'management' – of populations that are considered both vulnerable and invasive, victimized and dangerous, refugees and illegal immigrants'.[204]

The 'technical approach' is also visible in the IOM's involvement in detention and its reliance on so-called 'voluntary return'. So, while it claims of its centres in Niger that it 'does not operate any closed / detention facilities', it also says that 'the main condition for accommodation in the centres is a willingness to voluntarily return home.'[205] There is nothing 'voluntary' about such return. In relation to its 'voluntary return' programme in Libya, Human Rights Watch remarked that 'it cannot be described as truly voluntary as long as the only alternatives are the prospect of indefinite abusive detention in Libya or a dangerous and expensive journey across the Mediterranean'.[206]

The IOM, together with UNHCR, implement EU policies to stop migration in Libya. They help to keep detention centres running, in which the conditions and treatment of refugees are so inhumane that they accept 'voluntary' repatriation, carried out by the same two agencies. According to aid officials who have worked in Libya, both the IOM and UNHCR are actively whitewashing the consequences of EU policies, in order to safeguard substantial EU funding: 'They are constantly watering down the problems that are happening in the detention centers. They are encouraging the situation to continue'.[207] In an investigative series, in July 2020, Euronews wrote about UNHCR in Libya helping to cover up abuses in detention centres, lack of transparency about its work, ignoring requests from refugees, neglecting detained refugees, delaying registration procedures, corruption, mismanagement and increasingly aligning itself with EU migration policies, including externalisation – all for its own financial security.[208]

Libya is the most prominent example of IOM practices under the EU–IOM Joint Initiative for Migrant Protection and Reintegration, a programme providing assistance to 'voluntarily' returning migrants. The programme was launched in December 2016 and receives €357 million from the EUTF and contributions from Germany and Italy. In June 2020, Euronews reported that by then 81,000 migrants had been returned under the programme, including almost 33,000 from Libya, often after being held in detention. Many returned migrants said they never received the IOM's promised reintegration support. While an IOM spokesperson placed responsibility for reintegration on the authorities of national states, Loren Landau, professor of migration and development at the University of Oxford Department of International Development, argues that 'the goal [of the Joint Initiative] is not really making migrants happy or to really reintegrate them, but getting rid of them in a way that is palatable for Europeans'. Felipe González Morales, UN Special Rapporteur on the human rights of migrants, was also very outspoken about the initiative: 'The fact that the European Union Trust Fund provides financial support to IOM largely to sensitise and return migrants to their countries of origin, even when the voluntariness in many cases is questionable, compromises its rights-based approach to development cooperation'.[209]

The IOM also occasionally proposes policies, such as its proposal, together with UNHCR, for disembarkment platforms in North Africa.[210]

Though it is involved in far fewer projects than the IOM, the ICMPD also implements EU-funded projects related to migration detention in third countries. The ICMPD is a Vienna-based international organisation, founded by Austria and Switzerland in 1993, working with governments, EU institutions and UN agencies on 'migration management'.[211] It is supported by 18 member states, mostly from Central Europe. The EU provides most of its project funding.[212]

'...eyewitnesses spoke of exactly five executions a week in one prison – with advance notice and always on Fridays – to make room for new migrants, i.e. to increase the human throughput and revenues of the smugglers.'[213]

ROLE OF COMPANIES

The extent to which governments outsource detention and detention-related services differs vastly.[214] As is the case in many EU countries, the detention centres in the case studies in this report are mostly government-run, while in other countries (Australia, UK, USA) there are completely privatised prisons, including the Australian offshore detention centres. There are many varieties in between, such as facilities with private guards under state management and/or with private services for catering, medical services, phone services and so on.

The trend of privatising migrant detention parallels what is happening in many prison systems. This is creating a 'prison industrial complex', described as 'a self-perpetuating machine where the vast profits […] and perceived political benefits […] lead to policies that are additionally designed to ensure an endless supply of "clients" for the criminal justice system.'[215] In turn, companies profit from incarcerating people by building and running prisons, cheap prison labour and so on. Translated to migrant detention this means that companies benefit from locking up migrants, which drives a push for policies and practices that contribute to this; they run these as cheaply as possible, with consequences such as understaffing, insufficiently trained staff, inadequate support and poor housing conditions.

There is little available information on the companies benefiting from detention-related projects in third countries and in most cases their management is not outsourced. It does, however, seem likely that privatisation will increase in the future, as the global trend is heading in that direction and companies see growing profit opportunities. Related commercial work, including providing certain services for detention or consultancy, could also see an increase in this context.

It is usually local construction companies that are contracted to build the detention centres, under whatever name they operate, although in the case of the EU-funded establishment of new detention centres in Ukraine, British firms were contracted.

