

PICUM's Main Concerns About the Fundamental Rights of Undocumented Migrants in Europe in 2006



 PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

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Introduction

In 2006, PICUM reported on the violations of human rights of undocumented migrants in Europe its monthly newsletter. PICUM's newsletter focuses on news items and policy developments concerning the basic social rights of undocumented migrants in Europe and is produced in seven languages (English, French, Spanish, Portuguese, Italian, German and Dutch).

The following report is an overview of some of the main issues that PICUM has identified concerning the fundamental rights of undocumented migrants in 2006. This report is based upon issues that were highlighted in PICUM's newsletters throughout the past year, including the increasing numbers of deaths at EU borders, the various barriers undocumented migrants face in accessing health care services, the erosion of the right to fair working conditions, and the lack of protection for undocumented children. The report gives examples of measures that have resulted in a worsening of human rights standards for undocumented migrants in Europe and points out some of the different initiatives undertaken by EU member states and/or EU institutions that seem to move in this direction.

As PICUM is a network of civil society organizations and individuals working with undocumented migrants, its monthly newsletters also include references to initiatives undertaken by NGOs, unions, and other actors to raise awareness about the realities faced by undocumented migrants in Europe. This report thus also refers to examples of advocacy and actions to defend undocumented migrants' rights, ranging from demonstrations and the promotion of social and cultural events to the publication of surveys and research.

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a non-governmental organization that aims to promote respect for the human rights of undocumented migrants within Europe. PICUM also seeks dialogue with organizations and networks with similar concerns in other parts of the world.

PICUM promotes respect for the basic social rights of undocumented migrants, such as the right to health care, the right to shelter, the right to education and training, the right to a minimum subsistence, the right to family life, the right to moral and physical integrity, the right to legal aid, and the right to fair labor conditions.

PICUM is based in Brussels and works as a network of approximately 2,400 civil society organizations and individuals operating in most EU member states.

PICUM's monthly newsletter is unique in that it is the only newsletter that exclusively reports on the human rights of undocumented migrants in both EU member states and EU institutions, and is thus filling a much-needed gap in information about socially excluded migrants in Europe today. Nonetheless, it must be underlined that PICUM's newsletters are not exhaustive and as such are not able to cover all of the current civil society initiatives and policy developments concerning undocumented migrants in EU member states and institutions. As this report is a synthesis of the main issues identified in PICUM's newsletters, it does not aim to be an exhaustive overview of all of the relevant developments concerning the human rights of undocumented migrants in 2006. PICUM rather hopes that this report can contribute to a better understanding of the main concerns of human rights of undocumented migrants as well as the many faceted ways that civil society throughout Europe is responding to this situation of social exclusion.

Death at the Border

In 2006 an increasing number of undocumented migrants tried to reach Europe, through different routes and borders. The estimated number of people who died while attempting to enter European territory is very high: it is difficult to give some data because there are no official statistics and even the little unofficial data provided by NGOs are limited to some single member states but not to the whole of Europe. However, to give an idea of the dimension of the phenomenon, some estimates refer to more than 6,000 undocumented migrants who died while trying to reach the Canary Islands alone.

Even if such tragic events are covered by the media, it appears as if the role of the media is becoming relegated just to a count of bodies found after each shipwreck. There are very few in-depth analyses of the reasons why so many undocumented migrants risk their lives to come to Europe. The attention of the media is too often focused on the more tragic aspects, like the life-threatening conditions of the journeys, but no attention is given to other aspects such as the need for workers in various low-wage industries¹ or the positive role that these workers play in the development of both their countries of origin and destination.²

A consequence of the lack of in-depth analyses in the media is the lack of proper understanding by civil society and policy makers regarding the phenomenon of irregular migration. This leads to less and less concern from the general public as they are becoming increasingly desensitized to these reports of “faceless” and “anonymous” migrant deaths. Furthermore from the side of the policy makers this simplified knowledge is on some occasions used to build their personal consensus on xenophobic and anti-immigrants policies³.

