

## **Campaign for the right of access**

### **« Campaign Kit »**

**This document aims at providing tools to the actors who will be launching this campaign, by listing the main demands (common appeal text) and by suggesting claims that can be worked on by the organizations which will carry on the campaign at national level.**

- **Doc 1 :** Draft for a common appeal for a campaign « *for a right of access in migrants' detention places* » with common demands
- **Doc 2 :** Note on the various modes of access for NGOs in the centres and on the other modes through which actors of the civil society may exercise a control
- **Doc 3 :** Suggestions of demands that can be put forward by NGOs or other actors of civil society at national level, and will have to be adapted according to the contexts and the priorities of each organization

#### **Timetable**

- **Launching :** The campaign will be launched on the occasion of the Social Forums in September : Madrid (11-12-13 September) and Malmö (18-19-20 September)
- **The perspective of European elections in June 2009** will also be taken into account in determining the different stages of the campaign.

**Doc 1:**

**Appeal : draft for a common text / common demands**

**FOR A RIGHT OF ACCESS IN DETENTION PLACES FOR MIGRANTS**

Ever since its creation, Migreurop has denounced the multiplication of the detention places for foreigners that member states of the European Union have been setting up within the context of their fight against illegal immigration. The phenomenon concerns the countries of the EU as well as those outside European borders which are urged by Europe to « *hold back* » or to « *take back* » would-be immigrants. Systems for detaining and removing foreigners vary from country to country but in all of them there is a generalization of the detention of persons who have committed no offence but that relative to entry or residence. That extension of foreigners' detention tends to be institutionalized by the European Union, in particular through the adoption by the European Parliament, on 18 June 2008, of the « Directive on Return » which validates practices of detention of third country nationals for immoderate lengths.

The detention places for third country nationals are often situated in out-of-the-way places with little visibility for civil society. The right of access for NGOs defending migrants' rights is limited or even non-existent. This favours the risks of abuse and infringement on the detainees' rights.

At a time when Europe reinforces its control and detention devices, civil society demands a right of access to the places of detention of foreigners in order to :

- make public the fact and the conditions of the detention of third country nationals in those centres,
- act in alerting and defending the detained foreigners,
- bear evidence on the consequences of the detention and on situations leading to violations of migrants' rights.

**In order that the right of access may be exercised in the detention places by the actors of civil society, we demand**

That the States :

- guarantee, through the law and without restriction, a right of access for civil society and for NGOs in the detention places for third country nationals,
- guarantee that detained foreigners have access to help for the defence of their rights, by agents independent of the national authorities,
- guarantee that a regular control on the situation of migrants in those detention centres be operated by organizations that are independent of the national authorities,
- give the civil society an account of the situation in the detention centres, in particular by providing information on the existence, the number and the functioning of detention places for foreigners on their territory.

That the European Union :

- create the obligation for Member States to give civil society an effective right of access to the detention places for foreigners,
- organize a mechanism of control on the situation in the detention places, in the Member States as well as in the third countries with which the EU has made migratory

agreements ; this implies regular visits by organizations independent of the Member States, and the presentation of reports on the situation in the detention places to the European Parliament, at least once a year

- impose on Member States the obligation to guarantee that detained migrants have an effective access to an independent system of defence of detained foreigners'rights

## Doc 2 :

### Notes on the different modes of access for NGOs in the centres

Considering the heterogeneity of the detention systems for foreigners in Europe and in the countries outside the European borders, the national legislative provisions, the conditions in the centres and the practices of the administration responsible for managing the centres vary from one country to the other, and even from one centre to another. The same applies to the NGOs' - and more widely to the civil society's - right of access in the detention places.

The possibilities of access, both in theory and in practice, vary between countries, as concerns :

- the frequency or regularity of access (permanent or regular right of presence, punctual or sporadic right of visit...);
- the conditions and details of the presence (right of access legally granted, agreement with the authorities managing the centres, simple tolerance);
- the actors granted authorization (lawyers, international institutions, associations or organizations more or less independent of the authorities responsible for managing the centres).

These conditions sometimes vary within one same country, according to the nature of the detention place : access may be granted in the transit zones of airports but forbidden in the detention centres for non-documented foreigners.

The claims that are suggested will have to be adapted according to the context and the priorities of each organization.

