

The Experience of Undocumented Women and Children in Detention Centres in Belgium Ill-Treatment or Torture?

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Abstract The article examines one of the forms of state violence exercised on undocumented migrants in Belgium, in particular on women and children, since the introduction of their confinement in detention centres and their forced deportation in the late 1980s. The article concludes that regarding the norm of the intentionality of migration policies and the detrimental effects on the mental and physical health of children and women migrants, the recognising of these inhuman treatments as typical forms of torture of detention centres and their re-labelling as such would seem more consistent and realistic. The challenge of this re-labelling lies in the need to shift the moral and legal debate to the political one in order to question that form of migrants' governmentality and policy unworthy of a democracy.

Keywords Undocumented women and children. Detention centres. Deportation. Torture. Belgium.

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1 Introduction

In the dominant social representation in Europe, the practice of torture and human ill-treatment are generally associated with non-Western States that do not respect fundamental rights and freedoms.

These practices are said to result from behaviour stemming from certain cultural traditions whereby ‘The West’ sits at the top of the scale in terms of respect for human rights. For Freedman and Valluy, this culturalist approach produces not only a polarisation between cultures¹ which persecute and those which protect, but also a “normalisation” of the persecutions practiced in European countries. In addition, it masks the systemic effects of power relations, notably the patriarchal ones, which precisely generate these oppressions in various sociocultural contexts (Freedman, Valluy 2007).

This social representation is often accompanied by an opposition between “refugee-producing” countries, and those that welcome them, as well as a negative and positive polarisation of their image, which has been clearly contested² since the 1990s (Fassin, Morice, Quiminal 1997). Indeed, some NGOs in Europe (Human Rights League and Amnesty International in particular) denounce the violent treatment of migrants. For the first time, in 2009, Amnesty International-Belgium is concerned about the extent of violations of migrants’ fundamental rights in Belgium and in Europe:

Human rights violations related to the arrest, detention and deportation of foreigners have been observed to persist, even when they seek international protection. In some countries, some people were denied the opportunity to apply for asylum. In others, the level of protection afforded Iraqi asylum seekers was reduced, and some were even deported. (Amnesty International 2009, 61)

These practices are part of the new restrictive migration and asylum policies developed in the 1990s when the European Union member States decided to work together to strengthen border controls and ‘protect’ themselves from populations qualified as ‘undesirable’

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1 This is also what Makaremi underlines, drawing inspiration from Talal Asad, who observes in this opposition a different justification based on culture: “The violence exerted by ‘civilized nations’, often labeled as a security operation, humanitarian intervention or damage collateral, does not seem to relate to any particular culture or relationship to violence, while the relationship to violence of ‘uncivilized nations’ requires specific grids of understanding mobilizing the concept of culture” (Makaremi 2016, 15).

2 “This image is stereotypical: the rich countries are today at the bottom of the ranking of international hospitality (in number of refugees hosted compared to the number of inhabitants and even more to income per inhabitant)” (Freedman, Valluy 2007, 20). This observation is still valid in 2021.

through two main instruments: the Schengen Agreements (1985, enforced in 1995) and the Dublin Convention (1990, enforced in 1997).

This chapter proposes to examine one of the forms of State violence exercised on undocumented migrants, in particular on women and children, since the introduction of these new policies that have reduced migrants' access to the territory, instituted detention centres for undocumented migrants and mobilised a criminalising rhetoric that justifies ill-treatment. These control policies are based on two pillars: the confinement of undocumented migrants³ in detention centres defined as places "of deprivation of liberty for people staying illegally awaiting deportation" (CIRÉ 2019, 10) and their forced deportation from the country.⁴

The question raised by this essay concerns the nature of the regime of violence inflicted on undocumented migrants and their children in detention centres: is it ill-treatment or is it similar, in some of its forms, to torture? From a legal standpoint, international law distinguishes the degree of seriousness between the two on the basis of the level of pain/suffering inflicted and the intentionality of the act: torture aims to obtain a confession, punish, exert pressure or intimidate while the ill-treatment (cruel, inhuman, humiliating, degrading, which is insulting to the dignity of the person) has no specific goal and presents a high degree of suffering/pain or humiliation/degradation. This legal description of violence has an operational aim, i.e., to restore justice by reparation for the act suffered with regard to fundamental rights by prioritising the categories of victims (legitimate and illegitimate) (Calzolaio, Colombo, Makaremi 2016). In the social sciences, violence is a complex object both epistemologically and methodologically. It is a social construction which, for some, refers to a descriptive process of a field of experience and of the structuring circumstances which requires an ethical examination, and the politics of "the position of whoever qualifies the act of violence" (Naepels 2006, 489). For others, it is a normative and evaluative concept that produces a "disqualification" or a "denunciation" (Lavergne, Perdoncin 2010).

With regard to State violence exercised in detention centres, I propose to examine, on the one hand, the norm of intentionality of migration policies which, in the legal approach, makes it possible precisely to establish a border between ill-treatment and torture and, on the other hand, violent forms of confinement and deportation and

3 According to Sampson and Mitchell, this policy has been accentuated with the increase in migration on a global scale. For an analysis of this policy and alternatives to detention see Sampson, Mitchell 2013.