Amongst the different routes utilized by undocumented migrants in their attempt to reach Europe, one which has grown continually in recent years is through the Canary Islands. It is estimated that more than 30,000 undocumented migrants tried to arrive in the Canary Islands in 2006. This figure, which was published by the Spanish daily *El País* in December 2006, is very close to the number of undocumented migrants who arrived in the Canary Islands over a three-year period, from 2002 to 2005.⁴ The increase in the numbers of undocumented migrants trying to reach Europe by any possible means has also corresponded to an increase in shipwrecks and deaths.⁵ Very often bad

¹ See a speech made by European Commission Vice-President Frattini, in which he stated that “The new key message is: Europe will need more migration, since labour and skills shortages are already noticeable in a number of sectors and they will tend to increase,” Speech at Harvard University, 7-11-2005, cited in Bureau of European Policy Advisers (BEPA) European Commission, *Migration and public perception*, 9 October 2006, page 3, (http://ec.europa.eu/dgs/policy_advisers/publications/docs/bepa_migration_final_09_10_006_en.pdf), accessed on 1 February 2007.

² In September 2006, the United Nations General Assembly convened its High Level Dialogue on Migration and Development. The various contributions of migrants to the process of development were underscored throughout the High Level Dialogue. However, as Migrant Rights International (MRI) has stated, “Most Member States did not offer any commitment to the protection of migrants’ human rights that it needed to legitimately develop as international policy and practice.” MRI has also expressed its disappointment at the significant exclusion of migrant voices themselves at the High Level Dialogue. See Migrant Rights International, *An International Statement for International Migrants Day, 18 December 2006*, pages 1-2, (<http://www.december18.net/web/docpapers/doc4823.doc>), accessed on 1 February 2007.

³ See for example, “In relation to migrants generally, a social construct has been forged between alarm and consensus. Media tend to create panic by relying heavily on covering emergency situations, such as mass boat arrivals at the Italian island of Lampedusa and the Canary Islands or the attempts to breach the Spanish enclaves of Ceuta and Melilla, which accommodates distortion and biased representations of immigrants or asylum-seekers,” Tana de Zulueta (Rapporteur), *The image of asylum-seekers, migrants and refugees in the media*, Doc. 11011, 10 July 2006, Committee on Migration, Refugees and Population, paragraph 44, (<http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc06/EDOC11011.htm>), accessed on 1 February 2007.

⁴ See J.A.R., *Canarias recibe 31.000 irregulares, casi los mismos que en cuatro años El Gobierno considera “espectacular” la llegada de cayucos en 2006*, 27 December 2006, *El País*.

⁵ According to the Asociación Pro Derechos Humanos de Andalucía’s Annual Report on Human Rights for 2006 (*Derechos Humanos en la Frontera Sur 2006*), the number of people who died while trying to reach Spain in 2006 was three times higher than in 2005; the number of people who attempted to arrive in Spain in 2006 was also three times higher than in 2005. (<http://www.apdha.org/documentos/informeinmigra2006.doc>), accessed on 1 February 2007.

weather conditions, together with the dangerous state of the small boats and rafts, have led to an increased number of accidents and deaths. There is no precise count of the number of people who died in 2006, but estimates made by the Spanish Red Cross and NGOs such as the Asociación Pro Derechos Humanos de Andalucía indicate that even if approximately 600 bodies had been found by the end of the year, the total number of undocumented migrants who died could be ten times higher.⁶

All southern European countries have been affected by the flow of people trying to reach Europe. There were also records of shipwrecks in all areas of the Mediterranean Sea, where many undocumented migrants lost their lives. In August, in a shipwreck near Lampedusa on the southern coast of Italy, more than 50 people died,⁷ while some months later, in October, in a similar tragedy, nearly 40 undocumented migrants lost their lives in a shipwreck off the southern coast of Greece.⁸ In both cases the few survivors reported that all of their mates had drowned trying to reach the coast. These shipwrecks were repeated many times off of Europe's southern coasts throughout the year.

In addition to trying to reach Europe via the Mediterranean Sea, undocumented migrants continue to attempt entry via land borders. There

are fewer statistics about these deaths but it is difficult to know if this is because of a real decrease or because there is lower media attention to these cases. PICUM has reported on some deaths of undocumented migrants over land borders, including two migrants who died from an explosion in a minefield on the Greek-Turkish border in July 2006⁹ and two Asian men who died from heat exhaustion in what appears to have been an attempt to enter the United Kingdom in the back of a vehicle.¹⁰

In addition to reporting on these silent tragedies, PICUM believes that it is important to raise awareness about human rights abuses on Europe's borders. A clear indication of this worrying trend towards the deterioration of human rights is exemplified in the incidents that occurred in late 2005 in the Spanish enclaves of Ceuta and Melilla.

In October 2005, six Sub-Saharan African undocumented migrants died from bullet wounds or were crushed in a stampede as they tried to cross the border between the Spanish enclave of Melilla and Morocco. Thirty immigrants were injured. They were all part of a larger group of approximately 1,000 immigrants who had tried to cross the border. Those who died of bullet wounds had been shot at by police stationed on the border.