**One of the purposes of this campaign being to make people aware of the conditions in the detention places, it is useful to specify that when we mention a « right of access » in the detention places, what we mean is a right of visit coupled with a mission of testimony.**

**The purpose is not only to demand a right of access to the centres in order to help with the defence of migrants' rights : demanding a right of access also aims at making known, raising awareness, spreading information and even denouncing.**

**Our viewpoint is not neutral, as might be that of organizations who would commit themselves not to bear witness on what goes on in the centres out of respect for some principle of neutrality or some duty of discretion.**

## **I - The Right of Access for NGOs and civil society**

The frequency or the regularity of access possibilities for NGOs or other actors of civil society varies according to the country (right of permanent or regular presence, right of visit, sporadic access). Situations differ as to the regularity of the presence of NGOs in the centres, often related to the conditions and forms of their presence.

### **1 - Frequency and forms of the right of access**

#### **-Regular intervention : permanent right of access within the framework of a formal agreement between the authorities and one or several associations**

This type of intervention is the most uncommon on European territory. It is the case in France where the Ministry of Immigration has passed a convention with the Cimade to enable this organization to provide a service of defence of foreigners held in the centres (and with Anafé concerning access to the airport transit zone and terminals).

*Example of the Cimade : the Cimade performs a mission of defence of the rights of detained foreigners in the French « retention centres ». The fulfilment of the mission rests on a convention signed with the Ministry of Immigration which grants the organization a budget towards it.*

*The convention was signed as an implementation of a Decree (Decree of 17 July 2001) which provides for the presence of an association for a mission of accompaniment. But the authorities may decide to grant or to withdraw that mission of foreigners' defence - which implies a financing and the authorization to have permanent presence in the centres : this may jeopardize the durability and the independence of the association.*

*And it must be noted that the Ministry of Immigration negotiates the convention with the Cimade again every three years : the authorities may thus throw back into question the organization's presence.*

*Beside the mission of accompaniment and defence of the rights of detained foreigners, the Cimade has taken on a duty of testimony on the reality of what the association is brought about to find out in the exercise of its mission. It frequently questions the authorities about certain individual situations and has no hesitation in denouncing the dramatic consequences of the policies implemented by the authorities.*

*In particular, such action of testimony has led to the denunciation of the dramatic consequences of the implementation of figured objectives concerning forcible returns.*

***Cf. 2007 Cimade Report on the centres and places of administrative detention :***  
<http://www.cimade.org/publications/16>

***Example of Anafé : In March 2004 the Anafé signed a convention with the Ministry of the Interior in order to bring juridical assistance to the foreigners who are not granted entry at the Roissy Charles de Gaulle airport. The Anafé accepted the terms of the convention***

*notwithstanding the restrictions it faces in the access to airport buildings : persons are held in police stations in the different terminals of the airport. The convention makes provision for having access to them only three times a week, accompanied by a border policeman and with a day's notice.*

*This service can be worked with the help of 15 volunteers authorized to visit the Roissy area.*

*Some associations also have a right of access in the transit zones : 13 associations<sup>2</sup>, among which Anafé, may have access to all transit zones in France.*

*These access rights allow them to meet foreigners held in the detention centres and to bear witness to what they see on the ground, to any changes in practise and to dysfunctions. During the visits it is possible also to talk to the representatives of the various services involved (PAF - Frontier Police Force, OFPRA - French Organisation for the Protection of Refugees and Stateless People, the French Red Cross, the ANAEM - French government migration service, medical services). For more on the participation of the ANAFE see the 2008 publication by the ANAFE: <http://anafe.org/publi2008.php>*

*Furthermore, the presence on a regular basis of these associations that have managed to prove their independence is no guarantee of migrants' fundamental human rights being upheld, as the associations' various reports suggest.*

The presence and daily involvement of these associations, their members being the only civilians present in these removal centres, could be the basis for demanding the opening up of these centres to other associations. (see doc 3)

#### **- Limited right of access**

In most countries, the right of access of NGOs to removal centres is not permanent and is limited. It is often granted as a form of “visiting right” or an occasional right of access, without any permanent character and/or only covering some but not all of the detention centres. This access right is sometimes formalised by an agreement signed by the authorities in charge (Ministry of the Interior, Ministry of Justice, Ministry of Immigration... the authorities in charge vary according to the country) or by the Centre Managers. But this visiting right is not always formalised by a specific agreement nor guaranteed by the law. Yet another possibility is that the detention centres for foreigners are organised according to a penitentiary system and the access right is exercised in the form of a visiting right as it might be permitted to a chaplain (e.g. Sweden, Ireland, Great Britain).