4 The article does not deal with violence suffered by women during their migratory journey. On this subject, see Laacher 2007; Canut, Pian, Petit 2017; Schmoll 2020.

their impact on children and undocumented women migrants. This dual approach aims to identify the intentionality of the actors who define migration policies on the basis of explicit⁵ designs to discourage ‘unwanted’ migrants from settling in Belgium, and the repetitive practices (punishment, pressure, intimidation) of violent and technical control, and retention in the detention centres. It also aims to reveal the suffering, the physical and psychological⁶ traumas known to the State and its agents from the testimonies of migrants and experts who, in many cases, amount to certain traumas resulting from torture.

The first section briefly presents the political context and the institutional architecture of detention centres developed at the end of the 1980s. The second section describes the violence of confinement and its consequences on women and children. The third section deals with the practices of deportation under their collective and individual aspect which notably led to the murder of Sémira Adamu on 22 September 1998. These practices of confinement and deportation are illustrated on the basis of two emblematic cases: that of a 5-year-old girl and that of a 22-year-old woman, both arrested at Brussels airport while transiting, one to Canada, and the other to England.

With regard to political strategies, the legitimisation of practices and the tragic consequences on migrants, the article raises the question of the re-qualification of what the judges of the ECHR⁷ most often designate as “ill-treatment” in specific forms of torture generated in detention centres in order to focus the debate more on the political level and on these forms of governmentality than on the moral or restorative dimension.

5 One of the gendarmes charged with the murder of Sémira Adamu said that 3,500 deportations were carried out each year and that the interior ministry was exerting pressure to achieve the goal. “There is a repatriation success percentage chart that was posted every day. If the number was too low, Colonel X berated us. Through the members of the internal affairs cabinet, we felt the pressure to remove Semira, supported by the Collective against deportations. If this deportation was not successful, it could lead people to believe that the Collective was capable of undermining the policy on foreigners” (Collective against deportations: <https://ccle.collectifs.net/Resume-de-la-deuxieme-journee-d.html>). In 1996, the Belgian authorities set the number of annual deportations at 15,000. (Carbocci, Vanpaeschen, Vanpaeschen 1998, 9).

6 Consequences now recognised in the 2009 and 2018 reports of Amnesty International which concluded for Europe: “On many occasions, States have failed to assume their responsibilities in terms of protecting refugees and migrants. Women and girls have again this year been victims of human rights violations and institutionalized abuse, including torture and other ill-treatment. Gender-based violence was still widespread” (Amnesty International 2018, 51).

7 The eight judgments of the European Court of Human Rights (ECHR) against the Belgian State for “extremely serious violations” of the fundamental rights of migrants and failure to fulfil its duties to protect women and children, are based on the notion of “ill-treatment” (Van Kiersbilck 2007).

The article mobilised several sources; an underdeveloped scientific literature on detention centres, documents from NGOs defending fundamental rights (such as the Coordination and Initiatives for Refugees and Foreigners-CIRÉ; the Coordination against Raids, Deportations and for Regularisation-CRER) or institutional (General Delegation for Children's Rights; Federal Ombudsman), but also the written press, the exchange of letters between undocumented migrants and citizens, and accounts of the experiences of those without-papers.

2 The Creation of Detention Centres

The turn of restrictive and more repressive migration policies began in Belgium at the end of the 1980s during the successive reforms of the first law (15 December 1980) which regulates access to the territory, stay, settlement and removal of foreigners. These reforms establish the new contours of the migration policy motivated by the “political will to curb immigration, strengthen controls, limit the rights of migrants, and tighten their conditions of stay and deportation” (Perrouy 2003, 108). The law of 15 July 1996, which integrates the European agreements (Schengen and Dublin) abolishes social assistance to undocumented migrants, obliges asylum seekers to reside in “open centres” to receive this social assistance, and prolongs the detention in detention centres of rejected asylum seekers and undocumented migrants for up to eight months before their deportation.⁸

From the beginning of the 1990s, the detention and deportation of undocumented migrants became the ‘keystone’ of Belgian migration policy and of the mode of governmentality⁹ (Foucault 2001) that the State imposed on migrants under the guise of a security imperative. The Minister of the Interior drew up a directive which legitimised the toughening of behaviour towards undocumented migrants in the form of an “internal manual for the use of the gendarmes [which] authorizes the use of coercive techniques, like the cushion, to carry out difficult deportations” (Centres fermés pour étranger 2006, 59). The use of this cushion is intended to prevent people from shouting

⁸ This legislation would lead in particular to the creation, in March 1998, of the Coordination against Raids, Deportations and for Regularisation-CRER, which plays an essential role in the strategy of mobilising passengers and airplane pilots to refuse the deportation of migrants who resist this deportation (Perrouy 2003). The Coordination and Initiatives for Refugees and Foreigners-CIRÉ is a network of NGOs which, since 1954, has also fought against the confinement and deportation of foreigners in Belgium and on a European scale.

⁹ For Foucault, it is a form of power exercised over a population, based on a set of institutions, procedures, knowledge, strategies, and techniques (security) to channel the behaviour of citizens.

and alerting the protesting passengers on the plane and thus blocking it from taking off. This technique caused the death by asphyxiation of Sémira Adamu during the sixth attempt at her deportation.

