

2009 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 2008.



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By **Eve Geddie**, Program Officer,
and **Michele LeVoy**, Director

PICUM
Platform for International Cooperation
on Undocumented Migrants

Gaucheretstraat 164
1030 Brussels
Belgium

Tel: +32/2/274.14.39

Fax: +32/2/274.14.48

info@picum.org

www.picum.org

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“The world, its continents, oceans and poles now face important global difficulties: global warming, contamination; the slow but certain disappearance of energy resources and of biodiversity; while hunger and poverty increase in all countries, weakening our societies. To make immigrants, documented or not, the scapegoats of these global problems, is not a solution. It does not correspond to any reality. The problems of social cohesion that Europe suffer are not the fault of immigrants, but are the result of the development model imposed by the north, which destroys the planet and dismembers human societies”¹

Open letter sent by Bolivian President Evo Morales Ayma ahead of the ratification of the European Union’s “Return Directive” on 18 June 2008

¹ Evo Morales Ayma, “Carta abierta de Evo Morales a propósito de la ‘directiva retorno’ de la UE”, 10 June 2008, English translation available online at <http://www.no-fortress-europe.eu/showPage.jsp?ID=2912&LANG=1&ISSUE=0&POPUP=0>.

Forward: Monitoring and Reporting in PICUM's Monthly Newsletter

Monitoring and reporting on the situation of undocumented migrants is a key task of PICUM. Since its foundation, PICUM's network has actively sought to improve understanding of the need to protect undocumented migrants by bringing visibility to the adverse effects current migration control policies have upon the realisation of their innate dignity and rights.

The 1999 Tampere agreement confirmed the EU member states' commitment to a common immigration and asylum policy which encompassed migration management, external border controls and deterrence of irregular migrants. Many organizations working with undocumented migrants at the local and national level feared their experiences and voices would be lost in the unfamiliar expanse of the Brussels institutions. Seeking a role in the development of those policies which directly impact upon undocumented migrants, these organizations formed PICUM to represent their concerns and engage in EU policy debates.

PICUM's thematic work areas have been developed in response to the realities facing grassroots organisations in their daily work with undocumented migrants. For them, the most pressing issues centered on undocumented migrants' exploitation in the workplace, their lack of access to health care and education as well as their inadequate housing conditions. A source of

reliable data was urgently needed by organizations working in the field as well as other actors involved in policy development, research and social support.

The populist view that those without a valid permit are 'illegal' migrants in violation of the law and not warranting its protection is a stark contrast to the grim reality of inhumane living conditions, de facto exploitation and impunity. For PICUM, this discrepancy highlighted the urgent need for an information source to bridge this gap. The overarching fear characterising undocumented migrants' situation and the alarming tendency among authorities to criminalize civil society assistance has meant that the daily violations perpetrated against undocumented migrants often remain hidden from view. Consequently, efforts to forge a link between the realization of fundamental rights and an individual's immigration status has been facilitated by the lack of awareness regarding the human suffering, immense vulnerability and social cleavages such policies cause.

As a newly established network of civil society organizations in direct contact with undocumented migrants, PICUM was keen to respond to this growing demand for a dedicated source of information regarding their situation. In consultation with its members, PICUM released its first newsletter in April 2002. Illustrating the adverse impact of immigration control mechanisms upon humanitarian concerns and highlighting civil

societies' expertise on undocumented migrants, the newsletter also offered a valuable tool to enhance the knowledge and advocacy capacities of NGOs and disseminate their concerns at the European level. The newsletter has been instrumental in the expansion of PICUM's network, bringing together experts and organizations actively engaged with undocumented migrants across Europe and beyond.

PICUM's newsletter is currently the only information source dedicated to exclusively reporting on the situation of undocumented migrants in Europe. Received by over 3,500 subscribers monthly, the bulletin reports violations of undocumented migrants' basic social rights in 28 countries, international and regional policy developments and charts the death of migrants at the borders of both Europe and the United States. It is a valuable support to those working to protect undocumented migrants by offering comprehensive overviews of developments in the EU institutions as well as networking opportunities arising from new projects and partnerships worldwide. Thanks to a dedicated team of interns and volunteers, PICUM's newsletter is available in seven languages, English, French, Dutch, Spanish, Portuguese, German and Italian. From grassroots organizers, government officials, EU representatives, academic researchers, MEPs, trade unionists and journalists to concerned citizens, the diversity of subscribers attributes to the multifaceted role which our newsletter holds on the EU and international policy scenes.²

In 2006, support from the Network for European Foundation's EPIM programme gave PICUM its first opportunity to issue an overview of key events, policy changes and civil society trends covered in its newsletter over the previous year. This report, entitled *PICUM's Main Concerns About the Fundamental Rights of Undocumented Migrants in Europe in 2006* allowed the organisation to reflect on the previous year by highlighting positive developments and identifying negative trends. Now in 2009, with the continued support of the Network for European Foundations EPIM program, PICUM has the opportunity to provide this overview annually until 2011.

PICUM's newsletter is a compilation of secondary sources from media outlets across Europe. While this report does not attempt to cover all civil society initiatives and policy developments concerning undocumented migrants in EU member states and institutions, it offers a valuable synthesis of the main trends identified in PICUM's newsletters. By gathering this information, PICUM hopes to encourage positive attitudes towards undocumented migrants and foster support for those struggling to deal with a humanitarian crisis which threatens the very core values of human rights, democracy and rule of law on which Europe was founded.

² A total of 44,400 newsletters were disseminated to subscribers in 2008, many of whom disseminate the newsletter throughout their contact networks, thus the potential number of readers is much higher.

A Introduction

Released in February 2007, *PICUM's Main Concerns About the Fundamental Rights of Undocumented Migrants in Europe in 2006* examined how national and European policy measures developed to address irregular migration served to undermine undocumented migrants' fundamental rights. The externalisation of border control was a notable policy trend and the increasing border deaths were most frequently reported in the Canary Islands, Melilla, Lampedusa and Greece. Exploring the fundamental rights of undocumented migrants residing in Europe, PICUM gathered reports which provided insight into their daily realities of inadequate access to health care and workplace rights, and reported its observations regarding the situation facing undocumented children.

By 2009, the increase in 'strategic partnerships' and readmission agreements with third countries had facilitated European states' surveillance, patrol and control of external borders. Encompassing 27 member states, the EU's political borders have built a buffer zone of influence stretching from Senegal to the Turkish-Iraqi frontier. While Frontex powers were increased and the Commission proposed the creation of Eurosur, a specialised border-surveillance agency, the frequency and severity of migrant related deaths and human rights rose steadily across the EU's immediate and extended frontiers.

The tightening of borders made it almost impossible or those seeking asylum to safely reach Europe. Migrants from perpetual war zones and countries with abominable human rights records constituted the majority of deaths at European borders. Instead of a transparent, fair and balanced entry procedure, these migrants were exposed to drowning, shootings, anti-personnel mines, physical and sexual violence, trafficking, detention and refoulement. This cruel re-victimisation was cloaked under the guise of 'fighting illegality' and 'targeting traffickers'.

Internally, EU policy makers developed a common returns policy aimed at facilitating the removal of irregular migrants and introduced sanctions in the field of irregular employment. Both the processes and outcomes of these developments were subject to intense criticism from civil society groups most directly exposed to the daily realities facing undocumented migrants. The EU has simply adopted a 'lowest common denominator' approach to the rights of migrants in detention and introduced employers' sanctions measures which have been tried, tested and failed in other world regions (such as the United States). This report highlights PICUM's concerns regarding the opportunistic use of human rights discourse in both debates and offers solutions to effectively introduce a rights-based approach into these policy domains.

DANGER OF INACCURATE AND BIASED REPORTING IN THE MEDIA

A key task of PICUM is to lobby against the use of discriminatory, dehumanising and criminalising terminology in relation to undocumented migrants by highlighting the arbitrary and discriminatory elements which inadvertently lead these migrants to a state of irregularity.

PICUM marked several successes in 2008 in our efforts to ensure that influential bodies and institutions use terminology such as “undocumented” or “irregular” instead of “illegal” in referring to undocumented migrants and irregular migration. In the past year, our message was reiterated by leading organisations such as the European Parliament, the International Organisation of Migration (IOM), the European Union Fundamental Rights Agency (FRA) and various UN agencies.

Nonetheless, we have numerous misgivings regarding the media’s obedient reiteration of anti-migrant discourse. Labelling migrants who arrive in Europe to claim asylum as ‘illegal’ is not only inaccurate reporting, but it is a legally flawed term. Incorrect media assumptions create misunderstanding which in turn fosters fear, resentment and anger towards those we have a duty to treat with dignity and humanity. Fairness and accuracy are bastions of the free press and all media correspondents reporting on immigration have a moral duty to inform themselves of the complexities at hand. It is not acceptable that leading print and broadcast journalists continue to categorise the act of migration or seeking asylum as a criminal activity. Journalists guilty of oversight have a professional duty to educate themselves, amend inaccuracies in their reports and seek to redress the negative impacts they have effectuated upon undocumented migrants.

We urge civil society to remain vigilant in monitoring media discourses relating to undocumented migrants and to recognise their role in providing expertise to correct common misunderstandings and reject clear defamations.

When PICUM released its first annual report on the fundamental rights of undocumented migrants in Europe, the organization’s two-year research initiative on access to health care for undocumented migrants was underway and preliminary findings clearly indicated the inconsistency between the treatment of undocumented migrants and the key tenets of international human rights law. These findings were corroborated by UN Special Rapporteur Paul Hunt following his visit to Sweden in 2006. With regards to the workplace, managed migration policies were seen to reduce the human rights standards of undocumented workers and pose a significant barrier to their empowerment. Reports from the field were used by PICUM to highlight the potential of various actors, such as trade unions, researchers, NGOs and governmental bodies, in the support and protection of undocumented migrant workers. The situation of undocumented children was also highlighted as a main concern of PICUM’s network due to the increasing reports of detention and deportation evident at local and national levels while civil society organisations were pushing for a prohibition of such measures against minors.

PICUM’s ongoing monitoring and reporting activities testify to the continuing damage restrictive migration policies exert upon the fundamental rights of undocumented migrants. With specific focus on the domains of health care, fair working conditions, housing, family life and particularly vulnerable groups such as women and children, PICUM’s 2009 report explores the daily realities of those with an irregular migration status. Addressing the situation of those living and working in

European societies, held in detention facilities or subject to deportation, the inhumanity and ineffectiveness of the current enforcement agenda is exposed through objective monitoring of its incorporation within a variety of migration and social policy domains.

Bridging the gap between the policy level, where decisions regarding undocumented migrants are made, and the local level, where their realities and experiences are most visible, the civil society organisations in PICUM's network have a valuable role to play in the realisation of just, fair and democratic solutions to the irregular migration debate. When their expertise was called upon, they proved a valuable partner in the realisation and implementation of effective and coherent policies. Of significant concern to PICUM, and a

main element of this report, is the subjugation of these organisations by measures which criminalise humanitarian assistance to undocumented migrants in a bid to disenfranchise those who raise their voices in the public debate.

Many positive developments are evident in the reporting undertaken by various actors in 2008 and PICUM has made a conscious effort to include those occurring at local, national, European as well as international levels. We hope that in forthcoming editions of reports on the fundamental rights of undocumented migrants in Europe, the positive and informed discourse regarding the need to protect undocumented migrants' rights that is now evident on several policy levels will have effectuated a genuine improvement for these migrants and their advocates at the local level.

CONTRIBUTE TO PICUM'S WORK BY MONITORING AND REPORTING VIOLATIONS AGAINST UNDOCUMENTED MIGRANTS

Please feel free to assist us to continue developing our newsletter by sending us items relating to undocumented migrants in your country/region, etc. We would particularly appreciate your assistance in providing us short news summaries from regions we have traditionally been unable to access due to language barriers such as Eastern Europe, Greece, Turkey.

We further encourage all those witnessing abuse and exploitation of undocumented migrants at the local level to consider engaging with national, European and international monitoring and reporting mechanisms. PICUM recognizes that those with the greatest expertise on the realities facing undocumented migrants are generally under immense pressure, with little time and resources. It is therefore our intent to increase support by multiplying positive initiatives to improve civil society's capacity to report occurring violations to those bodies monitoring implementation of the international human rights regime.

B European Union Policy Developments in the Fight Against Irregular Migration

1. Externalising the Control of Europe's Borders

The EU's relations and agreements with neighbouring states during the year indicated an increased willingness to use economic enticements to encourage a crackdown on the entry of undocumented migrants onto adjoining territories. Despite reports of systematic abuses by police and security forces in many of these countries,³ the EU failed to demand assurances for the humane and dignified treatment of the migrants they are seeking to deter. PICUM holds serious concerns regarding the level of treatment afforded to undocumented migrants under these arrangements. The European Union and its member states risk appearing to side-step their obligations under human rights and refugee law by entering bilateral agreements which prevent migrants from entering their jurisdiction at all cost. Furthermore, they may stand complicit in the violations which these third countries undertake on their behalf.

A strategic partnership which may be seen as the precursor to these agreements was adopted at the EU-Africa Summit held in Lisbon during December 2007. Affirming the intent of African and European leaders to increase cooperation on 'key political challenges', the partnership included proposals to jointly combat irregular immigration by means of cooperation on return and readmission, border control and on the fight against the trafficking of human beings. Portuguese Prime Minister and then President of the Council of the European Union, Mr



The EU and its member states entered into agreements with neighbouring countries to increase control of shared borders and systematise the forced return of undocumented migrants.

Jose Socrates presented the plan as a model for future partnerships formed between EU and African leaders 'eager' to combat irregular immigration.⁴ As a result of the summit, 2008 saw an increase in joint operations between EU's external border agency FRONTEX and the West African states of Senegal and Mauritania to prevent the entry of boats destined for the Canary Islands into international waters. The EU also sought the participation of Tunisia, Algeria, Morocco, and Libya in similar joint patrols.

In February 2008, the European Commission presented a communication on the creation of a European Border Surveillance System (EUROSUR)

³ For one such example, see the summary prepared by the Office of the High Commissioner for Human Rights for the UN Universal Periodic Review of Morocco, UN Doc. A/HRC/WG.6/1/MAR/3, p. 8, available online at: <http://daccessdds.un.org/doc/UNDOC/GEN/G08/116/00/PDF/G0811600.pdf>.

⁴ European Council on Refugees and Exiles (ECRE), *ECRAN Weekly Update*, 14 December 2007. (Also cf. PICUM Newsletter January 2008.)

to support member states in strengthening their external borders. Presented as a means to prevent unauthorised border crossings, reduce the number of migrants losing their life at sea and raise the EU's internal security, the package included measures relating to the FRONTEX agency and control of maritime borders, as well as longer-term considerations regarding methods of recording entry and exit of third country nationals. Based on operational coordination and information sharing between Member States, EUROSUR would seek to use new technologies such as satellites.⁵ The proposals were welcomed by the Slovenian Presidency who held a ministerial conference in March 2008 to discuss the communications at which they underpinned external border management and discussion regarding the future of FRONTEX as key priorities of the Presidency.⁶

In June 2008, the European Commission claimed the first two "mobility partnership" agreements with Cape Verde and Moldova as "a step forward in the fight against irregular immigration".⁷ Both agreements include offers of support from the Commission and participating member states in exchange for commitments to 'crack down' on irregular immigration into the EU. Support includes member state commitments to increase labour market access for migrants from these countries, and assistance from FRONTEX on border security. Moldova has received offers from 15 member states, while Spain, France, Luxembourg and Portugal were involved in the Cape Verde agreement.

As a result of these cooperative agreements and partnerships with third countries to manage migration flows, migrants fleeing from perpetual war zones or tyrannical regimes were increasingly denied a refugee determination process and subject to forceful returns, actions which are clearly prohibited under international law.⁸ In 2008, the EU exerted growing pressure on Turkey to 'clamp down' on the flow of migrants claiming that the country could do more to stop irregular migration to Europe. In response, the Ankara government said they needed more assistance from Europe to stop the thousands of people from Iran, Iraq, Palestine and Afghanistan travelling through their country en route to Europe.⁹

EU Strategic Partnerships: Examples of Positive External Cooperation

The externalisation of Europe's borders and outsourcing of its human rights obligations to vulnerable migrants were packaged and sold to the European public as examples of positive cooperation.

The mainstream media continued to wrongly identify those targeted as 'illegal' migrants, ignoring their innate right to seek protection and the state's duty to provide an accessible asylum procedure. These media frequently failed to elucidate that the right to asylum is a fundamental entitlement guaranteed to those at risk of persecution or inhumane and degrading treatment in their country of origin.

5 European Council on Refugees and Exiles (ECRE), *ECRAN Weekly Update*, 15 February 2008, and European Commission, "A comprehensive vision for an integrated European border management system for the 21st Century", Press Release IP/08/215, 13 February 2008, available online at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/215&format=HTML&aged=0&language=EN&guiLanguage=en>. (Cf. PICUM Newsletter March 2008.)

6 *Ibid.*

7 Jim Brunsten, "Partnerships against illegal immigration", *EuropeanVoice.com*, 5 June 2008, available online at <http://www.europeanvoice.com/article/2008/06/0208/partnerships-against-illegal-immigration/61092.aspx>. (Cf. PICUM Newsletter July 2008.)

8 The 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol provide the foundation of international refugee law. State parties are prohibited from imposing penalties on refugees who enter a country unlawfully (Article 31) and can not expel or return a refugee to a country where his life or freedom is under threat (Article 33).

9 Laure Marchand, "La Turquie, carrefour migratoire vers l'Europe", *Le Figaro*, 23 June 2008, available online at <http://www.lefigaro.fr/international/2008/06/23/01003-20080623ARTFIG00340-la-turquie-carrefour-migratoire-vers-l-europe.php>. (Cf. PICUM Newsletter July 2008.)

Under the Geneva Convention and the Protocol on the status of refugees, which are universal in scope, migrants may not be expelled or extradited towards a state in which there is a serious risk of being subject to such treatment or punishment. However, readmission agreements which facilitated the return of third-country nationals to territories crossed on their journey to Europe were also on the rise in 2008. The EU signed a number of such agreements with western Balkan countries in September and the Commission continued negotiations Algeria, Morocco and Turkey throughout the year. Again, these agreements contained little provision to ensure effective access to asylum procedures or guarantees for the humane treatment of those who are returned.

Negotiations on the EU-Libya Framework Agreement seeking to strengthen the political, social, economic, commercial and cultural relations officially started between the Commission and Libya in November. A negotiation mandate was adopted by the Council of the European Union in July 2008 for this purpose.¹⁰ These discussions, while exploratory in nature, enabled the European Commission and Libya to develop a framework for future agreement. Libya is considered an important partner in relation to trade and energy issues and the EU consider immigration a central element of any agreement. Leading human rights organizations, Amnesty International and Human Rights Watch voiced their concern over Libya's poor human rights record and urged the EU to ensure that human rights obligations remained a central tenet of any future agreements.¹¹

Lack of Guidelines Concerning Migrants' Rights in Member States' Agreements

An increase in agreements at member state level to externalize borders was also evident throughout the year. These agreements also lacked clear guidelines regarding asylum procedures, and caused disagreement among states regarding responsibility of migrants intercepted or rescued in international waters.

Cooperation accords between Spain and several West African countries involving the provision of financial support to patrol their waters resulted in the trial and imprisonment of 37 Senegalese undocumented youths in Gambia who had tried to embark for the Spanish coast. The repatriation of undocumented children from Spanish territory did raise problems between the Senegalese and Spanish government in negotiations; the lack of a population census in Senegal made it impossible to ensure family regroupings were carried out in an appropriate manner. Morocco's government was criticised by Spain's Popular Party for not stopping the flow of migrants to Spanish shores.¹² The centre-right opposition party demanded that Morocco take more control over its borders and called upon the Spanish government to develop a cooperative immigration policy with Morocco despite the fact that cooperation between these governments on the immigration control issue has led to reports of 'unlawful expulsions, lack of due process, breach of the principle of *nonrefoulement* and excessive use of force' on both sides.¹³

10 Europa Press Release, "EU-Libya: Negotiations on future Framework Agreement Start", 12 November 2008, available online at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1687&format=HTML&aged=0&language=EN&guiLanguage=en>.

11 Human Rights Watch, "EU Libya Relations: Human Rights Conditions Required", 3 January 2008, available online at <http://www.hrw.org/en/news/2008/01/03/eu-libya-relations>, and Amnesty International, "Increased cooperation with Libya cannot proceed without human rights guarantees", 15 October 2007, available online at <http://www.amnesty.org/en/library/info/MDE19/016/2007/en>.