⁶ This count has also been confirmed by Spanish authorities, in a radio interview with the deputy director of immigration in the Canary Islands on 28 December. See *Canaries migrant death toll soars*, 28 December, (<http://news.bbc.co.uk/2/hi/europe/6213495.stm>), accessed on 1 February 2007.

⁷ See *Immigrazione. Naufragio a Lampedusa: almeno 10 le vittime. Amato: una tragedia ma anche un crimine da stroncare*, 19 August 2006, Rai News 24, (<http://www.rainews24.rai.it/Notizia.asp?NewsID=63610>), accessed on 1 February 2007.

⁸ See *Group of 57 washed up on Aegean islet, another 40 feared to have drowned*, 10 November 2006, Kathimerini English Edition, (<http://www.ekathimerini.com/4dcgi/news/content.asp?aid=75259>), accessed on 1 February 2007.

⁹ See *Two killed by mines in Evros*, 9 December 2006, Kathimerini English Edition, (<http://www.ekathimerini.com/4dcgi/news/content.asp?aid=74101>), accessed on 1 February 2007.

¹⁰ See *Pictures of dead immigrants shown*, 21 August 2006, BBC News, (http://news.bbc.co.uk/2/hi/uk_news/england/essex/5272530.stm), accessed on 1 February 2007.

Various reports were published on these abuses and inquiries were made in the Spanish Parliament to clarify the events. In December 2005, a delegation of 17 Members of European Parliament visited Ceuta and Melilla and presented a report in January 2006 on their visit to the border and on the CETI (Immigrants Temporary Holding Centre).¹¹ In a report entitled *Le livre noir de Ceuta et Melilla (The black book of Ceuta and Melilla)*,¹² Migreurop gathered the stories and the words of these anonymous victims of Ceuta and Melilla as testimonies but also to denounce the tragic events of 2005. According to Migreurop the undocumented migrants who died in Ceuta and Melilla are the most visible consequence of a policy that is being pursued and whose unnamed victims are limited to silence and anonymity.

Amnesty International also released a report on the events, which is based on victims' testimonies and contacts with Spanish and Moroccan authorities over the past two years.¹³ Amnesty International voices concern that in October 2006, one year after the deaths, there had been no guarantees that investigations would be thorough, impartial and

effective, and no disciplinary action had been taken for the deaths and ill-treatment of migrants. This means effective impunity so far.

Four groups in the Spanish Parliament (Esquerra Republicana, Izquierda Verde (IU-ICV), BNG and la Chunta Aragonesista) submitted a proposal to the Spanish Congress to create an independent parliamentary committee to clarify the deaths of the migrants.

Nonetheless, it must be highlighted that even after the tragic events of October 2005 and the ensuing political and civil reactions, new incidents of storming of the fences occurred in July 2006 and resulted in the deaths of two undocumented migrants. One of the victims was on the Spanish side and although authorities believed he died from falling from the six-meter high fence, an investigation is underway to determine if he was shot at by border guards, since it appeared that he had a bullet hole in his sternum. Several NGOs have denounced the deaths and are demanding the Spanish government to make an exhaustive inquiry.

¹¹ See Ms Ewa Klant (Rapporteur), *Report from the LIBE Committee Delegation on the Visit to Ceuta and Melilla (ES)*, Brussels, 24 January 2006, ([http://www.europarl.europa.eu/registre/commissions/libe/proces_verbal/2006/01-24/LIBE_PV\(2006\)01-24_EN.pdf](http://www.europarl.europa.eu/registre/commissions/libe/proces_verbal/2006/01-24/LIBE_PV(2006)01-24_EN.pdf)), accessed on 1 February 2007.

¹² See Migreurop, *Le livre noir de Ceuta et Melilla*, June 2006, (<http://www.migreurop.org/IMG/pdf/livre-noir-ceuta.pdf>), accessed on 1 February 2007.

¹³ See Amnesty International, *Spain and Morocco, failure to protect the rights of migrants - Ceuta and Melilla one year on*, October 2006, (<http://web.amnesty.org/library/index/engneur410092006>), accessed on 1 February 2007.

Lack of Access to Health Care

Access to health care is an urgent priority for undocumented migrants, and lack of access has proven to have serious consequences for both undocumented migrants and public health in general. In addition, local actors (health care staff, social workers, local administrations and NGOs) increasingly stress that they are being left alone to deal with the problems related to access to health care for undocumented migrants.