The control and containment of “wild flows” of irregular migrants (Laacher 2007) relies in particular on detention centres intended for the administrative detention of undocumented migrants with a view to their deportation. The first centre in Belgium, called the transit centre, was illegally created in 1988 on the site of the Brussels military airport (Centre 127) in Melsbroek to hold 60 people. In 1993, the Tobback Law provided the legal framework for the detention and deportation of undocumented migrants, but it was immediately criticised and then repealed in 2001 because of the penitentiary regime it imposed on migrants who had committed no crime nor had been the object of any conviction. Despite the change in the law in 2019, NGOs noted that the prison regime is still in force in these centres:

The operation, organization and even the architecture of the detention centres are clearly prisons (two of them are former prisons). The conditions of detention are set by a Royal Decree, but each centre has its own internal regulations. They have in common a very safe functioning, a group life regime, the possibilities of sanctions going up to imprisonment, a strictly controlled right of visitation (actually non-existent at INAD). (CIRÉ 2019, 28)

Between 1994 and 1999, the capacity of the five newly created centres reached nearly 650 places. They are designated as “Centres for illegal immigrants” (1994 Merksplas: 165 places; 1995 Bruges: 112 places of which 40 are reserved for women and 1999 Vottem: 160 places¹⁰), “Repatriation Centres” (1994 Centre 127bis of Steenokerzeel: 120 places), “Centres for Inadmissible Persons” at Brussels airport (INAD Centre: 30 places) or even “Transit Centres” (2012 Centre Caricole and Centre 127bis put together: 90 places). These centres are managed by the Immigration Office which is an administration under the supervision of the State Secretariat for Asylum and Migration.

In March 2016, the attacks that hit Brussels helped to strengthen and legitimise the policy of locking up undocumented migrants by including it in the fight against crime and terrorism. In 2017, the Prime Minister of the Federal Government then decided to double the detention capacity by planning the construction of three new detention centres: in 2019, the Holsbeek Centre (50 places) reserved for women; in 2020, the Zandvliet Centre (144 places) and in 2021, the Jumet Centre (200 places). The entire scheme will eventually bring the num-

¹⁰ This centre has a specialised wing for ‘difficult’ inmates who may be subject to isolation from 10 up to 24 hours.

ber of places to 1,129 in 2022 at the eight existing or planned sites.¹¹ Finally, in 2018, despite the multiple condemnations of Belgium by the European Court of Human Rights (ECHR) for the confinement of children, the Minister of Asylum and Migration completed the system by establishing the “Unit’s detention for families” (Centre 127bis: 34 places) in order to lock up children and their parents, which sparked a wave of protest from NGOs and awareness campaigns.¹²

3 The Confinement Policy

I did not know that in Belgium, people who have not committed any crime could find themselves locked up. [...] You have to be in my skin to feel what I feel. I live the nightmare, the ordeal and the worst time of my life. [...] my freedom is all I hold dearest. (Ntumba 1999, letter of 12 November)

According to NGO reports and the testimonies of visitors¹³ and women migrants themselves, the detention of undocumented migrants is marked by multiple forms of violence both in the institutional organisation of the centres and in the daily social relations with the officers in charge of surveillance or deportation.

3.1 Organisational Violence

Institutional violence results from the mode of organisation of space and movements imposed on undocumented migrants which corresponds to the prison regime: barbed wire and high gates, watchtowers or panoramic control towers, the presence of police officers, loudspeakers, prison cells isolation, armoured doors etc. Two of these detention centres are even former prisons, the one in Bruges accommodated women. For example, in the detention centre of Melsbroek [fig. 1] exits are prohibited, movement inside the centre is limited and the proximity of the airstrip exposes the detainees, day and night, to an unbearable noise.¹⁴

11 In 2008, the annual expenditure for the management of the six detentions centres and the organisation of the deportations amounted to more than €25 million (CIRÉ 2009b).

12 The campaign *We do not lock a child. Period!* Supported by three hundred and thirty associations and the creation of the “NotinMyName” collective in 2018.

13 The CRER had organised with citizens residing in Belgium a chain of solidarity consisting in sponsoring one or more imprisoned migrants. This involved supporting detainees through visits, mailing, buying phone cards or educating flight passengers against the deportation of undocumented migrants.

14 The ECHR condemned France for having exposed a young child for seven days to significant noise pollution which caused serious emotional consequences.



Figure 1 Detention centre 127, Melsbroek (Zaventem airport), very close to the airstrip. © Nick Hannes

Some speak of the “feeling of being treated like a criminal” which oppresses them even though they have not committed any crime (Centres et locaux de rétention administrative 2018, 18).¹⁵

What can I possibly do! There is nothing I can do. [...] I am not a criminal, not a thief and even less a prostitute, just an asylum seeker. (Ntumba 1999, letter of 24 October)

The Steenokkerzeel centre (Centre 127bis) carries out surveillance of the premises by camera, searches of the rooms, the separation of spaces without the possibility of communication between them, the moving of detainees from one wing to another in the event of indiscipline or failed deportation, the deprivation of telephone communication, the forced injection of calming substances not provided for in the means of restraint authorised by the legislation, or the placing in solitary confinement.

In Bruges, testimonies reveal that agents confiscate cosmetics and medicines, showers are limited, rooms are locked from 9 a.m. to 9 p.m. and detainees are sometimes deprived of food and mattresses in isolation cells.