12 V. García, "El PP pide al Gobierno que reclame de Marruecos un mayor control de la inmigración sobre sus fronteras", *SUR.es*, 14 November 2008, available online at <http://www.diariosur.es/20081114/melilla/pide-gobierno-reclame-marruecos-20081114.html>. [Cf. PICUM Newsletter December 2008.]

13 Amnesty International, "Morocco, Submission to the UN Universal Periodic Review, First session of the UPR Working Group, 7-11 April 2008", p.4, available online at <http://www.amnesty.org/en/library/asset/MDE29/012/2007/en/67f977c8-a71b-11dc-bf49-a1e867231d5c/mde290122007en.pdf>.

The Italian government also engaged in bilateral border control agreements, signing a Protocol with Libya to prevent irregular migration by seeking to address the trafficking of irregular migrants into Italy through joint maritime patrols along the Libyan coast.¹⁴ Berlusconi claimed the 'friendship pact' would enable Italy to 'turn the page' of its colonial past, yet its tenets also provide for increased export of Libyan oil and gas while decreasing the flow of irregular migrants from its coast.¹⁵

2. Deaths at the Border

At least 14,797 migrants have perished in attempts to reach Europe over the past 10 years.¹⁶ In 2008, PICUM continued to monitor EU migration control policy and report instances of death at the borders of both the EU and US.

Increase in FRONTEX Powers

The EU's border management agency, FRONTEX, experienced a steady reinforcement of its powers in 2008 and there was an increase of operations in the Mediterranean. PICUM's monitoring of border deaths since 2002 has shown that increased security in one part of the border will cause migrants to seek for other routes – which often are the most dangerous.

With a significant increase in the annual budget for 2008,¹⁷ FRONTEX organized four new missions in the waters surrounding Malta, Spain, the Canary Islands and the Balkans.¹⁸ In April, the European Parliament debated the role of FRONTEX in the context of irregular migration and EU external action in which several MEPs

raised concerns over the number of deaths at sea, the scope of FRONTEX's mandate and responsibility sharing among member states.¹⁹ Spokesperson on immigration policy from the Alliance of Liberals and Democrats for Europe party, Dutch MEP Jeanine Hennis-Plasschaert stressed that FRONTEX was not a panacea to all the problems caused by irregular migration; instead of putting all its efforts into keeping people out, the EU needed to develop a radical and responsible migration policy for the region.

By September however, FRONTEX chief Illka Laitinen admitted that the increased EU patrols of the Mediterranean and Aegean were failing to prevent an 'alarming' increase in undocumented migrants reaching Italy, Malta and Greece by sea.²⁰ Arrivals to the Italian island of Lampedusa

PICUM's newsletter reported on 1,479 migrant deaths at European borders and 21 instances of human rights abuses by security guards in 2008. While the body count continued to rise, many more victims remain missing and unaccounted for.

14 Ministero dell'Interno, "Immigrazione clandestina: il ministro dell'Interno Amato firma a Tripoli un accordo per il pattugliamento congiunto della costa libica – Amato: 'Si conclude un lungo e riservato negoziato con la Libia. Ora sarà possibile bloccare i traffici e salvare molte vite umane'", 29 December 2007, available online at http://www1.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/_sottosegretarioprecedenti/_ministro/0871_2007_12_29_ministro_Amato_firma_a_Tripoli_accordo_per_il_pattugliamento_congiunto.html_8783098.html. (Cf. PICUM Newsletter January 2008.)

15 Caro Paola, "Berlusconi da Gheddafi Intesa sui risarcimenti", *Corriere della Sera*, 30 August 2008, page 010/011, available online at http://archiviostorico.corriere.it/2008/agosto/30/Berlusconi_Gheddafi_Intesa_sui_risarcimenti_co_9_080830032.shtml.

16 Figures supplied by Fortress Europe; annual reports available online at <http://fortresseurope.blogspot.com>.

17 Frontex budget for 2007 was €42,986,000; in 2008 this increased to €70,432,000. Information available online at <http://www.frontex.europa.eu/finance>.

18 Dory Merino, "La vigilancia de Frontex abre la salida a los africanos como polizones en cargueros", *El Día*, 22 April 2008. (Cf. PICUM Newsletter May 2008.)

19 European Council on Refugees and Exiles (ECRE), *ECRAN Weekly Update*, 25 April 2008, and Alliance of Liberals and Democrats for Europe, "FRONTEX cannot solve immigration on its own", 23 April 2008, available online at http://www.alde.eu/index.php?id=42&no_cache=1&tx_ttnews%5Btt_news%5D=9472. (Cf. PICUM Newsletter May 2008.)

20 Jim Brunsten, "Frontex chief warns about failure to reduce migration", *EuropeanVoice.com*, 11 September 2008, online at <http://www.europeanvoice.com/article/imported/frontex-chief-warns-about-failure-to-reduce-migration/62224.aspx>. (Also cf. PICUM Newsletter October 2008.)

had increased by 190% in the first six months of 2008, compared to the equivalent period in 2007 and Malta was also under increasing pressure. Laitinen said that one reason for the increase could, perversely, be FRONTEX's increased presence in the area. Traffickers force migrants to sink the boats they are sailing in, so that they will be rescued by Frontex vessels. His sentiments were echoed by the Andalucian Organisation for Human rights (*APDHA - Asociación Pro-Derechos Humanos de Andalucía*) who blamed surveillance of the Mediterranean Sea, in particular the *External Surveillance Integrated System (SIVE)*, as the main cause for the increase in deaths of undocumented migrants.²¹ In reaction to this situation, approximately 30,000 Spanish citizens supported a petition to ask the Parliament of the European Union to use its budgetary control power to influence control over the FRONTEX agency.

Potential Asylum Seekers Unable to Safely Reach Europe

The tightening of EU borders has made it almost impossible for those seeking asylum to safely reach Europe and a growing number of deaths among migrants from perpetual war zones and countries with extremely poor human rights records.

In June, a boat in Maltese water split in two after crashing into the tuna cages of a fishing boat.²² Six Somalis, two of them children, died after being sucked into the cages while the remaining 28 passengers survived by holding onto the cages

and other floatation devices thrown into the water by the fishermen.²³ A rubber dinghy carrying 27 Palestinian migrants sank off the north-western coast of Turkey in December, while the majority were rescued; three men and a woman were pulled from the water dead.²⁴

A port in the Italian city of Venice reported the deaths of three Iraqis in two separate incidents occurring over a fortnight in the summer of 2008.²⁵ The increased use of the Sinai Peninsula by African migrants, many of whom are refugees from Eritrea and Sudan, led to a dramatic rise in deaths in the region with at least 16 migrants shot dead in the first six months of the year as they attempted to cross the Egyptian-Israeli border.²⁶ In Turkey, 13 dead asylum seekers were found in Istanbul's Küçükçekmece district, having been dumped by the driver of the truck in which they had been hiding with 60 others (another 13 of whom had to be hospitalised).²⁷ Autopsies revealed that the victims had died of asphyxiation.

Disproportionate Number of Women and Children Dying

Women and young children are particularly vulnerable on both land and sea voyages to Europe and constitute a disproportionate number of border related deaths.

When a boat carrying 36 people en route from Morocco to Spain sank on April 28, four babies and two women died.²⁸ Survivors accused Morocco's

21 Juan José Téllez, "Ocho muertes en rebaja", *infoapdha*, 17 January 2008, available online at http://www.apdha.org/index.php?option=com_content&task=view&id=464&Itemid=48. [Cf. PICUM Newsletter September 2008.]

22 "Barcone affonda al largo di Malta sei dispersi, tra loro dei bambini", *La Repubblica*, 15 June 2008, available online at <http://www.repubblica.it/2008/02/sezioni/cronaca/sbarchi-immigrati/barcone-malta/barcone-malta.html>.

23 A documentary film about the incident was made by an Italian television station; it is available online at http://www.unmondoacolori.rai.it/sito/scheda_puntata.asp?progid=753. [Cf. PICUM Newsletter July 2008.]

24 "Balkan Briefs", *Kathimerini English Edition*, 8 December 2008, online at http://www.ekathimerini.com/4dcgi/_w_articles_world_2_08/12/2008_102832. [Cf. PICUM Newsletter January 2009.]

25 See "Press review 1988-2008", *Fortress Europe*, 31 December 2008, online at <http://fortresseurope.blogspot.com/2006/01/press-review.html>. [Cf. PICUM Newsletter August 2008.]

26 "June 2008", *Fortress Europe*, 2 July 2008, <http://fortresseurope.blogspot.com/2006/01/june-2008.html>. [Cf. PICUM Newsletter August 2008.]

27 "13 migrants die in a truck in Istanbul", *Hürriyet Daily News*, 31 July 2008, available online at <http://www.hurriyetdailynews.com/h.php?news=13-migrants-die-in-a-truck-in-istanbul-2008-07-31>. [Cf. PICUM Newsletter November 2008.]

28 Gabriele del Grande, "April 2008: 101 migrants died at the EU gates", *Newropeans Magazine*, 8 May 2008, online at <http://www.newropeans-magazine.org/content/view/7965/84/>. [Cf. PICUM Newsletter June 2008.]

Royal Navy of having pierced the inflatable boat in which the victims were sailing, making it sink but the authorities in Rabat denied any responsibility. In June and July alone, 13 infants drowned in the Mediterranean, and a pregnant woman had a stillbirth on board an Italian fishing ship following her rescue from the sea.²⁹ The following month, a pregnant African woman died shortly after being rescued by a cargo ship in Maltese waters and the corpses of two other immigrant women were recovered from the sea.³⁰

Scrupulous traffickers pose another significant risk to desperate migrants attempting to reach Europe. In September, thirteen African immigrants were thrown overboard alive as they attempted to reach Italy by boat.³¹ Sicilian prosecutors had initially established that the would-be immigrants were already dead when they were thrown into the ocean before hearing testimony otherwise. 'Statements from the foreigners have shown that the 13 disappeared immigrants had been thrown into the sea still alive,' prosecutor Ugo Rossi said in a statement, adding that the boat's skipper and four other passengers had been arrested. The victims were part of a group of 59 people from Nigeria, Niger and Ghana travelling by boat to Italy. There were 14 women and two young girls on board.

Along the Greek-Turkish border, a woman on board a rowboat with five other migrant women and an unidentified smuggler drowned while attempting to cross the Evros River.³² The victim fell into the frozen river waters when the boat capsized.

The smuggler swam to the Turkish side of the river while the remaining women managed to reach the Greek shore where they were spotted by Border Guards and taken to hospital for first aid. The woman's body was found later in the region of Petra when her sister, who was among the boat passengers, informed the authorities of the accident. According to the testimonies of the migrants, they had each paid €500 to be ferried across to Greece.³³ In September, four Georgian migrants were killed in marked minefields along the Greek-Turkish border bringing the total number of deaths in the Evros minefields over the past 17 years to 72.³⁴

Abuses Committed by Coast and Border Guards

The international and regional obligations placed on national governments, to ensure protection against violations that occur within its jurisdiction, also apply to the marine areas under the law of the sea. Nonetheless, PICUM reported systematic human rights abuses and cases of refoulements along the entire EU border region.

Reports of violations against undocumented migrants in the Aegean Sea prompted Amnesty International to call for an investigation by Greek authorities into the actions of their Coast Guard. Amnesty interviewed 13 individuals who had been prevented from entering Greece by uniformed individuals, some of whom were masked, on two boards flying Greek

29 "'C'era una donna che aveva partorito un neonato morto'", *Il Tempo*, 21 June 2008, available online at http://iltempo.ilsole24ore.com/interni_esteri/2008/06/21/893521-donna_aveva_partorito_neonato_morto.shtml, and Gabriele del Grande, "July 2008", *Fortress Europe*, 2 August 2008, online at <http://fortresseurope.blogspot.com/2006/01/july-2008.html>. [Cf. PICUM Newsletters July and August 2008.]

30 Migration News Policy Group, *Migration News Sheet*, September 2008, p. 27. [Cf. PICUM Newsletter October 2008.]

31 AFP, "13 immigrants thrown into sea", 14 October 2008, available online at http://www.news24.com/News24/Africa/News/0,,2-11-1447_2409203,00.html. [Cf. PICUM Newsletter November 2008.]

32 "Illegal migrant drowns", *ANA-MPA*, 9 April 2009, available online at <http://www.ana.gr/anaweb/user/showplain?maindoc=6047653&maindocimg=1546521&service=96>. [Cf. PICUM Newsletter February 2008.]

33 ANA-MPA, "Athens News Agency: News in English, 08-01-15", 15 January 2008, available at <http://news.pseka.net/index.php?module=article&id=7929>.

34 Niki Kitsantonis, "Land mines and a perilous crossing to Greece", *International Herald Tribune*, 6 January 2009, available at: http://www.nytimes.com/2009/01/06/world/europe/06iht-mines.4.19133102.html?pagewanted=1&_r=1,

35 Amnesty International, "Greece: Alleged violations at sea must be investigated", 5 February 2008, available at <http://www.amnestyusa.org/document.php?lang=e&id=ENGEUR250012008>.

flags.³⁵ The uniformed men, believed to have been members of the Greek coast guard, beat and kicked the migrants before pushing their unseaworthy boats back into Turkish waters. The group of Afghan males, eight of them minors, were interviewed following their subsequent detention in Turkey. Amnesty International called on the Greek government to launch a proper investigation in the case.

Turkish authorities were also subject to a number of negative reports. Witnesses interviewed by the UNHCR alleged that four men drowned after a group of eighteen people was forced to cross a river by the Turkish police at Turkey's southeastern border with Iraq on 23 April 2008.³⁶ Turkish authorities had earlier attempted to forcibly deport 60 people of various nationalities to Iraq through the official border crossing. When the Iraqi border authorities refused to admit 18 Iranian and Syrian nationals, the Turkish police took these persons to a place where a river separates the two countries, and forced them to swim across. Four persons were swept away by the strong river current and drowned. Their bodies could not be recovered and surviving migrants were deeply traumatized by the experience.

In March, three Spanish coast guards were charged with causing the drowning of a Senegalese migrant by puncturing his life jacket.³⁷ The Senegalese migrant and three other migrants had tried to reach the Spanish enclave of Ceuta off the Moroccan coast by swimming. They were stopped and arrested by the Spanish coast guards, who brought them back to Moroccan waters and threw them back into the water, but before doing so destroyed their life jackets by puncturing them with a knife. The three other migrants were able to reach land by swimming but Landng Sonko did not know how to swim and drowned. The survivors testified against the coast guards in question.

The disregard shown to these migrants during their life was also evident following their death. No efforts were made by either Spanish or Moroccan authorities to locate the bodies of more than 20 irregular migrants who were on board a vessel that was rescued by a Spanish transport ship on 25 August near to the Spanish-held island of Alboran, 50 kilometres from the northern Moroccan coast.³⁸ The only hope for their recovery is that they may wash ashore.

3. European Pact on Immigration and Asylum

In March, British Prime Minister Gordon Brown and French President Nicolas Sarkozy announced their intentions to form a common immigration package.³⁹ Focusing on combating 'illegal immigration', the proposals included joint charter flights to return rejected asylum seekers and increased lorry checks at French and British ports. Sarkozy also used the opportunity to encourage the British Premier to sign a common immigration policy with other EU nations. While the UK has traditionally opted out of much EU immigration law, Mr. Sarkozy expressed eagerness to promote a common 'European Immigration and Asylum Pact' during the French Presidency of the Council of the European Union from July – December 2008.

France continued to prioritise plans for a pan-EU pact to 'combat' irregular immigration throughout the year in the lead up to its Council presidency. Included in the original proposals was a blanket ban on 'mass regularisations' of irregular immigrants – such as those successfully carried out in Spain, Italy and other countries – which it believed sends the 'wrong message' to so called 'illegal' migrants.⁴⁰ The French presidency very much brought the debate regarding regularisation to the fore of

36 UNHCR, "UNHCR deplores refugee expulsion by Turkey which resulted in four deaths", 25 April 2008, available online at <http://www.unhcr.org/news/NEWS/4811e23c4.html>. [Cf. PICUM Newsletter May 2008.]

37 APANEWS, "Trois gendarmes espagnols devant la justice pour avoir noyé un clandestin sénégalais", *Jeune Afrique*, 17 March 2008. [Cf. PICUM Newsletter April 2008.]

38 Migration Policy Group, *Migration News Sheet*, September 2008, p. 15. [Cf. PICUM Newsletter October 2008.]

39 European Council on Refugees and Exiles (ECRE), *ECRAN Weekly Update*, 28 March 2008. [Cf. PICUM Newsletter April 2008.]

40 "France sets out EU immigration 'pact'", *Parliament Magazine*, 30 May 2008, available online at <http://www.theparliament.com/press-reviewpolicy-focus/justice/justice-article/newsarticle/-df87a4e3f2//1212102000/#267280france-sets-out-eu-immigration-pact/>.

national and European debates. Despite the fears of NGOs across the EU regarding a region-wide ban, disputes over a common asylum policy and other contentious elements such as an 'integration contract' for new immigrants, the proposal regarding the regularisation ban was dropped due to objections from such countries as Spain.

The legalisation of migrants facilitates the criminalisation of abuses against them. While many governments showed resistance to the recognised benefits of regularisation campaigns, civil society organisations played a key role in putting pressure on them to improve access to basic rights and seek justice without fear of reprisals. Regularisation will likely continue to be a controversial issue and PICUM will continue to gather evidence from its network which attributes to its economic, practical and humanitarian benefits to enable an informed and grounded discussion.

4. Returns Directive

"Europe has written one of the darkest pages of its history and can no longer be considered the cradle of human rights...This text cancels out centuries of a civilisation based on legitimacy and puts Europe in the hands of a racist and xenophobic culture. These ethnic prisons, where migrants can be legally locked up from today, will become the new symbol of this Fortress Europe".⁴¹

Confederal Group of the European United Left - Nordic Green Left (GUE/NGL) in the European Parliament

Described by one world leader as a 'hypocritical, draconian and undiplomatic'⁴² move by the EU, the Returns Directive met with unprecedented resistance and criticism both within Europe and beyond.

It was the internal struggles exposed by the Lisbon Treaty which dominated EU headlines for the first half of 2008; the rejection of the Treaty by Irish voters was largely unexpected among European leaders and spurred renewed speculation of a democratic deficit existing between the EU institutions and its citizenship. While trying to come to terms with this setback for their vision of a more unified Europe, EU leaders moved forth to finalise the 'Returns Directive' – a document which not only shocked much of European civil society and ignored valid concerns of several EU parties but also sparked unprecedented anger and questioning from other regions as to the European Union's intended purpose.

If ratified, the Lisbon Treaty would have made the EU Charter of Fundamental Rights legally binding, thereby requiring all EU institutions to respect fundamental principles of non-discrimination and social rights. In stark contrast, the Returns Directive marked a highly retrogressive step in the EU's human rights record. These processes illustrate the massive policy incoherence which frequently undercut the EU's non-discrimination, social inclusion and migration strategies. A more reasoned approach to Europe's issues is urgently needed if the EU is to prevent further alienation from its citizenship, foreign residents and the world leaders with whom it must cooperate.

After almost three years of negotiations, the directive was approved by the European Parliament on 18 June 2008 on its first reading and adopted under the co-decision procedure by 369 votes to 197, with 106 abstentions.⁴³ An amendment by the PES group, seeking to reduce the maximum detention period from eighteen to six months, was rejected, as was a proposal from the GUE/NGL group for an all out rejection of the directive. The approved text stipulates that those who become undocumented, including children, pregnant

41 Confederal Group of the European United Left - Nordic Green Left (GUE/NGL) in the European Parliament, "Europe no longer the cradle of human rights", 18 June 2008, available at <http://www.guengl.eu/showPage.jsp?ID=6253&AREA=27&HIGH=1>.

42 Evo Morales, "'42 days? Try 18 months - This European targeting of undocumented immigrants is hypocritical, draconian and undiplomatic'", *The Guardian*, 16 June 2008, available online at <http://www.guardian.co.uk/commentisfree/2008/jun/16/eu.immigration>.