Many NGOs and international institutions have denounced the increasing difficulties faced by undocumented migrants in gaining access to health care services in EU member states. The practical and concrete barriers are in many cases insurmountable obstacles for undocumented migrants in defending their right to health. In its annual report about access to health care in Belgium, Médecins sans Frontières underlined that ten years after a royal decree established that undocumented migrants could gain access to urgent medical care in Belgium, many remained excluded from access to health care services in practice, due to the poor running of the system, administrative obstacles, arbitrary decisions, as well as undocumented migrants' mistrust of governmental agencies.¹⁴

In some other EU member states where undocumented migrants are entitled to gain access to the health care system, administrative barriers

entail that access is far from being entirely guaranteed. In Spain, Medicos del Mundo has remarked that access to the health care card depends to a great extent on the amount of barriers encountered by undocumented migrants when trying to register in the city hall through the so-called system of *empadronamiento*. Moreover the lack of information the user receives as well as the existing cultural and language barriers also hinder the enjoyment of this right by undocumented migrants.¹⁵

In January 2006, during his visit to Sweden, the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Mr. Paul Hunt, announced that Swedish law and practice regarding the health services available to asylum seekers and undocumented migrants is inconsistent with international human rights law.¹⁶

The general lack of access to health care for undocumented migrants is strengthened by various testimonies from NGOs and health care professionals that PICUM has collected throughout the year within the framework of an EU project on access to health care for undocumented migrants. This project, which gathers 19 partners (NGOs, health care providers and local authorities) from 11 EU member states, aims to improve access to health care for this specific group of socially

¹⁴ See Médecins Sans Frontières, *Accès aux Soins en Belgique: Rapport d'activité 2005*, page 36, (http://www.msf.be/fr/pdf/rapport_belg_2006.pdf), accessed on 1 February 2007.

¹⁵ See Medicos del Mundo, *X Informe de Exclusión Social 2005*, pages 26-27, (<http://www.medicosdelmundo.org/NAVG/pagina/XInformeExclusionSocial.pdf>), accessed on 1 February 2007.

¹⁶ See Paul Hunt, UN Special Rapporteur on the right to the highest attainable standard of health, *Visit of UN Special Rapporteur on the right to the highest attainable standard of health, to Sweden from 10-18th January 2006*, page 3, (<http://www.humanrights.se/upload/files/2/Nyheter/Sweden%20press%20conference%20revised%20remarks%2019%20January%202006.pdf>), accessed on 1 February 2007.

excluded migrants. This project focuses on research, capacity building and advocacy. Throughout the course of the project, partners have provided testimonies which indicate the numerous obstacles encountered by particularly vulnerable groups of undocumented migrants, such as pregnant women and people with chronic diseases (e.g. HIV/AIDS).

Some surveys on reproductive health issues of undocumented women indicate that these women face difficulties in gaining access to pre-natal and post-natal health care. A survey among gynecologists in Amsterdam indicated that 33% of the referrals of pregnant undocumented women to general practitioners failed, either because the general practitioners bluntly refused to treat the women or because they required a financial guarantee.¹⁷ In Spain a report published by the Association of Registered Clinics for the Voluntary Interruption of the Pregnancy (ACAI) states that more than 50% of foreign women who had abortions

in Spain are undocumented and most women refer to their precarious economic situation as the reason behind their decisions.¹⁸

In this challenging context it is important to underline the work carried out by a number of NGOs that raise awareness, conduct advocacy, and hold training courses on the health care needs of undocumented migrants. One example is the French network ODSE (Observatoire du Droit à la Santé des Etrangers), whose advocacy efforts¹⁹ stopped the adoption of a proposed measure to exclude migrants with precarious residence status from complementary health insurance. Without the ODSE's intervention, more than 6,000 severely and chronically ill migrants with permission to remain in France for medical reasons (due to the lack of adequate treatment in their countries of origin), would have been excluded from the essential complementary coverage and repatriated to their countries of origin.

¹⁷ Cited in *Toegankelijkheid van de gezondheidszorg voor mensen zonder verblijfsvergunning*, 30 March 2006, Pharos, (<http://www.pharos.nl/Act/Brief310306.doc>), accessed on 1 February 2007.