The shower is three times a week; Tuesday, Thursday and Sunday for 10 minutes around 4 pm. Even if we are refugees, we still have the right to hygiene like all other women? A woman naturally

¹⁵ See also Médiateur fédéral 2009, CIRÉ 2009a and Centres fermés pour étrangers 2006.

has little problems that the whole universe knows about. Hence 3 times a week is not enough. In the dormitories we have four sinks and only cold water. (Ntumba 1999, 5)

The conditions of detention are regulated by a royal decree, but each centre defines its own internal regulations. The royal decree provides for the prohibition of visits, coercive neutralisation measures (hand-cuffs on the wrists and ankles, strait-jacket) and, in Bruges for example, the transfer of a person “to a prison with severe regimes”. After a nervous breakdown, Nancy Ntumba will undergo this diet for ten days.

It’s very hard to know that you are released when you still live locked in the same place. [...] The more the days passed, the more hatred grew in me. I couldn’t stand being ordered anymore. [After touching a female guard] they took me to solitary confinement where there is concrete and a metal toilet. It was locked with three hooks, it’s very scary, I was shaking. [...] It was cold, I fell asleep on the concrete without a mattress, without sheets. And at the end of the punishment, I was to take a shower and join Z section in the medical wing for a week, where we are on a severe diet. (Ntumba 1999, 5-6)

Overcrowding in detention centres is another source of violence because privacy spaces are almost non-existent: according to the testimonies of the detainees, the rooms can accommodate 15 to 20 people in a small space, poorly ventilated and often overheated. Daily life takes place in confined and noisy collective spaces (crying, TV sets or radios, various activities of adults and children) which do not offer any serene space. Women also speak of the invasion of their privacy, which is constantly violated by repetitive body searches or their personal effects before and after a deportation, after revolts or during meetings between agents who exchange information on the health of migrants.

3.2 Agent Violence

The living conditions in the detention centres and the social relations with the officers responsible for the control of detainees are a source of violence and suffering for migrants. These lead to various modes of individual (despair, depression, hunger strike, suicide) or collective reactions (hunger strike, riot) which, in turn, trigger the often brutal reaction of the agents (sanctions) on their living conditions.¹⁶

¹⁶ The NGOs have listed the chronology of the tragic events (e.g., suicides) which punctuate life in the detention centres and provoke revolts. See in particular the re-

Andrew Crosby (2018) observed that initially, policies within detention centres were more or less autonomous with varying internal rules and regulations. This autonomy has caused tensions between the agents because of their conception of the relations established with undocumented migrants, some adopt a security-based approach while others develop a 'humanitarian' one:

Their management goes a bit in all directions, except their dysfunction. Indeed, there was no royal decree which stipulated the rights and obligations of the personnel of the detention centres. The detention regime therefore varied depending on the security team. The tough teams were very strict, they arbitrarily punished people because there was no stipulation who could put who in solitary confinement. Given the lack of central coordination, these teams were for a long time hegemonic. (Crosby 2018, 16)

Recurrent riots often start after successful or unsuccessful eviction attempts, suicide attempts, death by suicide or accident, or the outbreak of hunger strikes. In response, the managers of the centres appealed to the riot police who, according to the testimonies of the undocumented migrants, act with great brutality (physical violence, use of dogs, physical neutralisation on the ground, imposition of handcuffs etc.). The people designated as the ringleaders are subject to reprisals such as being placed in solitary confinement, being transferred to other detention centres, being deprived of going out and using the telephone, intimidation, bullying and humiliation.¹⁷

These difficult living conditions in the detention centres have been corroborated, in particular, by a doctor at the Vottem detention centre, Dr. Ginette Marchant, who resigned 11 months after taking office for infringing medical independence and the ethics of the profession. She denounced the injunctions made to the agents of the Ministry of the Interior (social workers, psychologists, doctors, and surveillance agents) to convince the detainees to allow themselves to be repatriated. From a medical point of view, she could only provide basic care (urgent medical aid) and medical confidentiality was not respected (medical examination in the presence of a third person, disclosure of health records in meetings). Finally, she observed the imposition of medical isolation for punitive purposes (Vanpaeschen 2000) and

ports of Amnesty International (<https://www.amnesty.be/infos/rapports-annuels/rapport-annuel-2018/europe-et-asie-centrale/article/belgique>) and of the Collective against Raid, Deportations and for Regularisation (CRER), *Les 15 victimes de tentatives d'expulsions par voie aérienne en Europe (1991-2014)* (The 15 victims of attempted deportations by air in Europe (1991-2014): CRER 2015, 28).

17 According to Nancy, the director of the Bruges Centre threatened her never to be released because she was conversing with "human rights activists".

the forced injection of sedatives before deportation (CRER 2009b, 9). CIRÉ (2009b, 33) made similar findings.

The feeling of institutional violence is accentuated in the gap between the recurrent violation of the law on the part of institutions and their agents, and the Rule of Law. Thus, the indefinite extension of the period of detention after failed deportations beyond the maximum period causes incomprehension or even a serious state of mental decompensation:

My lawyer appealed to Bruges and the judge decided to release me. [...] You cannot imagine my joy when the judge pronounced the verdict. I was very happy, I cried with joy. But when I arrived here [in the Bruges detention centre] the social worker informed me that the public prosecutor had appealed against my release. [...] I was dead that day, yes it is as if I had been crucified. I cried like crazy [...]. It was then that I felt that everything was falling apart. I took the chairs and started to throw them; I had lost control. So, I was isolated for a day. I can't sleep anymore, my head is still hot, my heart has been broken. (Ntumba 1999, letter of 10 August)

