

# 2010 PICUM's Main Concerns about the Fundamental Rights of Undocumented Migrants in Europe



 PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

This report pieces together a year of European, national and local news issues on irregular migration to foster a better understanding of the main concerns of human rights of undocumented migrants as well as the multifaceted ways in which civil society throughout Europe is responding to this situation of social exclusion. It is based on a review of events reported in PICUM's newsletter during the year 2009.

This report was made possible  
with the generous support of:



This project has received funding from the European Community under the Daphne III program. The information is the sole responsibility of the author, and the Commission is not responsible for any use that may be made of the information contained therein.

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October 2010



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## Introduction

## A Introduction

PICUM's two previous *Main Concerns About the Fundamental Rights of Undocumented Migrants in Europe*, reviewing events of 2006 and 2008, followed the conflict between policy measures developed to address irregular migration, and undocumented migrants' fundamental rights. The externalisation of border control was a notable policy trend, with a concomitant increase in reports of migrants dying attempting to reach Europe by irregular means. Within Europe, PICUM gathered reports which provided insight into the daily realities of inadequate access for undocumented migrants to health care and workplace rights, and reported its observations regarding the situation facing undocumented children.

By 2010, Frontex's rapidly rising budget and increased powers, proliferating 'strategic partnerships' and readmission agreements, visa restrictions and carrier sanctions, and vigorous efforts to detect and deport undocumented migrants had virtually sealed off the EU to irregular migration. In particular, 2009 saw the prototyping of a system of migration control whereby naval patrols actively sought to intercept migrants at sea, summarily depositing them back with collaborating third countries without giving them the chance to request, let alone receive, protection. This did lead to a noticeable reduction in the numbers of reported deaths at the borders

of Europe – but at the price of exposing migrants to abuse, inhumane conditions, and death unseen in prisons in North and West Africa.

PICUM's research and advocacy efforts over the past decade have focused largely on undocumented migrants already present in Europe. While the pseudo-militarisation of the EU's borders and its drastic impact on human rights have justifiably drawn significant attention from civil society, press, and policymakers, the fundamental rights of those already present cannot be forgotten. Especially in view of the Lisbon Treaty and its incorporation of the Charter of Fundamental Rights as primary, enforceable EU law, PICUM is focusing an increasing portion of its resources on advancing the rights of undocumented migrants in the EU to education, health, housing, and fair working conditions. PICUM is also exploring the particular vulnerabilities of certain groups such as children, and the gender dimension of social issues facing undocumented migrants.

Accordingly, this report concentrates first upon the challenges facing undocumented migrants in the EU. PICUM's monitoring and reporting testify to the continuing damage restrictive migration policies exert upon the fundamental rights of undocumented migrants. Some positive developments are also noticeable. Unfortunately,

in a year of efforts by populist politicians to exploit economic distress and channel public dissatisfaction toward the most voiceless and disempowered residents of Europe, restrictive tendencies became even more visible. Several EU member states enacted new laws designed to make undocumented life even harder than it already is, and others enthusiastically pursued the same goal using existing laws. In some cases, only judicial intervention prevented further inroads against the fundamental rights of irregular migrants. In others, civil society stepped in where official actors would not, and tried to stem the tide of hostility.

PICUM's 2010 report explores the daily realities of those with an irregular migration status. Reflecting a main focus of PICUM's research activities over the past few years, this begins with health care, followed by housing. Undocumented migrants have the same fundamental right to access health care as anyone else in Europe, and national legislation in some EU member states recognises this right. Many practical barriers exist, however, and numerous studies have demonstrated that in practice undocumented migrants enjoy a much lower level of health care than the population generally. The situation is much the same regarding housing. In both areas, efforts to convince service providers to

report undocumented migrants to enforcement authorities pose a particular problem. The next sections of the report explore cross-cutting themes of children, women, and the family unit. Each of these groups shares a set of vulnerabilities that can impact any of the social rights discussed in this report. Family life in particular is only beginning to be explored as a topic of policy research relating to social rights, a fact reflected in the brevity of that section relative to those on children and women.

After the sections on particular groups, the report addresses fair working conditions and efforts at regularisation. These two subjects are closely related, as often it is through employment (if at all) that undocumented migrants can achieve regular status. Trade unions joined civil society and migrants themselves in agitating for regularisation programmes, with some notable successes. Regularisation does not of course obviate the need to open up social services to the undocumented, but it is extremely helpful in reducing the numbers who cannot realise their social rights through normal channels. The part of the report dealing with social rights finishes by dealing with the particularly tragic topics of the forced destitution that many migrants face, the systematic and harsh practices of administrative detention, and trafficking.

It is impossible to ignore the attempts to push the EU's border controls outwards. 2009 was an especially active year in this regard. Coordinated efforts essentially closed down the migration routes from West Africa and across the central Mediterranean. As a result, migrants at the end of dangerous journeys, far from arriving in a place where they could enjoy at least minimal respect for their basic human rights, faced deplorable prison-like conditions. Even as the EU declined to provide care for these people, it seemed quite willing to contribute financial and physical resources to the security apparatuses that kept them confined. This externalisation of control sometimes took the form of cooperation between the EU and third countries, and in other cases was implemented in the form of readmission agreements or other instruments that left the third country to choose the means of enforcing European border restrictions. After reviewing two major incidents where dozens or hundreds of migrants died, the report details further cases of deaths attempting to reach Europe. It is important to keep in mind that these reports stem only from known incidents; it is likely that many others died unseen.

The final sections of the report discuss institutional and policy developments relating to migration. The EU officially promulgated its Stockholm Programme, which although purporting to be based on a fair and humane migration policy, in fact concentrated largely upon border controls and returns. The United Nations human rights and refugee rights bodies, as well as the Council of Europe, intervened in the European migration debate to try to bring standards closer to international law and fundamental human rights.

Many positive developments are evident in the reporting undertaken in 2009 and PICUM has made a conscious effort to include those occurring at local, national, European and international levels. We hope that in forthcoming reports on the fundamental rights of undocumented migrants in Europe, the positive and informed discourse regarding the need to protect undocumented migrants' rights will have effectuated a genuine improvement for these migrants and their advocates.





# The Impact of Restrictive Migration Policies on the Fundamental Rights of Undocumented Migrants

# B The Impact of Restrictive Migration Policies on the Fundamental Rights of Undocumented Migrants

## 1. Criminalization of Undocumented Migrants and Their Advocates

### New Spanish legislation attracts criticism mixed with praise

Spain amended its Law on the Rights and Freedoms of Aliens in Spain and their Integration (“Ley de los Derechos y Libertades de los Extranjeros en España y su Integración”). More than 500 organisations supported a statement by Cáritas, Comisión Española de Ayuda al Refugiado (CEAR - Spanish Commission for Refugee Aid) and Red Acoge that strongly criticised the legislation. The amendments did not criminalise all assistance to undocumented migrants, as originally proposed, but they provide for fines of up to €10,000 for individuals who sponsor foreigners to enter Spain and continue to support them after the expiry of their visa. They also extended the maximum detention period for undocumented migrants from 40 to 60 days; removed the right for migrants to bring their parents to Spain unless the latter are more than 65 years old or there are humanitarian concerns; strengthened deportation mechanisms; and

established a register of foreigners who enter and exit Spain. Undocumented victims of gender-based violence can apply for residence permits if they denounce their abusers. While welcoming some of the amendments and the success of civil society in securing changes to the original draft, humanitarian and human rights organisations reiterated their criticism that many provisions of the amendments violate fundamental rights.<sup>1</sup>

### New Italian legislation raises serious concerns

Italy enacted a “security bill,” introducing the crime of irregular entry and stay. Under the new law, migrants who enter and reside irregularly face a fine of €5,000-10,000 and immediate expulsion. The maximum period in temporary centres for purposes of identification was raised to 18 months from 60 days. Renting housing to irregular migrants carries a penalty of up to three years’ imprisonment. Any act concerning civil status, including marriage and registering a child, requires a residence permit, making these fundamental rights practically inaccessible to undocumented migrants (health care and enrolling children in school are exempted). A

1 Martin Dahms, “Neue Härte in Spanien”, Frankfurter Rundschau, 18 September 2009, [http://www.fr-online.de/in\\_und\\_ausland/politik/aktuell/1954726\\_Auslaenderrecht-Neue-Haerte-in-Spanien.html](http://www.fr-online.de/in_und_ausland/politik/aktuell/1954726_Auslaenderrecht-Neue-Haerte-in-Spanien.html); Càritas, 28 September 2009, <http://www.caritas.es/home/noticias/index.php?MjE=&MTEyMg==>; Tomás Bárbulo, “El Gobierno reforma la Ley de Extranjería con los nacionalistas”, El País, 30 October 2009, [http://www.elpais.com/articulo/espana/Gobierno/reforma/Ley/Extranjeria/nacionalistas/elpepunac/20091030elpepinac\\_10/Tes](http://www.elpais.com/articulo/espana/Gobierno/reforma/Ley/Extranjeria/nacionalistas/elpepunac/20091030elpepinac_10/Tes); ACCEM, “Nueva ley de Extranjería”, 30 October 2009, [http://www.accem.es/?action=showNews&news\\_id=93](http://www.accem.es/?action=showNews&news_id=93); “Cáritas, CEAR y Acoge lamentan la oportunidad perdida en la reforma de la LOEX”, 26 November 2009, <http://www.caritas.es/home/noticias/index.php?MjE%3D&MTE5MQ%3D%3D>. (Cf. PICUM Newsletters, October, November, and December 2009.)

residence permit will also be required to use a money transfer service, which must keep a copy of the permit for 10 years and inform the authorities if a migrant does not produce a permit on request. Unarmed citizens' patrols will support law enforcement bodies. They will be registered by local authorities, and regulated by a decree of the Interior Minister. Stricter rules against using children for begging were also introduced.<sup>2</sup>

The opposition strongly criticised the new law. The Vatican stated there was no need to demonise and criminalise migrants, and that the new law would bring sorrow and difficulty to their lives.<sup>3</sup> The association of Catholic bishops from Lombardy called on Christians to act to ensure respect for the dignity of all human beings, emphasising that the majority of migrants live and work in Italy in an honest and responsible way.<sup>4</sup> Council of Europe Commissioner for Human Rights Thomas Hammarberg expressed grave concerns about criminalising renting to undocumented migrants.<sup>5</sup> Tens of thousands of people demonstrated in Rome against the new law.<sup>6</sup> Hundreds of organisations participated

in events in about 60 Italian cities to mark "Clandestino Day" on 25 September.<sup>7</sup> The goal was to inform citizens, establish links between communities and migrants, and to counteract the "racist climate" reflected in the new immigration legislation. Interior Minister Roberto Maroni stated that he considers it unacceptable for judges to claim the new law is difficult to interpret consistently. He said the law was so clear a child could understand it and it would be a "crime" for judges not to apply it.<sup>8</sup>

At least one person was reported convicted, and another acquitted, under the new law. A Jordanian undocumented migrant arrested for stealing a bike in Florence was reportedly the first person convicted. By agreeing to pay a fine of €5,000, he escaped immediate deportation, but could still be expelled after serving a three-month sentence.<sup>9</sup> A judge in Bologna acquitted an undocumented Kurdish woman from Syria who had been tried under the new law. The judge considered she had not committed any offence besides being undocumented.<sup>10</sup>

2 Nicola Grigion, "Pacchetto sicurezza - Votata la fiducia sui maxi-emendamenti", Melting Pot, 14 May 2009, <http://www.meltingpot.org/articolo14504.html>. [Cf. PICUM Newsletter, June 2009.]

3 Corriere della Sera, "Il Ddl sicurezza diventa legge", 2 July 2009, [http://www.corriere.it/politica/09\\_luglio\\_02/voto\\_sicurezza\\_senato\\_563d6780-66e3-11de-9708-00144f02aabc.shtml](http://www.corriere.it/politica/09_luglio_02/voto_sicurezza_senato_563d6780-66e3-11de-9708-00144f02aabc.shtml); Cf. PICUM Newsletter, July 2009.]

4 Zita Dazzi, "La Diocesi critica le leggi sui clandestini", La Repubblica Milano, 11 November 2009, <http://milano.repubblica.it/dettaglio/Lappello-dei-vescovi:-Aiutate-gli-immigrati/1773166>. [Cf. PICUM Newsletter, December 2009.]

5 ECRE Weekly Bulletin, 17 April 2009, [http://www.ecre.org/files/ECRE\\_Weekly\\_Bulletin\\_17\\_April\\_2009.pdf](http://www.ecre.org/files/ECRE_Weekly_Bulletin_17_April_2009.pdf); Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, report following his visit to Italy on 13-15 January 2009, 16 April 2009, <https://wcd.coe.int/ViewDoc.jsp?id=1428427&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FE65B&BackColorLogged=FFC679>. [Cf. PICUM Newsletter, May 2009.]

6 AFP, "Protesters rally against Italian anti-immigration law", 17 October 2009, <http://www.france24.com/en/node/4903733>. [Cf. PICUM Newsletter, November 2009.]

7 See <http://clandestino.carta.org>.

8 Stranieri in Italia, 25 September 2009, [http://www.stranieriinitalia.it/attualita-il\\_25\\_settembre\\_sara\\_il\\_clandestino\\_day\\_9252.html](http://www.stranieriinitalia.it/attualita-il_25_settembre_sara_il_clandestino_day_9252.html) and Il Giornale, 26 September 2009, [http://www.ilgiornale.it/interni/clandestini\\_maroni\\_reato\\_non\\_applicare\\_legge/politica-lega\\_nord-viminale-magistrati-maroni-sicurezza-immigrazione-reato\\_clandestinita/26-09-2009/articolo-id=385659-page=0](http://www.ilgiornale.it/interni/clandestini_maroni_reato_non_applicare_legge/politica-lega_nord-viminale-magistrati-maroni-sicurezza-immigrazione-reato_clandestinita/26-09-2009/articolo-id=385659-page=0). [Cf. PICUM Newsletter, October 2009.]

9 La Nazione, 24 August 2009, [http://lanazione.ilsole24ore.com/firenze/2009/08/24/221874-prima\\_condanna\\_reato\\_clandestinita.shtml](http://lanazione.ilsole24ore.com/firenze/2009/08/24/221874-prima_condanna_reato_clandestinita.shtml). [Cf. PICUM Newsletter, August/September 2009.]

10 Valerio Varesi, "Giudice assolve clandestina...", 3 November 2009, La Repubblica Bologna, <http://espresso.repubblica.it/dettaglio-local/giudice-assolve-clandestina/2113849>. [Cf. PICUM Newsletter, December 2009.]

Italian judges questioned the lawfulness of requiring a residence permit for birth registration. The Supreme Council of Magistrates (CSM) said this would deprive undocumented children of their identity, in violation of the Convention on the Rights of the Child, which guarantees the right to personal identity and citizenship from birth. The CSM also warned the measure could make children more vulnerable to illegal adoptions.<sup>11</sup> A Turin judge referred the new legislation to the Constitutional Court in a case of a baby born in Italy to a Moroccan mother holding a residence permit and an Egyptian father in the country irregularly. The father's undocumented status precluded registration of the birth, which the public prosecutor's office argued, amounts to discrimination against the baby. The judge considered it might also violate equality before the law.<sup>12</sup>

Regional governments demonstrated that it is possible for lower levels of government to implement more humane policies than the national government may be prepared to contemplate. Tuscany passed a new immigration law on 1 June to address the treatment and status of undocumented migrants. While Italy's national law attempts to curb and control the presence of irregular migrants, Tuscany's law emphasises the basic human rights of all immigrants, and grants free access to health care and other forms of socio-sanitary assistance, such as meals at municipal cafeterias and beds

in shelters. The Marche region has a similar law, which gives migrants awaiting a final decision on regularisation access to basic services and integration programmes. The Council of Ministers challenged the laws, claiming they exceed the powers of the regions.<sup>13</sup> Tuscany's Councillor for Social Affairs, Gianni Salvadori, said Tuscany would defend its law, which he was confident the Constitutional Court would uphold.<sup>14</sup>

### France saw considerable controversy around the 'crime of solidarity'

Notwithstanding the assertions of Immigration Minister Eric Besson that the "crime of solidarity" did not exist in France, police and courts continued to act as though it did. A woman in southern France was prosecuted for aiding a sick undocumented Afghan boy whose father had been killed by the Taliban. Backed by associations who support migrants, she tried repeatedly to obtain his regularisation, and eventually sought to place him in state care. She was charged with "abandoning" him, then prosecuted for assisting an undocumented migrant. The court invoked the doctrine of necessity to decide that the circumstances made her actions lawful.<sup>15</sup> A woman in Alsace received a suspended sentence for housing an undocumented migrant, a member of a Marxist party sentenced to death in Turkey in 1996 (later commuted to life in prison) who tried three times to obtain asylum in France.<sup>16</sup>

11 FEANTSA Flash newsletter for June/July 2009, available at <http://feantsa.horus.be/code/EN/pg.asp?Page=1218>. (Cf. PICUM Newsletter, August/September 2009.)

12 Migration News Sheet, November 2009, pp. 3-4. (Cf. PICUM Newsletter, December 2009.)

13 Minister for Regional Affairs, 15 July 2009, <http://www.affariregionali.it/Comunicati/SchedaComunicato.aspx?idComunicato=537> and Melting Pot, "Marche - Disposizioni a sostegno dei diritti e dell'integrazione dei cittadini stranieri immigrati", 15 June 2009, <http://www.meltingpot.org/articolo14640.html>. (Cf. PICUM Newsletter, August/September 2009.)

14 ASCA, "Regione Toscana: difenderemo nostra legge con unghie", 11 September 2009, [http://www.asca.it/regioni-IMMIGRATI\\_\\_REGIONE\\_TOSCANA\\_\\_DIFENDEREMO\\_NOSTRA\\_LEGGE\\_CON\\_UNGHIE-424319--.html](http://www.asca.it/regioni-IMMIGRATI__REGIONE_TOSCANA__DIFENDEREMO_NOSTRA_LEGGE_CON_UNGHIE-424319--.html). (Cf. PICUM Newsletter, October 2009.)

15 RESF, "L'indépendant : Aide à un sans-papiers : Claudine Louis relaxée", 10 September 2010, <http://www.educationsansfrontieres.org/article22261.html>. (Cf. PICUM Newsletter, October 2009.)

16 "Délit de solidarité", [nouvelobs.com](http://tempsreel.nouvelobs.com), 6 November 2009, [http://tempsreel.nouvelobs.com/actualites/societe/20091106.OBS7089/delit\\_de\\_solidarite\\_\\_une\\_epiciere\\_de\\_mulhouse\\_condamnee.html](http://tempsreel.nouvelobs.com/actualites/societe/20091106.OBS7089/delit_de_solidarite__une_epiciere_de_mulhouse_condamnee.html). (Cf. PICUM Newsletter, December 2009.)

Police questioned the documentary film director José Chidlovsky for sheltering an undocumented woman, a protagonist in one of his films who became suicidal when faced with deportation upon turning 18.<sup>17</sup> Beyond individual cases, the Immigration Minister pressured the radio station "France Inter" not to rebroadcast a show exploring the increase in proceedings against those assisting irregular migrants.<sup>18</sup>

A report from the International Federation of Human Rights and the World Organization against Torture addressed the "Offence of solidarity, stigmatization, repression and intimidation of defenders of migrants' rights" in France. The report denounced government policies, pressure on individuals in contact with foreigners, and imprecise and stigmatising legislation.<sup>19</sup> In a letter to Immigration Minister Besson, 16 French NGOs expressed concern regarding his aggressive tone toward NGOs working on poverty issues. The Ministry and NGOs disagree over the "solidarity offence," and over conditions in detention centres. In France, people detained pending

deportation have the right to legal assistance. The NGO Cimade has been assisting foreigners in French detention centres for 60 years. In May, the government established contracts with six associations, including Cimade, to provide advice. Cimade contested the contracts, arguing that under the new system migrants might simply be "informed" of their rights without receiving legal assistance. The court ruled in Cimade's favour.<sup>20</sup>

The French government announced it would aim to issue 28,000 expulsion orders to undocumented migrants in 2011, and to arrest 5,500 people who assist undocumented migrants.<sup>21</sup> Emmaüs France, in alliance with other French and European NGOs, held a nationwide action in response. At the Palaces of Justice in Paris, Lille, Marseille, Strasbourg, Lyon, Bordeaux, Toulouse, Rennes, and other cities, approximately 5,500 people offered themselves for arrest by claiming to have helped undocumented migrants in distress. This followed the prosecution of a French woman for organising donations of food and clothing for undocumented migrants.<sup>22</sup>

17 "Affaire Chidlovsky : « J'hébergerai encore des sans-papiers »", La Depeche, 6 October 2009, <http://www.ladepeche.fr/article/2009/10/06/688093-Affaire-Chidlovsky-J-hebergerai-encore-des-sans-papiers.html>; Ligue des droits de l'Homme, «La LDH, le RESF et la SRF protestent contre la convocation du réalisateur José Chidlovsky pour avoir hébergé une femme sans papiers», 7 October 2009, <http://www.ldh-france.org/La-LDH-le-RESF-et-la-SRF>; «Délit de solidarité : Besson reconnaît qu'il y a un flou législatif», Nouvelobs.com, 16 October 2009, [http://tempsreel.nouvelobs.com/actualites/societe/20091016.OBS4822/delit\\_de\\_solidarite\\_\\_besson\\_reconnait\\_quil\\_y\\_a\\_un\\_flou\\_.html](http://tempsreel.nouvelobs.com/actualites/societe/20091016.OBS4822/delit_de_solidarite__besson_reconnait_quil_y_a_un_flou_.html). (Cf. PICUM Newsletter, November 2009.)

18 Nouvelle Obs.com, "Le ministère de l'Immigration aurait exercé des pressions sur France Inter", 15 May 2009, [http://tempsreel.nouvelobs.com/speciales/medias/20090513.OBS6738/le\\_ministere\\_de\\_limmigration\\_aurait\\_exerce\\_des\\_pression.html](http://tempsreel.nouvelobs.com/speciales/medias/20090513.OBS6738/le_ministere_de_limmigration_aurait_exerce_des_pression.html). (Cf. PICUM Newsletter, June 2009.)

19 Laetitia Van Eeckhout, "Délit de solidarité : la FIDH veut forcer la France à s'expliquer", Le Monde, 11 June 2009, [http://www.lemonde.fr/societe/article/2009/06/11/delit-de-solidarite-la-fidh-veut-forcer-la-france-a-s-expliquer\\_1205858\\_3224.html#xtor=EPR-32280229-\[NL\\_Titresdujour\]-20090611-\[zonea\]](http://www.lemonde.fr/societe/article/2009/06/11/delit-de-solidarite-la-fidh-veut-forcer-la-france-a-s-expliquer_1205858_3224.html#xtor=EPR-32280229-[NL_Titresdujour]-20090611-[zonea]). (Cf. PICUM Newsletter, July 2009.)

20 France24, "French NGO aiding illegal immigrants wins court case", 1 June 2009, <http://www.france24.com/en/20090601-french-ngo-cimade-illegal-immigrants-deportation-legal-assistance-court-case>; CIMADE, «Lettre de réponse à Eric Besson des organisations engagées dans les rassemblements sur le délit de solidarité», 13 Mai 2009, [http://www.cimade.org/nouvelles/1610-Lettre-de-r-ponse---Eric-Besson-des-organisations-engag-es-dans-les-rassemblements-sur-le-d-lit-de-solidarit-](http://www.cimade.org/nouvelles/1610-Lettre-de-r-ponse---Eric-Besson-des-organisations-engag-es-dans-les-rassemblements-sur-le-d-lit-de-solidarit-.). (Cf. PICUM Newsletter, June 2009.)

21 See PICUM Newsletter, April 2009, "France," [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf)

22 RASÉD en lutte, «Appel à mobilisation citoyenne : non au délit de solidarité ! », <http://rased-en-lutte.net/2009/04/appel-a-mobilisation-citoyenne-non-au-delit-de-solidarite/>; Jean-Baptiste Chastand, «Le délit de solidarité aux sans-papiers existe-t-il ? », Le Monde, 8 April 2009, [http://www.lemonde.fr/societe/article/2009/04/08/le-delit-de-solidarite-aux-sans-papiers-existe-t-il\\_1178134\\_3224.html](http://www.lemonde.fr/societe/article/2009/04/08/le-delit-de-solidarite-aux-sans-papiers-existe-t-il_1178134_3224.html), (Cf. PICUM Newsletter, May 2009.)

Reflecting a more general tendency to prosecute those sympathising with migrants, Andre Barthélemy, President of the NGO 'Agir Ensemble pour les Droits de l'Homme', was fined €1,500 for "incitement to rebellion" and "obstruction of an aircraft" after objecting to police treatment of two Congolese nationals being deported on an Air France flight.<sup>23</sup>

Lack of clarity in the law leads to unacceptable administrative discretion. Meeting with Secours Catholique and Emmaüs France, Immigration Minister Besson proposed to re-examine the law that criminalises aid to irregular migrants. Besson invited the organisations to join working groups to examine the proposals. He advocated for the creation of a good practices guide to help humanitarian associations avoid prosecution, and promised to send a circular to prefects regarding police intervention where aid is provided. Some organisations welcomed these steps, but many were sceptical.<sup>24</sup> Besson and the Justice Minister later released a circular to clarify that the law stipulating a five-year prison sentence and fine of €30,000 for facilitating irregular entry, movement or stay should not be used in cases of purely humanitarian assistance. Besson stressed that the aim was to combat smuggling of human beings and not to impede humanitarian assistance, which he defined as a response to an emergency situation. He insisted nobody had ever been convicted for providing such assistance and said he would propose clarifying the law to ensure

"humanitarian immunity" would no longer be limited to protecting life or physical integrity, but would more broadly apply to the protection of the "person." Human rights organisations criticised Besson's definition of humanitarian assistance and expressed concerns that prosecutions for the "crime of solidarity" might continue.<sup>25</sup>

### Increasingly restrictive migration laws and policies across the EU

While Spain and Italy enacted significant new immigration laws, and France saw the most active dispute over an existing provision, several other European states altered their laws or policies toward irregular migrants. In most cases, the changes moved further toward criminalisation. In Cyprus, a bill penalising landlords who rent to undocumented immigrants was submitted to parliament. Anyone renting or offering accommodation to an undocumented immigrant would face a fine of up to €4,000 and/or 18 months imprisonment. Landlords would have to ensure that a foreigner seeking accommodation has authorisation to be in Cyprus. A further provision would require a foreigner to have sufficient knowledge of Greek language and culture to be entitled to a permanent residence card.<sup>26</sup> In Greece, a new law provided for the extension of detention periods for undocumented immigrants from three to six months and for prison sentences of up to five years and a fine of €25,000 for

23 Rue89, "1500 euros d'amende pour André Barthélemy", 21 March 2009, <http://www.rue89.com/2009/03/21/1500-euros-damende-pour-andre-barthelemy> [Cf. PICUM Newsletter, May 2009.]

24 No Borders Brighton, "Besson Claims There Is No Crime Of Solidarity In France", 21 July 2009, <http://nobordersbrighton.blogspot.com/2009/07/besson-claims-there-is-no-crime-of.html>. [Cf. PICUM Newsletter, August/September 2009.]

25 Laetitia Van Eeckhout, "Délit de solidarité : les associations ne croient pas à une immunité humanitaire renforcée", Le Monde, 23 November 2009, [http://www.lemonde.fr/societe/article/2009/11/23/delit-de-solidarite-les-associations-ne-croient-pas-a-une-immunite-humanitaire-renforcee\\_1271086\\_3224.html](http://www.lemonde.fr/societe/article/2009/11/23/delit-de-solidarite-les-associations-ne-croient-pas-a-une-immunite-humanitaire-renforcee_1271086_3224.html).

26 See PICUM Newsletter, July 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-07-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-07-2009.pdf)

individuals who transport irregular migrants (€50,000 for repeat offenders).<sup>27</sup> In Switzerland, the Supreme Administrative Court (TF) upheld the conviction of a man who was sanctioned twice for irregular presence, the second time because he was still in the country. The TF ruled courts can repeatedly punish people for irregular stay as long as they continue to ignore the obligation to leave.<sup>28</sup>

A decision by the Committee for Victims' Help not to compensate the family of Oulematou Niangadou, an undocumented woman from Mali who was murdered in Belgium in 2006, raised considerable concern. The Belgian Minister of Justice suggested changing the law on compensation for victims of violence. At the time of her death, Oulematou worked as babysitter in Antwerp but did not hold a residence permit. While Belgian law provides for compensation to crime victims, the Committee decided her family was not entitled to compensation as she was undocumented. Under the new proposal, undocumented migrants would also be entitled to compensation.<sup>29</sup>

Policies presenting potential dangers for undocumented migrants emerged at both European and member state levels. The European Commission proposed allowing Europol to access EURODAC, the database holding the fingerprints of asylum seekers and people who enter the EU irregularly. This followed a request by member states to permit their law enforcement authorities

and Europol to use EURODAC to investigate terrorism and other serious crimes, including trafficking in human beings and drugs. The Commission stressed that the measures would include guarantees to protect personal data and safeguard the right to asylum.<sup>30</sup> In Poland, the Border Guard began to monitor immigrant employment. Guards may ask employers to present contracts for foreign employees, and verify that immigrants' jobs match their permits. The law provides fines for both employers and workers in the event of irregularities. More severe measures, such as deportation or the obligation to leave Polish territory within seven days, may also be enforced. Foreigners running businesses without an adequate visa will be deported.<sup>31</sup> In the Netherlands, the government announced it would take "unorthodox measures" to ensure the removal of rejected-asylum seekers and others living in the Netherlands irregularly. The measures include allowing foreigners' police to search homes and workplaces without a court order, and to check data on mobile phones and computers that undocumented migrants own. Foreigners apprehended for unauthorised stay will not be allowed to submit an asylum application before a deportation trial. A new asylum application will only be accepted if submitted from abroad and accompanied by new facts or circumstances. The government will also pass information on possible criminal records of persons to be expelled to the authorities in the country of origin, after verifying this will not place the person's life in jeopardy.<sup>32</sup>

27 M&C News, "Greek parliament passes tough new immigration law", 25 June 2009, [http://www.monstersandcritics.com/news/europe/news/article\\_1485867.php](http://www.monstersandcritics.com/news/europe/news/article_1485867.php). [Cf. PICUM Newsletter, August/September 2009.]

28 Migration News Sheet, December 2008, p. 11. [Cf. PICUM Newsletter, January 2009.]

29 Expatica.com, "Family of murder victim to get no compensation," 19 January 2009, [http://www.expatica.com/fr/news/french-news/Family-of-murder-victim-to-get-no-compensation\\_48779.html?ppager=0](http://www.expatica.com/fr/news/french-news/Family-of-murder-victim-to-get-no-compensation_48779.html?ppager=0). [Cf. PICUM Newsletter, February 2009.]

30 ECRE Weekly Bulletin, 11 September 2009, available at [http://www.ecre.org/files/ECRE\\_Weekly\\_Update\\_11\\_September\\_2009.pdf](http://www.ecre.org/files/ECRE_Weekly_Update_11_September_2009.pdf); <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1295&format=HTML&aged=0&language=FR&guiLanguage=fr>. [Cf. PICUM Newsletter, October 2009.]

31 Gazeta Prawna.pl, "Straż Graniczna skontroluje zatrudnienie cudzoziemców", 12 January 2009, [http://praca.gazetaprawna.pl/artykuly/106223,straz\\_graniczna\\_skontroluje\\_zatrudnienie\\_cudzoziemcow.html](http://praca.gazetaprawna.pl/artykuly/106223,straz_graniczna_skontroluje_zatrudnienie_cudzoziemcow.html). [Cf. PICUM Newsletter, February 2009.]

32 Migration News Sheet, May 2009. 14. [Cf. PICUM Newsletter, June 2009.]

Even without official changes in law or policy, authorities in several EU countries took it upon themselves to step up raids targeting undocumented migrants. In Spain, a memo from Madrid police headquarters contained precise instructions on the number of immigrants to be arrested per week, with a bias toward groups such as immigrants from North Africa. The security forces order expulsion in almost all cases, instead of the fines recommended by law.<sup>33</sup> In Cyprus, KISA - Action for Equality, Support, Anti-racism and ENAR Cyprus condemned September's "Broom" operation in Nicosia, which police defended as a measure to combat crime and irregular migration. The organisations accused the police of indiscriminately arresting individuals based on their skin colour, called for the police to be held accountable, and held a demonstration.<sup>34</sup> An incident in the Netherlands demonstrated the risks undocumented migrants subject to police action can face: a Turkish migrant died in custody in Houten on 1 September after being apprehended for a public order offence and being found to have no papers. Rights groups protested at Utrecht police headquarters, demanding more information about the circumstances of his death.<sup>35</sup> In Austria, the

Interior Ministry chose not to renew its contracts with the NGOs Diakonie and Caritas, who had been organising legal counsel for migrants in custody pending deportation. The task is to be taken over by "Verein Menschenrechte Österreich" (Human Rights Association Austria - VMÖ), which has close links to the Interior Ministry and is seen by many organisations to merely inform migrants about the status of their proceedings and not provide legal counselling.<sup>36</sup>

In a particularly blatant example of hostile local policies, the town of Coccaglio in northern Italy launched a project titled "White Christmas," aiming to expel the town's irregular migrants before 25 December 2009. Coccaglio has a population of nearly 7,000, of whom an estimated 1,500 are migrants. Local police would check the residency status of foreign nationals in 400 households. Coccaglio's mayor, Franco Claretti of the Lega Nord party, endorsed the project, which provoked outrage among human rights groups and many Italian politicians, some of whom compared it to the fascists' rounding up of Jews. The administration in the northern town of San Martino dell'Argine asked residents to denounce any irregular migrants they become aware of.<sup>37</sup>

33 Diario Vasco, "Redadas indiscriminadas de inmigrantes", <http://www.diariovasco.com/20090225/comarca/redadas-indiscriminadas-inmigrantes-20090225.html>. [Cf. PICUM Newsletter, March 2009.]

34 ENAR, Weekly Mail no. 201, 9 October 2009, <http://www.enar-eu.org/Page.asp?docid=22732&langue=EN>. [Cf. PICUM Newsletter, November 2009.]

35 RTV Utrecht, 7 September 2009, "Aanhouding demonstratie bij Paarendveld" <http://www.rtvutrecht.nl/nieuws/216702>; <http://www.rtvutrecht.nl/nieuws/216300>; Alex Wolf, "AAGU eist opheldering dood illegaal", IndyMedia NL, 8 September 2009, <http://indymedia.nl/nl/2009/09/61448.shtml>. [Cf. PICUM Newsletter, October 2009.]

36 NoRacism.net, "Ende der Rechtsberatung in Schubhaft", 18 October 2010, <http://no-racism.net/article/3002/>, 05.07.2009. [Cf. PICUM Newsletter, July 2009.]

37 Sandro de Riccardis, "Un bianco Natale senza immigrati: Per le feste il comune caccia i clandestini", La Repubblica, 18 November 2009, <http://www.repubblica.it/2009/11/sezioni/cronaca/natale-a-coccaglio/natale-a-coccaglio/natale-a-coccaglio.html>; "Uproar over Italian Town's Foreigner Registration Drive", Spiegel Online International, 23 November 2009, <http://www.spiegel.de/international/europe/0,1518,662832,00.html>; Sandro de Riccardis, "'Denunciate al Comune i clandestini': Il manifesto della giunta leghista", La Repubblica, 23 November 2009, <http://www.repubblica.it/2009/11/sezioni/cronaca/immigrati-13/sindaco-leghista/sindaco-leghista.html>. [Cf. PICUM Newsletter, December 2009.]



## The growing climate of fear, and some countervailing efforts

More restrictive policies and police practices in the course of 2009 contributed to a climate of fear. In Spain, for example, many undocumented Bolivians reportedly do not want to leave their homes for fear of being arrested, and prefer to go and come to work without changing their route. Intensive police checks also frighten those who have documents, because they lose time or are detained for hours if they have left their papers at home.<sup>38</sup> In Poland, according to the Warsaw Freedom of Speech Association, Vietnamese secret police questioned sixteen Vietnamese refugees. The interrogations were termed “voluntary.” The association said such interrogations are inappropriate, as they subject asylum applicants to additional trauma. The daily *Gazeta Wyborcza* reported 120 Vietnamese refugees were interrogated in May 2008 in Przemyśl in south-east Poland due to their allegedly illegal stay, and in February 2008 89 Vietnamese refugees were questioned by the Vietnamese National Police near Warsaw.<sup>39</sup>

The UK and the Netherlands displayed two approaches to reducing the effects of criminalisation. In the UK, at least nine branches of the University and College Union (UCU) voted to launch a ‘campaign of non-compliance’ with new rules governing foreigners who study in the UK.

Foreign students may only attend institutions that have special licenses. To maintain their licenses, institutions must report absent foreign students. Many staff are angry at having to ‘police’ students. Employers are also reportedly concerned. Universities claimed the new rules were already causing problems, with students finding it difficult to win visas or finding the bureaucracy involved interferes with their studies.<sup>40</sup> Showing that governments can also provide shelter from denunciation when they so choose, the Dutch Repatriation and Departure Service agreed with Belgian authorities that migrants who travel from the Netherlands to Belgium to get documents at their consulate will not be detained, and people who accompany them will not be arrested on suspicion of human trafficking.<sup>41</sup>

## 2. Health Care

### Netherlands extends free health care to uninsured, regardless of status

Some Member States made strides towards providing undocumented migrants with equal access to health services. The Netherlands introduced rules reimbursing care providers for treating patients unable to obtain medical insurance, regardless of status.<sup>42</sup> The NGOs Lampion and Doctors van der Wereld supported this by establishing a registration point for

38 <http://www.opinion.com.bo/Portal.html?CodNot=55853&CodSec=6>. (Cf. PICUM Newsletter, April 2009.)

39 Grazyna Zawadka, “‘Voluntary’ Interrogations?” (“‘Dobrowolne’ przesłuchania?”), 18-02-2009, *Rzeczpospolita*, <http://www.rp.pl/artykul/264955.html>. (Cf. PICUM Newsletter, March 2009.)

40 Bryan Palmer, “UCU to challenge UK student visa changes”, 29 May 2009, [http://www.globalvisas.com/news/ucu\\_to\\_challenge\\_uk\\_student\\_visa\\_changes1179.html](http://www.globalvisas.com/news/ucu_to_challenge_uk_student_visa_changes1179.html). (Cf. PICUM Newsletter, June 2009.)

41 Dutch Minister of Justice, “Bemiddelingsverzoeken”, <http://www.dienstterugkeerenvertrek.nl/werkwijze/bemiddeling>. (Cf. PICUM Newsletter, August/September 2009.)

42 See PICUM Newsletter, January 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-01-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-01-2009.pdf)

reporting incidents concerning access to health care.<sup>43</sup> Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, welcomed the reforms.<sup>44</sup> In response to advocacy groups' concerns, the responsible minister promised to ensure that hospital staff understand the obligation to provide necessary care, and not to turn away uninsured patients, but defended the practice of pressuring individuals to pay for treatment. He rejected concerns that removing dental care from the list of "necessary care" would lead to serious health problems.<sup>45</sup>

Several organisations studied the new system's early operation. The Health Care Insurance Board (CVZ - College voor Zorgverzekeringen) reported in March that, under the new system, medical care for undocumented migrants in the Netherlands was well organised.<sup>46</sup> The Netherlands instituut voor onderzoek van de gezondheidszorg (Netherlands Institute for Health Care Research - NIVEL) asked providers what changes they anticipated. While most appeared to have become more willing to assist the undocumented, general practitioners still received a disproportionate number of undocumented patients.<sup>47</sup> The Broad Medical Consultation (Breed Medisch Overleg - BMO) surveyed the first six months, and cited insufficient provision of information to providers

and patients, the limited number of pharmacies and hospitals serving undocumented migrants who cannot pay, and lack of compensation for some care, such as physiotherapy and dental care.<sup>48</sup> The MAPP project, a collaboration of the NGOs Pharos and ASKV, examined hundreds of asylum seekers with psychological problems over three years and published a report on rejected asylum seekers whose psychological problems were not considered in assessing their asylum claims. The report illustrates bottlenecks in the asylum procedure and makes recommendations.<sup>49</sup> A later Pharos report concluded that undocumented patients seek treatment by general practitioners less frequently and for more serious illnesses than others. Based on data on 1,147 undocumented patients from 11 general practitioners, undocumented women were less likely to use birth control, and undocumented migrants with dental problems often visited their general practitioner rather than a dentist, for example.<sup>50</sup>

## The interaction between access to care and public health

Switzerland and Greece demonstrated the relationship between access to care for undocumented migrants, and public health

43 [www.lampion.info](http://www.lampion.info); [www.doktersvandewereld.org](http://www.doktersvandewereld.org). [Cf. PICUM Newsletter, February 2009.]

44 Thomas Hammarberg, Council of Europe's Commissioner for Human Rights, "Report on his visit to the Netherlands", March 2009, <https://wcd.coe.int/ViewDoc.jsp?id=1417061> [Cf. PICUM Newsletter, June 2009.]

45 See PICUM Newsletter, December 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-12-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-12-2009.pdf)

46 CVZ, 31 March 2009, "Monitor gefinancierde zorgverlening illegale vreemdelingen" [http://www.lampion.info/uploads/\\_site\\_1/Pdf/Documenten/Lampion/Monitor%20gefinancierde%20zorgverlening%20illegale%20vreemdelingen.pdf](http://www.lampion.info/uploads/_site_1/Pdf/Documenten/Lampion/Monitor%20gefinancierde%20zorgverlening%20illegale%20vreemdelingen.pdf).

47 "Toegankelijkheid van gezondheidszorg voor 'illegalen' in Nederland: een update," NIVEL, "Toegankelijkheid van gezondheidszorg voor 'illegalen' in Nederland: een update", 2009, <http://www.nivel.nl/pdf/Rapport-toegankelijkheid-illegalen.pdf>. [Cf. PICUM Newsletter, November 2009.]

48 VK-NL, "Meer gebitsproblemen bij illegalen", 30 July 2009, <http://www.volkskrant.nl/vk/nl/2672/Wetenschap-Gezondheid/article/detail/336433/2009/07/30/Meer-gebitsproblemen-bij-illegalen.dhtml>. [Cf. PICUM Newsletter, August/September 2009.]

49 ASKV, "Mapp: Goed gehoord?", 2009, <http://www.askv.dds.nl/docs/MAPP%20brochure%202009%20low.pdf>. [Cf. PICUM Newsletter, May 2009.]

50 LHV, Pharos, Julius Center, "Ongedocumenteerde Patiënten Bij de Huisarts", May-August 2009, [http://www.lampion.info/uploads/\\_site\\_1/Pdf/Documenten/Lampion/Morbiditeitongedocumenteerden2009.pdf](http://www.lampion.info/uploads/_site_1/Pdf/Documenten/Lampion/Morbiditeitongedocumenteerden2009.pdf). [Cf. PICUM Newsletter, August/September 2009.]

systems. A study at two health care centres in Lausanne found a high prevalence of tuberculosis in undocumented migrants. The authors argued that undocumented patients' lack of insurance increases their risk of developing the disease unnoticed, and that low adherence to treatment is an important public health concern.<sup>51</sup> The Hellenic Centre for Infectious Disease Control expressed its intent to cooperate with the municipality of Athens to improve the living conditions of irregular immigrants residing in rundown buildings of central Athens, by providing a mobile medical unit, vaccination and other medical services.<sup>52</sup>

Italy showed the effects merely debating restrictive migration legislation can have, on the rights of irregular migrants and on public health. When the government was discussing the Security Bill legislation early in the year, Lega Nord senators proposed to require health professionals to report undocumented migrants. Italian civil society and mainstream politicians denounced the proposal.<sup>53</sup> This provision was not enacted, but nevertheless the debate appeared to have done damage. The Italian NGO EveryOne surveyed hospitals in Rome and Milan after the introduction of the Alien Law, finding the number of migrants seeking care had fallen dramatically due to fear of denunciation. Almost 35% fewer sought treatment in the three weeks preceding

the publication of the survey, with one hospital in Milan experiencing a 75% drop in migrants.<sup>54</sup>

### Access to public medical care remains a challenge in the UK

UK legislators and courts considered access to free medical care, clarifying if not particularly advancing the rights of undocumented migrants. The UK Court of Appeals ruled in 'R (YA) v Secretary of State for Health' (C1/2008/108) that unsuccessful asylum applicants are not entitled to free medical care regardless of their length of residence. The Court held the NHS (National Health Service) Act was intended to serve citizens and regular residents, but left hospitals discretion to decide whether to treat irregular residents who cannot pay. The decision does not affect general practitioners (GPs), who must not discriminate. The Department of Health subsequently wrote to the NHS Trusts, clarifying that: a refused asylum-seeker who received free treatment between the decisions of the High Court and the Court of Appeal must not be required to pay; a refused asylum-seeker with a treatment in course should not have that treatment interrupted, nor be asked to begin paying; and the factors the Court considered applicable to failed asylum seekers must be considered before any migrant is charged.<sup>55</sup> A Department of Health/

51 Pub Med Central, 24 May 2009, "Screening for latent tuberculosis infection among undocumented immigrants in Swiss healthcare centers; a descriptive exploratory study," <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2667187>. [Cf. PICUM Newsletter, August/September 2009.]

52 UNHCR Greece Press Review: 14 - 20 March 2009 - Hora/ Metrorama/ Adesmeftos Tupos, 19 March 2009. [Cf. PICUM Newsletter, April 2009.]

53 AFP 19 March 2009. [Cf. PICUM Newsletter, April 2009.]

54 Migration News Sheet August 2009, p. 6. [Cf. PICUM Newsletter, August/September 2009.]

55 ILPA Information Sheet, "Access to Health Care 2", 20 April 2009, <http://www.ilpa.org.uk/infoservice/Info%20sheet%20Access%20to%20healthcare%202%200904.pdf>; UK Department of Health, "Advice for overseas visitors managers on: 1a) failed asylum seekers & ordinary/lawful residence; 1b) when to provide treatment for those who are chargeable; 2) victims of human trafficking", 2 April 2009, <http://www.bashh.org/documents/2174>; Decision of the Supreme Court of Judicature Court of Appeal (Civil Division), 30 March 2009, <http://www.bailii.org/ew/cases/EWCA/Civ/2009/225.html>. [Cf. PICUM Newsletter, July 2009.]

Home Office review dispelled fears it would restrict care, stating “there should not be any significant change” in the availability of “either primary or secondary care” under the NHS. The government had earlier expressed its intent to apply a charging regime for primary care similar to that for secondary care for those not “ordinarily resident.”<sup>56</sup>

### Civil society can act to counter policies restricting the right to health care

Even as some governments adopted an aggressive tone toward undocumented migrants, civil society actors managed to counteract some of the resulting rights violations. Sweden’s National Assembly of Health Professionals, the Vårdförbundet, publicly opposed the government’s policy of blocking access to health care for undocumented migrants, as denying health care contravenes the ethical codes that apply to Sweden’s midwives, biomedical scientists, radiographers and nurses. These professionals vowed the right to health, as guaranteed in international conventions, would take precedence. The Vårdförbundet urged all parties in Parliament to ensure people without papers can access health care on the same terms as others.<sup>57</sup> The annual congress of the Danish Christian Doctors Association announced the organisation would continue to provide medical assistance to failed asylum seekers, even though this would violate Danish law.<sup>58</sup>

In Poland, the Proksenos Foundation (Fundacja Proksenos) was established to assist vulnerable migrants. Almost 300,000 Ukrainians reside in Poland, many undocumented. As no organisation has yet addressed their situation, they remain invisible to social workers and civil servants. Proksenos raised money to provide treatment for severely ill migrants and planned to contest legislation that requires deportation and a five-year re-entry ban for undocumented migrants who give themselves over to the authorities.<sup>59</sup>

### German policy reforms

A Fundamental Rights Agency Conference in December 2009, “Making rights a reality for all”, discussed the fact that many EU countries lack clear regulations on access to health care for undocumented migrants. As a result, many migrants do not receive urgently needed care. To encourage greater confidence in health and education systems, calls were made for legislation to prohibit officials in those institutions from reporting undocumented migrants.<sup>60</sup> German efforts supplied a model to consider. Berlin, with an estimated 100,000 undocumented residents, raised health care issues at state and federal levels, aiming to secure and decriminalise medical treatment for the undocumented. In addition to reforming rules requiring providers to denounce, Berlin proposed increasing practical access through for example anonymous health insurance certificates, a

56 Migrants Rights News, August 2009, pp. 4-5, [http://www.migrantsrights.org.uk/downloads/newsletters/MRN\\_Newsletter\\_Aug09.pdf](http://www.migrantsrights.org.uk/downloads/newsletters/MRN_Newsletter_Aug09.pdf). [Cf. PICUM Newsletter, August/September 2009.]

57 See PICUM Newsletter, April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf)

58 Migration News Sheet, October 2009, p. 27. [Cf. PICUM Newsletter, November 2009.]

59 Grzegorz Lisicki, “For them no one is illegal” (“Dla nich nikt nie jest nielegalny”), 28-05-2009, *Gazeta Wyborcza*, [http://wyborcza.pl/1,76842,6658824,Dla\\_nich\\_nikt\\_nie\\_jest\\_nielegalny.html](http://wyborcza.pl/1,76842,6658824,Dla_nich_nikt_nie_jest_nielegalny.html); [Cf. PICUM Newsletter, June 2009.]

60 <http://www.fra.europa.eu/fundamentalrightsconference/>. [Cf. PICUM Newsletter, January 2010.]

public office to ensure anonymity within payment systems, and guaranteed doctor's fees.<sup>61</sup> In October, the federal Bundesrat (upper house) passed regulations implementing the Residence Law (Aufenthaltsgesetz), clarifying that medical personnel and administrators need not report undocumented migrants seeking emergency help to the Social Security Office. That office, in turn, may not transmit their personal data to the Foreigners' Office. Consequently, hospitals are more likely to be reimbursed for the costs of treatment of emergency care, and individuals can assist undocumented patients without fear of prosecution.<sup>62</sup> However, the Social Security Office is still obliged to pass on information about undocumented migrants seeking medical services beyond emergency care.<sup>63</sup>

### Serious concerns over health care in detention

Concerns arose over the provision of health services to migrants in the especially vulnerable situation of detention, particularly in Mediterranean reception centres. Médecins Sans Frontières (MSF) suspended its emergency work in detention centres in Malta, following requests to Maltese authorities to improve living conditions and health services. Since it began

observing in 2008, MSF witnessed unacceptable conditions that threaten physical and mental health: overcrowding; men, women and children forced to share common living areas; insufficient beds; broken windows and deplorable sanitation. MSF continued to work in Malta, supporting migrants and asylum seekers in open centres and providing medical care to new arrivals.<sup>64</sup> MSF also suspended their mission to care for undocumented migrants and asylum seekers landing on the Italian island of Lampedusa in October 2008 when Italy refused to renew the Memorandum of Understanding regulating MSF's activities, but reopened operations once a new memorandum was signed in June 2009.<sup>65</sup>

### 3. Housing

Medicins Sans Frontières (MSF) and the International Organization for Migration (IOM) documented "appalling" conditions for migrants in rural areas of southern Italy. MSF counted about 1,500 migrants working as fruit pickers around Gioia Tauro in Calabria, many without papers, for about €20 per 12 hour day. Many lived in disused houses, hangars or abandoned factories, with no running water, electricity or heat, often surrounded by rubbish that attracted rats.<sup>66</sup> Some migrants became sick after their arrival. MSF

61 Deutsche Welle, 27.02.2009, <http://www.dw-world.de/dw/article/0,,4060922,00.html?maca=de-rss-de-all-1119-rdf>; Die Tageszeitung, 6.01.2009, <http://www.taz.de/regional/berlin/aktuell/artikel/1/ein-papier-fuer-papierlose>. [Cf. PICUM Newsletters, April & May 2009.]

62 "Katholisches Forum ‚Leben in der Illegalität‘" ["Catholic Forum 'Life in Illegality'"], <http://www.benjamin-hoff.de/serveDocument.php?id=631&file=a/7/36d.pdf>. [Cf. PICUM Newsletter, November 2009.]

63 PICUM, "Undocumented Migrants' Health Needs and Strategies to Access Health Care in Germany", 2010. Available online: [http://www.nowhereland.info/?i\\_ca\\_id=389](http://www.nowhereland.info/?i_ca_id=389) and "Katholisches Forum ‚Leben in der Illegalität‘" ["Catholic Forum 'Life in Illegality'"], <http://www.benjamin-hoff.de/serveDocument.php?id=631&file=a/7/36d.pdf>. [Cf. PICUM Newsletter, November 2009.]

64 [www.msf.org](http://www.msf.org); Kurt Sansone, "Migrants' health deteriorates in detention", Times of Malta, 14 March 2009, <http://www.timesofmalta.com/articles/view/20090314/local/migrants-health-deteriorates-in-detention>. [Cf. PICUM Newsletter, April 2009.]

65 MSF, "MSF activities resume in Lampedusa, Italy", 28 April 2009, [http://www.msf.org/msfinternational/invoke.cfm?component=article&objectid=EC18C25B-15C5-F00A-2529E586900F9BFE&method=full\\_html](http://www.msf.org/msfinternational/invoke.cfm?component=article&objectid=EC18C25B-15C5-F00A-2529E586900F9BFE&method=full_html). [Cf. PICUM Newsletter, July 2009.]

66 BBC, "Italy migrants' state 'appalling'", 18 December 2008, <http://news.bbc.co.uk/2/hi/europe/7790571.stm>. [Cf. PICUM Newsletter, January 2009.]

warned health risks would increase if the regional authority failed to carry out emergency measures such as building toilets, providing drinkable water, and health care assistance.<sup>67</sup> The International Organization for Migration (IOM) interviewed more than 200 migrants during an assessment in San Nicola Varco, south of Naples: up to a thousand irregular migrants were squatting in abandoned structures, amid piles of rubbish, without running water or electricity. The young men from Morocco said they were paid between €15 and €25 a day for agricultural work, from 4:30 am to 4:00 pm. IOM called their living and working conditions unsafe and undignified. Most were victims of fraud: they had paid someone in their country of origin to find them a job, but upon arriving found their employers had either disappeared or refused to employ them. Without a work permit, many fell victim to exploitation.<sup>68</sup>

Undocumented migrants faced scarce and inadequate housing in cities as well. For example, La Strada, a support centre for homeless people, found a significant number of undocumented migrants living on the streets in the Brussels Region. Accommodation for irregular migrants is hard to obtain in Brussels, so they are left to use services designated for the homeless (e.g. shelter, sanitation, food, medical help), further straining scarce resources. Organisations have had to

reconsider how they operate, their objectives and their target clients.<sup>69</sup>

In Athens, a July raid evicted dozens of undocumented migrants living in squalid conditions in two buildings. The owners of the two buildings were detained by police, suspected of having charged migrants €5 a day to share dirty, overcrowded rooms. The fate of the migrants, including 40 women and children, remained unclear. An earlier raid evicted around 600 migrants from the former Athens appeals court building, as part of a crackdown on thousands of undocumented migrants squatting in abandoned buildings.<sup>70</sup> Beyond Athens, police raided a camp in the port city of Patras, arresting all the irregular migrants they could find, and sending them to police stations and detention centres throughout Greece. Witnesses said police allowed a fire to destroy most of the camp, and demolished the remaining structures, leaving only a makeshift mosque and tent owned by Médecins Sans Frontières. The camp had existed for 13 years and at its height was home to almost 2,000 people.<sup>71</sup>

Several Dutch cities made efforts to provide shelter to failed asylum seekers remaining in the Netherlands after witnessing the central government's inability to respond to the needs

67 January 2009 Migration News Sheet; MSF Italy, "Calabria, condizioni drammatiche per gli immigrati nella Piana di Gioia Tauro", 18 December 2009, [http://www.medicisenzafrontiere.it/msfinforma/comunicati\\_stampata.asp?id=1908](http://www.medicisenzafrontiere.it/msfinforma/comunicati_stampata.asp?id=1908). (Cf. PICUM Newsletter, February 2009.)

68 IOM, "Stranded Migrants in Italy Seek Assistance", 28 July 2009, <http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnEU/cache/offonce?entryId=25741>. (Cf. PICUM Newsletter, August/September 2009.)

69 <http://www.medimmigrant.be/newsletter43.asp>. (Cf. PICUM Newsletter, July 2009.)

70 Louisa Gouliamaki, "Police remove migrants from Athens squats", Kathimerini, 31 July 2010, [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_politics\\_2\\_31/07/2009\\_109429](http://www.ekathimerini.com/4dcgi/_w_articles_politics_2_31/07/2009_109429). (Cf. PICUM Newsletter, August/September 2009.)

71 Green Left, "Greece: Police flatten refugee camp", 19 July 2009, <http://www.greenleft.org.au/2009/803/41318>; EURONEWS, "Greek police raid illegal immigrant camp", 12 July 2009, <http://www.euronews.net/2009/07/12/greek-police-raid-illegal-immigrant-camp>. (Cf. PICUM Newsletter, August/September 2009.)

of these people. Amsterdam officials announced they would continue to offer temporary helter to rejected asylum seekers in serious emergency situations and would look for more structural solutions as well. Other municipalities like Utrecht, Groningen and Nijmegen were considering similar measures in cases where the state does not provide a solution.<sup>72</sup>

## 4. Undocumented Children

### Reports and examinations identified challenges facing undocumented children

International and European bodies reported on issues facing undocumented children. Stressing states' obligation to protect children in all stages of migration, the UN Special Rapporteur on migrants' rights, Jorge Bustamante, discussed children left behind by migrating family members; those crossing borders; and those in host countries. His report made numerous references to undocumented children, whose rights are eroded through criminalisation of irregular migration. Often unable to have their births registered, they face barriers to health and education services. The lack of regularisation and employment for irregular migrants also

affects children's living standards.<sup>73</sup> Children remain especially vulnerable to abuses due to crime syndicates engaged in smuggling, human trafficking and modern forms of slavery. The Rapporteur called on states to combat racism, xenophobia and intolerance.<sup>74</sup>

In 'The Human Rights of Migrant Children,' the International Organization for Migration (IOM) summarised how international law protects migrant children. IOM focused on the Convention on the Rights of the Child, which applies regardless of nationality. Children's ability to travel legally without an adult is limited, so they are more likely to migrate irregularly, risking exploitation or abuse. Policymakers have paid relatively little attention to why children move, their experiences, or the consequences of adult migration for children left at home.<sup>75</sup>

The EU Fundamental Rights Agency (FRA) report 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union' proposed indicators to measure child rights across the EU. FRA developed indicators for family environment and alternative care; protection from exploitation and violence; education, citizenship and cultural activities; and adequate living standards.<sup>76</sup> Another FRA report, "Child Trafficking in the EU

72 Het Parool, 23 April 2009 <http://www.parool.nl/parool/nl/224/BINNENLAND/article/detail/238751/2009/04/23/Hulp-aan-illegalen-blijft-toch.dhtml>. (Cf. PICUM Newsletter, May 2009.)

73 Jorge Bustamante, UN Special Rapporteur on the human rights of migrants, "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development", 14 May 2009, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.7.pdf>. (Cf. PICUM Newsletter, August/September 2009.)

74 UN News Centre, "UN human rights expert voices concern over treatment of child migrants", 27 October 2009, <http://www.un.org/apps/news/story.asp?NewsID=32746&Cr=migrant&Cr1>. (Cf. PICUM Newsletter, November 2009.)

75 IOM, "Human Rights of Migrant Children", n.15, International Migration Law, 2008, [http://www.childtrafficking.com/Docs/iom\\_08\\_human\\_children\\_0109.pdf](http://www.childtrafficking.com/Docs/iom_08_human_children_0109.pdf). (Cf. PICUM Newsletter, July 2009.)

76 FRA, "Developing indicators for the protection, respect and promotion of the rights of the child in the European Union", Summary Report, March 2009, [http://fra.europa.eu/fraWebsite/attachments/RightsOfChild\\_summary-report\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/RightsOfChild_summary-report_en.pdf) (Cf. PICUM Newsletter, April 2009.)

- Challenges, perspectives and good practices,” found substantial numbers of children fall victim to trafficking, but without a clear legal definition of child trafficking, few convictions result. It argued that immigration regulation should not overshadow the best interests of children, and called for better legislation to combat child trafficking, and improved protection and care for victims.<sup>77</sup>

France, Belgium, and Switzerland were specifically studied. The Committee on the Rights of the Child expressed concern over France’s failure to respect the basic rights of foreign children, particularly in detention, and the lack of effective recourse against placement or representation decisions. Committee members also worried about the removal of children to countries where they risk exploitation, and a lack of responsibility for children held by protective services.<sup>78</sup> Réseau Éducation Sans Frontières (Education Without Borders Network) (RESF) and France Terre d’Asile submitted alternative reports. RESF highlighted the dangers French immigration policy creates for undocumented children. France Terre d’Asile raised concerns about inhumane treatment of undocumented and unaccompanied children at the border, on

French territory, and in detention. A Committee working group selected France Terre d’Asile for interview.<sup>79</sup>

The Centre for Migration and Intercultural Studies and Antwerp University studied the psycho-social well-being of undocumented children in Belgium. According to the study, research on unaccompanied and undocumented children has improved while research on undocumented children with caregivers is lagging. Second, although their uncertain status may cause serious psychological issues, undocumented children show great resilience. Third, Belgium’s approach to the detention of accompanied children is problematic.<sup>80</sup>

In Switzerland, the Monitoring Office for Asylum and Foreigners’ Law concluded that the basic principles of the UN Convention on the Rights of the Child are continually disregarded and children are regularly deported to unfamiliar countries, into instability, poverty and potential wars. The report argued that immigration policies particularly affect undocumented children, who constitute at least 10 percent of the estimated 80,000 to 100,000 undocumented migrants in Switzerland.<sup>81</sup>

77 FRA, “Child Trafficking in the European Union: Challenges, perspectives and good practices”, July 2009, [http://fra.europa.eu/fraWebsite/attachments/Pub\\_Child\\_Trafficking\\_09\\_en.pdf](http://fra.europa.eu/fraWebsite/attachments/Pub_Child_Trafficking_09_en.pdf). (Cf. PICUM Newsletter, October 2009.)

78 Report of the British Refugee Council and France Terre d’Asile joint fact-finding mission to Calais, September 2009, <http://www.refugeecouncil.org.uk/OneStopCMS/Core/CrawlerResourceServer.aspx?resource=3A7D2653-94F8-494D-B6F9-F54CC2636E8B&mode=link&guid=a92c169968654cb1a6885f681419636e> (Cf. PICUM Newsletter, July 2009.)

79 See PICUM Newsletters, March & April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-03-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-03-2009.pdf), [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf).

80 AWW Flash, “Studiedag jongeren zonder papieren” [http://www.steunpunt.be/\\_steunpunt/E-zine/AWW-flash/aww-flash5/studiedag%20NBM.doc](http://www.steunpunt.be/_steunpunt/E-zine/AWW-flash/aww-flash5/studiedag%20NBM.doc), 3 June 2010, [Cf. PICUM Newsletter, June 2009.]

81 Schweizerische Beobachtungsstelle für Asyl- und Ausländerrecht, “Kinderrechte und die Anwendung der Migrationsgesetzgebung in der Schweiz..”, August 2009, [http://www.beobachtungsstelle.ch/fileadmin/user\\_upload/pdf\\_divers/Berichte/Kinderbericht\\_def\\_D.pdf](http://www.beobachtungsstelle.ch/fileadmin/user_upload/pdf_divers/Berichte/Kinderbericht_def_D.pdf); [Cf. PICUM Newsletter, November 2009.]



## State policies raised concerns, and sometimes responded to them

Spanish authorities, oversight bodies, and courts considered basic issues concerning the presence, custody, and legal standing of unaccompanied migrant children. The Immigration Minister stated that a Moroccan-Spanish working group had decided on an action plan to curb arrivals of unaccompanied children in Spain. Such arrivals have fallen recently, but both sides agreed on the need to further reduce the flow in view of the dangers of the journey.<sup>82</sup> A Spanish prosecutor said the deportation of three juvenile Moroccans did not comply with Spanish law. The boys were detained, and NGOs demonstrated they were children, but a Madrid court ordered them expelled. Spanish authorities base age determination on a radiograph of the wrist, a procedure which NGOs and medical professionals criticise for its margin of error of almost two years.<sup>83</sup> The Spanish Ombudsman considered unlawful the Andalusian Department of Equality and Social Welfare's failure to declare unaccompanied migrant children in protection centres as abandoned, calling it incompatible with child protection legislation and international law. The Department contended many of the

children are not abandoned, as their families know their situation, and they are protected by juvenile services.<sup>84</sup> The Canary Islands regional government stated its intent to return custody of undocumented children to the Spanish state, aiming to establish a legal difference between unaccompanied foreign children and others under public protection.<sup>85</sup> The Spanish Constitutional Court recognised the right of an undocumented Moroccan child to contest his repatriation. This guaranteed judicial standing for foreign children, so they can appeal any decisions taken by the administration (acting as guardian) contrary to their interests and consent.<sup>86</sup>

In Greece, newspapers reported that approximately 250,000 children born to migrant or refugee parents, or who arrived very young, were not recognised as citizens. Unless they immediately find employment or enrol in university, they become undocumented upon reaching adulthood.<sup>87</sup> The deputy Minister for Citizen Protection, Spyros Vougiatis, said the government would amend the law to enable children born in Greece to obtain citizenship, whether or not their parents are in Greece regularly. The government would examine whether those parents would qualify for

82 Migration News Sheet, December 2008, p. 28. [Cf. PICUM Newsletter, January 2009.]

83 lne.se, "Menores señala que el marroquí expulsado con 16 años no tenía documentación", 8 July 2009, [http://www.lne.es/secciones/noticia.jsp?pRef=2009060800\\_48\\_765316\\_\\_Sucesos-Menores-marroqui-expulsado-tenia-documentacion](http://www.lne.es/secciones/noticia.jsp?pRef=2009060800_48_765316__Sucesos-Menores-marroqui-expulsado-tenia-documentacion). [Cf. PICUM Newsletter, July 2009.]

84 EuropaPress.es, "Múgica dice que la Junta infringe la ley al no declarar desamparados a los menores inmigrantes", 31 May 2010, <http://www.europapress.es/andalucia/noticia-mugica-dice-junta-infringe-ley-no-declarar-desamparados-menores-inmigrantes-atiende-20090531114524.html>. [Cf. PICUM Newsletter, June 2009.]

85 T. Barbulo, "Canarias quiere devolver al Estado la competencia sobre niños 'sin papeles'", El País, 29 January 2009, [http://www.elpais.com/articulo/espana/Canarias/quiere/devolver/Estado/competencia/ninos/papeles/elpepuesp/20090129elpepinac\\_15/Tes](http://www.elpais.com/articulo/espana/Canarias/quiere/devolver/Estado/competencia/ninos/papeles/elpepuesp/20090129elpepinac_15/Tes). [Cf. PICUM Newsletter, March 2009.]

86 infoapdha 20 January 2009, [http://www.apdha.org/index.php?option=com\\_content&task=view&id=581&Itemid=48](http://www.apdha.org/index.php?option=com_content&task=view&id=581&Itemid=48) [Cf. PICUM Newsletter, February 2009.]

87 UNHCR Greece Press Review, 12-18 September 2009 (citing Kathimerini, 17 September / Nea athinaiki, Akropoli, 18 September). [Cf. PICUM Newsletter, October 2009.]

residence.<sup>88</sup> The reforms also provided for the release of unaccompanied children held in overcrowded detention centres.<sup>89</sup>

In France, the organisations CIMADE and Ligue des Droits de l'Homme (the League for Human Rights) expressed concern about the increasing number of undocumented children in detention with their parents. Such detention violates the International Convention on the Rights of the Child. The Ombudsperson for Children, Dominique Versini, rejected Immigration Minister Eric Besson's argument that the detention is necessary to preserve family unity, suggesting house arrest as an alternative. Besson said the policy would remain unchanged. French civil society organisations, trade unions and opposition parties protested plans to merge the children's ombudsperson into a new Ombudsperson for Human Rights. Versini stressed this would reduce the protection of children, which would be one among many issues addressed by the new Ombudsperson.<sup>90</sup>

France and the Council of Europe established new entities to address children's rights. The French Minister of Immigration launched a working group on unaccompanied children, including government ministries, independent authorities, international agencies and NGOs. It will consider isolation, access to asylum, obtaining a residence permit, age determination, and

methods of identifying family links.<sup>91</sup> The Council of Europe launched a platform on children's rights, to include a network of focal points and representatives of civil society, ombudspersons, international organisations and experts, and research institutions. The platform will begin by producing guidelines on holistic national strategies to protect children from violence, building on recommendations from a UN study. The conclusions of the first meeting affirmed the platform's commitment to protecting particularly vulnerable children, such as migrant children.<sup>92</sup>

### Civil society continued to press to advance the rights of undocumented children

Alongside discussions and changes in public policy, civil society organisations strove to improve information and practice regarding the rights of undocumented children. Calls and protests reminded governments of their obligations. NGOs published reports and guidelines, and continued to grow and work together in networks.

Calls continued for the integration and protection of undocumented children. During a mass to mark the church's World Day for Migrants and Refugees, Pope Benedict XVI appealed for the integration of immigrant children. The

88 Migration News Sheet, December 2009, p.7. [Cf. PICUM Newsletter, January 2010.]

89 Helena Smith, "Greek socialists to grant citizenship to migrants' children", The Guardian, 21 October 2009, <http://www.guardian.co.uk/world/2009/oct/21/greece-citizenship-immigrant-children>. [Cf. PICUM Newsletter, November 2009.]

90 Laure Daussy, "Protestations après la suppression du Défenseur des enfants", Le Figaro, 16 September 2009, <http://www.lefigaro.fr/actualite-france/2009/09/16/01016-20090916ARTFIG00616-protestations-apres-la-suppression-du-defenseur-des-enfants-.php>; Le Point, "Éric Besson refuse de céder sur les enfants de sans-papiers", 3 September 2009, <http://www.lepoint.fr/actualites-societe/2009-09-03/immigration-clandestine-besson-refuse-de-ceder-sur-les-enfants-de-sans-papiers/920/0/373787>; [Cf. PICUM Newsletters, August/September & October 2009.]

91 <http://www.immigration.gouv.fr/IMG/pdf/MEIGW.pdf> [Cf. PICUM Newsletter, June 2009.]

92 [http://www.coe.int/t/transversalprojects/children/events/launchmeetingplatform\\_EN.asp](http://www.coe.int/t/transversalprojects/children/events/launchmeetingplatform_EN.asp). [Cf. PICUM Newsletter, July 2009.]

Pope said the number of children seeking asylum was rising, and governments needed to coordinate action to protect migrant children from exploitation.<sup>93</sup> The NGO France Terre d'Asile launched a call with two members of the National Assembly to increase protection of unaccompanied children. They called for EU institutions to adopt and apply international standards, in particular the Convention on the Rights of the Child. The call highlighted the precarious situation of an estimated 100,000 unaccompanied children in Europe who, having fled conflict, persecution and exploitation, meet extremely varied levels of treatment, with serious consequences.<sup>94</sup> More than 100 activists gathered outside the cathedral of Notre Dame in Paris on 20 September to protest the detention and deportation of undocumented children. Réseau éducation sans frontières (RESF - "Education without Borders Network") organised the protest, saying an increasing number of children had been detained in France in the summer of 2009, and that it had obtained the archdiocese's permission to demonstrate outside Notre Dame every Sunday afternoon.<sup>95</sup>

Spanish NGOs SOS Racismo and SOS Arrazakeria published guidelines for health care professionals and social workers. The guidelines deal with the health needs, integration, and treatment of unaccompanied children, based on interviews with those children and the experience of professionals working on their social care.<sup>96</sup> Save the Children Italy reported on the living conditions of immigrant children in Italy, including almost eight thousand unaccompanied children, mainly from Morocco, Egypt, Albania, Palestine, Afghanistan, Eritrea, Nigeria, Somalia and Iraq. 90.4% of the children were male, with 77% between 16 and 17 years old. Save the Children in Rome launched a project to promote and support vulnerable immigrant children.<sup>97</sup> Swiss organisations founded the association "For the Rights of Children without Legal Status." Their campaign "No child is illegal" seeks to educate the public about undocumented children and promote the right to training from pre-school to post-compulsory education, the prohibition of constraint measures, and regularisation. It aims to establish a network of children's rights organisations, promote public discussion, and lobby for access to vocational training.<sup>98</sup>

93 "Messaggio del Santo Padre per la 96a Giornata Mondiale del Migrante e del Rifugiato (17 gennaio 2010)", 27 November 2009, [www.fides.org/eng/documents/Messaggio\\_Migranti\\_ingl\\_27112009.doc](http://www.fides.org/eng/documents/Messaggio_Migranti_ingl_27112009.doc) [Cf. PICUM Newsletter, December 2009.]

94 France Terre d'Asile, "Call for a European Protection of Unaccompanied Children", [http://www.coe.int/t/dg3/migration/appel-protection\\_en.pdf](http://www.coe.int/t/dg3/migration/appel-protection_en.pdf) [Cf. PICUM Newsletter, January 2010.]

95 Le Figaro, "RESF manifeste devant Notre-Dame" 20 September 2009, <http://www.lefigaro.fr/flash-actu/2009/09/20/01011-20090920FILWWW00145-resf-manifeste-devant-notre-dame.php>. [Cf. PICUM Newsletter, October 2009.]

96 <http://mugak.eu/gunea/men/int/>. [Cf. PICUM Newsletter, July 2009.]

97 SDP Noticias, "Casi ocho mil menores inmigrantes llegaron solos a Italia en 2008", 2009, <http://sdpnoticias.com/sdp/contenido/2009/02/19/335001>. [Cf. PICUM Newsletter, April 2009.]

98 <http://www.sans-papiers.ch/site/index.php?id=180&L=4> [Cf. PICUM Newsletter, March 2009.]

## Unacceptable reception conditions for migrant children arriving in southern Europe

Inadequate reception conditions seriously affected children in Italy and Greece. Save the Children reported that in 2008, 2,646 children, most unaccompanied, passed through the Lampedusa reception centre and were often held in poor conditions. In January 2009, an additional 81 children and 1,035 adults arrived. Despite institutional efforts to manage migration flows, Save the Children found several critical issues. Children are detained for up to 37 days before being transferred to detention centres in Sicily, and a lack of beds means some sleep on mattresses on the floor. The report also highlighted inadequate hygiene and unsatisfactory age assessment procedures.<sup>99</sup> Pro Asyl and Borderline Europe reported on separated children in southern Italy, which has experienced steadily increasing numbers of young asylum seekers arriving on its coasts. The almost constant “state of emergency” leads to falling reception standards and guardians rarely being appointed to separated children, making access to protection, education and health care problematic. The report criticised age assessment methods used in Italy, recommending a holistic method involving experts and a psychological assessment. It called for structures such as an independent office for the rights of children that would recruit and train guardians,

and a network for practitioners dealing with separated children.<sup>100</sup>

Reception conditions in Greece attracted particularly strong criticism. Human Rights Watch (HRW) documented abuses of unaccompanied migrant children rising to the level of torture, such as mock executions, and inhuman or degrading treatment, including routine kicking and beatings. Some 1,000 unaccompanied children entered Greece in 2008. HRW accused Greece of flouting its most basic obligations and urged the EU to press Greece to take appropriate action.<sup>101</sup> UNHCR was “shocked” by conditions on the island of Lesbos and “alarmed” by the detention of unaccompanied children. A delegation visited after activists released a video that showed cramped and unsanitary conditions inside the centre, which housed more than 800 with a capacity of 250.<sup>102</sup> The detainees reported that even seriously ill children did not receive medical treatment. An estimated 150 children, ages 12 to 17, went on a hunger strike between 18 and 21 August and released a letter protesting conditions. UNHCR and human rights organisations called for more special centres for unaccompanied children. The government responded by announcing the unaccompanied children on Lesbos would be transferred to special reception facilities and that new centres would be created. HRW reported, however, that the release of around 120 children to open centres put additional pressure on facilities which already

99 Save The Children, ‘Monitoring Report – Reception and Protection of Children’s Rights in the Lampedusa Centre,’ 21 January 2009, <http://www.savethechildren.net/alliance/media/newsdesk/2009-01-26a.html>. (Cf. PICUM Newsletter, February 2009.)

100 Pro Asyl and Borderline Europe, ‘Wir haben nichts zu verbergen’ - Eine Reise auf den Spuren der Flüchtlinge durch Süditalien. (Cf. PICUM Newsletter, June 2009.)

101 Human Rights Watch, “Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece,” December 2008, [http://www.hrw.org/sites/default/files/reports/greece1208web\\_0.pdf](http://www.hrw.org/sites/default/files/reports/greece1208web_0.pdf). (Cf. PICUM Newsletter, January 2009.)

102 <http://w2eu.net/2009/08/20/voices-from-the-inside-of-pagani-detention-centre>,

run beyond their capacity, and accused Greece of neglecting its obligations under the Convention on the Rights of the Child.<sup>103</sup>

### Criticism and action against detention of children in the UK

Immigration detention of children in the UK attracted significant criticism. Many public figures supported the 'End Child Detention Now' campaign.<sup>104</sup> In August, 470 children, most under five years old, were in detention with their families. The Home Office said almost a third of children in detention as of 30 June had been held longer than 28 days, which means in each case the immigration minister had to authorise continued detention. The Border Agency reportedly targeted families to increase its removal totals.<sup>105</sup> The Agency's new Code of Practice for Keeping Children Safe from Harm did not change immigration procedures, and continued to allow detention beyond 28 days despite recommending 2-3 day limits.<sup>106</sup> In the first comprehensive review of children's experiences since the introduction of the Code, the charity Refugee and Migrant Justice claimed Agency staff "routinely" flout guidelines on

children in the asylum process. Often denied access to lawyers and routinely locked up, young people face a "culture of disbelief." The Border Agency rejected the 'vast majority' of the findings.<sup>107</sup>

The Children's Commissioner for England, Sir Al Aynsley-Green, also criticised the detention of children who are refused asylum. His report compared Yarl's Wood Immigration Removal Centre to a prison. Each year 2,000 children are held there, for an average of 15 days. The report highlighted significant discrepancies between policy guidance and practice. It set out 42 recommendations for making detention a "last resort." The Commissioner recommended that children with serious health problems never be confined and suggested developing a community-based alternative along with government monitoring. The children's charity Barnardo's supported the report. The government said detention of children was necessary if their parents refused to return home.<sup>108</sup> A report from Parliament's Home Affairs Select Committee found periods of detention for children awaiting deportation unacceptably long and said children should only be detained as a last resort. The report emphasised the obligation

103 UN News Center, "UN refugee agency shocked at conditions at Greek detention facility", 29 August 2009, <http://www.un.org/apps/news/story.asp?NewsID=31876&Cr=UNHCR&Cr1=>; Human Rights Watch, "Greece: Create Open Centers for Migrant Children", 23 August 2009, <http://www.hrw.org/en/news/2009/08/23/greece-create-open-centers-migrant-children>; UNHCR Greece Press Review 14 – 21 August 2009 (sources cited: Rizospastis 15 August, [www.tvxs.gr](http://www.tvxs.gr), 20 August; Eleftherotypia, 19 August; Eleftherotypia, 18 & 21 August; Ta Nea, Avgi 21 August). (Cf. PICUM Newsletter, August/September 2009.)

104 <http://ecdn.org/>. (Cf. PICUM Newsletter, January 2010.)

105 Karen McVeigh, "Ministers under fire for locking up immigrant children", *The Guardian*, 30 August 2009, <http://www.guardian.co.uk/uk/2009/aug/30/ministers-under-fire-immigrant-children>. (Cf. PICUM Newsletter, October 2009.)

106 Frances Webber, "New immigration code does not fully protect children", *Institute of Race Relations*, 8 January 2009, <http://www.irr.org.uk/2009/january/bw000006.html>. (Cf. PICUM Newsletter, February 2009.)

107 Lawyers Defending Human Rights, "Does Every Child Matter?: Children Seeking Asylum in Britain", 2009, [http://refugee-migrant-justice.org.uk/downloads/RMJ\\_Doeseverychild\\_Report2.pdf](http://refugee-migrant-justice.org.uk/downloads/RMJ_Doeseverychild_Report2.pdf). (Cf. PICUM Newsletter, April 2009.)

108 BBC News, "Detention for children must stop", 27 April 2009, [http://news.bbc.co.uk/1/hi/uk\\_politics/8019667.stm](http://news.bbc.co.uk/1/hi/uk_politics/8019667.stm) (Cf. PICUM Newsletter, May 2009.)

of the Border Agency to treat migrant children with compassion, and questioned the detention of families who were unlikely to abscond. The Committee recommended a reform of the asylum process, in which currently 90% of appeals against deportation are never heard.<sup>109</sup> Members of Parliament supported the report's conclusions.<sup>110</sup>

Medical experts in the UK also argued children should not be detained. A study in "Child Abuse & Neglect: the International Journal," the first of its kind, examined 24 children in a UK detention centre and found clear evidence most of them had developed clinically significant emotional and behavioural problems since being detained.<sup>111</sup> The Royal Colleges of Paediatrics and Child Health, General Practitioners and Psychiatrists and the UK Faculty of Public Health later released a statement regarding the physical and mental health of children and young people in immigration detention in the UK. They called on the Government to immediately stop detaining children. Highlighting viable alternatives to detention in other countries, the statement provided recommendations to minimise the damage caused by the detention of children.<sup>112</sup>

Undocumented children turned to the UK courts to obtain redress for harsh detention practices. The Home Office annually authorises the

detention of an estimated 2,000 child immigrants. A court awarded £150,000 to a Congolese family, eventually granted asylum, whose one- and eight-year-old children were traumatised after officers twice raided their home and detained them at Yarl's Wood for a total of 60 days. Both children suffered post-traumatic stress and were kept in detention despite warnings from social services and an expert psychologist. Lawyers and immigration campaigners believe the settlement could lead to dozens more compensation claims. One law firm said it was preparing three cases where families had been unlawfully detained.<sup>113</sup> Bhatt Murphy, a UK firm of solicitors, represented six young refugees who arrived in the UK as unaccompanied children, but were treated as adults and held in detention. At least three were detained alongside adults for up to two weeks. Each sued the Home Office for false imprisonment and breaches of human rights.<sup>114</sup>

## Education

Several EU states showed they realise the importance to both undocumented migrants and host societies of making education universally accessible in practice. In France, the Réseau d'Éducation Sans Frontières (RESF - Education Without Borders Network) kicked off a campaign that aims to help undocumented people attending

109 BBC News, "Migrant children held 'too long' in detention, MPs say", 29 November 2009, [http://news.bbc.co.uk/2/hi/uk\\_news/8384860.stm](http://news.bbc.co.uk/2/hi/uk_news/8384860.stm). (Cf. PICUM Newsletter, January 2010.)

110 "Migrant children held 'too long' in detention, MPs say", BBC News, 29 November 2009, [http://news.bbc.co.uk/2/hi/uk\\_news/8384860.stm](http://news.bbc.co.uk/2/hi/uk_news/8384860.stm). (Cf. PICUM Newsletter, December 2009.)

111 Karen McVeigh, "Children made 'sick with fear' in UK immigration detention centres", The Guardian, 13 October 2009, <http://www.guardian.co.uk/uk/2009/oct/13/children-immigration-detention-health>. (Cf. PICUM Newsletter, November 2009.)

112 Royal Colleges of Paediatrics and Child Care, General Practitioners, Psychiatricians and Faculty of Public Health, "Intercollegiate Briefing Paper: Significant Harm - the effects of administrative detention on the health of children, young people and their families", [http://www.rcpch.ac.uk/doc.aspx?id\\_Resource=5829](http://www.rcpch.ac.uk/doc.aspx?id_Resource=5829). (Cf. PICUM Newsletter, January 2010.)

113 Robert Verkaik, "Asylum detainees win record payout", The Independent, 13 February 2009, <http://www.independent.co.uk/news/uk/home-news/asylum-detainees-win-record-payout-1608207.html>. (Cf. PICUM Newsletter, March 2009.)

114 Migration News Sheet, December 2008, p. 19. (Cf. PICUM Newsletter, January 2009.)

universities and high schools. Undocumented youths in France can face expulsion at the age of 18. RESF held two theatre and debate initiatives in Orleans in January.<sup>115</sup> Delegations from Lyon, Marseille and Paris met to discuss problems affecting young undocumented migrants.<sup>116</sup> A second general assembly of undocumented youth was held in Lyons in March.<sup>117</sup>

In Germany, civil society actors worked to counter the effects of an initiative the Berlin Senate passed to establish a database of personal data of all Berlin students. Student and parent associations had campaigned against the database, which will be accessible to law enforcement, youth welfare and health officials. Officially intended to facilitate administrative processes and target absenteeism and juvenile delinquents, the measure may lead undocumented students to avoid schools for fear of detection. Even before the development of this database, undocumented children only attended school in Berlin in exceptional cases. Data protectors called on parents to boycott the database.<sup>118</sup>

At the same time, some German states worked to expand access to education. Hesse announced undocumented children could soon attend school without fear their families would be deported, as they could enrol without showing they regularly

reside in Hesse. This would free school principals of the obligation to denounce undocumented migrants per the national residence law. A 2007 study by the German Interior Ministry had found that only the states of Bavaria and North Rhine-Westphalia required all children to attend school, but North Rhine-Westphalia and Hamburg had prohibited administrators from requiring students to provide proof of residence or identification documents.<sup>119</sup>

The Netherlands also took a practical step toward opening access to education, affirming that undocumented secondary school students, like others in the Netherlands, have the right to compensation of €316 for school books for the year 2008-2009.<sup>120</sup> The Swedish government appointed a commission to determine whether Swedish law allows undocumented children to attend school. The Education Minister said that, if his party stayed in power, it would pass laws to give all children in Sweden access to schooling.<sup>121</sup>

## 5. Undocumented Women

Awareness of the needs of women, and undocumented migrant women in particular, grew at the international level. The UN General Assembly began the process of establishing a new "super-agency for women". While the UN

115 <http://www.educationsansfrontieres.org/>. (Cf. PICUM Newsletter, January 2009.)

116 RESF, "Jeunesse sans papiers, jeunesse volée, ça suffit ! La loi doit changer !" 16 et 17 janvier à Orléans (Vidéo reportage), <http://www.educationsansfrontieres.org/spip.php?article17235>. (Cf. PICUM Newsletter, February 2009.)

117 RESF, "Jeunesse sans papiers, jeunesse volée, La loi doit changer!", 28-29 March 2009, <http://www.educationsansfrontieres.org/article19098.html>. (Cf. PICUM Newsletter, May 2009.)

118 Flucht Rat, "Flüchtlingsrat lehnt geplante Schülerdatei ab - Verbot der Datenübermittlung gefordert", 29 January 2010, [http://www.fluechtlingsrat-berlin.de/print\\_pe.php?sid=424](http://www.fluechtlingsrat-berlin.de/print_pe.php?sid=424). (Cf. PICUM Newsletter, April 2009.)

119 Mohr Von Mirjam, "Zur Schule ohne Angst vor Abschiebung", 2 October 2009, <http://www.spiegel.de/schulspiegel/wissen/0,1518,652817,00.html>. (Cf. PICUM Newsletter, October 2009.)

120 See PICUM Newsletter, February 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-02-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-02-2009.pdf)

121 Peter Vinthagen Simpson, "Undocumented kids have a right to school", The Local, 17 August 2009, <http://www.thelocal.se/21514/20090817>. (Cf. PICUM Newsletter, August/September 2009.)

sets global standards for human rights, no single UN agency holds the necessary resources to improve the lives of women in all areas, with women's concerns spread across four UN entities - Unifem, DAW, Osagi and Instraw.<sup>122</sup> More than 300 NGOs, under the acronym GEAR (Gender Equality Architecture Reform) had pushed for the new super-agency. The European Women's Lobby (EWL) established a network of migrant women under their 'Equal Rights, Equal Voices' project. This project, which dates to 2006, builds on the observation that migrant women have specific needs and face specific obstacles in the integration process, but their voices are barely heard and reflected in the integration debate. A main objective is to make migrant women's organisations heard at the European level.<sup>123</sup>

### The continuing risk of violence against undocumented women

According to UN High Commissioner for Human Rights Navanethem Pillay, the global economic crisis will disproportionately affect women, the majority of whom are poor and disenfranchised. Women migrant workers face additional threats of marginalisation, job losses and deprivation of economic and social rights. Many industries do not provide equal pay for equal work and women lack legal protection. At the 53rd session of the Commission on the Status of Women, Deputy Secretary-General Asha-Rose Migiro

stated that migrant women in domestic work often fall outside the scope of labour laws and urged governments to promote equality and stop violence against women. The secretary-general's 2006 study found many governments had yet to adopt legislation criminalising all forms of violence against women or on human trafficking.<sup>124</sup>

Several reports discussed violence against undocumented women, and the related phenomenon of trafficking. A Euro-Mediterranean Human Rights Network report identified general trends in causes of violence against migrant women, factors exacerbating this violence, and obstacles to support and protection. Focusing on Morocco, Egypt, France and Italy, the report found violence is not due to deviant individuals, but to structural gender inequalities. Barriers to talking about violence stem from fear of authorities, and of community responses. Sometimes women are simply unaware of structures that may exist to help them.<sup>125</sup>

A French association working on access to health and other rights for prostitutes, Association Griselidis, reported increased violence against migrant women in Toulouse. In some instances victims were detained for immigration irregularities while their attackers went free, despite an Interior Ministry announcement that police should disregard victims' migration status. The association also criticised institutional and

122 Lesley Abdela, "Finally, a UN agency for women", The Guardian, 27 May 2009, <http://www.guardian.co.uk/commentisfree/2009/may/27/un-super-agency-women> (Cf. PICUM Newsletter, July 2009.) See also <http://gear.collectivex.com/>.

123 European Women's Lobby, "Project: Equal Rights, Equal Voices. Migrant Women in the European Union," [http://ewl.horus.be/site/1abstract.asp?DocID=2391&v1ID=&RevID=&namePage=&pageParent=&DocID\\_sousmenu=](http://ewl.horus.be/site/1abstract.asp?DocID=2391&v1ID=&RevID=&namePage=&pageParent=&DocID_sousmenu=), (Cf. PICUM Newsletter, February 2009.)

124 Commission on the Status of Women, Report on the fifty-third session, 2-13 March 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/283/98/PDF/N0928398.pdf?OpenElement> (Cf. PICUM Newsletter, June 2009.)

125 Jane Freedman, Bahija Jamal, "Violence Against Migrant and Refugee Women in the EUROMED Region", Euro-Mediterranean Human Rights Network, December 2008, <http://euromed-migrasyl.blogspot.com/2009/04/euromed-emhrn-violence-against-migrant.html>. (Cf. PICUM Newsletter, May 2009.)



police violence, and highlighted social repression as the cause of these women's exploitation.<sup>126</sup>

The British Refugee Council released two reports as part of its Vulnerable Women's Project. Highlighting evidence of rape and sexual violence and the particularly vulnerable situation of undocumented women, the project showed that women who seek asylum in the UK often face further hardships, such as destitution, as the system fails to recognise their needs. Undocumented status and enforced destitution risk further sexual violence, whether through prostitution or simply lacking a place of safety.<sup>127</sup> Asylum Aid started a campaign, "Every Single Woman", to promote a gender-sensitive asylum system. A video and report called for women seeking asylum to receive treatment comparable to that of women in similar situations who are already settled in the UK.<sup>128</sup>

The United Nations Office of Drugs and Crime's Global Report on Trafficking in Persons, based on data from 155 countries, found the most common form of trafficking (79%) is sexual exploitation, with predominantly female victims. In 30% of the countries that provided information on the gender of traffickers, women make up the largest proportion of traffickers and in some regions, women trafficking women is the norm. The report included an overview of trafficking patterns; legal steps taken in response; and country-specific information on cases of trafficking, victims, and prosecutions.<sup>129</sup>

## Health related challenges facing undocumented migrant women

Several reports studied the health effects of undocumented status on women. The BMC Public Health Journal published two articles on reproductive health of undocumented migrants in Switzerland. The first, 'Undocumented migrants lack access to pregnancy care and prevention' finds undocumented migrants have more unintended pregnancies and delayed prenatal care, use fewer preventive measures and are exposed to more violence during pregnancy. The study underscored the need for better access to prenatal care and screening for violence exposure and recommended language- and culturally-appropriate education on contraception, family planning and cervical cancer. The second paper, 'Chlamydia trachomatis prevalence in undocumented migrants undergoing voluntary termination of pregnancy' reported that pregnant undocumented migrants showed higher rates of Chlamydia trachomatis infection (CTI) indicating the need to improve access to treatment and education.<sup>130</sup> A study by Italian researchers into HIV among undocumented migrant women highlighted social determinants including immigration status and living and working conditions. Preventive educational campaigns rarely reach migrants because of logistical, cultural, and language barriers. The majority of undocumented migrants with HIV were infected post-migration. The study recommended

126 Association Grisélidis, "Femmes étrangères et violences au quotidien", 3 April 2009, <http://www.millebords.org/spip.php?article10910>. (Cf. PICUM Newsletter, May 2009.)

127 The Refugee Council released a Literature Review and Good Practice Guide. See [http://www.refugeecouncil.org.uk/policy/position/2009/vulnerable\\_women/](http://www.refugeecouncil.org.uk/policy/position/2009/vulnerable_women/). (Cf. PICUM Newsletter, April 2009.)

128 <http://www.asylumaid.org.uk/charter>. (Cf. PICUM Newsletter, December 2009.)

129 UNODC, "Global Report on trafficking in persons", February 2009, <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>. (Cf. PICUM Newsletter, April 2009.)

130 BMC Public Health, "Undocumented migrants lack access to pregnancy care and prevention", 2008, <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2323378>; BMC Public Health, "Chlamydia trachomatis prevalence in undocumented migrants undergoing voluntary termination of pregnancy: a prospective cohort study", 2008, <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2605464>. (Cf. PICUM Newsletter, February 2009.)

improved health education and free access to HIV testing and care for undocumented migrants, particularly those from sub-Saharan Africa.<sup>131</sup>

In a statement to mark International Women's Day, the International Organization for Migration (IOM) highlighted the need to provide maternal and child health services for migrants. IOM noted the disproportionate vulnerability of undocumented women and girls to exploitation and violence and how lack of access to maternal and child health services exacerbates this risk. Children of women who have not had pre-natal care can be more susceptible to premature birth and growth and development issues. The IOM cited recent studies showing a lack of legal status increases risks of violence and sexual assault, and reduces access to pre-natal as well as other non-emergency care.<sup>132</sup>

### Labour standards and domestic work

An International Labour Organisation (ILO) paper highlighted some of the problems migrant domestic workers face and strategies to improve rules and practices in selected countries. They occupy one of the largest female-dominated occupations, but are among the least protected by labour laws. Due to the lack of opportunities for regular entry for this sector, and increasing demand for household and care services, domestic work attracts undocumented women.

Hidden from police and labour inspectors, they are often excluded from legal protection and isolated from support networks.<sup>133</sup> Another ILO report, to facilitate discussion of domestic work at the 2011 International Labour Conference, examined innovative laws and regulations on domestic workers. Stressing the significance of domestic work in labour markets globally, the report advocated the adoption of standards promoting decent work for domestic workers, including social protection.<sup>134</sup> Domestic Workers Rights, a global network run by and for domestic workers' organisations, published a leaflet explaining the need for an international convention to promote domestic workers' rights, and steps to achieve this.<sup>135</sup>

UN and OSCE bodies, as well as Irish trade unions, took positive steps toward recognising and protecting the rights of undocumented women engaged in domestic work. The UN Committee on the Elimination of Discrimination Against Women (CEDAW) adopted General Recommendation 26 on Women Migrant Workers, affirming that CEDAW must protect all migrant women. Noting the particular vulnerability of undocumented female workers because of limited access to basic labour rights and fear of deportation, the recommendation highlighted the abuses and discrimination female migrants face. The Committee encouraged states to ratify instruments that protect undocumented migrant women, in particular the International Convention

131 Maria Chiara Pezzoli et al, 'HIV Infection Among 'Illegal' Migrants, Italy, 2004 – 2007', *Emerging Infectious Diseases*, 15(11), November 2009. <http://www.cdc.gov/eid/content/15/11/1802.htm#cit>. [Cf. PICUM Newsletter, January 2010.]

132 <http://www.iom.int/jahia/Jahia/media/news-releases/newsArticleEU/cache/offonce?entryId=23934>. [Cf. PICUM Newsletter, March 2009.]

133 Maria Gallotti, "The Gender Dimension of Domestic Work in Western Europe", ILO, 2009, <http://www.ilo.org/public/english/protection/migrant/download/imp/imp96.pdf>. [Cf. PICUM Newsletter, August/September 2009.]

134 "Decent work for domestic workers", ILO, report IV, International Labour Conference, 99<sup>th</sup> Session, 2010, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_104700.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_104700.pdf). [Cf. PICUM Newsletter, May 2009.]

135 <http://domesticworkerrights.org/sites/en.domesticworkerrights.org/files/pamILOeng.pdf>. [Cf. PICUM Newsletter, May 2009.]

on the Protection of All Migrant Workers and Members of their Families.<sup>136</sup>

The OSCE published a "Guide on Gender-Sensitive Labour Migration Policies." It focuses mainly on the fact that female migrant workers often experience different disadvantages than men, due to their status, the nature of the employment sector and type of educational requirements, and stereotyped roles. The lack of policies geared towards female migrant workers' specific needs, limited legal channels for female migrant workers, and other exclusion from legislation make women particularly vulnerable to discrimination and exploitation. In the worst case, they risk becoming victims of trafficking.<sup>137</sup>

Irish trade unions negotiated a 'Code of Practice for Protecting Persons Employed in Other Peoples Homes' that emphasises the right of domestic workers to be recognised and protected as workers and obliges employers to respect their privacy. The Irish Congress of Trade Unions campaigned for an enforceable Convention on decent work for domestic workers and lobbied the government to ensure ratification at national level.<sup>138</sup>

## 6. Family Life

One UK court stopped an undocumented migrant's deportation because it would violate

his right to family life, but Switzerland heightened barriers to marriage. In November, a UK High Court quashed a 2008 immigration tribunal ruling that had ordered the expulsion of an undocumented Pakistani migrant based on his conviction for reckless driving resulting in death. The judge accepted that expulsion would violate his right to family life, as he was married to a British woman and they had a daughter.<sup>139</sup> Switzerland's National Council and Council of States accepted a law prohibiting the marriage of people lacking the right of residence, in order to combat "fictitious marriages." The registry office will report marriages and civil unions of migrants to the migration authorities. The organisation Platform for Sans-Papiers protested against this intrusion into basic rights and said the regulation breached the constitution.<sup>140</sup>

A study in the Netherlands demonstrated a steep decline in family reunification since November 2004, when income and age requirements for migration of foreign partners were heightened. An evaluation carried out by Scientific Research and Documentation Centre of the Ministry of Justice found that after the measure was introduced 37% fewer applications were granted for family-forming migration during the period than in the prior period. This is probably more related to the raised income requirement, than to the raised age requirement. The decline was strongest among Turkish, Moroccan and Surinamese referents.<sup>141</sup>

136 [http://www2.ohchr.org/english/bodies/cedaw/docs/GR\\_26\\_on\\_women\\_migrant\\_workers\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf). [Cf. PICUM Newsletter, February 2009.]

137 OSCE, "Guide on Gender-Sensitive Labour Migration Policies", 2009, <http://www.osce.org/item/37689.html>. [Cf. PICUM Newsletter, August/September 2009.]

138 "Code of Practice for Protecting Persons Employed in Other People's Homes", <http://www.entemp.ie/publications/employment/2007/coppersonsemployedhomes.pdf>; [Cf. PICUM Newsletter, July 2009.]

139 Migration News Sheet, December 2008, p. 7. [Cf. PICUM Newsletter, January 2009.]

140 Schweizer Fernsehen, 25.05.2009, "Auch Ständerat für härtere Gangart bei Scheinehen", Schweizer Fernsehen, 25 Mai 2009, [http://tagesschau.sf.tv/nachrichten/archiv/2009/05/25/schweiz/auch\\_staenderat\\_fuer\\_haertere\\_gangart\\_bei\\_scheinehen](http://tagesschau.sf.tv/nachrichten/archiv/2009/05/25/schweiz/auch_staenderat_fuer_haertere_gangart_bei_scheinehen). [Cf. PICUM Newsletters, April & June 2009.]

141 "International family formation restricted? An evaluation of the raised income- and age requirements with regard to the migration of foreign partners to the Netherlands," [http://english.wodc.nl/onderzoeksdatabse/de-gevolgen-van-de-aanscherping-van-het-gezinsvormingsbeleid.aspx?nav=ra&l=migratie\\_en\\_integratie&l=migratie](http://english.wodc.nl/onderzoeksdatabse/de-gevolgen-van-de-aanscherping-van-het-gezinsvormingsbeleid.aspx?nav=ra&l=migratie_en_integratie&l=migratie) [Cf. PICUM Newsletter, May 2009.]

## 7. Working Conditions and Employment

### The EU adopted the Employer Sanctions Directive amidst criticism from NGOs and trade unions

Following the agreement of the European Parliament, the Council of the European Union adopted a new Directive in February for minimum standards on sanctions against employers of irregularly staying third-country nationals. The directive aims to complement other measures, such as the “return directive” and the “blue card” directive, to reduce irregular immigration while encouraging legal immigration. It introduced minimum criminal penalties against employers of undocumented migrants for repeat offences, where a large number of people in an irregular situation are employed, where working conditions are exploitative, where the employee is a victim of trafficking and this is known to the employer, or if the employee is a child. Employers could be fined, forced to pay wages in arrears at legal levels or banned for up to five years from bidding for public sector contracts or receiving state aid. An employer who is found guilty must pay a sum equal to the taxes and other levies due if the worker had been employed legally. Penalties for infringements will include fines that increase according to the number of illegally employed

foreigners; and payment of return costs, where applicable. MEPs argued that Member States should establish lower penalties for people using clandestine immigrants as domestic staff, if working conditions were not exploitative. Parliament also wanted Member States to set up mechanisms for undocumented immigrants to lodge complaints. Irregular immigrants will be able to get a temporary residence permit, if they cooperate with legal action against their employer. A list of employers who have infringed the directive may be made public. MEPs demanded that procedures to recover unpaid wages be automatic, without requiring the employee to act.<sup>142</sup>

At the adoption of the directive, PICUM and several European networks reiterated their concern that the directive would have a number of unintended effects which contradict EU policy priorities in the areas of migration, non-discrimination and integration, particularly since the focus of the directive remains on the status of the migrant, rather than on the exploitation by the employer.<sup>143</sup> The European Trade Union Confederation (ETUC) also criticized the adoption of the directive by the Parliament, as “MEPs failed to achieve a fair balance between adequate and dissuasive sanctions on the one hand and necessary protection of workers’ rights on the other.”<sup>144</sup>

142 EP News, “New rules will penalize employers of undeclared workers”, 19 February 2009, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20090202FCS47946+0+DOC+XML+V0//EN#title1>, Council of the European Union Press Release, “New measures against employers of illegal foreign workers in the EU”, 25 May 2009, [www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/misc/107988.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/misc/107988.pdf). (Cf. PICUM Newsletters, February, March and June 2009.)

143 ENAR, PICUM, European Women’s Lobby, Solidar, “Joint Statement: Employers’ sanctions directive: migrant workers, not employers, will pay the price of exploitation,” 2 February 2009, [http://www.euractiv.com/31/images/2009-02-04%20employer%20sanctions%20directive%20final\\_tcm31-179165.pdf](http://www.euractiv.com/31/images/2009-02-04%20employer%20sanctions%20directive%20final_tcm31-179165.pdf). See also PICUM, *PICUM’s Annual Concerns on the Fundamental Rights of Undocumented Migrants in Europe 2009*, PICUM, Brussels, October 2009, pp. 18-19.

144 European Trade Union Confederation (ETUC), “Sanctions against employers of irregular migrants: ETUC deplores a toothless and counterproductive instrument,” 4 February 2009, <http://www.etuc.org/a/5801>.

## Civil society resisted Ireland's attempt to increase work restrictions

In late April, the Tánaiste, the Irish deputy prime minister, Mary Coughlan, announced major changes to restrict work permits issued to non-EU workers from 1 June 2009. They will affect all new work permit holders, and permit holders already in Ireland who are made redundant. A third country national could not take a new job unless it had been publicly advertised for two months. Migrant Rights Centre Ireland (MRCI) urged the Tánaiste to postpone the changes to allow a review and consideration of alternatives. MRCI explained the changes would cause many migrant workers and their families to become undocumented or to work in the informal market, which would lead to more exploitation and would not create jobs for Irish workers.<sup>145</sup> The current processing time for permanent residency applications in Ireland is approximately 22 months, which increases the risk that applicants who become unemployed but are eligible for permanent residency could become undocumented. MRCI and other immigrant organisations recommended applicants be granted a one-year renewable permission to stay while awaiting the outcome of their applications. Government ministers announced on 28 August that the length of time a migrant worker has to seek alternative employment would increase

to six months.<sup>146</sup> Migrants' rights organisations also welcomed the September introduction of a scheme to regularise migrant workers who become undocumented for reasons beyond their control. Migrant workers from outside the European Economic Area can apply for a four-month residence permit if they fall out of the work permit system in Ireland and become undocumented through workplace exploitation, deception, or unexpected redundancy. The permit will give migrants the chance to find a job or, if they are already employed, to obtain a work permit. MRCI estimates this "Bridging Visa" could benefit several thousand undocumented workers.<sup>147</sup>

## Undocumented workers remained vulnerable to exploitation

Lack of access to the labour market compels undocumented migrants to seek informal work, which can lead to exploitation and human rights violations. Raids uncovered systematic abuses of undocumented workers. In Belgium, police in April raided a company that hired approximately 450 undocumented workers, mainly from Brazil and Ecuador, under the "service vouchers" system. The pastor who hired them, to clean private houses, had told them to register under his company to improve their chances

145 MRCI, "Urgent action needed to stop the changes to the work permits system," <http://www.virtualireland.ru/showthread.php?t=30335> [Cf. PICUM Newsletter, June 2009.]

146 MRCI e-bulletin July 2009, page 6, [http://www.mrci.ie/news\\_events/documents/e-bulletin2.July2009.doc](http://www.mrci.ie/news_events/documents/e-bulletin2.July2009.doc); [http://www.mrci.ie/news\\_events/index.htm#WorkPermitsChanges](http://www.mrci.ie/news_events/index.htm#WorkPermitsChanges). [Cf. PICUM Newsletter, August/September 2009.]

147 MRCI, Irish Congress of Trade Unions' Press Release, "MRCI and ICTU Welcome Long-Awaited Scheme for Undocumented Migrant Workers", 14 September 2009, [http://www.mrci.ie/news\\_events/documents/14.09.09AnnouncementofBridgingVisa-MRCIICU\\_000.doc](http://www.mrci.ie/news_events/documents/14.09.09AnnouncementofBridgingVisa-MRCIICU_000.doc); Irish Times, "New Bridging Visas for immigrants", 9 September 2009, <http://www.irishtimes.com/newspaper/breaking/2009/0914/breaking69.htm>. [Cf. PICUM Newsletter, October 2009.]

of regularisation. Nonetheless, the workers remained undocumented and many did not regularly receive their wages. The organisations OR.C.A., CIRE and Abraço, and unions ACV and ABVV pointed out that the workers were victims of the long uncertainty about the regularisation agreement in Belgium.<sup>148</sup>

In Germany, police and customs agents raided 180 Chinese restaurants in August. The restaurants were suspected of falsifying documents to obtain visas for Chinese cooks, who were forced to work for less than €3 per hour. The victims' passports were taken away by the restaurants' owners, who were investigated for smuggling and trafficking, labour exploitation, and failure to pay social security contributions. The newspaper "Neue Osnabrücker Zeitung" reported that catalogues circulate among Chinese restaurants so they can "order" workers from China.<sup>149</sup>

Police on the Spanish island of Gran Canaria arrested two farmers who had exploited undocumented Indonesian workers as "modern-day slaves." Two migrants reported the farmers to the police, who raided the farms and found nine undocumented workers, some of whom had spent several years working in "inhumane conditions."<sup>150</sup> In the UK, government ministers conceded existing legislation failed to prevent modern-day slavery, and agreed to criminalise

forced labour and servitude.<sup>151</sup>

Two incidents in Spain highlighted the heightened danger of workplace accidents, when the victim is undocumented. Edgar Franns Rilles, an undocumented Bolivian worker at a bakery in Valencia, had his arm cut off by a kneading machine. His employer allegedly threw the arm away, left Mr Rilles 200 meters from a hospital, and warned him not to tell authorities where the incident had occurred. Mr Rilles was afraid to admit his arm had been lost in a work accident, as he feared denunciation. The trade union CCOO (Confederación Sindical de Comisiones Obreras) filed a complaint for breaches of safety regulations by the bakery, which paid undocumented workers €700 a month for working 12 hour days. Inspectors found that all safety mechanisms had been removed or were not used. They ordered the bakery closed due to a lack of hygiene and the poor state of its equipment. The government granted Mr Rilles a residence permit on exceptional grounds.<sup>152</sup>

On the Canary island of Tenerife, a 56-year-old Uruguayan undocumented worker died after suffering a heart attack while working on renovations in a local bar. The witness who called the emergency services accused the owner of the bar of refusing to provide assistance and of dragging Luis Beltrán Larrosa into the street. The

148 See PICUM Newsletter, April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf)

149 Der Spiegel, "Fahnder durchsuchen 180 China-Restaurants", 17 October 2009, <http://www.spiegel.de/wirtschaft/soziales/0,1518,643274,00.html> (Cf. PICUM Newsletter, August/September 2009.)

150 Comprendes, "Sklavenhalter auf Gran Canaria verhaftet", 19 October 2010, <http://www.comprendes.de/nachrichten/nachrichten-einzelansicht/datum/2009/09/04/sklavenhalter-auf-gran-canaria-verhaftet>. (Cf. PICUM Newsletter, October 2009.)

151 UK Parliament Publications, <http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/91028-0004.htm#09102836000130>; Anti-Slavery, "Forced Labour in the UK: UK Government backs new slavery law" [http://www.antislavery.org/english/campaigns/previous\\_actions/forced\\_labour\\_in\\_the\\_uk\\_2.aspx](http://www.antislavery.org/english/campaigns/previous_actions/forced_labour_in_the_uk_2.aspx). (Cf. PICUM Newsletter, December 2009.)

152 Gema Peñalosa, "'Los veneno', empresarios sin escrúpulos", El Mundo, 12 June 2009, <http://www.elmundo.es/elmundo/2009/06/12/valencia/1244787114.html>; Migration News Sheet July 2009, p. 5. (Cf. PICUM Newsletters, July & August/September 2009.)

victim's son said three hours passed before his father was taken to the hospital. The owner of the bar was investigated for failure to provide first aid and reckless homicide.<sup>153</sup>

Some undocumented workers took action to combat their exploitation directly. Undocumented workers in France released a video showing the unsafe and exploitative working conditions they faced while renovating metro stations in Paris for a sub-contractor of Régie Autonome des Transports Parisiens, the regional transit operator.<sup>154</sup>

In Germany, an undocumented migrant from Serbia won €25,500 in back wages in a settlement in the labour court of Celle, in Lower Saxony. The migrant said his employer had made him work 13 to 14 hours per day, six days a week, had withheld part of his salary for seven years, and had refused to help him receive medical assistance after a serious work accident. The migrant approached "Migration und Arbeit" ("Migration and Work"), a centre established by the German trade union *ver.di*, who sued the employer on his behalf after his return to Serbia.<sup>155</sup>

To help avoid such situations, the Multinational Enterprise Programme of the International

Labour Office established a helpdesk to provide guidance on international labour standards to company managers and workers. Drawing on the ILO Declaration of Fundamental Principles and Rights at Work, the ILO MNE Declaration and other instruments, the helpdesk answers questions relating to labour standards and explains how these instruments can guide company operations.<sup>156</sup>

The NGO network SOLIDAR brought 50 social workers from its member organisations to the European Parliament on 29 April to share the challenges they face working with disadvantaged groups and vulnerable people, to highlight the impact of European policies, and to provide recommendations to improve social Europe. SOLIDAR released six key messages to the European institutions, two of which referred to undocumented migrants. The declaration called for better protection of migrant workers in social care professions by clarifying the interplay of European and national rules regarding posting workers and temporary work agencies. SOLIDAR urged the EU to promote framework conditions in social protection systems for better pay and conditions for migrants.<sup>157</sup>

153 Belen Molina, "Un sin papeles muere por omisión de socorro", *Público*, 11 August 2009, <http://www.publico.es/espana/243837/papeles/muere/omision/socorro>; Laura Docampo, "Larrosa llegó al hospital tres horas después de desvanecerse", *La Opinión*, 13 August 2009, <http://www.laopinion.es/sucesos/2009/08/13/larrosa-llego-hospital-tres-horas-despues-desvanecerse/237462.html>. [Cf. PICUM Newsletter, August/September 2009.]

154 "Les incroyables conditions de travail des sans-papiers qui travaillent pour un sous-traitant de la RATP", *20minutes.fr*, 15 October 2009, <http://www.20minutes.fr/article/355453/France-Les-incroyables-conditions-de-travail-des-sans-papiers-qui-travaillent-pour-un-sous-traitant-de-la-RATP.php>; «A Paris, des sans-papiers dévoilent leurs conditions de travail», *Le Monde*, 14 October 2009, [http://www.lemonde.fr/societe/article/2009/10/14/a-paris-des-sans-papiers-devoilent-leurs-conditions-de-travail\\_1253732\\_3224.html](http://www.lemonde.fr/societe/article/2009/10/14/a-paris-des-sans-papiers-devoilent-leurs-conditions-de-travail_1253732_3224.html). [Cf. PICUM Newsletter, November 2009.]

155 Taz, "Papierloser bekommt Recht", 30 September 2009, <http://www.taz.de/1/archiv/print-archiv/printressorts/digi-artikel/?resort=na&dig=2009%2F09%2F30%2Fa0116&cHash=3f9cac972c>. [Cf. PICUM Newsletter, October 2009.]

156 ILO Help Desk Paper, "Do you have questions about putting decent work principles into practice in company operations?" <http://www.world-psi.org/Template.cfm?Section=Home&CONTENTFILEID=26170&TEMPLATE=/ContentManagement/ContentDisplay.cfm>. [Cf. PICUM Newsletter, October 2009.]

157 Solidar's Press Release, "Social Workers bring a Social Reality Check to the European Parliament", 30 April 2009, [http://www.solidar.org/Page\\_Generale.asp?DocID=13955&thebloc=21240](http://www.solidar.org/Page_Generale.asp?DocID=13955&thebloc=21240). [Cf. PICUM Newsletter, May 2009.]

## Trade unions support undocumented migrant workers

Trade unions provided key support and advocacy for undocumented migrant workers in 2009. Migrant domestic workers in the Netherlands are now protected by the labour union FNV Bondgenoten, categorised as cleaning workers.<sup>158</sup> In Stockholm, the two main Swedish trade unions (TCO and LO) and the NGO Papperslösa Stockholm opened a drop-in centre for undocumented migrants, to prevent their ill-treatment through services such as legal and practical advice to workers.<sup>159</sup> In March, ver.di, the German service sector trade union, opened a contact point specialising in the concerns of undocumented workers in Berlin. Undocumented workers and their supporters had campaigned for union recognition for several years. A similar contact point opened in Hamburg office, and undocumented workers may become members of the union.<sup>160</sup> In the UK, the General, Municipal, and Boilermakers' Union called for "strong consideration" of an amnesty or sustainable regularisation of undocumented migrant workers as a step towards ending workplace exploitation. The union argued that the work registration scheme and civil penalty regime introduced in February 2008 had a serious impact on the

employment rights of migrant workers, and increased discrimination and exploitation.<sup>161</sup>

The German Trade Union Federation issued a paper discussing undocumented migrants in Germany. It named good practice examples and raised policy goals, i.e. respecting undocumented migrants' basic social and human rights; combating moonlighting as a matter of labour, not regulatory policy; no EU ban on regularisations; an expanded right to stay and work for migrants with short-term permits; an end to the duty to report for social service administrators; decriminalisation of support; decoupling of employment and residence rights; and deportations that respect rights and are ideally voluntary.<sup>162</sup>

Throughout Europe, civil society actors and undocumented migrants themselves continued to work for labour market reforms and regularisation of workers. In Denmark, the national daily "Politiken" reported the high costs of not allowing unsuccessful asylum applicants to work. According to the Danish Refugee Council, these amount to €33,000 per undocumented migrant per year. A UNHCR spokesperson agreed that leaving people in limbo was not good for them, nor for Denmark.<sup>163</sup>

158 See PICUM Newsletter, February 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-02-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-02-2009.pdf). See also ABVAKABO and FNV, "Your rights as a domestic worker in a private household," October 2008, <http://www.abvakabofnv.nl/PDF/downloads/folder-rechten-als-huishoudelijke-hulp/193055/.pdf>.

159 Landsorganisationen i Sverige, "Trade union centre for non-documented persons inaugurated", 18 September 2009, <http://www.lo.se/home/lo/home.nsf/unidView/9A7E32111685E39BC12574C8002E49D7>; Union Renewal, "Swedish Unions fight exploitation of illegal workers", <http://unionrenewal.blogspot.com/2008/10/swedish-unions-fight-exploitation-of.html>. [Cf. PICUM Newsletter, February 2009.]

160 See PICUM Newsletter, April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf).

161 Final Agenda of the GMB Congress 2009, p. 44, <http://www.gmb.org.uk/files/98741/FileName/FinalAgenda20092.pdf>; [http://www.morningstaronline.co.uk/britain/gmb\\_agrees\\_to\\_back\\_immigrant\\_amnesty](http://www.morningstaronline.co.uk/britain/gmb_agrees_to_back_immigrant_amnesty). [Cf. PICUM Newsletter, August/September 2009.]

162 DGB-Bundesvorstand, Department of Migration and Antiracism Policy, 14 April 2009, [http://www.dgb.de/themen/migration/index\\_html](http://www.dgb.de/themen/migration/index_html). [Cf. PICUM Newsletter, June 2009.]

163 Migration News Sheet June 2009, p.13. [Cf. PICUM Newsletter, July 2009.]



In Portugal, four immigrant associations met with Artur Penedos, Presidential adviser on social affairs, calling for the return of the 90-day visa policy. Timóteo Macedo, president of the association Immigrant Solidarity, explained that Portugal's new immigration bill made legalisation dependent upon a job contract, but only regular immigrants are entitled to job contracts. The 90-day visa would allow migrants to work and employers to hire without fear. Rights associations challenged the high fees (€500) immigrants must pay to regularise their status.<sup>164</sup>

After a week on strike, a group of undocumented migrants employed by the fast-food chain Kentucky Fried Chicken in Paris obtained an agreement with the company in view to obtaining their regularisation.<sup>165</sup>

### Undocumented migrants, civil society, and governments worked for regularisation

After 17 days protesting outside the Labour Stock Exchange, the Coordination Sans Papiers 75 ("Undocumented Migrants Coordination Group 75") (CSP 75) abandoned a 14-month struggle to force unions to back demands for the right

to live and work in France. The migrants had been expelled from the Exchange offices by members of the General Confederation of Labour (Confédération générale du travail - CGT). They then camped on the sidewalk outside, and on 12 July accepted the government's offer to examine 300 of their 1,174 applications for residence within two months, in return for ending the protest.<sup>166</sup> A group of about 100 migrants, most from Mali, split from the CSP 75 and continued to camp outside the Exchange. Police removed them one day after the destruction of the Calais "jungle" in September.<sup>167</sup> The CSP 75 inaugurated a "Ministry for the Regularisation of all Undocumented Migrants" ("Ministère de la Régularisation de Tous les Sans-Papiers") in Paris on 26 September. The Ministry aims for the regularisation of all undocumented migrants in France.<sup>168</sup> Several thousand people demonstrated outside the Ministry on 10 October to support its demand.<sup>169</sup>

More than 5,000 undocumented migrant workers in France engaged in a strike, starting on 12 October. They occupied more than 40 employment agencies, restaurants, construction sites and businesses, demanding to be regularised. The Confédération générale du travail (General Confederation of Labour - CGT) coordinated the strikes, supported by

164 Sofia Branco, "Associações de imigrantes pedem ao Governo que reponha visto de 90 dias", *Público*20, 2 April 2010, <http://ultimahora.publico.clx.pt/noticia.aspx?id=1372284&idCanal=62>. (Cf. PICUM Newsletter, May 2009.)

165 Destins d'Immigres Blog, <http://destinsdimmigres.wordpress.com/>. (Cf. PICUM Newsletter, April 2009.)

166 Liberation, "Ils sont rentrés et ont balancé les lacrymo", 24 June 2009, <http://www.liberation.fr/societe/06011055-descente-cgt-sans-papiers>; Karl Laske, «Les sans-papiers cessent leur occupation contre une promesse», Liberation, 13 July 2009, <http://www.liberation.fr/societe/0101579389-les-sans-papiers-cessent-leur-occupation-contre-une-promesse>. (Cf. PICUM Newsletters, July & August/September 2009.)

167 MediaPart, "Paris: évacuation en silence des sans-papiers du boulevard du Temple", 23 September 2009, <http://www.mediapart.fr/journal/france/230909/paris-evacuation-en-silence-des-sans-papiers-du-boulevard-du-temple>. (Cf. PICUM Newsletter, October 2009.)

168 AlterInfo, "Inauguration du Ministère de la Régularisation de Tous les Sans-Papiers", [http://www.alterinfo.net/Inauguration-du-Ministere-de-la-Regularisation-de-Tous-les-Sans-Papiers\\_a37068.html](http://www.alterinfo.net/Inauguration-du-Ministere-de-la-Regularisation-de-Tous-les-Sans-Papiers_a37068.html). (Cf. PICUM Newsletter, October 2009.)

169 "Manifestation pour la régularisation des sans-papiers à Paris", Le Monde, 10 October 2009, Le Monde, "Manifestation pour la régularisation des sans-papiers à Paris", 10 October 2009, [http://www.lemonde.fr/societe/article/2009/10/10/manifestation-pour-la-regularisation-des-sans-papiers-a-paris\\_1252355\\_3224.html](http://www.lemonde.fr/societe/article/2009/10/10/manifestation-pour-la-regularisation-des-sans-papiers-a-paris_1252355_3224.html). (Cf. PICUM Newsletter, November 2009.)

trade unions and associations. "Ici", a free newspaper, was distributed throughout France, presenting the migrants' views and interviewing representatives of organisations who support them. Several thousand protestors marched in Paris on 29 November in support of the striking workers, urging France to "say no to disposable immigration" and calling on the government to reopen negotiations. Immigration Minister Eric Besson issued a revised circular detailing conditions for regularisation through employment, in consultation with several French unions.<sup>170</sup> Migrant workers could be regularised if they lived in France for more than five years; work in a sector with a high demand for labour; have at least one year of seniority in their company and a contract of employment for over one year; and were "integrated". Besson estimated about a thousand workers could be regularised. Labour Minister Xavier Darcos announced prefects would be able to close companies employing undocumented workers and that the government would step up controls. Four unions expressed surprise, as when Darcos was Minister of Education, he had employed an irregular migrant as a cook.

President Nicolas Sarkozy insisted there would "never" be a universal regularisation in France while he is president, as past regularisations had only attracted more irregular migrants.<sup>171</sup>

Governments in Italy and Greece backed limited regularisations of undocumented workers. Italy offered regularisation to domestic workers and carers ("bandanti"). During September 2009, Italian and long-term residents families could register one domestic worker and two carers for €500 each, if the migrants had worked in their household since April 2009. Those registering carers were required to provide documentation showing they need care, and to pay the workers at least €20,000 per year. The revenue from the regularisation benefited the Italian National Health Service.<sup>172</sup>

According to media reports, the overseas employment minister of Bangladesh stated after the 3rd Global Forum on Migration and Development in Athens that Greece would regularise 15,000 Bangladeshis working in Greece irregularly.<sup>173</sup>

170 "Sans-papiers : Besson prépare une nouvelle circulaire sur la régularisation par le travail", *Le Monde*, 29 October 2009, [http://www.lemonde.fr/societe/article/2009/10/29/sans-papiers-nouvelle-circulaire-pour-la-regularisation-par-le-travail\\_1260181\\_3224.html](http://www.lemonde.fr/societe/article/2009/10/29/sans-papiers-nouvelle-circulaire-pour-la-regularisation-par-le-travail_1260181_3224.html); La Cimade, «Travailleurs sans papiers : en grève pour défendre leurs droits», 13 October 2009, <http://www.cimade.org/nouvelles/1887-Travailleurs-sans-papiers---en-gr-ve-pour-d-fendre-leurs-droits>; AFP, «Nouvelle grève de sans-papiers à Paris», 12 October 2009, <http://www.lefigaro.fr/flash-actu/2009/10/12/01011-20091012FILWWW00435-nouvelle-greve-de-sans-papiers-a-paris.php>; Lancement d'"Ici" journal de soutien aux travailleurs sans-papiers", *Le Monde*, 7 November 2009, [http://www.lemonde.fr/actualite-medias/article/2009/11/07/lancement-d-ici-journal-gratuit-de-soutien-aux-travailleurs-sans-papiers-demandant-leur-regularisation\\_1263966\\_3236.html](http://www.lemonde.fr/actualite-medias/article/2009/11/07/lancement-d-ici-journal-gratuit-de-soutien-aux-travailleurs-sans-papiers-demandant-leur-regularisation_1263966_3236.html). (Cf. PICUM Newsletters, November & December 2009.)

171 "Marche pro-immigration à Paris", *Le Figaro*, 29 November 2009, <http://www.lefigaro.fr/flash-actu/2009/11/29/01011-20091129FILWWW00148-marche-pro-immigration-a-paris.php>; «Besson annonce qu'un millier de sans-papiers seraient régularisables», *Le Monde*, 25 November 2009, [http://www.lemonde.fr/politique/article/2009/11/25/besson-annonce-qu-un-millier-de-sans-papiers-seraient-regularisables\\_1271770\\_823448.html](http://www.lemonde.fr/politique/article/2009/11/25/besson-annonce-qu-un-millier-de-sans-papiers-seraient-regularisables_1271770_823448.html); «Les préfets pourront décréter la 'fermeture administrative' des entreprises employant des sans-papiers», *Le Monde*, 22 November 2009, [http://www.lemonde.fr/societe/article/2009/11/22/les-prefets-pourront-decreter-la-fermeture-administrative-des-entreprises-employant-des-sans-papiers\\_1270497\\_3224.html](http://www.lemonde.fr/societe/article/2009/11/22/les-prefets-pourront-decreter-la-fermeture-administrative-des-entreprises-employant-des-sans-papiers_1270497_3224.html); Caroline Beyer, «Darcos et Besson intractables sur le travail des sans-papiers», *Le Figaro*, 23 November 2009, <http://www.lefigaro.fr/conjoncture/2009/11/23/04016-20091123ARTFIG00416-darcos-et-besson-intractables-sur-le-travail-des-sans-papiers-.php>; «Sarkozy 'la régularisation globale des sans-papiers : jamais !'», *France Info*, 24 November 2009, <http://www.france-info.com/france-politique-2009-11-24-sarkozy-la-regularisation-globale-des-sans-papiers-jamais-372823-9-10.html>; Migrant News Sheet, January 2010, p.4. (Cf. PICUM Newsletter, December 2009.)

172 Migration News Sheet August 2009, p. 7; <http://www.monde-diplomatique.fr/carnet/2009-08-24-Italie>. (Cf. PICUM Newsletter, August/September 2009.)

173 "Greece to legalise 15,000 Bangladeshis", *bdnews24.com*, 10 November 2009, <http://bdnews24.com/details.php?id=146649&cid=2>. (Cf. PICUM Newsletter, December 2009.)

## 8. Regularisation

### Belgian civil society campaigned for regularisation

Belgium saw sustained civil society efforts for regularisation.<sup>174</sup> In December 2008 between 2,000 and 4,500 people demonstrated for the fulfilment of the Prime Minister's March 2008 promise to establish regularisation criteria.<sup>175</sup> Members of Parliament and representatives of Collectif de Résistance Aux Centres Pour Etrangers joined a Christmas regularisation demonstration at a detention centre near Liege.<sup>176</sup> In Brussels, almost 500 undocumented migrants gathered alongside the Union pour la Défense des Sans-Papiers (UDEP) to demand a regularisation measure.<sup>177</sup> UDEP occupied two universities in Brussels for two weeks, and marched to government buildings, capping months of demonstrations.<sup>178</sup> Demonstrations and a hunger strike continued into March.<sup>179</sup> On 26 March, Migration and Asylum Minister Annemie Turtelboom announced regularisation instructions for migrants in certain "distressing humanitarian situations."<sup>180</sup>

One hundred and three undocumented migrants ended their hunger strike outside the Free University of Brussels on 15 April, and were allowed to remain in Belgium for three months on medical grounds.<sup>181</sup> In Antwerp, undocumented migrants occupied several institutions to call for regularisation, sheltering with unions, civil society organisations, universities and cultural foundations from April to early June.<sup>182</sup> Around 650 undocumented migrants of 25 nationalities began a hunger strike in Brussels on 30 May, squatting in a vacant building. On 20 June, approximately 200 others ended their hunger strike after 79 days in Brussels' Beguinage Church and were allowed to apply for temporary residence permits on medical grounds.<sup>183</sup> NGOs, labour unions, and lawyers rallied in Brussels on 12 June to criticise the mismanagement of asylum and migration by Minister Turtelboom and the non-execution of a March 2008 agreement to allow the regularisation of employed undocumented migrants, give a definitive answer to asylum applicants who have waited for years, and enable residency for those integrated in Belgian society.<sup>184</sup> Brussels police removed about 180 undocumented migrants protesting for regularisation outside the headquarters of the socialist party on 30 July.<sup>185</sup>

174 PICUM, Main Concerns about the Fundamental Rights of Undocumented Migrants in Europe 2009, pp. 45-46.

175 See PICUM Newsletter, January 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-01-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-01-2009.pdf)

176 Ibid.

177 Ibid.

178 Union de defense des sans papier-UDEP, available online at <http://sanspapiers.skynetblogs.be>. [Cf. PICUM Newsletter, February 2009.]

179 See PICUM Newsletter, April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf)

180 Vreemdelingenrecht.com, "Verblijf om humanitaire redenen", available online at <http://www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=7136>. [Cf. PICUM Newsletter, April 2009; PICUM Newsletter, May 2009.]

181 "Hongerstakers VUB schorten actie op", Knack.be, 15 April, 2009, available online at <http://www.knack.be/nieuws/belgie/hongerstakers-vub-schorten-actie-op/site72-section24-article32205.html>. [Cf. PICUM Newsletter, May 2009.]

182 ACW.be, available online at <http://www.acw.be/verbond/antwerpen/content/view/full/440/69/>. [Cf. PICUM Newsletter, May 2009.]

183 See PICUM Newsletter, July 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-07-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-07-2009.pdf)

184 John Moussiaux, "Een duizendtal 'Mensen zonder papieren' betogen in de straten van Brussel", indymedia.be, 15 June 2009, available online at <http://www.indymedia.be/en/node/33668>. [Cf. PICUM Newsletter, July 2009.]

185 "Gedwongen ontruiming van mensen zonder papieren", Knack.be, 30 June 2009, available online at <http://www.knack.be/nieuws/belgie/gedwongen-ontruiming-van-mensen-zonder-papieren/site72-section24-article37257.html>. [Cf. PICUM Newsletter, August/September 2009.]

Prime Minister Van Rompuy released details of the regularisation agreement, after more than a year of negotiations, on 20 July.<sup>186</sup> A three-month programme began on 15 September, under which several categories of undocumented migrants could stay and work: 1) asylum seekers who have waited for a decision for an unreasonably long time (three or four years for families with children in school, or four or five years for singles and other families), or whose appeals have been pending for more than five years; 2) individuals who require urgent humanitarian assistance; 3) families whose children attend school, who have waited for an asylum decision for at least a year, and who have lived in Belgium for at least five years without interruption; 4) undocumented migrants who have lived in Belgium for at least five years without interruption and have either held a residence permit or attempted to obtain one before 18 March 2008; 5) migrants who can demonstrate they are well integrated locally, have lived in Belgium without interruption since at least 31 March 2007, and have an offer of employment.<sup>187</sup> A committee of cabinet members, the foreigners' office, NGOs, and the professional lawyers' body was established to oversee the interpretation and application of these criteria.<sup>188</sup>

## Undocumented migrants in Switzerland pressed for regularisation

In Switzerland, undocumented migrants pressed for their own regularisation. One hundred and fifty occupied the Prediger Kirche church in Zurich from 19 December 2008 to 3 January. Supported by migrant organisations, these migrants and failed asylum seekers claimed the right to stay and work in Switzerland. A 30-minute film documented the occupation. New educational media, two short films and a brochure on undocumented migrants, for public discussion, school projects and other activities, were available as well. Many of Switzerland's irregular immigrants live and work in Zurich, but the canton authorities have never applied for a collective regularisation. The trade union SIT (Syndicat interprofessionnel des travailleurs) estimated there were 120,000 undocumented migrants in Switzerland. Mr. Felipe Polania, spokesman for the squatters, reported racist and xenophobic behaviour against undocumented migrants in Switzerland. He expressed concern this would interfere with setting up an organisation of undocumented migrants' movements.<sup>189</sup>

186 "Belgium to legalise 25,000 immigrants", Euractiv.com, 20 July 2009, available online at <http://www.euractiv.com/en/socialeurope/belgium-legalise-25000-immigrants/article-184257>. [Cf. PICUM Newsletter, July 2009.]

187 EurActiv, "Belgium to legalise 25,000 immigrants", 20 July 2009, available online at <http://www.euractiv.com/en/socialeurope/belgium-legalise-25000-immigrants/article-184257>. [Cf. PICUM Newsletters, July & October 2009.]

188 Foyer, Juridische nieuwsbrief n°202, 23 October 2009, [www.foyer.be](http://www.foyer.be). [Cf. PICUM Newsletter, November 2009.]

189 Olivier Chavaz, "Les sans papiers s'invitent pour Noel", Le Courrier, 21 December 2008, available online at <http://www.lecourrier.ch/index.php?name=NewsPaper&file=article&sid=441225>; Romain Clivaz, "Les cantons depasses par les demandes asile", 24 heures, 5 January 2009, available at <http://www.24heures.ch/actu/suisse/cantons-depassees-demandes-asile-2009-01-04>; Ariane Gigon, "Sans-papier: La durete de Zurich etonne les Romands" Swissinfo.ch, 8 January 2009, available at <http://www.swissinfo.ch/fre/swissinfo.html?siteSect=105&sid=10168899&ty=st>. [Cf. PICUM Newsletters, January, February & April 2009.]

The occupation and protest in Zurich triggered further action. Undocumented migrants in Zurich established a school to provide German language classes. While Swiss law allows undocumented migrants who have lived in Switzerland for at least five years and are well integrated to apply for a residence permit, Zurich authorities require German language skills, and undocumented migrants generally are not given the opportunity to attend classes.<sup>190</sup> In April, more than 100 undocumented migrants and supporters marched to the Department of Social Affairs and the Department of Migration of the Canton of Zurich to demand identity papers and protest against their identity cards being taken away.<sup>191</sup> The Zurich church occupations drew media attention to the challenges facing undocumented migrants elsewhere in Switzerland. Swissinfo.ch interviewed undocumented migrants in Geneva and Lausanne, who reported having to share beds in a rotating system. They complained about the education system: basic education is guaranteed to undocumented children until age 17, but thereafter they cannot access universities or training institutions. They also expressed concern about low wages, abuse and domestic violence, and movement restrictions.<sup>192</sup>

## Regularisation rises in public debate

In the UK and Poland, calls for regularisation rose from public officials. London mayor Boris Johnson called for an “earned amnesty” for irregular immigrants in London, claiming the notion they will one day be deported is implausible. Instead, they should have a chance to “earn” citizenship and contribute fully to society.<sup>193</sup> An estimated 600,000 to 1,000,000 people are in the UK irregularly, around 440,000 in London. According to a report by the London School of Economics, granting amnesty to long-term undocumented migrants in the UK could add up to £3 billion to the economy. The report found amnesty would not lead to a rise in migration, but would raise funds to benefit welfare and housing services. Mayor Johnson, who commissioned the study, said it proved immigrants were not a financial burden. The study found 67% of irregular immigrants would be eligible to remain under a five-year residency plan. The Home Office stated that no amnesty would take place and irregular migrants should go home.<sup>194</sup>

Ecumenical actors urged society to counter hostile trends toward migrants. In Prague,

190 Ray Smith, “SWITZERLAND: Undocumented Migrants Run Their Own School”, IPS, 13 October 2009, available online at <http://www.ipsnews.net/news.asp?idnews=48829>. (Cf. PICUM Newsletter, November 2009.)

191 Video “Sans papiers protest for identity papers”, A Films, 8 April 2009, available online at <http://a-films.blogspot.com/2009/04/080409en.html>. (Cf. PICUM Newsletter, May 2009.)

192 Rodrigo Carrizo Coutto, “Invisible works fight for recognition”, swissinfo.ch, 24 January 2009, available online at <http://www.swissinfo.org/eng/front.html?siteSect=109&ty=st&sid=10236041>. (Cf. PICUM Newsletter, March 2009.)

193 Helene Mulholland, “Boris Johnson calls for illegal immigrant amnesty in London”, The Guardian, 22 November 2008, available online at <http://www.guardian.co.uk/politics/2008/nov/22/illegal-immigrant-amnesty-london/print#history-byline>. (Cf. PICUM Newsletter, January 2009.)

194 “Economic impact on the London and UK economy of an earned regularization of irregular migrants in the UK”, Greater London Authority, May 2009, available online at [http://www.london.gov.uk/mayor/economic\\_unit/docs/irregular-migrants-report.pdf](http://www.london.gov.uk/mayor/economic_unit/docs/irregular-migrants-report.pdf); Charles Kelly, “Immigrant Amnesty ‘worth 3 billion pounds’ says LSE”, Immigration Matters, 16 June 2009, available online at <http://www.immigrationmatters.co.uk/uk-immigrant-amnesty-worth-3bn-say-lse.html>; Charles Kelly, “UK border agency response to LSE report on amnesty for illegal migrants”, Immigration Matters, 17 June 2009, available online at <http://www.immigrationmatters.co.uk/uk-border-agency-response-to-lse-report-on-amnesty-for-illegal-migrants.html/comment-page-1>. (Cf. PICUM Newsletter, July 2009.)

Pope Benedict XVI said migrants should be welcomed “without limits.” He deplored restrictive immigration policies, and the “attitude of rejection” of “so-called civilised societies.” He urged respect for all, regardless of race or culture.<sup>195</sup> During a mass in May in Westminster Cathedral in London, the Rt Rev Patrick Lynch, auxiliary Catholic bishop of Southwark, said the Church had a long tradition of solidarity with workers, especially migrant workers, and prayed migrants would not be made “scapegoats” during the economic downturn. The mass was part of the Strangers into Citizens action calling for an “earned amnesty” for an estimated 450,000 long-term undocumented migrants in the UK. To qualify, migrants would have to demonstrate four years’ residence, followed by a two-year “pathway” period, a clean criminal record, good English and character references. In an Anglican service at Westminster Abbey, the Bishop of Southwark, the Rt Rev Tom Butler, also backed the Strangers into Citizens campaign.<sup>196</sup> The Churches Commission for Migrants in Europe and the Conference of European Churches declared 2010 the Joint Year for European Churches Responding to Migration.<sup>197</sup>

Poland’s Commissioner for Civil Rights Protection, Janusz Kochanowski, appealed to the Ministry of Interior and Administration to

regularise undocumented migrants who have not broken the law. At present, irregular immigrants in Poland can only regularise their status if they have a terminal illness, if their children are born in Poland, or if they marry a citizen. While a regularisation was conducted in 2007, only about 0.5 percent of undocumented immigrants met its requirements. An estimated 500,000 people currently reside in Poland irregularly. Kochanowski’s proposal could allow 50,000 Vietnamese immigrants and between 50,000 and 300,000 Ukrainians to regularise their status.<sup>198</sup>

Regularisation entered the debate in Portugal and the Czech Republic as well, although official actions remained relatively limited. The Portuguese Service of Foreigners and Frontiers (Serviço de Estrangeiros e Fronteiras, SEF) and Directory General of Prison Services (Serviços Prisionais, DGSP) signed a protocol to deepen and improve their connections. The protocol is part of the Plan for Immigrant Integration, which aims at increasing awareness among detained foreigners, who represent 20% of the prison population, about the rules regarding regularisation. The “SEF Mobile Service” will initially be dispatched to prisons in Alcoentre, Carregueira, Lisbon and Pinheiro da Cruz, to speed regularisation processes.<sup>199</sup>

195 “Praga il Papa: No a false ideologie Accogliere tutti. Sì all’economia responsabile”, *La Repubblica*, 26 September 2009, available online at <http://www.repubblica.it/2009/07/sezioni/esteri/benedetto-xvi-36/praga/praga.html>, “Immigrati, scontro Vaticano-Lega Il ministro Calderoli ci offende”, *La Repubblica*, 25 August 2009, available online at <http://www.repubblica.it/2009/08/sezioni/cronaca/immigrati-10/vaticano-calderoli/vaticano-calderoli.html?ref=search> and AFP, “Vatican deplores indifference to migrants after more deaths”, *ReliefWeb*, 22 August 2009, available online at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SNAA-7V845Q?OpenDocument>. [Cf. PICUM Newsletter, October 2009.]

196 Strangers into Citizens, available online at <http://www.strangersintocitizens.org.uk/>; Ekklesia, “Thousands back ‘strangers into citizens’ pro-migrant call”, 5 May 2009, available online at <http://www.ekklesia.co.uk/node/9388>. [Cf. PICUM Newsletter, May 2009.]

197 ENAR, *Weekly Mail* no. 204, 30 October 2009, available online at <http://www.enar-eu.org/Page.asp?docid=22912&langue=EN>; Migration 2010, available online at <http://www.migration2010.eu>. [Cf. PICUM Newsletter, November 2009.]

198 “Imigranci czekaja na abolicję” [“Immigrants await regularisation”], *TVP.INFO*, 29 August 2009, available online at [www.tvp.info/informacje/polska/imigranci-czekaja-na-abolicje](http://www.tvp.info/informacje/polska/imigranci-czekaja-na-abolicje); Joanna Cwiek, “Abolicja dla nielegalnie przebywających w Polsce imigrantów” [“Regularisation for illegal migrants in Poland”], and Leszek Szymowski, “Nielegalni celem przestępców” [“Illegal migrants as target for crime bosses”], *NaszeMiasto.pl*, 26 August 2009, available online at <http://opole.naszemiasto.pl/wydarzenia/8787,abolicja-dla-nielegalnie-przebywajacych-w-polsce,id,t.html>. [Cf. PICUM Newsletter, November 2009.]

199 *Publico.pt*, “Imigrantes reclusos: SEF e Serviços Prisionais assinam protocolo para criar rede de contactos”, 24 April 2009, available online at <http://ultimahora.publico.clix.pt/noticia.aspx?id=1376096&idCanal=62>. [Cf. PICUM Newsletter, May 2009.]

Several Czech NGOs working on migration launched a project "Regularisation as One of the Tools for the Fight against Irregular Migration", to chart the lives of undocumented migrants in the Czech Republic and propose solutions to their situation. The project seeks to integrate socially excluded individuals in society and the labour market. It includes awareness raising campaigns and counselling and lobbying activities. The initiative came when the government had stepped up efforts to convince undocumented migrants to leave. An initiative, "Voluntary Returns for Illegal Immigrants," ran from 15 September to 15 December and provided undocumented migrants with assistance and transportation to their home countries if they had not been convicted of a crime in the Czech Republic, were not subject to a criminal investigation, and were not ordered deported. It is estimated that up to 300,000 undocumented migrants live in the Czech Republic.<sup>200</sup>

### Limited steps toward regularisation and tolerated status

Small, limited regularisations took place under French and Dutch jurisdiction. France agreed by treaty to regularise migrants from Burkina Faso who hold a regular employment contract. The agreement also established an entry permit that would allow 500 people per year from Burkina

Faso to enter France to find work. Burkinabe students could apply for a one year labour permit. Under French law, employers must fire migrant employees whom they are aware are residing irregularly. Therefore, migrants may only obtain a regular labour contract if they first receive a legal permit of stay. Undocumented migrants may also apply for a special temporary permit for work, if the employer would support their application for a regular stay permit.<sup>201</sup>

The Netherlands Antilles, a group of islands in the Caribbean Sea that form an autonomous part of the Netherlands, launched a six-week regularisation programme in November to grant residency to undocumented migrants who can prove they have lived there since the end of 2006 or have a valid employment contract.<sup>202</sup> Dutch politicians, notably the anti-immigration PVV, the Christian Democrats (CDA) and the Liberal party (VVD), protested that once regularised, migrants might try to enter the Netherlands. The Antillean Minister of Justice replied that the permit would only be valid for the island where it was issued.<sup>203</sup>

Austria and the Netherlands experimented with expanding tolerated stays for certain categories of migrants. Austria enacted a law regulating migrants' humanitarian right to stay. The final decision regarding residence remains with the Interior Ministry, while the federal states provide recommendations. Preconditions for an

200 Migration Online.cz, "Undocumented Migration and Regularisation", available online at <http://www.migrationonline.cz/themes/regularisation>; <http://www.migrationonline.cz/about-us/projects>; Marie Jelinkova, "An interview with Bela Hejna", Migration Online.cz, 15 September 2009, available online at <http://www.migrationonline.cz/e-library/?x=2197614>. (Cf. PICUM Newsletter, October 2009.)

201 RFI, "Le Burkina signe un accord sur l'immigration avec Paris", 11 January 2009, available online at [http://www.rfi.fr/actu/fr/articles/109/article\\_77167.asp](http://www.rfi.fr/actu/fr/articles/109/article_77167.asp). (Cf. PICUM Newsletter, February 2009.)

202 Associated Press, "Dutch islands offer amnesty to illegal immigrants", 5 November 2009, available online at <http://www.guardian.co.uk/world/feedarticle/8791315>. (Cf. PICUM Newsletter, December 2009.)

203 NRC Handelsblad, "Tijdelijke regeling illegalen Antillen", 23 October 2009, available online at [http://www.nrc.nl/nieuwsthema/antillen/article2395283.ece/Tijdelijke\\_regeling\\_illegalen\\_Antillen](http://www.nrc.nl/nieuwsthema/antillen/article2395283.ece/Tijdelijke_regeling_illegalen_Antillen). (Cf. PICUM Newsletter, January 2010.)

application are continuous and predominantly legal stay in Austria since May 2004, employment, accommodation and health insurance. Alternatively, a sponsor may pay for the claimant for three years. The ministry will establish an advisory board including church and humanitarian organisations.<sup>204</sup>

In the Netherlands, a pardon regulation that provided residence permits for around 27,500 ex-asylum seekers ended at the start of the year. Several centres housing former asylum seekers had to close for lack of funding, as required by the pardon agreement.<sup>205</sup> In December, the State Secretary of Justice, Nebahat Albayrak, announced €14.5 million to support refused asylum seekers who apply for a residence permit on medical grounds. Albayrak agreed to a trial period of one year to assess whether the policy leads to increased applications, as she was not sure means could be developed to screen out unfounded applications. She agreed to examine the consequences of granting support to those awaiting a decision on other grounds, such as humanitarian reasons.<sup>206</sup>

## 9. Forced Destitution

Undocumented status bears a disturbingly close relationship to poverty or destitution. The

European Annual Report on Social Protection and Social Inclusion, released in March 2009, showed 16% of Europeans live at risk of poverty and 8% of workers are still below the poverty line, with those figures likely to rise. The report makes several references to the situation of undocumented migrants, specifically in relation to health care access in Spain, Sweden and Luxembourg.<sup>207</sup> Civil society actors recognised the issue. In Portugal, for example, a public meeting organised by the Catholic Organisations' Forum for Immigration addressed the difficulties migrants face due to the economic crisis. The meeting discussed some of the concerns of immigrants in Portugal following the approval of an immigration bill. Of particular concern is destitution of rights, which affects those who entered Portugal regularly, but who have since lost their jobs.<sup>208</sup>

Authorities in Belgium and France failed to provide sufficient accommodation for destitute migrants, while a UK study demonstrated the potential human consequences. Belgian welfare organisations, including Kinderen Zonder Papieren (Children without Papers), said the agency for the reception of asylum seekers (Fedasil) inadequately managed reception centres. An increasing number of undocumented children have to sleep on the streets. Kinderen Zonder Papieren stated that centres are obliged

204 DiePresse.com, 24 February 2009, <http://diepresse.com/home/politik/innenpolitik/455205>. [Cf. PICUM Newsletter, April 2009.]

205 Stichting LOS newsletter 5-26. [Cf. PICUM Newsletter, January 2009.]

206 See PICUM Newsletter, January 2010, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-0102-2010formatting.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-0102-2010formatting.pdf)

207 Joint report by the European Commission and the Council of the National Reports on Strategies for Social Protection and Social Inclusion submitted by the Member States, available online at [http://ec.europa.eu/employment\\_social/spsi/joint\\_reports\\_en.htm#2009](http://ec.europa.eu/employment_social/spsi/joint_reports_en.htm#2009). [Cf. PICUM Newsletter, April 2009.]

208 Agencia Ecclesia, "Preocupações dos imigrantes em audição pública", 6 June 2009, available online at <http://www.agencia.ecclesia.pt/cgi-bin/noticia.pl?id=73562>. [Cf. PICUM Newsletter, July 2009.]



to accommodate families with children, but in reality, overcrowding has increased pressure on other shelters such as centres for homeless people. The organisations demanded that Fedasil implement the law regarding the reception of asylum seekers.<sup>209</sup>

Riot police removed up to 200 Afghan migrants from a park in Paris in August. The mayor's office claimed it had become difficult to keep the park clean, and that the growing number of migrants staying there had become aggressive. Human rights groups protested, and criticised authorities' failure to provide sufficient shelter places.<sup>210</sup>

In the UK, many refused asylum seekers, including families with children, sleep on the street, and eat from bins, according to a report by the Joseph Rowntree Charitable Trust. "Still Destitute" calls for humanitarian status and the right to work for people from Iraq, Iran, Zimbabwe and Eritrea, classified as "unreturnable." The study listed 273 destitute former asylum seekers in "limbo" in Leeds, including 30 children and 11 elderly dependants. More than a third had been destitute for over a year and many were developing mental illnesses.<sup>211</sup>

## 10. Detention

The European Parliament adopted a report of MEP Martine Roure (PSE, FR) that stressed poor conditions in several detention centres the Parliament's LIBE committee visited between 2005 and 2008. The report noted the lack of health care and legal assistance, and expressed concern that European asylum and immigration directives were not always implemented correctly, and sometimes were not implemented at all. The Parliament asked the European Commission to set up a system of regular visits and inspections, and called for LIBE to continue its visits to assure respect for European laws.<sup>212</sup>

Hundreds of undocumented migrants broke out of a detention centre on the Italian island of Lampedusa on 23 January and protested alongside local citizens against conditions there. Built for 850 migrants, the centre held more than 1,800. The government opened a new Centre for Identification and Expulsion (CEI) at a disused military base on the island,<sup>213</sup> where a fire broke out on 18 February amid fighting between migrants that also involved the police. 22 policemen were injured, and two migrants were hospitalised due to smoke inhalation. One

209 De Standaard, "Kinderen Zonder Papier en slaapt België voor rechter", 7 May 2009, available online at <http://www.standaard.be/artikel/Detail.aspx?artikelId=7J29U05G> (Cf. PICUM Newsletter, June 2009.)

210 Reuters, "Un jardin parisien abritant des Afghans évacués par la police", 19 August 2009, available online at <http://fr.reuters.com/article/topNews/idFRPAE5710B420090819>; Exiles 10, "À Paris, les exilés, principalement afghans, chassés du parc Villemin, seul abri qui leur est offert la nuit !", 19 August 2009, available online at <http://www.exiles10.org/spip.php?article1219>. (Cf. PICUM Newsletter, August/September 2009.)

211 Martin Wainright, "Refused asylum seekers forced to eat from bins, says Rowntree trust", The Guardian, 8 July 2009, available online at <http://www.guardian.co.uk/uk/2009/jul/08/asylum-seekers-rowntree-report>; Joseph Rowntree Charitable Trust, available online at <http://www.jrct.org.uk/text.asp?section=0001000200030006>. (Cf. PICUM Newsletter, August/September 2009.)

212 See PICUM Newsletter, March 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-03-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-03-2009.pdf).

213 "Migrants escape on Italian island", BBC, 24 January 2009, available online at <http://news.bbc.co.uk/2/hi/europe/7848786.stm>. (Cf. PICUM Newsletter, February 2009.)

day earlier, 300 migrants in the centre started a hunger strike to protest the decision to return 500 migrants coming from Tunisia.<sup>214</sup> A Euro-Mediterranean Human Rights Network delegation that visited in February expressed concern about the deteriorating situation on Lampedusa.<sup>215</sup> Interior Minister Roberto Maroni announced detention centres would be opened in regions where there are none, converting former army barracks, preferably close to airports.<sup>216</sup>

The United Nations Working Group on Arbitrary Detention concluded a visit to Malta in January. During the visit experts visited several detention facilities and conducted interviews. The group said the length of time undocumented migrants are detained is not “in line with international human rights law.” Although a number of positive steps safeguarding against arbitrary detention were identified, the group expressed grave concerns regarding automatic detention without recourse to a court of law in Malta.<sup>217</sup> Jacques Barrot, JLS Commissioner and Vice-President of the European Commission, participated in a fact-finding mission on 13 March regarding detention conditions for immigrants in Malta. His visit came a day after the departure of Médecins Sans Frontières from the detention centres. The

Commissioner stressed the need to improve conditions in the centres. He also pledged to make more funds available to Malta, on top of the money already allocated, to improve the centres. Finally, he emphasised that the creation of the European Asylum Support Office could lead to a pilot programme to transfer asylum seekers from Malta to other EU Member States. Mr Barrot stated there were few other ways to proceed as Malta could not continue taking more migrants.<sup>218</sup> Authorities stated that some of a group of 71 undocumented Tunisians who were demanding to be repatriated, but whose documentation has not been sorted out, were responsible for a riot that broke out in Lyster Barracks in Valletta, Malta. Police and soldiers cordoned off the area, amid reports that some migrants had escaped.<sup>219</sup> The UNCHR delegate in Malta, Neil Falzon, expressed concern about the inhumane conditions of undocumented migrants held there. Mr Falzon noted that not allowing migrants access to work, education and housing risks increasing human rights violations and of the development of xenophobic behaviour against migrants.<sup>220</sup>

NGOs in Spain had difficulty accessing detention centres, but nevertheless showed that serious abuses occurred there. Migreurop and Spanish

214 La Repubblica, “Lampedusa, rivolta nel centro di accoglienza violenti scontri tra i migranti e la polizia”, 18 February 2009, available online at <http://www.repubblica.it/2009/02/sezioni/cronaca/immigrati-4/lampedusa-18feb/lampedusa-18feb.html>. [Cf. PICUM Newsletter, March 2009.]

215 Euromed-Migrasyl, “Les violations importantes des droits des migrants et demandeurs d’asile doivent être dénoncées par le Commissaire”, 13 March 2009, available online at <http://euromed-migrasyl.blogspot.com/2009/03/italie-remdh-les-violations-importantes.html>. [Cf. PICUM Newsletter, April 2009.]

216 Vladamiro Polchi, “Clandestini, nei centri fino a sei mesi”, La Repubblica, 23 February, 2009, available online at <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2009/02/21/ clandestini-nei-centri-fino-sei-mesi.html>. [Cf. PICUM Newsletter, March 2009.]

217 Raphael Vassalo, “Malta slammed over arrest, interrogation procedure”, Matla Today, 25 January 2009, available online at <http://archive.maltatoday.com.mt/2009/01/25/t4.html>. [Cf. PICUM Newsletter, April 2009.]

218 ECRE Weekly Bulletin, 20 March 2009, available online at [www.ecre.org](http://www.ecre.org). [Cf. PICUM Newsletter, April 2009.]

219 “Tunisian Immigrants Riot at Detention Centre”, Earth Times, 19 February 2009, available online at <http://www.earthtimes.org/articles/show/256502,tunisian-immigrants-riot-at-detention-centre-in-malta.html>. [Cf. PICUM Newsletter, March 2009.]

220 New Europe, “More than 100 would be illegal”, 5 January 2009, available online at <http://www.neurope.eu/articles/91694.php>. [Cf. PICUM Newsletter, February 2009.]

NGOs complained that despite having received written permission from the Secretary of State and Security, they were denied entry to the Centre for Detention of Foreigners in Madrid. This, according to the NGOs and MEP Willy Meyers, is a sign of the lack of transparency of these centres.<sup>221</sup> A report by Ferrocarril Clandestino, SOS Racismo Madrid and Médicos del Mundo Madrid, titled "Voces desde y contra los Centros de Internamiento de Extranjeros" ("Voices from and against the Immigration Detention Centres"), examined conditions at the Aluche immigration detention centre in Madrid, featuring accounts by 40 detainees who described systematic abuses of human rights.<sup>222</sup> Undocumented immigrants held in detention in Madrid claimed to be threatened, beaten, abused and humiliated frequently by guards. One man had his arm broken by guards. 85 detainees were able to smuggle their complaint to investigating authorities.<sup>223</sup>

Activists said Greek police were responsible for the death of an undocumented migrant from Pakistan on 9 October 2009, about a week after his release from custody. Muhammad Kamran Atif had been arrested on 28 September after allegedly attacking a Pakistani teenager with a knife. His relatives and friends claimed he had been tortured with clubs and electric shocks while in custody. They said he had been

afraid to seek medical treatment as he was an undocumented immigrant.<sup>224</sup>

Human rights activists called for an overhaul of the detention system for migrants and asylum seekers in Austria after an Indian migrant died four weeks into a hunger strike. They voiced serious doubts over the medical care the man received in detention, and claimed the case highlighted grave shortcomings in the way Austrian authorities treat migrants. Under Austrian law, asylum seekers and migrants can be detained for up to 10 months while their asylum or deportation arrangements are being processed. Rights groups report children and individuals with special needs are detained for lengthy periods, and detainees' access to legal services and proper medical care is restricted. The Interior Ministry said 1,223 of the 3,923 people who were in preventive detention between 1 January and 31 August 2009 went on hunger strikes. Activists warned that problems would likely worsen in 2010, when the Interior Minister planned to introduce legislation allowing broader use of preventive detention for migrants and asylum seekers facing deportation, and detaining them at the start of deportation proceedings. Migrants and asylum seekers would also have to undergo x-rays to determine their age, and new facilities would be built to accommodate more detainees.<sup>225</sup>

221 Canalsolidario.org, "Prohiben el acceso de ONG al Centro de Internamiento de Extranjeros de Madrid", 2 February 2009, available online at [http://www.canalsolidario.org/web/noticias/noticia/?id\\_noticia=10822](http://www.canalsolidario.org/web/noticias/noticia/?id_noticia=10822). (Cf. PICUM Newsletter, March 2009.)

222 MigrEurop, "Para quien quiera oír: Voces desde y contra el ICE Aluche", 19 November 2009, available online at <http://www.migreurop.org/article1495.html>. (Cf. PICUM Newsletter, December 2009.)

223 Pedro Simon, "'Nos desnudan, nos insultan y nos dicen que somos basura de fuera'", *Elmundo*, 16 February 2009, available online at <http://www.elmundo.es/elmundo/2009/02/15/espana/1234725780.html>. (Cf. PICUM Newsletter, March 2009.)

224 Demetris Nellis, Associated Press, "Protesters accuse Athens police of torturing an illegal immigrant who later died", *Edmonton Sun*, 11 October 2009, available online at <http://www.edmontonsun.com/news/world/2009/10/11/11374086.html>. (Cf. PICUM Newsletter, November 2009.)

225 Pavol Stracansky, "Thousands of Migrants Take to Hunger Strike", *IPS*, 30 September 2009, available online at <http://www.ipsnews.net/news.asp?idnews=48661>; No.Racism.Net, "Hungerstreiks in Schubhaft sind alltäglich," 18 September 2009, <http://no-racism.net/article/3094>; (Cf. PICUM Newsletter, October 2009.)

Médecins Sans Frontières (MSF) visited Italian detention centres for migrants and asylum seekers to investigate sanitary and living conditions. The report “Beyond the Wall” is based on two examinations conducted by MSF between 2008 and 2009 in 21 centres across Italy. MSF said little has changed since its 2003 surveys. Health care assistance is structured to provide only basic care. There are no protocols for diagnosing and treating infectious and chronic diseases. A lack of cultural mediators often creates misunderstandings between doctors and patients.<sup>226</sup> The Médecins Sans Frontières mission in Greece described the conditions for migrants in detention centres in Mitilini and Evros, as well as in Patras’ migrant shantytown, as an ‘acute humanitarian crisis.’ MSF highlighted that the care provided to undocumented migrants in Greece is far behind what it should be, while living conditions inside the detention centres and in Patras are unacceptable.<sup>227</sup>

In Greece, Thomas Hammarberg, Council of Europe commissioner for human rights, inspected the Feres border post, the Fylakio holding facility and the nearby minefields at Kastanies, reporting that conditions were ‘condemnable’ and ‘in violation of international standards’. At Feres, inmates are locked 24 hours a day in overcrowded rooms, while at Fylakio inmates

lack legal assistance and adequate healthcare. The Commissioner said Greece has not given the matter sufficient priority, but Europe should display greater solidarity.<sup>228</sup> A UNHCR delegation visited the Pagani detention centre on the Greek island of Lesbos and called for its closure. More than 700 men, women and children were held there. About 200 women and children lived in one ward with two toilets and one shower. Mattresses were soiled by water leaking from the toilets. Deputy Citizens’ Protection Minister Spyros Vougiaris apologised to the detainees, and pledged to work to improve accommodations. Vougiaris also announced an investigation into the fate of several hundred thousand euros the previous government had received from the EU to accommodate migrants arriving from Turkey. He said the government would push for more operational support from the European Commission, as Greece faced pressures as a border state, and because the Turkish government was refusing to honour a 2003 bilateral readmission pact.<sup>229</sup> A few days later, UNHCR expressed serious concern over reports of police brutality at the centre, and urged an inquiry into the alleged beating of detainees protesting conditions. A 17-year-old Kurdish migrant was reportedly beaten for half an hour until he fell unconscious and had to be hospitalised. Human rights activists said the beating took place in front of 40 other

226 MSF, “Over the Wall: A Tour of Italy’s Migrant Centres”, January 2010, available online at [http://www.msf.org/source/countries/europe/italy/2010/wall\\_report.pdf](http://www.msf.org/source/countries/europe/italy/2010/wall_report.pdf). (Cf. PICUM Newsletter, January 2010.)

227 See PICUM Newsletter, April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nL\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nL_en_01-04-2009.pdf)

228 See PICUM Newsletter, January 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nL\\_en\\_01-01-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nL_en_01-01-2009.pdf)

229 Ketty Kehayoiyloou, “UNHCR delegation visits detention centre on Greek island, urges closure”, UNHCR, 23 October 2009, available online at <http://www.unhcr.org/4ae1af146.html>; “Gov’t vows to improve centers for migrants”, Kathimerini English Edition, 23 October 2009, available online at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_politics\\_0\\_23/10/2009\\_111813](http://www.ekathimerini.com/4dcgi/_w_articles_politics_0_23/10/2009_111813); “Probe into EU aid for migrants”, Kathimerini English Edition, 24 October 2009, available online at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_politics\\_0\\_24/10/2009\\_111844](http://www.ekathimerini.com/4dcgi/_w_articles_politics_0_24/10/2009_111844). (Cf. PICUM newsletter, November 2009.)

migrants, who signed affidavits.<sup>230</sup> The centre was temporarily closed on 29 October, after which arriving migrants were transferred to a detention centre on neighbouring Chios island. Many of those detained at Pagani were released. As of early November, the centre was only externally guarded, all wards had been unlocked, and detainees had free access to the courtyard.<sup>231</sup>

Amnesty International concluded in its 2008 annual report that undocumented migrants are held in detention for too long in the Netherlands. Some rejected asylum seekers and undocumented migrants are detained for over a year.<sup>232</sup>

Detention centres in Mayotte, a French territory near Mozambique, are overcrowded, unhygienic and inhumane, and undocumented migrants exist in a state of 'complete rightlessness,' according to local lawyers. Mayotte receives an increasing number of irregular migrants from the nearby Comoro Islands. Local sources estimate about 500 Comorians die each year attempting to make the journey, while the rest are placed in overcrowded detention centres.<sup>233</sup>

Hasun Albaadzh, a migrant from Syria, died in detention in Sofia, Bulgaria, on 6 October, having been denied proper medical care for 34

months. Other migrants at the centre staged a protest, and four Bulgarian human rights groups formally asked the Interior Ministry to investigate the circumstances leading to Albaadzh's death. They pointed out that Albaadzh was never taken to a specialised hospital, even though he had several chronic diseases, and that, in general, medical care was extremely poor at the centre. They also stressed that detainees suffered from malnutrition, no psychological support was provided, and individuals were often detained for much longer periods than the six-month maximum stipulated by the Returns Directive, which Bulgaria adopted in May.<sup>234</sup> In the case of a Chechen asylum seeker, held without trial since October 2006 in a detention centre in Bulgaria, the European Court of Justice (ECJ) confirmed that the Returns Directive does not allow a detention pending removal for more than 18 months. However, the ECJ also decided that the period during which a person has been detained on the basis of other provisions of national and Community law concerning asylum seekers should not count toward the 18 months.<sup>235</sup>

The Border Monitoring Project (BMP) in Zakarpattya, Western Ukraine, confirmed these issues are not limited to Bulgaria. BMP published its first activity report, covering November 2008 to June 2009. Set up by associations

230 Malcolm Brabant, "UN alarm at Greek migrant centre", BBC News, 27 October, available online at <http://news.bbc.co.uk/2/hi/europe/8328746.stm>. [Cf. PICUM Newsletter, November 2009.]

231 See PICUM Newsletter, November 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-11-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-11-2009.pdf)

232 See PICUM Newsletter, June 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-06-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-06-2009.pdf)

233 Mediapart, "Mayotte, 101e département de la République, zone de non droit pour les migrants", 1 July 2009, available online at <http://www.mediapart.fr/club/edition/les-invites-de-mediapart/article/010709/mayotte-101e-departement-de-la-republique-zone->; Afrol News, "Migrants new secret door to Europe: Mayotte", 21 November, 2009, available online at <http://www.afrol.com/articles/22815>. [Cf. PICUM Newsletter, July 2009.]

234 Claudia Ciobanu, "BULGARIA: Migrants Denied Even Medicine", IPS, 17 October 2009, available online at <http://www.ipsnews.net/news.asp?idnews=48903>. [Cf. PICUM Newsletter, November 2009.]

235 See PICUM Newsletter, January 2010, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-0102-2010formatting.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-0102-2010formatting.pdf)

and institutions in Germany, Switzerland, Belgium, UK and Ukraine, the project monitors respect for the rights of refugees and other vulnerable migrants and access to protection in Ukraine, on its borders, and in neighbouring EU member states. The report found violations of the maximum holding period and inhumane conditions at a detention centre, and frequent and ongoing refoulement from Hungary and Slovakia to Ukraine.<sup>236</sup> Protestant and Catholic clergy in Germany demanded minimum humanitarian standards for detention prior to deportation, stressing that this type of detention must be organised separately from penal detention. Furthermore, they argued that psychologically and physically ill people, children and the elderly should not be detained at all.<sup>237</sup> Between 2005 until 2007, over 40 people detained prior to deportation committed or attempted suicide in Germany, according to the federal government.<sup>238</sup>

236 Activity Report, "Border Monitoring Project Ukraine", November 2008-June 2009, available online at <http://www.statewatch.org/news/2009/nov/ukraine-border-project.pdf>. (Cf. PICUM Newsletter, December 2009.)

237 Nordelbischen Evangelisch-Lutherische Kirche, "Flüchtlingspastoren fordern mehr Humanität in der Abschiebehaft", 29 January 2009, available online at <http://www.nordelbien.de/nachrichten/newsne.1/archiv.news-nordelbien/archiv.news-nordelbien.2009/one.news/index.html?entry=page.newsne.200901.187&>. (Cf. PICUM Newsletter, April 2009.)

238 See PICUM Newsletter, April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf)



# EU Policy Developments Concerning Irregular Migration and Borders

# C EU Policy Developments Concerning Irregular Migration and Borders

## 1. Externalising Controls

The year 2009 saw increasing efforts to deflect migrants from borders, indiscriminately denying access to European territory. This assumed two forms: heightened administrative barriers, and physical rejection of spontaneous arrivals. While often claiming to disapprove of physical barriers to access, member states in the EU's interior employed administrative means such as stricter air travel requirements, attempts to virtually excise airport transit zones, and restrictive protection procedures to accomplish the same ends. At the same time, physical efforts to deflect migrants began at the interior EU borders and moved steadily outwards. French and British authorities collaborated to close the migration route across the English Channel from Calais. Interior member states sought to offload their responsibility for migrants onto states near the EU's external borders. By formal agreement or through force, interior and border member states alike sought to remove as many migrants as possible to countries of transit or origin. 2009 also saw an intensification of Europe's efforts to physically shut its borders, leaving non-EU countries responsible by default for migrants' human rights.

## Administrative exclusion

France and Portugal took explicit steps to exclude migrants, while the Netherlands sought to achieve the same end through constricting its humanitarian protection regime. The French border authority issued guidelines stating that migrants with a short-term residence permit who leave the territory even briefly should be refused re-entry. Those returned to their country of origin, including asylum seekers, should apply for a visa to re-enter. The Council of State had declared that these practices are contrary to French law and violate the right to freedom of movement, but NGOs reported that they continue.<sup>239</sup>

Portugal's Minister for Labour and Social Solidarity declared Portugal would keep its quota at 3,800 residence permits for migrants for 2009, 50% fewer than in 2008. Organisations such as SOS Racismo strongly criticised this cutback, for stigmatising migrants, reinforcing xenophobia and racism, and preventing discussion about the failure of Portugal's quota system. In response to the OECD's call to integrate foreign workers despite the economic crisis, the minister stated that Portugal is not adopting a blind policy of closed doors.<sup>240</sup>

239 Anafe, "L'imagination au service de la politique du chiffre : et si on refoulait les étrangers en situation régulière ?" 2 July, 2009, available online at <http://www.anafe.org/doc/communiqués/com-112.html>. (Cf. PICUM Newsletter, July 2009.)

240 See PICUM Newsletter, July 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-07-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-07-2009.pdf)



The Dutch Council of State considered a bill “for a more effective asylum procedure and more effective return policy.” The proposal includes an 8-day asylum procedure, considering medical aspects in the asylum procedure, and four weeks of shelter after refusal of a claim.<sup>241</sup> The State Secretary of Justice announced the abolition of category protection for asylum seekers from Somalia, as a response to fraud. The Dutch Refugee Council objected that a measure to protect people from armed conflict cannot be terminated to prevent fraud.<sup>242</sup> Thomas Hammarberg, the Council of Europe’s Commissioner for Human Rights, expressed concern that a fast-track procedure is unsuitable for vulnerable groups such as victims of violence and unaccompanied children, and urged authorities to limit the procedure to clear-cut cases.<sup>243</sup>

France and other member states persisted in attempts to treat airports as a lesser type of territory, providing reduced respect for human rights. The National Association for Foreigners Assistance at the Borders (ANAFE), an NGO network, released a report called ‘Inhumanity in holding areas. Observations and Interventions of the ANAFE in the Roissy holding area,’ summarising its observations in 2008 concerning foreigners who arrived in Roissy Charles de Gaulle Airport in Paris and were detained for up to 20 days. In general, migrants cannot benefit

from legal aid. ANAFE have lawyers permanently available to detainees.<sup>244</sup> ANAFE denounced the lack of respect for fundamental rights in airport waiting centres (“zones d’attente”), highlighting inadequate treatment for ill migrants, and police brutality. Families are often separated, unaccompanied children over age 13 are detained with adults, and younger children are held in hotels. Several children were threatened with deportation or police violence. ANAFE accused police of trying to deport people before a judge could intervene, citing at least 39 cases where police refused to register asylum claims. The immigration minister denied these statements, saying a majority had seen a judge and a medical team was at the airport.<sup>245</sup> A Human Rights Watch (HRW) report “Lost in Transit: Insufficient Protection for Unaccompanied Migrant Children at Roissy Charles de Gaulle Airport” also criticised France’s policy of detaining children in a transit zone, denying them rights granted to other migrant children in France. It highlighted issues such as police pressuring children to sign documents renouncing their rights, and deportation to countries through which they merely transited.<sup>246</sup> The government subsequently published proposals to improve the treatment of unaccompanied children in transit zones. The proposals, the result of a six-month study, suggested stationing children’s guardians permanently at the airport and improving their training, and creating a separate area for younger

241 See PICUM Newsletter, May 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-05-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-05-2009.pdf)

242 Vluchtelingenwerk Nederland, available online at [www.vluchtelingenwerk.nl](http://www.vluchtelingenwerk.nl). (Cf. PICUM Newsletter, April 2009.)

243 See PICUM Newsletter, April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf)

244 Anafe, available online at <http://www.anafe.org/index.php>. (Cf. PICUM Newsletter, June 2009.)

245 Migration News Sheet June 2009, p. 1. (Cf. PICUM Newsletter, July 2009.)

246 HRW, “Lost in Transit”, 29 October 2009, available online at <http://www.hrw.org/en/node/86211>. (Cf. PICUM Newsletter, November 2009.)

children. HRW called for further measures in compliance with the UN Convention on the Rights of the Child.<sup>247</sup>

Poor airport conditions were not unique to Paris. ProAsyl criticised the absence of legal standards in asylum procedures at Frankfurt/Main airport, where 90% of the airport proceedings of the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge – BAMF) take place. The summary proceedings employed there are hasty, unfair and inadequate. The minutes of hearings and decisions are often inconsistent and show interpretation errors. Lawyers cannot assist clients from the start of a proceeding. The BAMF rejected the study, but agreed to review individual cases.<sup>248</sup> The Greek newspaper “Espresso” published photographs showing conditions at the detention facilities at the Athens airport. The facilities were built to hold up to 26 people, but as of October housed about 270, including women and small children. The migrants reportedly took turns sleeping on the floor and shared two toilets. Police officers used their own money to buy food for the children.<sup>249</sup>

## Physical exclusion

A spokesman for UNHCR warned in January that limited opportunities to enter the EU by regular

means meant thousands of people threatened by persecution and serious human rights violations in their home countries had no choice but to take the sea route.<sup>250</sup> This route is extremely dangerous in itself. The danger is exacerbated by the persistence and fast growth of a general “shunting” policy, by which member states seek to physically push migrants outwards toward or across the external borders of the EU. This policy is implemented at practically every point along migration routes to, and within, Europe. Thomas Hammarberg, the Council of Europe’s Commissioner for Human Rights, deplored the unfortunate trend across Europe “to repel, at any cost, irregular migrant flows, thus putting human lives at serious risk.”<sup>251</sup> This deflection of responsibility starts at the part of the EU furthest from the entry points.

## Calais

Efforts to physically push migrants away without consideration of their human rights or protection needs start at the westernmost edge of Europe. In 2009, British and French authorities worked to shut down the migration route across the English Channel, indiscriminately denying access to the UK. Hundreds of migrants were arrested, mistreated, and often deported, for no crime worse than wanting to build a new life safe from

247 “Eric Besson annonce les premières mesures pour l’accueil des mineurs étrangers isolés”, Portail du Gouvernement, 19 November 2009, available online at <http://www.gouvernement.fr/gouvernement/eric-besson-annonce-les-premieres-mesures-pour-l-accueil-des-mineurs-etrangers-isoles>; Human Rights Watch, “France: Inadequate Plan for Migrant Children at Airport: Meager Changes in Abusive System No Way to Celebrate Children’s Rights Treaty Anniversary”, 20 November 2009, available online at <http://www.hrw.org/en/news/2009/11/20/france-inadequate-plan-migrant-children-airport>. [Cf. PICUM Newsletter, December 2009.]

248 Migration und Bevölkerung Newsletter 5/2009, available online at [http://www.migration-info.de/mub\\_artikel.php?Id=090503](http://www.migration-info.de/mub_artikel.php?Id=090503). [Cf. PICUM Newsletter, July 2009.]

249 See PICUM Newsletter, November 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-11-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-11-2009.pdf)

250 Elitsa Vucheva, “UN calls on EU to treat asylum seekers fairly”, Euobserver.com, 12 January 2009, available online at <http://euobserver.com/22/27383>. [Cf. PICUM Newsletter, February 2009.]

251 Thomas Hammarberg, “Europe must respect the rights of migrants”, CommDH/Speech[2009]7, 26 September 2009, available online at <https://wcd.coe.int/ViewDoc.jsp?id=1506653&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>. [Cf. PICUM Newsletter, October 2009.]

their war-torn homelands. At a July summit, Prime Minister Gordon Brown announced £15 million for new technology to search vehicles and goods heading to Britain. President Nicolas Sarkozy announced France would step up the repatriation of irregular immigrants.<sup>252</sup> Subsequently, French Immigration Minister Eric Besson stated his government's intent to demolish a shantytown near Calais known as the "Jungle," a temporary home to hundreds of mainly Afghan, Kurdish, and Somali migrants seeking to reach the UK. Instead, a temporary centre would provide food, shelter and advice, but not overnight accommodation.<sup>253</sup> UK Immigration Minister Phil Woolas announced a new detention centre in Calais, and said he would demonstrate that the UK is "not the Promised Land." After encountering British authorities on the docks, migrants would be detained, then returned to their countries of origin on charter flights.<sup>254</sup> This accompanied calls for the UK to match a French crackdown on migrants and asylum seekers in Calais.<sup>255</sup> Accordingly, a new UK Act created a "unified force" of customs and immigration officers with "wide ranging powers" to "crack down" on

irregular migration.<sup>256</sup> In July, in cooperation with the NGO France Terre d'Asile, UNHCR opened a centre at the port in Calais to provide orientation services and unbiased information to migrants, and information about the British and French asylum systems.<sup>257</sup>

In August 2009, the French government reportedly took advantage of an outbreak of scabies, a contagious skin disease, to clear migrant encampments near the Calais ferry port. The disease broke out after the charity Secours Catholique closed its showers and cleaning facilities in the area because they could no longer cope with the influx of migrants. Local authorities sought to limit the spread of the disease by providing two mobile showers and disinfectant soap. When the police raided the area, they reportedly waited until humanitarian activists had departed, then sprayed an irritant chemical on personal belongings and cooking utensils under the pretext of disinfecting.<sup>258</sup> The French efforts culminated in clearance through open force. One of the first camps raided was in a field near Calais, where about 80 undocumented migrants from Vietnam were arrested on 8 September.<sup>259</sup>

252 Rosa Prince, "Tighter border controls to stop immigrants in Calais", *Telegraph*, 6 July, 2009, available online at <http://www.telegraph.co.uk/news/worldnews/europe/france/5760397/Tighter-border-controls-to-stop-immigrants-from-Calais.html>. (Cf. PICUM Newsletter, July 2009.)

253 See PICUM Newsletter, June 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-06-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-06-2009.pdf)

254 John Lichfield, Ben Russell, "Guantanamo en Calaisis?", *Courrier International*, 26 March 2009, available online at [http://www.courrierinternational.com/article.asp?obj\\_id=95941](http://www.courrierinternational.com/article.asp?obj_id=95941). (Cf. PICUM Newsletter, April 2009.)

255 AFP, "French police round up 200 migrants in Calais", 21 April 2009, available online at <http://www.google.com/hostednews/afp/article/ALeqM5hVeZuB--pcUA84wHUiJVf23vsnFg> (Cf. PICUM Newsletter, April 2009.)

256 See PICUM Newsletter, August/September 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-09-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-09-2009.pdf)

257 Marie-Ange Lescure "UNHCR returns to Calais to provide migrants, refugees with information", UNHCR, 17 June 2009, available online at <http://www.unhcr.org/4a3914c86.html>; <http://www.independent.co.uk/news/world/europe/the-big-question-why-is-the-un-setting-up-in-calais-and-can-it-resolve-the-refugee-problem-1727950.html>. (Cf. PICUM Newsletter, July 2009.)

258 Henry Samuel, "Migrants in Calais infected with scabies", *Telegraph*, 12 August 2009, available online at <http://www.telegraph.co.uk/news/worldnews/europe/france/6017750/Migrants-in-Calais-infected-with-scabies.html>; Calais Migrant Solidarity, "French police exploit scabies epidemic to clear migrant camps", 22 August 2009, available online at <http://calaismigrantsolidarity.wordpress.com/2009/08/22/21-august-french-police-exploit-scabies-epidemic-to-clear-migrant-camps>. (Cf. PICUM Newsletter, August/September 2009.)

259 Sebastien Rosele, "Angres : le camp de Vietnamiens clandestins démantelé hier matin par la police", *La Voix du Nord*, 9 August 2009, available online at [http://www.lavoixdunord.fr/Locales/Lens/actualite/Secteur\\_Lens/2009/09/09/article\\_angres-le-camp-de-vietnamiens-clandestin.shtml](http://www.lavoixdunord.fr/Locales/Lens/actualite/Secteur_Lens/2009/09/09/article_angres-le-camp-de-vietnamiens-clandestin.shtml). (Cf. PICUM Newsletter, October 2009.)

Police cleared the “Jungle” on 22 September, arresting 141 adults and 135 children. Human rights organisations protested the clearing of the camp, which was bulldozed. UNHCR stressed that the closing addressed neither the phenomenon of irregular migration nor the problems of the affected individuals, many of whom might require protection. It called on French authorities to allow the migrants access to a full and fair asylum procedure and to take special measures for unaccompanied children. By 29 September at least 124 of the migrants had reportedly been freed, and several tribunals had annulled deportation orders as the right to seek asylum had been violated. Immigration Minister Besson nonetheless announced police would continue to clear camps.<sup>260</sup> Despite protests by French politicians and national and international human rights groups, the government began to deport migrants arrested at the “Jungle.” The first flight took place on 20 October, when three Afghans were deported, along with 24 others who had been expelled from the UK, on a plane chartered by the British government.<sup>261</sup>

## Tow-backs to Libya

If migrants in the central Mediterranean faced a precarious situation when rescued by commercial vessels, the results of interception by state actors were appalling. 2009 saw a rapid increase in cooperation between the EU and its member states, and Muammar Khadafi’s regime in Libya. In May Italy diverted over 500 migrants to Libya without assessing their protection needs, which Interior Minister Roberto Maroni described as a “historic shift.”<sup>262</sup> The description is apt. Never before in modern times had a European state summarily returned migrants in distress at sea to a country that does not even pretend to abide by international standards of humanitarian protection. Libya is not a party to the Refugee Convention and has no asylum system. It has a dismal record of abuse of migrants caught trying to flee the country, and Human Rights Watch has warned it cannot be regarded as a serious partner in any scheme to protect migrants.<sup>263</sup>

Italian Prime Minister Silvio Berlusconi welcomed Libyan leader Colonel Muammar Khadafi on

260 Jean-Marc Leclerc, “La «jungle» de Calais en partie désertée”, *Le Figaro*, 17 September 2009, available online at <http://www.lefigaro.fr/actualite-france/2009/09/18/01016-20090918ARTFIG00013-la-jungle-de-calais-en-partie-desertee-.php>; *Le Monde*, “La ‘jungle’ de Calais évacuée, d’autres évacuations à venir”, 22 September 2009, available online at [http://www.lemonde.fr/societe/article/2009/09/22/debut-de-l-evacuation-de-la-jungle-de-calais\\_1243358\\_3224.html#ens\\_id=1230610](http://www.lemonde.fr/societe/article/2009/09/22/debut-de-l-evacuation-de-la-jungle-de-calais_1243358_3224.html#ens_id=1230610); UNHCR, “France dismantles a migrant camp at Calais”, 22 September 2008, available online at <http://www.unhcr.org/4ab8a65a9.html>; Nadim Audi and Caroline Brothers, “French police dismantle migrant camp”, *The New York Times*, 22 September 2009, available online at <http://www.nytimes.com/2009/09/23/world/europe/23france.html>; La Cimade, “Evacuation de ‘la jungle’ de Calais : des Afghans menacés d’expulsion”, 24 September 2009, available online at <http://www.cimade.org/communiqués/1845-Evacuation-de-la-jungle-de-Cala>; *Le Figaro*, “Jungle de Calais : la plupart des migrants ont été relâchés”, 29 September 2009, available online at <http://www.lefigaro.fr/actualite-france/2009/09/29/01016-20090929ARTFIG00570-jungle-de-calais-la-plupart-des-migrants-ont-ete-relaches-.php>. [Cf. PICUM Newsletter, October 2009.]

261 Laure Daussy, “Besson confirme les expulsions d’Afghans vers Kaboul”, 7 October 2009, available online at <http://www.lefigaro.fr/actualite-france/2009/10/06/01016-20091006ARTFIG00413-des-afghans-expulses-par-charter-vers-leur-pays-d-origine-.php>; Peter Walker, “British-chartered plane takes Afghan migrants home”, *The Guardian*, 21 October 2009, available online at <http://www.guardian.co.uk/world/2009/oct/21/british-chartered-plane-afghan-migrants>; Sophie Hardach, Reuters, “Outcry as France, UK deport migrants on joint flight”, 21 October 2009, available online at <http://in.reuters.com/article/companyNews/idINLL8769020091021?sp=true>. [Cf. PICUM Newsletter, November 2009.]

262 See PICUM Newsletter, June 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-06-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-06-2009.pdf)

263 Mark Tran, “Gaddafi makes historic visit to Italy”, *The Guardian*, 10 June 2009, available online at <http://www.guardian.co.uk/world/2009/jun/10/gaddafi-visit-italy-protests-libya>; HRW, “Italy/Libya: Gaddafi visits celebrates dirty deal”, 9 June 2009, available online at <http://www.hrw.org/en/news/2009/06/09/italylibya-gaddafi-visit-celebrates-dirty-deal>. [Cf. PICUM Newsletter, July 2009.]

10 June for a visit under the 2008 'Treaty of Friendship', in which the two countries agreed to cooperate against irregular migration. Both countries were required to start a joint patrol operation on 15 May 2009 to stop irregular migration flows.<sup>264</sup> The pact allows Italy's coastguard to swiftly deport migrants to Libya, skipping procedures for filing asylum applications. Italy provided three patrol boats to Libya and promised three more, and pledged to help construct a radar system to monitor Libya's desert borders.<sup>265</sup>

UNHCR, human rights organisations, and NGOs swiftly and severely criticised the "tow-back" policy.<sup>266</sup> UNHCR wrote to the Italian government expressing concern that it undermines access to asylum and risks violating the non-refoulement principle.<sup>267</sup> The Euro-Mediterranean Human Rights Network and Migreurop stated that the migrants risk violence, ill treatment, detention, rape, torture and deportation. The migrants sent back were not identified, nor did they receive individual treatment.<sup>268</sup> UNHCR stated it was "endeavouring to provide humanitarian assistance and basic protection," but asked that the migrants be readmitted to Italy so those in need of

protection could receive it.<sup>269</sup> High Commissioner António Guterres asked the European Commission to convene a meeting of Italy, Malta, Libya, UNHCR and others to develop a strategy to respond to migration across the Mediterranean. Mr. Guterres said UNHCR recognises the pressure irregular migration places on Italy and other member states, but stressed that asylum remains a state responsibility, for which UNHCR's activities cannot substitute.<sup>270</sup>

Meanwhile, the tow-backs continued, with European support. The newspaper *Malta Today* reported on 21 June that a Frontex operation from Malta led to forced returns. A German helicopter participating in the *Nautilus IV* operation was instructed to work closely with the Italian coastguard, which picked up 74 migrants and handed them over to a Libyan patrol boat. This marked the first forced return operation coordinated by Frontex on the high seas.<sup>271</sup> UNHCR interviewed 82 migrants who were transported to Libya after being intercepted by the Italian navy about 30 miles from Lampedusa on 1 July. The interviews suggested the navy did not attempt to establish the migrants' nationalities or reasons for leaving their home countries. The

264 Magharebia, "L'UE examinera le retour des 'boat people' en Libye", 10 May 2009, available online at <http://www.magharebia.com/cocoon/awi/xhtml1/fr/features/awi/newsbriefs/general/2009/05/10/newsbrief-03>. [Cf. PICUM Newsletter, June 2009.]

265 Mark Tran, "Gaddafi makes historic visit to Italy", *The Guardian*, 10 June 2009, available online at <http://www.guardian.co.uk/world/2009/jun/10/gaddafi-visit-italy-protests-libya>; HRW, "Italy/Libya: Gaddafi visits celebrates dirty deal", 9 June 2009, available online at <http://www.hrw.org/en/news/2009/06/09/italylibya-gaddafi-visit-celebrates-dirty-deal> [Cf. PICUM Newsletter, July 2009.]

266 See e.g., Statewatch, "Submission on May refoulements to Libya to the European Commission and UN Human Rights Commissioner", available online at <http://www.statewatch.org/news/2009/jul/italy-libya.htm>.

267 See PICUM Newsletter, June 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-06-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-06-2009.pdf)

268 AFP, "Italians rescue 48 boat people, ferry 500 to Libya", 11 May 2009, available online at [http://www.google.com/hostednews/afp/article/ALeqM5i4F5R5Ls01\\_BoDyqZh8LP2LsAF4w](http://www.google.com/hostednews/afp/article/ALeqM5i4F5R5Ls01_BoDyqZh8LP2LsAF4w); Consiglio Italiano per i rifugiati, "IMMIGRATI: Unione Forense e CIR: respingimenti illegittimi, porteremo ricorsi davanti alla Corte europea", 14 May 2009, available online at <http://www.cir-onlus.org/14%20maggio%202009%20Unione%20Forense%20e%20CIR.htm>. [Cf. PICUM Newsletter, June 2009.]

269 See PICUM Newsletter, June 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-06-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-06-2009.pdf)

270 Ibid.

271 ECRE weekly bulletin, 26 June 2009, available online at [www.ecre.org](http://www.ecre.org). [Cf. PICUM Newsletter, July 2009.]

migrants alleged Italian personnel used force in transferring them to a Libyan vessel and that six of them required medical attention as a result. The individuals, most of whom UNHCR found to be from Eritrea, said their personal belongings, including vital documents, were seized and not returned. They spoke of their distress after four days at sea and said the navy did not offer them any food during the 12-hour operation.<sup>272</sup> The European Commission pressed the Italian government to provide full information on the tow-back policy, and on its new immigration law. Although the Commission did not reveal what questions it posed, it confirmed it was concerned about returns to Libya of migrants from Eritrea and Somalia. Prime Minister Berlusconi suggested the Commission should limit its public statements to the President or his immediate spokesperson, otherwise Italy would consider blocking the work of the European Council.<sup>273</sup> Human Rights Watch issued a report examining the treatment of migrants, asylum seekers and refugees in Libya through the eyes of those who reached Italy and Malta, and documenting Italy's tow-back practice. It urged Libya to improve the

deplorable conditions of detention in the country, and called on Italy, the EU and Frontex to ensure access to asylum, and to refrain from returning non-Libyans to Libya until its treatment of migrants fully meets international standards.<sup>274</sup>

Not all voices disapproved of the tow-backs. Some seemed to consider that the policy did not go far enough. British National Party leader and MEP Nick Griffin told the BBC that the EU should sink boats carrying irregular migrants, and throw them life rafts to return to Libya.<sup>275</sup> Italian media reported that the Lega Nord party, part of Prime Minister Berlusconi's governing coalition, had created a game for the social-networking website Facebook in which players win points by preventing migrants from reaching Italy. A link to "Rimbalza il clandestino" ("Bounce the undocumented migrant") appeared on the Facebook page of "Lega Nord Padania - Umberto Bossi", a group co-administered by the son of Lega Nord leader and Minister of Federal Reforms Umberto Bossi. Responding to complaints, Facebook removed the link.<sup>276</sup>

272 UNHCR Briefing Notes, "UNHCR interviews asylum seekers pushed back to Libya", 14 July 2009, available online at <http://www.unhcr.org/4a5c638b6.html>. (Cf. PICUM Newsletter, August/September 2009.)

273 Judith Crosbie, "Commission questions Italy's immigration policy", *European Voice*, 23 July 2009, available online at <http://www.europeanvoice.com/article/imported/commission-questions-italy%27s-immigration-policy/65570.aspx>; EU Observer, "Berlusconi threatens to wreck EU summit unless commission shuts up", 1 September, 2009, available online at <http://euobserver.com/843/28607>; La Stampa, "Migranti respinti verso la Libia L'Ue chiede chiarimenti all'Italia", 31 August 2009, available online at <http://www.lastampa.it/redazione/cmsSezioni/politica/200908articoli/46848girata.asp>. (Cf. PICUM Newsletter, August/September 2009.)

274 HRW, "Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers," 21 September 2009, available online at <http://www.hrw.org/en/news/2009/09/17/italylibya-migrants-describe-forced-returns-abuse>. (Cf. PICUM Newsletter, October 2009.)

275 BBC, "Sink immigrants boats-Griffin", 8 July 2009, available online at [http://news.bbc.co.uk/2/hi/uk\\_news/politics/8141069.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/8141069.stm). (Cf. PICUM Newsletter, July 2009.)

276 Marco Pasqua, "Ma sul sito della Lega impazza il gioco 'Rimbalza il clandestino'", *The Repubblica*, 21 August 2009, available online at <http://www.repubblica.it/2009/08/sezioni/politica/lega-fiction/lega-viedeogame/lega-viedeogame.html>; *Corriere della sera*, "Rimbalza il clandestino' tolto dalla", 23 August 2009, available online at [http://www.corriere.it/politica/09\\_agosto\\_23/rimbalza\\_clandestino\\_tolto\\_rete\\_lega\\_renzo\\_bossi\\_a70c933e-8fe7-11de-ab60-00144f02aabc.shtml](http://www.corriere.it/politica/09_agosto_23/rimbalza_clandestino_tolto_rete_lega_renzo_bossi_a70c933e-8fe7-11de-ab60-00144f02aabc.shtml). (Cf. PICUM Newsletter, August/September 2009.)

## Agreements with African countries

The prototype for the initiatives to deflect migrants back to Libya, whatever the human cost, was the Spanish and EU effort to stop people fleeing or migrating from west Africa to the Canary Islands. According to Spanish authorities 28% fewer migrants were intercepted off the Canaries during 2008 than in 2007, less than a third of the number in 2006.<sup>277</sup> The total fell by a further 50% in 2009 when some 7,000 “boat migrants” were apprehended. Prime Minister José Luis Rodríguez Zapatero attributed the reduction to co-operation with countries of origin, most of them African, and the deployment of all means to interdict migration flows.<sup>278</sup> A report by the Association for Human Rights of Andalusia showed how stricter immigration control in the EU forces people to find different ways to migrate. The report analysed the externalisation of border control to countries that lack the infrastructure to be a host country and are not subject to effective human rights oversight. It found people’s rights are systematically violated at Europe’s southern borders. After being intercepted at sea or detained in raids, migrants are held for arbitrary periods in Spanish funded detention centres, without judicial review or legal aid, often

subjected to theft, police violence and abuse.<sup>279</sup>

France showed itself eager to follow the Spanish example, pressuring Mali to sign an agreement on “concerted management” of migratory flows. Malian and French civil society organisations protested the proposed agreement, which seven African countries had signed but Mali refused. They alleged it would require Malian authorities to act as “security guard[s] for Fortress Europe”, and facilitate France’s goal of 30,000 deportations in 2009. They protested the non-transparency of the negotiations, and that development aid was conditioned on the agreement.<sup>280</sup> Beyond Africa, France and Brazil signed an agreement to strengthen cooperation to reduce irregular migration. The announcement said it was France’s first migration agreement with a major emerging country, and that France would soon open negotiations with Russia, and engage in dialogue on migration with India, China and Vietnam.<sup>281</sup> The French National Assembly debated the ratification of bilateral agreements with Tunisia, Senegal, Benin, and Congo. These would increase possibilities for legal migration, but would oblige these countries to readmit their citizens, or others who passed through their territory.<sup>282</sup>

277 The junior Minister of Immigration attributed this decrease to agreements with Morocco, Senegal, Mauritania and Gambia. Migration News Sheet, January 2009, pp. 7, 28. [Cf. PICUM Newsletter, February 2009.]

278 Migration News Sheet, January 2010, p.6. [Cf. PICUM Newsletter, January 2010.]

279 “Otra frontera sin Derechos Humanos: Malí-Mauritania” (Another border without human rights: Mali-Mauritania), Report from the joined mission of AME-APDHA, 21-29 October 2009, available online at [http://www.apdha.org/media/Informe\\_Nioro200509.pdf](http://www.apdha.org/media/Informe_Nioro200509.pdf). [Cf. PICUM Newsletter, July 2009.]

280 MRI E-Bulletin Jan 2009, available online at [www.migrantwatch.org](http://www.migrantwatch.org). [Cf. PICUM Newsletter, February 2009.]

281 AFP, “Accord migratoire France/Brésil signé”, Le Figaro, 8 September 2009, available online at <http://www.lefigaro.fr/flash-actu/2009/09/08/01011-20090908FILWWW00408-accord-migratoire-francebresil-signe.php>; Press Release, “Accord migratoire entre la France et le Brésil”, French Ministry of Immigration, Integration and National Identity, 7 September 2009, available online at <http://www.immigration.gouv.fr/IMG/pdf/CP-AccordmigratoireBresil070909.pdf>. [Cf. PICUM Newsletter, October 2009.]

282 GISTI, “Une gestion ‘concertée’ de flux migratoires au détriment des droits des migrants”, 12 May 2009, available online at <http://www.gisti.org/spip.php?article1484>. [Cf. PICUM Newsletter, June 2009.]

## The growth of the EU dimension

The European Parliament adopted an own initiative report in April regarding a Common Immigration Policy, by 485 votes to 110 with 19 abstentions. The report considered immigration with respect to prosperity, security and solidarity. Key points included a “burden-sharing mechanism” as envisaged in the Immigration Pact; increasing returns of irregular migrants; increasing the fight against trafficking; and expanding Frontex’s financing and capacity to act. The report recommended including chapters on immigration in all EU agreements with third countries.<sup>283</sup> Similarly, Spanish Prime Minister Zapatero announced in July the strengthening of European immigration policy and border controls and promoting cooperation with countries of origin and transit as goals of the Spanish Presidency of the EU, and argued for readmission agreements at the EU level, which could follow the model of the Moroccan-Spanish agreements. These have drawn heavy criticism regarding unlawful expulsions, lack of due process, breach of the non-refoulement principle, and excessive use of force by security personnel.<sup>284</sup>

## Mediterranean

The European Commission presented a strategy in September for sustainable growth in the Mediterranean basin and to counter maritime challenges including irregular migration. The Commission reported that its Integrated Maritime Policy, launched in 2007, had yielded a number of governance tools, and that six coastal member states had joined a pilot project to enhance cooperation and information exchange among national authorities responsible for monitoring and surveillance at sea.<sup>285</sup> At the same time, the French delegation to the Council of the European Union sent a note to member states, discussing the “Mediterranean migration crisis” and arguing that a solution can only be found at the European level. It proposed partnerships with third countries based on reciprocal requirements, operational support, tighter checks at maritime borders, and handling asylum applications outside the EU. The delegation argued that Frontex’s funding should be increased to allow it to intercept migrants as close as possible to coasts with support from high-seas surveillance, and that Frontex should coordinate return flights from Mediterranean member states. Human rights organisations condemned the proposals and called on governments to respect human rights treaties and the rights of refugees.<sup>286</sup>

283 ECRE Weekly Bulletin, 24 April 2009, available online at [http://www.ecre.org/files/ECRE\\_Weekly\\_Bulletin\\_24\\_April\\_2009.pdf](http://www.ecre.org/files/ECRE_Weekly_Bulletin_24_April_2009.pdf). [Cf. PICUM Newsletter, May 2009.]

284 El Mundo, “Zapatero quiere reforzar el Frontex y negociar nuevos acuerdos de repatriación”, 13 July 2009, available online at [http://www.elmundo.es/elmundo/2009/07/13/union\\_europea/1247500139.html](http://www.elmundo.es/elmundo/2009/07/13/union_europea/1247500139.html) and Amnesty International submission to the UN Universal Periodic Review, “Morocco”, 7-11 April 2008, available online at <http://www.amnesty.org/en/library/asset/MDE29/012/2007/en/67f977c8-a71b-11dc-bf49-a1e867231d5c/mde290122007en.pdf>. [Cf. PICUM Newsletter, August/September 2009.]

285 Press Release, “EU strategy to improve maritime governance in the Mediterranean Sea”, EUROPA, 11 September 2009, available online at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1305&format=HTML&aged=0&language=EN&guiLanguage=en>; Press Release, “Towards an EU Integrated Maritime Policy and better maritime governance in the Mediterranean: questions and answers”, EUROPA, 11 September 2009, available online at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/387&format=HTML&aged=0&language=EN&guiLanguage=en>. [Cf. PICUM Newsletter, October 2009.]

286 Council of the European Union, “Migration situation in the Mediterranean”, Note from the French Delegation, 11 September 2009, available online at <http://www.statewatch.org/news/2009/sep/eu-france-med-13205-09.pdf>; Le Figaro, “Migrants amnesty accuse la France”, 20 September 2009, available online at <http://www.lefigaro.fr/flash-actu/2009/09/20/01011-20090920FILWWW00088-migrants-amnesty-accuse-la-france.php>. [Cf. PICUM Newsletter, October 2009.]



At the subsequent Justice and Home Affairs Council, ministers discussed these topics and the establishment of regional specialised Frontex offices, and requested that the Commission present an action plan on unaccompanied children by 2010.<sup>287</sup>

France and Italy also urged EU leaders to further address irregular immigration, including through cooperation with Turkey and Libya. In a letter to Commission President Jose Barroso and Swedish Prime Minister Fredrik Reinfeldt, whose country then held the EU presidency, French President Sarkozy and Italian Prime Minister Berlusconi called irregular migration a humanitarian, political and social challenge, and suggested Frontex should have more offices near the borders and more means to intercept migrants in the Mediterranean, and should regularly charter deportation flights.<sup>288</sup> In October, the European Council called for further efforts, in particular the enhancement of Frontex. It welcomed increased dialogue on migration with Turkey, called on the Presidency and the European Commission to intensify dialogue with Libya, underlined the importance of readmission agreements, and invited the Commission to consider regularly chartering joint Frontex return flights.<sup>289</sup> At a November summit, ministers from Italy, Malta, Cyprus, France, Spain, Algeria, Libya, Tunisia, Morocco and Mauritania discussed how the

EU could step up its efforts and assistance to reduce irregular migration. Italian Interior Minister Maroni expressed hope that the Mediterranean countries would receive support to deal with immigration. He said that to better manage regular immigration, procedures for handling irregular immigration must first be strengthened.<sup>290</sup>

### The elephant in the room: the absence of responsibility sharing

Pushing migrants further from the wealthy centre of the EU contributes to the degradation of conditions for the average migrant. It does this in two senses: it shifts migrants to countries that provide relatively less social support, and it strains the ability of those countries to maintain that support, affecting the migrants shunted from other Member States and those already present alike. EU and member state actors signalled awareness of this problem, but cooperative solutions remained scarce.

In January, the Quadro Group, formed by the home affairs ministers of Malta, Cyprus, Greece, and Italy, signed a declaration on irregular immigration and asylum, citing principles of solidarity and burden-sharing. They stressed that countries of origin should be briefed on the dangers resulting from irregular migration, that

287 ECRE Weekly Bulletin, 25 September 2009, available online at [http://www.ecre.org/files/ECRE\\_Weekly\\_Update\\_25\\_September\\_2009.pdf](http://www.ecre.org/files/ECRE_Weekly_Update_25_September_2009.pdf); Press Release, "2962<sup>nd</sup> Council Meeting Justice and Home Affairs", Council of the European Union, 21 September 2009, available online at [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/jha/110272.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/110272.pdf); <http://register.consilium.europa.eu/pdf/en/09/st11/st11225.en09.pdf>. (Cf. PICUM Newsletter, October 2009.)

288 Francois de Beaupuy, "France, Italy Urge Tougher EU Fight Against Illegal Immigration", Bloomberg.com, 23 October 2009, available online at <http://www.bloomberg.com/apps/news?pid=20601085&sid=ah8STuiYLDVQ>; DPA, "Italy and France seek EU-Libya accord to curb illegal immigration", 25 October 2009, available online at <http://www.unhcr.org/cgi-bin/txis/vtx/refdaily?pass=463ef21123&id=4ae545c58>. (Cf. PICUM Newsletter, November 2009.)

289 Brussels European Council, Presidency Conclusions, 29/30 October 2009, available online at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/110889.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/110889.pdf). (Cf. PICUM Newsletter, November 2009.)

290 Migration News Sheet, December 2009, p. 7. (Cf. PICUM Newsletter, January 2010.)

more readmission agreements should be signed, and that existing readmission agreements (for example with Turkey) should be implemented.<sup>291</sup> The Olive Group (foreign ministers of Italy, France, Spain, Greece, Romania, Bulgaria, Cyprus, Slovenia, Portugal, and Malta) met in December 2008, called attention to the migration pressure they face due to their location, and urged northern EU member states to show greater solidarity on this issue.<sup>292</sup> The Netherlands unilaterally took tentative first steps toward solidarity. State Secretary for Justice Albayrak visited reception centres in Cyprus, Greece and Malta in May, and discussed ways to increase practical cooperation regarding asylum policy and irregular border crossing. The Netherlands will send asylum experts to Greece to assess needs. Greece also announced plans to use boats as reception centres where asylum requests will be processed.<sup>293</sup>

## Deportations and returns

Civil society actors and courts continued to stress the impropriety of hurried returns. The European Council on Refugees and Exiles issued an information note on the “Returns Directive.”

ECRE expressed concerns about the short period to prepare to return, between 7 and 30 days; the obligation to include entry bans as long as 5 years in certain return decisions; and the possibility to detain third country nationals, including families, unaccompanied children and other vulnerable persons, for up to 18 months for reasons beyond their control. ECRE urged member states to refrain from using the directive to justify harsh return measures.<sup>294</sup> The European Court of Justice (ECJ) ruled on 22 October that Articles 6b and 23 of the Convention implementing the Schengen Agreement, and Article 11 of the Schengen Borders Code, mean that EU law does not require the repatriation of immigrants without valid residence permits, nor preclude replacing deportation with a fine. The cases analysed two questions from Spain, after Bolivian citizens appealed against their repatriation. The Spanish court decreed their expulsion and prohibited them from entering the Schengen zone for five years. According to the ECJ, expulsion is the exception, not the rule. If expulsion is not authorised under the law, a member state may allow a person to remain within its territory. In Spain, if a fine has already been imposed, the next step would be an expulsion procedure.<sup>295</sup>

291 Matthew Xuereb, “Quadro Group report stresses solidarity and burden sharing”, Times of Malta, 13 January 2009, available online at <http://www.timesofmalta.com/articles/view/20090113/local/quadro-group-report-stresses-solidarity-and-burden-sharing>; Times of Malta, “Migration: Italian minister waters down repatriation pledge”, 13 January 2009, available online at <http://www.timesofmalta.com/articles/view/20090113/local/migration-italian-minister-waters-down-repatriation-pledge>. [Cf. PICUM Newsletter, February 2009.]

292 Migration News Sheet, January 2009, p. 5. [Cf. PICUM Newsletter, February 2009.]

293 ECRE Weekly Bulletin, 29 May 2009, available online at [www.ecre.org](http://www.ecre.org). [Cf. PICUM Newsletter, June 2009.]

294 ECRE Information Note on the Returns Directive, 7 January 2009, available online at [http://www.ecre.org/resources/Policy\\_papers/1296](http://www.ecre.org/resources/Policy_papers/1296). [Cf. PICUM Newsletter, February 2009.]

295 Publico, “Legislação comunitária ‘não obriga’ ao repatriamento de imigrantes ilegais”, 19 May 2009, available online at <http://ultimahora.publico.clix.pt/noticia.aspx?id=1381605&idCanal=62>. Opinion of the Advocate General (Kokott), Eurolex, 19 May 2009, available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008C0261:CS:NOT> and Official Journal of the European Union, the Opinion of the Court, C 297/12, 5 December 2009, available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:297:0012:0012:EN:PDF>. See also Migration News Sheet June 2009, p. 7, and November 2009, pp. 1-2. [Cf. PICUM Newsletters, June, July and December 2009.]

A High Court judge ruled the removal of an undocumented man from the UK “manifestly unlawful.” UK Border Agency officers “deliberately misled” him, and denied his right to legal advice. The man testified he was deceived into thinking he was being taken for an immigration interview. Instead, he was taken to an airplane. He said that, when he resisted leaving the van, he was handcuffed, and punched in his private parts to make him straighten his legs so they could be belted together, then was lifted on to the airplane and flown out of the country. His mobile phone was taken, and he was given no chance to contact friends or lawyers, even though Home Office rules required 72 hours’ notice so he could make calls. The Home Secretary conceded his removal was carried out illegally, but argued that flying him back to the UK was pointless as he was bound to lose his new claim. The judge ordered the Home Secretary to “use her best endeavours” to bring him back.<sup>296</sup> Anne Owers, Chief Inspector of Prisons, issued a report “Detainee escorts and removals” that found weaknesses in complaint and monitoring processes for the removal of migrants from the UK. Owers argued that the lack of clear and consistent standards of treatment, support and communication heightens risks of abuse.<sup>297</sup>

Notwithstanding these rulings, Europe’s enthusiasm for deportations continued to rise. Belgian Migration and Asylum Minister Turtelboom and Interior Minister De Padt

prepared a circular for mayors and local police with instructions and advice to speed identification and expulsion of irregular migrants.<sup>298</sup>

More than 30 Nigerian nationals were deported from Ireland in March. The Irish Refugee Council called for one of them to be allowed to return immediately to care for her two young sons, Irish citizens born in Dublin. The 32-year-old woman, who had been held in detention with her children, was deported after her asylum application was denied. A spokeswoman for the Council said the younger boy was still being breast-fed.<sup>299</sup>

Three French citizens forcefully removed from a SN Brussels Airlines flight in April 2008 for protesting the conditions in which a Cameroonian national was being deported complained against the airline. The Belgian League for Human Rights and the Centre for Equal Opportunity Against Racism supported them. Their lawyers stressed that the method used to restrain Mr. Sontsa was similar to that used on a Nigerian woman who died in 1998 during deportation when a cushion was held over her face to prevent her shouting for help. The legal team also noted that immigration authorities did not reveal a complaint written by Mr. Sontsa, after the attempted deportation and before his suicide in the detention centre, detailing his treatment on the flight. Furthermore, police officials deleted a mobile phone video of the incident filmed by one of the witnesses.<sup>300</sup>

296 Robert Verkaik, “Deporting gay asylum seeker was ‘unlawful’”, *The Independent*, 20 February 2009, available online at <http://www.independent.co.uk/news/uk/home-news/deporting-gay-asylumseeker-was-unlawful-1627052.html>. (Cf. PICUM Newsletter, April 2009.)

297 Short thematic report by HM Inspectorate of Prisons, “Detainee escorts and removals”, August 2009, available online at [http://www.justice.gov.uk/inspectors/hmi-prisons/docs/Detainee\\_escorts\\_and\\_removals\\_2009\\_rps.pdf](http://www.justice.gov.uk/inspectors/hmi-prisons/docs/Detainee_escorts_and_removals_2009_rps.pdf). (Cf. PICUM Newsletter, August/September 2009.)

298 See PICUM Newsletter, July 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-07-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-07-2009.pdf)

299 See PICUM Newsletter, April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf)

300 Ibid.

Governments seemed to see only numbers, not people. French Minister of Immigration Brice Hortefeux expressed satisfaction regarding the numbers of migrants expelled. 29,796 undocumented migrants left France in 2008 by voluntary return or expulsion. Since the beginning of the Sarkozy government there have been 45,000 departures. Hortefeux said it was the first time the number of undocumented migrants began to decrease in France.<sup>301</sup>

Citing a March 2009 European Commission report, a Greek MP said that in 2005-2007 Greece deported 141,777 aliens. The number of deportation decisions issued was significantly lower (54,608). This discrepancy raised worries about the legitimacy of the deportation procedure.<sup>302</sup>

In 2008 the Dutch government carried out fewer forced returns than in 2007 and more people went MOB - Met Onbekende Bestemming (With Unknown Destination). According to State Secretary for Justice Albayrak, in 2007, 10,950 were forced to leave the Netherlands. In 2008 this number decreased to 7,200. The number of people leaving with unknown destination (mostly into life as an undocumented migrant) increased from 13,400 in 2007 to 16,800 in 2008.<sup>303</sup>

## Forced returns to Iraq raised concerns and prompted civil society responses

UNHCR expressed concern that European countries forcibly returned failed asylum seekers to central Iraq, despite serious human rights violations and violence. UNHCR guidelines state that asylum seekers from central Iraq need protection, but Denmark and Sweden, for example, forcibly returned 38 and 250 failed asylum seekers, respectively. Even though the Iraqi government stressed it would no longer receive forcibly repatriated Iraqis, and refused to accept 34 of 44 failed asylum seekers the UK tried to return to Baghdad in October, European governments said they would continue to deport Iraqis.<sup>304</sup>

The Swedish newspaper 'Dagens Nyheter' reported in June that 111 refused Iraqi asylum seekers had been returned. The Minister of Migration designated 2009 the 'Year of Return' and Sweden reached an agreement with the Iraqi government to take back unsuccessful asylum applicants. The government in the Kurdish region, which previously refused to take back deportees from Sweden, will be forced to abide by the agreement. Police carried out searches for Iraqis, and on 23 February, forty-five Iraqis were sent to Baghdad on a chartered flight. 107 Swedish officials, eighty-eight from the Prison

301 RFI, "Brice Hortefeux défend son bilan", 13 January 2009, available online at [http://www.rfi.fr/actu/fr/articles/109/article\\_77284.asp](http://www.rfi.fr/actu/fr/articles/109/article_77284.asp),=. [Cf. PICUM Newsletter, February 2009.]

302 See PICUM Newsletter, April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf)

303 See PICUM Newsletter, June 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-06-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-06-2009.pdf)

304 "UN agency concerned over forced returns of asylum-seekers from central Iraq", UN News Centre, 23 October 2009, available online at <http://www.un.org/apps/news/story.asp?NewsID=32685&Cr=Iraq&Cr1=asylum>; Migration News Sheet, October 2009, p. 27; Marie Jackson, "Iraq sends back UK asylum flight", BBC News, 16 October 2009, available online at [http://news.bbc.co.uk/2/hi/uk\\_news/8310572.stm](http://news.bbc.co.uk/2/hi/uk_news/8310572.stm). [Cf. PICUM Newsletter, November 2009.]

Board and sixteen from the police, accompanied the migrants. Many deportees reported police brutality and some suspected they had been administered sedatives. The report blacked out the names of the officials involved. In a family deportation case, the mother suffered a nervous breakdown the day before the flight, and her children were put into the care of social services. The family was only reunited on the flight.<sup>305</sup>

The Danish Prime Minister announced a readmission agreement with the Iraqi government to enable the return of unsuccessful asylum applicants. The agreement affected 300 undocumented Iraqis who had been living in Danish detention centres, some for as long as 12 years. Among them are many families with children born in Denmark.<sup>306</sup> Police raided a Copenhagen church sheltering refused Iraqi asylum seekers and arrested 19 men on 13 August, sparking clashes with 300 protestors, many affiliated with the refugee assistance group Kirkeasyl ("Church Asylum"). The protestors accused the police of causing considerable damage inside Brorson's Church, and filed at least 30 complaints about police brutality. The detained Iraqis began a hunger strike, while an estimated

15,000 people demonstrated on 13 August to urge the government not to deport them. Protests were also held in Århus, Aalborg and Svendborg, and thousands gathered in Copenhagen's City Hall Square for a protest concert on 18 August. According to the Copenhagen Post, the raid on Brorson's Church was only the second time in modern Danish history that police arrested people sheltering in a church, and the first time they did so without the church's permission.<sup>307</sup> The governing Liberal Party asked the Minister of Justice to determine whether Kirkeasyl violated Danish law and misused public funds by assisting the failed asylum seekers.<sup>308</sup> Police charged the vicar of Brorson's Church with enabling foreigners to remain in the country irregularly.<sup>309</sup>

Belgium and Kosovo signed an agreement on 20 October 2009 to regulate the return of Kosovars who reside irregularly in Belgium and do not qualify for regularisation. Belgian media reported the government of Kosovo had requested such an agreement in an effort to strengthen its ties with the EU. The agreement is the first bilateral readmission agreement since Kosovo declared its independence.<sup>310</sup>

305 Lotta Holmberg, "Forced returns of Iraqis from Sweden", IRR News, 18 June 2009, available online at <http://www.irr.org.uk/2009/june/ha000032.html>. (Cf. PICUM Newsletter, July 2009.)

306 Migration News Sheet June 2009, p.13. (Cf. PICUM Newsletter, July 2009.)

307 The Copenhagen Post, "Raid on asylum seekers sparks riot", 13 August 2009, available online at <http://www.cphpost.dk/news/local/87-local/46552-raid-on-asylum-seekers-sparks-riot.html>; The Copenhagen Post, "Police brutality complaints after church raid", 17 August 2009, available online at <http://www.cphpost.dk/news/local/87-local/46580-police-brutality-complaints-after-church-raid.html>; The Copenhagen Post, "Arrested Iraqi's on hunger strike", 14 August 2009, available online at <http://www.cphpost.dk/news/1-latest-news/46572-arrested-iraqis-on-hunger-strike.html>; The Copenhagen Post, "Despite the protests most support the police", 14 August 2009, available online at <http://www.cphpost.dk/news/local/87-local/46561-despite-protests-most-support-police.html>; The Copenhagen Post, "Flood of support for Iraqi refugees", 19 August 2009, available online at <http://www.cphpost.dk/news/national/88-national/46607-flood-of-support-for-iraqi-refugees.html>. (Cf. PICUM Newsletter, August/September 2009.)

308 Migration News Sheet, October 2009, p. 27. (Cf. PICUM Newsletter, November 2009.)

309 Migration News Sheet, November 2009, p. 11. (Cf. PICUM Newsletter, December 2009.)

310 "Accord avec le Kosovo sur le retour des Kosovars illégaux", RTBF, 20 October 2009, available online at <http://www.rtbf.be/info/belgique/divers/accord-avec-le-kosovo-sur-le-retour-des-kosovars-illegaux-152618>. (Cf. PICUM Newsletter, November 2009.)

French Immigration Minister Eric Besson announced on 19 November 2009 that France and Serbia had reached an agreement on the readmission of irregular migrants. Besson also stated that France would support the abolition of visa requirements for nationals of Serbia, Macedonia and Montenegro to enter the Schengen area.<sup>311</sup>

The Antirassistische Initiative e.V (Anti-racist initiative e.V) released statistics to highlight the 'deadly consequences' of German migration policies. At least half a million people live with a precarious residence status in Germany and 5,800 migrants had their refugee status revoked in 2008. Figures for the period 1993 to 2008 show that 175 migrants died and 480 suffered injuries on their way into Germany or at its borders, 150 killed themselves and 814 injured themselves to protest against or prevent deportation, 5 died during deportation and 70 disappeared following deportation.<sup>312</sup>

## 2. Deaths at the Borders

Thousands of people have died attempting to reach Europe in recent decades.<sup>313</sup> Many more were never located. Survivors have experienced extreme suffering. PICUM continues to monitor EU migration control policy and report deaths at the borders. Although recorded deaths decreased markedly in 2009 from 2008, the problem remains acute.<sup>314</sup> Organisations such as UNITED<sup>315</sup> and APDHA<sup>316</sup> attribute this to a strict regime of border militarisation, restrictive asylum laws, detention policies, deportations, and carrier sanctions that has driven migrants to take longer and more dangerous routes to Europe.<sup>317</sup> UNITED stressed that the fatalities are not isolated incidents, but symptoms of policies that no longer see the humanity of people fleeing their homeland.<sup>318</sup> Reacting to the resulting in human rights violations at the borders of the EU, approximately 30,000 citizens petitioned the European Parliament to use its budgetary and other powers to control the FRONTEX agency.<sup>319</sup>

311 "Immigration: Coopération franco-serbe", leJDD.fr, 19 November 2009, available online at <http://www.lejdd.fr/Politique/Depeches/Immigration-Cooperation-franco-serbe-151589>. (Cf. PICUM Newsletter, December 2009.)

312 Antirassistische Initiative E.V., "Germany asylum policy and its deadly consequences", 1 March 2009, available online at [http://www.ari-berlin.org/PE\\_english\\_16.pdf](http://www.ari-berlin.org/PE_english_16.pdf). (Cf. PICUM Newsletter, May 2009.)

313 Fortress Europe, a press review that reports on migrants who have died along European frontiers, recorded 14,944 deaths from 1988 through 2009. Fortress Europe, 1 July 2009, available online at <http://fortresseurope.blogspot.com/2006/01/da-ventanni-in-europa.html>. (Cf. PICUM Newsletter, January 2010.) UNITED has counted at least 13,250 people who have died attempting to reach Europe from 1993 until mid-2009. <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf>. (Cf. PICUM Newsletter, July 2009.)

314 According to Fortress Europe, in 2009, 49 people died in the Strait of Sicily and 376 were missing. 71 died between Africa and Spain and the Canary Islands, 87 were missing. 27 died in the Aegean Sea and 4 were missing. Fortress Europe, 1 July 2009, available online at <http://fortresseurope.blogspot.com/2006/01/da-ventanni-in-europa.html>. (Cf. PICUM Newsletter, January 2010.) During 2008, more than 1,500 deaths occurred at the EU borders. Asociación Pro Derechos Humanos de Andalucía (APDHA) homepage, 20 January 2009, available at [www.apdha.org](http://www.apdha.org). (Cf. PICUM Newsletter, February 2009.)

315 UNITED for Intercultural Action, available online at [www.unitedagainstracism.org](http://www.unitedagainstracism.org).

316 APDHA homepage, available online at [www.apdha.org](http://www.apdha.org).

317 United for Intercultural Action, "Death by Policy: The Fatal realities of 'Fortress Europe'", available online at <http://www.unitedagainstracism.org/pages/campfatalrealities.htm>. (Cf. PICUM Newsletters, February & July 2009.)

318 United for Intercultural Action, "Death by Policy: The Fatal realities of 'Fortress Europe'", available online at <http://www.unitedagainstracism.org/pages/campfatalrealities.htm>. (Cf. PICUM Newsletter, July 2009.)

319 See PICUM Newsletter, February 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-02-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-02-2009.pdf)

One of the largest shipwrecks in the modern history of immigration into Europe occurred on 29 March, 30 km off the Libyan coast. Out of three boats that left Libya, two sank and the third disappeared. Provisional figures indicated 23 survivors, 21 bodies recovered and over 500 disappeared. Libyan press stated that a majority of the migrants were Egyptian and that the vessels had left Sid Belal Janzur with 257 people on board. The International Organisation for Migration estimated the number of victims at 300. In Italy (the intended destination), the press switched between repeating the news from Libya and reporting that the 257 people were all on one boat, which would yield a far larger estimate of the number lost.<sup>320</sup> Jacques Barrot, JLS Commissioner and Commission Vice-President, called for all possible efforts to stop immigrants crossing the Mediterranean and for solidarity “with Italy and Malta, who bear the brunt of the migratory flows.” He urged Libya “to assume its responsibilities on readmitting irregular immigrants who travelled through its territory.” Barrot expressed concern that, in return, Libya requested “funding and logistical means for the surveillance of its southern border,” which other African states might object to as a use of the European development fund. Barrot also stressed the importance of stepping up maritime surveillance through Frontex, given the number of people trying to make the crossing.<sup>321</sup>

The European Parliament adopted the Erika III package, aimed at protecting Europe’s coasts from maritime disasters and improving safety. The new rules provide for a range of measures including an independent authority in each member state with the power to launch rescue operations and decide where to take ships in distress. Under the directive on Vessel Traffic Monitoring, member states must designate an independent authority to take decisions in the event of an accident or dangerous situation, to prevent time being lost agreeing on matters such as where to take a ship in distress. The authority would take decisions on its own initiative, to protect lives, the coast and the environment, ensure safety at sea, and minimise economic damage. The authority may restrict the movement of the ship or direct it to alter course; instruct the ship’s master to end the threat to the environment or safety; send an evaluation team aboard to assess damage; deploy rescue workers; and organise towing. The directive will enter force in 2011.<sup>322</sup>

The migration route to Greece remained dangerous. Several fatal incidents took place in December 2008, and deaths continued in 2009. Four migrants died on 6 December 2008 when their rubber dinghy capsized off the coast of Turkey. Coast guards rescued twenty-three, most of them Palestinians.<sup>323</sup> An infant died in December 2008 during an attempt by a group of

320 Press Release, “Shipwreck in the high sea off Libya: an announced tragedy. Until when?”, Migreurop, 1 April 2009, available online at <http://www.migreurop.org/article1414.html>; (Cf. PICUM Newsletter, April 2009.)

321 ECRE Weekly Bulletin, 10 April 2009, available online at [http://www.ecre.org/files/ECRE\\_weekly\\_bulletin\\_10\\_April\\_2009.pdf](http://www.ecre.org/files/ECRE_weekly_bulletin_10_April_2009.pdf) (Cf. PICUM Newsletter, May 2009.)

322 See PICUM Newsletter, April 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-04-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-04-2009.pdf)

323 AFP, “Four illegal migrants die off Turkey’s northwestern coast”, Kathimerini, 8 December 2008, available online at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_world\\_2\\_08/12/2008\\_102832](http://www.ekathimerini.com/4dcgi/_w_articles_world_2_08/12/2008_102832). (Cf. PICUM Newsletter, January 2009.)

19 men, three women and three children to cross from Turkey to the Greek island of Samos. The Greek coastguard rescued the others after their dinghy sank.<sup>324</sup> Three bodies washed ashore in north-western Turkey, Anatolia reported on 21 December 2008. The dead men were believed to be either Somalis or Mauritians, among 12 people aboard a rubber dinghy that sank in bad weather in the Aegean Sea on 18 December. Two passengers swam ashore, the coast guard rescued three, and four were not found.<sup>325</sup> The Greek coast guard recovered the bodies of two migrants and was looking for a third who presumably drowned after a speedboat carrying migrants from Turkey to Greece sank off the island of Kos on 12 August. Two men and one woman were rescued after the crew of a yacht noticed the wreckage.<sup>326</sup> Five children and three women from Afghanistan drowned on 27 October when their boat hit a rocky outcrop on the Greek island of Lesbos. The boat had carried 17 Afghan and one Turkish migrants.<sup>327</sup> Deaths occurred on shore as well. A 19 year old Afghan migrant died after falling from his hiding place underneath a truck unloading in the port of Acona in Greece, on 24 June.<sup>328</sup> The body of an 18-year-old

undocumented migrant was found near the port of Igoumenitsa in northwestern Greece on 6 August. Police suspected the victim may have been part of a group who jumped off a truck they believed was about to board a ferry for Italy, but which was headed for mainland Greece instead.<sup>329</sup>

According to Spanish authorities, 45 migrants died attempting to reach the Canary Islands in 2008, but this only counts the number of bodies recovered.<sup>330</sup> Migrants continued to risk their lives to reach the Canaries in 2009. A boat carrying 77 migrants was spotted off the island of Gran Canaria, Spain on 3 February. Three had died during the 10 day journey from Gambia. The survivors all needed medical care upon arrival.<sup>331</sup> Four drowned and twenty went missing when a boat holding twenty eight undocumented migrants of Moroccan origin capsized off the coast of the Teguisse.<sup>332</sup> A boat carrying 65 sub-Saharan migrants was intercepted off the Canary Island of El Hierro during the night of 12 July. One had already died. Two more died within 24 hours. The boat had been drifting for about a week and had run out of food and water.<sup>333</sup> One migrant died before two boats carrying 15 passengers reached

324 See PICUM Newsletter, January 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-01-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-01-2009.pdf)

325 AFP, "Three illegal migrants drown in the Aegean", Kathimerini, 22 December 2008, available online at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_world\\_2\\_22/12/2008\\_103228](http://www.ekathimerini.com/4dcgi/_w_articles_world_2_22/12/2008_103228). [Cf. PICUM Newsletter, January 2009.]

326 See PICUM Newsletter, August/September 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-09-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-09-2009.pdf)

327 Anthee Carassava, "8 Afghan Immigrants Drown Off Greek Island", New York Times, 27 October 2009, available online at <http://www.nytimes.com/2009/10/28/world/europe/28greece.html>. [Cf. PICUM Newsletter, November 2009.]

328 ADUC Immigrazione, "Immigrato clandestino si attacca sotto un camion, morto", 24 June 2009, available online at <http://www.aduc.it/dyn/immigrazione/noti.php?id=263715>. [Cf. PICUM Newsletter, July 2009.]

329 Kathimerini, "Body found at Igoumenitsa port", 7 August 2009, available online at [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_politics\\_2\\_07/08/2009\\_109634](http://www.ekathimerini.com/4dcgi/_w_articles_politics_2_07/08/2009_109634). [Cf. PICUM Newsletter, August/September 2009.]

330 Migration News Sheet, January 2009, p. 7. [Cf. PICUM Newsletter, February 2009.]

331 Earthtimes, "Three migrants die when crossing from Africa to Spain", 3 February 2009, available online at <http://www.earthtimes.org/articles/show/253969,three-migrants-die-when-crossing-fromafrica-to-spain.html>. [Cf. PICUM Newsletter, March 2009.]

332 Cordoba, "Cuatro muertos y veinte desaparecidos en Canarias", 16 February 2009, available online at <http://www.diariocordoba.com/noticias/noticia.asp?pkid=463706>. [Cf. PICUM Newsletter, March 2009.]

333 Migration News Sheet August 2009, p. 28. [Cf. PICUM Newsletter, August/September 2009.]



Spain's Canary Islands on 31 August. The first boat arrived in Cueva del Trigo (Tenerife) in the morning, while the second was intercepted off Puerto del Carmen at night.<sup>334</sup>

Deaths occurred en route to mainland Spain as well. A tourist boat found the bodies of two Sub-Saharan African men, wearing life jackets, off the coast of Ceuta, a Spanish enclave in northern Morocco, on 23 April.<sup>335</sup> Eight people drowned after a boat capsized off Barbate, near Cadiz on the southern Spanish coast on 30 June. The Spanish coast guard also located 15 survivors, including four children. The boat was not intercepted by the Integrated External Surveillance of the Spanish Civil Guard.<sup>336</sup> A ship found the body of a male sub-Saharan African about 42 miles south of Cabo de Gata in Almería, Spain, in an advanced state of decay.<sup>337</sup> A boat carrying migrants was rescued along the Spanish coast near Murcia on 17 June. One man died and a second was missing. Nine others were treated with first aid.<sup>338</sup> The headless body of a man was recovered between Cabo del Agua (Murcia) and the island of Escombreras in southern Spain on 10 August. He may have been

an Algerian man missing since a boat carrying 10 migrants sank near Murcia on 16 June.<sup>339</sup> One migrant was reported missing after he fell into the water before being rescued off the coast of Manilva, in the Spanish province of Málaga, on 24 July. The man had shared a boat with three other migrants.<sup>340</sup> Eight African migrants died and dozens of others were missing after a dinghy carrying at least 42 mostly Nigerian and Senegalese migrants capsized off the Spanish-owned islet of Perejil, close to the Moroccan coast, on 19 September. Seven of the 11 survivors appeared before prosecutors in Tangiers on 20 September, while the four others, who were in poor condition, were in hospital.<sup>341</sup> Spanish authorities found the bodies of two Algerian migrants on a boat about 120 kilometres southeast of Cartagena on Spain's south-eastern coast on 29 October. After getting lost on the open sea, the four migrants aboard the vessel became so dehydrated they drank seawater. The two survivors were hospitalised in serious condition.<sup>342</sup>

Efforts to reach EU territory can also result in deaths outside EU-patrolled waters. One

334 El País, "Llegan dos pateras a Canarias con un inmigrante muerto", 31 August 2009, available online at [http://www.elpais.com/articulo/espana/Llegan/pateras/Canarias/inmigrante/muerto/elpepuesp/20090831elpepunac\\_4/Tes](http://www.elpais.com/articulo/espana/Llegan/pateras/Canarias/inmigrante/muerto/elpepuesp/20090831elpepunac_4/Tes). [Cf. PICUM Newsletter, October 2009.]

335 Ennahar Online, "Spain: 128 Harraga intercepted in southern", 24 April 2009, available online at <http://www.ennaharonline.com/en/news/1014.html>. [Cf. PICUM Newsletter, May 2009.]

336 Manuel Estevez, "Ascienden a ocho los cadáveres hallados del naufragio de una patera", *Elmundo*, 30 June 2009, available online at <http://www.elmundo.es/elmundo/2009/06/29/andalucia/1246262310.html>. [Cf. PICUM Newsletter, July 2009.]

337 Laverdad, "Encuentran el cadáver de un subsahariano en aguas de Almería", available online at <http://www.laverdad.es/murcia/20090604/espana/encuentran-cadaver-subsahariano-aguas-20090604.html>. [Cf. PICUM Newsletter, July 2009.]

338 L'Unita, "Spagna: un immigrato morto dopo soccorsi", available online at [http://www.unita.it/newsansa/37689/spagna\\_un\\_immigrato\\_morto\\_dopo\\_soccorsi](http://www.unita.it/newsansa/37689/spagna_un_immigrato_morto_dopo_soccorsi). [Cf. PICUM Newsletter, July 2009.]

339 Laverdad, "Hallan el cadáver de un hombre flotando en el mar en Cartagena", available online at <http://www.laverdad.es/murcia/20090811/region/hallan-cadaver-hombre-flotando-20090811.html>. [Cf. PICUM Newsletter, August/September 2009.]

340 Sur.es, "Buscan al naufragio de una patera", 24 July 2009, available online at <http://www.diariosur.es/20090724/malaga/buscan-naufragio-patera-20090724.html>. [Cf. PICUM Newsletter, August/September 2009.]

341 AFP, "Dozens still missing in sinking of migrant boat off Morocco", 19 September 2009, available online at <http://www.google.com/hostednews/afp/article/ALeqM5j-Njfdj9S7iUdZZyUcK4G9JSgXAQ>. [Cf. PICUM Newsletter, October 2009.]

342 Earth Times, "Spain intercepts migrant boat with two bodies on board", 29 October 2009, available online at <http://www.earthtimes.org/articles/show/292396,spain-intercepts-migrant-boat-with-two-bodies-on-board.html>. [Cf. PICUM Newsletter, November 2009.]

person died and at least 11 were missing after an Algerian coast guard vessel collided with three migrant boats on 8 August off the city of Annaba, a focal point for young, unemployed men hoping for a better life in Europe.<sup>343</sup> A boat carrying 35 undocumented migrants capsized off the Tunisian coast overnight on 18-19 January. Five swam ashore, and the remaining thirty were not found.<sup>344</sup> Twenty-one migrants died when their boat capsized between the Comoros and the French island of Mayotte in the Indian Ocean on 24 November. 11 migrants were rescued.<sup>345</sup> At least eight migrants from Kosovo, including a woman and a child, drowned when a boat carrying an estimated 19 migrants capsized trying to cross the Serbo-Hungarian border via the Tisza river on 15 October. The only confirmed survivors were a man and his two children.<sup>346</sup> Kosovo and EU police arrested seven people on 16 December in connection with the deaths. The EU police and justice mission (EULEX) said suspects were charged with smuggling migrants and organized crime for having taken money from the victims and organised their journey.<sup>347</sup>

Smugglers posed dangers, sometimes mortal. Algerian authorities found the bodies of six sub-Saharan migrants in an advanced state of decomposition in the south-eastern Sahara region of Adrar on 12 November 2008. Less than a week earlier, 80 sub-Saharan migrants had been located by the Algerian police in approximately the same region. The group told the police they had been abandoned without water or food by traffickers who were supposed to take them to southern Europe.<sup>348</sup> In the Gulf of Aden off Yemen, six undocumented migrants drowned and eleven disappeared after traffickers forced them from their boat. The migrants, all African, were on a boat carrying 52 people, part of a convoy of seven boats that left Somalia.<sup>349</sup> Three people drowned and three others were missing after trying to swim to the coast of Sicily from a rubber dinghy carrying 50 Egyptian migrants. They had been abandoned by the ship carrying them, and given plastic drums to hold on to, with no oars or other means to reach shore. Eighteen survivors were quickly repatriated.<sup>350</sup>

343 BBC, "Migrant dies in patrol boat crash", 8 August 2009, available online at <http://news.bbc.co.uk/2/hi/africa/8191474.stm>. [Cf. PICUM Newsletter, August/September 2009.]

344 See PICUM Newsletter, February 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-02-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-02-2009.pdf)

345 Associated Press, "Naufrage d'une embarcation de clandestins entre les Comores et Mayotte: 21 morts", 26 November 2009, available online at [http://tempsreel.nouvelobs.com/depeches/societe/20091126.FAP5141/naufage\\_dune\\_embarcation\\_de\\_clandestins\\_entre\\_les\\_como.html](http://tempsreel.nouvelobs.com/depeches/societe/20091126.FAP5141/naufage_dune_embarcation_de_clandestins_entre_les_como.html). [Cf. PICUM Newsletter, December 2009.]

346 "Les corps de huit Kosovars noyés découverts", 7 sur 7, 31 October 2009, available online at <http://www.7sur7.be/7s7/fr/1505/Monde/article/detail/1023731/2009/10/31/Les-corps-de-huit-Kosovars-noyes-decouverts.dhtml>; Marietta Le, «Hungary, Serbia: Tragedy At The Border», Global Voices, 28 October 2009, available online at <http://globalvoicesonline.org/2009/10/28/hungary-serbia-tragedy-at-the-border>. [Cf. PICUM Newsletter, November 2009.]

347 Global Development Briefing, 17 December 2009, available online at [http://www.devex.com/global\\_development\\_briefing](http://www.devex.com/global_development_briefing). [Cf. PICUM Newsletter, January 2010.]

348 Migration News Sheet, December 2008, p. 9. [Cf. PICUM Newsletter, January 2009.]

349 Gara, "Seis inmigrantes ahogados y once desaparecidos tras ser lanzados al mar en Adén", 25 February 2009, available online at <http://www.gara.net/paperezkoa/20090225/123926/es/Seis-inmigrantes-ahogados-once-desaparecidos-tras-ser-lanzados-mar-Aden>. [Cf. PICUM Newsletter, March 2009.]

350 ANSA, "Abbandonati in mare, sei morti a Gela. Sbarchi anche a Malta e Lampedusa", 7 October 2009, available online at <http://fortresseurope.blogspot.com/2009/10/abbandonati-in-mare-sei-morti-gela.html>; "Immigrazione: abbandonati in mare, trovato un altro cadavere", L'Unione Sarda, 10 October 2009, available online at <http://unionesarda.ilsole24ore.com/Articoli/News/149187>. [Cf. PICUM Newsletter, November 2009.]

As if the dangers of migration were not enough, acts of border control and other authorities sometimes also had fatal consequences. An irregular Senegalese migrant drowned attempting to reach Spain, reportedly after he was intercepted by the Spanish coast guard and thrown back into the water. The UN Committee against Torture declared a subsequent complaint admissible.<sup>351</sup> A 29-year-old Kurdish migrant from Iraq died in July after four months in a coma, after reportedly being beaten by police at the port of Igoumenitsa in western Greece. The Minister of Mercantile Marine called for the investigation to be re-opened, as the perpetrators have yet to be identified.<sup>352</sup> Moroccan police killed a sub-Saharan immigrant on 1 January as he tried to reach the Spanish enclave of Melilla. The immigrants heard gunfire from all sides, but continued while they saw some of their companions fall. One witness called it a "massacre." More than twenty people were injured. Fourteen were arrested and deported to the desert between Morocco and Algeria.<sup>353</sup> In at least one case, a killer was brought to justice when a court in Sicily sentenced a fishing boat captain to 12 years in prison for killing a Somali migrant. On 10 January 2008, Ruggiero Marino threw 37-year-old Mohamud Ahmed Mohamed

overboard after a crew member had hoisted him from a rubber dinghy carrying about 60 migrants from Somalia and Nigeria. Mohamed drowned because the dinghy had drifted away. The migrants had run out of fuel and approached the "Enza D" for help. The court also ordered Marino to pay civil damages to the migrants.<sup>354</sup>

### 3. Stockholm Programme

Sweden took over the EU presidency on 1 July. Prime Minister Fredrik Reinfeldt presented a programme that focused on EU cooperation in areas such as police, borders and customs, and asylum, migration and visa policy. Legislation regarding processing asylum applications and return would be another main focus.<sup>355</sup> In September, Tobias Billström, Minister of Migration and Asylum Policy, presented the "Stockholm Programme" to the European Parliament's Committee on Civil Liberties (LIBE). Billström said the programme should contain guidance on what the EU needed to do to control irregular immigration, while maintaining a "balance" and ensuring that security measures were not taken at the expense of regular migrants or asylum seekers.<sup>356</sup> On 25 November, the

351 Migration News Sheet, February 2009, p. 9. [Cf. PICUM Newsletter, March 2009.]

352 Fortress Europe, "Sangue a Igoumenitsa: muore kurdo pestato dalla polizia greca", 29 July 2009, available online at <http://fortresseurope.blogspot.com/2006/01/pestato-sangue-dalla-polizia-greca-come.html>. [Cf. PICUM Newsletter, August/September 2009.]

353 See PICUM Newsletter, January 2009, [http://www.picum.org/sites/default/files/data/newsletters/en/nl\\_en\\_01-01-2009.pdf](http://www.picum.org/sites/default/files/data/newsletters/en/nl_en_01-01-2009.pdf)

354 Carta, "Capitan vergogna condannato a 12 anni", 23 July 2009, available online at <http://www.carta.org/campagne/migranti/18158>. [Cf. PICUM Newsletter, August/September 2009.]

355 ECRE Weekly Bulletin, 26 June 2009, available online at [www.ecre.org](http://www.ecre.org). [Cf. PICUM Newsletter, July 2009.]

356 "Presentation to the Committee on Civil Liberties (LIBE) by Minister of Migration and Asylum Policy Tobias Billström", Swedish Presidency of the European Union Web Site, [http://www.se2009.eu/en/meetings\\_news/2009/9/3/presentation\\_to\\_the\\_committee\\_on\\_civil\\_liberties\\_libe\\_by\\_minister\\_of\\_migration\\_and\\_asylum\\_policy\\_tobias\\_billstrom](http://www.se2009.eu/en/meetings_news/2009/9/3/presentation_to_the_committee_on_civil_liberties_libe_by_minister_of_migration_and_asylum_policy_tobias_billstrom). [Cf. PICUM Newsletter, October 2009.]

European Parliament adopted a resolution on the Stockholm Programme that argued EU countries should work together more closely on the reception of asylum seekers and in fighting discrimination, and that migrants must have access to justice, housing, education and health care. It also condemned refoulement and mass expulsions to countries where human rights are not respected. Human rights groups expressed strong concerns over the draft of the Stockholm Programme. Amnesty International pointed to major gaps and inconsistencies where irregular migration is concerned, arguing that the EU's proposals are disproportionately aimed at returning migrants, without taking into account the rights of irregular migrants.<sup>357</sup> The December 2009 European Council adopted the Stockholm Programme for 2010-2014.<sup>358</sup>

357 European Parliament, "Stockholm programme: more citizens' rights, say MEPs", 25 November 2009, [http://www.europarl.europa.eu/news/expert/infopress\\_page/019-65084-327-11-48-902-20091124IPR65083-23-11-2009-2009-false/default\\_en.htm](http://www.europarl.europa.eu/news/expert/infopress_page/019-65084-327-11-48-902-20091124IPR65083-23-11-2009-2009-false/default_en.htm); Amnesty International EU Office, "JHA: Fill in gaps of Stockholm Programme in relation to irregular migration", 30 November 2009, <http://www.amnesty-eu.org/static/html/pressrelease.asp?cfid=12&id=434&cat=4&l=1>. (Cf. PICUM Newsletter, December 2009.)

358 European Council Conclusions, 10-11 December 2009, [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ec/111877.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/111877.pdf); Council of the European Union, "The Stockholm Programme", [http://www.se2009.eu/polopoly\\_fs/1.26419!menu/standard/file/Klar\\_Stockholmsprogram.pdf](http://www.se2009.eu/polopoly_fs/1.26419!menu/standard/file/Klar_Stockholmsprogram.pdf). (Cf. PICUM Newsletter, January 2010.)



# International Recognition of Undocumented Migrants' Human Rights

## D International Recognition of Undocumented Migrants' Human Rights

### 1. United Nations

UN High Commissioner for Human Rights Navi Pillay affirmed that a rights-based approach to migration would be a priority for 2010–2011. Policies focused on border control, return, and criminalisation have been ineffective and threaten rights. Measures such as fining landlords who rent to irregular migrants; placing a duty to report on health professionals; and criminalising assistance, can affect migrants' labour rights, and access to housing, health, education and food. The High Commissioner deplored that states turn away migrants at sea, without checking whether they are fleeing persecution. She called for an end to the mandatory detention of irregular migrants and their criminalisation and ill-treatment at borders.<sup>359</sup>

The UN Committee on Economic, Social and Cultural Rights adopted General Comment No. 20, interpreting Article 2(2) of the International Covenant on Economic, Social and Cultural Rights. The General Comment stated that discrimination undermines economic, social and cultural rights for much of the world's population

and that "non-discrimination and equality [are] essential to the exercise and enjoyment of economic, social and cultural rights." The Committee provided a non-exhaustive list of prohibited grounds of discrimination, including disability, age, nationality (covering non-nationals, migrant workers and victims of trafficking), sexual orientation and gender identity, health status, and economic and social situation.<sup>360</sup>

### 2. Council of Europe

Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, presented reports on three EU member states. The Netherlands report focused on the treatment of asylum seekers, children's rights, and integration. The Commissioner called on Dutch authorities to provide alternatives to detention, keep families united, and not to detain children except in extraordinary circumstances.<sup>361</sup> The government promised to look into the situation for unaccompanied migrant children and a status for stateless unaccompanied children, and endorsed the undesirability of detaining trafficking victims.<sup>362</sup>

359 EU Business, "UN rights chief targets treatment of migrants", 4 June 2009, <http://www.eubusiness.com/news-eu/1244131321.67>; ReliefWeb, "Statement of Ms. Navanethem Pillay United Nations High Commissioner for Human Rights at the 12th session of the Human Rights Council", 14 September 2009, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/JBRN-7VVG7G?OpenDocument>. [Cf. PICUM Newsletters, July & October 2009.]

360 <http://www2.ohchr.org/english/bodies/cescr/comments.htm>. [Cf. PICUM Newsletter, June 2009.]

361 ECRE Weekly Bulletin, 13 March 2009, [http://www.ecre.org/files/ECRE\\_Weekly\\_Bulletin\\_13\\_March\\_2009.pdf](http://www.ecre.org/files/ECRE_Weekly_Bulletin_13_March_2009.pdf) [Cf. PICUM Newsletter, April 2009.]

362 Kamerstuk 31 700 V, nr. 85, <http://parlando.sdu.nl/cgi/login/anonymous>, [Cf. PICUM Newsletter, June 2009.]

In Italy, the Commissioner recommended stronger anti-discrimination action and protection of migrants, Roma and Sinti, and holding counter-terrorism measures to Council of Europe standards. He voiced concerns regarding the protection of migrants and asylum seekers, especially the decision to process all asylum applications on and deport migrants from Lampedusa, and subsequent overcrowding there. Deportations on security grounds also raised concern, especially to Tunisia, where credible reports showed deportees had been tortured. Even diplomatic assurances cannot justify forced return to countries that torture. Two deportations took place despite European Court of Human Rights orders suspending them.<sup>363</sup>

The report on Belgium emphasised the need to improve living conditions and access to health care in detention and called for more transparency and providing detained migrants better information about their rights. The Commissioner welcomed the new policy of not automatically detaining irregular families but regretted that in certain cases children and their parents are still detained.<sup>364</sup>

Two Council of Europe bodies assessed Greece. The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reviewed the treatment of people by officials and conditions in police and border guard stations and detention facilities. People apprehended by Greek authorities still run a considerable risk of ill treatment. Furthermore, material conditions of detention, hygiene and access to medical care remained unacceptable for the vast majority of irregular migrants, even for periods of a few days.<sup>365</sup> The European Commission against Racism and Intolerance (ECRI) urged the government to revise legislation affecting undocumented migrants and to improve detention conditions. ECRI argued that the lack of a formal structure to assist irregular migrants in areas such as accommodation and social services leaves them vulnerable to informal work, trafficking and crime. It recommended creating a long-term strategy to address irregular immigration, special attention to unaccompanied children, and unfettered access to detention centres for NGOs and UNHCR.<sup>366</sup>

363 ECRE Weekly Bulletin, [http://www.ecre.org/files/ECRE\\_Weekly\\_Bulletin\\_16\\_January\\_2009.pdf](http://www.ecre.org/files/ECRE_Weekly_Bulletin_16_January_2009.pdf); [http://www.ecre.org/files/ECRE\\_Weekly\\_Bulletin\\_17\\_April\\_2009.pdf](http://www.ecre.org/files/ECRE_Weekly_Bulletin_17_April_2009.pdf); Thomas Hammarberg, Council of Europe's Commissioner for Human Rights, "Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13-15 January 2009", 16 April 2009, <https://wcd.coe.int/ViewDoc.jsp?id=1428427&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>. (Cf. PICUM Newsletters, February & May 2009.)

364 Thomas Hammarberg, Council of Europe's Commissioner for Human Rights Press Release, 17 June 2009, "Belgium should improve detention conditions and strengthen migrants' rights" says Commissioner Hammarberg in a report" [https://wcd.coe.int/ViewDoc.jsp?Ref=PR480\(2009\)&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE](https://wcd.coe.int/ViewDoc.jsp?Ref=PR480(2009)&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE). (Cf. PICUM Newsletter, July 2009.)

365 ECRE weekly bulletin, 3 July 2009, [http://www.ecre.org/files/ECRE\\_Weekly\\_Bulletin\\_03\\_July\\_2009.pdf](http://www.ecre.org/files/ECRE_Weekly_Bulletin_03_July_2009.pdf) (Cf. PICUM Newsletter, July 2009.)

366 UNHCR Greece Press Review, 12-18 September 2009 (sources cited: Eleftherotypia, 15 September / Avgi, Niki 16 September); ECRI, "ECRI Report on Greece", 15 September 2009, <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-IV-2009-031-ENG.pdf>. (Cf. PICUM Newsletter, October 2009.)







**Conclusion**

## E Conclusion

This report discussed a number of serious issues in Europe concerning the human rights of undocumented migrants. Many residents of the EU are unaware of the mass violations carried out in their name; local monitoring and reporting is an important first step in achieving accountability and change. PICUM urges all EU citizens to reject populist anti-immigrant sentiment and the scapegoating of vulnerable migrants by political leaders, European representatives and media outlets. In support of this aim, PICUM strives to provide correct and clear information about the actual rights and challenges facing undocumented migrants in Europe.

While its institutions are dismissed by many as bureaucratic entities, disconnected from the daily realities of Europe and its citizens, the EU plays a significant role in the development and implementation of policies which define life within the EU and the experience of those who live within our borders. The European Union must remain true to its core founding values and not fall subject to populist and reactionary measures in an attempt to increase public support. Particularly since the Charter of Fundamental Rights obtained formal status as primary EU law via the Lisbon Treaty, these values have become part and parcel of the fabric of life in Europe for everyone – in theory. A large task remains ahead, to translate these values to the reality of daily life. The principles of human rights, democracy and

rule of law enabled the unification of Europe and remain obligatory for accession states and third country agreements with the EU. A fundamental understanding is required within the European institutions that irregularity is a process caused by policies and procedures in the receiving country; it is not an isolated event.

The year 2009 saw decidedly mixed results for migrants' rights. Awareness grew of the fact that undocumented migrants have rights to education, housing, health care, and fair working conditions even for irregular work. In some cases, that awareness led to concrete action. Regularisation efforts attracted particular attention, and saw some success. Efforts grew from the grassroots, aided by laudable initiatives from local government authorities, to expand access for undocumented migrants to the necessary social services that are theirs by right. At the same time, however, national politicians and sometimes even EU actors continued to construct barriers. Some of these barriers were physical, as for example in the tragic and unlawful practice of pushing migrants back from borders without affording them the opportunity to express their humanitarian needs. Others appeared in legislation or administrative practice, as if driving undocumented migrants, who are already in Europe and cannot leave, further underground could solve social problems. These practices violate human rights on a large scale, and are

creating an underprivileged underclass of long-term European residents.

A more effective and humane approach would be to address the causes of irregularity at the levels of entry, stay and work. This requires guaranteeing secure and regularised entry routes for protection seekers, implementing a fair and transparent asylum procedure across the EU, recognising the economic need for low skilled migrant workers within the EU and exploring paths to regularise those already here, guaranteeing equal rights to all workers regardless of status and finally, adhering in practice to obligations under international human rights law.

National governments must also address the damaging effects of policies developed in response to irregular migration such as irregular entry, visa overstaying and workplace exploitation. These policies must stem from a rights based approach and not simply re-victimise vulnerable migrants by prioritising immigration control. An important first step is to build increased cooperation with organisations and experts working at the local level and provide them with an active role in the development, implementation and monitoring of policies to facilitate a rights-based approach towards irregular migration. Civil society organisations working at local and national level have an

essential role in monitoring and reporting the situation facing undocumented migrants. The real experts in this issue, these organisations must recognise their strength and engage with policy makers and implementers to improve their understanding of irregular migration and ensure they recognise the impact or failure of existing policy measures.

The international human rights regime is one designed to protect ostracised, disenfranchised individuals and non-citizen groups from arbitrary abuses of state power. Establishing basic principles of inalienable human rights for all people, the human rights regime offers a comprehensive framework for governments and EU leaders. All of the EU member states have ratified six of the eight United Nations human rights conventions currently in force (with the exception of the Migrant Workers Convention and the convention on disabilities), and are thus obliged to respect, protect and fulfil the rights of all who fall within their jurisdiction. The Charter of Fundamental Rights and the European Convention on Human Rights, with its well-developed jurisprudence, buttress these obligations at the European level. Establishing a normative framework for humane and dignified treatment of all people, these instruments outline core values and terms which should be integrated into political policies and discourse.









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