43 European Parliament, "Parliament adopts directive on return of illegal immigrants", 18 June 2008, online at http://www.europarl.europa.eu/news/expert/infopress_page/018-31787-168-06-25-902-20080616IPR31785-16-06-2008-2008-true/default_en.htm; European Council on Refugees and Exiles (ECRE), *ECRAN Weekly Update*, 20 June 2008; and "EU rules on illegal migrants anger human rights groups", *EurActiv.com*, 19 June 2008, available online at <http://www.euractiv.com/en/mobility/eu-rules-illegal-migrants-anger-human-rights-groups/article-173477>. [Cf. PICUM Newsletter July 2008.]

women and families, may be detained for 18 months pending removal. Following a deportation decision, a voluntary departure period of between seven and thirty days is established. If the migrant then fails to leave the territory for whatever reason, a removal order will be issued. The judicial authority issuing the order has the discretion to imprison the prospective deportee on suspicion that they may attempt to flee in advance of deportation.

Once an undocumented migrant has been detained, they must receive a court hearing 'as speedily as possible'. Notably, in the original draft of the legislation, a court order was required within 72 hours; the EU Parliament's Civil Liberties Committee had recommended a limit of 48 hours and a PES amendment seeking a restoration of the original 72 hour deadline was rejected. Migrants who are deported after their voluntary return period has expired may face a re-entry ban of up to five years.

While seeking to promote harmonization of European migration policy, the directive has simply led to several member states issuing dissenting views regarding their approach to detention and return. Following the harsh criticism by global regions from which migrants to Europe have traditionally originated, many member states scrambled to ease relations by affirming their intent to deviate from key principles of the directive.

On a visit to Dominican Republic, Spanish Deputy Prime Minister Fernandez de la Vega assured Latin Americans living in Spain that the directive would 'never' be applied to them expressing, her government's discomfort with the proposals adopted by the EU and stressing that Spanish legislation offered 'infinitely' more guarantees than EU laws.⁴⁴ In May, Spain's national advisor on Justice and Security, José Miguel Ruano, criticized the EU directive on return and pointed to the

refusal of the Government of the Canary Islands to extend the detention period of irregular migrants to 18 months.⁴⁵ He explained that to pass the borders of a state or to be without permission to stay is an administrative infraction, and that an extension of the time of retention would be to impose a punishment that itself does not correspond with the action committed.

While the Returns Directive marked an occasion for EU institutions to ensure the dignity and security of undocumented migrants in establishing minimum humanitarian standards to which member states must comply, it disappointed many civil society organisations who had worked hard to ensure that it did not simply adopt a 'lowest common denominator' approach to human rights protection.

5. Employers' Sanctions Directive

At EU level, the opportunistic use of human rights discourse and increased influence of an immigration control agenda within the sphere of social affairs were manifested in negotiations surrounding the Commission's Employers' Sanctions Directive.

While PICUM welcomed the European Commission's recognition of the need to address the systematic exploitation of undocumented migrants, our network held serious concerns that the directive's focus on controlling immigration rendered many of its welcome initiatives ineffective and undermined the ability of Commission to achieve its stated goal.⁴⁶

Discussions during the Justice and Home Affairs Council meeting held in July 2008 exposed significant difficulties to reach an agreement among members to harmonise administrative, financial and criminal sanctions against employers of unlawfully staying third-country nationals.⁴⁷

44 Migration Policy Group, *Migration News Sheet*, September 2008, p. 14. (Cf. PICUM Newsletter October 2008.)

45 "Ruano rechaza que la retención de inmigrantes sea de hasta 18 meses", *El Día*, 13 May 2008, available online at <http://www.eldia.es/2008-05-13/canarias/canarias9.htm>. (Cf. PICUM Newsletter June 2008.)

46 For a complete account of the concerns outlined by the Employer Sanctions Working Group involving PICUM, ENAR, Solidar and others, visit www.picum.org.

47 Jim Brunsten, "EU-wide rules on immigrant employment resisted", *EuropeanVoice*, 24 July 2008, online at <http://www.europeanvoice.com/article/2008/07/2127/eu-wide-rules-on-immigrant-employment-resisted/61862.aspx>, and "EU split on punishing employers of illegal migrants", *EurActiv.com*, 25 July 2008, online at <http://www.euractiv.com/en/mobility/eu-split-punishing-employers-illegalmigrants/article-174516>.

Many member states reacted in strong opposition against the Commission's proposed directive, with several indicating that they could not accept criminal sanctions being imposed at an EU level. Criticisms, led by Germany's interior minister Wolfgang Schäuble, were backed by Poland, the Netherlands, Latvia, Hungary, the Czech Republic, Sweden and Finland. Both Sweden and Finland contested that the Commission does not even have the power to propose the inclusion of rules on criminal sanctions. Opposition on specific elements within the proposals were also voiced, including the obligation on member states to set a quota for the number of workplace inspections to be achieved annually.

The Civil Liberties Committee of the European Parliament examined the call for the use of penal sanctions in the worst cases, stressing that immigrants should be paid the legal rate and companies would be held responsible for the practices of their sub-contractors. Members of the Civil Liberties Committee, in co-operation with the Employment Committee, adopted a co-decision report drafted by Italian MEP Claudio Fava to guide negotiations with the Council Presidency.

The imposition of sanctions against employers is neither a new, nor a proven approach in addressing the exploitation of undocumented workers and reducing irregular migration. The Commission fervently promoted Directive 'COM(2007) 249' as a definitive solution to worker exploitation and irregular migration, seemingly ignoring the experiences and lessons learned from such legislation in other developed economies. America's Immigration Reform and Control Act (IRCA), enacted by the Regan administration in 1986, has been criticised by immigration specialists in the US for 'putting employers at risk for both civil

and criminal penalties and financial ruin from work force shut downs, despite their good faith attempts to comply with the law'.⁴⁸ While it contained many well intentioned provisions, such as an amnesty provision for workers, the legislation ultimately failed to address its intended goal of reducing undocumented labour and actually had the adverse impact of lowering the wages of legally residing workers of Latino origin.⁴⁹

In fact, the negative effects of immigration control-based sanctions in the workplace were already evident in several member states where, under the auspices of 'fighting exploitation', the vulnerability of undocumented workers was effectively increased.

Workplace ID checks requiring employees to produce evidence of their immigration status to employers and fining those found to be hiring undocumented migrants were introduced by the British government in February 2008. Research conducted by the Migrants' Rights Network (MRN) found that the new civil penalty regime, which further entrenched immigration control functions into the employer-employee relationship, was forcing undocumented workers into an increasingly desperate situation.⁵⁰ Seeking to justify a punitive approach to undocumented migrants, the British government had developed an ineffective civil penalty regime which failed in its pronounced aims of promoting compliance with immigration regulations and addressing the exploitation fuelling irregular labour. The report found that employers were simply discouraged from employing migrant workers, while undocumented migrants, rather than leave UK territory as the regime had intended, moved to more hidden spheres of employment where their susceptibility to exploitation was increased.

48 Ronald Tasoff, "Employer Sanctions", *Lawyers World*, September/October 1996, available at <http://library.findlaw.com/1999/Dec/1/128927.html>.

49 Cynthia Bansak and Steven Raphael, "Immigration Reform and the earnings of Latino Workers: Do Employer Sanctions Cause Discrimination?", *Industrial and Labor Relations Review*, Volume 54, No. 2, January 2001, pp.: 275-295.

50 Migrants Rights Network, *Migrants Rights News*, No. 6, May 2008, online at http://www.migrantsrights.org.uk/downloads/newsletters/MRN_Newsletter_May08.pdf. [Cf. PICUM Newsletter June 2008.]

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

1. Health Care

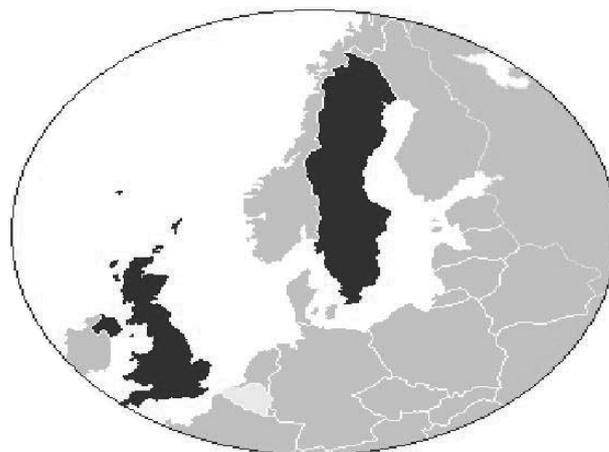
"I'm simply looking at the human being at the end of the chain and saying if they've got severe health problems...as a civilised country we should give it".⁵¹

Edwina Hart, Welsh Minister of Health

"Nobody would suggest that an undocumented person who is charged with a criminal offence should be denied their human right to a fair trial. Equally, a sick undocumented person should not be denied their human right to medical care without discrimination".⁵²

Paul Hunt, UN Special Rapporteur on the right to the highest attainable standard of health

The right to the highest attainable standard of health is a fundamental human right protected by international law. An important element of the right to health is that both health care and other essential conditions for health must be affordable to all without discrimination. Authorities are thus under obligation to ensure that health policies and programs consciously address the different needs of those suffering barriers in accessing care. Despite this, PICUM has found that publicly subsidized health care, either partially or fully, is not entirely guaranteed in Europe. In some



While the right to health was subject to further restrictions in the UK and Sweden, Belgium introduced legislation which provided health insurance for unaccompanied minors.

countries, all health care (even emergency care) is provided only on a payment basis and treatments are generally unaffordable for undocumented migrants.⁵³ In 2008, many countries attempted to further reduce their already limited provisions.

The British Home Office began the year by considering a controversial plan to bar an estimated 600,000 irregular immigrants and refused asylum seekers from all health services with the exception of 'emergency' health care.⁵⁴ A joint Department of Health and Home Office review

⁵¹ Edwina Hart, Welsh Minister of Health, quoted in a BBC interview, 20 May 2008, available online at http://news.bbc.co.uk/2/hi/uk_news/wales/7409265.stm.

⁵² Paul Hunt, "Seminar on the Right to Health for Undocumented Migrants, Stockholm, Sweden, 13 February, 2008 - Remarks of Paul Hunt, UN Special Rapporteur on the right to the highest attainable standard of health", 13 February 2008, available online at http://www.snabber.se/files/vardeforalla/paul_hunts_tal_hearingen_080213.pdf.

⁵³ See PICUM's report on *Access to Healthcare for Undocumented Migrants in Europe*, Brussels, 2007; available online at <http://picum.org/data/Access%20to%20Health%20Care%20for%20Undocumented%20Migrants.pdf>.

⁵⁴ Jamie Doward, "Failed asylum seekers face healthcare ban", *The Guardian*, 2 December 2007, available online at http://observer.guardian.co.uk/politics/story/0,,2220504,00.html#article_continue. (Cf. PICUM Newsletter January 2008.)

to restrict free access to GPs' surgeries generated concern among health experts and MPs who highlighted the increased risk it would impose upon public health and noted that the government was in danger of normalising a breach of the basic right to health care.

In April, a High Court judicial review found that refused asylum seekers could meet the 'ordinarily resident' qualification required by UK healthcare regulations and therefore may be entitled to free NHS hospital treatment in the UK.⁵⁵ The case was brought by Palestinian man, denied asylum in the UK but unable to safely return home, who was deprived of treatment for chronic liver disease on the basis of his undocumented status. The Health Minister of the Welsh Assembly spoke out in favour of the ruling and confirmed that rejected asylum seekers in Wales would be guaranteed free health care. Edwina Hart said her decision was 'the right one' and that 'the mark of a civilised society was how it treated the sick and dying'. The announcement was welcomed by human rights groups for 'confirming a basic level of humane treatment' and by religious leaders for adhering to Wales 'moral obligation' to care for all, regardless of status.⁵⁶

Despite condemnation by the UN Special Rapporteur for Health that its laws and practices regarding undocumented migrants' health were inconsistent with international human rights law, and the fierce lobbying by civil society and medical associations, the Swedish parliament voted to legislate the refusal of subsidised healthcare to refused asylum seekers.⁵⁷ Effective from 1 July 2008, the legislation prohibits access to emergency care unless migrants can pay for the treatment upfront. While the Green Party and the Left Party voted against the law on humanitarian

grounds, the proposal received strong majority approval with 265-33 in favour.⁵⁸ Notably, in Sweden the cost for all health care and medicine is disproportionately higher for undocumented migrants than for nationals. The exorbitant prices constitute one of the most important barriers impeding undocumented migrants from seeking medical treatment. The discriminatory policies existing in Sweden mean that undocumented migrants generally avoid contact with official health authorities, relying instead on the humanitarian initiatives of NGOs and health care providers.

The inexistence of an agreement in Poland regarding the provision of healthcare to irregular residents from Ukraine and Vietnam has created an unsustainable situation for health care professionals who provide them with care. An article reported that while these irregular migrants were able to access public healthcare in Poland, medical institutions who treated them were suffering from an accrual of considerable debt.⁵⁹ In the Netherlands, the Lower House of the Parliament reached a new agreement in April regarding the financing of health care for undocumented migrants. Undocumented patients would be asked to pay for their own care, and when this was not possible, a financial fund would be used to cover the medical expenses.

PICUM's newsletter reported many new services and initiatives undertaken by NGOs in the field of health care during the year, highlighting their significant role in filling gaps and overcoming barriers existing in the mainstream health care systems. The increase in lobbying and advocacy activities among these local experts led to some very positive results: in some cases, NGOs were involved in the reshaping of the mainstream health care systems.

55 Migrants Rights Network, "'Refused Asylum Seekers granted access to healthcare in the UK'", *Migrants Rights News*, No. 7, June 2008, available at http://www.migrantsrights.org.uk/downloads/newsletters/MRN_Newsletter_Jun08.pdf.

56 "Failed asylum seekers' free NHS", BBC News, 20 May 2008, available online at http://news.bbc.co.uk/2/hi/uk_news/wales/7409265.stm. (Cf. PICUM Newsletter June 2008.)

57 "Sweden tightens healthcare rules for illegal immigrants", *The Local*, 22 May 2008, available online at <http://www.thelocal.se/11924/20080522>. (Cf. PICUM Newsletter July 2008.)

58 *Ibid.*

59 Agnieszka PochrzDst, "Nielegalni emigranci, pacjenci niczyi", *gazeta Stołeczna*, 3 November 2008, available at http://miasta.gazeta.pl/warszawa/1,86775,5880007,Nielegalni_emigranci__pacjenci_niczyi.html. (Cf. PICUM Newsletter December 2008.)

On 1 May 2008, Belgian legislation came into force which granted unaccompanied minors, both documented and undocumented, the ability to obtain health insurance. The change enables unaccompanied children, who could previously only access urgent medical care, the same level of treatment and access as Belgian nationals. PICUM member Medimmigrant, a Brussels based NGO involved in mediation, advocacy and lobbying of the Belgian government on the issue of healthcare for undocumented migrants, led the civil society group proposing the introduction of these provisions into Belgian law.

2. Fair Working Conditions

Exploitation of 'crisis' situations as a precursor for lowering acceptable treatment afforded to vulnerable groups are by no means new features of European politics. As iterated in the introduction to this report, the international human rights regime is itself a direct response to such populist sentiment and provides states with clear and agreed standards codified in international law to avoid retrogressive claw-backs of hard fought protections.

Just as the 'war against terror' was manipulated by some to validate the use of torture, those eager to protect Europe's workers must stand firm against attacks on vulnerable and unpopular groups. The climate of fear and apprehension fostered by the 2008 financial crisis has provided a convenient façade for those seeking to 'water down' labour protections and criminalise undocumented workers. Civil society faced a hard battle in 2008 to emphasise the counter productivity of such measures and promote the realisation

that a secure, rights based approach to labour exploitation will reap both social and economic benefits for the EU.

In Ireland, a decade of unprecedented economic growth finally slowed, resulting in what one NGO termed the 'scapegoating' of migrants, who having contributed to Ireland's economic success and to the social transformation of many rural communities, were victimised by officials attempting to 'score cheap political points and stir up controversy'.⁶⁰ A similar situation occurred in Spain where the government's reaction to reports of rising unemployment involved a hardened approach towards migrants, including measures such as promoting voluntary return, limiting legal migration avenues for so-called 'low-skilled' workers and restricting family reunion visas. In response, the Basque authority expressed their concern that plans would effectively end recruitment in migrant workers country of origin, inevitably leading to 'greater disorder in migration flows' including irregular immigration and trafficking.⁶¹ In Britain, the Minister of State, while recognising that the economic climate would make the immigration issue 'extremely thorny', proposed a tightening of measures including changes to the UK's points-based system which was introduced to attract migrants considered valuable to the economy.⁶²

Juan Somavia, Director General of the International Labour Organisation (ILO), marked the occasion of International Migrants Day on 18 December 2008 by highlighting the largely 'unrecognised contributions' of migrant workers to the 'growth and development of both their host countries and home communities'.⁶³ Outlining the ILO's commitment to the promotion of decent work for migrant workers worldwide, he affirmed:

60 Siobhan O'Donoghue of Migrants Rights Centre Ireland, quoted in "Migrants contribute over €3.7bn each year to Irish economy-MRCI", *Metro Eireann*, 4 December 2008, available online at <http://www.metroeireann.com/article/migrants-contribute-over-37bn,1431>.

61 Migration Policy Group, *Migration News Sheet*, October 2008, p.7. (Cf. PICUM Newsletter November 2008.)

62 Lee Glendinning, "Immigration minister calls for cap on newcomers: Phil Woolas is applauded by anti-immigration group Migrationwatch but leaves senior Labour colleague 'astonished' with call for quota on immigrants", *The Guardian*, 18 October 2008, available online at <http://www.guardian.co.uk/politics/2008/oct/18/immigrationpolicy-immigration>.

63 International Labour Office, Office of the Director-General, "Message by Juan Somavia Director-General of the International Labour Office on the occasion of International Migrants Day", available online at <http://www.ilo.org/public/english/bureau/dgo/speeches/somavia/2008/migrants.pdf>. (Cf. PICUM Newsletter December 2008.)

*“The current global financial and economic crises have serious implications for migrant workers worldwide. Past experience makes us painfully aware that migrant workers, especially women workers and those in irregular status, are among the hardest hit and most vulnerable during crisis situations. While the full impact of the crisis on migrant workers is yet to unfold, there are reports of direct layoffs, worsening working conditions including wage cuts, increasing returns, and reductions in immigrant intakes. Yet all sectors may not be equally affected, and destination countries should assess their labour market needs before resorting to general layoffs of migrant workers. It is important that migrant workers do not become scapegoats for the current financial and economic crisis”.*⁶⁴

Issues facing seasonal migrant workers in the Italian regions of Puglia and Calabria were highlighted by a report released by Médecins Sans Frontières (MSF) in January 2008.⁶⁵ Every year, the agricultural lands of southern Italy attract thousands of undocumented migrants, a cheap and unprotected labour force on whom the agricultural economy of the region is reliant. MSF's report, entitled 'A Season in Hell,' denounced the widespread exploitation of migrants in southern Italy, a region in which thousands of undocumented migrants live and work in extremely hazardous conditions, occupying abandoned factories and makeshift housing. According to MSF, these migrants are subject to violence, labour exploitation, substandard housing and inadequate healthcare on a daily basis. Throughout 2008, MSF undertook more than 700 consultations with these migrant workers in the area and distributed 3,750 hygiene kits, 1,500 sleeping bags and 800 blankets.

The organisation was also successful in pressuring regional authorities in the area to guarantee basic services and living conditions for migrant workers in the area regardless of their status.

Positive Developments in Labour Rights

Improvements in undocumented workers' rights were not totally absent however, as PICUM did trace several improvements in labour protections during the year.

Germany's first unionised contact point for undocumented migrants was opened in May 2008. One of the largest independent trade unions in the world, ver.di began the service in the city of Hamburg to address the poor working conditions endured by undocumented migrants by providing them with information on employment and social law.⁶⁶ The union estimates that almost one million undocumented migrants live in Germany, with almost 100,000 in Hamburg alone. The union had several successes during the year in supporting undocumented migrants to receive payment of outstanding wages.

Abvakabo FNV, the largest trade union in the Netherlands for public sector, health and social workers released a brochure for undocumented domestic workers as part of a larger effort to organize them.⁶⁷ Outlining the rights of domestic workers, the brochure, which can be downloaded from the internet, includes a model contract which can be used when making agreements with their employer. The programme BlinN, Bonded Labour in the Netherlands, focuses particularly on the situation of domestic workers and published a leaflet 'Undocumented workers also have rights' with the rights of undocumented workers in the Netherlands.