The multiple complaints lodged with the management of the centres against ill-treatment by surveillance agents or gendarmes during the evictions remain unanswered and accentuate the feeling of injustice and isolation:

The violence is most often committed without witnesses, in the police station at the airport, or on the way back to the detention centre after a 'failed' eviction attempt. The assaulted detainee has the right to lodge a complaint, but few complaints are actually lodged, and among them, few succeed. It often happens that the doctors in the centres refuse to certify the violence suffered. (CIRÉ 2009b, 62)

Before her death, Sémira Adamu reported that she was under surveillance by a person who was permanently by her side. After her escape from the 127bis centre, she could no longer use the telephone, she felt alone, was no longer entitled to visits and the migrants with whom she had established links in this centre were displaced. According to the testimony of her godmother¹⁸ (a famous virologist, university professor and member of the Collective against deportations-CRER) and the support of the CRER led to bullying on the part of the agents of the centre.

18 Lise Thiry, testimony at the gendarmes' trial, 10 September 2003: <https://ccl.collectifs.net/Temoignage-de-Lise-Thiry-marraine>.

3.3 Violence against Children

Although the confinement of children is prohibited by international conventions, this practice is still widespread in Europe. According to UNICEF, only Ireland prohibits the locking up of minors. The ECHR has condemned Belgium on multiple occasions for having detained 2,341 children with their parents in the centres between 2004 and 2008. The government temporarily put an end to it in 2008,¹⁹ but resumed this practice despite the damning medical and psychological reports published since 1999 (Ligue des Droits Humains 2019), which reveal the deleterious consequences on the state of physical and mental health of children and on their future development.²⁰ Indeed, in 2007, two psychologists drew up reports attesting to the suffering and deterioration of the psychological state of Angelica, an eleven-year-old Ecuadorian girl detained with her mother for a month. She displayed signs of depression, sadness, anxiety, difficulty breathing, had nightmares, headaches, dizziness related to remembering her arrest and the threat of being sent back to her home country.

The high degree of dehumanisation of the policy of confining migrants and the brutality with which it treats children is embodied in the case of Tabitha Kaniki Mitunga, a 5-year-old Congolese girl. In August 2002, she transited at Brussels airport with her maternal uncle (legally resident in the Netherlands) to go to Canada where she was to join her recognised refugee mother in that country. The border police believe that she did not have the necessary travel and residence documents and decided to lock the child in 'detention centre 127' with a view to her deportation to the Congo. The request for recognition of refugee status, often recommended to migrants in transit stopped at the border²¹ and not justified in this case, was immediately introduced but deemed inadmissible by the Office of the Commissioner General for Refugees and Stateless Persons. The latter, however, underlines the young age of the child and her right to family reunification guaranteed by the *Children's Rights Convention*.

¹⁹ The government then created the 'return homes' to accommodate families awaiting deportation: 27 units for 169 places in the form of apartments or studios. According to the CIRÉ analysis, 2,180 children were placed in these houses between 2008 and 2016, divided into 27 housing units in the territory. In 2016, 39% of families left the territory, 28% were released and 33% disappeared (CIRÉ 2018, 3).

²⁰ See the list of the damages inflicted and the descent into hell of those subjected to confinement, established from the observations of Dr. Christine Dormal in the centre 127bis. It was published by the Coordination against Raids, Deportations and for Regularisation (CRER 2009a, 9-10).

²¹ Undocumented migrants in transit arrested indicated that they had no intention of seeking asylum in Belgium, but border control officers recommend that they introduce it to avoid deportation and obtain their release from the detention centre. These requests are exceptionally accepted.

The lawyer then initiated procedures with the Canadian authorities and asked the Immigration Office to entrust the child to a host institution while awaiting family reunification, which was not accepted since Tabitha was locked up alone for two months. The lawyer began the process for her release, which was ordered by the court on 16 October 2002, but the next day, the Office des Étrangers deported the child to the Democratic Republic of the Congo where no member of her family was waiting for her. After several hours of waiting at the airport, she was finally taken care of (and accommodated) by an official from the Congo National Intelligence Agency. Faced with the scandal,²² the Prime Minister contacted the Canadian government, which grants Tabitha the right to join her mother, which she did a week after her deportation (Van Keirsbilck 2007).

In 2006, the ECHR recognised the responsibility of the Belgian authorities that

had or should have known of this ill-treatment [...] [and that] could not ignore the serious psychological consequences [of this decision]. In their view, such detention shows a lack of humanity and reaches the threshold required to be qualified as inhuman treatment. (*Journal du Droit des Jeunes* 2006, 54)

It condemned Belgium for undermining both respect for private and family life and for liberty and the right to an effective remedy. (Lelièvre 2006, 227-8; Van Keirsbilck 2007).

Despite this new condemnation, this policy continued; in 2014, the government developed a new rhetoric announcing a ‘more humane’ practice of confining children with their families.²³ In June 2018, the Secretary of State for Migration and Asylum created ‘Detention Units for Families’²⁴ presented as spaces adapted to the needs of children, which the NGOs deny (CIRÉ 2018). On 14 August 2018, a Rom moth-

22 The case triggered reactions of indignation and collective action, in particular from the French-speaking and German-speaking bar associations, and from 15 associations who lodged a complaint with the Council of State (no. 244.190, 4 April 2019) that suspended the royal decree allowing the confinement of children in Centre 127 because of the invasion of their private and family life and their exposure to serious noise pollution.

