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## **CALAIS, THE VIOLENCE OF THE BORDER**

**Fact-finding mission in Calais and Paris  
25 January – 2 February 2010**

**REPORT**

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## Table of contents

BACKGROUND OF THE MISSION	3
INTRODUCTION: The border area within – Calais as an area of passage	6
Chronology of events May 2009 – 29 January 2010	7
I – Police operation the 22nd September 2009: goals and results	8
II – The situation of migrants and refugees in Calais and the surrounding area	10
III – Systems of protection	16
· Right to defence and right to appeal	16
· Unaccompanied minors	18
· Forced return	19
IV – The role of the European Court for Human Rights	20
V – The European Policy on Asylum: State of Art	21
· Access to Europe: whither legal routes?	22
· Dublin II Regulation as a hindrance to refugees’ rights	23
VI – RECOMMENDATIONS	25
EPILOGUE – January 2011	27
REFERENCES	28
ANNEXES	
Annex 1: List of persons met by the mission delegation	30
Annex 2: List of abbreviations	31
Annex 3: Questionnaire	32

## Background of the mission

In the summer of 2009 the French Minister of Immigration, Integration, National Identity and Inclusive Development announced the destruction of “the Jungle”, a large unofficial camp situated close to the port area of the city of Calais, which is inhabited by some seven hundred<sup>1</sup> people mainly of Pashtu origin from Afghanistan. The destruction was to be executed so as to do away with “the problem of migration” in Calais and in the department of Pas-de-Calais, Northern France. On 22 September 2009 the French police executed orders to destroy “the Jungle”.



January 2010, the campsite following demolition by bulldozers

Having observed the migratory situation in Calais for many years prior to the destruction on 22 September 2009, the Euro-Mediterranean Human Rights Network (EMHRN) in collaboration with the International Federation for Human Rights (FIDH) and the European Association for the Defense of Human Rights (AEDH) decided to send a fact-

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<sup>1</sup> Estimations concerning the average number of inhabitants in “the Jungle” range from 300 to 1500 persons depending on the period and the source of information. The estimates of numbers of undocumented migrants in Calais and in its surrounding area also vary significantly. In general the numbers given by officials are much smaller than those estimated by civil society activists. However, the estimates given by the authorities concerning the number of people present in the campsite on the day of destruction are higher than those given by civil society activists who were present, who consider that the official numbers are exaggerated.

finding mission to Calais and the surrounding area in order to investigate impacts of the police clamp down on the situation of migrants and refugees rights in the region.

The findings of the mission are that the destruction of “the Jungle” made the situation worse for the migrants, in terms of having their rights respected. In general, the closing down of unauthorised camps does not do away with people’s need to move. Instead, they worsen the human rights situation of those most in need of protection.

A main reason why displaced persons live in unofficial camps and squatted houses is the lack of adapted structures for receiving persons on the move, many of whom are fleeing for their life and many of whom are children. When displaced persons succeed in lodging an asylum claim in France, there are not enough adapted structures for accommodating these. This is particularly so in Calais and its surrounding area. Therefore, we suggest that new reception centres should be established in areas with a high concentration of migrants, including in the region of Pas-de-Calais, and long-term solutions should be provided to further integrate persons already present in the territory.

The everyday and voluntary work of local organisations and activists has been rendered even more difficult by the destruction of “the Jungle” in Calais. This is partly due to the wide dispersal of the displaced in the coastal area, which makes it more difficult to reach those in need of services including legal aid.

The clamp-down the 22 September 2009 took place in a context of police harassments taking place before and after the destruction of “the Jungle”. This has contributed to increasing the suffering of the displaced persons and increasing stress among those who work with and for them. The continuous arrests, the destruction of the materials (including sleeping bags, tents and warm clothes necessary to survive the night) and the confiscation of personal belongings of displaced persons need to stop.

The situation in Calais and its surrounding area is a consequence of European policies. Similar clamp-downs take place elsewhere in Europe. On top of this, the application of the Dublin II Regulation creates inhumane conditions for asylum seekers, as it forces them to constantly be on the move, and they wait endlessly for their applications to be duly examined by the relevant country (usually the one through which they entered the EU).

The situation in Calais is thus an example of the dysfunctional European Asylum System in-the-making. The following points illustrate how the system does not, according to us, work: 1. Obstacles to filling asylum applications, 2. The non-compliance with minimum protection standards, 3. In some countries, there are problems relating to the access of language-learning and housing, which are preconditions for engaging in declared work once international protection has been granted. These factors condemn migrants to be wandering around.

The situation in Calais is regrettably exemplary of the situation in several parts of Europe and its immediate neighbourhood, when it comes to human mobility, as it shows a large number of migrants' lack of access to the most basic human rights in Europe.

The only positive aspect of the destruction of “the Jungle” was the increased attention by the international and national media on the situation of migrants and refugees in Calais.

The fact-finding mission took place from 25 to 29 January in Calais and the surrounding area, after which the draftsman continued the mission in Paris from 30 January to 2 February for additional information. The mission delegation included Nadia KHROUZ (Gadem/Migreurop), Anitta KYNSILEHTO (author of the report), Annapaola SPECCHIO (FIDH) and Caterina SPISSU (Amera). The mission delegation would like to thank all those who assisted and agreed to meet with the mission, and in particular Lily BOILLET (Terre d'errance), who accompanied the mission in the Calais area and Abdullah, who assisted with interpretation.

NOTE ON TERMINOLOGY: In this report, we speak of *migrants* and *refugees* as if these are differentiable categories. Despite the particular rights the latter are to be granted as confirmed in the Geneva Convention relating to the Status of Refugees of 1951 and Protocol of 1967, as well as in the European directives concerning international protection<sup>2</sup>, we would like to point out that these categories hardly capture the human variety found in Calais or elsewhere. Therefore, they do not denote any hierarchical distinction between “forced” or “voluntary” reasons for migration from our part, or claiming an ability to concretely evaluate a given person's situation when encountered during a short mission. Administrative categories such as that of *asylum-seeker* are only used when a quoted interviewee is employing it, or when referring to the administrative procedures or the press. “*Displaced persons*” is used to denote both migrants and refugees present in the region who are in transit, that is, those who do not reside there in any officially recognised manner.

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<sup>2</sup> Council Directive 2004/83/CE of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; and Council Directive 2005/85/CE of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

## **Introduction**

### **Calais: a border area, an area of passage**

The fight against undocumented migrants within the European Union member states as well as in its immediate neighbourhood does not cease to increase. Along with police action taken on the Union's outside borders, in the island of Lampedusa, Italy<sup>3</sup> and nearby the Spanish cities of Ceuta and Melilla in Northern Morocco<sup>4</sup>, several actions have also been undertaken at the Union's internal borders, namely in Patras, Greece<sup>5</sup>, and in Calais<sup>6</sup>.

Given its central location close to the European capitals of Brussels, London and Paris, the destruction of "the Jungle" became one of the most publicised events in the "fight against illegal migration" in Europe during the year 2009.

The operation of the 22 September 2009 was neither an isolated event nor a unique one in the migratory context of Calais and its surrounding area<sup>7</sup>. The question of migration in the Calais area has been high on the agenda for a long time already, as it is an area of passage with its short distance from the British shores. On the 31 December 2002, following an agreement between the British and the French governments, the Sangatte camp, which had been operated by the Red Cross since 1999 was closed, with the aim of "doing away with the question of migration in Calais"<sup>8</sup>. However, as the closing did not do away either with the need to move or the short distance to the UK, displaced persons continued to travel to Calais after the closing of the Sangatte camp, and still do so, even after the destruction of the unofficial "Pashtu camp" in September 2009.