¹⁸ See Asociación de Clínicas Acreditadas para la Interrupción voluntaria del embarazo (ACAI), "Estudio sobre aborto, anticoncepción y otros aspectos de la salud reproductiva en mujeres inmigrantes." In *Boletín de salud sexual y reproductiva*, November 2006, page 5, (<http://www.acaive.com/pdf/boletin%200.pdf>), accessed on 1 February 2007.

¹⁹ See Observatoire du Droit à la Santé des Etrangers, *Lettre ouverte à Jacques Chirac*, 9 November 2006 (http://www.odse.eu.org/article.php3?id_article=37), accessed on 1 February 2007.

Undocumented Migrants in the Workplace: Exclusion Versus Empowerment

There is an apparent contradiction throughout Europe, starting from the EU institutions themselves, in which restrictions are made that hamper legal entry and employment in the EU for workers, while at the same time the increasing regularization schemes in different EU member states is just one indication of the high numbers of undocumented workers in Europe and the need for workers in various low-wage industries.

Although the European economies have shown an increasing demand for migrant labor, many countries have adopted new immigration laws and bills to restrict migrants' legal access to the labor market. Across Europe immigration policies have been marked by the reduction of human rights standards and "managed migration" policies which lead to the exclusion of undocumented migrants from the formal labor market and relegate them to the informal labor market. There are examples of this trend coming from different countries around Europe. In Switzerland the new Aliens Act that was approved in December 2005 basically excludes third country nationals from the Swiss labor market unless they are highly skilled workers, and gives priority to nationals from the European Economic Area. In the UK, Prime Minister Tony Blair presented a new migration scheme in November 2006 according to which all foreigners from outside the European Union will need a British identity card to find work or claim benefits in Britain. Blair has said the project, which also includes the introduction of national identity cards for all

Britons, would help catch terrorists and combat illegal immigration. In France the new immigration and integration law, adopted in July 2006, has been criticized by many migrants' rights organizations for its further restrictions in granting legal status to undocumented migrants.²⁰

Exclusion from the formal labor market aggravates the vulnerability of undocumented migrant workers and can lead to extreme situations, including cases of forced labor. The forced labor of Polish workers in the agricultural sector in Puglia (Italy) was brought to light after investigations in which a number of these workers were killed or disappeared. This case brought international attention and concerned Polish workers; however, it is estimated that there are many migrant workers in this area of Italy from outside Europe that are working in similar and even worse conditions. The Italian journalist Fabrizio Gatti released a report in September 2006 entitled "I was a slave in Puglia" in which he referred to undocumented migrants working in forced labor camps where they were reportedly raped and tortured if unwilling to work.²¹

The experiences of organizations in PICUM's network illustrate that undocumented workers throughout Europe face serious abuses of their rights in the workplace. Within this general context, however, some advances have been made through court rulings and through trade unions upholding undocumented workers' rights to organize.

²⁰ On the issue of the rights of skilled workers in France and UK, see also Migration Information Source, *Growing Competition for the "Right" Skilled Workers*, Issue n°6 of Top 10 Migration Issue of 2006, (<http://www.migrationinformation.org/Feature/display.cfm?id=542>), accessed on 1 February 2007.

²¹ See Fabrizio Gatti, *Io schiavo in Puglia*, 1 September 2006, L'Espresso, (<http://espresso.repubblica.it/dettaglio/lo%20schiavo%20in%20Puglia/1370307&ref=hpsp>), accessed on 1 February 2007. The article is available in both English and Italian.

For the first time in the Bouches-du-Rhône region in the South of France, the Social Agricultural Insurance (Mutualité Sociale Agricole) officially recognized, in April 2006, the right of a seasonal migrant worker to continue to receive social security coverage even after his temporary work contract had expired. The case concerned Mustapha L., who finished his 8-month contract as a seasonal worker on 3 September 2004, and had dental work done at the end of the same month. The NGO CODETRAS (Collectif de defense des travailleurs étrangers dans l'agriculture) has underlined the importance of this ruling because it is a formal recognition of a basic social right for a category of migrants who are particularly vulnerable. CODETRAS has focused its advocacy efforts and awareness raising about the "legal exploitation" of seasonal migrant farmworkers in the Bouches-du-Rhône region in the South of France who often become undocumented after the end of their seasonal contracts.²²

Another positive experience comes from the Netherlands, where undocumented migrants now have their own section (AbvaKabo) within the FNV trade union. Although workers could already join the trade union irrespectively of their legal status, it is now possible for undocumented workers to join anonymously, through a special agreement with the migrants' organization RESPECT.