23 As part of the strengthening of its policy of “quality, humane and sustainable return, in accordance with the principle of return voluntary, if possible, forced if necessary. [...] The detention centres will be extended. [...] The project to develop accommodation there (Centre 127bis) is being carried out so that appropriate places are provided for certain vulnerable target groups, for example, families with children, so that they no longer must go in the host network” (Federal government agreement, 10 October 2014, 158-60).

24 Children are allowed to go to school and adults to go out to see a lawyer, a doctor or do some shopping. However, an adult must always be present in the house to avoid escape. The Council of Europe Commissioner for Human Rights asked the Secretary of State for Migration and Asylum in a letter dated 5 June 2018, to drop the project (<https://www>.

er from Serbia and her four children aged between one and six, who had been in Belgium for ten years, were detained for 54 days (instead of one month maximum) and then deported on 24 September 2018 (Rasson 2019).²⁵ Three other families with young children would suffer the same fate in September and October 2018.

4 The Practice of Forced Deportation

Belgium has a heavy record of forced deportation of undocumented migrants, including the infamous case of Sémira Adamu, who died of suffocation on 22 September 1998.²⁶ During the trial of the gendarmes who suffocated her, the terrible film of her death was shown: this 11-minute sequence²⁷ was supposed to provide proof of the use of legitimate and necessary force to control a ‘violent’ victim who resisted her deportation. However, the film shows a very calm woman with her hands cuffed behind her back, her feet shackled, and two of the three gendarmes present who lean heavily on the victim’s back while discussing and ignoring the obvious signs of suffocation.

According to the report of the trial, the incriminated gendarmes above all described the instructions and checkpoints to be observed according to the memo and paid no attention to the condition of the person they were supposed to control:

We did our job as it should be done; everything was normal in the procedure, no one among my colleagues intervened; I heard she was breathing, I controlled what I had to control. (Van Meulder 2003a)

One of the gendarmes affirmed that he was under pressure from the hierarchy to achieve the quantified objective:

In the corridors we spoke and we said, “the thirty deportations must succeed or we will have misery”. A certain pressure was coming from above. The indicted repatriation officer confirms the or-

coe.int/fr/web/commissioner/-/commissioner-calls-on-belgium-not-to-resume-detention-of-migrant-children).

²⁵ The visit of the general delegates for children’s rights with a paediatrician in these family units in August 2018 revealed the “deplorable” state of the children but did not put an end to this practice despite the existence of alternatives more respectful of human rights, and less costly (International Detention Coalition 2015).

²⁶ The murder of Sémira Adamu leads to the resignation of the Minister of the Interior who had given his support to the gendarmes, the provisional suspension of the deportations - which resumed very quickly - and the publication of a ministerial directive removing the use of restraint techniques that obstruct the respiratory tracts.

²⁷ <https://cclle.collectifs.net/Les-onze-dernieres-minutes-de.html>.

der to reach the deportation of 23 people “because the (detention) centres were full”. (Van Meulder 2003b)

Their lawyer based their defence essentially on “obedience to orders” and on the voluntary commitment of the gendarmes assigned to this “deportation task”. In the end, two of the former gendarmes received a suspension of the sentence and the third who had already committed violence against undocumented migrants during other evictions was suspended.²⁸

The results of this policy twenty years after the death of Sémira Adamu reveals that the violence of the deportations and the violations of the fundamental rights of migrants remain the rule (Centres fermé pour étrangers 2016). The bill²⁹ authorising the police to intervene by force in the private homes of citizens or in associations to flush out undocumented migrants (Arnould 2019) and the government plan which provides for a solitary confinement regime announce the hardening of the detention of undocumented migrants.

4.1 Collective Deportations

Belgium not only practices individual deportations, but also collective deportations which also earned it a conviction by the ECHR in February 2002, in particular, for the violation of the *European Convention on Human Rights*, the conditions of detention of the Roma, and the collective nature of the deportation (Carlier 2002).

The first large-scale collective deportation that the Belgian government organised was implemented in October 1999 for 74 Roma, including many children, expelled to Slovakia despite the suspensive judgment of the ECHR issued one hour before takeoff. To arrest undocumented migrants, the police of the city of Ghent (Flanders) summoned, at the end of September 1999, several dozens of these Roma families, including the Conka family, on the grounds of “completing the file relating to the asylum application” (Carlier 2002, 64). At the police station, they received an order to leave the country and were taken directly to the 127bis detention centre for repatriation. In addition, the police wrote a number with a ballpoint pen on their hand to mark the spirits with a strong symbolism.

²⁸ The gendarme who filmed the deportation was dismissed since, during the operation, he said he asked several times if the victim was still breathing while the charge of non-assistance to a person in danger could have been retained. As for their superiors, they were acquitted (Perrouty 2003).

²⁹ In August 2018, the press announced that the federal government had abandoned this project, which drew much criticism, particularly from the judiciary and lawyers’ associations.