This report first evaluates the immediate consequences of the destruction of "the Jungle" 22 September 2009 on the situation of migrants and refugees in the region of Calais/Pas-de-Calais. Rather than considering the destruction of the 22 September as an isolated event, this report believes it should be contextualized in the wider mosaic of European migration policies and a European Asylum System in-the-making. This is to argue that the current state of affairs creates inhuman situations both for people on the move within Europe as well as for those native inhabitants who do their best in providing humanitarian assistance for persons in need at the local level. Moreover, the existing system positions persons in need of and entitled to international protection unevenly depending on the country they first arrive to, their nationality of origin, etc. This unequal treatment materialises both in terms of access to formal protection, as well as in the everyday life in the country offering international protection (even if a positive decision on the case for

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<sup>3</sup> Migreuop (2009) Les frontières assassinées de l'Europe

<sup>4</sup> Migreuop (2007) Guerre aux migrants. Le livre noir de Ceuta et Melilla. Paris: Syllepse.

<sup>5</sup> MSF (2009) Patras, Greece: "All these people have lost their homes and safety overnight". Field news, 17.7.2009 [www.doctorswithoutborders.org/news/article.cfm?id=3737&cat=field-news](http://www.doctorswithoutborders.org/news/article.cfm?id=3737&cat=field-news)

<sup>6</sup> Migreuop (2009) Les frontières assassinées de l'Europe.

<sup>7</sup> CFDA (2008) La loi des "jungles". La situation des exilés sur le littoral de la Manche et de la Mer du Nord. Rapport de mission d'observation mai-juillet 2008. <http://cfda.rezo.net>

<sup>8</sup> Ibidem.

asylum is made). Unequal treatment and lack of social and economic rights push persons to move around within the EU/Europe in the search for a dignified life.

### **Chronology of events May 2009 –January 2010**

- May 2009: opening of the asylum desk at the sub-Préfecture of Calais
- 3 June 2009: opening of the UNHCR-FTDA office in Calais
- Summer 2009: the plan to destroy “the Jungle” was announced by the Minister of Immigration, Integration, National Identity and Inclusive Development
- 22 September 2009: destruction of “the Jungle”. According to the official reports, 276 persons were arrested on-site, of whom 125 unaccompanied minors who were placed into the departmental child protection units. 140 of those believed to be adults were placed in 9 different detention centres all over the mainland France (from Coquelles to Marseilles). Everyone arrested and detained were liberated in court afterwards.
- 21 October 2009: three persons of Afghan nationality were forcibly returned to Afghanistan in a charter flight organised together with the United Kingdom. Prior to the expulsion, the embassy of Afghanistan in France had refused to grant a laissez-passer to the persons to be returned, but despite this, France used a unilateral laissez-passer to return the persons.
- 14 December 2009: state of emergency due to freezing temperatures (level 2 of the Plan Grand Froid) is declared in the department of Pas-de-Calais
- 15 December 2009: the emergency housing (salle BCMO) is opened to host displaced persons in Calais during the winter nights (Plan Grand Froid)
- 16 December 2009: nine Afghans forcibly returned to Afghanistan in a charter flight organised together with the United Kingdom
- 19 January 2010: closing of the emergency housing (salle BCMO) for the displaced persons (termination of Plan Grand Froid)
- 27 January 2010: reopening of the emergency housing (salle BCMO) for the displaced persons



## **I – Police operation of September 22, 2009: goals and results**

On September 22, at about 7.30am, tens of CRS patrols surrounded the campsite “Pashtu Jungle” close to the harbour. After they had removed migrants and activists present in the campsite, three bulldozers, tens of trucks, and a company of woodmen followed in order to clean the estate and to avoid any future resettlements. We encountered Abdallah and Mounir, two 16-year-old Afghan boys, who were in the “Pashtu Jungle” the day it was destroyed. “When we were in the jungle, we were happy because we had a place to sleep. Meanwhile, we were angry because we didn’t know what was going to happen. [On the day of destruction] there were No Border activists and journalists. We knew some ten days in advance that the jungle was going to be destroyed.” Based on testimonies of activists and a written statement of honour by a migrants’ rights activist<sup>9</sup>, a student of Lebanese origin present in “the Jungle” during the police operation, only persons of Afghan nationality were targeted in the operation. Only interpreters in Farsi language were present the day of destruction. According to the above-mentioned written statement of honour, the student pretending to be a Palestinian refugee was immediately released when it was noticed that he spoke Arabic instead of any Afghan languages.

As a result of the massive police operation of the 22 September, according to official reports, 276 persons were arrested. Of the 276, 125 persons were recognised as unaccompanied minors upon their personal declaration. “Many minors were left behind without any assistance”, a No Border activist told us. 140 persons were transported by bus to detention centres all over France (including Marseilles, Nîmes and Toulouse) despite the fact that there were available places in Coquelles and Lille-Lesquin,<sup>10</sup> situated much closer to the destructed campsite. Of the 140, over 50 persons declared themselves as being minors, yet the same date of birth (1 January 1991) was indicated on their files. All 140 of those detained were released after their cases had been examined at court in different cities. As to the local context in Calais, new persons arrived already the 23 September, the day after the destruction of “the Jungle”.

The police had previously defended the operation to the public, by claiming it was a move in the fight against human trafficking: to dismantle the smuggling network operating in the region of Calais. Despite being advertised in advance as a crucial part in the fight against trafficking in human beings and highlighted as successful in the report published by the Ministry of Immigration on 12 January 2010<sup>11</sup>, the results of the destruction remain very faint in terms of the stated goals. None of the 276 arrested in Calais during the destruction were accused of either trafficking or smuggling. According to Daniel Dubois, director of the PAF (Police aux frontières), it is not during these kinds of events that traffickers or smugglers are to be caught in any case. We can therefore conclude that the media frenzy was the only outcome. “The destruction of the jungle was a media scoop for the UK. It also contributed to the impression as if the situation would

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<sup>9</sup> A copy of the written statement is at the disposal of the draftsperson.

<sup>10</sup> Information received from Cimade, present in all the detention centers in France until the end of 2009.

<sup>11</sup> « Eric Besson publie le rapport des services de la police nationale relatif à la pression migratoire dans le Calaisis » [http://www.immigration.gouv.fr/spip.php?page=actus&id\\_rubrique=254&id\\_article=2060](http://www.immigration.gouv.fr/spip.php?page=actus&id_rubrique=254&id_article=2060)

be different in other times but that is not true”, said MEP H el ene Flautre<sup>12</sup>. Alain Vogelweith (Directeur G en eral des Services du Conseil G en eral, Le D epartement Pas-de-Calais), continued: “They speak of closing but nothing has been closed. The destruction made it look as if there was international trafficking. They play a lot with words and concepts to hide the reality.”<sup>13</sup> The mayor of Norrent-Fontes stated: “They wanted to do the same thing as with the Sangatte camp, but people were troubled by such an intervention and mediatisation. People and some media were quick to note that the migrants were still there.”<sup>14</sup>

The only positive aspect of dismantling the "jungle" has been to increase the interest of national and international media on the situation of migrants and refugees in Calais. Members of our mission were witnesses of that interest: in Paris and Calais, we have met on different occasions and in different locations a team of France 3, and a BBC crew making a documentary about unaccompanied minors<sup>15</sup>.