There have also been numerous initiatives by civil society organizations to empower undocumented workers by informing them of their rights through informational materials. In the past year, the French organization GISTI published the fourth edition of *Sans-papiers mais pas sans droits*, a booklet that explains the fundamental rights that apply to undocumented migrants in France. In Ireland the Migrants Right Center Ireland (MRCI) published and translated into six languages (Arabic, Bengali, Chinese, Polish, Russian and Urdu) a booklet entitled *Know Your Rights – Information for Migrant Workers in Ireland*, which contains information on the rights and entitlements of migrant workers in Ireland, as well as on their obligations and responsibilities.

In March 2006, PICUM held two international conferences on the protection of undocumented migrant workers. More than 200 representatives of NGOs, trade unions, governmental entities, consulates, researchers and other actors based throughout Europe were present over the two-day event, and shared experiences and ideas about the protection of undocumented workers. The conferences sought to provide ways in which these human rights abuses could be addressed, by looking at the roles of different actors and how they can intervene to protect undocumented workers.

²² Concerning this case and for general information on seasonal migrant farmworkers in the Bouches-du-Rhône region, see CODETRAS: <http://www.codetras.org/>

Defending the Rights of Undocumented Children

Many NGOs have underlined the increasing lack of protection of the human rights of undocumented children and have condemned the diffused practice of detention and repatriation of these children.

The general lack of protection of undocumented children has been observed in almost all EU member states and the deterioration of this situation has been indicated both by civil society organizations as well as institutional bodies. In February 2006, five French NGOs sent a letter to specific local, regional and national authorities to denounce the social exclusion of undocumented minors living in the streets of Calais, France, without food, shelter or assistance.²³ In a report following his mission to Greece in July, the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, regretted the absence of an institutionalized child protection system, the lack of adequate structures for unaccompanied minors, as well as the distant relationship between the government and NGOs, and urged the Greek government to tackle these problems.²⁴

The detention of undocumented children throughout Europe has also been denounced by many civil society actors, who reiterate the specific rights that children have according to the international human rights framework, even during detention. Various

campaigns have been launched throughout Europe to raise awareness and to put pressure on policy makers to abolish this practice. In Italy, Amnesty International launched an awareness raising campaign in March 2006 for the rights of undocumented children in detention centers. In the UK, a major campaign was launched to generate public and parliamentary support to free the 2,000 children detained in the UK each year for immigration purposes. The campaign, entitled “No Place for a Child: Stop Detaining Children Now!,” was set up by a coalition of organizations including Save the Children UK, Bail for Immigration Detainees, and the Refugee Council. In Belgium and the Netherlands, marches and demonstrations were held to condemn the practice of detaining children and to express solidarity with children who are imprisoned.

The detention of undocumented children is linked to another widespread practice throughout Europe: the deportation of undocumented children. Bilateral agreements between countries of origin and destination have been signed by almost all EU member states - especially with countries in North Africa - to allow the repatriation of undocumented children to their countries of origin. Moreover this diplomatic activity has been accompanied by EU measures to build two centers for undocumented children expelled from Europe to Morocco.

²³ See the open letter sent by C’Sur (Collectif de Soutien d’Urgences aux Réfugiés), CSE-10 (Collectif de soutien des exilés du Xe arrondissement de Paris), Gisti (Groupe d’information et de soutien des immigrés), LDH (Ligue des droits de l’homme (LDH), and MRAP (Mouvement contre la racisme et pour l’amitié entre les peuples), on 6 February 2006, (<http://www.gisti.org/doc/actions/2006/mineurs/lettre2006-02-06.pdf>), accessed on 1 February 2007.

²⁴ See *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, Mission to Greece (8-15 November 2005)*, E/CN.4/2006/67/Add.3, 27 March 2006, paragraphs 48-59, (<http://daccessdds.un.org/doc/UNDOC/GEN/G06/121/68/PDF/G0612168.pdf?OpenElement>), accessed on 1 February 2007.

Many NGOs have expressed their concern about the deportation of children, stating that in many cases these repatriations have violated the International Convention on Rights of Child (ICRC). In Spain, for example, a coalition of NGOs led by the Spanish Commission for Refugees (CEAR) submitted a report to the Spanish Ombudsman in May 2006, denouncing the unlawful conditions of the protection and repatriation of unaccompanied children in the community of Madrid.²⁵ Many concrete cases were reported in which the Spanish government had violated the Aliens Act as well as the Convention on the Rights of the Child. The report claims, for instance, that the specific situation of the child is not being taken into account when applying the administrative procedures and that children are sometimes simply abandoned in different Moroccan cities located very far from their towns of origin.