In 2009 engineering company Arup got a €4 million contract for the architecture, engineering, design and project management for nine detention centres in Ukraine, fully paid by the EU via the European Neighbourhood and Partnership Instrument (ENPI).[216] Eurasylum, a British migration research and consulting company, co-managed this project.[217] In 2013, the Ukrainian firm Vitis Trade won a €133,155 contract to provide furniture for these detention centres, and Moris Slovakia provided vehicles for the migrant custody centres under a €849,429 contract.[218]

Arup is not particularly involved in migrant detention or migration-related projects elsewhere, but Eurasylum has a long list of clients in this field, including the European Commission, IOM and Frontex. Most projects concern consultancy, research or evaluation. Eurasylum is, for example, part of the consortium that undertook the 'Evaluation of the EU's interventions on migration in third countries' for the European Commission. It was also involved in the training of Jordanian border guards, a 'Study on key priorities for the development of Libya's migration policy' for the IOM, and projects in Ghana and Iraq.[219] Former European Commission President Jacques Delors and former Commissioners for Justice and Home Affairs Anita Gradin and Antonio Vitorino are on its advisory board.[220]

For the construction of the detention centre in Lukavica (Bosnia and Herzegovina), 'with surrounding fence, window bars and video surveillance system', the Delegation of the European Commission in Bosnia and Herzegovina awarded a €863,532 contract to the Bosnian building company UNIGRAD d.o.o.[221] Another €56,280 was spend on furniture, appliances and bedding, for which Enmos d.o.o. Sarajevo, another national company, was contracted.[222]

For the EU-funded removal centres in Turkey, mostly Turkish companies were contracted to build them and to provide services. In 2014, contracts were awarded to a number of Turkish companies for a total of almost €6 million for providing furniture, textiles, IT and security equipment, among other items, to reception and removal centres.[223]

In 2019 a contract to build six new removal centres was awarded to two Turkish companies: Kemal İnşaat Turizm Gıda Otomotiv Akaryakıt Ticaret ve Sanayi Ltd. Şti. (four centres, ca €15.8 million) and İM-SA İnşaat Sanayi ve Ticaret Ltd. Şti. (two centres, ca €11.2 million).[224] In the same year UBM Uluslararası Birleşmiş Müşavirler Müşavirlik Hizmetleri A.Ş. won a contract worth €375,000 for 'supervision services for refurbishment and maintenance of removal centres'.[225] To supply equipment for this refurbishment, a number of Turkish and one Bulgarian company were contracted for a total of almost €6 million.[226]

CONCLUSION

This report shows that EU pressure to stop migrants from reaching its borders leads to their detention in transit countries in Eastern Europe, the Balkans, West Asia and Africa. This is part of a more general EU policy of externalising borders and migration policies, based on framing migration as a threat and a security problem for Europe. Cooperation with third countries remains at the heart of EU migration policies, illustrated by the new Pact on Migration and Asylum and the ever-expanding Frontex mandate.

In this context, it can be assumed that more migrants will be detained. Stricter asylum rules, more arrests at the borders, raids on irregular migrants already living in EU countries and more stringent policies on deportation are all contributing factors, often driven by EU institutions. More privatisation could also lead to more detention by introducing a profit incentive, as described above.

In our report Expanding the Fortress we wrote that 'the ways the EU puts pressure on African countries to guard its border outposts and to accept returned deportees, revive a long history of colonialism and neocolonialism and solidifies an unequal relationship between the continents. While the EU and its member states do not lay claim to "owning" third countries as they did in the colonial period, their migration policies certainly indicate a level of control and prioritisation of European above African interests that echo Europe's shameful colonial history'. The same logic applies to migrant detention, although this does not currently respond to an overarching EU policy, as it does with EU efforts to externalise border security and control.

The EU always emphasises that it adheres strictly to fundamental rights, and likewise expects third countries with which it cooperates to do the same. The reality is that its border and migration policies lead to violence and abuse against migrants, to human rights violations, to more deaths, to pushing migrants and refugees to adopt more dangerous routes and into the hands of smuggling networks, and to inhumane detention and deportations to unsafe countries of origin or transit. By pressurising third countries to contribute to this, the EU seeks to keep its own hands clean by concealing its role and responsibility for such practices. This is most starkly clear in Libya, the case with which we started this report. While the EU officially denounces the system of migrant detention there, it nevertheless keeps it running and continues to send migrants back to the hellish conditions faced inside Libya's notorious detention centres.

Beyond taking responsibility for its direct role in externalising border control and the detention of migrants, the EU must also immediately address its role in the structural causes of forced migration – its unequal trading relations, its sale of arms to the region, its extraction of wealth and resources from the region via its corporations, its historical and ecological debt to its neighbouring countries. It must also realise that outsourcing oppression may be politically convenient, but it is morally repugnant and ultimately self-defeating as it exacerbates the crises it seeks to contain. In an interdependent world, a just, humane and collaborative approach to migration is the only real solution.

ENDNOTES

1   Full statement available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706
     retrieved on 3 March 2021

2   MSF website statement on Moria published on 9 September 2020
     https://www.msf.org/refugees-moria-must-be-evacuated-wake-destructive-fire retrieved on 3 March 2021

3   See TNI and Stop Wapenhandel's report titled Expanding the Fortress for further details.
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4   EEAS (2017), Speech by Federica Mogherini at the European Parliament plenary session on the situation of
     migrants in Libya, 13 December, https://eeas.europa.eu/headquarters/headquarters-homepage/37290/speech-
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5   Akkerman, Mark (2018) *Expanding the Fortress: The policies, the profiteers and the people shaped by EU's border
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6   Arbogast, Lydie (2016) 'Migrant detention in the European Union: a thriving business'.
     Brussels: Migreurop/Rosa Luxemburg Stiftung.

7   Akkerman, Mark (2018).

8   https://www.globaldetentionproject.org/ as evidenced in the country profiles on the Global Detention Project
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