Moreover, as for the potentiality in attacking trafficking networks by destroying campsites, the results in general remain very vague. According to a person who had resided in the destroyed “Pashtu camp”: “There is no link between the smugglers and the migrants in the camp. The migrants are autonomous in the daytime but at night, when they go to the parking lots [to get to the trucks], the migrants can only do what the smugglers tell them to. Most of the smugglers do not live with the migrants. And the prices for passing have gone up since the jungle was destroyed.” On certain occasions, when the police have been called to arrest well-known smugglers, the police have simply not turned up.<sup>16</sup>

Another publicly stated aim of the destruction was that an “individual solution” to each of the displaced persons present in Calais was needed. However, not one person we met during the fact-finding mission in Calais and Paris noted an amelioration of the living conditions of the displaced persons in the immediate or longer-term aftermath of the destruction. The only outcomes from the destruction were the following: 1. The representative of the UNHCR at the Calais office stated that the increased publicity was positive in order to bring national and international attention to the migration situation of Calais; 2. Some local activists noted an increase in the rates of passing to the UK in the month preceding the destruction.

In Paris we met a young man of Afghan nationality who had asked for asylum in France when he was arrested in the destroyed campsite the 22 September. With the help of French legal experts, he had managed to access housing in Paris while his case was being examined by the administration, but he regretted not being granted the possibility to study

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<sup>12</sup> In an interview with us, 25 January 2010.

<sup>13</sup> In an interview with us, 26 January 2010.

<sup>14</sup> In an interview with us, 26 January 2010.

<sup>15</sup> A journalist from France 3 have asked to follow our mission, we refused this request to preserve the trust of our interlocutors.

<sup>16</sup> In Angres, we were told about an incident from autumn 2009, where Vietnamese migrants had called the police from their campsite. They asked for help to protect them from “Chechnyan mafia” who had attacked the camp, armed with Kalashnikovs. The police only arrived the day after.

the French language so as to be able to integrate the French society in any a meaningful way.

During our meeting with the representatives of the French Ministry of Immigration, Integration, National Identity and Inclusive Development, we inquired into the overall costs of the police operation. However, as of 5 May 2010, more than three months after our meeting with the representatives, we have not received any reply to the questionnaire<sup>17</sup>. The representatives promised answer via email, due to the fact that they did not have the numbers requested available during the meeting. We strongly regret this lack of continuing cooperation while remaining grateful for the meeting itself<sup>18</sup> and hope that at some point the amount of French tax-payers' money spent on the police operation on the 22nd September will be publicly announced. The same applies to similar events and the overall costs of migration control within the European Union member-states and in its immediate neighbourhood; a context where it is extremely difficult to gather any detailed calculations of the costs of the undertaken policies. These figures should be rendered public in a detailed manner so that taxpayers all across the European Union have exact information on how their money is being spent.

The destruction of “the Jungle” seems to have aimed at breaking down the possibilities of self-organization of displaced persons residing in Calais. By self-organization we refer here to the system of functioning of “the Jungle”, with a shop, a mosque, etc. in the camp, explained in detail by many of our interlocutors. The migrants had shown a capacity of organization and taking action, and thus were seen as a threat by the French or the British authorities. However, despite this clear sign of agency, they were never consulted during the process, seen either as ones to be eliminated, or, at best, assisted.

## **II – The situation of migrants and refugees in Calais and the surrounding area**

When conducting the mission in Calais in January 2010 the delegation did not meet anyone who consider the situation of migrants and refugees in Calais and its surrounding area to have improved since the destruction of “the Jungle” (even during its existence was it hardly an ideal living place). On the contrary, everyone we talked to said that the situation had worsened after the destruction. The number of migrants had diminished in the city of Calais itself partly due to the fact that, tired of the constant police harassment, many had resorted to surrounding areas while waiting for a chance to pass to the United Kingdom. The mission delegation observed the results of some of this harassment very concretely:

In the evening of January 27 we visited the “African squat” (squat Paigniez) to talk to some fifty persons of different nationalities (e.g. Ethiopia, Somalia, Sudan) from the African continent residing there. The housing conditions were far below any adequate

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<sup>17</sup> The questionnaire is an annex (3) of this report.

<sup>18</sup> Reminders for fulfilling the promise to answer the questionnaire were sent by the draftsman via email February 12<sup>th</sup> and March 17<sup>th</sup>, 2010. No reply was received to either one of these reminders.

living standards. To give a concrete description: the abandoned industrial hall had been barred by a cement wall to forbid the access to the building; heating and light were provided by six makeshift fireplaces to survive the night in low winter temperatures and to use for cooking; a big hole in the middle of the hall served as a trash deposit area and was used as a toilet for the residents. We did however see tents and blankets provided by local associative volunteers, and the atmosphere was friendly and relaxed.

On January 29, while visiting the health centre for migrants we learnt that the police had evacuated the building (squat Paigniez) in the early morning of the same day, arrested the persons residing there and confiscated all blankets, tents, personal belongings and the wood used for cooking and heating. Three hours later almost all the arrested persons had been released but the confiscated items had not been returned to their owners. Late in the evening of the 29<sup>th</sup> the delegation visited the squat for a second time and observed how empty the squat was. Moreover, we noticed that the number of residents had fallen dramatically as the squat was not considered a safe place after the police operation in the morning. The remaining squat residents were scared and the atmosphere was very tense. “How are we to survive the night?” they asked, worried about the temperatures dropping several degrees below zero. Within the short time we stayed there during this second visit, there were two persons who fell down into the big holes in the middle of the floor because of the lack of light.

As the extract above shows, harassment is the best word to describe the everyday conditions of encounters between the police and the displaced persons<sup>19</sup>. From these observations and other narratives we collected, it seems a recurrent practice by the police to arrest the undocumented persons and confiscate their personal belongings. The arrests usually last for a few hours after which the persons are released, just to find themselves in the street without their personal belongings and warm items to survive the following nights in freezing temperatures (as was the case 29 January 2010). Personal belongings also represent the concrete sign of humanitarian assistance: sleeping-bags, tents, blankets and warm winter clothes are provided by French citizens and migrants’ rights activists from other countries. The only occasion we witnessed encounters between the police and the displaced took place close to a campsite situated near Dunkerque. Here, the migrants were warned against recharging their mobile phones at an electric site “because it is very dangerous”, said the policeman who came to check the campsite. On this occasion, the police behaviour was extremely polite, probably influenced by the fact that our mission team was accompanied by two representatives from Médecins du Monde wearing visible humanitarian signs on their clothes.

Civil society activists work within different local associations and organisations so as to provide support for migrants’ everyday struggle for existence. It seems that constant

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<sup>19</sup> For a day-by-day update on the situation in Calais, see the blog of Calais Migrant Solidarity. For descriptions of similar events in France and elsewhere, see e.g. Amnesty France 2005 *Pour une véritable justice. Mettre fin à l’impunité de fait des agents de la force publique dans des cas de coups de feu, de morts en garde à vue, de torture et autres mauvais traitements*; Migreurop 2007 *Guerre aux migrants. Le livre noir de Ceuta et Melilla*. Paris: Syllepse on Morocco-Spain border area near the cities of Ceuta and Melilla.

short-term arrests and confiscations are used as a tactic by the local authorities to discourage the displaced persons to stay in the city of Calais; a tactic which does not seem to discourage persons to completely abandon Calais but rather aimed at systematically degrading them. In general, providing humanitarian assistance to the displaced seems to be tolerated by the authorities. Local associations are, however, to limit their activities strictly to the humanitarian sphere rather than offering legal advice and helping the displaced in accessing to their rights. Several of our interlocutors from local civil society organisations underlined the need for providing more legal advice on the procedures to access to rights.



A campsite near Dunkerque.