In France, according to a circular for prefects issued by Minister of the Interior Nicholas Sarkozy on 31 October 2005, the deportation of school-age children and their parents would be officially

suspended from that date until 30 June 2006 in order to allow these children to finish the school year. The circular stated that after that date undocumented children and their family would be eligible for deportation. The increased mobilization of teachers, pupils and parents throughout the country (notably through the efforts of the "Education Without Borders" network) most likely contributed to the regularization in September 2006 of almost 7,000 undocumented migrants with school-age children. Almost 30,000 people had applied for the regularization but only 20% of the applications were successful.²⁶

On the European level, an appeal has been launched by several European NGOs²⁷ for an amendment to the EU return directive to prohibit the detention and forced removal of minors. The appeal demands that the directive should respect international commitments signed by EU member states and therefore demands the prohibition of the detention and forced removal of undocumented children and proposes amendments to the draft directive in this sense.

²⁵ See Comisión Española de Ayuda al Refugiado (CEAR), *CEAR vuelve a denunciar las vulneraciones de los derechos de los menores extranjeros en la Comunidad de Madrid*, 19 April 2006, (<http://www.cear.es/verNoticia.php?idNoticia=141>), accessed on 1 February 2007.

²⁶ See *6. 924 parents d'élèves sans-papiers régularisés*, Le Figaro, 18 September 2006, (http://www.lefigaro.fr/france/20060918.WWW000000437_pres_de_parents_deleves_sans_papiers_regularises.html), accessed on 1 February 2007. The petition launched by Education Without Borders Network (Réseau Éducation Sans Frontières - RESF) against the circular of 31 October 2005 is available at: <http://www.educationsansfrontieres.org/IMG/pdf/PETITION10.pdf>

²⁷ See the *European Appeal Against the detention and forced removal of foreign minors*, signed by CIRE (Coordination et Initiatives pour et avec les Réfugiés et Étrangers) - Belgium, APDHA (Asociación Pro Derechos Humanos de Andalucía) - Spain, CEAR (Comisión española de ayuda al refugiado) - Spain, ANAFE (Association Nationale d'Assistance aux Frontières pour les Étrangers), Cimade - France, ARCI - Italy, Kerkinactie Binnenland - Netherlands, European Coordination for Foreigners' Right to Family Life, CCME (Churches' Commission for Migrants in Europe) and Jesuit Refugee Service Europe, (<http://www.nominorsindetention.org/>) accessed on 1 February 2007.

National and European Policy Measures: A Rights-Based Approach?

The evolution of national and European policies towards undocumented migrants is a complex picture in which it can be observed that while there is a general lack of upholding the human rights of undocumented migrants, there are nonetheless initiatives to defend and promote them on both the national level and within some European institutions.

Various European states have adopted new immigration bills or laws that do not incorporate a rights-based approach to migration and erode migrants' human rights, coupled with increasingly restrictive approaches to legal entrance and residence. The picture is very alarming, with some examples being reports of undocumented migrants who commit suicide while in detention, the presence of children in detention, and lack of access of civil society organizations to monitor the situation of detention centers. There has also been an increased externalization of EU policies for border controls through member states' agreements with third countries, as well as agreements with EU institutions (Commission and Council). This process is carried out under agreements to repatriate undocumented migrants to their countries of origin, to construct new centers to detain undocumented migrants in third countries, and to strengthen border controls.²⁸

Some states have taken measures to regularize the situation of undocumented migrants, in different forms and at different levels. In the past year

various regularization schemes were publicly debated or undertaken in Belgium, France, Germany, Italy, and Portugal. Civil society has played an active role in these campaigns, especially in putting pressure on governments calling for regularization. Furthermore the activities undertaken have varied from general campaigns for regularization to research and publication on specific aspects related to the regularization process, as for example the results of the 2005 regularization in Spain, or the total cost of deportation of undocumented migrants compared to the potential income to the Treasury through the regularization of workers in the informal economy in the UK.²⁹

On the European level the various initiatives undertaken by the European Commission have been mainly aimed at combating irregular migration, with scarce attention to the human rights of undocumented migrants. Within this context greater resources have been allocated for the strengthening of border patrol control, both from the EU as well as from countries of origin, due to cooperation policies. In the informal meeting of the EU's Justice and Home Affairs Council in Tampere in September, for example, it was agreed to grant Tripoli the sum of 3 million euros to purchase ten desert patrol vehicles and night visors.

On the other hand the European Court of Human Rights and the Parliamentary Assembly of the Council of Europe have played an important role in

²⁸ On the impact of the externalization of EU border control policies on migrants' rights, see Human Rights Watch, *Managing Migration Means Potential EU Complicity in Neighboring States' Abuse of Migrants and Refugees*, October 2006, (<http://hrw.org/backgrounders/eca/eu1006/eu1006web.pdf>), accessed on 1 February 2007, and Alexander Betts and James Milner, *The Externalisation of EU Asylum Policy: The Position of African States*, Centre on Migration, Policy and Society, Working Paper No. 36, University of Oxford, 2006, (<http://www.compas.ox.ac.uk/publications/Working%20papers/WP0636-Betts-Millner.pdf>), accessed on 1 February 2007.

²⁹ For the UK, see The Institute for Public Policy Research (IPPR), *Irregular Migration in the UK: An ippr Factfile*, 31 March 2006, in which the IPPR calculates that the forced deportation of all irregular migrants could cost the taxpayer around £4.7 billion, while regularising work status could net the Treasury around £1 billion a year. (<http://www.ippr.org/publicationsandreports/publication.asp?id=446>), accessed on 19 February 2007. For Spain, see Union General de Trabajadores (UGT), *Valoración de UGT al cumplirse un año del inicio del proceso de normalización de trabajadores inmigrantes en situación irregular*, Madrid, 7 February 2006 (<http://www.ugt.es/inmigracion/informenormalizacion.pdf>), accessed on 19 February 2007.

upholding the rights of undocumented migrants. In a ruling handed down in January 2006, the European Court of Human Rights decided that the Netherlands had violated Article 8 of the European Convention on Human Rights on respect for private and family life, when it refused to renew the residence permit of Mevlut Sezen, a married father of two children, on account of a particularly serious drug conviction.³⁰

In a different decision issued by the European Court of Human Rights in October 2006, the Belgian government was condemned for inhumane treatment regarding a child.³¹ The case refers to a situation that occurred in 2002, when, after receiving refugee status in Canada, Pulcherie Mubilanzila Mayeka, the mother of five-year-old Tabitha Mitunga, asked her brother – who had Dutch nationality and was residing in the Netherlands – to go to Congo and take care of Tabitha until she could join her in Canada. When Tabitha and her uncle arrived at the Brussels airport on 17 August 2002 without the proper residence documents, Tabitha was denied entry to Belgium and was taken alone to a detention center because her uncle did not have parental authority. Five-year old Tabitha remained alone in the detention center for more than two months until

she was finally deported alone to Congo on 17 October 2002. The judges recognized the Belgian government's violation of Article 3 of the European Convention of Human Rights relating to degrading and inhumane treatments, Article 8 on the right to respect of private and family life, and Article 5, Paragraph 1 on the right to freedom and safety.

The Parliamentary Assembly of the Council of Europe had two main legislative initiatives in 2006 that upheld the protection of the human rights of undocumented migrants. In Recommendation 1737 of March 2006 on *New trends and challenges for Euro-Mediterranean migration policies*, the Parliamentary Assembly encouraged member states of the Council of Europe to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³² In Resolution 1509 of June 2006 on *Human rights of irregular migrants*, the Parliamentary Assembly underlined the need to clarify the minimum rights applying to irregular migrants, stating that "Irregular migrants, as they are often in a vulnerable situation, have a particular need for the protection of their human rights, including basic civil, political, economic and social rights."³³

³⁰ See *Sezen v. The Netherlands* - 50252/99 [2006] ECHR 87 (31 January 2006), (<http://worldlii.org/eu/cases/ECHR/2006/87.html>), accessed on 1 February 2007.

³¹ See *Mubilanzila Mayeka and Kaniki Mitunga V. Belgium* (Application No. 13178/03), Judgment, Strasbourg, 12 October 2006 (<http://cmiskp.echr.coe.int/tkp197/viewhbk.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=58704&sessionId=11300000&skin=hudoc-en&attachment=true>), accessed on 1 February 2007.

³² See Council of Europe, Parliamentary Assembly, Recommendation 1737 (2006) *New trends and challenges for Euro-Mediterranean migration policies*, paragraph 12.1, (<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/EREC1737.htm>), accessed on 1 February 2007.

³³ See Council of Europe, Parliamentary Assembly, Resolution 1509 (2006) *Human rights of irregular migrants*, paragraph 5, (<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/Eres1509.htm>), accessed on 1 February 2007.

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