⁶⁴ *Ibid.*

⁶⁵ Médecins Sans Frontières, "A Season in Hell: MSF Report on the Conditions of Migrants Employed in the Agricultural Sector in Southern Italy", January 2008 available at http://www.medicisenzafrontiere.it/immagini/file/MSF_A_Season_In_Hell.pdf

⁶⁶ "Illegal beschäftigt: 50.000 Euro zu wenig verdient", *TAZ*, 20 October 2008, available online at <http://www.taz.de/regional/nord/nord-aktuell/artikel/1/50000-euro-zu-wenig-verdient>. (Cf. PICUM Newsletter November 2008.)

⁶⁷ Eva Cremers, Leontine Bijleveld and Katrien Depuydt, *Your rights as domestic worker in a private household*, ABVAKABO FNV, Zoetermeer (Netherlands), June 2008, available online at http://www.abvakabofnv.nl/docs/bijlagen/200807/Your_rights_as_domestic_worker_in_a_private_household.pdf. (Cf. PICUM Newsletter September 2008.)

In August, the British government announced plans to cooperate with trade unions and other non-profit groups through a newly established 'Fair Employment Enforcement Board'.⁶⁸ The plans include the establishment of a telephone helpline for vulnerable workers and a public campaign encouraging them to report abuses. Migrant organisations commended the government's proposals to address workplace exploitation through effective cooperation between public and voluntary sector bodies and expressed hopes it would have positive implications for undocumented workers who were most vulnerable to abuse.

3. Housing

Undocumented migrants in Europe are excluded by law from most government services, including social housing. Private accommodation rented to undocumented migrants is usually at an exploitative price and in very poor conditions. PICUM gained evidence throughout the year of inadequate housing standards for undocumented migrants as well as evidence of flats being shared with several other people who have different working timetables and use the same beds for eight or nine hours sleep (five to ten beds in a room).

In 2008, a complaint registered against the Dutch government for violating the right to housing for undocumented children on discriminatory grounds was declared admissible by the European Committee for Social Rights.⁶⁹ The Committee, which judges the conformity of Council of Europe member states to the Revised European Social Charter, received a complaint lodged by Defence for Children International, with the support of Stichting Los, UNICEF and NJCM. These organisations

accused the Dutch government of failing to fulfil its obligations under the Revised Charter concerning the right of undocumented minors to housing and social services causing an increase in homelessness. Their complaint outlined how the fundamental right to housing was a prerequisite to the various other rights granted to children in the Revised Social Charter.⁷⁰ The interdependence of human rights means that the fulfilment of one right often influences upon the realisation of others; consequently, the lack of privacy, overcrowding and unsanitary living conditions experienced by many undocumented children living in the Netherlands was adversely affecting their human development, right to health, family life and education. The organisations responsible for the submission of the complaint estimate that the total number of undocumented migrants in the Netherlands is between 75,000 and 185,000 with the amount of children present between 25,000 and 60,000.

4. Undocumented Children

The situation of undocumented children in Europe emerged as a key concern among PICUM's reporting in 2008. Facing a triple discrimination on the basis of being children, migrants and in an irregular status, they have been recognised by the Council of Europe's Human Rights Commissioner as one of most vulnerable groups in Europe today. Undocumented children are systematically denied their fundamental entitlements in the areas of education, health care and housing.

Throughout the year a growing tension was evident between the protection needs of children and the immigration control agenda. In clear violation of international child rights law, migrant children

⁶⁸ Migrants Rights Network (MRN), *Migrants Rights News*, No. 10, September 2008, available online at http://www.migrantsrights.org.uk/downloads/newsletters/MRN_Newsletter_Sep08.pdf. [Cf. PICUM Newsletter October 2008.]

⁶⁹ Chantal van den Berg, Vincent Böhre, Marije Graven, Maria Lourijsen and Dženeta Mulabegović, *Commentary on the Fourth Periodic Report of the Netherlands on the International Covenant on Civil and Political Rights (ICCPR)*, Dutch section of the International Commission of Jurists (Nederlands Juristen Comité voor de Mensenrechten, NJCM), Leiden, 2008; available online at <http://www.njcm.nl/site/uploads/download/276>. [Cf. PICUM Newsletter November 2008.]

⁷⁰ Council of Europe, European Committee of Social Rights, *Defence for Children International (DCI) v. The Netherlands*, Complaint No. 47/2008, 12 February 2008. The full text of the complaint is available online at http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC47CaseDoc1_en.pdf.



Violations against undocumented children with regards to education and detention were reported in Greece, Spain, the UK, France, Germany and Belgium.

were detained in prison-like conditions or deported to countries where they have no family to care for them. Those remaining in Europe occupied the worst available housing conditions, were excluded from child protection services and, due to their parents' prohibition from the workforce, were forced into situations of abject poverty and exclusion.

Detention and Return of Undocumented Children

The continued practice of detaining entire families, including pregnant and lactating women, as well as children renders the EU Returns Directive fundamentally inconsistent with international human rights principles. The Convention on the

Rights of the Child (CRC) places clear limitations on the administration and duration of detention for children. Accordingly, the best interests of the child must be a primary consideration in all dealings with the authorities; children must only be detained as a measure of last resort, held and for the shortest time possible. The Committee on the Rights of the Child, the independent body which monitors the CRC, has stated that "Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof."⁷¹

At national level, many Justice and Home Affairs Ministers were forced to address growing concerns regarding the detention of undocumented children. Belgian Immigration Minister Turtelboom affirmed her commitment to actively increasing deportations and continuing the detention of families with children in closed detention centres, but said the government would attempt to 'humanise' them.⁷² However, her administration set up an experimental new project where undocumented families with children are no longer detained awaiting their expulsion. The families were brought to so-called 'Return Houses' where preparations were made for their return along with an immigration officer ('coach'). This project, inspired by the Swedish system, is an improvement when it comes to the rights and well being of undocumented children.

In the UK, Minister Liam Byrne attempted to empathise with detained families with children stating 'As a parent myself of three small children, I have a simple motive...I insist that we keep families together and not split them up.'⁷³

The detention and deportation of Senegalese children by the Spanish government brought a strain on relations between the two countries as

71 UN Committee on the Rights of the Child (CRC), "CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin", UN Doc. CRC/GC/2005/6, 1 September 2005, Paragraph 61.

72 Foyer, *Juridische nieuwsbrief Foyer*, No. 170, April 2008.

73 Liam Byrne, "We are trying to find alternatives", *New Statesman*, 11 September 2008, available online at <http://www.newstatesman.com/uk-politics/2008/09/children-families-immigration>.

President Abdoulaye Wade expressed concern regarding the condition the centres in which the minors were held.⁷⁴ Spain had invited a delegation from Senegal, consisting of NGOs, members of the government, journalists, to visit the centers and witness these conditions for themselves. A group of MEPs who travelled to Britain in November 2008 found the conditions in which children were held 'not humane' and urged the UK government to find an alternative.⁷⁵ The MEPs presented their preliminary findings after visiting three removal centres. Acknowledging the difficulties of family separation, they urged an alternative response to the inhumane practice of detaining such young children.

In December 2008, Human Rights Watch released a report which catalogued a series of failures by the Greek authorities to protect unaccompanied minors who are routinely detained for extended periods, alongside adults in poor conditions under which they suffer systematic abuse and ill-treatment.⁷⁶ Greek authorities were found to issue such orders without tracing the child's family or potential carer and with no consideration the child's best interest. Human Rights Watch identified many instances in which unaccompanied children were deported without any safeguards, and who were often re-trafficked upon return.

The Right to Education

The conflict between children's rights and immigration control was also highly evident in the field of education. While undocumented children's

enjoyment of their right to education is frequently negated by their living and housing conditions, it is increasingly subject to direct attack by national legislation or policies.

In some EU member states, undocumented children are refused access to schools on the basis of their status, while in others, the foreigners' police use the educational system as a means to detect and deport undocumented families. The exploitation, discrimination and increased rates of detention facing undocumented minors severely limits their education. While the importance of schooling for a child's formation and social integration is an established and incontrovertible fact, for undocumented children, the educational system holds added significance as it often initiates the process through which they may become regularised. In some countries, regular school attendance enables children to receive residence permits when they reach 18 years of age.⁷⁷

Education is a far-reaching right of particular importance for children as affirmed all international conventions. The Convention on the Rights of the Child obliges states to provide free primary education for all children and to take measures to ensure the protection of children against all forms of discrimination or punishment on the basis of their status. The UN Committee guiding the implementation and interpretation of this convention have highlighted that overt or hidden discrimination preventing children from accessing their right to education, offends the human dignity of the child and may undermine or even destroy their capacity.⁷⁸

74 Dory Merino, "Caldera asegura que se busca la fórmula para repatriar a los menores senegaleses", *El Día*, 4 January 2008, available online at <http://www.eldia.es/2008-01-04/canarias/canarias9.htm>. (Cf. PICUM Newsletter February 2008.)

75 Jack Doyle, "Locking up asylum children is inhumane, say MEPs", *The Scotsman*, 24 November 2007, available online at <http://thescoatsman.scotsman.com/immigrationandrefugees/Locking-up-asylum-children-is.3543911.jp?CommentPage=1&CommentPageLength=1000>. (Cf. PICUM Newsletter January 2008.)

76 Human Rights Watch, "Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece", December 2008, available at <http://www.hrw.org/en/node/76791/section/1>.

77 In Italy and France, for example, conferral of the residence permit once the student reaches adulthood is tied to physical presence in the territory for a certain number of years and having followed a scholastic course.

78 UN Committee on the Rights of the Child (CRC), "CRC General Comment on the No. 1: The Aims of Education", UN Doc. CRC/GC/2001/1, 17 April 2001, available online at [http://www.unhcr.ch/tbs/doc.nsf/\[symbol\]/CRC.GC.2001.1.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/[symbol]/CRC.GC.2001.1.En?OpenDocument).

Practical Barriers in Gaining Access to the Educational System

Coverage in PICUM's newsletter during the year exposes the difficulty facing undocumented children to access education at all levels, from pre-school through to professional training. Numerous practical barriers prevent undocumented children's access to education, such as their lack of identify documents, the discretionary power of local actors and the fear among undocumented families of being detected and deported through their contact with the school.

In 2008, RESF - Réseau Éducation Sans Frontières (*Education Without Borders Network*), a highly successful network of activists dedicated to defending the human rights of undocumented school-going children and their families in France, released findings of their investigation into the discrimination policies existing in France against undocumented families with children enrolled in schools. Titled '*La Chasse aux enfants*' (The hunting of children) the report highlighted the traumatic effects on the entire French society and in particular on children.⁷⁹

PICUM reported how in Germany, schools are required by law to report to the Foreigners' Office if they receive any knowledge about irregularities concerning the immigration status of students or their parents. Before a migrant family can send their child to a public school, they first have to check with the local school department who is obliged to check immigration status. In the

state of Hamburg, immigration authorities used information gathered on a student register to locate a 15-year-old undocumented student from Bolivia and her mother who had both been living in Hamburg for the past 11 years.⁸⁰ The deportation order against them, while postponed until the girl takes her exams in 2009, has confirmed the fears of undocumented migrants regarding the threat of detection through schools.

In Paris, a woman in an irregular situation was denounced when where she enrolled her son in school in July. The summons received by the woman from the Police Commissariat stated was issued 'following the enrolment of your child to school while in irregular situation in France'. Such cases are not uncommon in France; civil society networks have noted their prevalence in provincial towns. The Mayor of Paris announced an administrative investigation into the case confirming that enrolment of a child into school should in no way refer to the legal status of the parents.⁸¹

In Belgium, some undocumented families issued deportation orders were permitted to remain in the country until the end of the school year.⁸² The rule applies to children under 18 who are enrolled in primary or secondary education and who were had received orders to leave Belgium in the current calendar year. In July however, police in the city of Antwerp detained a twelve-year old Ecuadorian girl along with her mother and grandmother on 1 July 2008, the very day their demand for regularisation was denied and conveniently, the beginning of

79 Miguel Benasayag, Angelique Del Rey and activists of the RESF, *La chasse aux enfants: L'effet miroir de l'expulsion des sans-papiers*, Réseau Éducation Sans Frontières, Paris, 2008; see <http://www.educationsansfrontieres.org/article12415.html>. [Cf. PICUM Newsletter May 2008.]

80 Anke Schwarzer, "Immer brav melden", *Jungle World*, No. 36, 4 September 2008, online at <http://jungle-world.com/artikel/2008/36/22567.html>, and "15-Jährige ohne Papiere darf nur vorläufig bleiben", *NDR 90.3*, 3 September 2008, online at <http://www.ndr903.de/schuelerregister102.html>. [Cf. PICUM Newsletter October 2008.]

81 Marie Piquemal, "Une sans-papiers dénoncée après son passage en mairie", *Libération*, 29 October 2008, available online at <http://www.liberation.fr/societe/0101165724-une-sans-papiers-denoncee-par-une-mairie-parisienne>. [Cf. PICUM Newsletter November 2008.]

82 Oost-Vlaams Diversiteitscentrum (ODICE), *Nieuwsbrief*, nr. 4 – Jg. 8, April 2008, available online at <http://www.odice.be/userfiles/file/Nieuwsbrieven%202008/2008-04.doc>. [Cf. PICUM Newsletter May 2008.]

the school holidays.⁸³ The family, who had been residing there for over eight years, were deported to Ecuador three days later which rendered any form of legal appeal impossible. The Movement for Children without Papers (Beweging voor Kinderen zonder Papieren) reported that Belgian authorities commonly deported children at the beginning of the school holidays. The organisation issued an online toolkit for families risking expulsion.

A father of four living in France was met by police officers in civilian clothing when he picked up his young children from school in order to attend an 'appointment at the town hall.'⁸⁴ Later in the day, migrant organisations learned that the whole family had been detained in Lyon and could not be reached. CIMADE, who were at that time entitled to enter detention centres in France, advised the centre's administration they would visit the family on the morning of November 30. Upon their arrival to the centre as arranged, activists of CIMADE learned that the family was en route to the airport, and were deported from France.

Positive Developments in Gaining Access

Some positive resolutions were evident during the year, through both the courts and parliamentary systems, to remove barriers facing undocumented children's access to education.

The Christian Democratic and Christian Social Union (CDU/CSU) within Germany's federal parliament urged for a removal of the immigration control obligations placed on schools.⁸⁵ The

new regulations which they proposed in March 2008 aimed to prevent the fear causing many undocumented parents to keep their children at home for fear of detection arguing against current regulations which criminalise support undocumented persons.

An Italian judge in Milan accepted an appeal filed by a Moroccan woman against the municipality for denying undocumented migrants the possibility of registering their children in local kindergartens.⁸⁶ While the ban was firmly supported by the mayor, its discriminatory nature was found to be inconsistent with the law. The mother, a home owner in Italy who has been living and working there for many years, had been denied legal residence by immigration authorities.

Despite the recognised need for skilled workers in Europe, non-academic or vocational training for undocumented youth is often denied as it is considered as 'work'. The Swiss Christian Democratic Party (PDC) proposed in a motion in April to open vocational classes also to undocumented adolescents whose access was limited by law to professional training.⁸⁷ This measure would concern only undocumented children who have carried out their schooling in Geneva. A PDC spokeswoman said the motion would provide particular support to those who, at 15 or 16 years of age, were unable to accept offers of apprenticeship or technical training because of their education status.

83 Beweging voor Kinderen Zonder Papieren, "Sonia brengt haar dertiende verjaardag door in Ecuador...", 10 July 2008, blog entry available online at <http://www.kzp.be/wordpress/?p=73>. [Cf. PICUM Newsletter August 2008.]

84 "Une première en Isère: des enfants raflés à l'école", *Le Post*, 1 December 2008, available online at http://www.lepost.fr/article/2008/12/01/1343314_une-premiere-en-isere-des-enfants-raflés-a-l-ecole.html. [Cf. PICUM Newsletter December 2008.]

85 Migration Info, "Irreguläre Migration in Europa", *Newsletter April 2008*, available at http://www.migration-info.de/migration_und_bevoelkerung/artikel/080308.htm. [Cf. PICUM Newsletter May 2008.]

86 "Giudice: asili aperti ai figli di irregolari", *Corriere della Sera*, 12 February 2008, available at http://www.corriere.it/vivimilano/cronache/articoli/2008/02_Febbraio/11/asili_aperti.shtml. [Cf. PICUM Newsletter March 2008.]

87 Simon Petite, "L'apprentissage aussi pour les sans-papiers", *Le Courrier*, 9 April 2008, available at <http://www.lecourrier.ch/index.php?name=NewsPaper&file=article&sid=439167>. [Cf. PICUM Newsletter May 2008.]

Educational Staff and Families Act to Protect Undocumented Children

Teachers, parents and fellow classmates took an active role in the protection of undocumented children against discriminatory control measures.

Throughout the year, civil society played an important role in mobilising public support to prevent deportations and urging states to conform to their human rights obligations and seek humane alternatives. The Convention on the Rights of the Child expresses that children should not be detained for the purpose of immigration control due to the negative physical, mental and educational consequences of detention.⁸⁸ In order to protect the right of family unit, some alternative to the detention of the entire family or to mothers detained with children should be implemented. Despite this, PICUM found that the detention of undocumented children is a common practice in most European countries and cases involving the repatriation of children, either with their families or even alone, has been reported by both NGOs and the European Court for Human Rights.

In reaction to criticism by UNICEF and Defence for Children International that state policy regarding child detention violated the International Convention on the Rights of the Child, the Dutch State Secretary for Justice announced that families with children who were awaiting deportation would not be detained for periods exceeding two weeks.⁸⁹ In Belgium, the Minister for Asylum and Integration declared that undocumented families with children would no longer be detained in closed centres but placed in specifically dedicated open

holding facilities.⁹⁰ Families waiting for expatriation would however be asked to sign a contract with the Belgian government, stating that they would not flee. In the past years, hundreds of children in Belgium have been kept in closed centres for long periods, in absence of any educational support.

5. Undocumented Women



Human rights abuses against undocumented migrant women were evident across the EU and concentrated along the border regions.

Gender vulnerabilities increase the likelihood of migrant women to become undocumented, a status under which they are greatly exposed to systematic violence, abuse and discrimination. While European governments recognise health and education as fundamental standards to improve the situation of vulnerable women abroad,⁹¹ they implement policies which effectively strip these same women of their innate rights and entitlements should they become undocumented within EU borders. The inability of undocumented women to access basic social rights and social support systems or seek redress for abuses perpetuates their vulnerability and exploitability.

⁸⁸ United Nations Convention on the Rights of the Child, Article 40(1).

⁸⁹ Derk Stokmans, "Het moet kindvriendelijker: Albayrak wil minder kinderen van asielzoekers in de gevangenis", NRC Handelsblad, 29 January 2008, page 3, available online at <http://archieff.nrc.nl/index.php/2008/Januari/29/Binnenland/03/Het+moet++kindvriendelijker>. [Cf. PICUM Newsletter February 2008.]

⁹⁰ Veerle Beel, "Geen kinderen meer achter tralies", *De Standaard*, 13 September 2008, available online at <http://www.standaard.be/Artikel/Detail.aspx?artikelId=8020E56F>. [Cf. PICUM Newsletter November 2008.]

⁹¹ Gender equality has been identified as a 'cross-cutting issue' by the European Commission's development policy. Related communications and conclusions available at: http://ec.europa.eu/development/policies/crosscutting/genderequ_en.cfm

Exploitation in the Workplace

In the workplace, undocumented women face massive exploitation. Generally employed in the domestic realm as cleaners and nannies, they often remain hidden from public view – conditions which make it difficult to promote worker solidarity. Women with an irregular migration status are highly reliant on their employers and who often take advantage of their double fear to report ill-treatment.

In April, a series of strikes were held in Paris to denounce the situation facing undocumented women workers across France.⁹² An article published in *Le Monde* at the time put forth the case of three undocumented women who had worked in France for over eight years in order to send money home to their families. These women had been recruited by an agency which charged them for falsified identification papers and then leased their services to a cleaning agency.

On 1 July 2008 labour inspectors raided the luxurious Conrad Hotel in Brussels and found around 20 migrant women in a slave-like situation providing 24 hour-services to an ill member of Abu-Dhabi's royal family and her four daughters.⁹³ For the previous eight months, the domestic workers had been held in captivity, subjected to violence and had their passports confiscated. After being interviewed by the labour inspectors, thirteen of these exploited women accepted the status of victims of trafficking. However, six of them refrained from testifying to the Belgian labour authority and returned to work for their employer.⁹⁴

Sexual and Reproductive Health Disparities

With regards to health, undocumented women are often more susceptible to sexual and reproductive health disparities as a result of their inadequate access to health care and precariousness situation.