Due to the extreme winter conditions in the winter 2009–2010, a State of Emergency (level 2/3) was declared in the region on 14 December 2009. Accompanying this is the administrative measure, *Plan Grand Froid*, to in particular protect homeless persons from suffering from and even dying of cold. However, in the city of Calais the hall (salle BCMO) offered for a sleeping place for the homeless was closed on 19 January, then reopened again the 27 January and taken care of by the *Collectif C'Sur*. The closing and reopening of the emergency housing depending on the temperature continued until a final closing 11 March 2010. While open, the hall was at the disposal of the migrants for night-time use only, from 6pm until 10am, following the orders of the municipal authorities. The persons staying overnight were provided with cardboard to sleep on and blankets to cover themselves. All sleeping equipment was collected in the morning in order to be distributed again in the evening. Because there was no system available for the persons to use the same blanket for more than one night in a row, it was difficult to avoid infectious

diseases from spreading, such as scabies. There were no bathing facilities available because the facilities of the building were locked; a couple of removable toilets were located outside the hall. The eight showers provided for the migrants in the city of Calais are located at the outskirts of the city. Different units of police (CRS, PAF, local police) patrolled in the immediate vicinity of the hall where the migrants stayed overnight.



The CRS stationed some 200 metres from the BCMO, January 29 2010.

In other towns in the region, for example Norrent-Fontes and Steenvorde, the sites opened for the homeless were kept open without interruption for the whole duration of winter, and kept open also during the daytime to offer shelter against cold, rainy and windy weather. Let us focus on the case of Norrent-Fontes to give an example of how some local councillors and residents mobilised so as to organise the cohabitation of the displaced and the local residents.

In February 2008, the migrant camp in Norrent-Fontes was destroyed. Following the elections, the political balance shifted and the local governor (sous-préfet) was replaced. The mayor, a representative elected by the people as well as representing the state at the municipal level, contacted the local governor in Calais to negotiate the terms of organising the question of the displaced locally. Some months later the new local governor agreed that the camp could be repaired, though the state would not provide any financial assistance. Establishing the camp first caused trouble with the farmers, so a communal space was set at the disposal of the camp. Public land also prevents the police

from intervening in the campsite, given that it is not private property that was being affected.

Following an agreement with the local councillors of nearby villages, the displaced were granted the possibility of using public showers in different villages every other week, so that one village would not become too crowded.

From our encounters with different interlocutors it was discovered that there were several other destructions of campsites around September 2009. Some examples are: the destruction of the camp in Angres and arrests of Vietnamese persons; destruction of other places for dwelling in Calais at the same time, for example: the “Hazara camp” and several huts in the “Palestinian camp” were destroyed in August; the “squat Paigniez” was barred in September; there were arrests simultaneously with the destruction of “the Jungle” on the 22 September in Loon-Plage and furthermore on 17 November when some 30–40 persons were arrested same place. Dogs and tear gas were used to frighten the displaced and the civil society activists trying to protect the rights of the displaced. At the same time, Roma camps were being destroyed immediately after the 22 September and some sixty Roma were arrested; consequently, Roma families were dispersed.

There is also the phenomenon of accusations for “crime of solidarity” (*délit de solidarité*)<sup>20</sup> which can be caused by the most mundane of acts. Active members of local associations are constantly observed, even followed and filmed by the police. The reasons for harassment may vary from hosting a person in an irregular situation, offering a lift to a migrant, to recharging the mobile phone of a migrant. The identity control is externalised to whatever actor: a taxi-driver told us that he and his colleagues can be accused by the police for driving a client in an irregular situation.

Due to the aggressive police behaviour and frequent fears of arrests and confiscation of personal belongings, migrants and refugees prefer to reside outside the city of Calais. Being more scattered now than before 22 September, 2009, they are less likely to have access to the services of the France Terre d’Asile and the UNHCR representation in the city of Calais in order to receive information on asylum in France and help with the preparation of asylum applications. The reason why we say “less likely” is that the number of persons assisting the asylum seekers (1 FTDA employee, 1 UNHCR employee, 1 translator) is very small considering the average number of displaced persons temporarily residing in the area, as well as considering the difficulty of accessing the unofficial camps in different sites around the department of Pas-de-Calais and Dunkerque area. While visiting Calais prior to the opening of the office in June 2009, the UNHCR press officer Marie-Ange Lescure had explained that:

We will put in place the same measures as when we intervene with refugees in crisis situations. With a laptop, we will get to the field as much as possible to meet the migrants there where they eat and receive medical care. In Chad or in Sudan, the refugees do not have the means to come to

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<sup>20</sup> FIDH et OMCT (2009) *Délit de solidarité. Stigmatisation, répression et intimidation des défenseurs des droits des migrants*.  
[http://www.omct.org/pdf/Observatory/2009/Rapport\\_de\\_mission\\_France\\_110609.pdf](http://www.omct.org/pdf/Observatory/2009/Rapport_de_mission_France_110609.pdf)

us; it is the UNHCR that goes to them. In Calais, it will be the same thing. (*Nord Littoral* 29 May 2009)

To fully respond to the humanitarian crisis situation as described above, we doubt that the team established at the time of the mission delegation's visit can meet the information needs in Calais and especially the larger area surrounding the city and the coastal area extending from Dunkerque to Cherbourg. During a meeting with the mission delegation on 27 January the head of UNHCR delegation in Calais, Maureen McBrien, clarified to us that, contrary to some public information circulating, she does not help the persons seeking asylum with their applications because the UNHCR is a partner of OFPRA<sup>21</sup>, which is part of its administrative council. Concrete help offered by a UNHCR representative would thus position asylum applicants differently vis-à-vis the chances concerning the success of the asylum claim, McBrien explained. Therefore, there remains only one person from the FTDA to help the claimants with their applications, and it is clear that even with efforts combined with volunteers and few salaried staff-members from the local associations, this investment in personnel is insufficient in order to provide the persons in need of international protection with necessary information and help with their asylum procedure. Given the extensive network of volunteers currently taking care of the displaced, there would be enough potential of persons already familiar with the specificities of the region to enable a smooth hiring process of more personnel for giving information and legal aid for the displaced.

The de facto opening of the asylum desk at the sub-Préfecture in Calais in the beginning of summer 2009 had eased the access to the asylum process in that the persons asking for asylum no longer needed to go to the Préfecture in Lille or in the sub-Préfecture of Arras to lodge their claim. In short, the distance had considerably shortened given that Calais and its surroundings have been the main points of transit and short-term stay in Northern France for the displaced persons in the area. During the first months of its opening, from May to December 2009, 271 applications for asylum had been lodged in Calais. The claimants were of 18 different nationalities, half of the applications by persons of Afghan nationality. Of the 271, seven persons have been recognised as refugees, one person has received subsidiary protection, 79 persons have received a temporary residence permit (out of whom 69 have accepted a placement in housing services), and 135 were Dublin II cases to be returned to the EU countries responsible for examining their asylum applications. Of the 135 Dublin II cases, we received no information on what had happened to them; whether the responsible EU country had accepted to examine their application or the demand was refused or still pending, or whether the persons concerned had received housing a priori granted to Dublin II cases, etc.

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<sup>21</sup> Office français de protection des réfugiés et des apatrides – French office for the protection of refugees and stateless persons. OFPRA is the body entrusted with the task of deciding on refugee status.



### III – Systems of protection

In terms of access to asylum, improvements at the local level can be seen in the de facto opening of the asylum desk at the sub-Préfecture of Calais by the end of May 2009. Before the opening of this desk, applicants needed to go to the sub-Préfecture in Arras or the Préfecture in Lille first to lodge the asylum claim and again for the subsequent interviews. After this they had to go to Paris to OFPRA<sup>22</sup> and CNDA<sup>23</sup>, which demands a considerable amount of time and money to be used for transport. Alongside the opening of the asylum desk, an office of the France Terre d'Asile (FTDA) and the UNHCR was opened in order to provide information on gaining asylum in France and to help in composing the files. In practice, as already mentioned, this is done mainly by the one employee of the FTDA with the help of the UNHCR translator; the UNHCR protection officer accompanies the FTDA employee in the field visits to the makeshift camps in Calais and its surrounding area but does not help with the files. Also, the asylum claims are piling up at the Calais asylum office because of lack of personnel<sup>24</sup>.