In these cases the frequency of the presence of these organisations is variable: it is often dependent upon the discretionary powers of the authorities, but also upon the capacity of the associations themselves who do not always have sufficient means to carry out a mission defending the rights of the foreigners.

#### ***Examples:***

***Belgium:*** the CIRE network organises frequent visits to detention centres (“closed centres”), but do not have access to the transit zone in the airport. The access is often up to the discretion of the authorities.

***Italy:*** the association ARCI obtained in 2007, a four-month contract to visit the first aid centre of Lampedusa so as to carry out legal counselling.

***Estonia:*** the Estonian Refugee Council requested a special authorisation from the Ministry for occasional visits.

**Poland:** associations can ask for access to the centres, and decisions are taken case by case. The associations Halina Niec and the Helsinki Foundation have access rights to detention centres and carry out missions to defend the rights of foreigners in the centres.

The difficulties these associations have accessing the centres is that they have no state financing to carry out their mission. Since their budgets are insufficient they can only be present in certain centres (3 out of 17).

**Malta:** the same for Malta. JRS are allowed to provide legal assistance in certain centres. But the association's main difficulty comes from the fact that they cannot help all the detained migrants.

### **- Occasional right of access**

In certain European member states, or those situated on the outer borders of the European Union, no regulated right of access exists, neither is there any form of agreement or contract with the authorities in charge. The NGOs and other members of the public do have a very limited viewing right which is only granted by to the good will of the authorities, and which can be given or refused arbitrarily. In general, NGOs only manage to get into these areas in specific situations and following heavy pressure upon the authorities. In this context, migrants have little or no access to legal assistance and it is extremely difficult to have any reliable information as to the real situation inside these centres.

Examples:

**Cyprus:** the association KISA is allowed into the centres but only for specific cases, and in particular for asylum seekers. The members of the association have suffered heavy pressure and denigration campaigns from the authorities, following criticisms of the detention conditions.

**Spain:** the association RED ACOGE is allowed sporadic visits of Spanish detention centres.

**Mauritius:** sporadic access by representatives of the association AMDH to deal with specific cases.

## **2- The right to be present is sometimes related to the type of activity being carried out:**

In certain countries, the presence of associations or organisations is only allowed for certain types of activities:

- Legal assistance only for asylum seekers: in certain EU member states, Slovenia, Cyprus and Italy, associations are allowed access to the detention centres for illegal migrants but only to help out asylum seekers. What is more, being granted access is up to the good will of the Minister in charge of delivering authorisations, should such access not be guaranteed by the law.

In most cases only the HCR has access to these centres, with the reservation that this implies regarding the denunciation/dissemination of information by the HCR, the latter not being an NGO but an agency of the United Nations.

**Examples:**

**Slovenia:** the association PIC has signed a contract with the State of Slovenia to assist asylum seekers in the Asylum House, as well as those held in the detention centre. They also carry out monitoring at the frontiers, this activity also being part of the legal assistance to asylum seekers.

**Spain:** the association CEAR has a contract with the Spanish government to enter into detention centres and offer legal assistance, exclusively to asylum seekers.

*Greece:* The Greece Refugee Council is only allowed access to the detention centres to bring legal assistance to asylum seekers.

- **Access rights granted only with a view to bringing social support, and banning non governmental organisations from carrying out missions to defend foreigners' rights :** in certain countries certain associations are allowed into detention centres but only to bring social support to migrants. The authorities forbid the associations from carrying out activities in defence of the rights of foreigners.

*Example:*

*Germany:* The state finances the defence of foreigners by signing an agreement with lawyers. But the NGOs, who consider this assistance insufficient, are not allowed to carry out missions in defence of foreigners' rights in view of providing complementary legal assistance.

*Austria:* NGOs only have access to the centres for social assistance of a humanitarian kind.

## **II - Other actions by NGOs and civilians in view of exercising their right of inspection**

### **1 - Telephone calls and visiting time**

In some countries, whether those in which associations are present inside the detention centres (France), or those in which access is limited to asylum seekers, like Slovenia, or again those in which access is more or less forbidden, like Cyprus, mobilization has begun around these detention areas. The aim is to establish contact with those inside the centres, to gather information on the conditions of detention, but also to provide assistance.