This practice of collective deportation was theorised by experts from the Commission for the Evaluation of Removal Instructions (Commission chargée de l'évaluation des instructions en matière d'éloignement) established after the death of Sémira Adamu. Chaired by a retired professor of philosophy from Ghent University, the report of 21 January 1999, suggests that, in the event of a failed forced deportation, a special plane be chartered, and the deportation be organised on the European scale:

For example, business plane type, which would make it possible to repatriate a small number of people under sufficient surveillance and to avoid the repression of shouting and other types of provocation, given that there is no public. [...] This procedure could moreover be applied in consultation and in collaboration with other European countries, so that agreements could be concluded more easily with the countries of return for the necessary landing rights. (Vermeersch Commission I 1999, 23)³⁰

On the night of 13-14 March 1999, the government put this proposal into practice with the collective deportation of migrants to Cameroon accompanied by twelve gendarmes and a doctor at a cost of €50,000. The press revealed another collective deportation of 45 Albanians in February 2000 in an Airbus A310 chartered by the Belgian Army (Wibault, Van Meulder, Liebmann 2003). The practice has become commonplace and little information currently exists on these deportations.

4.2 Individual Deportations

Although Europe has 'relocated' part of its detention and deportation policy to certain third countries (Morocco, Tunisia, Libya) in return for financial retribution and political support for non-democratic regimes, States like Belgium maintain this practice which has a strong symbolic function with regard to the discourse on the "effective management" of migratory flows (Ouali, Chicha 2005).

30 This report triggered strong criticism from an inter-university group "Asile et expulsion" which condemns such collaboration: "We condemn the complicity of those among our colleagues who saw fit to legitimize the Belgian asylum policy and deportation, by actively participating in the commission created by the Minister of the Interior. [...] This report casts an unacceptable shadow on what can or should represent the participation of academics and intellectuals in social debates. [...] [The most shocking] is that certain academics are called upon to help reach objectives for which they have no expertise (types of handcuffs etc.) and to support recommendations of a technical nature which do not absolutely require their opinion" (cited in Wibault, Van Meulder, Liebmann 2003, 131). In January 2005, the Vermeersch Commission II (2005) will make 34 recommendations for a "humane and effective" removal policy.

The examination of the experience of Nancy Ntumba Kabongo, on which I now propose to dwell, is emblematic of the violence exerted on undocumented migrants both because of the repeated attempts at deportation before the actual deportation or the possible regularisation, and the stressful and humiliating ritual, before and after these attempts, of isolation, search and moral pressure. I followed Nancy's case during 1999 through visits to the Bruges detention centre - from which I was very quickly banned - telephone contacts and correspondence during the ten and a half months of her detention. The analysis of her story shows, on the one hand, the administrative imbroglio and the multiple obstacles deployed by the institutions and its agents which the most vulnerable people must face in order to stay in Belgium, and, on the other hand, very long-term deleterious consequences of this deportation policy in terms of the physical and mental health of undocumented migrants.

Nancy Ntumba was born on 10 August 1976, in the Democratic Republic of Congo and arrived in Belgium on 14 February 1999, at 9 a.m. in transit³¹ to England where she was considering seeking asylum. Her arrest took place in the transit zone of Zaventem airport after her passport was checked because border police officers accused her of travelling under a false identity. She was sidelined for several hours and then these agents offered to return her to South Africa, where she came from, or to seek asylum in Belgium. One of them told her that she would receive help, which persuaded her to apply in Belgium. She was taken to the detention centre 127 (Melsbroeck) located next to the airport and the next day obtained an interview with an agent from the Office des Étrangers who rejected her asylum application: "I was downcast and confused. I did not know what to do. All of a sudden everything changed and I had to go back to where I had fled" (Ntumba 1999, 1)

On 16 February 1999, her lawyer lodged an urgent appeal with the Office of the Commissioner General for Refugees and Stateless Persons, which was also rejected on 1st March 1999. Nancy was then moved to the Bruges Detention Centre for Women, located 100 km from Brussels. The initial contact with the agents of the centre left her traumatised:

It was very strange; I was very scared. All these uniformed women screening officers searched my things, removed the dangerous items, and then did the body search. The agent is wearing medi-

31 Dr Marchant's testimony evokes the distress she observed in people in transit to another country to join their families, who were arrested at Brussels airport for lack of document (visa) or on suspicion of detention of false papers. She points out that these situations affected black men and women more, and that led to numerous suicide attempts (Vanpaeschen 2000).

cal gloves: I was in support and underwear, and I was too scared. I was sobbing because I did not understand anything, I was lost. (Ntumba 1999, 1-2)

The consequence of her transfer to Bruges is twofold: contacts with her lawyer, NGOs and visiting citizens who support her are more difficult because most of them are located in Brussels. Then, the legal procedures for her release are in Dutch, while Nancy is French-speaking, and a large part of it escapes her.

Nancy arrived at the centre on 1st March 1999 and was quickly subjected to a first unforced deportation attempt to South Africa,³² on 3 March. As she refused to leave, she was brought back to the Centre. Her lawyer filed an appeal with the Brussels Council chamber for her release, which was refused. Another appeal was filed with the Bruges Council chamber on 18 May 1999, which was also negative. Her detention in the Centre was extended each time by two months since the law had allowed, since 1996, detention for up to 8 months, but the frequent resetting of the counter following a failed deportation makes the detention indefinite.