We also encountered persons who had different types of documents concerning their cases for asylum and consequently their residence in some of the European Union member states (for example, temporary humanitarian protection received from Italy). A major reason for the persons to continue their journey is the lack of adequate reception conditions in many countries: even if they are officially recognised as persons entitled to international protection, life is rendered impossible due to the lack of housing, language instruction, and other essential elements of everyday life. This is the current situation despite the provisions in different legislations, and especially the Reception Directive of 2003<sup>25</sup>. Therefore the displaced persons are obliged to continue their journey in order to search for a life elsewhere. To respond to these needs, new reception centres should be established in the areas of high concentration of persons seeking asylum, including in the region of Pas-de-Calais, and long-term solutions are necessary to better integrate persons already in the territory.

#### • Right to defence and right to appeal

In general, we noted that specific problems regarding this subject were the shortness of time to appeal and difficulties in the access to legal aid. To give an example, retold by several of our interlocutors: When a person receives an order for removal or APRF (Arrêté Préfectoral de Reconduite à la Frontière) if s/he receives it in person<sup>26</sup> when arrested, s/he has to appeal within 48 hours to the administrative court. The appeal can happen, if the recipient is dissatisfied with the decision to expulse her/him, or does not

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<sup>22</sup> Office français de protection des réfugiés et des apatrides.

<sup>23</sup> Cour nationale du droit d'asile.

<sup>24</sup> Information retrieved from the blog of Calais Migrant Solidarity.

<sup>25</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

<sup>26</sup> 7 days for those who receive the order for removal by mail. For the displaced in Calais and its surrounding area, the usual way of receiving the ARPF is in person during the frequent arrests.

agree with the choice of the country where s/he would be returned to. Receiving the note, in French without translation, from the police or via the post office requires that the recipient is aware of her/his rights, obligations and the procedures to follow, and that s/he knows a competent lawyer to help with the appeal in very short delays. At the administrative court there usually are lawyers available for free to defend the clients, but they are not always fully competent, and they only receive the case and meet their clients a few minutes before the court hearing, which hardly enables them to prepare the case.

Offering advice of this kind for those in need puts a considerable pressure upon people involved with and worrying over the displaced persons, mostly doing unpaid voluntary work. Moreover, it requires an extensive network of lawyers and other legal specialists ready to prepare the cases within hours, again for free. Given that not everyone who receives an APRF is well-informed about the networks and/or organisations, and there are not always people with the practical advice to help the person immediately after the reception of the APRF, this situation is unbearable especially for persons who might in fact be entitled to international protection.

In France, interpretation services needed to prepare the defence, or for the case, are not provided by the state. Even the "return directive" provides for the obligation of giving migrants explanations in a language they understand or should understand<sup>27</sup>, and requires that s/he be given language assistance, guaranteeing the effectiveness of recourse<sup>28</sup>. Usually, these are provided by unpaid volunteering interpreters. In general, the interpretation is provided in the court, though not for the hearings concerning removal orders (e.g. APRF). Even if interpretation is provided, it is not always adequate: as an example, a legal advisor currently working for the FTDA told us about the case a young Afghan (Hazara) person whose interpreter, of Pakistani origin, did not understand him. As a result, the defence could not be made, and he was sentenced to prison for eight months.

Officially until 2 June 2009 and in practice until 1 January 2010, the Cimade was the only association with access to detention centres in France, to offer legal aid for those in need. After a public call for proposals, despite protests on behalf of civil society organisations, a new distribution of tasks was announced 10 April 2009, and so now, five different organisations provide legal aid within detention centres<sup>29</sup>, which will continue over the next three years. We are afraid that, given the scattering of legal aid provision from the beginning of 2010 onwards, a complete picture of the conditions of the detained persons will be difficult to gather. Cimade also published annual reports on the conditions

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<sup>27</sup> Article 12 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

<sup>28</sup> Article 13 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

<sup>29</sup> These are (in alphabetical order): Association Service Social Familial Migrants (Bobigny, Paris); Cimade (Bordeaux, Hendaye, Mesnil-Amelot 1-3, Nantes, Nîmes, Perpignan, Rennes, Sète, Toulouse); Forum Réfugiés (Lyon, Marseille, Nice); France Terre d'Asile (Coquelles, Palaiseau, Plaisir, Rouen-Oissel); Ordre de Malte France (Geispolsheim, Lille 1&2, Metz).

in the detention centres until 2009, but due to the lack of comprehensive data since the beginning of 2010, the publication might come to an end. It thus seems that the scattering of legal aid provision can be seen as a means by the French authorities to prevent the publication of critical reports on the conditions of detention in France and thereby a means at weakening the defence of migrant subjects.

The arrested persons of 22 September 2009 were dispersed in detention centres located in different cities<sup>30</sup>. This act of dispersing the arrested seemed to aim at rendering it more difficult, if not impossible, for associations and supporters to prepare the cases. This was however a miscalculation on behalf of the commanding authorities. The networks of lawyers, through their syndicates, were quickly mobilised and the defence was well-prepared with the help of local migrants' rights activists from Calais who knew the arrested persons. All of the arrested persons were released in court.

### • Unaccompanied minors

A surprisingly great number of those we met while on mission in Calais and its surrounding area were unaccompanied minors, most of them aged between 14 and 17 years. The youngest person we met was an eleven-year-old boy. Despite the fact that they are entitled to particular protection, many find themselves living in the streets while waiting for a chance to continue their journey towards the United Kingdom or Northern Europe.

We wanted to find out why there was such a big number of unaccompanied minors. Several explanations can be provided for this. There are very few places in any adapted structures for foreign unaccompanied minors. In the Parisian area, there is one specialised centre for unaccompanied minors that offers psycho-social counselling, language courses, and aims at facilitating entry to the schooling system and to others ways of integrating them into the French society. In the department of Pas-de-Calais, unaccompanied minors are placed in the same structures as the French minors under protection. This means that often in a given centre, the foreign minor stands out and is isolated, as s/he is the only one who has fled for his/her life, then travelled across several countries in order to reach France, and probably also the only person without any previous knowledge of the French language. One major problem that many local civil society activists pointed out to us was that in Pas-de-Calais, as opposed to any other department in France, the young person needs to pass via the police before accessing to facilities for minors. The minors become used to fearing the police because of harassment and frequent arrests, and it is therefore very difficult to convince them to go to the police in order to be further directed at the social services destined to provide assistance for the underage persons. Moreover, in Dunkerque we met with young persons who held documents stating their age issued by the Préfecture, so as to prove that they are minors. In Calais, such documents do not exist.

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<sup>30</sup> Lyon (10), Marseille (8), Metz (2), Nîmes (40), Mesnil-Amelot (15), Rennes (15), Rouen (10), Toulouse (28), and Vincennes (10).

Children under the age of eighteen years old are entitled to special protection due to their young age and consequent vulnerability; however unaccompanied minors are not always recognised as children. Minors are being kept in the same detention centres as adults, contrary to both to international human rights standards, namely the International Convention for the Rights of the Child, and the provisions within the national legislation in France<sup>31</sup>. The immediate aftermath of 22 September 2009 serves as a further example of the mishandling of children. Of the 276 of those arrested in “the Jungle”, 125 persons were recognised as unaccompanied minors upon their personal declaration and placed in the special child protection services. However, “many minors were left behind without any assistance”, a No Border activist informed us. Of the 140 persons transported to detention centres all over France, over 50 persons declared themselves as being minors, yet the same date of birth (1 January 1991) was indicated on their files, as if they were aged above maturity. In addition, it needs to be noted that the tests used for the age determination are very costly and the results remain very unsure, with up to two years of margin.