Many reports made by PICUM's 'death at the border' section in 2008 involved pregnant women; our July edition reported the delivery of a stillborn baby on an Italian fishing boat whose mother had been pulled from the sea and in October, a pregnant woman died aboard a cargo ship having been rescued from Maltese waters.

Two articles published in the *BMC Public Health Journal* during the year illustrated the acute sexual and reproductive health situation of undocumented women residing in Europe.⁹⁵ Research undertaken in Geneva's University Hospital found that undocumented women had more unintended pregnancies and delayed prenatal care, used fewer preventive measures and were more exposed to violence during their pregnancy.⁹⁶ This study underscores the need for better access to prenatal care and routine screening for violence exposure during pregnancy for undocumented migrants and recommends that health care systems provide language- and culturally-appropriate education on contraception, family planning and cervical cancer screening. The second paper, published later in the year, reported disproportionately higher rates of genital chlamydia among pregnant women who were undocumented.

92 "A Paris, la fronde singulière de femmes sans papiers", *Le Monde*, 28 May 2008, available at http://www.lemonde.fr/archives/article/2008/05/28/a-paris-la-fronde-singuliere-defemmes-sans-papiers_1050650_0.html, [Cf. PICUM Newsletter July 2008.]

93 Bruno Waterfield, "Women 'enslaved' by Arab royals", *Telegraph*, 2 July 2008, available online at <http://www.telegraph.co.uk/news/worldnews/middleeast/unitedarabemirates/2236851/Women-enslaved-by-Arab-royals.html>. [Cf. PICUM Newsletter September 2008.]

94 "Six des 'esclaves' ont rejoint leurs patronnes au Conrad", *RTL Info*, 3 July 2008, available at <http://www.rtlinfo.be/info/archive/145884/six-des-esclaves-ont-rejoint-leurs-patronnes-au-conrad/?&archiveYear=2008>.

95 Hans Wolff *et al.*, "'Undocumented migrants lack access to pregnancy care and prevention'", *BMC Public Health* (2008) 8:93, available online at <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2323378>.

96 Hans Wolff *et al.*, "Chlamydia trachomatis prevalence in undocumented migrants undergoing voluntary termination of pregnancy: a prospective cohort study", *BMC Public Health* (2008) 8:391, available online at <http://www.biomedcentral.com/1471-2458/8/391/abstract>.

Vulnerabilities Due to Human Trafficking

Undocumented women are vulnerable to trafficking for sexual or labour based purposes. Women may be targeted in their countries of origin, while in transit to Europe and also when in an undocumented status in Europe.

In March, La Strada International released a report entitled 'Violation of women's rights: a cause and a consequence of trafficking in women' and launched an international campaign to highlight the relation between trafficking and the violation of women's rights.

Protection for Victims of Domestic Violence

In the Netherlands, the Ministry of Justice announced a series of proposed measures aimed at granting more protection to immigrant women who are victims of domestic violence.⁹⁷ The Ministry also proposed that confirmation from a women's shelter or an aid worker that a migrant woman has been beaten by her husband be enough as proof of her status as victim of domestic violence.

In December, PICUM's newsletter reported the release of a report published by the French Centre d'Etude des mouvements sociaux (Research center for social movements) which gathered the testimonies of migrant women residing in France who are subjected to domestic and marital violence.⁹⁸ The report uses the words and writings of the migrant women and girls affected, gathering 400 telephone calls, 300 letters and interviews.

In 2008, PICUM gained increasing reports of coercion and abuse of women who have arrived through legal routes on a student, travel or working visa but who have become undocumented. A three year gender initiative will enable PICUM to explore the various coercion facing undocumented women at various stages of the migration process.

6. Family Life



Violations against undocumented migrants' right to family life were reported in France and Switzerland.

Every person has the right to marry, to family life, privacy and protection from arbitrary interferences from the state with regards to these rights.⁹⁹ Authorities have nonetheless intruded into many aspects of the private and family lives of undocumented migrants.

In Switzerland, undocumented migrants wishing to marry Swiss nationals faced increasing difficulties following the implementation of a new directive on 1 January 2008.¹⁰⁰ Intended to prevent 'marriages to obtain documents' ('unions de complaisance'), new legislation enabled registrars to refuse to conduct weddings, or annul them, if they suspected the marriage was fictitious. Those who divorce within the first three years of marriage now run the risk of losing their residence permit and

97 Migration Policy Group, *Migration News Sheet*, September 2008, p. 7. (Cf. PICUM Newsletter October 2008.)

98 Mouloud Idir, "Femmes invisibles – Leurs mots contre la violence", available at <http://www.ababord.org/spip.php?article859>. (Cf. PICUM Newsletter December 2008.)

99 International Covenant on Economic, Social and Cultural Rights, Art 10(1,2), International Covenant on Civil and Political Rights, Art 23(1), Convention on the Rights of the Child Art 9(1), 10(1), 20(1), Economic and Social Charter, Art 16, 19(6).

100 Radio Suisse Romande, "Mariage avec un(e) migrant(e), situation 'kafkaienne'", 18 January 2008, available at <http://cscps-10.blogspot.com/2008/01/mariage-avec-une-migrante-situation.html>. (Cf. PICUM Newsletter February 2008.)

astonishingly, it is even possible to annul paternity affiliation for children born during these supposed 'sham' marriages. In many cantons, those without a residence permit face difficulty to marry and migrants are ordered to return to their country of origin to get married, with no assurance of a possible return to Switzerland.

Undocumented migrants in France also experienced increasing barriers to realise their right to get married. In response to the increasing and negative impact of immigration control policies upon family life in France, dozens of couples took to the street of Bobigny on St Valentine's Day to state their condemnation of the current situation and launch the association "Amoureux au ban public" ('State banned love') to lead the fight for the right to marry regardless of the status of either partner.¹⁰¹

Positive Developments

Some positive developments regarding the right to family life were recorded during the year. The UK's House of Lords actually increased the freedom to marry for undocumented migrants by removing the obligation to prove the sincerity of the relationship.¹⁰² Under the old system, marriages were routinely forbidden between migrants and those without authorisation to stay in the UK, or whose residence status would expire within three months. A ruling by the House of Lords in August labelled this law 'arbitrary and unjust' and overruled it on the grounds that it breached the right to marry codified in the European Convention on Human Rights.

In April, the Catalan Counsellor of Social Action and Citizenship announced her intentions to request two modifications in Spanish immigration law:

firstly, authorisation for those who arrived through family reunifications to obtain work, and secondly, a reduction in the required length of legal residence for Spanish nationality from ten years to five years.

7. Forced Destitution

"There was a time when the welfare state did not look at your passport or ask why you were here... immigration status was a matter between you and the Home Office, not the concern of the social security system".¹⁰³

Lord Hoffman

The destitution of undocumented migrants in Europe is engineered by migration control mechanisms aiming to limit the realisation of fundamental rights. Its specific objective of driving migrants into a state of poverty and destitution is so extreme that they are compelled to leave European territory.

Anxiety regarding irregular migration often centres on irrational fears of a mass invasion by impoverished migrants causing a collapse in the economic standards and social order of developed countries. By focusing this battle on the limitation, and not the realisation, of fundamental rights, these policies have had the opposite effect: rather than maintaining order, they have created situations of chaos, illegality and tyranny. While undocumented migrants may not be eligible for protection under refugee law, they are, by definition of being human, protected by international human rights law.

National governments often play on these fears to rationalise an increasing claw-back in human rights norms, while at EU level, internal borders

101 Sylvie Arsever, "Pas de mariage sans papiers la nouvelle arme contre les abus", *Le Temps*, 6 February 2008, available at http://www.letemps.ch/Page/Uuid/ea99f4d6-a9fe-11dd-bf59-ad3d6140ad87/Pas_de_mariage_sans_papiers_la_nouvelle_arme_contre_les_abus. (Cf. PICUM Newsletter March 2008.)

102 "UK immigration news: Newly married couples can live in the UK according to court ruling", *migrationexpert.com*, 11 August 2008, available at http://www.migrationexpert.com/UK/Visa/uk_immigration_news/2008/Aug/0/206/Newly_Married_Couples_Can_Live_in_the_UK_According_to_Court_Ruling. (Cf. PICUM Newsletter September 2008.)

103 Lord Hoffmann, "Opinions of the Lords of Appeal for Judgement", *Westminster City Council v National Asylum Support Service*, HoL, 17 Oct 2002, available online at <http://www.publications.parliament.uk/pa/ld200102/ldjudgmt/jd021017/westmi-1.htm>.

fell as external walls were fervently built. The European Commission's 'fight against illegal migration' is a key tenet on which it seeks to gain the support and justification of its 500 million citizens. 'Supporting our rights and defending our interests' is the telling caption of the EU's department responsible for both human rights and migration control.

The measures taken by the EU overwhelmingly focus on the entry or return of irregular migrants. Regardless of these efforts, between 5-8 million undocumented migrants live within Europe's borders and are a part of our society; the policy-driven destitution they face places an enormous strain on local actors who often work with limited resources to defend their most fundamental rights. There is an overwhelming lack of coherence between the various governing departments of the European Commission. Efforts to promote social inclusion and eradicate poverty exclude undocumented migrants who are arguably the most marginalised and impoverished members of European society while overseas, the EU promotes the importance of healthcare, education, adequate housing and fair working conditions while these fundamental elements are denied within its own borders for solely political reasons.

Limbo Situations: Unsuccessful in the Asylum System But Not Returned

The inhumanity and ineffectiveness of existing policies are highly evident in the situation facing migrants who have been unsuccessful in the asylum process but are unable to be deported from Europe.

An increasing number of migrants who travel to Europe to claim asylum are refused and thus become undocumented. The UK government refused asylum in 70% of the applications heard in 2008.¹⁰⁴ While 10% of this number were deported, approximately 20,000 remained in the UK.¹⁰⁵ Once their claim is refused and there is no outstanding appeal, these migrants become undocumented and are expected to leave the country within 21 days, after which all social support and housing is cut off, and they face a ban on access to non-emergency free secondary healthcare.¹⁰⁶ Stressing the need to end the threat and use of destitution as a tool of government policy, the 'Still Human, Still Here' coalition have called upon the government to maintain financial support and accommodation provided during the asylum process, grant migrants with permission to work until such time as they are granted leave to remain or have left the UK and essentially, continue to provide full access to health care and education throughout the same period.

Committed to highlighting the destitution of undocumented migrants who have been refused asylum in the UK, 'Still Human, Still Here' reported a significant deterioration in their condition during 2008. Documenting the severe human costs of government policies, the campaign brought to light a situation in the UK of undocumented migrants going hungry, forced to sleep rough and denied essential medicines; an increased dependence and strain upon migrant communities and humanitarian organisations; and exposure to the exploitative and dangerous conditions through irregular employment. Civil society groups have come together to urge the government to extend the minimal support provided during the asylum

104 The Office for National Statistics, "The Home office: Asylum Seekers, control of immigration figures for 2008"; available at <http://www.statistics.gov.uk/cci/nugget.asp?id=261>.

105 "Asylum case backlog doubles in year", *The Independent*, 23 January 2009, available at <http://www.independent.co.uk/news/uk/politics/asylum-case-backlog-doubles-in-year-1513873.html>.

106 The cut off for social support and housing applies to single adults and childless couples.

period, grant permission to work, access to health care and education until the time of departure or grant of leave to remain.

Amnesty International, a participant in the campaign, issued a statement in July identifying the hypocritical stance of the UK government, which has been vocal in its condemnation of the current situation in Zimbabwe yet has not offered adequate grants of asylum, facing refused asylum seekers with the threat of persecution in Zimbabwe or becoming undocumented in the UK.¹⁰⁷ Zimbabweans are increasingly subject to forced destitution in the UK. Research released by the Joseph Rowntree Charitable Trust in July found they constituted the largest group of destitute asylum seekers in Leeds, with many sleeping in public parks and toilets, scavenging for food, and going without vital health care even after suffering torture.¹⁰⁸

In November, Switzerland's Socialist party announced a legislative initiative aiming to improve the daily lives of rejected asylum seekers who are no longer entitled to social welfare assistance.¹⁰⁹ Once their asylum claim had been refused, migrants could only receive emergency aid, consisting of accommodation, clothing and meals.

8. Detention

International human rights standards iterate that detention for migration control purposes must only be used in exceptional circumstances, remain proportionate to its objectives and be limited to

the shortest possible time.¹¹⁰ Furthermore, each migrant is entitled to an assessment of their case and have the option of a judicial review. In much of Europe however, both asylum seekers and undocumented migrants face immediate detention upon their arrival.

Policy Measure to Deter and Control Irregular Migration

Despite concerns regarding overcrowding, inhumane conditions and growing reports of suicide and self harm by detainees, EU member states continued to opt for detention as means to deter and control irregular migration.

The arbitrary use of administrative detention in counties such as France has increased with the establishment of deportation targets set by immigration authorities which focus on tracking down and expelling the maximum number of migrants. France deported a total of 29,799 migrants in 2008, a figure which both surpassed the year's expulsions target by almost 4,000 and marked an increase from 23,200 in the previous year.¹¹¹ The secretary general of French NGO *Cimade* labelled the policy as 'dogmatic and brutal'.¹¹²

The United Kingdom illustrated an ongoing commitment to the 'detect and detain' approach: in May 2008, the UK Border Agency (UKBA) announced government plans to increase the capacity of immigrant detention centres by 60%, creating between 1,300 to 1,500 new places.¹¹³

107 Amnesty International, "Amnesty appalled at new findings showing destitution among Zimbabweans seeking refuge in UK", 24 July 2008, available at http://www.amnesty.org.uk/news_details.asp?NewsID=17842. [Cf. PICUM Newsletter August 2008.]

108 Amnesty International, "UK/Zimbabwe: UK talks tough on Mugabe but treats Zimbabweans stranded in UK inhumanely", 10 July 2008, available at http://www.amnesty.org.uk/news_details.asp?NewsID=17822. [Cf. PICUM Newsletter August 2008.]

109 Migration Policy Group, *Migration News Sheet*, December 2008, p. 19. [Cf. PICUM Newsletter January 2009.]

110 International Covenant of Civil and Political Rights, Article 9(2, 3, 4, 5), Convention on the Rights of the Child, Article 40(1), International Convention on the Rights of Migrant Workers and their families, Article 17(1).

111 "Deportations Pass 2008 Targets", *The Connexion*, 13 January 2009, available online at http://www.connexionfrance.com/news_articles.php?id=595, and The Global Detention Project, "'France' country profile", available at <http://www.globaldetentionproject.org/countries/europe/france/introduction.html>.

112 *Ibid.*

113 "Extra Immigrant Detention Places", *BBC News*, 19 May 2009, available at http://news.bbc.co.uk/2/hi/uk_news/7408121.stm.

With the additional places dedicated to 'fast tracked' asylum procedures, the move aimed to increase both the volume and pace of removals. In June, the UKBA formalised its intention to strengthen partnerships between law enforcement and immigration enforcement agencies over the coming year by preparing for the establishment of a national surveillance system to 'monitor' undocumented migrants.¹¹⁴ Formalising cooperation between UKBA and a range of public and private bodies, 'Immigration Crime Partnerships' would be established to coordinate partnership work. While primarily targeting those who have committed criminal offences, the partnership also set its sight on landlords who let accommodation to undocumented migrants and local services who may offer them 'unauthorised benefits and safety nets' effectively putting pressure on public and private administrations to adopt the duties of immigration officials. At a practical level, undocumented migrants may be detected if they attempt to access public or financial services, public benefits or obtain a driving licence. In addition to increasing the pressure on public and private bodies, this approach risks undercutting Britain's integration initiatives and poses a serious threat to national race relations.

The imprisonment of migrants sustains the effort to construct their immigration as a criminal activity, increases xenophobic attitudes and encourages gross inaccuracies in media reports which label those in need of protection as 'illegal'. The accelerated procedures developed by states have been developed to prevent abuses of state responsibility rather than to protect the individual migrant; notably no state has yet established

statistical targets to 'fast-track' the realisation of migrants' rights.

Unsanitary Conditions and Degrading Treatment in Detention Centers

The mandatory imprisonment of migrants arriving in Malta, Greece and the Italian island of Lampedusa put continued strain on the already limited detention facilities there. Despite the construction of an additional detention facility on the island of Samos, there was a significant increase in reports regarding the inhumane conditions Greek detention facilities and the ill-treatment of migrants there.¹¹⁵ The structural malfunction of the asylum determining process and the high number of returns to Greece via the Dublin II regulation has created a situation which the NGO Pro-Asyl has described as 'out of control'.¹¹⁶ In Greece, asylum seekers and refugees suffer from such an extreme state of social exclusion and rightlessness that their treatment is almost indistinguishable to that meted out to undocumented migrants.

Médecins Sans Frontières (MSF) reported cases in which over 800 undocumented migrants, including children and pregnant women, were packed inside detention wards which were built to accommodate no more than 400 people at a time.¹¹⁷ Between June and September 2008, the humanitarian organisation worked inside the detention center of Pagani on the island of Lesbos during which their team provided primary care and psychosocial support to the people, and also began construction to improve the living conditions.¹¹⁸ However, MSF's

114 Migrants Rights Network, "New Immigration Crime Partnerships: concerns for local race", *Migrants Rights News No. 8- July 2008*, available at <http://www.migrantsrights.org.uk/enews/2008/july.htm>. [Cf. PICUM Newsletter August 2008.]

115 Apostolis Fotiadis, "RIGHTS: Norway finds Greece cannot be trusted with migrants", *Inter Press Service*, 14 February 2008, available at <http://www.ipsnews.org/news.asp?idnews=41199>. [Cf. PICUM Newsletter April 2008.]

116 Pro-Asyl, "The Situation in Greece is Out of Control", November 2008, available at http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Asyl_in_Europa/Griechenland/Out_of_contol_Eng_END.pdf

117 Médecins Sans Frontières, "Greece: MSF returns to detention centre for undocumented migrants", 11 August 2009, available at: <http://doctorswithoutborders.org/news/article.cfm?id=3852&cat=field-news>.

118 *Ibid.*

staff faced significant obstacles in accessing the detention wards and those who needed medical and psychosocial support. Consequently, after only four months, MSF was compelled to suspend its activities in Pagani.

When a detention centre on the Island of Patros was destroyed by an earthquake in July, the Port Authority handcuffed undocumented migrants to public benches and trees outside their offices for over 48 hours. Officials responded that they had done so because the detention center was unsafe for the detainees. Médecins du Monde reported that a photographer they had commissioned to document the situation of migrants on the island was physically attacked by a member of the Patros port authorities when he came within the vicinity where the migrants were handcuffed and had his camera destroyed.¹¹⁹ By the end of the year, the Patros Port Authority had resorted to the use of metal containers to hold arrested migrants, a practice unanimously condemned by NGOs as inhuman and degrading.¹²⁰

Investigations by Human Rights Watch in the region have exposed systematic violations of international human rights law and refugee law as well as detention conditions which constitute inhuman and degrading treatment.¹²¹ Following visits to several facilities in Greece and Turkey and interviews with current and former detainees, the organisation reported 'an alarming picture of police mistreatment, overcrowding, and unsanitary conditions, particularly in places where we were not allowed to visit, such as border police stations,

the airport, Venna, and Mitilini'. Their report urged both the Greek and Turkish authorities to treat migrants in a humane and dignified manner, enable them to seek asylum and immediately halt the instances of refoulement occurring along the Greek-Turkish and Turkish-Iraqi borders.

Self-Harm and Abuses in Detention Centres

Target-driven deportation policies have led to serious overcrowding and human rights abuses in Europe's detention centres. Acts of despair and anger, including self-mutilation, suicide attempts, hunger strikes, and desperate protest measures such as setting fire to mattresses occurred in migrant detention centres throughout Europe.¹²²

Detention rates in the UK have increased from 250 places in 1993 to 2,644 by 2005. A growing number of those asylum seekers routinely deprived their liberty in the UK are held in privately run, profit driven institutions in which social unrest and high rates of suicide are a common feature.¹²³ According to research by the Refugee Studies Centre at the University of Oxford, the rise in detention rates is partly driven by the interests of private prison companies. Britain's 'get tough' attitude towards immigration and asylum is fostered by the increasing commercial interest in maintaining detention as an integral part of the migration control regime and encouraging the prevailing view that migrants 'are compromising the interests of the state'.¹²⁴ In a telling statement made in May

119 Médecins du Monde, "MDM photographer attacked and now denied the right to photograph", 8 September 2008, available at: http://www.medecinsdumonde.org/gb/presse/communiqués_de_presse/un_photographe_mandate_par_mdm_brutalise_et_aujourd'hui_interdit_de_reportage

120 US Department of State, "2008 Human Rights Report: Greece", available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119082.htm>

121 Human Rights Watch, "Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union", January 2008, available online at <http://www.hrw.org/en/reports/2008/11/26/stuck-revolving-door>

122 Institute of Race Relations, *European Race Bulletin*, vol. 65, Autumn 2008, p.11.

123 Of a total of 10 immigration detention centres in the UK, seven are managed by the types of private firms involved in the management of prisons, including GEO, Group 4, G4S, Serco, Kalyx and GSL.