On 8 June, she was subjected to a second deportation attempt, which she resisted:

I was at the airport for repatriation, I did not understand a thing. I was morally tortured to begin with and then I was tied up and brought aboard the plane. [...] The police asked me to go and sit in the last seat. As both my arms were tied behind my back, I turned around so that all passengers could see my arms. One last passenger came in and asked what was going on, and that's when I was taken off the plane. [...] I cried a lot that day because I was treated like a criminal. (Ntumba 1999, letter of 21 June 21)

The procedures to request Nancy's release followed one another and systematically received a negative response until the judgment of 30 July 1999, when the judge of the Bruges Council chamber decided to release her. Back at the Centre, an agent told her that the King's Prosecutor had appealed the release decision, but on 12 August 1999, the court confirmed it. It was followed by a further appeal:

It was the second time that I was released, I was happy and I was jumping for joy. When I got to the centre, I waited for someone to tell me to pack my bags. I kept it a secret to myself and was afraid I would be told again that the prosecutor had appealed. [...] The next day, I am told that the appeal has been filed and that I must

32 Where she lived with an aunt for two years.

initiate new proceedings. The worst part is that the counter for the months of confinement resumes at zero. I was crazy and very sick. [...] It was very difficult. (Ntumba 1999, 4)

On 9 July 1999, Nancy was taken to Brussels airport for a third deportation attempt, which she resisted, and on 4 October 1999, she returned for a fourth attempt. Finally, the fifth deportation attempt took place on 9 November 1999: it failed thanks to the visit of the director of the Centre for Equal Opportunities and Opposition to Racism, present at the airport and who asked for an interview with Nancy:

I was put in a small, very dirty cell and waited for the time [of her deportation]. Mr. Cornil was at the airport on a mission concerning detention centres. So, I was saved and was able to talk to him for a few minutes. I was lucky that he was there because I was sure they wanted to force me. (Ntumba 1999, 7)

Before and after each return from an aborted deportation, detainees and their baggage undergo a thorough and humiliating search. In addition, the agents and the management consider Nancy “strong headed” and a “leader” (Ntumba 1999, 7) who creates disorder in the centre. As a result of which she is the object of more and more pressure, in particular because she is greatly supported by activists of the Collective against Deportations, she receives visits from citizens and parliamentarians of Brussels, and that her case was the subject of several press articles. After the fifth deportation attempt, the *gendarmes* accompanying her tried to impress her:

They started to intimidate me with the same song: that it was an order from the minister, that I had to leave and that if I did not leave today as a free woman, next time I will leave surrounded by two police officers. (Ntumba 1999, 8)

On her return to the centre, Nancy could no longer bear her detention and the body searches: she cried and screamed and lost control of her emotions. The situation was all the more painful for Nancy as women from the Centre with whom she had established links were released and she would stay there for a total of ten and a half months. She was forbidden to speak but she continued to speak Lingala (her mother tongue), she was then physically overpowered by several guards (plastic ties to the feet, suffocation): “I thought I was going to die. I was screaming, I was crying. Such suffering, I would have preferred death rather than living” (Ntumba 1999, 8).

She was then placed in isolation and at 11 p.m., the deputy director visited her and put pressure on her:

You again Nancy! You are turning the whole group on. I know you have influence in the group because you talk to Ecolo and the politicians. But associations and everyone else give you false hope. You are at the end of the procedure and you must leave. You are not allowed to speak here. [...] He had promised me that if anything else happened, I would be sent to “Z section” [isolation section] until the next repatriation. (Ntumba 1999, 8)

Finally, on 29 December 1999, the Ministry of the Interior freed Nancy from the centre with an order to leave the territory within five days. “According to the Government, this release was the result of a general end-of-year pardon” (ECHR 2009). She migrated to the United Kingdom as she wished in February 1999 and on 11 September 2002, she obtained a four-year residence permit and subsequently her final regularisation.

5 From the Legal to the Political

Putting into perspective the practices of confinement and deportation deployed since the end of the 1980s to control migratory flows in Belgium remind us of all the systemic violence of this policy with regard to undocumented migrants. Systematic violations of fundamental rights; the imposition of a prison regime; the harsh living conditions; multiple pressures and intimidation; the physical and mental energy invested in dealing with the profusion of administrative and judicial procedures to obtain asylum, release from the detention centre or prevent deportation; the indefinite extension of the period of confinement and the repeated attempts at deportation reveal the logic of a system which is a real ordeal aimed at punishing and discouraging any migrant and asylum seeker from coming and settling in Belgium.

This policy, which has been pursued for more than thirty years by successive governments and political parties (the Social Democrats, the Christian Democrats, the Liberals or Flemish nationalists close to the extreme right) is based on the alleged ‘threat’ that the foreigner represents for our jobs and our social security and on a powerful ideological discourse: “we cannot accommodate all the misery in the world” and the rhetoric of the “democratic and human” control of migratory flows which serves to justify and trivialise their deportation as a solution to our problems (Ouali, Chicha 2005, 25).

The constructed and intentional character of what the judges of the ECHR most often designate as “ill-treatment” through, on the one hand, an institutional organisation and the legitimisation of the violent practices of the agents, and, on the other hand, their indelible consequences on the mental and physical health of migrants (and their children) as powerful as those resulting from torture, would

they not suggest re-labelling and recognising these inhuman treatments as typical forms of torture (punishment, pressure, intimidation) specific to detention centres?

The challenge of this re-labelling lies in the need to shift the moral and legal debate to the political one in order to question the forms of governmentality applied to undocumented migrants rather than being limited to the individualised remedial dimension. Asking the questions from a political angle is the *sine qua non* for grasping the logic of the exceptional regime imposed on migrants and the discourse of criminalisation of undocumented migrants and for eliminating a policy unworthy of a democracy.

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