On the 25 January 2010, we met with two young Afghan boys who brought the following to our attention: “Two days ago the police followed me. They follow us day and night. In the evening I didn’t sleep, I had nowhere to sleep. I was arrested and released within two hours. In two months I have spent fifteen days in custody. Each time I told the police my age [15, then 16 years]”, recounted one of them. The other continued: “I got hurt when I fled the police. An association took care of me. I walk every night. An association came to look for me once when the police had arrested me.” A third boy, encountered in a different location, told us how he had been caught by the police when already in the truck. Getting down, he broke his legs. The police took him to the hospital to get care for his legs, but he was sent out within a few hours “due to lack of available beds”. There clearly is a lack of adapted structures for unaccompanied minors in the region; meanwhile the population present is very young.

#### • **Forced return**

The principle of *non-refoulement* is the cornerstone of refugee protection and is enshrined in article 33 of the Convention relating to the Status of Refugee which states “*No contracting state shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion*”. This means that no person can forcibly be returned to a country where s/he may risk persecution, or may risk of being subject to torture or other forms of ill-treatment. Moreover, the expulsion of minors cannot be accepted, and a special protection is used with unaccompanied minors as provided by the UN Convention of the Rights of the Child, articles 20 and 22.

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<sup>31</sup> Le Cour Grandmaison Olivier, Lhuillier Gilles, Valluy Jérôme (2007) : Introduction. Quels Camps ? Quel retour ? In Le Cour Grandmaison Olivier, Lhuillier Gilles, Valluy Jérôme (eds.) *Le retour des camps ? Sangatte, Lampedusa, Guantanamo...*, 5–13. Paris: Autrement.

France forcibly returned three Afghans in October 2009 and nine Afghans in December 2009 in common charter flights together with the UK. None of those forcibly returned were among those arrested the 22 September 2009. The first three to be deported had refused an appeal to the European Court for Human Rights in the mistaken conviction that their deportation would not be possible due to the refusal by the Afghan authorities to grant a *laissez-passer* for the persons to be deported. However, France issued a unilateral *laissez-passer* so as to forcibly return the persons and thus they were expelled. Under the principle of *non-refoulement*, nobody should be deported to Afghanistan given the current situation in the country.

#### IV – The role of the European Court for Human Rights

The European Convention on Human Rights (“the ECHR”) establishes the principle of *non-refoulement* through its case-law and article 3 of the ECHR that extended the principle of *non-refoulement* to all persons who may be exposed to a risk of torture, inhuman treatment or punishment should they be returned to a particular country<sup>32</sup>. The principle applies not only in respect to return to the country of origin but also to any other country to which the person may subsequently be moved. States parties are obliged to examine whether a relevant risk would incur through chain deportation or indirect *refoulement*<sup>33</sup>.

The European Court for Human Rights can be used as a mechanism to halt forced deportation, both within the European Union (Dublin II removals) and to the countries of origin. The Court has found that a state sending an asylum-seeker to a third country pursuant to the Dublin Regulation would also be responsible if there was a real risk that the person would be sent on from that third country to a country where he faced treatment, contrary to article 3<sup>34</sup>. In autumn 2008, some fifty cases of Afghans to be forcibly returned from France were appealed for. In some earlier instances, for example the case of Kosovars during the war in 1999, the Court had pronounced a categorical prohibition to forcibly deport any Kosovar. As for the Afghan nationals in 2008, however, the prohibitions were examined on a case by case basis; thus each person needed to appeal individually.

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<sup>32</sup> See *Chahal v. the United Kingdom* judgement 15 November 1996; *Saadi v. Italy* judgement 28 February 2008; *Muslim v. Turkey* judgement 26 April 2005, §75; *Vilvatajah v. the United Kingdom* judgement 31 October 1991; Committee of the Human Rights application number 1051/2002 *Ahani v. Canada* judgement 14 June 2004, §10.10; Committee against the Torture, see the *Concluding observations on the Periodic Report of Canada*, 7 July 2005, UN CAT/C/CR/34/CAN §§ 4-5; the *Resolution 61/153 on the Torture and other Cruel, Inhuman and Degrading treatment or punishment*, 16 December 2006, UN A/RES/61/153 and *Resolution 62/148 on Torture and other Cruel Inhuman and Degrading treatment or punishment* 18 December 2007, UN A/RES/62/148 § 9-12.

<sup>33</sup> See *Hussun and others v. Italy* declared admissible on 11 May 2006; *T.I. v. the United Kingdom* 7 May 2000.

<sup>34</sup> See *Ti. v. the United Kingdom*, 7 March 2000; *S.D. v. Greek* application no. 53541/07, 11 June 2009.

## V – The European Policy on Asylum: State of Art

Since 1999, the year the Amsterdam treaty was put into force as well as the agreement on the Tampere Programme (2000–2004), the European Union has affirmed its goal of building a coherent European-wide system of refugee protection as part of its policy on human migration. The following years have witnessed subsequent policy programs, namely The Hague Programme (2005–2009) and the most recent Stockholm Programme (2010–2014), which provide further steps in the domain of asylum. Up until now, there have been numerous directives contributing towards the building of a policy on asylum: the Reception Conditions Directive (2003)<sup>35</sup>; the Asylum Procedures Directive (2005)<sup>36</sup>; the Qualification Directive (2004)<sup>37</sup>; the Dublin Regulation (2003)<sup>38</sup> and, as the other side of the coin we could add; the Return Directive (2008)<sup>39</sup> for removing those who have not been granted international protection. The European Asylum Support Office is to be opened in Malta with the mandate to coordinate national practices and align existing rules concerning asylum in the EU.

Nevertheless, despite the Directives concerning the procedures and reception conditions of persons seeking international protection, formally agreed upon since 2003, at the practical level their implementation remains unachieved. To take examples from Calais and its surrounding area, we will now look more closely at reasons for the persons to continue their journey across the EU member states. Why would they not lodge an asylum claim in France?

Two reasons can be provided: 1) given the application of the Dublin II Regulation and the Eurodac fingerprinting system, they would soon be returned or asked to return elsewhere, most probably to Greece or Italy which are most often the first countries of arrival. Considering that their applications would very likely be rejected if ever offered the possibility to lodge an asylum claim (notably in Greece), given the uneven rates of recognition of asylum claims in different states, they do not want to risk being deported to their countries of origin from where they fled. In Italy, even if the application was accepted and humanitarian protection formally offered, the possibilities for finding housing and work seem near inexistent, thus staying there is not considered a viable option. 2) There is a serious lack of information on their rights to housing etc. when applying for asylum in France. In fact it seems to be widely assumed or known that even

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<sup>35</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

<sup>36</sup> Council Directive 2005/85/CE of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status.

<sup>37</sup> Council Directive 2004/83/CE of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

<sup>38</sup> Council Regulation (EC) 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the member states by a third-country national.

<sup>39</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals.

those who do decide to lodge their asylum application in France will not in fact receive the provisions, such as housing, they are entitled to.

On the first point, we met people who hold a valid residence permit in other Member States than France. Thus, in 2009, Italy granted international protection to nearly 45% of the applicants, to a much wider extent than other EU Member States, such as Greece where the rate of acceptance did not exceed 0.5% of requests in 2007, and barely 1.37% in 2009<sup>40</sup>. In France, the recognition rate for 2009 was 13, 45%<sup>41</sup>.

In 2008, France had registered the highest acceptance rate - in absolute figures – of the 27 UE member states<sup>42</sup>. However, having obtained a temporary permission to stay and a work permit, at least on paper, is far from being synonymous with good living conditions. Adding to legal and administrative difficulties there is the hostile political rhetoric. Not proficient enough in the language to find a decent job, faced with rising unemployment and even a spate of racist attacks, as in January 2010, migrants had no other choice but to continue their journey through Europe.