124 The Refugee Studies Centre, "RSC Working Paper No. 27: 'The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies'", Oxford University Press, Oxford, 2005.

2008, Minister Liam Byrne justified plans for up to 60 per cent more immigration removal centre places in the UK with the rationale that 'Even though asylum claims are at a 14-year low, we are removing more failed asylum seekers each year; that means we need more detention space'.¹²⁵ In the first six months of 2008, the UK's detention centres experienced repeated hunger strikes and a 73 per cent increase in incidents of self-harm.¹²⁶

In April, four employees of Group 4 Securicor, a global private security firm, seriously injured a female migrant who had been refused asylum in the UK.¹²⁷ Stephanie Toumi was kicked, pinned to the ground, lifted by her hair, and verbally abused aboard a flight from UK to Brussels in April 2008. Upon arrival to Brussels airport, Belgian officials refused to place her on the connecting flight to Cameroon due to her visible injuries. Ms. Toumi was then returned to the UK where her injuries required her to use a wheelchair but officials in the Yarl's Wood Detention Centre denied her the use of it which rendered her unable to use the centres dining hall. The UK government began investigations in July 2008. The story follows a detailed report by the National Coalition of Anti-Deportation Campaigns, documenting hundreds of similar cases of abuse by the UK authorities.

This case, along with several others were covered in a report released by the National Coalition of Anti-Deportation Campaigns in July 2008 regarding the use and misuse of force in immigration detention and removal, often perpetrated by outsourced security forces.¹²⁸ Cases involved children who suffered physical, physiological, and sexual abuse, as well as abuse against rape and

torture victims who were rejected asylum seekers. The report calls on the government of the UK to uphold its human rights obligations, both in the physical treatment of detainees and by increasing access to asylum.

Civil Society Protests to Persecution of Detainees

In January 2008, news of proposals to harmonise the detention of undocumented migrants across the EU for periods of up to 18 months sparked demonstrations across Europe. In France, where the allowed detention period was 32 days, between 5,000 and 8,000 people came out to voice their protest at the proposed increase. The largest single protest in Paris had an estimated attendance of 3,500.¹²⁹ Richard Moyon of RESF - Réseau Éducation Sans Frontières (Education Without Borders Network) stated that those in attendance denounced not only the conditions of the holding centres, but contested the very fact that people are being held in detention centres without a legal hearing. He stressed that the detainees had committed no crime, but found themselves banished from their lives, their jobs and their families.

In April 2008, around 2,000 people marched in Madrid under the motto 'No to Detention Centres for Migrants - Let's Close our Guantánamos'.¹³⁰ The march ended in front of a detention centre in Aluche, a district of Madrid, where various migrants had started a hunger strike to denounce the arduous conditions they suffer. Close to 100 NGOs presented a request to the District Attorney's

125 UK Border Agency, "Large Scale Expansion of Britain's Detention Estate", 19 May 2008, available at <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2008/largescaleexpansionofbritainsdet>.

126 Emily Dugan, "Alarming' rise in self-harming at detention centres", *The Independent*, 31 August 2008, available online at <http://www.independent.co.uk/news/uk/home-news/alarming-rise-in-selfharming-at-detention-centres-913909.html>.

127 Robert Verkaik, "Women 'assaulted' by UK security guards during forced removal", *The Independent*, 30 June 2008, available online at <http://www.independent.co.uk/news/uk/home-news/woman-assaulted-by-uk-security-guards-duringforced-removal-856897.html>. (Cf. PICUM Newsletter August 2008.)

128 NCADC *et al*, "'Outsourcing Abuse: The use and misuse of state-sanctioned force during the detention and removal of asylum seekers'", available at <http://www.ncadc.org.uk/emmaginnsfolder/emmaginnsfolder/july%2008/Outsourcing%20Abuse.pdf>.

129 *Ibid*.

130 "Miles de personas marchan al CIE de Aluche exigiendo el cierre de los centros de internamiento de extranjerios", *Indymedia Estrecho*, available at <http://estrecho.indymedia.org/malaga/newswire/display/73520/index.php>. (Cf. PICUM Newsletter May 2008.)

office for an investigation over possible ‘serious violations of human rights’ suffered by migrants detained in the Aluche detention centre and demanding measures of ‘urgent’ protection.

In December, Amnesty International released a report to call for an end to the automatic detention of asylum seekers and migrants across the world and for states to introduce a presumption against detention in law and to make alternatives to detention effectively available.¹³¹ ‘Migration Related Detention – A Global Concern’ contains a number of testimonies from detainees to highlight how migrants, asylum-seekers and refugees are regularly deprived of their liberty purely for administrative convenience with many countries use detention to deter people from migrating or seeking asylum.

Criticism from Independent Advisory Bodies and Legal Challenges in Court

The increasing use of prolonged or indefinite administrative detention by European states has warranted critiques from independent advisory bodies and met with a number of legal challenges in court.

In February 2008, the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published its report on Greece. It contains information gathered during a 2007 ad hoc visit to Greece, where a delegation of the CPT visited a number of police and border guard stations in the Attica and Evros Regions, as well as several holding facilities for undocumented migrants. The report indicated no improvements since the Committee’s last visit in 2005 as regards the manner in which persons

detained by law enforcement agencies are treated. The delegation again heard a considerable number of allegations of ill-treatment of detained persons by law enforcement officials as well as ill-treatment occurring at Athens International Airport following failed deportation attempts. The report criticized the inappropriate detention facilities as regards material deficiencies as well as suitability for prolonged stays. It concludes that persons deprived of their liberty by law enforcement officials in Greece still run a real risk of being ill-treated and it questions whether the Greek authorities have afforded this matter the serious attention it merits.¹³²

Following the release of the CPT report on conditions in Greece, the Norwegian government announced a suspension in the application of the Dublin II regulation so as to prevent the return of migrants to Greece. Dublin II is the legal basis which allows member states to return asylum-seekers to the state where they first entered, or to the state responsible for their entry into European territory. Greece grants asylum in only 2% of the cases it receives, compared to the European average of over 20 percent. The independent rights group Greek Helsinki Monitor (GHM) reports that only 0.5 percent of the rejected asylum claimants have been granted residence permits in Greece on humanitarian grounds. Consequently, Greece rejects many asylum claims that would lead to refugee or protection status in Norway.

The Maltese government has strongly rebutted allegations made regarding its mandatory detention policy in a report by the Council of Europe’s Commission against Racism and Intolerance (ECRI). The members of the commission visited Malta in July 2008. In its report, ECRI stated that Malta’s detention policy had resulted in negative consequences not only for the rights of the persons

131 Amnesty International, “Migration-related detention: A global concern”, Amnesty International, London, 2008; available online at <http://www.amnesty.org/en/library/asset/POL33/004/2008/en/c4b6797b-c873-11dd-b5e7-cf1e30795cb4/pol330042008eng.pdf>. [Cf. PICUM Newsletter July 2008.]

132 European Committee for the Prevention of Torture and Inhumane and Degrading Treatment (CPT), “Report to the Government of Greece on the visit to Greece, 20-27 February 2007”, available online at <http://www.cpt.coe.int/documents/grc/2008-03-inf-eng.htm>. [Cf. PICUM Newsletter March 2008.]

concerned but also for the perception of these people as criminals and the levels of racism and xenophobia among the general population.¹³³

The detention of children in the Netherlands earned Dutch officials a rebuke from the independent advisory, supervisory and judiciary board the Dutch Council for the Administration of Criminal Justice and Protection of Juveniles (Rad voor Strafrechtstoepassing en Jeugdbescherming, RSJ).¹³⁴ The board spoke out against the increased use of detention for undocumented migrants and called on the Dutch Minister of Justice to limit its use for a last resort.

In January 2008, PICUM's newsletter covered the UK's issuance of deportation papers to an ill three-year-old girl ordering her to board a flight to the US despite the fact that she had no family there and threatening her with detention should she breach immigration rules.¹³⁵ The case of Adedoyin Fadairo, who was born in the US but who had spent most of her life in London, was referred to the European Court of Human Rights. Because of her undocumented status, Adedoyin had been denied medical treatment in the UK for a serious kidney disorder and was living with relatives following a lengthy separation from her mother who was in detention pending removal to Nigeria. The European Court of Human rights barred deportation of the girl while they considered her treatment at the hands of the British government and the legality of the separation from her family.¹³⁶

The French Courts of Appeal adopted different interpretations regarding the administrative detention of children. In Reindeers, the court permitted the continued detention of a 15-month old baby with his undocumented mother in the centre of Saint-Jacques de la Lande,¹³⁷ while the Rennes court twice revoked an order of detention for an undocumented family with a child on the basis of Article 3 of the European Convention which prohibits any form of inhuman and degrading treatment.¹³⁸ In Belgium, a petition protesting the detention of undocumented children was sent to the new Minister for Migration and Asylum in April and many migrants and citizens took to the street in a public demonstration to mark their opposition to this inhumane practice.¹³⁹

A report released by the UK based Institute for Race Relations concluded that the EU's target-driven deportation policy towards migrants paid little attention to its effect upon children and the detention of those for whom parentage was their only crime was now commonplace across Europe and often in contravention of international law.¹⁴⁰ These findings were echoed in France where the National Committee for the Control of Detention Centres and Reception Zones launched a cutting attack on the government for perusing an immigration policy which had been internationally-discredited for its inhumane and degrading treatment of minors.¹⁴¹ In a report released in June, the government sponsored agency reported that in 2006 almost 500 children were detained in France for an average of 3.5 days. Of these, 230 were

133 "Updated: Government disappointed by CoE report on racism, intolerance", *The Times of Malta*, 23 April 2008, available online at <http://www.timesofmalta.com/articles/view/20080423/local/government-disappointed-by-coe-report-on-racism-intolerance>. [Cf. PICUM Newsletter May 2008.]

134 Rad voor Strafrechtstoepassing en Jeugdbescherming, "Advies: Vreemdelingenbewaring", 16 June 2008, available online at http://www.rsj.nl/Images/Advies%20Vreemdelingenbewaring_tcm60-118933.pdf. [Cf. PICUM Newsletter August 2008.]

135 Robert Verkaik, "Battle to halt deportation of girl, 3, puts spotlight on UK asylum policy", *The Independent*, 2 January 2008, available at <http://news.independent.co.uk/uk/legal/article3300978.ece>. [Cf. PICUM Newsletter January 2008.]

136 *Ibid.*

137 Liberation, "17 jours d'enfermement pour un bébé de 15 mois", 19 February 2008, available at <http://www.liberennes.fr/libe/2008/02/17-jours-denfer.html>. [Cf. PICUM Newsletter March 2008]

138 "Le CRA, c'est pas pour les enfants!", RESF, 1 October 2008, available at <http://www.educationsansfrontieres.org/?article15641>. [Cf. PICUM Newsletter November 2008.]

139 Cf. <http://www.kzp.be/wordpress/> and PICUM Newsletter April 2008.

140 Liz Fekete, "Detained: foreign children in Europe", *Race and Class*, Vol. 49, 2007, available at <http://rac.sagepub.com/cgi/content/abstract/49/1/93>.

141 La Commission nationale de contrôle des centres et locaux de rétention administrative et des zones d'attente (CRAZA), "Rapport: Bilan de l'exercice 2006/2008", available at http://www.anafe.org/download/rapports/file_339655_281665.rtf. [Cf. PICUM Newsletter September 2008.]

deported, 35 were granted asylum while 85 came of age while in detention. The report detailed that in 2007, the French government received 166 requests for asylum from minors, a slight increase on the previous year; three-quarters of these claims were rejected and the applicants deported to their countries of origin. The National Commission expressed serious concern regarding the lack of knowledge regarding the situations to which these children were being deported.

In August, an official report raised concerns that children at UK's Yarl's Wood detention centre were suffering from serious emotional damage.¹⁴² While disabled children were being illegally detained, the inaccurate maintenance of detention records meant that the file of one child who had been detained for a total of 275 days was reported that they only been in the centre for 14 to 17 days. Along with physical health concerns, the mental health issues arising among the children following their detention included depression, bedwetting, refusal to eat and insomnia. The centre was without a registered children's nurse and there had no children's counsellor.¹⁴³ Mothers in the centre held several protests during the year against the extended detention of minors in confined conditions which has encouraged the outbreak of viruses.¹⁴⁴ The women, many having been detained for several months, stood naked in a corridor and went on hunger strike in a bid to gain recognition for the immense suffering inflicted on them and their children.

During the year, PICUM also recorded a number of instances in which migrants themselves protested against their treatment in detention centres. As undocumented migrants are typically detained in closed and concealed facilities, the public knows little about the conditions and day-to-day realities of those families and individuals forcibly held in administrative detention. As some member states sought to prohibit civil society from gaining access to detention facilities during 2008, the public's ability to monitor the conditions in detention suffered a further decline. Detained migrants have few means to communicate with European society and engage in the public discourse which deciphers their fate. This frustration coupled with inhumane conditions and undefined detention periods led to a number of protests in detention facilities. PICUM's monitoring of these protests illustrates a clear relation between inadequate conditions, abuse by detention guards and those centres in which protests most frequently occur.

For example, the conditions of migrant detention centres in Turkey, described by Human Rights Watch as 'indefinitely inhumane',¹⁴⁵ sparked a number of protests by detained migrants. The Kumkapi detention centre in Istanbul was the scene of several revolts during the year as migrants protested abuse by Turkish authorities, a lack of basic medical care and malnutrition.¹⁴⁶ In June, a riot which broke out in a detention facility in Kirklareli resulted in the shooting of a Somali man by Turkish authorities.¹⁴⁷ In France, the Vincennes

142 Anil Dawar, "Yarl's Wood child detainees suffering emotional damage, report says", *The Guardian*, available at <http://www.guardian.co.uk/uk/2008/aug/22/immigration.childprotection>. (Cf. PICUM Newsletter September 2008.)

143 *Ibid.*

144 Emily Dugan, "Mothers detained in immigration centre hold 'naked' protest", *The Independent*, 11 April 2008, available at <http://www.independent.co.uk/news/uk/home-news/mothers-detained-in-immigration-centre-holdnaked-protest-807802.html>. (Cf. PICUM Newsletter May 2008.)

145 Human Rights Watch, "Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union", Human Rights Watch, New York, 2008; available online at <http://www.hrw.org/en/node/76211/section/1>.

146 Migration Policy Group, *Migration News Sheet*, November 2008, p.28. (Cf. PICUM Newsletter December 2008.)

147 "One dead in migrant centre riot in Turkey", *The International News*, 12 June 2008, available at <http://thenews.com.pk/updates.asp?id=47338>. (Cf. PICUM Newsletter August 2008.)

Detention Centre was destroyed by fire in June following protests which broke out following the death of a Tunisian detainee.¹⁴⁸ The living conditions in Vincennes had been criticised by NGOs and governmental agencies, both of whom had predicted the likelihood of a violent reaction by detainees.

Many public sector employees faced increasing pressure in 2008 to regulate immigration status in the course of their work. PICUM reported on several instances where social workers, health care providers and even police forces openly criticised attempts to involve them in the current punitive discourses relating to migration highlighting that such duties contravened their ability to serve and protect the most vulnerable members of society. In one such example, Spain's SUP - Sindicato Unificado de Policía (National Police Union) issued an official communication voicing opposition to their amplified involvement the forced detention and expulsion of 'irregular' migrants who were not 'criminals' and did not warrant being treated 'as an animal'.¹⁴⁹

9. Criminalization of Undocumented Migrants and Their Advocates

Italy was the scene for the most xenophobic developments regarding undocumented migrants, with the Berlusconi government's utter disregard and contempt for migrants' rights fuelling some of the most barbarous acts Europe has seen for generations.

Silvio Berlusconi lost no time in reassuring those 'post-fascist' supporters of his electoral campaign



The UK and Italy introduced restrictive legislation to criminalise undocumented migrants, while attacks against human rights defenders were evident in France and Belgium.

of his intent as Prime Minister by labelling undocumented migrants an 'army of evil' on his very first day back in office on 15 April 2008.¹⁵⁰ The Lega Nord (Northern League), a group who in 2005 declared that undocumented migrants and asylum seekers should be 'shot in their boats', helped usher Berlusconi's return to power by supporting his majority in both parliamentary chambers of the Italian government. The Berlusconi government proceeded to weaken established protections against expulsion, and presented plans which made undocumented residence a criminal offence punishable by imprisonment.¹⁵¹

Following intense condemnation from the Vatican, UNHCR and the European Parliament, Berlusconi attempted to appease critics of his criminalising

148 "Un incendie détruit le centre de rétention de sans-papiers de Vincennes", *Le Monde*, 22 June 2008, available at http://www.lemonde.fr/societe/article/2008/06/22/un-incendie-detruit-le-centre-de-retention-de-sans-papiers-de-vincennes_1061471_3224.html?xtor=RSS-3208. [Cf. PICUM Newsletters July and September 2008.]

149 "El Sindicato Unificado de Policía critica que se trate a los inmigrantes ilegales 'como animales'", *El Día*, 18 September 2008, available at <http://www.eldia.es/2008-09-18/sociedad/335-Sindicato-Unificado-Policia-critica-trate-inmigrantes-ilegales-animales.htm>.

150 Malcolm Moore, "Silvio Berlusconi says illegal migrants are 'army of evil'", *Telegraph*, 16 April 2008, available online at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2008/04/16/witaly116.xml>.

151 Elitsa Vucheva, "Italy's Anti-Immigration Push", *Business Week*, 22 May 2008, available at http://www.businessweek.com/globalbiz/content/may2008/gb20080522_247572.htm?chan=globalbiz_europe+index+page_top+stories. [Cf. PICUM Newsletter June 2008.]

law by making a distinction between the 'irregular presence' and 'eventual criminal behaviour', but as noted by Italian Interior Minister Roberto Maroni 'The law is already in force, it considers illegal migration a crime, it has been approved two weeks ago by the Government with unanimity and bears Berlusconi's signature'.¹⁵² Under this legislation which received the approval of the Italian senate, 'illegal immigration' was punishable by six to four years in prison and property rented to an undocumented immigrant may be confiscated.

In the UK, a Criminal Justice and Immigration Bill came before the House of Commons which created a new immigration status for 'undeportable foreign nationals' who have committed an offence.¹⁵³ The new bill allows the Secretary of State to label anyone who cannot be deported for human rights reasons but who has had a two-year prison sentence (in the UK or abroad), or been sentenced to any term of imprisonment for a 'specified' offence (including criminal damage, public order offences and theft) as a 'foreign criminal'.

These 'foreign criminals' and their families are not granted leave to remain but are to have a special 'limbo' status. They may be tagged, required to live in specified places and to report to police or immigration officers, may be prevented from working and required to live on the National Asylum Support Service (NASS) which provides accommodation and basic subsistence worth about £35-40 per week and cannot be paid in cash. The European Court of Human Rights has condemned long-term immigration limbo in a number of cases because of the adverse effects on private life, including rights to work, to move freely, to have access to ordinary social and welfare entitlements

and to marry and build a home. This bill follows the introduction of the 2007 UK Borders Act which allows for mandatory deportation of all foreign criminals sentenced or convicted of any offence specified by regulations as 'particularly serious' – a category which the Institute for Race Relations warned includes kicking a phone box, swearing at a policeman or stealing a pint of milk.¹⁵⁴

Attacks Against Airlines Passengers Denouncing Abuses of Undocumented Returnees

"Thoughts begin racing through my mind; What should I do? Do nothing like the others? Take action? As someone interested in human rights and the rights of foreigners in Europe, I get up, and call on the closest flight attendant. I protest firmly and loudly, reminding her that we are on a commercial flight and that we cannot fly under such conditions".¹⁵⁵

Serge Ngajui Fosso

The entire economy class were ordered off a British Airways flight from London to Lagos in March following their objection to the ill-treatment of a deportee on board by security personnel. The London Independent reported that the man, held down in his seat by four or five police officers while other passengers filed on board, cried out in broken English that he was afraid he would die if he were sent back to Nigeria.¹⁵⁶ The flight captain made the extraordinary decision to clear 136 economy class passengers from aircraft which then departed from Heathrow with the deportee aboard. Police then arrested Ayodeji Omotade, whom they considered

152 "Berlusconi backs down on jailing immigrants", *EurActive.com*, 4 June 2008, available at <http://www.euractiv.com/en/mobility/berlusconi-backs-jailing-immigrants/article-173018>. (Cf. PICUM Newsletter July 2008.)