Mostly the telephone is used via the telephone call boxes in the centres or detainees' mobile phones. Private visits are also set up with the detainees.

Although this type of activity, which in part makes up for the deficiencies of the legal system, does not provide a complete overview, it does mean that information on the detention conditions can be made public.

*Examples:*

*Slovenia:* the Anti-Racist Assembly of the ROG, following a year of communication with the migrants held in the detention centre of Postojina through daily visits, published a report denouncing violations of fundamental human rights committed there.

*France:* following detainees' revolts in detention centres (end of 2007), some individuals set up a communication system with the migrants detained in some of the centres. They regularly make their situation public.

The Anafé has opened a regular telephone help-line to provide legal help to all persons held in French detention centres.

*Cyprus:* in an atmosphere of severe repression of any associations rallying around the question of migrant detention, it is almost impossible to obtain an outside viewpoint of the detention centres. Communication with the migrants is only possible by telephone, and only in this way can the serious violations of their rights suffered by the detainees be made public.

2- Information gathered from migrants who have been through certain centres inaccessible to NGOs.

Sometimes no access is granted to detention centres, in particular in the countries on the outer borders of Europe. Detention camps are set up there, pushed or encouraged by European policies, and they come under no existing legal status. These detention centres thus become inaccessible to the exterior eye. A means of obtaining information on what is happening there is therefore to collect information from migrants who have been through such centres.

***Example:***

***Lybia, Algeria, Tunisia:*** information on these camps has been gathered through the reports of migrants who have passed through them, once they have reached Europe. Also there have been certain media reports, and official reports by the European Commission for Lybia or by international organisations.

***Turkey:*** NGOs are not authorised to enter detention centres for illegal migrants. Only the HCR is allowed in.

Such information can be matched to information coming from the reports of international organisation who have had access to the centres. However, this is incomplete and the demands will have to be seriously considered by the European Union who should control and inform themselves on the situation of migrants in these detention centres.

### III - What the Return Directive involves

The measures taken by the Return Directive are insufficient to guarantee civilians a right of inspection of migrants' detention centres.

**Access to the centres:** regarding access to detention centres, article 16 paragraph 4 states: *“Organisations and appropriate national, international and non governmental authorities may enter the detention centres mentioned in paragraph 1, in so far as they are used for the detention of foreign nationals from non-member countries, according to the present chapter. These visits may also require authorisation”*.

This article is extremely vague and does not specify the practical terms and conditions of the deliverance of this authorisation, nor does it state the need for justifying a refusal.

**The right to free legal aid:** article 13 does not specify the terms of this aid. No provision is made stating who can provide legal help to migrants in the centres (qualifications, independence of the chosen parties, etc...), nor is there even a guarantee of access by these parties to the dossiers and to the current procedures relating to the removal or detention of migrants.

**Monitoring of the centres:** the directive does not make provision for the regular monitoring of the situation in these detention centres by organisations independent of the national authorities.

### **Doc 3:**

#### **Suggested demands that can be put forward at a national level by NGOs to be adapted according to the context**

To be addressed to the State and authorities in charge of managing detention centres :

#### **Access by the general public to detention centres**

- Legally guarantee the right of access, without restriction, by the general public and in particular NGOs to detention centres,
- Regulate the means of access by the general public and associations, with a view to ensuring the application of this access.

#### **Help in defending the rights of foreign detainees**

- Guarantee foreign detainees access to the defence of their rights by parties independent of the national authorities,
- Providing these parties with the financial means to carry out their missions in complete independence, and in a way that such funding is not linked to a duty of confidentiality.

#### **Controlling the conditions in the centres**

- Ensure that a regular control of the situation in these detention centres is carried out by organisations independent of the national authorities;

#### **Making information public on the situation in these detention centres**

- Inform the general public of the situation in these detention centres, and in particular communicate their existence, whereabouts, and the number and functioning of the detention centres for foreigners on their territory.

#### **Rights of detained migrants to communicate with the outside**

- Legally ensure that all detainees have the right to communicate with the outside world by regulating the communication possibilities in such a way as to ensure their effectiveness: in particular by putting means of communication at their disposal (access to telephones, covering the costs of telephone cards, authorising visits without any restrictions).