In the UK, it has for a long time been easier to access the labour market and the practicing of a global language mastered by many has contributed to the UK being a favourite destination for many migrants. Moreover, as a group of Eritrean nationals emphasised, reaching relatives and friends, and the community already established in the UK, would offer necessary support to start a life in dignity in the UK. These prospects represent an important reason for continuing the journey towards the UK.

- **Access to Europe: whither legal routes?**

Refugees find it extremely difficult to access Europe in order to seek asylum. Outside the small quotas of resettlement designed for refugees recognised by the UNHCR implemented by very few member states (e.g. Denmark, Finland, the Netherlands, Sweden), legal routes to enter the area of European Union in order to enjoy international

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<sup>40</sup> European Council for Refugees and Exiles ECRE (2008a) Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered et Eurostat, Asylum applicants and first instance decisions on asylum applications in Q4 200, data in focus 18/2010, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-10-018/EN/KS-QA-10-018-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-10-018/EN/KS-QA-10-018-EN.PDF)

<sup>41</sup> Eurostat, Asylum applicants and first instance decisions on asylum applications in Q4 200, data in focus 18/2010, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-10-018/EN/KS-QA-10-018-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-10-018/EN/KS-QA-10-018-EN.PDF)

<sup>42</sup> Juchno, Piotr (2009) 75 thousand asylum seekers granted protection status in EU in 2008. Eurostat – Statistics in focus, 92/2009. In 2009, always in absolute numbers, France was preceded by Sweden, Germany and the UK. Voy. Eurostat, Asylum applicants and first instance decisions on asylum applications in Q4 200, data in focus 18/2010. [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-10-018/EN/KS-QA-10-018-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-10-018/EN/KS-QA-10-018-EN.PDF)

protection and especially to seek asylum in any of the European Union member-states do not exist<sup>43</sup>.

Moreover, it is worth remembering that the signing of the Italy-Libya Treaty on Friendship, Partnership and Cooperation (article 19), by endorsing a mutual collaboration in the fight against illegal immigration, has important consequences to the whole system. Italy's decision to return boatloads of migrants caught in the international sea area to Libya, and the financial support given by the Italian government and the European Union<sup>44</sup> in order to prevent migrants and refugees from approaching the EU member states represent the complementary side of the unfair system built by the European Union.

- **The Dublin II Regulation as a hindrance to refugees' rights**

The Dublin II Regulation<sup>45</sup> determines the state responsible for examining the asylum claim within the adhering parties to the Dublin Convention. The responsibility is determined so as to ensure that every asylum application is duly examined and to prevent "asylum shopping", that is, having multiple applications for asylum lodged simultaneously in several member states by one person. In practice, nevertheless, application of the Dublin II Regulation has created uneven conditions for access to a fair asylum process. The current application of the Dublin II Regulation creates major obstacles to asylum in the European Union member states and often prevents refugees from access to international protection in the EU<sup>46</sup>.

In its own evaluation of the Dublin system, the European Commission concluded in 2007 that the system functions well, that the Dublin Regulation was in general being applied in a satisfactory manner and that it did provide a workable system for determining responsibility for the examination of asylum applications<sup>47</sup>. Meanwhile the report did state very clearly that the system was extremely difficult to evaluate: the statistics provided by the member states were very difficult to analyse<sup>48</sup> and it was not possible to evaluate the cost of the Dublin system due to lack of data<sup>49</sup>. The report also stated certain

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<sup>43</sup> 43European Council for Refugees and Exiles ECRE (2007) *Defending Refugees' Access to Protection in Europe*. Brussels: ECRE. <http://www.ecre.org/files/Access.pdf>; Gammeltoft-Hansen, Thomas; Gammeltoft-Hansen Hans (2008) *The Right to Seek – Revisited. On the UN Human Rights Declaration Article 14 and Access to Asylum Procedures in the EU*. *European Journal of Migration and Law* 10:4, 439–459.

<sup>44</sup> Cf. [http://www.cermam.org/en/logs/zoom/the\\_italylibya\\_treaty\\_on\\_frien\\_1/](http://www.cermam.org/en/logs/zoom/the_italylibya_treaty_on_frien_1/)

<sup>45</sup> Council Regulation (EC) 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national.

<sup>46</sup> European Council for Refugees and Exiles ECRE (2008a) *Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered*.

<sup>47</sup> Commission of European Communities (2007) *Report of the Commission to the European Parliament and the Council on the evaluation of the Dublin system*. COM (2007) 299 final, Official Journal C 191 17.8.2007,6

<sup>48</sup> *Ibidem*, 3

<sup>49</sup> *Ibidem*, 13



elements that need to be taken into account for the system to function: 1) “examination of an asylum application” as defined in the Dublin Regulation has to be interpreted in accordance with the Qualification Directive<sup>50</sup>. In fact, the Dublin regulation does not exhaustively define “vulnerable asylum-seekers”. It refers to vulnerable groups only in the context of the humanitarian clause which can be applied for unaccompanied minors, for pregnant women and newborn children, those suffering from a serious illness, severe handicap, persons who have subjected to torture, rape and other serious forms of psychological, physical or sexual violence; 2) the system needs to be applied in consistency with the European asylum acquis, namely in that applicants for/beneficiaries of subsidiary protection need to enjoy rights to family reunification as provided in the Dublin Regulation, even if they were not initially included therein.

The regulation contains a possibility, called *the sovereignty clause* (Art. 3(2) of the Dublin Regulation), for a state party that is not defined primarily responsible to examine the asylum application lodged in its territory. However, this possibility is seldom used<sup>51</sup>. In its evaluation of the Dublin system the European Commission underlined that the application of the sovereignty clause for humanitarian reasons should be encouraged<sup>52</sup>. Many civil society organisations<sup>53</sup> have continuously stressed the need to suppress the Dublin system given the uneven protection the current European Asylum System in-the-making offers to persons seeking asylum within the European Union member states. ECRE has also denounced the huge disparities found from one “Dublin State” to another in relation to housing, material benefits and access to healthcare, contrary to the European Union’s Reception Directive which states that all EU States have to provide similar standards of support to asylum-seekers.

As for the European Asylum System to function, the level of formal protection needs to be fully coherent with social and economic rights and the provisions of the Reception directive should effectively be endorsed as the minimum standards in all the member states.

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<sup>50</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

<sup>51</sup> The member states are fairly reluctant to publicly share the information concerning the use of the sovereignty clause. To give an example of numbers: according to a civil servant from Finland, the clause has been applied in some fifty individual cases since the entry into force of the Dublin II Regulation, despite the ministerial affirmation, in May 2008, concerning the non-return of Iraqi asylum seekers to Greece, and the very current knowledge of the deteriorating conditions for persons upon an intra-EU removal to some of the countries most exposed to migration.

<sup>52</sup> Commission of European Communities, op.cit.,7

<sup>53</sup> European Council for Refugees and Exiles ECRE (2008a) Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered

## **VI – Recommendations**

### **Recommendations**

#### To the European Union:

The system of Dublin II, should be revised in order to allow asylum seekers to apply for refugee status in the country of their choice.

A mechanism should ensure that the asylum systems in each EU member state respect international obligations on refugee and human rights law. Access to asylum procedure is a prerequisite but does not suffice in itself; it needs to be accompanied by a system in which every basic right – as the right to housing, to medical care, to education, etc. – is guaranteed and respected. To achieve this, it is indispensable that the existing instruments, especially the EU's Qualification Directive<sup>54</sup> and the Reception Directive<sup>55</sup>, are fully implemented.

Furthermore, the specific rights of particularly vulnerable populations such as unaccompanied minors need to be fully respected.

A financing mechanism should be established to provide help to member states where the system needs to be strengthened.