153 Frances Webber, "Limbo status is made official", *IRR News*, 3 January 2008, available online at <http://www.irr.org.uk/2008/january/ha000005.html>. (Cf. PICUM Newsletter February 2008.)

154 *Ibid.*

155 Serge Fosso's Blog, "'Parce que j'ai osé réagir'", available at <http://www.sergefossomaverite.blogspot.com>.

156 Andy McSmith, "'Nigerians call for a boycott of BA after deportation'", *The Independent*, 21 April 2008, available online at <http://www.independent.co.uk/news/uk/home-news/nigerians-call-for-boycott-of-ba-after-deportation-812649.html>.

the ringleader of the passengers' protest, held him in custody for 10 hours, confiscated all of his money and left him penniless outside Heathrow Terminal. The treatment and the lifetime ban he has received from British Airways fuelled a boycott campaign of the airline in both Nigeria and the UK.

In April 2008, passengers boarding a Brussels Airlines flight from Brussels to Kinshasa spoke out against the treatment of a Cameroonian national by four policemen who they reported were attempting to 'smother him' to subdue his protests. Three objecting passengers were removed from the flight, some in handcuffs. One of those removed, Serge Ngajui Fosso, suffered injuries at the hands of Belgian police who detained him for over ten hours. He has also been blacklisted by SN Brussels airways. Fosso, whose case has been taken up by the Human Rights League, has spoken very publically about the incident and operates a blog tracing his campaign for justice titled 'Because I dared to resist'.¹⁵⁷ While the passengers' action prevented the intended deportation of Ebenizer Sontsa on 27 April, the Cameroonian hung himself ten days later using the bed sheets in an isolation cell of Belgium's Merksplas detention centre. Police had to be called to quell the ensuing riot by other detainees.

Notably, 2008 marked the tenth anniversary of the death of twenty-year-old Semira Adamu who was suffocated by Belgian immigration officials on a deportation flight from Brussels airport. Having fled Nigeria to avoid an arranged marriage, Semira was denied asylum in Belgium and died while officers attempting to deport her used "the cushion technique" to stifle her cries on board.

When Good People Are Forced 'To Do Nothing'

Across Europe, NGOs with a long history of providing humanitarian and legal assistance to those in detention were subject to obstruction and vilification by the national authorities during 2008.

The increase used of migrant detention across Europe has no doubt been facilitated by a coinciding decrease in public access to these centres. Restricting the ability of NGOs, journalists and other civil society actors to access those in detention has served as an effective tool in desensitising the public to the human realities and reducing the accountability of state and enterprise involved.

In October, Doctors Without Borders (MSF- Médecins Sans Frontières) ended their activities in the harbour of the Italian island of Lampedusa following a refusal by the Italian Interior Ministry to renew their Memorandum of Understanding.¹⁵⁸ The international humanitarian organisation, which provides emergency medical assistance in over 70 countries worldwide including Burma and Zimbabwe, blamed the Italian government of preventing their team from working effectively. Loris de Filippi, MSF Operational Manager in Italy, found it unacceptable that 'while MSF medical teams are able to respond to the same needs in many different contexts, also in very difficult and tense situations, we are practically forced to stop our medical and humanitarian assistance on the territory of a European state'.¹⁵⁹ MSF expressed concern about the lack of medical screening at Lampedusa harbour following their departure,

157 Serge Fosso's Blog, op. cit.

158 Medecins sans Frontieres, "Lampedusa, MSF costretta a chiudere i progetti a causa del diniego del Ministero dell'Interno", 31 October 2008, available at http://www.medicisenzafrotiere.it/msfinforma/comunicati_stampa.asp?id=1856.

159 *Ibid.*

particularly due to the notable increase of migrants' suffering conditions such as shock, hypothermia and skin burns.

In France, the announcement by Immigration Minister Hortefeux in July of new immigration legislation to come into force as of January 2009 was denounced by many organisations as 'a bombshell'.¹⁶⁰ While restricting access to aid for migrants in so-called 'administrative' detention centres, the new text contained provisions to restrict associations which help these migrants on grounds of neutrality and of confidentiality. Concerned organisations, such as Cimade (Ecumenical Service of Mutual Aid) and SOS Support for Undocumented Migrants consider this decree as a step by the government to keep them quiet.¹⁶¹ A total of ten French associations joined together to launch an appeal before the State Council on the prohibition of national and local level joint action by civil society associations to provide assistance to those in detention. The decree, which imposed serious sanctions on the rights of migrants in administrative detention centres, illustrates a direct attempt by the French government to silence those NGOs who had vocally opposed recent draconian initiatives by curbing their role in the centres.¹⁶² The banishment of organisations such as CIMADE, who have held an active presence in internment camps since the start of the Nazi occupation in the 1940s, is further evidence of the alarming regression occurring in France.

Clamping Down on NGOs for Damages Occurring in Detention Centers

NGOs critical of the conditions of migrant detention in France who urged for the abolition of these centres in France were increasingly blamed by authorities when detained migrants, protesting against their confinement, damaged the centres in which they were held.

A revolt of migrants in a detention centre at Mesnil-Amelot (Seine-et-Marne) on 2 August spurred Minister Hortefeux to lodge a complaint against the association 'SOS Soutien aux Sans Papiers' who he claimed 'incited the revolt'. Mr. Hortefeux's complaint leaned heavily on the fact that the organisation had called for the burning of these detention centres, a comment that was cited in *Le Parisien* but later denied by Rodolphe Nettié, president of the association who in turn, accused Hortefeux of diverting attention away from the conditions of the centres by concentrating on external actors and attempting to find a scapegoat.

A similar accusation was levelled against the Education Without Borders Network (RESF) by Frédéric Lefebvre, spokesperson of Sarkozy's Union for a Popular Movement (UMP). Mr. Lefebvre accused the RESF of having a 'moral responsibility' for fires occurring within the Vincennes detention centre at Val-de-Marne on 22 June following the death of a Tunisian migrant.¹⁶³ Much controversy surrounded the death of the detainee: while police and officials said staff were in no way to blame for his heart attack, organisations protesting against the centre blamed its cruel, brutal and inhumane policies for the incident.¹⁶⁴ The two fires, which

160 "France: silence, on expulse!", available online at <http://www.afrik.com/article15170.html>. (Cf. PICUM Newsletter October 2008.)

161 *Ibid.*

162 GISTI, "10 associations déposent ensemble un recours contre le décret devant le Conseil d'État", 22 October 2008, available at <http://www.gisti.org/spip.php?article1268>. (Cf. PICUM Newsletter November 2008).

163 "Incendie de Vincennes: l'UMP s'en prend à RESF", *Associated Press*, available at <http://www.educationsansfrontieres.org/article14346.html>.

164 "Un incendie détruit le centre de rétention de sans-papiers de Vincennes", *Le Monde*, 22 June 2008, available at http://www.lemonde.fr/societe/article/2008/06/22/un-incendie-detruit-le-centre-de-retention-de-sans-papiers-de-vincennes_1061471_3224.html?xtor=RSS-3208.

were started simultaneously, badly damaged the buildings and while there were no serious injuries, twenty people were intoxicated by the fumes and transferred to hospital and fourteen others escaped. The UMP spokesman blamed the Education Without Borders Network, who were protesting nearby the centre at the time of the fires, alluding to police reports that the demonstration, organized shortly after the death of the Tunisian detainee, was 'not declared'.¹⁶⁵

10. Civil Society Responses

Despite authorities' attempts to guise the repressive measures waged against irregular migrants with claims of preventing criminality and increasing public safety, civil society and migrants themselves have reacted in strong protest to the pursuit and persecution of the undocumented. Civil society organisations played a prominent role in protecting the fundamental rights of vulnerable migrants, raising awareness about their situation and advocating for long-term and sustainable policy change.

Advocacy for Regularisation Programs

As policy debates regarding regularisation played out on the national scene, increased demands for the regularisation paths of undocumented workers were particularly evident throughout the year.

In Belgium, the year commenced with a series of demonstrations and silent protests to remind the interim government of pledges to address the situation of vulnerable migrants. Throughout the summer of 2008, public demands for a circular, or directive, to shorten the excessive waiting times for regularisation saw people taking to the



Authorities in Belgium, France and Ireland moved forward with proposals to regularise undocumented migrants, while an 'amnesty' was discussed in the UK. Calls for debate were evident in Switzerland and Spain while in Finland, churches took an active role in protecting migrants from deportation.

streets in protest and spurred a number of high profile public demands by undocumented migrants including hunger strikes and mounting construction sites and cranes. Upon taking office in April 2008, Belgium's new Immigration Minister Annemie Turtelboom rejected calls for a general pardon or regularisation stating that migrants were well aware of their situation by choosing to stay in Belgium in an undocumented situation. Her comments were labelled as intransigent and callous by numerous human rights groups.¹⁶⁶ Undocumented migrants' occupation of several Brussels buildings

165 "Incendie de Vincennes: l'UMP s'en prend à RESF", *Associated Press*, op. cit.

166 Migration Policy Group, *Migration News Sheet*, December 2008, p.9. (Cf. PICUM Newsletter January 2009.)

throughout the year, including churches, disused office buildings and a university sports hall, received significant media attention and public support.

In France, the government released a circular on 7 January 2008 outlining proposals to regularize undocumented migrants employed in certain sectors experiencing worker shortages, such as catering and construction. Undocumented workers held a wave of strikes to lobby for prompt implementation of the circular while civil society organisations and many trade unions held joint protests to demand negotiations with the Ministry of Work to allow for regularisations among 150 professions with labour shortages.¹⁶⁷ In keeping with his government's message on the EU stage, French Immigration Minister Brice Hortefeux responded against a possibility of a widespread regularisation of irregular workers stating his support was limited to a discretionary case-by-case basis for undocumented workers.

In February, over 2,000 people poured onto the streets of Seville in southern Spain as part of a nationwide manifestation organised by the National Network for the Rights of Immigrants (Red Estatal por los Derechos de los Inmigrantes - REDI).¹⁶⁸ Showing their support for the 'immediate regularization for all immigrants', the demonstrators denounced the precarious situation of undocumented migrants and the expulsions conducted by the Spanish government. Civil society organisations in the Netherlands organised a bus tour to travel through major cities and collect signatures demanding the regularisation of

'borderline cases' involving migrants who were unsuccessful in the asylum process but found themselves ineligible for the 'General Pardon'.

In Bern, Switzerland, 2,000 people demonstrated during the month of September for the rights of undocumented migrants residing in Switzerland, calling for collective regularization, a halt to deportations and the application of legal articles regarding labour exploitation and family reunification.¹⁶⁹ The following month, a dozen pro-migrants' rights associations in the Swiss canton Vaud also joined forces to advocate for the regularization of the estimated 15,000 undocumented migrants working in that region and speak out against proposals to link immigration control mechanisms with administrative services.¹⁷⁰

In a highly positive development, Migrant Rights Centre of Ireland (MRCI) successfully campaigned for a 'bridging visa' to enable migrant workers who had become undocumented through no fault of their own the chance to legally re-enter the workforce and regularise their status.¹⁷¹ The Ministry of Justice accepted the programme, recognising the validity of a 'bridging visa' to fight labour exploitation and place workers on equal terms with their employers, enabling them to lodge official complaints and seek new employment should they so wish.

London's Mayor Mr Boris Johnson announced his plans to study the potential benefits of an amnesty for irregular immigrants as a 'sensible' solution to deal with the 400,000 people living and working irregularly in the city. His intention

167 Reuters France, "Appels à la régularisation des travailleurs sans papiers", 21 April 2008, available online at <http://fr.reuters.com/article/topNews/idFRMAL13228020080421>. (Cf. PICUM Newsletter May 2008.)

168 No Fortress Europe, "Unas 2.000 personas convocadas por REDI reclaman en Sevilla una 'regularización inmediata para todos los inmigrantes'", 25 February 2008, available at <http://www.no-fortaleza-europa.eu/showPage.jsp?ID=2730&PR=0&AREA=2518&GRP=0&SITE=0&CH=1&TYPE=1&FILENAME=showPage.jsp&INTERNAL=1&ISSUE=0&POPUP=0>. (Cf. PICUM Newsletter March 2008.)

169 "Sans-papiers: environ 2000 personnes ont manifesté à Berne", *Romandie News*, 13 September 2008, available at http://www.romandie.com/infos/ats/display2.asp?page=20080913181517629172194810700_brf043.xml. (Cf. PICUM Newsletter October 2008.)

170 "Echos de l'ATS pour les 3ème Etats Généraux Vaudois", *Le Courrier*, 27 October 2008, available at <http://www.lecourrier.ch/index.php?name=NewsPaperPDF&file=download&edition=2008/10/27/2.Geneve.pdf>. (Cf. PICUM Newsletter November 2008.)

171 For more information on this campaign, visit Migrant's Rights Centre Ireland, "Policy work: Bridging Visa Campaign", available at http://www.mrci.ie/policy_work/IrregMigrant_UndocuMigrant.htm. (PICUM Newsletter March 2008.)

to regularise undocumented migrants who had been resident in Britain for five years and passed a citizenship test, earned him the condemnation of his Conservative party colleagues as well as the Labour opposition.¹⁷²

Church Asylum

Churches in Europe have provided asylum from arrest and legal action since the middle ages and were increasingly used in 2008 as sanctuaries by undocumented migrants facing persecution by immigration authorities.

In Finland, Lutheran churches took an active stand against the deportation of several undocumented migrants by providing sanctuary and assisting with legal appeals. The churches' assistance to an undocumented Iranian Kurd who had sought refuge there following the issuance of a deportation order had a positive outcome when the Helsinki Administrative Court overturned the Directorate of Immigration's decision to deport her. Assisting Naze Aghai with living arrangements, the church also helped her to submit a new asylum application and follow up with the appeals procedure. The churches' support of Aghai brought a lot of publicity to her plight and enabled her to eventually receive a fair outcome. The case has set a precedent in Finland for undocumented migrants to seek sanctuary from a church.

In June 2008, semi-paralysed 67-year-old Maria Kirbasova sought the support of the church to prevent her deportation from Finland. The Finnish Immigration Service had rejected the request by the woman and her daughter for a family reunification permit ruling that family ties had been broken from their long separation. Kirbasova,

who arrived in Finland to stay with her daughter following her husband's funeral, has no relatives in Russia to provide her with care. Return to Russia was made even more difficult due to the fact that Kirbasova is an active opponent of the conflict in Chechnya and founder of the Committee of Soldiers' Mothers, which seeks to expose human rights violations within the Russian military. The Russian woman was supported by her daughter Kermen Soitu who had provided housing and covered medical expenses since her arrival to Finland. The Helsinki Administrative Court reopened her case after the initial deportation decision sparked a public outcry in Finland, with several high-ranking politicians calling for Kirbasova to be allowed to remain in Finland. In June 2009, the Finnish Immigration Service overturned their decision and granted Ms Kirbasova a residence permit.

Guidelines released by the Finnish Ecumenical Council have urged other Christian parishes to help if someone asks for assistance, fearing that their life is in danger. The provision of sanctuary to undocumented migrants by churches in the US and Canada has given them a central role in solidarity movements at local and national level. America's 'New Sanctuary Movement' has witnessed the mass mobilisation of religious leaders, congregations and faith-based organizations of all denominations in a united effort to accompany and protect immigrant families facing the violation of their human rights in the form of hatred, workplace discrimination and unjust deportations.¹⁷³ In Montreal, Canada, Kadir Bealouni, an Algerian undocumented migrant who has been living in a church rectory in Canada for over two years, began broadcasting his monthly radio show in 2008 which he titles 'the hour of power'.¹⁷⁴

172 Steven Swinford, "Boris Johnson calls for migrant amnesty", *The Sunday Times*, 23 November 2008, available at <http://www.timesonline.co.uk/tol/news/politics/article5213454.ece>.

173 For more information, visit <http://www.newsanctuarymovement.org/movement.html>.

174 "Refugee spends third year in church sanctuary", *Montreal Gazette*, 12 January 2009, available at <http://www.soutienpourkader.net/files/RefugeeSpendsThirdYear.pdf>.

D Institutional Recognition of Undocumented Migrants' Human Rights by International Bodies

1. United Nations

60th Anniversary of the Universal Declaration of Human Rights

Throughout 2008, momentum built for the commemoration of the Universal Declaration of Human Rights (UDHR) which marked its sixty year anniversary on 10 December 2008. The ratification of this seminal document by the United Nations General Assembly in 1948 was the first international confirmation of universal rights for all human beings. To strengthen recognition of inherent dignity and equality, the UN ran a celebratory campaign throughout 2008 entitled *Dignity and justice for all of us* which oversaw many high profile events and a renewed enthusiasm for disseminating the UDHR so it could be 'known, understood and enjoyed by everyone, everywhere'.¹⁷⁵

The UDHR is the founding document on which all seven UN human rights conventions are based. The declaration's thirty articles outline the view of the United Nations on the human rights that are guaranteed to all people. Even if the UDHR was developed as a non-binding statement regarding the universality of human rights, in 1968 the United Nations International Conference on Human Rights agreed that it "constitutes an obligation for the members of the international community" for all persons.¹⁷⁶ Nowadays the UDHR is considered to

be part of customary international law and is thus intended to be binding on states.

The preamble of the Declaration bares clear reminder to the motivations behind its development in 1948. The 'barbarous acts' of the Second World War which had 'outraged the conscience of mankind' impelled the codification of basic protection for vulnerable and ostracized individuals against abuses of power. The Universal Declaration of Human rights exists for everybody, 'without distinction of any kind' including 'status'. Reportedly the most translated document in the world, the declaration's language of inherent dignity and inalienable rights is rarely verbalized in the migration control discourse or realized by undocumented migrants living a life of fear and destitution in the margins of developed society.

In February 2008, PICUM attended a parliamentary hearing in Sweden to advocate for an improvement of undocumented migrants' access to health care at which the UN Special Rapporteur on the Right to Health, Prof. Paul Hunt, delivered an address confirming states' legal obligations to undocumented migrants under international human rights law. Illustrating the vital role of human rights in protecting vulnerable individuals against abuses of power, he noted how mistreatment occurring in democratic society is often 'obscured by subtle legal arguments and compelling political justification'. While such rationale is frequently

175 UN Secretary General Ban Ki-Moon, "Preamble to the Universal Declaration of Human Rights: 60th Anniversary Special Edition", available online at http://www.un.org/events/humanrights/udhr60/pdf/60th_booklet_final.pdf.

offered by authorities to justify abuses against undocumented migrants, it was vital to recognise that 'they are precisely the sort of disadvantaged group which human rights were designed to protect'. Six decades after the ratification of the UDHR, its established principles of universality, indivisibility and non-discrimination remain vital to ensuring the protection of societies most vulnerable and marginalised members. In the words of the UN Special Rapporteur, here is the 'historic role of human rights':

"To expose – and challenge – the abuse of power, wherever it occurs and whatever form it takes. Whether the abuse is at the hands of a dictator or democracy. Whether it is deliberate or accidental. Whether those affected are popular or unpopular. Whether they are visible – or hidden".¹⁷⁷

Criticism from Various UN Bodies on EU Member States' Treatment of Undocumented Migrants

The systematic deprivation of undocumented migrants' freedom in many EU countries warranted strong criticism from several UN human rights experts and monitoring bodies. As a result of current policies, irregular migrants are often obliged to pass two to three years in prison without having committed any crime.¹⁷⁸

Following an official mission to Italy in November, the **United Nations Working Group on Arbitrary Detention** expressed 'significant human rights

concerns with regard to the centres in which migrants and asylum seekers are kept' and questioned the legal basis for their detention.¹⁷⁹ The Group's spokesman referred to the 'alleged' security and crime threats which Italian law enforcement and justice 'perceived as critical' and 'thus requiring extraordinary measures' regarding the limitation of liberty. In its concluding statement the Working Group made a keen observation that 'The strength of the commitment of a government to human rights – among them due process guarantees – is really put to test when faced with a real or perceived emergency'.¹⁸⁰

In her first news conference as **UN High Commissioner for Human Rights**¹⁸¹, Navanethem Pillay denounced the increased detention of migrants in industrialised nations. Noting that more effective action was needed to reduce this hidden, large-scale violation of human rights, she denounced the maximum 18-month detention period allowed for by the EU Returns Directive as 'excessive' fearing that EU member states would make it the rule rather than the exception.