#### To the French authorities and other European Union member-states

Full respect for the principle of 'non-refoulement' should be ensured, in accordance with Article 33 of the Convention relating to the Status of Refugees and Article 3 of the Convention Against Torture and article 3 of the European Convention for Human Rights.

Access to economic and social rights should be ensured, in accordance with international obligations, in particular under the International Covenant on Economic, Social and Cultural Rights and the European Social Charter, including adequate housing, education and healthcare.

Effective access to asylum procedures should be provided, including by:

- Increasing the number of centres where applications can be registered. These centres need to be located in areas where migrants are staying;
- Providing adequate information, legal advice and translation;
- Ensuring full respect for the right to appeal, including the suspension of any orders for expulsion pending conclusion of appeals.

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<sup>54</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

<sup>55</sup> Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

Protection of the rights of vulnerable persons should be ensured. In particular:

- Prohibition of detention and return of unaccompanied minors;
- Protection for all victims of human trafficking without condition.

Put an end to police violence and harassment, including by:

- Issuing clear orders to respect obligations of non-discrimination, proportional use of force etc.;
- Facilitating the registration of complaints; and
- Conducting administrative and criminal investigations into the use of excessive force against and harassment of migrants by police;
- Decriminalising solidarity acts by civil society with the displaced persons.

The Member States of the European Union must ensure full transparency during the negotiation of any bilateral or multilateral agreement on migration, particularly on the costs of implementing these policies and their sources of financing.

The member states of the European Union must ratify the Convention on the Rights of All Migrant Workers and Members of their families.

## **Epilogue—January 2011**

The fact-finding mission organized by the EMHRN was conducted in January 2010, three months after the highly publicized demolition of the camps of the "jungle" of Calais. The stated purpose of the immigration minister at the time, Eric Besson, was to stop smugglers of migrants by depriving them of their "clients". During the operation of destruction, 276 illegal immigrants were arrested (including 125 unaccompanied minors).

Fifteen months after the destruction of the "jungle", it is clear that migrants are still numerous in the Calais region (200 to 300, according to sources). But their origin has changed: it is no longer the majority of Afghans or Iraqis but sub-Saharan Africans, Sudanese in particular. Local associations and their members also note that no woman is present, except in families with very young children. In fact, the population is renewed rapidly, every three or four weeks.

In Calais itself, migrants are less "visible"; reception equipments were installed following a government subsidy, they benefit from very basic material and sanitary conditions. The establishment of a registration office for asylum applications has facilitated procedures.

But out of Calais (the majority), migrants continue to seek shelter in a string of "micro-jungles" set up along the railroads or highways; they are regularly targeted by police, destroyed ... then reconstructed a few hundred meters away. Clearly the French government remains steadfast in its commitment to eradicate these basic places of refuge as evidenced by the fact that on the eve of Christmas, the Prefect of Arras summoned the Mayor of Norrent-Fontes and asked him to conduct the eviction of the occupants of the Marniere camp installed on communal land.

We also note that many of the provisions of the bill on immigration, which will be adopted in early 2011 by the French parliament, will help increase the legal precariousness of migrants and will significantly reduce the guarantees of rights during their arrests. As for the "crime solidarity", it will continue to threaten the volunteers who try to help migrants and refugees.

Meanwhile, the efforts to strengthen the British-French struggle against illegal crossings of the Channel have been given new impetus: inauguration in March 2010 in Calais of a center of operational coordination of border controls using new equipment financed by the United Kingdom, established in Folkestone, a British-French center for sharing intelligence to dismantle smuggling organizations (See statement following the " British-French summit" in London, November 2, 2010).

In sum, for migrants, nothing has really changed in the Calais area...

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## ANNEX 1

### **List of persons met by the mission delegation** (in alphabetical order)

Associations: Auberge des migrants, Avocats pour la Défense des Droits des Etrangers, La Belle Etoile, Calais Migrant Solidarity, Cimade, Collectif d'associations soutenant des migrants du dunquerqueois (MRAP, Emmaüs, Salam Dunkerque, Carrefour des solidarités), Collectif des exilés du 10<sup>ème</sup>, Collectif fraternité migrants, C'Sur, France Terre d'Asile (Calais and Paris), Groupe d'information et du soutien aux immigrés, Habitat Insertion, Ligue des Droits de l'Homme, No Border, Secours Catholique, Syndicat Avocats de France, Terre d'Errance

International organisations: Médecins du Monde, UNHCR (Calais and Paris)

National authorities: Christian Le Bossenec (Directeur, Pôle de solidarité, Direction de l'Enfance et de la Famille, Conseil Général Pas-de-Calais), Marc Boulnois (Maire de Norrent Fontes), Jean De Croone (Directeur-adjoint de l'immigration, Ministère de l'immigration, de l'intégration, de l'identité nationale et du développement solidaire), Daniel Dubois (Directeur central-adjoint, Police aux frontières), Hélène Flautre (EP/Greens), Brigitte Frenais-Chamaillard (Chef du service de l'asile/Ministère de l'immigration, de l'intégration, de l'identité nationale et du développement solidaire), Alain Vogelweith (Directeur Général des Services, Le Département Pas-de-Calais)

Along with the institutional partners, we talked to many migrants and refugees from Afghanistan, Egypt, Eritrea, Ethiopia, Ghana, Iran, Iraq, Palestine, Somalia, Sudan and Vietnam whose real names are not cited in order to protect their identities in their everyday lives of vulnerability as undocumented migrants.

## ANNEX 2

### List of abbreviations

APRF	Arrêté préfectoral de reconduite à la frontière
CFDA	Coordination française pour le droit d’asile
CNDA	Cour nationale du droit d’asile
CRS	Compagnies républicaines de sécurité – Mobile units of riot police
ECHR	The European Convention on Human Rights
ECRE	European Council for Refugees and Exiles
EMHRN	Euro-Mediterranean Human Rights Network
FIDH	International Federation for Human Rights
FTDA	France Terre d’Asile
OFPRA	Office français de protection des réfugiés et des apatrides – French office for the protection of refugees and stateless persons
PAF	Police aux frontières – Border police
UNHCR	Office for United Nations High Commissioner for Refugees



## ANNEX 3

### Questions:

- 1) Quels étaient les effectifs moyens de police à Calais en 2009?
- 2) Quels étaient leurs effectifs le 22 septembre 2009?
- 3) Quel a été le coût totale de l'opération du 22 septembre 2009 (interpellation, rétention, transport, interprétariat, frais de justice, etc.)?
- 4) Combien effectue-t-on d'exams médicaux de détermination de l'âge dans Pas-de-Calais par an?
- 5) Selon le rapport des services de la police nationale relatif à la pression migratoire dans le Calaisis publié le 12 janvier 2010, 386 passeurs ont été interpellés au cours de l'année 2009. Sur ces 386 passeurs interpellés, combien de ces personnes interpellés ont fait l'objet d'une instruction judiciaire? Combien parmi les interpellés du 22 septembre 2009 font l'objet d'une instruction pour aide à l'entrée, au séjour ou à la circulation d'étrangers en situation irrégulière en France?
- 6) Combien d'étrangers interpellés en 2009 à Calais et dans Pas-de-Calais ont fait l'objet
  - de gardes à vue
  - d'APRF
  - de placements en rétention
  - de renvois en application du règlement Dublin II et vers quels pays de l'Union Européenne
  - de reconduites à la frontière dans leurs pays d'origine et vers quels pays?
- 7) Combien de demandes d'asile d'étrangers domiciliés dans le Pas-de-Calais ont été enregistrées en 2009
  - entre le 1 janvier et le 31 mai, dont combien de procédures prioritaires et de « procédures Dublin »
  - du 1 juin au 31 décembre, dont combien de procédures prioritaires et de « procédures Dublin » ?