The detention issue was also taken up by the **UN Committee Against Torture (CAT)**, a body of ten independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State parties. In February 2008, CAT released the list of questions it wants Greece to answer regarding the detention of undocumented migrants when its record on torture is examined in November 2009. In addition to disaggregated data on the number of undocumented migrants detained

176 UNHCHR, "The International Bill of Human Rights", Fact Sheet No.2 (Rev.1), available online at <http://www.unhcr.org/refworld/publisher/OHCHR,,,479477480,0.html>.

177 UN Special Rapporteur Paul Hunt, speaking at the Swedish Parliamentary Hearing on the Right to Health for Undocumented Migrants, 13 February 2008, text available online at http://www.snabber.se/files/vardforalla/paul_hunts_tal_hearingen_080213.pdf.

178 "L'ONU dénonce la détention abusive des immigrés clandestins dans le monde", *Le Monde*, 12 March 2008, available online at http://www.lemonde.fr/organisations-internationales/article/2008/03/12/l-onu-denonce-la-detention-abusive-des-immigres-clandestins-dans-le-monde_1021848_3220.html#ens_id=1021856. [Cf. PICUM Newsletter April 2008.]

179 UNHCR, "Statement by the UN Working Group on Arbitrary Detention at the Conclusion of its Mission to Italy", available online at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/FC935BD49C6C6998C125750100693B4C?opendocument>.

180 *Ibid.*

in the preceding three years, the Committee demands a response from Greek officials 'on reports that undocumented migrants are detained in overcrowded facilities with poor living and sanitary conditions, are not informed of their rights, and lack any effective means of communication with their families and their lawyers.'¹⁸² Greece's UNHCR Office also called on the government to improve its care for unaccompanied minors finding that that Greek authorities were failing its obligations to adequately care for them including serious shortcomings with regard to access to the asylum procedure, the duration of the asylum procedure, the quality of reception conditions and the number of reception facilities available.¹⁸³

Having examined the Swiss report on their application of the International Convention for the Elimination of Racial Discrimination, the **UN Committee on the Elimination of Racial Discrimination (CERD)** criticised the state's treatment of foreigners and minorities in its final recommendations saying that Switzerland could do better in their fight against racism.¹⁸⁴ The criticism points especially to the Swiss treatment of foreigners by the police, noting their increase in excessive use of force. It also stated that little significant progress had been made since 2002 to combat racism against minorities, including travellers, migrants and asylum seekers. As a result, CERD has suggested the creation of an independent national institution in Switzerland to defend human rights.

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** was developed to enforce the provisions of those instruments designed to ensure the full realization of human rights by combating the particular discriminations against women in particular areas such as political rights, marriage and the family, and employment. The Committee which oversees the implementation of the convention considers reports by states parties and seeks to engage in a constructive dialogue pointing out the state's shortcoming, or encouraging particular progress, through a series of questions and comments.

France was among the first European countries to be reviewed under CEDAW in 2008 and Committee members expressed concern regarding the 'restrictive immigration laws and policies' now in place in France which prevent many immigrant women from qualifying for residence permits.¹⁸⁵ Concerns were raised regarding France's restrictive reunification practices, which mostly affect women, such as DNA tests, language proficiency exams and tests relating to 'knowledge of the values' of the Republic. In its 41st session held in July, the Committee expressed similar concern regarding the UK's proposals to introduce pre-entry language tests for those applying for spouse dependent visas which risk discriminating against vulnerable migrants, especially women.¹⁸⁶ The UK government was urged to review its 'no recourse to public funds' policy for undocumented migrants to ensure the protection of and provision of support to victims of violence.

181 Stephanie Nebehay, "Immigrants among millions unlawfully detained – Pillay", *Reuters*, 2 October 2008, available online at <http://www.alertnet.org/thenews/newsdesk/L2538064.htm>.

182 UN Committee Against Torture, "List of issues prior to the submission of the combined fifth and sixth periodic reports of Greece", UN Doc. CAT/C/GRC/Q/5, 28 February 2008, available online at <http://www2.ohchr.org/english/bodies/cat/docs/reportingprocedure/CAT-C-GRC-Q-5.doc>.

183 "Plea for child migrant support: UNHCR calls on state to give priority treatment to unaccompanied children arriving at borders", *Kathimerini English Edition*, 19 June 2008, available online at http://www.ekathimerini.com/4dcgi/_w_articles_politics_100002_19/06/2008_97804. [Cf. PICUM Newsletter July 2008.]

184 CEDAW, "Concluding observations of the Committee on the Elimination of Racial Discrimination: Switzerland", UN Doc. CERD/C/CHE/CO/6, available online at <http://daccessdds.un.org/doc/UNDOC/GEN/G08/441/92/PDF/G0844192.pdf?OpenElement>.

185 CEDAW, "Concluding observations of the Committee on the Elimination of Discrimination against Women: France", UN Doc. CEDAW/C/FRA/CO/6, 8 April 2008, available online at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/298/26/PDF/N0829826.pdf?OpenElement>.

186 CEDAW, "Fifth and sixth periodic reports: United Kingdom of Great Britain and Northern Ireland", available online at <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.GBR.CO.6.pdf>.

Also in December 2008, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) adopted General Recommendation 26 on Women Migrant Workers, marking a powerful affirmation that every migrant woman, including those who are undocumented, must be protected from all forms of discrimination under CEDAW. Noting the particular vulnerability of undocumented female workers to exploitation and abuse because of their limited access to basic labour rights and fear deportation, the Committee stressed State Parties obligation to protect the basic human rights of undocumented migrant women. The recommendation highlights the grave abuses and acts of discrimination that female migrants face and clarifies the standards set out in the Convention that are relevant to these abuses. While using CEDAW to further women migrant's rights and advance equality in all spheres, the Committee also encourages State Parties to ratify other international instruments which protect the human rights of undocumented migrant women, in particular the International Convention on the Protection of All Migrant Workers and Members of their Families.¹⁸⁷

The plight of migrant workers and their families was highlighted in a joint statement by UN Special Rapporteur on the Human Rights of Migrants, Mr Jorge Bustamante and the Chairman of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families Mr Abdelhamid El Jamri, to mark International Migrants Rights Day on 18 December 2008.¹⁸⁸ Their statement highlighted the international community's tendency to focus upon the economic dimension of migration while failing to address other important aspects of the migration question,

such as the rights of migration workers and the members of their families. To adequately address the situation of migrant children, both unaccompanied and with their families in an undocumented situation, they urged governments to ratify the Convention on the Protection of Migrant Workers and their families.

2008 marked the implementation of the Universal Periodic Review (UPR), a new mechanism which enables the **UN Human Rights Committee** to examine the human rights record for each of the 192 UN Member State once every four years.¹⁸⁹ Accordingly, the Human Rights Committee examines the human rights situations in the member state and considers the authorities' fulfilment of their human rights obligations. The reviews are based on three sources of information: a 'national report' provided by the state under review; information contained in the reports of UN experts and treaty bodies; and finally, information submitted by other stakeholders including NGOs and national human rights bodies. In advance of each periodic review, the Committee releases a list of issues to which the state must respond in its report.

In its first session held in 2008, the UN Committee of Human Rights criticised France for its treatment of foreigners and undocumented migrants, pointing to a series of violations of liberty especially within unsuitable waiting areas and overcrowded prisons.¹⁹⁰ Reporting conditions of overcrowding, lack of facilities for personal hygiene, and inadequate food and medical care, the Committee expressed concern regarding the ill-treatment of migrants by officials in France and the lack of safeguards to adequately ensure

187 CEDAW, "General recommendation No. 26 on women migrant workers", UN Doc. CEDAW/C/2009/WP.1/R, 5 December 2008, available online at http://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf.

188 United Nations, "Statement by the Chairman of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Mr. Abdelhamid El Jamri and the Special Rapporteur on the Human Rights of Migrants, Mr. Jorge Bustamante on the occasion of International Migrants Rights Day 2008", 18 December 2008, available at <http://www.unhcr.ch/hurricane/hurricane.nsf/0/F718ED32471C2E92C125752300559FE7?opendocument>.

189 For full details on the Universal Periodic Review visit: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>.

190 Human Rights Committee, "Concluding observations of the fourth periodic report of France", UN Doc. CCPR/C/FRA/CO/4, 31 July 2008, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs93.htm>.

that undocumented migrants are not returned to countries where they face the real risk of abusive treatment.

In August 2008, the Committee outlined that it would take up the issue of arbitrary detention and expulsion of migrants arriving in the Canary Islands with the Spanish government during their periodic review in 2009. Spain has been asked to explain its removal of safeguards during the asylum process and the lack of legal assistance provided to those in detention and the alleged expulsion of undocumented migrants from Spanish territory without the proper guarantees.¹⁹¹ The Spanish government will also be asked to comment on the reports of abuses during deportation, especially from the Spanish enclaves of Ceuta and Melilla. Within the document, the Committee affirmed to have some documents on the irregularities carried out by the Spanish government on repatriations of unaccompanied children. According to the Committee these children were repatriated after a long period of detention and without a judicial review.

2. Council of Europe

At European level, there were also a number of important developments in 2008 regarding the human rights of undocumented migrants.

The **Council of Europe's Commissioner for Human Rights**, Mr. Thomas Hammarberg, remained vocal in his criticism of the abuses and violations

perpetrated against undocumented migrants. In 2008, he clearly stated his concern that the criminalisation of undocumented migrants was corroding international legal principles and increasing human tragedy while failing to achieve its stated purpose of genuine migration control.¹⁹²

In September, he released a human rights report regarding migrants in the UK stating that 'Improvements must be introduced to strengthen effective respect for the rights of asylum seekers and immigrants in the United Kingdom'.¹⁹³ The treatment of Roma and undocumented migrants in Italy was also subject to the Commissioner's scrutiny, as he advised the Italian government that 'security concerns cannot be the only basis for immigration policy' and that the measures now taken 'lack human rights and humanitarian principles and may spur further xenophobia'.¹⁹⁴ Mr Hammarberg also criticised the decision to criminalise migrants' entry and irregular stay as a worrying departure from established international law principles: 'These measures may make it more difficult for refugees to ask for asylum and is likely to result in a further social stigmatisation and marginalisation of all migrants - including Roma'.

In November 2008, Mr Hammarberg presented his report on France, identifying problems concerning prison conditions, preventive detention, juvenile justice and rights of migrants.¹⁹⁵ Amongst other things, he criticised the situation of those detained at the border and in detention centres who are not given enough time to complete their asylum

191 Melchor Saiz-Pardo, "El Comité de Derechos Humanos de la ONU acusa a España de ordenar expulsiones arbitrarias de inmigrantes", *La Voz de Galicia*, 6 September 2008, available at http://www.lavozdeg Galicia.es/espaa/2008/09/06/0003_7116354.htm. [Cf. PICUM Newsletter October 2008.]

192 Council of Europe, Commissioner for Human Rights Thomas Hammarberg, "'It is wrong to criminalize migration'", 29 September 2008, available online at http://www.coe.int/t/commissioner/Viewpoints/080929_en.asp.

193 Council of Europe, "United Kingdom: Commissioner Hammarberg releases human rights report on asylum-seekers and immigrants", Press release 639[2008], available online at [https://wcd.coe.int/ViewDoc.jsp?Ref=PR639\[2008\]&Language=lan English&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE](https://wcd.coe.int/ViewDoc.jsp?Ref=PR639[2008]&Language=lan English&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE). [Cf. PICUM Newsletter October 2008.]

194 Council of Europe, "Italy: 'Immigration policy must be based on human rights principles and not only on perceived security concerns', says Commissioner Hammarberg presenting a special report", Press release 558[2008], available at <https://wcd.coe.int/ViewDoc.jsp?id=1328445&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>. [Cf. PICUM Newsletter September 2008.]

195 Council of Europe, "'French detention and immigration policies risk reducing human rights protection' says Commissioner Hammarberg in his report", 20 November 2008, available online at http://www.coe.int/t/commissioner/News/2008/081120FranceMemo_en.asp. [Cf. PICUM Newsletter December 2008.]

applications. He also observed that French immigration policy, in particular the quota of irregular migrants to be expelled, raises serious human rights concerns. He recommends that regularisation and family reunification procedures be more transparent and invites French authorities to consult national human rights structures and NGOs more systematically and protect their independence.

The **European Court of Human Rights** (ECtHR) celebrated the 10th anniversary of Protocol 11 which made the Court a single, full-time institution and granted individuals within the Council of Europe's jurisdiction, including undocumented migrants, the right to apply directly to the Court. With an increasing caseload overall, the court experienced a notable rise in requests for interim measures mostly in 'sensitive cases' concerning immigration law and the right of asylum.¹⁹⁶

In May, the **Committee on Migration, Refugees and Population** of the Council of Europe's Parliamentary Assembly (PACE) adopted a report underlining the necessity to put forward minimum standards of reception to be guaranteed by all countries of destination for 'boat people'. The report recalls that in 2007 alone, 51,000 people arrived on the coasts of Italy, Spain, Greece and Malta, many of them asylum seekers and refugees who 'lack legal avenues to enter Europe'. The report also expresses the Committee's major concern on the detention of immigrants and asylum seekers upon arrival.¹⁹⁷

3. European Union

European Parliament

The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) issued two reports in 2008 which underlined the particular vulnerabilities faced by undocumented migrants in detention, the exploitation of undocumented workers, and ways to uphold their rights.

The LIBE Committee released a report in January 2008 on the conditions in which migrants were held and the provisions and facilities available to them in 25 EU member states. Highlighting the needs of particularly vulnerable migrants, the report provides an overview of detention conditions in each member state and offers country-specific recommendations to improve the situation in these centres. While conditions were generally described as 'adequate', some of the centres visited were described as 'unacceptable, or even inhumane or degrading' where migrants suffered from overcrowding, a lack of privacy, and a lack of basic hygiene facilities.¹⁹⁸ Numerous difficulties existed related to health care and treatment for chronic disease while the solutions on offer for detainees with psychological or psychiatric disorders are inexistent, insufficient or inappropriate.¹⁹⁹ The lack of attention regarding post-traumatic and psychological disorders within the centres marked a key finding of the report; the vulnerabilities caused by conflicts in the migrants country of origin or traumatic voyage to Europe were increased in accordance with the length of time

196 Council of Europe, "The European Court of Human Rights Annual Report 2008: Provisional Edition", p. 5, available online at http://www.echr.coe.int/NR/rdonlyres/B680E717-1A81-4408-BFBC-4F480BDD0628/0/Annual_Report_2008_Provisional_Edition.pdf.

197 Parliamentary Assembly of Council of Europe (PACE), "Europe's 'boat-people': mixed migration flows by sea into Southern Europe", 20 May 2008, available online at <http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ID=777>. [Cf. PICUM Newsletter June 2008.]

198 European Parliament – DG Internal Policies, "'The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states'", REF: IP/C/LIBE/IC/2006-181, available online at http://www.libertysecurity.org/IMG/pdf_eu-ep-detention-centres-report.pdf.

199 *Ibid.*

they were detained. Detained children suffered from inadequate education and paediatric services whose provision was often linked to the residence status of parents.

In December, the LIBE Committee released a report of the situation of fundamental rights in the European Union from 2004-2008.²⁰⁰ The report, written by MEP Giustio Catania, marked an important moment in the mainstreaming of undocumented migrants' concerns at EU level: calling for particular attention to undocumented migrants' situation, the report also illustrates an increased understanding of the realities and violations they face in key areas of employment and children's rights. While calling on member states to ensure undocumented children may exercise their rights as defined in the UN Convention on the Rights of the Child, including the right to non-discrimination, the report makes a number of key points on the issue of irregular migrant labour in the EU. Affirming the growing commitment by a number of international and European institutions for the use of correct and non-discriminatory terminology regarding undocumented migrants, the report 'calls on the European institutions and Member States to stop using the term 'illegal immigrants', which has very negative connotations, and instead to refer to 'irregular/undocumented workers/migrants'. In referring to the proposed Employer Sanctions Directive due for consideration by the Parliament in early 2009, the report urges a

recognition by member states 'to the fact that most people who work without being in possession of the appropriate immigration documents are doing work which is legal and essential to Europe's economies, such as fruit picking, construction or maintenance work, and care of the sick, the elderly and children' and requests the establishment of a sanctions system which does not penalise workers instead of employers. Recognising that the very design of employment law is to protect those workers who find themselves in unfair employment situations, which is precisely the situation of undocumented workers, the report calls upon EU Member States to safeguard undocumented workers right to trade-union membership and ensure that can safely file a complaint against an exploitative employer without being threatened with expulsion.

In April, the European Parliament held a debate in its Strasbourg session on the EU's external action regarding irregular migrants and the role of FRONTEX. MEPs raised concerns over the number of deaths at sea, the scope of FRONTEX's mandate, and the actual level of responsibility sharing between member states. MEPs from all political groups called on the member states to provide FRONTEX with sufficient resources to achieve its mission. Interim Commissioner for Justice Liberty and Security Jacques Barrot said that real border management was needed as well as strengthened solidarity; human rights must be respected in the treatment of irregular migrants, he added.²⁰¹

200 European Parliament, "Report on the situation of fundamental rights in the European Union 2004-2008 (2007/2145(INI))," 5 December 2008, available online at: <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=A6-0479/2008>.

201 ECRAN Weekly Update 25 April 2008, "Debate on FRONTEX role and the EU's external dimension", available online at <http://www.ecre.org/.../ECRAN%20Weekly%20Update%2025%20April%202008.pdf>. (Cf. PICUM Newsletter May 2008.)

E Conclusion

This report sheds light on 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; monitoring and reporting on the situation at local level is an important first step in achieving accountability and change. By providing an alternative information source on undocumented migrants, 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.

The EU is battling against a low level of public interest and the declining turnout in European elections has recently brought about an increase of European Parliament representatives with a centre-right and anti-European affiliation. While its institutions are dismissed by many as bureaucratic entities, disconnected from the daily realities of Europe's 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 arrive at our borders in search of protection.

The European Union must remain true to the core values on which it was founded and not fall subject to populist and reactionary measures in an attempt to increase public support. The principles of human rights, democracy and rule of law enabled

the unification of Europe and remain obligatory requirements 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.

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 unskilled migrant workers within the EU and exploring paths to regularise those already here, guaranteeing equal rights to all workers regardless of status and finally, adhere to obligations under international human rights law and remove barriers which deny fundamental rights to migrants on the basis of status.

National governments must also address the damaging effect of policies developed in response to irregular migration such as irregular entry, visa overstaying and workplace exploitation. To reach their stated aim, these policies must stem from a rights based approach and not simply re-victimise vulnerable migrants by prioritising immigration control mechanisms. 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.

While PICUM's newsletter developed in response to a gap in the monitoring and reporting of undocumented migrants' rights, examples of more responsible and informed reporting on the issue within the mainstream press are evident. The laws and procedures governing fundamental rights and the protection of refugees are complex and there are many different terms at use; notably 'illegal' is not one of them. Journalists have a responsibility to inform themselves about the intricacies of the migration issue, cease presenting asylum seekers and exploited migrants as criminals and instead, hold authorities accountable to the laws which govern their conduct.

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 ostracized, disenfranchised individuals and non-citizen groups from arbitrary abuses of state power. Establishing basic principles of inalienable human rights for all people everywhere, the human rights regime offers a comprehensive framework for governments and EU leaders. The EU member states have ratified each of the United Nations human rights conventions, with the exception of the Migrant Workers Convention, and are thus obliged to respect, protect and fulfil the rights of all who fall within their jurisdiction. Establishing a normative framework for humane and dignified treatment of all people, these instruments also outline core values and terms which can be integrated into political policies and discourse.

**PICUM - Platform for International Cooperation
on Undocumented Migrants**

Gaucheretstraat 164

1030 Brussels

Belgium

tel. +32/2/274.14.39

fax +32/2/274.14.48

www.picum.org

info@picum.org



PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS