

RÉPUBLIQUE FRANÇAISE

**LE DÉFENSEUR
DES DROITS**



Exiles and fundamental rights: the situation in the territory of Calais

October 2015

NOTICE

In publishing this report, the elements of which were gathered in the course of two missions conducted by the Defender of Rights' officials on 16th and 17th June and 20th July 2015, in the midst of an ever-changing situation, the Defender of Rights is not unaware of the daily problems faced by those in charge of elaborating and implementing public policies, whether with regard to maintaining the vital economic and social balance or ensuring our fellow citizens' protection in the face of the risks presented by international crises and security measures.

However, by virtue of the duties entrusted to him by the Constitution and the legislature, the Defender of Rights has full authority to establish the actual reasons for existing situations and assess whether they are in accordance with the very ambitious objectives that our country has set itself with regard to the protection of fundamental rights.

The massive arrivals of population groups on our continent call for collective rethinking of the way in which the movement of people, the fight against human trafficking and the reception of those obliged to leave their countries of origin should be organised at the European level.

Although Calais represents a unique phenomenon of its kind, it nevertheless illustrates the limits of action based upon a national – not to say local – approach, aimed at organising “the policing of foreigners”, at a time when we are faced with an entirely unprecedented situation, calling for far-reaching responses at the international level.

There are many obstacles and innovative approaches are being paralysed by electoral pressures throughout Europe.

It is not the Defender of Rights' role to assert its own preferences concerning the conduct of public affairs, for which responsibility is exclusively incumbent upon the authorities. On the other hand, it has a duty to constantly recall the lines that should never be crossed, representing our fundamental values and resulting from the rights held by every individual by virtue of the sole fact of their membership of the human community.

The situation is extremely sensitive and it is therefore necessary to reject caricatures and unjustified simplifications. The problems require not only humanitarian action, but also political responses. The Defender of Rights can only hope that this report contributes to the elaboration of a pertinent analysis for those who are called upon to take action.

Jacques Toubon

In the course of these missions, the Defender of Rights' officials visited:

- the Calais shanty town adjoining the "Jules Ferry" reception centre, taking time for long exchanges with the exiles living there
- the "Jules Ferry" reception centre and accommodation centre
- The PASS free medical clinic (PASS / *Permanence d'accès aux soins de santé*)

Persons encountered within the framework of the missions in Calais:

Mr Bockstael, director of the AUDASSE association

Mr Caillaux, coordinator of the Migrants Support Platform (PSM / *Plateforme de soutien aux migrants*), in two meetings bringing together representatives from the following associations:

M. Duval, director of the *La Vie Active* association

- o *Médecins du Monde* (MDM)
- o *Secours Catholique CALAIS*
- o FIDA (Detention Centre for Illegal Immigrants at COQUELLES)
- o *Calais, Ouverture et Humanité* (COH)
- o *L'Auberge des Migrants*
- o The *Passeurs d'hospitalités* blog

Mr Elmouden, coordinating doctor of the PASS free medical clinic and the nursing staff

Mr Roger, manager of the FTDA (*France Terre d'Asile*) reception centre for unaccompanied foreign minors in Saint-Omer

Representatives of the police

POLICE:

- General Inspectorate of the French national police force (*Inspection générale de la police nationale*)
- The departmental police administration (*Direction départementale de la sécurité publique*)
- Zonal administration of the riot control force (*Direction zonale des compagnies républicaines de sécurité*)
- Interregional administration of the criminal investigation department (*Direction interrégionale de la police judiciaire*)
- Departmental administration of the border police (*Direction départementale de la police aux frontières*)
- Calais police station (*Commissariat de police*)

GENDARMERIE:

- Mobile Gendarmerie (*Gendarmerie mobile*)
- Departmental gendarmerie (*Gendarmerie départementale*)

Interview with the representatives of the Prefecture

- Mrs Buccio, Prefect
- Mr Gaudin, Sub-Prefect (*Sous-préfet*) of Calais

General introduction	7
A specific geographical and political context	7
A situation fuelled by a migration policy aimed at reducing legal emigration channels	7
History of the development of the wasteland Shanty Town: illustration of the continuing desire to limit the visibility of the presence of migrants in Calais as far as possible	9
Part One Violations of fundamental rights associated with the fear of providing overly attractive living conditions	15
I. The right to accommodation and shelter	16
A. Violations of the unconditional right to emergency accommodation	16
B. Violations of asylum seekers' specific right to the benefit of material reception conditions including accommodation	19
C. Observations concerning the government plan to create a camp of 1,500 places	21
D. Observations on the proposed creation of emergency shelter centres put forward by various bodies	22
II. The right to respect for one's home	22
III. The right to decent material living conditions	25
A. Distribution of meals	25
B. Access to water	26
C. Refuse removal	28
IV. The right to protection of health	29
A. Living conditions and vulnerability that are particularly harmful to the health of exiles present in Calais	31
B. Highly insufficient and unsuitable provision of medical care	32
1. <i>The Free Medical Clinic (PASS)</i>	32
2. <i>The hospital</i>	35
3. <i>The development of humanitarian services in the shanty town</i>	36
V. Access to asylum for exiles living in the Pale of Calais: a change of position not devoid of all ambiguity	39
A. A positive change in the processing of asylum applications in the Pale of Calais...	39
B. ... not devoid of all ambiguity.	42
1. <i>The harmful effects of the Dublin regulation</i>	42
2. <i>Visa policy, with regard to Syrians in particular</i>	44
3. <i>Asylum in France, an unconvincing alternative to the choice of departing for Great Britain</i>	45
VI. The right to the benefit of protection measures for both unaccompanied and accompanied minors	48
A. Alarming living conditions clearly constituting situations of danger for children	48
1. <i>A system for the provision of shelter that is overcrowded and ill-adapted to needs</i>	50

2.	<i>Children lacking any educational facilities</i>	50
3.	<i>The need for greater diligence in the implementation of existing legal provisions</i>	52
B.	A specific system dedicated to unaccompanied foreign minors	53
1.	<i>Emergency accommodation which despite being unconditional is ill- adapted to the needs of the majority of unaccompanied minors present in the Pale of Calais</i>	53
2.	<i>The Problem of the Reliability of Age Assessments for Minor Status</i>	55
3.	<i>Failure to take civil status documents into account</i>	55
4.	<i>Absence of legal support for young people excluded from the reception system</i>	56
5.	<i>A need to emphasise the quality of provision of long-term educational measures</i>	57
VII.	The right, as a woman, to specific health protection and not to suffer sexual violence	58
A.	Obstacles to their right not to suffer sexual violence or to be victims of trafficking.	58
B.	Obstacles to access to termination of pregnancy for migrant women	60
Second Part Threats to fundamental rights increased by a policy of hermetically sealing the border		64
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I.	An unprecedented increase in security procedures	64
A.	Exceptional police presence	64
B.	Strengthening the physical border	67
1.	<i>Securing the port by the construction of a wall</i>	67
2.	<i>Securing the Eurotunnel site involves delegating border controls to private contractors</i>	68
II.	Violence suffered by refugees, in particular relating to police action	69
A.	Investigation of claims hindered by specific obstacles	69
1.	<i>Problems relating to the situation in the Pale of Calais</i>	69
2.	<i>Legal problems</i>	70
B.	Continuing evidence of harassment since publication of the 2012 report	71
C.	Numerous physical injuries to migrants brought to the attention of the Defender of Rights	75
D.	The hybrid nature of duties devolved to the police and the inappropriate nature of legislation for intervention which encourages confrontation	78
1.	<i>Sensitive duties for the police</i>	78
2.	<i>Some legal context for action which might be specified</i>	79
General Conclusion		82
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General introduction

Quite apart from the shocking humanitarian situation, which calls for immediate responses on the part of the authorities, and beyond the specific geographical and political nature of its location, Calais remains the spectacular symptom of the pitfalls of the European Union's migration policy. Today, the so-called "migrant crisis", an expression which the Defender of Rights moreover considers to be totally inappropriate, has caused these pitfalls to burst into the foreground. Indeed, these terms give rise to particularly harmful preconceptions within the collective imagination, since the word "crisis", like other words such as "tragedy" or "drama", gives the impression of the existence of a phenomenon resulting more from a twist of fate than from political choices and which is only temporary; for its part, the word "migrants" lumps together different categories of persons that are actually distinct in law and in fact.

A specific geographical and political context

The difficulties of movement which the Calais exiles come up against are attributable to the municipality's specific location as the gateway to Great Britain, as well as to the latter's special legal status within the European area. Indeed, Great Britain is not a party to the Convention implementing the Schengen Agreement of 14th June 1985, which organised the opening of borders between the signatory European countries. On the other hand, it is party to the Dublin III Regulation of 26th June 2013¹, under the terms of which the State responsible for the examination of an asylum application is, in principle, the first host country, providing the framework for the implementation of the EURODAC information system (automatic fingerprint recognition system intended for the determination of the responsible Member State).

Moreover, the obstacles to movements of migrants in the Pale of Calais have been increased by the various different treaties and administrative bilateral agreements entered into by France and Great Britain, in order to relocate British border controls to French port and railway areas².

For this reason, persons wishing to request British protection are confronted with the closure of the Franco-British border and find themselves placed in an irregular situation.

A situation fuelled by a migration policy aimed at reducing legal emigration channels

This summer, in response to the observed increase in attempted intrusions at the site managed by the Eurotunnel group, France and Great Britain entered into a new cooperation agreement³. The agreement comprises two parts, one is concerned with security and is aimed at confirming the externalisation of the British border through the deployment of British police in Calais and increased police cooperation between the two countries, the other deals with humanitarian concerns. The latter part is organised around four different issues:

¹ Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26th June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

² On this issue see: CNCDH (French National Consultative Commission on Human Rights), *Avis sur la situation des migrants à Calais et dans le Calaisis* ["Opinion on the situation of migrants in Calais and in the pale of Calais"], 2nd July 2015.

³ Joint Declaration by the French Interior Minister and the British Home Secretary "Managing migratory flows in Calais: joint ministerial declaration on UK/French co-operation", Calais, 20th August 2015.

improvement of measures provided for vulnerable persons (women, children, potential victims of trafficking), assisted voluntary returns, increase of asylum application processing capacities and, finally, stepping up of dialogue with the countries of origin and support for the creation of “reception offices” in Greece and Italy, aimed at sorting asylum seekers from economic migrants.

The agreement is inspired by European migration policy, which is based upon very similar principles. Indeed, its foundations have been the same for more than 20 years⁴: the fight against illegal immigration and the smuggling of migrants, assisted voluntary returns and the reinforcement of cooperation with third-party countries (externalisation of border controls, concerted management of migratory flows, development aid and the creation of reception and sorting centres on Europe’s borders).

This policy was widely adopted by the majority of European States and has contributed to a drastic reduction in the legal channels of immigration. Yet, these restrictions upon the right to emigrate to Europe in turn lead to the violation of numerous fundamental rights.

The right to leave any country, including one’s own, is established under Article 2-2 of additional Protocol No. 4 to the European Convention on Human Rights (ECHR) and Article 13 of the Universal Declaration of Human Rights (UDHR). Indeed, this right should be subject to particularly strong protection when exercised by persons seeking asylum and, more broadly, by any persons whose inviolable rights to life and not to be subjected to inhuman or degrading treatment are threatened. In this respect, Nils Muižnieks, Council of Europe Commissioner for Human Rights, invites Member States of the Council of Europe to “refrain from criminalising migration” and to “consider policies, including regularisation programmes and increased possibilities for legal channels to immigrate for work, so as to avoid or resolve situations whereby migrants are in, or are at risk of falling into, an irregular situation”⁵. Accordingly, he specifies that policies aimed at restricting the right to emigrate should not result in foreigners being deprived of access to basic social rights of universal application.

At a time when the humanitarian consequences of the various obstacles to the right to emigrate are a daily part of current affairs, reflection is required concerning the pertinence of tools aimed at reducing the possibility of emigration. These tools include the visas policy at the level of the European Union and its Member States and the implementation of border security measures on an unprecedented scale, as well as the Dublin III Regulation, which deters people likely to be granted the benefit of international protection from undertaking the required formalities in order to obtain it. This combination of obstacles undoubtedly gives rise to a situation in which persons, who after all are fleeing persecutions or war, are led to resort to migrant smuggling networks, thus increasing their vulnerability still further and subjecting them to domination (cf. *infra*).

The asylum seeker relocation measures, about which the Member States are currently trying to reach agreement, reveal their new awareness of the adverse effects arising from the Dublin Regulation and of the need to develop solidarity mechanisms within the EU, which are

⁴ In this regard see the three successive long-term programmes adopted by the European Union: the Tampere Programme (1999-2004), the Hague Programme (2005-2010) and the Stockholm Programme (2010-2015).

⁵ Nils Muižnieks, “*Without papers but not without rights: the basic social rights of irregular migrants*”, Press Release, Strasbourg, 20th August 2015.

essential for the development of a real common asylum policy. They nevertheless fail to answer the question of the obstacles that the increasing reinforcement of Europe's external borders places in the way of the right to emigrate.

Yet, despite the fact that the reinforcement of Europe's external borders was once considered to be the necessary consequence of the opening of internal borders within the Schengen Area, the inadequacies of this thinking are now becoming clear, as the Schengen Member States themselves re-establish controls at their own borders⁶.

Since the 2000s, this kind of thinking, fuelled by fears that treating migrants with dignity and respect for their rights would cause a "magnet effect", has nonetheless been at work in the management of the situation in the Pale of Calais. In order to circumvent the risk of this "magnet effect", the authorities initially sought, as far as possible, to limit the visibility of the phenomenon of migrants gathering together in the Pale of Calais, while avoiding the creation of "fixed settlement points". This is perfectly illustrated by the development of the "new jungle".

History of the development of the wasteland Shanty Town⁷: illustration of the continuing desire to limit the visibility of the presence of migrants in Calais as far as possible

This phenomenon can be retraced by means of a rapid history of the events that led to the creation of the current shanty town, adjoining the recent Jules Ferry reception centre.

In September 1999, the Sangatte centre, a former warehouse managed by the Red Cross, was opened as a temporary settlement in order to face the flood of refugees fleeing the war in Kosovo. It was initially intended for between 200 and 800 persons. It finally received as many as 2,000.

In May 2002, the centre was closed "*in order to put an end to a symbol of the illegal immigration magnet effect in the world*"⁸, according to the terms used by the French Minister of the Interior of the period.

Although the closure of the centre did not make the exiles disappear, on the other hand, it caused a severe deterioration in their living conditions, encouraging them to spread out over a much wider area, building improvised shelters as a replacement for reception centres, and led to repeated wanderings after each expulsion from camps and squats.

These camps, squats and shanty towns were initially referred to as "Jungles" by Afghan foreign nationals⁹, the expression subsequently being taken up by numerous local and

⁶ On 13 September 2015, Germany thus declared the re-establishment of controls on its border with Austria. It was closely followed by Austria and Slovakia, which also announced the closure of their borders the next day. France, for its part, had already re-established controls of this kind on the Franco-Italian border, at Ventimiglia. Although the Council of State deemed these controls on the Franco-Italian border not to be systematic and *permanent* (CE [*Conseil d'État*], 29th June 2015, Orders (*Ordonnances*) Nos. 391192, 391275, 391276, 391278, 391279), on the other hand, the Prime Minister acknowledged having re-established *temporary* controls on this border since the previous spring. Finally, the construction of a wall by Hungary, on its Croatian border (after the model of the one it had already built on its Serbian border) is the most blatant symbol of this failure.

⁷ Commonly referred to as the "New Jungle".

⁸ Nicolas Sarkozy, TF1, 6th December 2002

⁹ Philippe Wanesson, *Une Europe des jungles* ["A Europe of Jungles"], *Plein droit* n°104, mars 2015, p.18

national actors. The name refers to the trees, sand and dunes amongst which the camps are set up, as well as to the extreme harshness of the living conditions that prevail in them.

Today, the political choice of creating a reception and accommodation centre on the outskirts of the town, and the decision to tolerate the setting up of illegal improvised shelters around it, constitute a continuation of the approach initiated with the closure of the Sangatte centre.

For a long period, the idea of creating new accommodation centres, or merely day reception centres, with a view to reducing the unhealthy living areas of the Calais “Jungles”, was forcefully rejected. Apart from the declared objective of the destruction of Sangatte, one might quote the current Minister of the Interior who, a few months before agreeing to the opening of the new Jules Ferry reception and accommodation centre, made the following statement: “*I do not want to create a reception centre which could be a new gathering point for migrants*”¹⁰.

For a very long time, the authorities’ desire to avoid the creation of fixed settlement points for exiles on the territory of Calais was manifested in high numbers of expulsions from living areas. The violence involved in some of these expulsions left its mark upon members of the associations that the Defender of Rights’ officials had the opportunity of meeting on 16th June and 20th July 2015 (cf. *supra*, part II).

In 2014 there was a turnaround. The opening of a day reception centre in a former children’s outdoor activity centre located on the outskirts of the town was, in the first place, requested by Mrs Bouchart, the mayor of Calais, before finally being supported by Mr Cazeneuve, the Minister of the Interior. This turnaround may be explained, on the one hand, by the increase in the number of migrants present in the Pale of Calais – associated with wars in the Near and Middle East – and, on the other hand, by new awareness of the fact that the Calais migrants’ fate needs to be viewed not only as arising from short-term conditions but rather, indeed, as a permanent problem, since the whole of the forms of deterrence and repression put in place have not succeeded in making them give up their intended destination of England (cf. *infra*, part II).

The Jules Ferry Centre thus finally opened its doors in March 2015. Managed by an association appointed by the authorities, *La Vie Active*, its principal mission is to serve around 2,500 meals a day to persons living in the adjoining shantytown. The centre also places sixty shower modules and thirty toilets at the migrants’ disposal, as well as facilities for recharging mobile phones and washing linen. Finally, it provides access to a nursing service two hours a day, from Monday to Friday. In addition, the scheme includes an accommodation centre for women and children, providing accommodation for about a hundred people, while another hundred or so are currently on the waiting list.

Although the creation of this centre, which is allocated a budget of 10 million euros per year jointly provided by the European Union, Great Britain and France, unquestionably constitutes an improvement as far as totally destitute exiles’ living conditions are concerned, the facilities nevertheless remain inadequate in relation to the scale of needs (cf. *infra*, Part I).

¹⁰ *Le Monde*, 20th August 2014, *Afflux de migrants à Calais : Cazeneuve opposé à l'ouverture d'un centre* ["Flood of Migrants in Calais: Cazeneuve Opposed to the Opening of a Centre"]

Furthermore, the centre is located on the outskirts of the town, about 6 kilometres from the town centre and important places for the migrants such as, on the one hand, the headquarters of the AUDASSE association, appointed by the State to assist asylum applications and, on the other hand, the hospital and the PASS (*permanence d'accès aux soins de santé*) free medical clinic for persons without resources. This location appears to be the result of a political choice, as confirmed by similar testimonies from several different associations, as well as by the comment of the mayor of Calais that the opening of "reception premises" would make it possible to "take 80% of this phenomenon out of the town"¹¹ and finally, the instructions to take a firm approach given to the Prefect of the Pas-de-Calais at the time of taking up her duties in February 2015.

At the same time as the establishment of the Jules Ferry centre, seven living areas were thus emptied of their inhabitants and destroyed, either by use of the police, or through simple "persuasion" to go to the land adjoining the centre, in order to have the benefit of its services.

Beyond political statements, **the will to group the migrants together on this new plot of land is evidenced by the mobilisation of several levers, of an institutional, legal and police nature.**

Indeed, it emerges from the exchanges held between the Defender of Rights' officials and the Prefect on 17th June 2015, that from the time of taking up her post, in February 2015, the new representative of the State for the Pas-de-Calais was looking into ways of evacuating the squats and pieces of land in the town centre without resorting to the police, thus marking a break with past practices¹². With this approach in view, the Prefect mentioned that she had made contact with representatives of the majority of locally-established associations providing support for exiles in order to ask them to encourage the migrants living in the town's various different squats to settle on the land located near the Jules Ferry reception centre, while informing them that expulsion orders concerning the great majority of squats and "jungles" then inhabited were likely to be executed. At the same time, the associations were informed that if the migrants settled on this plot of land placed at their disposal by the town council, they would not be at any risk of expulsion. In this situation, the sub-prefect of Calais, Mr Gaudin, personally went to each of the towns "jungles" or squats, accompanied by interpreters and representatives of the French agency in charge of migration and the reception of foreign people (OFII / *Office français de l'immigration et de l'intégration*), in order to give this message to the migrants. They were given three weeks' notice to move to the new area.

The associations were deeply divided over the response to be made to this order issued to migrants to go and live on the outskirts of the town in order to avoid the risk of expulsion, on the one hand, and to have the benefit of the Jules Ferry reception centre's services, on the other. Although the majority of them rejected the principle of legitimisation of this "self-expulsion"¹³, they were nevertheless led to help the migrants with the move, through fear of

¹¹ Quote reported by *La Voix du Nord*, 7th April 2014, "Migrants de Calais : Natacha BOUCHART, de l'appel anti-squat à la "richesse culturelle" ["Migrants of Calais: Natacha Bouchart, from anti-squat appeal to 'cultural asset']"

¹² See decision of the Defender of Rights No. 2011-113 of 13th November 2012

¹³ Expression used by certain members of the PSM Migrants Support Platform (*Plate-forme de Service aux Migrants*) at the time of their exchanges with the Defender of Rights' officials in Calais on 16th June 2015.

new violent actions on the part of the police¹⁴. In particular, *Médecins du Monde* thus supplied tents and helped with the construction of certain groups of huts.

Virtually all of the town centre “squats” were very rapidly dismantled and by April 2015 the exiles had moved to this “new jungle”, a sandy plot of land of 18 hectares, located in a marshy flood zone, particularly exposed to wind and bad weather.

In addition to this institutional support for moving the migrants to the “new jungle”, two other levers were used, one involving legal means, the other the police, both also aimed at making the living areas located in the town centre disappear, without resorting to force or judicial expulsion procedures.

Well before the beginning of the year 2015, **several legal tools had been used in order to curb the increase in squats** and illegal occupancies on the territory of the municipality: prosecution for the offence of unlawful assembly and occupation of land, inspection of identity and residence papers, arrests for questioning, the sealing off of a building that had been a squat for several years, implementation of the administrative evacuation procedure on the basis of the existence of an imminent danger and the enactment of a municipal decree giving formal notice to the owner to carry out waste removal. The proceedings culminated with the enactment of a municipal decree prohibiting the distribution of food on a piece of land, which had long been occupied by migrants and on which a “historical” local aid association for exiles had been distributing meals for several years.

Within the framework of this overall strategy, the prefect – the current prefect’s predecessor – also resorted to another legal instrument: the obligation to leave French territory (OQTF / *obligation de quitter le territoire français*). In July 2014, two hundred and three such removal measures were thus taken against migrants sharing the same living areas, accompanied with their placement in detention centres for illegal immigrants. Nevertheless, the Administrative Court of Melun had no illusions with regard to the real motives guiding the authorities’ actions. In a series of rulings pronounced on 19th February 2015, it set these administrative decisions aside, finding that the prefect of the Pas-de-Calais had committed an “*improper use of authority*” insofar as these obligations to leave French territory (OQTF) and detention centre placements did not actually pursue the objective of deporting the persons concerned from French territory, but only that of leaving the plot of land free with a view to destroying the groups of huts and tents found there¹⁵.

On the other hand, the complaints made to the Defender of Rights mention **increased police pressure**, in 2014 and 2015, which also contributed to deterring occupants without any rights or title from remaining in Calais town centre. The use of practices of this kind, for the purpose of destroying camps and evacuating of plots of land without making use of the police, had already been noted by the Defender of Rights with regard to the evacuation of what are referred to as “Roma” shanty towns¹⁶. At that time, the Defender of Rights referred to the

¹⁴ These fears could prove to be well-founded if one is to believe the acts of violence recently reported to the Defender of Rights, concerning expulsions having taken place in September 2015, and currently undergoing investigation by the institution’s officials – see *infra*.

¹⁵ Administrative Court (TA) Melun, 19th February 2015, No. 1406150 amongst others.

¹⁶ Defender of Rights, *Bilan d’application de la circulaire interministérielle du 26 août 2012 relative à l’anticipation et l’accompagnement des opérations d’évacuation des campements illicites* [“Assessment of the application of the Interministerial Circular 26th August 2012 concerning anticipation and support of operations for the evacuation of unlawful camps”], August 2012-May 2013.

“forced nomadism” to which these persons were subjected. This analysis is easily applicable to the Calais exiles’ situation (cf. *infra*, Part II).

In June 2015, the prefect informed the Defender of Rights’ representatives that her assessment of the migrants’ move to the plot of land adjoining the Jules Ferry centre was positive since, on the one hand, it had enabled the disappearance of living areas in the town centre with appalling sanitary conditions (“*dumping grounds*”) and, on the other hand, had made it possible to move the migrants away from the Calais bypass. This procedure of legitimisation of a camp – which for all that remains illegal and lacks any public infrastructure enabling the protection of the individuals found there – raises certain questions insofar as, according to the prefect, this “*camp*” is intended to become permanent.

In this respect, the press referred to an “*open air Sangatte*” and a “*roofless Sangatte*”¹⁷. Other actors are disturbed by this situation: “*We are currently witnessing the formation of a new concept: the sub-camp. It is the first in Europe*”, noted Pierre Henry, the managing director of *France Terre D’ Asile*; “*The birth of a shanty town is being orchestrated. Is France, the 5th world power, unable to take care of the provision of proper shelter for 2,000 people?*” asked Jean-François Corty, director of French missions for *Médecins du Monde*.

In view of what the shanty town adjoining the Jules Ferry centre has now become, in the course of a few months, - this “new jungle” intended to receive 1,500 people (there are now thought to be close to 4,000 people there) far from Calais town centre -, it appears that these initial concerns were far from unfounded (cf. *infra*).

This shanty town nevertheless remains a camp which is both illegal, - and may ultimately be evacuated at any time (one recalls the Calais jungle, “demolished”¹⁸ in 2009 when it numbered at least 800 exiles) -, and unfit for habitation, rather than being a real refugee camp of the kind managed by the UN Refugee Agency which, as such, would be subject to certain norms, and sanitary norms in particular.

Moreover, in spite of the site’s extremely harsh living conditions and state of insalubrity (cf. *infra*, Part I), the State – *via* its representative in Calais – is now once again raising the question of “*to what extent can conditions in the “camp” be made human, without endangering the local inhabitants’ situation through the creation of a magnet effect?*”¹⁹

However, it is precisely this halfway house situation (illegal camp tolerated but not managed by the State) which is unsatisfactory, since it means that priority is given to an approach based upon mutually exclusive humanitarian / security concerns, offering no prospect of resolution of the problems and, in any case, preventing exiles from asserting their rights.

This same approach of fighting against the risk of a magnet effect involves two other dynamics, in addition to the will to reduce the migrants’ visibility: the avoidance of creating attractive living conditions for migrants (Part II) and the will to ensure border security, at the

¹⁷ *Le Monde*, 3rd April 2015, *Le bidonville de Calais, “Sangatte sans toit”*, [“The Calais Shanty Town, a ‘Roofless Sangatte’”].

¹⁸ *Le Parisien*, 18 Sept. 2009, *Eric Besson: « je veux que la jungle soit rasée »* [“I want the Jungle to be demolished”].

¹⁹ The prefect of Pas-de-Calais informed the Defender of Rights’ representatives of her concerns at the time of their meeting on 17th June 2015.

price of an unprecedented security apparatus which, while in no way lessening exiles' determination to cross the Channel, actually leads to their exposure to bodily harm (Part II).

Nevertheless, none of these decisions have ever made it possible to limit the number of exiles in the Pale of Calais, quite the reverse. This is easily explained by the fact that, when leaving Eritrea, Sudan, Afghanistan or Syria, migrants are not necessarily pursuing the objective of going to Calais in order to cross the English Channel²⁰. In the first place, exiles leave in order to flee countries that are prey to wars or dictatorship. This congestion in the West of Europe is rather the result of wandering situations associated, on the one hand, with phenomena of *persuasion*, on the part of smugglers in particular, intended to convince migrants that their fate would be better in Great Britain and, on the other hand, with phenomena of *deterrence*, exercised by other States determined not to receive them.

Conversely, the whole of the dynamics on which the authorities' actions in the Pale of Calais are based, have harmful consequences in terms of respect for the exiles' fundamental rights, at the very moment when, having in most cases fled because of the persecutions to which they were subjected in their countries of origin²¹, they are particularly vulnerable.

Today, solutions for resolving this situation, in a positive manner, should nevertheless impose themselves. The Defender of Rights hopes to contribute thereto by means of this report.

²⁰ In this respect, in the report on the situation of migrants in the Pale of Calais handed over to the French Interior Minister in June 2015, Jean ARIBAUD and Jérôme VIGNON note that several studies, and British studies in particular, attest that plans to go to the United Kingdom were only rarely formed at the outset.

²¹ Indeed, the principal nationalities present in the Pale of Calais are the Afghan, Sudanese, Eritrean and Syrian nationalities.

Part One

Violations of fundamental rights associated with the fear of providing overly attractive living conditions

Due to the fear of creating a “magnet effect”, the authorities are careful not to make migrants’ living conditions too “attractive”, at points of transit to Great Britain, as well as within Britain itself.

This concern is shown in particular by the fact that several French politicians have urged Great Britain to reduce the benefits that it provides for migrants. In this respect, one might recall the speech made by the Mayor of Calais before British MPs in October 2014, in which she explained that migrants are “*prepared to die to get to the United Kingdom. [...] They know that they can easily find work, that they can get accommodation and that they can receive money every week*”. Mrs Natacha Bouchart also mentioned the 36 pounds a week (around 45 euros) granted to asylum seekers present on British soil: these “*36 pounds may not appear very much in the United Kingdom, but these people [...] come from very poor countries, they do not understand that it is not much money*”²². For all that, the British “Eldorado” is not as radiant as it might appear: admittedly, asylum applications are examined much more rapidly than in France, and the rate of acceptance thereof is twice as high as in France. However, these figures are partly explained by the fact that Great Britain only receives half as many asylum applications as France. Above all, although asylum seekers present on British soil may indeed have the benefit of accommodation, this is at the price of a restriction of their liberty to come and go, since they are subject to curfews or have to wear ankle monitors²³. For its part, the weekly allowance that they receive, considered in France to provide too much of an incentive, is in reality no higher than the allowances that may be claimed by asylum seekers present in French territory²⁴, and is sometimes paid by means of a prepaid card only accepted in certain shops. Finally, asylum seekers present on British soil are not entitled to work. Moreover, the same applies with regard to foreigners in an irregular situation on British soil who, pursuant to English law, are indeed obliged to prove to their employer that their residence papers are in order.

Nevertheless, on 3rd August 2015, the Prime Minister David Cameron announced new measures aimed at curbing the flood of migrants at the entrance to the Channel Tunnel, including an increase in the penal sanctions that can be taken against owners renting their accommodation to foreigners whose residence papers are not in order (an offence which will henceforth be punishable by a prison sentence whereas it was only previously punishable by

²² Comments reported by *20 Minutes*, 29th October 2014, “*Calais: la maire explique son cas au parlement britannique*” [“Calais: the Mayor states her case to the British Parliament”].

²³ *Le Monde*, 19th August 2015, “*Royaume-Uni: après Calais, le soulagement puis l’attente*” [“United Kingdom: after Calais, relief followed by waiting”].

²⁴ Under the influence of legislation prior to Act No. 2015-925 of 29th July 2015 concerning the reform of the right of asylum, asylum seekers accommodated in reception centres for asylum seekers (CADA / *centre d’accueil des demandeurs d’asile*) had the benefit of a monthly living allowance whose amount varied according to the services provided by the CADA and the asylum seeker’s family situation and resources. In addition, when they could not have the benefit of accommodation of this kind, due to overcrowding of the reception facility, they received a temporary waiting allowance to the approximate amount of 340 euros per month. The Act of 29th July 2015 replaced these different benefits with a single benefit, the Asylum Seekers Allowance (ADA / *allocation pour demandeurs d’asile*). Pending the implementing decree, the previous provisions continue to apply.

a fine) and seizure of the wages of undocumented immigrant workers²⁵. Thus, although the line of argument denouncing the British Eldorado is based upon beliefs that are sometimes unfounded, it nevertheless contributes to encouraging the levelling down of foreigners' reception conditions, in France and Great Britain alike.

The fear of developing overly-generous reception policies is reflected in the living conditions of migrants present in the Pale of Calais and seriously affects respect for their fundamental rights, which nevertheless should not be dependent upon their residence papers being in order or their possession of adequate resources. The Defender of Rights intends to take up this denial of rights in this report.

Infringements of the rights to accommodation (I), to respect for one's home (II), to have the benefit of decent living conditions (III), to medical care (IV) and to asylum (V) have an impact upon persons in a vulnerable position in particular, such as children (VI) and migrant women (VII).

I. The right to accommodation and shelter

Although the right to emergency accommodation for persons in situations of distress is unconditionally established by law (A), and asylum seekers should, in accordance with European and French legal texts, have the benefit of minimal reception conditions, including decent accommodation (B), the majority of migrants in Calais – and amongst them asylum seekers – find themselves obliged to live in the shanty town, in disgraceful conditions. This constitutes a blatant violation of their fundamental right to accommodation.

A. Violations of the unconditional right to emergency accommodation

The unconditional right to emergency accommodation is established under article L.345-2-2 of the Social Action and Family Code (CASF / *Code de l'action sociale et des familles*), which provides that:

“Any homeless person in a situation of medical, mental or social distress has access, at any time, to an emergency accommodation measure. This emergency accommodation should enable them, in reception conditions in accordance with human dignity, to have the benefit of measures ensuring board, lodging and hygiene, initial medical, mental and social assessment, carried out within the accommodation facility or, by agreement, by professionals or external bodies, and to be directed to any professional or organisation likely to provide them with the assistance justified by their condition, in particular an accommodation and social rehabilitation centre (centre d'hébergement et de réinsertion sociale), accommodation for stabilisation and social integration (hébergement de stabilisation), a boarding house, hostel-accommodation, a retirement home for infirm elderly people, convalescence and healthcare accommodation for persons suffering from social exclusion (lit halte soins santé) or a hospital”.

In an Order of 10th February 2012, the judge of French Council of State with power to hear urgent applications elevated this right to emergency accommodation to the level of a

²⁵ *Francetvinfo*, 5th August 2015, “*Le Royaume-Uni en fait-il assez pour aider à régler le problème des migrants à Calais?*” [“Is the United Kingdom doing enough to help resolve the problem of migrants in Calais?”]

fundamental right. Indeed, after having recalled that the implementation of this right is incumbent upon the State authorities, the supreme administrative court deemed that “*a clear case of inadequate accomplishment of this task may [...] bring to light, with regard to the application of Article L.521-2 of the Code of Administrative Law (Code de justice administrative), a serious and manifestly illegal violation of a fundamental freedom when it leads to serious consequences for the person concerned*” and specified “*that in each case it is incumbent upon the judge with power to hear urgent applications to assess the procedures carried out by the administration, taking into account the means at its disposal as well as the age, state of health and family situation of the person concerned*”²⁶.

It results from this case law that the extent of the best-efforts obligation incumbent upon the authorities with regard to emergency accommodation varies not only according to the state of overcrowding of accommodation facilities but also according to the vulnerability of the persons concerned. When confronted with situations of extreme vulnerability, the authorities thus appear to be bound by an onerous best efforts-obligation. In this respect, in another order of 12th March 2014, the Council of State found that neither the absence of places, nor the absence of budgetary credits, was enough to exonerate the State from its obligation when the person concerned was a minor²⁷. Similarly, the urgent applications judge of the Administrative Court of Limoges found that there was a clear case of violation of the unconditional right to emergency accommodation, in spite of the overcrowding of the accommodation facility, in a case concerning a single mother with two very young dependent children, one of whom was suffering from a heart disease²⁸.

On the other hand, in more recent cases concerning persons whose asylum applications had been rejected and who were subject to deportation measures, the urgent applications judge of the Council of State found that “*foreigners whose asylum applications have been definitively rejected and who are subject to deportation measures against which all means of remedy have been exhausted, can only claim the benefit of these provisions [concerning emergency accommodation] in case of special circumstances bringing to light a sufficiently serious situation to stand in the way of their departure, for the period of time strictly necessary for that departure*”²⁹. To take another example, the urgent applications judge found that a couple of Angolan nationals whose asylum applications had been refused, and who were the parents of four children, were not in a situation of distress justifying compulsory expenditure on emergency accommodation measures, despite the fact that there was no question that both parents’ state of health was “*incompatible with their remaining on the street*”³⁰.

These special cases show that their condition of vulnerability would never be so severe as to come within the field of situations referred to by the urgent applications judge of the Council of State as being “*sufficiently serious*” to enable persons whose asylum applications have been refused to claim the right to emergency accommodation.

²⁶ Council of State (CE), ref., 10th February 2012, *Fofana c. Ministre des solidarités et de la cohésion sociale*, No. 356456.

²⁷ CE, ref., 12th March 2014, No. 375956.

²⁸ Administrative Court of Limoges (*TA Limoges*), ord. ref., 18th April 2014, No. 1400858.

²⁹ CE, ref., 4th July 2013, No. 399750.

³⁰ CE, ref., 15th May 2014, No. 380289.

Admittedly, within the framework of her or his duty, the urgent applications judge assesses whether an illegal situation is manifest and serious in view of the administration's behaviour as a whole, and in particular with regard to the means at its disposal. The judges are thus bound by a principle of realism and, in these cases, considered that they should not order the administration to take measures that it could not execute.

Nevertheless, this restrictive approach was very quickly manifested in two Circulars of 11th March 2013 and 19th July 2013³¹, while in the most recent case law the specific cases dealt with by the urgent applications judge actually illustrate the de facto limitation of the right to emergency accommodation for persons whose asylum applications have been refused.

The situations of families lacking any accommodation solutions after refusal of their asylum applications have been referred to the Defender of Rights on several occasions. The Defender set out reserves with regard to the legality of the position of systematically excluding unsuccessful asylum seekers from the right to emergency accommodation, despite the fact that this right is unconditionally established under domestic law. In two decisions³², he deemed that refusal to grant emergency accommodation to families of unsuccessful asylum seekers in situations of extreme vulnerability - as clearly evidenced in particular by the fact that these families had several minor children, some of whom were suffering from handicaps or serious pathologies requiring medical treatment -, appeared to be contrary to several international texts and, in particular, the higher interests of the child established under Article 3-1 of the Convention on the Rights of the Child and Article 31-2 of the revised European Social Charter. Furthermore, he considered that the different treatment effectively reserved for persons whose asylum applications have been refused, with regard to access to the unconditional right to emergency accommodation established by law, was liable to comprise a violation of Article E of the revised European Social Charter as well as of the combined Articles 3, 8 and 14 of the European Convention on Human Rights. In these two cases, the prefect finally granted the families concerned a place in emergency accommodation and withdrew the proceedings. In this respect, the Defender of Rights reserves the right to take action within the framework of a third-party intervention before the European Court of Human Rights should an application be referred to the latter, instituted by persons refused asylum who have been excluded from emergency accommodation measures despite their being in a situation of extreme vulnerability.

In any case, independently of the restrictive nature of these decisions, they only concern persons refused the right of asylum and do not apply to other foreigners, including those in an irregular situation. For the latter, the letter of the law applies with regard to the unconditionality of reception.

Having ascertained the precarity of living conditions in the Calais shanty town, the Defender of Rights considers that the whole of the migrants obliged to live there indeed fall within the field of application of the provisions of Article L345-2-2 of the Social Action and Family Code (CASF).

Furthermore, the Defender of Rights wishes to recall the unconditional nature of the right to emergency accommodation established by law. He considers that, when faced

³¹ Circulars INTK1300190C of 11th March 2013 and INTK1307757J of 9th July 2013, concerning the fight against irregular immigration.

³² Decisions Nos. MDE-MSP-MLD-2015-154 and MDE/MSP/MLD 2015-156

with situations of extreme vulnerability, as evidenced in particular by the presence of very young children, aged, sick or disabled persons, the authorities, upon which implementation of the right to emergency accommodation is incumbent, are bound by an onerous best-efforts obligation.

The Defender of Rights recommends that, in accordance with the obligations recalled above, the authorities should make every possible effort to immediately offer accommodation solutions to all migrants obliged to live in the shanty town.

The Defender of Rights considers that the means implemented in order to fulfil this objective should be proportional to the exceptional humanitarian situation existing in the Calais shanty town. In addition, he asks the authorities to take an inventory of public real property resources so that unoccupied buildings (barracks, disused premises etc.) can be used in order to accommodate these migrants and provide them with reception conditions that are dignified and in accordance with the law, as recommended by the United Nations High Commissioner for Refugees (UNHCR) in his report of 7th August 2015³³.

B. Violations of asylum seekers' specific right to the benefit of material reception conditions including accommodation

The right of asylum seekers to have the benefit of decent material reception conditions is guaranteed by European Union law, as well as by European Court of Human Rights (ECHR) case law.

Established in EU Council Directive 2003/9/EC of 27th January 2003 laying down minimum standards for the reception of asylum seekers in the Member States, referred to as the "Reception Conditions Directive", this right was reasserted in the Directives of 2013 referred to as the "Revision" Directives³⁴. These Directives put in place a common European asylum system guaranteeing dignified living standards and minimum reception conditions to all non-EU national or stateless asylum seekers present in the European area. They were transposed into French national law by Act No. 2015-925 of 29th July 2015 concerning the reform of asylum law.

These material reception conditions should not merely include food and clothing, but also accommodation, as well as a daily benefit allowance. Whatever the form of these reception conditions, they have to guarantee an adequate standard of living for asylum seekers with regard to their health and ensure their subsistence. If the State decides to pay financial benefits or vouchers, the amount of the financial assistance has to be adequate and enable them to have accommodation, if necessary on the private rental market³⁵.

Under the terms of Article 13 of the Reception Conditions Directive, these material reception conditions should be guaranteed to asylum seekers as from the filing of their asylum

³³ Report of the 63rd Meeting of the UNHCR Standing Committee (24-26 June 2015), A/AC.96/1151.

³⁴ Directives 2013/32/EU of the European Parliament and of the Council of 26th June 2013 on common procedures for granting and withdrawing international protection and 2013/32/EU of the European Parliament and of the Council 26th June 2013 on common procedures for granting and withdrawing international protection.

³⁵ See Article 13 of the Reception Conditions Directive as interpreted by the CJEU, 27th February 2014, C-79/13.

application. This was recalled by the Court of Justice of the European Union (CJEU) in a judgement of 27th February 2014:

“the general scheme and purpose of Directive 2003/9 and the observance of fundamental rights, in particular the requirements of Article 1 of the Charter of Fundamental Rights of the European Union, under which human dignity must be respected and protected, preclude the asylum seeker from being deprived – even for a temporary period of time after the making of the application for asylum [...] of the protection of the minimum standards laid down by that directive”³⁶.

All asylum seekers should have the benefit of these material reception conditions, whether placed under the normal, priority or “Dublin” procedure³⁷.

For its part, when petitioned by asylum seekers in situations of extreme precarity, the European Court of Human Rights recalled the obligations incumbent upon States pursuant to Article 3 of the European Convention on Human Rights, which prohibits any inhuman or degrading treatment.

Indeed, since the *M.S.S. v. Belgium and Greece* judgement, the Court considers that “*the obligation to provide accommodation and decent material conditions to impoverished asylum-seekers has now entered into positive law*” and “[*the States of the European Union*] are bound to comply with their own legislation, which transposes the Reception Directive”. The Court specifies that this obligation has entered into positive law due to the “*broad consensus at the international and European level*” concerning the need to grant special protection to asylum seekers. It recalls that vulnerability is inherent to their status as asylum seekers³⁸.

This case law has since been reasserted by the Court at the time of the case *V. M. et al. v. Belgium*, which concerned the access to material reception conditions of a family of asylum seekers placed under the “Dublin” procedure. The applicant family, which included children, had been obliged to live on the street for one month, with the exception of two nights. After having observed that this situation was particularly serious and that the Belgian authorities had not duly taken into account the applicants’ vulnerability as asylum seekers, the Court considered that the authorities were responsible for the degrading treatment suffered by this family.

For this reason, the authorities are obliged to guarantee impoverished asylum seekers access to reception conditions enabling them to meet their basic needs (accommodation, food and clothing) and may be held liable in case of failure to fulfil this obligation.

The flood of asylum seekers within the territory and the inadequacy of means at the administration’s disposal cannot exempt the authorities from their obligations. This was recalled by the Court in the recent *V. M. et al. v. Belgium* case, in which the Belgian government cited the overloading of the national system for the reception of asylum seekers:

³⁶ CJEU, 27th February 2014, C-79/13, point 35.

³⁷ In this respect see CJEU, 27th September 2012, C-179/11; on applicants under the priority procedure: CE (Council of State), 16th June 2008, No. 300636; CE, 7th April 2011, No. 335924; on applicants under the Dublin procedure: CE, 14th February 2013, No. 365637 and 365638.

³⁸ ECHR, Grand Chamber, 21st January 2011, *M.S.S. v. Belgium and Greece*, application No. 30696/09, §§49-251.

“Notwithstanding the fact that the crisis situation constituted an exceptional situation [...] the Belgian authorities have to be considered as having failed to fulfil their obligation of not exposing the applicants to conditions of extreme destitution, having left them in the street for four weeks, with the exception of two nights, without resources, without any access to sanitary facilities, and without any means of meeting their basic needs”³⁹.

At the time of their trip to Calais, the Defender of Rights’ officials observed that numerous asylum seekers were living inside the shanty town itself. Although it is difficult to put a figure on their presence, this information was however confirmed by the AUDASSE, the association appointed by the French agency in charge of migration and reception of foreign people (OFII) for the purpose of establishing asylum seekers’ official addresses and assisting them in the completion of formalities (cf. infra).

The Defender of Rights notes that the situation of the asylum seekers present in the shanty town adjoining the Jules Ferry centre clearly constitutes a manifest violation of the above-mentioned protective European Directives, for which the State may be held liable. He recommends that asylum seekers should immediately be guaranteed effective access to national reception facilities, guaranteeing them decent living conditions, and accommodation in particular, in accordance with France’s undertakings.

C. Observations concerning the government plan to create a camp of 1,500 places

On a visit to Calais on 31st August 2015, the Prime Minister announced work for the construction of a “migrants’ camp”⁴⁰, on the wasteland adjoining the Jules Ferry reception centre. At an estimated cost of 25 million euros, including 5 million financed by the European Commission, this project consisting of earthworks and the installation of tents, would enable the reception of 1,500 persons in more decent conditions.

However, the dimensions of the project appear inadequate in view of the number of exiles in Calais, estimated at between 3,500 and 4,000. In this respect, he warns against any attempt to select exiles in order to have the benefit of this scheme.

On the one hand, it should be recalled that the Defender of Rights recommends accommodation of the persons concerned in actual buildings (cf. recommendations above) instead of the establishment of a new camp, this right being in any case unconditional.

On the other hand, in awareness of the fact that, were a camp to be set up including the whole of the migrants present on the wasteland, its dimensions would be such as to lead, quite apart from tensions between exiles, to the establishment of strict rules of operation (control of access, limitation of freedom to come and go etc.), thus constituting the de facto re-establishment of a new “Sangatte” on an even larger scale, the Defender of Rights instead recommends the creation, before the winter, of smaller facilities not concentrated in a single place.

³⁹ ECHR, 7th July 2015, *V. M. et al V. Belgium*, application No. 60125/11, §162.

⁴⁰ *Le Figaro*, 31st August 2015, *Calais : Valls annonce la création d'un camp de 1500 places* [“Calais: French Prime Minister announces the creation of a camp of 1500 places”]

D. Observations on the proposed creation of emergency shelter centres put forward by various bodies

In the report to the Minister of the Interior on the situation of migrants in the Pale of Calais, quoted above, Jean Aribaud and Jérôme Vignon proposed the creation of an emergency shelter centre (*centre de mise à l'abri / CMA*), on an experimental basis, for “*persons who have considered the possibility of an asylum application*” (proposal No. 7). They specify that this centre could also, on a transitional basis, cater for asylum seekers awaiting a place in an asylum seeker reception centre (*centre d'accueil des demandeurs d'asile / CADA*) and persons subject to the “Dublin” Regulation pending transfers, to Italy in particular.

It would be created about 100 km from the coast and would comply with “*strict rules of operation with regard to entry and exit regulations (badges)*”. Associations selected by the prefecture and representatives of the EASO [European Asylum Support Office] could hold regular sessions there in order to help migrants “*put together their asylum applications on a solid basis and, if necessary, return to their first country of transit*”.

The report states that were this experiment to prove convincing, other centres could be created, in the Paris region in particular.

The idea that exiles should – in particular at the time of expulsions from squats and shanty towns – be able to have the benefit of reception in a safe place, away from any climate of violence and insecure living conditions, in order to calmly think about their right to make an asylum application has long been recommended, by *Secours Catholique* in particular, and holds numerous advantages.

It should however be recalled that these centres, which in the mind of the report's authors would be destined to increase in number within France, cannot provide a substitute for emergency accommodation centres (providing unconditional reception which cannot be subject to consideration of asylum applications) and still less replace the asylum seeker reception centres (CADA), which provide certain services connected with social integration.

Yet, the introductory terms of the Aribaud-Vignon report do nothing to allay these concerns since, on page 9, it is stated that “*the mission shares the conviction that access to accommodation is a fundamental point. It proposes that this sensitive need should not be a precondition as demanded by the associations, but rather an objective at the end of a controlled process. Today the conditions are not present*”.

Indeed, this declaration hardly appears to be in accordance with the principle of the unconditionality of the right to accommodation established by law and by the European Court of Human Rights. Moreover, in this regard it is scarcely compatible with Defender of Rights' recommendations.

II. The right to respect for one's home

Although the Defender of Rights noted a suspension of expulsions from living areas within the territory of the town of Calais in the first part of the year 2015, cases have nevertheless been referred to him for the preceding periods (evacuation of 2nd July 2014 in particular) and for more recent actions (evacuations of 21st September 2015, cf. *infra*, Part II). Quite apart

from the material conditions under which these evacuations took place, with regard to which the Defender of Rights is conducting a detailed investigation, none of these operations appear to have been preceded by any social assessment, which would have made it possible to envisage continuity of the occupants' rights, as well as alternative accommodation solutions.

Pending the implementation of a voluntarist policy for the reduction of shanty towns in France, the urgent need for which has been emphasised on several occasions, by the Defender of Rights⁴¹ in particular, it should be recalled that homes are protected by Article 8 of the European Convention on Human Rights. In this respect, case law produced by the European Court of Human Rights clearly specifies that any shelter which a person considers to be their home falls within the field of this protection, even in the case of improvised shelters (tents, huts etc.)⁴².

This case law should provide the yardstick for the conduct of police visits to plots of land occupied without any right or title and, if need be, for expulsions from such plots. The Interministerial Circular of 26th August 2012⁴³ should be fully applicable on this point, in particular with regard to compliance with legal proceedings, the obligation to ensure continuity of rights and the preservation of personal property etc.

In this respect, the whole of the recommendations made by the Defender of Rights in his report on the so-called "Roma" camps of June 2013, may be reiterated with regard to the Calais migrants' situation⁴⁴. Similarly, in February 2015 the French National Consultative Commission on Human Rights (CNCDDH / *Commission nationale consultative des droits de l'Homme*) called for expulsions to be halted in the absence of rehousing proposals and for respect to be shown for the winter truce for shanty town inhabitants⁴⁵.

The question of whether the shanty town expulsion procedures conducted in France were in compliance with the revised European Social Charter had already been referred to the European Committee of Social Rights (ECSR) which, in a decision of 11th September 2012, observed that the legal protection for persons threatened with expulsion was inadequate, in view of the fact that these procedures could take place day or night, at any time of the year and, in particular, during the winter period. The procedures were condemned by the Committee as being contrary to respect for human dignity⁴⁶.

Similarly, in its ruling of 10th March 2011 the Constitutional Council of France (*Conseil constitutionnel*) had already condemned the provisions enabling prefects to conduct forced

⁴¹ Defender of Rights, *Bilan d'application de la circulaire interministérielle du 26 août 2012 relative à l'anticipation et l'accompagnement des opérations d'évacuation des campements illicites* ["Assessment of the application of the Interministerial Circular of 26th August 2012 concerning the planning and support of operations for the evacuation of unlawful camps"], August 2012-May 2013.

⁴² The notion of domicile includes, in particular, the case of persons living in a tent (ECHR, 24th November 1986, *Gillow v. United Kingdom*, app. No. 9063/80; ECHR, 19th September 2006, *McKay-Kopecka v. Poland*, no. 45320/99).

⁴³ Interministerial Circular NOR INTK1233053C of 26th August 2012 concerning the planning and support of operations for the evacuation of unlawful camps.

⁴⁴ Defender of Rights, Assessment of the application of the Interministerial Circular of 26th August 2012, *op. cit.*

⁴⁵ CNCDDH, *Avis sur le respect des droits fondamentaux des populations vivant en bidonvilles*, "Mettre fin à la violation des droits" ["Opinion on respect for the fundamental rights of inhabitants of shanty towns, 'Putting an end to the violation of rights'"], 20th November 2014 (JORF [*Journal officiel*] No. 0034 of 10th February 2015).

⁴⁶ ECSR, 11th September 2012, *Médecins du Monde – International v. France*, Decision on the merits, complaint No. 67/2011, §§ 55, 73-82.

evacuations of places occupied without any right or title, in particular insofar as they enabled “*evacuation procedures to be executed as a matter of urgency, at any time of the year, with regard to disadvantaged persons not possessing any accommodation, regardless of their personal or family situation*”. One of the arguments providing the basis for this censure was the principle of prohibition of the expulsion of occupants of plots of land and improvised shelters at certain times of the year⁴⁷.

Moreover, on numerous occasions the judges have granted notice periods for the execution of court decisions pronouncing the expulsion of occupants from such plots of land. The Defender of Rights set out observations within the framework of several of these disputes. The judges thus acknowledged the occupants’ right to take advantage of the provisions of the Code of Civil Execution Procedures (*Code des procédures civiles d’exécution*) (Articles L.412-3 and L.412-4 in particular), considering that the field of application thereof should extend to improvised shelters, wasteland and caravans, when they constitute the only home of the persons against whom expulsion measures are taken⁴⁸.

In a recent judgement of 22nd January 2015, the Paris Court of Appeal found that these provisions should apply “even for simple makeshift huts which, whatever the level of comfort and salubrity thereof, constitute dwelling places in the same way as any covered premises in which people dwell on a long-term basis”⁴⁹.

This national case law is in accordance with the case law produced by the European Court of Human Rights on the basis of Article 8. Yet, the expulsion procedures implemented by the French authorities against persons occupying plots of land without any right or title raise difficulties in view of the obligations incumbent upon France by virtue of the European Convention on Human Rights. For this reason, in 2014 the Defender of Rights, to whom a large number of cases of evacuations of camps by the authorities had been referred, decided to make a third-party intervention before the European Court in the case *Hirtu and others v. France* (app. No. 24720/13)⁵⁰. This case, which is still pending before the Court, raises the question of whether expulsion procedures against families in situations of extreme precarity are in accordance with Articles 3 and 8 of the Convention, with regard to the conditions under which such expulsions take place, the consequences thereof for the families’ living conditions, and for children in particular, and the effectiveness of existing means of remedy.

Having recently once again received complaints with regard to the evacuation of squats of migrants in the centre of Calais, the Defender of Rights wishes to recall that, in order to comply with national and international requirements concerning the right to accommodation and the fight against social exclusion, evacuations of plots of land occupied without any right or title need to comply with the Circular of 26th August 2012, which invites prefects to organise support for the persons evicted and seek emergency accommodation for them. No evacuation should therefore be carried out without guaranteeing continuity of school attendance and access to medical care, as recommended by the Interministerial Circular of 26th August 2012.

⁴⁷ *Conseil constitutionnel* (Constitutional Council of France), 10th March 2011, DC [Dalloz Critique] No. 2011-625.

⁴⁸ In this regard cf. TGI [Court of First Instance] Bobigny, 24th January 2013, No. 12/13284; TGI Nantes, 15th October 2012, No. 12/04352.

⁴⁹ CA Paris, 22nd January 2015, No. 13/19308.

⁵⁰ Defender of Rights, Decision No. MDE-MSP-MDS/2014-11 of 15th September 2014 (unpublished).

With regard to evacuations undertaken without prior implementation of the preparatory support measures in the fields of accommodation, school attendance and access to medical care recommended in the Circular, the Defender of Rights reiterates his recommendations that such evacuations should not be undertaken on the basis of general notions such as insalubrity or security risks, but should be limited to precisely-defined cases of extreme seriousness (prostitution, exploitation of vulnerable persons or children) in accordance with the requirements of case law.

In any cases where the support measures recommended in the Circular have not been implemented, in spite of the absence of a situation of extreme seriousness as mentioned above, the Defender of Rights once again recommends that provision should be made for deferment of the evacuation and that, without prejudice to any special circumstances justifying the granting of a longer notice period, the occupants should be granted a minimum 3-month notice period – as authorised by Articles L.412-1 et seq. of the Code of Civil Execution Procedures – in order to enable the relevant authorities to find alternative emergency accommodation and/or housing solutions.

Finally, the Defender of Rights reiterates his recommendations intended to ensure the application of the winter truce provided for under Article L. 412-6 of the Code of Civil Execution Procedures with regard to the evacuation of plots of land occupied without any right or title. In this respect, he specifies that an obligation to defer the evacuation of illegally-occupied plots of land during the winter period results from several supranational norms by which France is bound – the Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.

III. The right to decent material living conditions

Article 3 of the European Convention on Human Rights, which prohibits cruel, inhuman or degrading treatments, established positive obligations which are incumbent upon States. The latter may thus be held liable on the grounds of Article 3 whenever they fail to act in order to put an end to situations in which persons are placed in destitute circumstances of such a kind as to constitute inhuman or degrading treatment.

Access to services and networks meeting the basic vital needs of persons living in the Calais shanty town should be measured by this yardstick, in particular with regard to access to food (A), water (B) and the removal of household waste (C).

A. Distribution of meals

The Jules Ferry reception centre organises the distribution of one meal per day. Apart from the manifestly inadequate nature of this single daily distribution, at the time of their visits the Defender of Rights' officials ascertained the precarity of the conditions under which this distribution takes place: every day beginning at 4 p.m., almost 2,500 meals are distributed (while there are currently thought to be more than 3,500 persons in the shanty town). The queue outside is not sheltered. When the doors are opened, this queue is more than 500 metres long, and people may have to wait, under police surveillance, for up to three hours before being able to obtain a meal. The meals are distributed in takeaway containers. The

centre's facilities do not enable the provision of shelter for a large number of people and the majority of migrants eat their meals outside, or return to the shanty town for shelter.

Pending the provision of decent accommodation solutions in accordance with the unconditional right to emergency accommodation, the Defender of Rights recommends the allocation of material and financial resources to *La Vie Active*, the association in charge of the management of the Jules Ferry centre, in order to enable it to serve a number of meals equal to the number of people currently living in the shanty town at least twice a day.

B. Access to water

The right to water is a fundamental right acknowledged by several international bodies.

On 26th November 2002, the UN Committee on Economic, Social and Cultural Rights (CESCR) found that the right to water resulted from Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, which respectively establish the right to adequate living conditions and the right to health. This right involves ensuring “*sufficient, physically accessible and affordable water for personal and domestic uses*”⁵¹.

More recently, in a resolution of 28th July 2010⁵², the United Nations General Assembly considered “*the right to safe and clean drinking water to be a fundamental right, essential to the full enjoyment of the right to life and all human rights*”⁵³.

The right of access to drinking water is also protected at the European level. On 17th October 2001, the Committee of Ministers of the Council of Europe thus reasserted every person's right “*to a minimum quantity of water of satisfactory quality from the point of view of health and hygiene*”⁵⁴.

Above all, in a decision of 7th December 2005, the European Committee of Social Rights concluded that Italy had violated article 31§1 of the European Social Charter concerning the right of access to accommodation of adequate standard, insofar as the infrastructures of camps intended for the population groups referred to as “Roma” did not constitute salubrious accommodation, which should in particular include access to water and electricity⁵⁵.

In French law, the right to drinking water and electricity is not expressly established at the constitutional level but may nevertheless be inferred from the protection of public health⁵⁶ and the right to decent accommodation⁵⁷, which constitute objectives of constitutional status, established in 1993 and 1995 respectively.

⁵¹ Committee on Economic, Social and Cultural Rights, General Comment 15, U.N. Doc. E/C.12/2002/11 (2003), (§2 GC15).

⁵² United Nations General Assembly, resolution A/64/L.63/Rev.1 of 28th July 2010.

⁵³ Press Release of the United Nations General Assembly, “*General Assembly adopts resolution recognizing access to clean water, sanitation as human right, [and appoints Carman Lapointe of Canada Deputy Secretary-General for Internal Oversight Services] by recorded vote of 122 in favour, none against, 41 abstentions*”, 28th July 2010.

⁵⁴ Council of Europe, Committee of Ministers, Recommendation Rec(2001)14 of 17th October 2001 on the European Charter on Water Resources, Point 5.

⁵⁵ ECSR, 7th December 2005, *European Roma Rights Centre v. Italy*, complaint No. 27/2004.

⁵⁶ *Conseil constitutionnel*, 13th August 1993, DC No. 93-325, cons. 70

⁵⁷ *Conseil constitutionnel*, 19th January 1993, DC no. 94-359, cons. 7. See also, more recently, *Conseil constitutionnel*, 18th March 2009, DC no. 2009-578, cons. 12.

Moreover, Article L.210-1 of the Environmental Code (*Code de l'environnement*) provides that: *“Water is part of the nation’s common heritage. The protection, enhancement and development thereof as a usable resource, with due respect to natural equilibriums, is of general interest. Within the framework of laws and regulations as well as that of previously established rights, the use of water belongs to all and each natural person has the right of access to drinking water, for their sustenance and hygiene, under economically acceptable conditions for all [...]”*.

The right to water established under these provisions is not absolute. Indeed, it is limited by the rules established under the Urban Planning Code (*Code de l’urbanisme*) with regard to mains connection. Definitive connection to the electricity, water, gas and telephone networks may thus be refused in case of unauthorised buildings or disregard of urban planning rules (article L.111-6 of the Urban Planning Code). Conversely, these provisions do not give mayors any jurisdiction to refuse provisional connection to the networks, as very clearly recalled by the Council of State in a ruling of 12th December 2003⁵⁸ concerning the refusal of a provisional connection to the electricity distribution network.

Moreover, with regard to the length of time for which provisional connections may continue, in a decision concerning the refusal of a connection to the electricity distribution network, the Council of State allowed the possibility of continuation of a connection of this kind until the end of the winter, in view of the urgent situation associated with the living conditions of the occupants of a caravan⁵⁹.

More generally speaking, the Supreme Court calls upon the authorities, when considering any decisions to refuse provisional connections, to verify that the decision does not constitute a disproportionate infringement of the right to private and family life as protected under Article 8 of the European Convention on Human Rights⁶⁰.

Apart from the taps and showers made available in the Jules Ferry centre, which is only open between 12 and 7 p.m., the Calais shanty town has an absolute total of no more than three taps. This is proving to be very inadequate.

By way of comparison, the Humanitarian Charter and Minimum Standards in Humanitarian Response, established within the framework of the SPHERE Project⁶¹, recommend a minimum of one tap for two hundred and fifty persons, that is to say, on the scale of the population of the Calais shanty town, fourteen taps for three thousand five hundred people. It also recommends that the distance separating living areas from water taps should be no greater than five hundred metres. Yet, in Calais, the most distant shelters are almost two kilometres away from the Jules Ferry centre.

The lack of access to water taps in the Calais shanty town constitutes a blatant violation of the right to water and sanitation, which is nevertheless recognised as a fundamental right by several international bodies.

⁵⁸ CE, 12th December 2003, No. 257794.

⁵⁹ CE, 9th April 2004, *Municipality of Caumont-sur-Durance*, No. 261521.

⁶⁰ CE, 15th December 2010, No. 323250.

⁶¹ The Sphere Project is a non-profit making initiative bringing together a vast panorama of humanitarian agencies for a common objective: improving the quality of humanitarian aid as well as the acceptability of humanitarian actors in relation to those who appoint them, their funding agencies and disaster-stricken populations.

Pending the provision of decent accommodation solutions in accordance with the unconditional right to emergency accommodation, the Defender of Rights recommends that at least six additional water taps should be created in the shanty town, distributed in such a way as to ensure that the distance to be travelled in order to gain access to them is as short as possible.

C. Refuse removal

Under the terms of Article L.2212-2 of the General Code of Local and Regional Authorities (*Code général des collectivités territoriales*):

“The purpose of the municipal police is to ensure proper public order, security, safety and health. In particular this comprises:

[...] 3° The maintenance of proper order in places where large gatherings of people take place, such as fairs, markets, public celebrations and ceremonies, shows, games, cafes, churches and other public places;

[...] 5° The task of preventing and bringing to an end accidents, disastrous adversities, and pollution of all kinds, including fire, flood, the breaking of dykes, land and rock slides, avalanches and other natural accidents as well as epidemic, contagious and epizootic diseases, by means of appropriate precautions and provision of the required help, to take care of all urgent measures of assistance and rescue and, if necessary, to prompt action on the part of the higher administration [...].”

Similarly, by virtue of their general police powers, mayors are bound to ensure respect for proper public order and health throughout the territory of their municipalities. The removal of waste comes within the scope of this obligation whenever it becomes a public health issue due to its nature or volume. In a judgement of 29th April 2014, the Administrative Court of Appeal of Versailles found that lack of knowledge of the risks to public health caused by the unlawful occupation of a plot of land would be the sole reason for which a mayor might be exempted of the responsibilities incumbent upon them in their capacity as guarantor of public order and health within the territory of their municipality⁶².

In this regard, the case law produced by the courts has indirectly established that, by virtue of a concern for public health and within the framework of disputes concerning expulsions from plots of land occupied in the absence of any right or title, it is incumbent upon the mayor to take care of ensuring the removal of household waste, at least pending the rehousing of illegal occupants⁶³.

In the Pas-de-Calais, the aforementioned obligations are reinforced by Articles 89 A and 89 B of the Departmental Health Regulations (*Règlement Sanitaire Départemental*), which prohibit the leaving of rubbish on public highways and private roads, implicitly placing responsibility upon the municipal authority for the removal of any such waste.

At the time of their visits, the Defender of Rights’ officials observed that only one or two skips of the kind used for residential buildings were positioned at the entrance to the shanty town

⁶² *Cour administrative d’appel de Versailles*, 29th April 2014, “*Commune de Saint-Denis*”, No. 12VE00814.

⁶³ *TGI Créteil*, 23rd April 2013, No. 13/00149; *TGI Bobigny*, 24th January 2014, No. 13/02254.

for the purpose of waste removal. In order to offset this failing on the part of the local authorities, the occupants had put in place collection points, in the form of holes of about one metre in depth and two metres in diameter, in which rubbish was burnt.

These facilities are totally inadequate. Apart from the fact that they fall well below requirements pertaining to respect for human dignity, they involve major health risks.

Pending the putting in place of decent accommodation solutions for the inhabitants of the Calais shanty town, the Defender of Rights recommends that the local authorities should provide the shanty town with regular waste collection facilities, in accordance with their obligation to ensure hygiene and salubrity within the territory for which they are responsible. This measure means the installation of high-volume skips at several collection points distributed along the edge of the shanty town, it being necessary to collect these skips at least three times a week.

IV. The right to protection of health

The right to the protection of health, enshrined by several norms of international and French law, imposes positive obligations upon the authorities, in particular with regard to equal access to medical care for all.

Article 12-1 of the Covenant on Economic, Social and Cultural Rights thus upholds “*the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*”.

Similarly, at the European level, the right to the protection of health has been established on many different occasions.

Although not expressly protected by the Convention for the Protection of Human Rights and Fundamental Freedoms, it is nevertheless indirectly protected by virtue of the decisions announced by the European Court of Human Rights on the basis of Article 2 of the Convention, which protects the right to life. Indeed, from the consistent case law of the Court it follows that the right to life as protected by the Convention not only imposes negative responsibilities upon States (refraining from directly harming the life of persons coming under their jurisdiction) but also positive responsibilities (obligation to take the measures required for the protection of the lives of persons coming under their jurisdiction). Thus, in a judgement of 10th May 2001: “*The Court observes that an issue may arise under Article 2 of the Convention where it is shown that the authorities of a Contracting State put an individual's life at risk through the denial of health care which they have undertaken to make available to the population generally. It notes in this connection that Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction*”⁶⁴. In two more recent judgements, the Court had the opportunity of specifying its case law with regard to the refusal of medical treatment, finding that a blatant violation of Article 2 had occurred when a malfunctioning of the hospital system had had the effect of depriving the applicants of any access to medical treatment⁶⁵. In this respect, in a judgement of

⁶⁴ ECHR, (GC), 10th May 2001, *Cyprus v. Turkey*, application No. 25781/94.

⁶⁵ ECHR, 9th April 2013, *Mehmet Sentürk and Bekir Sentürk v. Turkey*, application No. 13423/09, § 97: “*Thus, the deceased woman, victim of a flagrant malfunctioning of the hospital departments, was deprived of the possibility*

January 2015 the Court noted a double failing, in the first place on the part of hospital doctors, due to a lack of coordination between hospitals, as well as on the part of the authorities, due to their failure to put in place a “*regulatory framework imposing upon hospitals, whether public or private, the adoption of suitable measures for ensuring protection of the lives of their patients*”⁶⁶.

Moreover, with more specific regard to the right of foreigners in an irregular situation to protection of their health within the territory of a Member State, the Court has produced case law upon the basis of Article 3 of the Convention, which prohibits inhuman and degrading treatments. In this respect, the Court considers that it is not incumbent upon States to make up for the failings of other States that are not party to the Convention, with regard to access to medical treatment, by providing free and unlimited healthcare to all foreigners who do not have the right to reside on their territory⁶⁷. However, it is incumbent upon them, for as long as these persons are under their jurisdiction, to examine the consequences of any decisions that they may take, in particular with regard to deportation, in view of these persons’ right not to be subjected to inhuman and degrading treatments. For this reason, the Court judged that the enforcement of the expulsion of a terminally-ill AIDS patient to St Kitts would constitute a violation of Article 3⁶⁸ and, more recently, that the extradition of a prisoner to the United States was liable to constitute a violation of Article 3 due to the sole fact of the seriousness of the mental illness from which they were suffering⁶⁹.

Positive obligations also result from the European Social Charter, under the terms of which the right to protection of health obliges the authorities to take measures aimed “*to provide advisory [...] facilities for the promotion of health*” (Article 11) and “*to ensure that any person who is without adequate resources [...] be granted adequate assistance, and, in case of sickness, the care necessitated by his condition*” (Article 13). In this respect, it should be recalled that the French Court of Cassation has, on several occasions, recognised the direct applicability of article E, which enshrines the principle of non-discrimination in the exercise of the rights established under the Charter⁷⁰.

Furthermore, at the level of European Union law, the right of access to medical care is enshrined in the Charter of Fundamental Rights, the legal force of which has been binding since the coming into force of the Treaty of Lisbon on 1st December 2009. Article 35 of the Charter thus provides that “*everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices*”.

In French law, the right to protection of health, established under paragraph 11 of the preamble to the Constitution of 1946, is enshrined with the status of a principle of constitutional value⁷¹. By virtue of this principle, the Nation guarantees protection of health

of access to appropriate emergency care. This finding is sufficient for the Court to conclude that the State failed in its obligation to protect her physical integrity. Consequently, it concludes that there has been a violation of the substantive part of Article 2 of the Convention”.

⁶⁶ ECHR, 27th January 2015, *Asiye Genç v. Turkey*, application No. 24109/07, §§ 67.

⁶⁷ ECHR, (GC), 27th May 2008, application No. 26565/05.

⁶⁸ ECHR, 2nd May 1997, *D. v. United Kingdom*, application No. 30240/96.

⁶⁹ ECHR, 16th April 2013, *Aswat v. United Kingdom*, application No. 17299/12.

⁷⁰ *Cour de cassation, chambre sociale* [social division], 29th February 2012, No. 11-60203 and 10th May 2012, No. 11-60235.

⁷¹ *Conseil constitutionnel*, 22nd July 1980, DC No. 80-117.

and material security for all. In this respect, an obligation to implement the means to meet this objective is incumbent upon the authorities.

Among the most important laws, the Act of 29th July 1998 concerning the fight against social exclusion devotes a whole chapter to access to medical care. In particular Article 67 of the Act provides that: *"access to prevention and treatment for the most impoverished persons constitutes a priority health policy objective. The public-health programmes implemented by the State as well as local and regional authorities and health insurance bodies take the specific difficulties of the most impoverished persons into account"*.

Yet, at the time of their visit in June and July 2015, the Defender of Rights' delegations noted the extreme precarity of the migrants' conditions of existence in the shanty town adjoining the Jules Ferry centre: apart from a hundred women and children accommodated within the centre at night, the vast majority of exiles live together in very overcrowded conditions, sleeping in tents and improvised shelters (wood, plastic tarpaulins etc.) or even without any protection.

The lack of infrastructures (small number of water taps, distance to travel in order to reach them, limited access to showers and distribution of a single meal, for which a wait of several hours is required, cf. *supra*) contributes to making the sites hostile and the living conditions appalling. At the time of their on-site visits to the PASS free medical clinic and the shanty town, the Defender of Rights' officials took particular note of the state of physical and mental exhaustion of exiles who, after a migratory journey of several months or years, find themselves obliged to adopt a lifestyle even closer to bare survival. In this context, the persons concerned feel that medical treatment is pointless or unimportant rather being a vital act. This situation gives particular cause for concern with regard to the most vulnerable persons: pregnant women, children and any persons undergoing deterioration in their state of health due to the ending of medical care or treatment⁷².

The pathologies shown by the exiles are characteristic of persons in situations of very great precarity and are combined, on the one hand, with disorders specific to their situation as migrants and, on the other hand, with police violence or pressure giving rise to post-traumatic stress disorders (A). Yet, one can only note that, in spite of the efforts undertaken, the availability of medical care remains very inadequate in view of the sanitary conditions (B), which in this respect constitutes a blatant violation of the migrants' right to protection of their health.

Apart from these overall and manifest infringements of the fundamental right of access to health, the Defender of Rights received a complaint from the Pas-de-Calais family planning service concerning the conditions under which requests for termination of pregnancy made by migrant patients are dealt with by Calais hospital (cf. *infra*, Part VII).

A. Living conditions and vulnerability that are particularly harmful to the health of exiles present in Calais

The precarity of living conditions in the shanty town located near the Jules Ferry day reception centre has a direct impact upon the exiles' physical and mental state of health.

⁷² This is the case with regard to chronic pathologies in particular (high blood pressure, asthma, diabetes and psychiatric disorders etc.)

From exchanges with *Médecins du Monde* and the PASS free medical clinic it emerges that the vulnerability of the Calais migrants' situation means that they are particularly exposed to certain pathologies. They are principally affected by infectious pathologies – of ENT (throat infections, ear infections and sinusitis), respiratory (bronchitis, pneumonia and tuberculosis), ophthalmological (conjunctivitis), digestive (diarrhoea), dermatological (dermatosis, scabies epidemics, abscesses) and dental (dental abscesses) origin – which bear witness to their great precarity.

In addition, the migrants' often fruitless attempts to get to Great Britain frequently result in trauma injuries if not death. Traumatic pathologies (ecchymosis, haematoma, wounds, amputations, burns, sprains and fractures) are constantly increasing and constitute a daily concern for health professionals. They currently constitute the principal reason for seeking treatment. They result in particular from risks taken at the time of attempts to reach England (falls, road accidents etc.), from violence occurring in the migrants' daily lives, often between communities, as well as acts of police violence, which are often recounted to the doctors of the PASS free medical clinic (blows, tear gas – cf. *infra*, section on police violence).

Apart from these reasons for consultations, it emerges from medical examinations conducted by the *Médecins du Monde* association (cf. *infra*) that the body mass index (BMI) of certain migrants living in the shanty town bears witness to a state close to undernutrition. The distribution of a single meal per day, when dietary norms are three meals per day, is unlikely to change this situation for the better.

Finally, due to their life stories (they have often suffered persecutions causing them to flee their country of origin or during their journey to reach Europe), the migrants living in the Calais shanty town present a high risk of suffering from mental disorders (post-traumatic stress disorders and depressions). Moreover, the doctors observe an increase in addictive behaviours (opiates and alcohol), particularly among young migrants, which is all the more worrying in so far as the prevalence of mental disorders among the migrant population and the risk of acts of violence between individuals are thereby increased. These disorders are obviously neglected both by sufferers and those who might provide treatment for them (cf. *infra*).

B. Highly insufficient and unsuitable provision of medical care

It needs to be recalled that, whatever a person's administrative situation, they have a right of access to the treatment required by their state of health. Although healthcare access facilities exist in Calais, they are decidedly insufficient and/or unsuitable. These facilities comprise the PASS free medical clinic (*permanence d'accès aux soins de santé*) (1), the hospital (2), and the *Médecins du Monde* clinic in the shanty town (3).

1. The Free Medical Clinic (PASS)⁷³

Due to the migrants' highly disadvantaged situation and the instability of their residence, the PASS free medical clinic is the main health facility providing them with access to treatment. The PASS clinic is located near Calais hospital and was put in place in 2006. In the course of

⁷³ Established in health institutions by the Act laying down the basic principles for government action in the fight against social exclusion (*Loi d'orientation de lutte contre les exclusions*) of 29th July 1998, the PASS free medical clinics are intended to enable effective access to healthcare for destitute persons.

a visit in the month of July 2015, a delegation of the Defender of Rights met the coordinating doctor of the PASS and observed the reception of migrants within the clinic and medical consultations.

The PASS clinic has been established in a prefabricated building located near Calais hospital since 2012. It operates as an independent consultation and treatment service in its own right, although it nonetheless comes under the authority of the accident and emergency department. The personnel comprises a coordinating doctor (emergency department doctor), ten shift-working general practitioners, a dental surgeon, three nurses, two interpreters, a psychologist (present twice a month by appointment) and a (female) social worker available two hours per day. The PASS clinic is the “fixed” medical facility providing physical and mental treatment for Calais’s most destitute patients. It constitutes the principal ordinary facility available to migrants in terms of access to treatment. Its opening times are from Monday to Friday, between 1:30 and 5:00 p.m., catering for 7,000 visits per year from 4,500 outpatients. For the past several years, the patients attending consultations have been predominantly migrants (90 to 95%). The doctors work half-days, seeing an average of forty to fifty patients per day, with recorded peaks of up to seventy consultations. There is a dedicated waiting room for children. The PASS clinic shares its premises with the free and anonymous HIV and viral hepatitis screening centre (*Centre de dépistage anonyme et gratuit / CDAG*).

However, first difficulty that the migrants encounter in terms of access to treatment is getting to the PASS clinic, since it is located almost eight kilometres from the shanty town adjoining the Jules Ferry centre, and access via public transport is very limited (one bus every four hours). The *La Vie Active* association can only transport a maximum of sixteen people per day. Although numerous associations, including *Médecins du Monde* organise return trips to the PASS clinic, this is not enough and the only solution open to numerous migrants (almost half) is to go there on foot (more than an hour and fifteen minutes), when their state of health so permits. In view of the fact that wounds and injuries are the most common cause of consultations, this obvious lack of accessibility stands out all the more flagrantly as an obstacle to access to treatment.

On their arrival at the PASS clinic, from 1:30 p.m., the patients are initially received by the office, where the reception staff (secretary and nurse) process their administrative medical file (identity, medical history, reason for consultation etc.). This initial phase of patient identification may take more than an hour before the doctor begins their first consultation, and then continues according to the arrival of patients throughout the afternoon. The personnel ask for papers proving the person’s identity in order to avoid the situation of having to deal with multiple identities, should the person return to the clinic under a different identity. Indeed, it is not uncommon for certain migrants to give different false identities at each consultation due to “fear of administration”. At the present time, the reception of patients at the PASS clinic is not computerised and does not involve the creation of any personal identification numbers of the kind usually issued in other health institutions and certain PASS clinics (e.g. the Bichat clinic). However, tools of this kind, which enable limitation of the risks of identification errors and mistaken identities, would facilitate follow-up care and the continuity of migrants’ treatment.

In spite of the efforts of the medical personnel, who are manifestly highly motivated, surgeries at the PASS clinic suffer from overcrowding on a daily basis. Designed to cater for 500 outpatients per year, the PASS clinic is now catering for 4,500 patients for the same period. Working under difficult conditions, the PASS clinic personnel are sometimes obliged to turn patients away, thus increasing the number of persons abandoning the attempt to receive treatment. Only patients accompanied to the PASS clinic by associations (*La Vie Active, Médecins du Monde*) are certain to be granted a consultation on the day of their arrival, since the associations take care to inform the PASS clinic personnel of the urgency of their situation.

Due to the very large number of visits, the average time devoted to each patient is estimated at between three and five minutes. This limited time does not appear conducive to provision of suitable medical care to patients, since the presence of an interpreter is often required.

A situation of this kind leads patients to make repeated demands on the PASS clinic medical staff, thus making the outpatient numbers all the more cumbersome: half of the persons arriving for consultations have come at least once before. In the face of urgency, medicines are issued on-site by the nurse, without their original packaging and without prescription. This mode of organisation increases the risk of dosage errors and makes the implementation of effective follow-up care difficult, when the migrant is led to consult the medical personnel in another treatment centre.

Physical injuries occupy a special place in the daily life of the PASS clinic doctors. The origin of these traumas often raises questions for health professionals. Are these physical injuries accidental (falls, road accidents etc.), which remains the most frequent case, or are they the result of deliberate acts of violence (between individuals, the police etc.)? In this respect, in the course of consultations the PASS clinic doctors, - who informed us of hearing accounts of acts of violence on the part of the police (cf. *infra* Part II) -, constantly remind migrants that they are able to draw up medical certificates detailing their injuries, in order to serve all legal purposes and, in case of doubt, prompt them to make criminal complaints. However, according to the PASS clinic's coordinating doctor, due to their insecure administrative situation, it is rare for them to fully complete such formalities. Moreover, the question of physiotherapy, after a sprain or fracture, is inconceivable under current conditions.

Dental care is provided in specific, dedicated and equipped premises, by a dental surgeon present one morning a week. Dental appointments may nevertheless be made seven days in advance for the most urgent treatments. In the meantime, dental infections and pain are dealt with by medical consultation. The fact remains that the material and human resources remain inadequate in the face of the scale of demand.

Asylum seekers and migrants' experiences are often punctuated with dangers and acts of violence that expose them to increased risk of mental disorders (post-traumatic stress disorders and depressive states). These disorders are often neglected, both on the part of sufferers and those in charge of treating them. The psychologist, who is only present twice a month and sees patients exclusively by appointment, is often obliged to conduct interviews alone, without the help of the "official" interpreter, who is already heavily occupied with the medical consultations. These working conditions complicate the handling of patients' problems and do not enable the provision of long-term care. A mobile "precarity psychiatry" team has recently been created, composed of medical personnel trained in intercultural

relations, in liaison with the PASS clinic and dedicated to the disadvantaged population. Nevertheless, the team does not work in the migrants' living areas or at the Jules Ferry centre, which would be appropriate in view of the increase in addictive behaviours (opiates and alcohol) noted by the doctors (PASS clinic and associations).

- *The consequences of the absence of health insurance cover*

The PASS clinic scheme does not meet the need for specialised consultations and, above all, for continuity of treatment, with regard to chronic illnesses in particular. As far as access to rights is concerned, persons living in the shanty town very rarely have the benefit of health insurance cover, even when they could have access thereto. Indeed, asylum seekers are eligible for health insurance, on the basis of affiliation according to social and occupational or residence criteria. Persons in an irregular situation may claim State Medical Assistance (*Aide Médicale d'État / AME*) after three months of uninterrupted residence in France⁷⁴. However, patients claiming health-related benefits are rare, in spite of the presence of a social worker. The latter obviously does not have enough time to offer assistance with claims, for State medical assistance (AME) in particular, or to provide information on asylum application procedures and the issuance of residence permits on medical grounds (2% of migrants). Furthermore, because of their administrative situation, migrants are little inclined to undertake formalities due to the fear of being denounced, or because they hope to get to Great Britain.

In the absence of health care insurance cover, migrants do not have access to private medical practices, which would enable de facto relief of the overcrowding of the PASS clinic and hospital services. More generally, this absence of health insurance cover means that the migrants are only entitled to urgent and essential treatment – i.e. of an unexpected nature – which excludes the treatment of any long-term illness.

2. The hospital

When a patient's state of health gives cause for concern, the PASS clinic doctors may be led to send them to the accident and emergency department. Although the nurse indeed prepares their medical file and announces their arrival to the accident and emergency department by fax, migrants regularly go there alone, on foot, or accompanied by a local association, at the request of the PASS medical personnel, which in practical terms does not have the available time to accompany them.

The PASS coordinating doctor informed the Defender of Rights' officials that all medical acts prescribed by the PASS doctors are completed by the hospital, which places no obstacles in the way of performance of even the most costly acts (MRI, scans and x-rays etc.), aimed at establishing more detailed diagnoses. However, in the face of the growing number of injuries, fractured limbs and circumstance-related pathologies, Calais hospital's accident and emergency department is, like the PASS clinic, increasingly unable to cope. Additional human resources for these situations are more than ever indispensable.

Outside of the PASS clinic opening times, migrants sometimes go directly to the hospital accident and emergency department in case of emergency. According to *Médecins du Monde* and certain local associations, they are then identified by means of a bracelet which, rather than showing the patient's name, shows the name of a flower or animal followed by a

⁷⁴ Article L251-1 paragraph 1 of the Social Action and Family Code (*Code de l'action sociale et des familles*).

number, determined in a random manner on the basis of pre-established lists. Although the hospital Management has not yet been questioned on this point, this information has nevertheless been confirmed by several members of the PASS clinic medical personnel, who condemned the practice.

The Defender of Rights intends to undertake a detailed inquiry of this issue and considers that, should the existence of an identification procedure of this kind be confirmed, it would in any case be prejudicial to personal dignity and thus contrary to the rules fixed under the Code of Medical Professional Ethics (*Code de déontologie médicale*).

Indeed, medical ethics dictate that doctors “*exercise their duties with respect for human life, persons and their dignity*”⁷⁵ and that they thus “*respect the principles of morality, integrity and devotion essential to the practice of medicine*”⁷⁶ in all circumstances.

Furthermore, respect for human dignity, which is a principle of constitutional value, demands that patients – whatever their nationality and administrative situation with regard to residence – be considered in all of their “prerogatives” as human beings, on an equal footing with all other patients, who cannot be treated in a degrading manner.

In addition, the Defender of Rights is concerned that this practice may lead to patients being deprived of certain rights.

In the first place, the Public Health Code (*Code de la santé publique*) gives all patients the right of access to their medical files (Article L.1111-7). In the absence of proper identification of the patient, any access to medical files and any requests for the latter to be passed on to another doctor are impossible.

In the second place, the same Code provides that continuity of treatment is a duty (R. 4127-47). However, the “identification” put in place by the hospital does not appear to guarantee the possibility of effective medical follow-up care, since any migrant patient hospitalised on a subsequent occasion would be allocated a new identification “code”, entirely unrelated to the previous one.

Finally, since it applies only to migrant persons, a practice of this kind is discriminatory in nature, whereas the law and medical ethics alike impose that doctors shall treat all patients with the same conscientiousness, without any discrimination based on their origin, political or religious convictions or social status, without regard to their feelings towards them and irrespective of circumstances.

3. The development of humanitarian services in the shanty town

The PASS doctors do not work in the areas where the migrants live. Since 15th March 2015, the Calais migrants have had access to a nursing care room established within the Jules Ferry day reception centre. A nurse from the PASS clinic is seconded there from Monday to Friday, and attends to migrants between 11 a.m. and 2:30 p.m. Nursing consultations are exclusively devoted to women and children between 11 a.m. and 12 p.m. From 12:30 to 2:30 p.m. consultations are open to the whole of the population on the site.

⁷⁵ Article 2 of the Code of Medical Professional Ethics (*Code de déontologie médicale*), repeated under Article R.4127-2 of the Public Health Code (*Code de santé publique*).

⁷⁶ Article 3 of the Code of Medical Professional Ethics, repeated under article R.4127-3 of the Public Health Code.

The nurse's role is the provision of care not requiring medical treatment (no issuing of medicines), preventive action (health education) and to direct patients to the PASS clinic or the accident and emergency department at Calais hospital, according to the degree of urgency.

Only 15% of consultations actually come within the scope of nursing care. The majority of migrants coming to consultations show a state of health calling for medical examination, thus leading the nurse to direct them to the PASS clinic. The *La Vie Active* association organises their transport. Due to crowds at the nursing room opening times, it is not possible for all of the patients hoping to see the nurse to be received. The nurse usually holds between twenty and thirty consultations.

Although the establishment of a nursing care room in the Jules Ferry reception centre constitutes a real step forward, the fact remains that the migrants require medical treatment more than nursing care. In this respect, it is regrettable that a doctor is not present on-site, that the most common medicines are not issued in order to avoid needless journeys to the PASS clinic, that the nursing consultations are provided by a single medical worker, that the hours of the latter are limited and that, due to insufficient transport facilities, not all patients who need to be directed to the PASS clinic have the benefit of the shuttle system.

Moreover, in the absence of access routes and public lighting at night, the emergency services (fire brigade, emergency medical services and police) do not actually go into the shanty town. Persons in need of their assistance have to go to the site entrance by their own means, when no help is available from local associations, which in any case do not have the necessary resources to organise secure transport for persons requiring emergency attention. Circumstances of this kind therefore inevitably constitute an obstacle to any emergency care and prove to be particularly dangerous in case of life-threatening situations.

In the face of these failings in public services, actors from private associations have gradually taken the State's place, without prior authorisation from the latter and without any funding on its part.

*"It is astounding to find a worse situation in French territory than in crisis areas! You can see this in Sudan or Nepal, after an earthquake. But here, in Calais, it's preposterous"*⁷⁷, declared *"Solidarités Internationales"*, a humanitarian NGO which has been working in the field of international humanitarian crises for thirty-five years.

At the end of June 2015, four humanitarian organisations – *Médecins du Monde*, *Secours Catholique*, *Secours Islamique* and *Solidarité Internationale* – decided to join forces in order to respond to the population's immense needs and support local actors unable to cope: *"each is deploying its own skills and logistical resources, usually reserved for war or disaster situations"*⁷⁸. For the time being, the operation is intended to last for a limited period, rather than being permanent. Apart from providing immediate humanitarian aid (the distribution of hygiene kits, flasks and jerry cans for the storage of drinking water and the construction of toilet blocks), the operation is aimed at alerting the authorities and public opinion, in order to ensure that the announced facilities are completed as quickly as possible.

⁷⁷ *Le Quotidien du médecin*, 3rd September 2015, *"Avec les 3000 migrants de Calais, Les humanitaires sur le pied de guerre"* ["With Calais's 3,000 migrants, Humanitarian workers on the war path"]

⁷⁸ Press release – *Médecins du Monde* – June 2015.

More specifically, at the beginning of July 2015 *Médecins du Monde*, for its part, set up a mobile clinic composed of three tents and three wooden chalets, identical to those set up in countries subject to difficult humanitarian situations (war or natural disaster), in order to provide local community-based medical consultations, provided on a voluntary basis every day by about fifteen health professionals. Two doctors give three hours of consultations in the morning and three hours of consultations in the afternoon, providing sixty medical consultations per day. In addition, four nurses are continuously present in the shanty town, providing thirty consultations. In spite of this availability, thirty patients are turned away every day, attesting to the great need of the persons concerned for medical treatment. Listening, physiotherapy and psychological support sessions have also been put in place. When necessary, migrants are taken to the PASS clinic by shuttle, then taken back to the site after receiving first aid. Teams visit the various sectors of the shanty town, meeting the different communities, in order to ensure that treatments are properly followed and to detect any problems.

Apart from emergency humanitarian needs, provision still remains to be made for preventive measures with regard to hygiene, testing for sexually transmitted diseases, - and HIV in particular -, contraception and vaccinations.

In awareness of the sensitive situation with which Calais hospital is faced, and moreover in a context of financial constraints, the Defender of Rights recommends:

- **an increase in the resources of the PASS clinic, which are currently ill-adapted to the situation in Calais, in order to enable it to cater for patients throughout the day, instead of exclusively in the afternoon as at present, and organise better follow-up care (it should be recalled that the Calais PASS clinic caters for up to 7,000 patients per year as compared, for example, with the 5,000 patients catered for by the PASS clinic of Marseille Hospitals Authority⁷⁹ (*Assistance Publique des Hôpitaux de Marseille*);**
- **the creation of a “mobile PASS clinic” to work within the shanty town, the considerable demand for medical treatment (and not only nursing care) currently being left to NGOs, which usually work in war zones and natural disaster areas;**
- **an increase in the Jules Ferry centre’s material and human resources in order to be able to organise the physical accompaniment of patients to the PASS clinic;**
- **the implementation of social assistance for better provision of information on access to rights, and to health insurance and state medical assistance (AME) in particular;**
- **the immediate ending of the practices of identification of migrants at the hospital, as described above, in so far as they constitute an unacceptable violation of the principle of respect for human dignity and are a potential source of danger for the state of health of the persons concerned;**
- **the putting in place of an identification system for patients catered for at the PASS clinic, after the model of the personal identification number already**

⁷⁹ For the year 2011.

existing in certain PASS clinics (Bichat teaching hospital in Paris), which has enabled the improved provision of follow-up care for patients.

V. Access to asylum for exiles living in the Pale of Calais: a change of position not devoid of all ambiguity

Although a real will is today observable on the authorities' part to encourage access to asylum applications – a will manifested in statements as well as in certain symbolic measures – (A), the national and European decisions taken in this respect nevertheless very greatly reduce the achievement of the objectives thus declared (B).

A. A positive change in the processing of asylum applications in the Pale of Calais...

For a number of years, the authorities did not encourage the associations present in Calais to issue migrants with information concerning the asylum procedure in France. In 2001, one of the rare documents issued for the purpose of provision of information to exiles present in the Sangatte camp was entitled “Dignity or exploitation: the choice is in your hands” (*“Dignité ou exploitation: le choix est entre vos mains”*). This booklet comprising a few pages, the publication of which was jointly organised by the French International Migration Office (OMI / *Office des migrations internationales*) and the International Organization for Migration (IOM), remained silent with regard to the formalities to be accomplished in order to make an asylum application.

Today, access to asylum appears to be a priority in public statements. In May 2015, at the time of a visit to Calais, the French Minister of the Interior, Bernard Cazeneuve⁸⁰, lamented the still significant hesitations of potential asylum seekers in France and encouraged them to complete these formalities with the French authorities.

For the past few years, this position has been accompanied with an improvement in prefectural services, in terms of staff, reception and waiting times for the processing of applications. By way of example, in order to take the specific context of Calais into account, a decision by the Minister of the Interior of 25th September 2014 created an exception to the trial regionalisation of asylum applications, begun in 2006, by restoring jurisdiction to the Pas-de-Calais prefecture for residence permit applications made in the territory of the Calais districts. In this respect, it should be noted that between 2013 and 2014 the number of initial applications for international protection made at this prefecture increased by 189%. This figure is representative of the major challenge that rapid and effective processing of these applications represents for the prefectural services.

Data collected from the French Office for the Protection of Refugees and Stateless Persons (OFPRA / *Office français de protection des réfugiés et des apatrides*) reveal that special processing has been put in place for asylum seekers in the Pale of Calais, taking the area's specific situation into account. While the ordinary waiting period for asylum application is six months, with an overall rate of 20% of them being granted, it is forty days in Calais. It nevertheless needs to be specified that this short waiting period begins after the granting of residence by the prefecture, and access to the prefecture is already very time-consuming in

⁸⁰ Accompanied by Mr Pascal Brice, Director of the OFPRA, who has been visiting Calais twice a month for the past year.

itself (cf. *infra*). The overall rate of asylum applications granted in Calais is 42% according to the Director of the French Office for the Protection of Refugees and Stateless Persons (OFPRA)⁸¹.

Moreover, the State has decided to finance an association known as the AUDASSE, in order to assist migrants in their asylum application formalities.

Initially specialised in assistance for access to accommodation and housing, and then in the management of an asylum seeker reception centre (CADA), the AUDASSE has been appointed by an agreement entered into with the French agency in charge of migration and the reception of foreign people (OFII) for three principal tasks: establishing a place of domicile for persons wishing to make asylum applications, providing support in the completion of formalities for the granting of temporary residence to asylum applicants by the prefecture and, finally, assisting applicants in the completion of their applications lodged with the OFPRA (however it does not take action within the framework of appeals brought before the French Court of Asylum (*Cour nationale du droit d'asile*)).

In addition, the association is responsible for the task of coordinating about ten associations in charge of emergency accommodation.

In the absence of adequate resources, the association is obliged to set reception limits in its objectives. Its objectives are based upon the prefecture's capacity to register applications. Since the prefecture can only receive fifteen persons per day, the association accordingly sends it an appointment sheet every day containing the names and addresses of the persons that it intends to present the following day. It establishes priorities according to the urgency of the situation and the asylum seekers' vulnerability (persons suffering from illness, pregnant women, families etc.).

It should be recalled that this mode of operation infringes legal provisions and the European requirements that they transpose: asylum seekers should be interviewed by the prefecture within an allowed time of fifteen days, reduced to three days under the terms of the recent legislative reform of asylum law⁸², without the possibility of establishing any filter system or limiting the number of persons received. The Defender of Rights considers that the failure to comply with these texts is not attributable to the AUDASSE, but rather to the lack of resources, and human resources and in particular, from which this organisation suffers. At the beginning of the year 2013, the association had two employees. It now has ten, but this remains highly inadequate in view of the scale of the tasks with which it is entrusted.

In view of its resources, the AUDASSE divides the hourly load of its tasks in a progressive manner. The first stage is simple and rapid and consists of the establishment of domicile, through the issuance of a card, which then enables the person to check whether they have any mail directly at reception, by means of dedicated software. Thirty minutes are devoted to the second stage of application for temporary residence (organisation of access to the prefecture). Finally, preparation of the account to be submitted to the OFPRA – the longest stage of the procedure – takes 1 hour 45 minutes. In order to optimise the time spent on this preparation, the AUDASSE partly recruits its legal experts on the basis of their language

⁸¹ Letter of 12th August 2015 from Mr Pascal Brice to the Defender of Rights

⁸² Articles L.743-1 and R. 742-1 of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA) resulting from Act No. 2015-925 of 29th July 2015.

skills (the language used being 95% Arabic), the latter then receiving training in asylum law. These legal experts prepare an average of four applications per day, which represents a considerable task.

The AUDASSE registers two hundred persons per week and can only actually process seventy-five applications (5x15 applications per day); there is therefore a differential of seventy-five persons. However, this waiting list is reduced by the loss of applications that are not finally completed, estimated at 50%, in particular due to persons going to Great Britain.

The entirely positive steps taken by the authorities in specifically appointing and financing an association in Calais, in order to promote effective access to asylum applications, would be fully convincing were it not for the fact that the dimensions of the tool thus created remain inadequate. It is particularly regrettable that this lack of resources means that the waiting periods for accompanying applicants to the prefecture are not in accordance with the law, a situation for which the State may be held liable. Similarly, proper handling of asylum applications would also mean appointing the AUDASSE to provide assistance with regard to accounts given before the French Court of Asylum (CNDA). Indeed, the granting of protection is often determined before the Court, which calls for the serious and detailed preparation of an appeal.

Among public initiatives considered to have led to better protection of exiles in terms of asylum, mention still remains to be made of the proactive actions undertaken by the OFPRA, which made a large number of grants of international protection with very short waiting times, via the use of travelling missions.

The latter institution's involvement in the understanding of problems concerning access to the right of asylum in Calais should be noted, since the OFPRA is responsible for examining asylum applications and protecting recognised refugees and persons with subsidiary protection.

Broadly speaking, since 2013 the OFPRA has shown a will to take local action when justified by protection needs.

One year ago, because the asylum situation in Calais unquestionably required specific attention, the OFPRA decided to go to Calais regularly in order to contribute to provision of information and proper organisation of the processing of asylum applications within tight deadlines. Conducted in cooperation with other administrative actors, its initiatives sometimes have the benefit of operational support from certain associations in Calais.

Between November 2014 and April 2015, more than six hundred asylum applications originating from Calais were registered with the OFPRA. Almost 90% (today closer to 80%) of the applications were made by asylum seekers of Sudanese nationality. In order to meet rapid deadlines, in the course of April 2015 the OFPRA therefore organised a mission in Paris dedicated to the Sudanese demand for asylum. Within the framework of this initiative, the institution heard two hundred and twenty-six persons and the proportion of applicants granted protection amounted to 32%.

Moreover, after several visits, the OFPRA ascertained an increasing presence of Eritrean nationals in Calais. However, unlike the situation in the town with regard to Sudanese applicants, the demand for international protection among Eritreans remained virtually non-

existent. Within the framework of an initiative for providing information and prompting applications, aimed at encouraging persons of Eritrean nationality to apply for asylum, the OFPRA organised a travelling mission, which was held from 16th to 21st May in Calais. On this occasion, one hundred and eleven persons (out of the one hundred twenty heard) of Eritrean nationality were granted refugee status.

Although these initiatives made it possible to facilitate formalities for applicants, while providing rapid responses to their applications, in the opinion of several members of associations as well as migrants, the operations lacked openness.

Indeed, although according to Mr Brice, Director of the OFPRA, these missions were organised with the support of actors from the associations, it nonetheless emerges from the inquiry conducted by the Defender of Rights that not all of the latter were consulted. Certain local and historical associations, as well as “private-public” associations such as the AUDASSE, - which comes under the authority of the French agency in charge of migration and the reception of foreign people (OFII) -, were only rather belatedly informed of the holding of this mission, by the migrants themselves.

In addition, the travelling mission worsened the tensions, which admittedly already existed, between migrants of different nationalities, since Sudanese, Afghan and Syrian nationals did not understand the reason for this procedure, lacking in openness and reserved for Eritreans.

In spite of explanations provided beforehand by the OFPRA, the migrants, and Sudanese migrants in particular, felt this special treatment of Eritrean asylum applications to be an injustice. The negative impression made upon actors from various different associations by the mission in Calais appears to be confirmed by the prefect’s declarations of 17th June 2015, when she revealed to the Defender of Rights that she preferred not to repeat the experiment due, on the one hand, to the magnet effect created among Parisian migrants and, on the other hand, to the interethnic rivalries to which it gave rise.

B. ... not devoid of all ambiguity.

Although, at first sight, these changes in the handling of asylum are to be welcomed, the current position is not free of all ambiguity. Indeed, the application of the “Dublin” Regulation (1), the choices made within the framework of the relocation of exiles, the visa policy (2) as well as the failure to comply with the law as far as access to material reception conditions is concerned (3) all constitute effective obstacles to asylum applications in Calais, obstacles which the State has not definitively decided to eliminate.

1. The harmful effects of the Dublin regulation

In the first place, it is important to note that in reality the positive changes in terms of the handling of asylum only concern a very small proportion of the migrants present in Calais. Indeed, the majority of these persons are liable to come under the “Dublin” procedure. In this case, France should not, in principle, examine their application, but rather transfer them to the responsible EU Member State.

It should be recalled that the system instituted by the Dublin Convention of 1990, incorporated in the “Dublin II” Regulation in 2003 and, since 1st January 2014, in EU Regulation 604/2013/EU referred to as “Dublin III”, means that asylum applications should be examined by a single country among the Regulation’s signatories (the countries of the

European Union, Norway, Iceland, Switzerland and Liechtenstein). In order to determine which country is responsible several criteria are applied, such as the place of residence of a member of the family, the State which issued a visa or the State whose borders the person concerned illegally crossed. In the latter case, fingerprints are taken and recorded in the “EURODAC” file, which then permits France to transfer the foreigner to that State⁸³.

The application of the “Dublin III” regulation is not without effect upon asylum applications in Calais. Indeed, the whole of the exchanges conducted by the Defender of Rights’ officials, both with migrants and with the managers of associations, within the framework of the visit to Calais organised on 16th and 17th June and 20th July 2015, show that the exiles are perfectly aware of this system and therefore know that, in making an asylum application within French territory, they risk being readmitted to Italy or Hungary in particular. Moreover, the fact that France is the European country on whose initiative the greatest number of transfer requests are executed⁸⁴ greatly deters migrants from lodging asylum applications.

Nevertheless, articles 17 and 18 of the Dublin regulation provide the State with the right to decide to process an asylum application, even if it is not *a priori* responsible for it, either for humanitarian reasons (due to the vulnerable condition of the persons concerned or family ties that they may have in France), or on totally discretionary grounds for which it does not have to provide any justification.

What is more, France has to declare itself responsible for the processing of an asylum application if it cannot be unaware that the responsible State is undergoing systemic failings in its procedure and reception system (Article 3.3⁸⁵). However, although for this reason asylum applicants are no longer transferred to Greece, they are still transferred to Italy and Hungary despite the fact that the serious breakdowns in asylum procedures and reception conditions for asylum seekers in these States are liable to be called into question⁸⁶.

This decision to continue the strict application of the Dublin Regulation – supported by the position taken by the European Council 23rd September 2015 reiterating the need to return to the principles established by this Regulation - is particularly paradoxical, on the one hand, in view of the authorities’ declared will to encourage asylum applications in the Pale of Calais and, on the other hand, due to the fact that the system does not appear to be very operational, since only 16% of transfers are actually executed⁸⁷.

In any case, the humanitarian situations of migrants reaching Europe via the Mediterranean manifested in massive arrivals on the Franco-Italian (Ventimiglia) and Franco-English borders are closely linked and should find a common solution. In this context, there appears

⁸³ If the prefect considers that France is not responsible for the application, they have a deadline of three months to refer the case to the European country assumed to be responsible. The State to which the readmission request is addressed then has a 2-month deadline to respond. Beyond this deadline, the latter State has given its tacit agreement, and the exile cannot lodge their asylum application in France. The prefecture has six months to actually hand the person over. After the expiry of this deadline, the asylum application is incumbent upon France.

⁸⁴ Eurostat and French Ministry of the Interior, statistical information for 2013.

⁸⁵ In substance this article takes up the case law of the European Court and Court of Justice: CJEU, 21st December 2011, *NS cv. SSHD*, C-411/10; and ECHR, Grand Chamber, 21st January 2011, *MSS v. Belgium and Greece*, application No. 30696/09.

⁸⁶ ECHR, Grand Chamber, 4th November 2014, *Tarakhel v. Switzerland*, application No. 29217112

⁸⁷ Eurostat and French Ministry of the Interior, *Op. Cit.*

to be a need for all of the EU member countries to engage in reflection on a joint and long-term basis, as the only means of being able to effectively offset the difficulties connected with the failure of these transfer procedures.

Several factors encourage a change of perspective of this kind since certain recent decisions have, in reality, led States to suspend the application of the Dublin Regulation. At the national level, one thinks of the travelling mission organised by the OFPRA and also, at the European level, of the relocation decisions made precisely for the purpose of entrusting asylum applications to a State (Germany and France in particular) other than the responsible State, in order to relieve the European countries whose borders are the first to be crossed, such as Italy, Greece and Hungary, from processing them. It is to be noted that this suspension was expressly called for by the European Parliament on 8th September 2015⁸⁸.

2. Visa policy, with regard to Syrians in particular

The legitimacy of applications for international protection on the part of Syrian nationals is evident in view of the war situation in Syria and the exactions committed upon the civilian population. The obstacles which are nevertheless placed in the way of these nationals' legal entry into French territory bear witness to the ambiguity of the position taken on asylum, described above.

On the one hand, in 2013 France re-established the requirement for airport transit visas for these foreign nationals, in view of the risk of massive floods of migrants that might be caused by the treatments experienced in French airports. This decision, formalised three months after the commencement of its implementation, was validated by the Council of State in 2014⁸⁹ on the grounds that this obligation meets "*needs of public order aimed at avoiding misuse of the international air zone, at the time of a stop in France or a change of aeroplane, for the sole purpose of entering France*" and that it does not infringe the right of asylum.

Shortly afterwards, the refusal of a visa application lodged by a Syrian family for the purpose of applying for asylum in France was, in turn, validated by the urgent applications judge of the Council of State on the grounds that "*although the right to request refugee status in France is the corollary of the constitutional right of asylum, the guarantees attached to this fundamental right recognised as pertaining to foreigners within the territory of the French Republic do not involve any right to the issuance of a visa with a view to lodging an asylum application in France*"⁹⁰.

Traditional case law was thus applied based upon the sovereign nature of decisions to grant or deny visas since "*the State is entitled to define the conditions of admission of foreigners to its territory*"⁹¹ when "*no principle or rule of constitutional value guarantees foreigners rights of a general and absolute nature in terms of access to and residence within the national territory*"⁹².

Admittedly, by law, once a person has entered the territory it is not necessary for them to have obtained a visa in due form in order to apply for asylum. In reality, the visa policy

⁸⁸ Resolution 2014/2254(INI) of 8th September 2015 on the situation of fundamental rights in the European Union.

⁸⁹ **CE, 2nd et 7^e SSR, 18th June 2014, *Anafe et Gisti*, No. 366307.**

⁹⁰ CE, ref., 9th July 2015, No. 391392.

⁹¹ *Cons. const.* 25th Feb. 1992, No. 92-307 D.

⁹² *Cons. const.* 13th August 1993, No. 93-325 D.

conducted by France necessarily obliges a large number of the persons concerned to choose other, illegal and dangerous means of moving about, despite the fact that the right to leave one's country – the right to emigrate – is enshrined under Article 13 2° of the Universal Declaration of Human Rights (UDHR) and Article 2-2 of additional Protocol No. 4 of the ECHR, and despite the fact that the right to apply for asylum is a fundamental right protected by the 1951 Refugee Convention and enshrined with the status of a constitutional right in France. Nevertheless, in the course of their migration and in the absence of having arrived in French territory via the legal channels, these same people find themselves in a situation of very great vulnerability, misinformed and without the provision of any measures for them – except on the part of smugglers able to convince them that it would be worth continuing their journey to another destination (cf. *infra*) –, and often obliged to live in disgraceful conditions, in Calais or other border areas with equally precarious conditions⁹³.

3. Asylum in France, an unconvincing alternative to the choice of departing for Great Britain

The French asylum system is in itself a factor deterring the lodging of asylum applications in France: the excessively long waiting periods, absence of any right to work for a nine-month period⁹⁴ and, above all, failure to comply with material reception conditions – including the right to accommodation and social measures in particular - explain why exiles living in the Calais shanty town, in spite of the fact that the legitimacy of their claim to asylum protection is particularly well-founded in view of their nationalities, decide to continue their migratory journey to the United Kingdom or elsewhere, at the price of remaining in an irregular situation and ultimately refraining from applying for asylum there, through fear of being readmitted to France, Italy or Hungary.

This situation is not new for the Defender of Rights who, on two occasions, has made third-party interventions before the ECtHR⁹⁵ in order to denounce the violations of asylum seekers' fundamental rights in France, placing some of them in a situation of great impoverishment and extreme vulnerability, contrary to the right not to be subjected to inhuman or degrading treatments (Article 3 of the ECHR).

Moreover, the Defender has also had occasion to state his position within the framework of the Parliamentary debate on the Act concerning the reform of asylum law⁹⁶ by explaining in two opinions⁹⁷ that, with regard to different points, the text was not fully in accordance with the Procedures, Reception and Qualification Directives. The Defender of Rights' analysis has recently been confirmed by the decision taken by the European Commission on 23rd September 2015 to begin proceedings, against France in particular, for infringements involving failure to fully transpose these Directives and for having insufficiently informed the Commission with regard to proper application of the law in terms of the reception of refugees.

⁹³ See, for example, the sixty or so Syrian nationals living in tents at the Porte de Saint-Ouen in Paris. Cf. *Libération*, 25th September 2015, *Réfugiés de la Porte Saint-Ouen : "c'est la gestion désespérée"* ["Refugees of the Porte de Saint-Ouen: "the management of despair"]

⁹⁴ After this 9-month period, the opposability of the employment situation for the issuance of a work permit in practice prohibits any employment, except for rare exceptions.

⁹⁵ Decisions of the Defender of Rights Nos. 2014-087 and 2015-221.

⁹⁶ Act of 29th July 2015 mentioned above.

⁹⁷ Opinion 14-10 (at the French National Assembly) and 15-05 (at the Senate).

Yet, apart from the fact that the granting of material reception conditions results from strict application of the law and European requirements, it is also a factor influencing migrants' decisions and changing their migratory paths.

In this respect, although the OFPRA travelling mission concerning Eritreans, organised between 16th and 21st May 2015, raised certain questions and was not satisfactory on all points, it nevertheless made it possible to call into question the false but solidly entrenched idea that the Calais exiles would be unlikely to abandon their plans to go to Great Britain. Indeed, this experiment showed that as soon as the exiles knew that they would quickly have the benefit of legal protection and accommodation, a future in France appeared possible and even desirable to them.

Finally, among the factors discouraging asylum applications in France, the rather low overall rate at which applications brought before the OFPRA are granted⁹⁸ may also be identified as a cause. It is even remarkable to note that the latter grants less protection than the French Court of Asylum (CNDA).

In 2014, a few months before being considered a priority by the OFPRA (via a travelling mission), applications from Eritrean nationals were granted at the rate of 14.8%. Out of 607 new applicants, 70 received protection from the OFPRA. Conversely, before the CNDA, 113 Eritreans were granted the setting aside of OFPRA decisions, thus obtaining refugee status. 13.3% of applications from Sudanese nationals, for their part, were granted by the OFPRA in 2014. Out of 1,793 new applicants, 170 obtained protection through the OFPRA. The CNDA pronounced the setting aside of 232 OFPRA decisions and granted refugee status 120 persons and subsidiary protection 112 persons.

The unlikelihood of obtaining international protection after living in appalling conditions, without forgetting the risk of being transferred to a European State in which one does not wish to live, means that the undertaking of such formalities has little relevance for migrants, and it is easy to understand why the invitation to apply for asylum in France will necessarily remain contradictory unless certain political choices and legal instruments are called into question. Moreover, this is attested to by the fact that, although decisions to "relocate" asylum seekers may be judged pertinent in terms of the will to ensure solidarity in the processing of asylum applications, they have nonetheless remained without any impact with regard to reducing the gathering together of migrants at Europe's borders, and in Calais in particular.

The Defender of Rights welcomes the opening of numerous asylum application procedures since the beginning of 2015 and recommends:

With regard to European migration policy and European initiative:

- **Suspension of the Dublin III Regulation, at least on a temporary basis, in the de facto form in which it appears to be taking shape in several regions of Europe, a simple reorientation of the system appears to be insufficient in view of the current situation;**

⁹⁸ Except in the case of Syrian applications, which are not however among the most common. The rate of granting of Syrian applications is very high, 95.7 % in 2014. Out of 2,072 new applicants, 1,404 were granted protection. For its part the CNDA pronounced the setting aside of 63 OFPRA decisions.

- That measures be taken to make sure that the new solidarity mechanisms – referred to as relocation mechanisms – between the various different States of the European Union do not lead to the fate of exiles present at the borders of the territory becoming a secondary issue, whether with regard to the occupants of the shanty towns of the Pale of Calais or the camps that appear to be taking shape, e.g. at Ventimiglia.

With regard to the right to provision of information about the right to apply for asylum in France:

- The establishment of permanent representation for the different institutional and private actors in order to ensure an effective, full and coordinated system of provision of information to asylum seekers. This representation could include the OFII, the OFPRA, the UNHCR, the AUDASSE and local associations providing support for exiles. All of these organisations should be provided with additional resources in order to meet the government’s will to find positive solutions – by means of asylum in particular – in order to resolve the critical humanitarian situation affecting the shanty town exiles in the Pale of Calais, respect for whose fundamental rights raises particularly serious problems;
- The organisation of “cruises” intended to better inform groups in especially vulnerable situations, possibly under the aegis of the UNHCR, accompanied by persons having acquired refugee status, or more broadly speaking persons sharing a comparable life history of exile, which could prompt migrants to undertake formalities, their words being likely to enjoy a certain prestige.

With regard to the role of prefects in determining the State responsible for the processing of asylum applications:

- In the absence of a European decision to suspend the Dublin III Regulation, greater involvement of the prefectural services in the implementation of the sovereignty clause of the Dublin Regulation and dynamic application of the whole of the provisions of the latter Regulation, in particular in order to enable migrants to be reunited with family members already in a Member State’s territory;

With regard to material reception conditions:

- The immediate ending of the manifest violation of protective texts in this regard (cf. *supra*, Part I), as clearly evidenced by the situation of the asylum seekers present in the shanty town adjoining the Jules Ferry centre, a violation for which the State may be held liable;
- Effective access to the national reception system guaranteeing decent living conditions for asylum seekers, and accommodation and social measures in particular, in accordance with France’s undertakings.

VI. The right to the benefit of protection measures for both unaccompanied and accompanied minors

The situation of migrants in Calais does not only involve adults. Indeed, the interviews conducted by the Defender of Rights' representatives show an increase in the number of children accompanying adults, in the 11-12 years age group in particular. This proves to be all the more cause for concern insofar as it is very often impossible to determine whether the adult is their parent, a family member, a smuggler or a procurer. In addition, according to information passed on to us by the *France Terre d'Asile* association, unaccompanied foreign minors represent 5 to 10% of the migrants present in the camps.

These children, whether accompanying their parents, travelling alone or with third-party who does not hold parental authority, live in appalling material conditions, the harmful consequences of which are increased by the vulnerability inherent to their condition of minors.

A. Alarming living conditions clearly constituting situations of danger for children

The foreign children present in the Pale of Calais are often subjected to dangerous situations. Indeed, the parents, accompanied by their children, attempt to reach Great Britain at night. These attempts are undertaken at the risk of their own lives and those of their children.

The journey, these futile attempts to get to England and the families' living conditions are a definite cause of trauma for children. The interviews conducted by the Defender of Rights' officials have made it possible to ascertain that, in addition to intense anxiety manifested by problems of enuresis in particular, certain children develop psychiatric pathologies. However, although they are able to see doctors on an occasional basis, their reception conditions make it difficult to set up suitable and regular follow-up care.

In addition, the Defender of Rights' officials were informed by the associations and voluntary workers, as well as by the managers and employees of the Jules Ferry centre, of rumours of prostitution both outside and within the "Jungle". The information brought to light exclusively concerns women and girls. However, it is impossible to rule out the possibility that this phenomenon may also involve boys. The Defender of Rights is greatly concerned about this phenomenon, both with regard to its consequences for minors engaged in prostitution and for its consequences for the children of prostitute mothers. The impossibility of gaining more objective information on the situation raises questions. One reason, mentioned on several occasions by various different actors, concerns the difficulty of making contact with women in the Pale of Calais, even for female voluntary workers. Indeed, the women appear to be on the defensive and to find it difficult to "confide" and trust in others. The associations also observed that, when they were finally able to engage in discussion with a woman present in the camps, they were often quickly joined by a man, whereupon the woman fell silent, thus ending the discussion and any possibility of being able to exchange freely.

Finally, children and adolescents not accompanied by parents, and for whom no care is provided on the basis of their status as unaccompanied foreign minors, are left alone. Among

adolescents, more and more high-risk behaviours are observed, principally connected with increasing alcohol use.

The foreign children present in Calais are thus growing up in living conditions which give extreme cause for concern. These conditions quite clearly constitute a dangerous situation for the children coming under Article 375 of the Civil Code (*Code civil*), which provides that “*when the health, safety or morality of a non-emancipated minor are in danger, or when the conditions of their education or their physical, emotional, intellectual and social development are seriously compromised, educational assistance measures may be ordered by the courts*”. Although these provisions are generally applicable in case of failings or mistreatment on the part of parents or guardians, this is not the case in this instance, since the danger to which the Calais minors are exposed is a direct result of the conditions in which they are obliged to live, in the absence of suitable responses on the part of the authorities.

The on-site visits, interviews and hearings conducted by the Defender of Rights’ officials have made it possible to shed light upon the exceptional situation of the migrants present in the Pale of Calais. The children’s terrible conditions of existence require measures and means proportional to this situation to be deployed as a matter of urgency, as imposed by the conventions to which France is a party and the law with regard to the protection of children and the assistance of families in situations of social precarity. These measures should ensure respect for the children’s physical and moral well-being, while maintaining their ties with their parents.

Indeed, the State has an obligation to protect all children present on its territory, without regard to their nationality. This obligation is enshrined in article 3-2 of the Convention on the Rights of the Child (UNCRC), which provides that “*States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*”

As recalled by the Committee on the Rights of the Child in General Comment No. 6 of 1st September 2005, “*the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness*”.

The children’s extreme vulnerability should take priority over their status as foreigners in an irregular situation. The European Court of Human Rights has also had occasion to specify this in the case *Popov v. France*⁹⁹.

The obligations incumbent upon the State are also established in French law. Article L.112-4 of the Social Action and Family Code provides that “*all decisions concerning children should be guided by the child’s interest, taking into account their essential, physical, intellectual, social and emotional needs as well as respect for their rights*”. The French Court of Cassation recalled that “*the interests [of the child], taking their needs and respect for their rights into account, constitute grounds of common interest [corresponding to] constitutional*

⁹⁹ ECHR, 19th January 2012, *Popov v. France*, application Nos. 39472/07 and 39474/07.

requirements recognised and guaranteed by paragraphs 10 et 11 of the preamble to the Constitution of 1946 and with the constitutional value of the objective of maintenance of public order”¹⁰⁰.

The Defender of Rights calls upon the government to consider the fate of the children present in Calais and in the neighbouring migrant camps to be a priority. It is imperative for the authorities to draw the immediate consequences of the conditions these children are living in and adopt appropriate measures as a matter of urgency in order to ensure their protection and enable them to develop according to their age and needs, in accordance with the provisions of both the Convention on the Rights of the Child and French law.

1. A system for the provision of shelter that is overcrowded and ill-adapted to needs

The “*Maison des Femmes*” is located within the Jules Ferry centre, near the Calais migrants’ camp. It was opened in March 2015, with the objective of providing shelter for women and their children.

The facility is managed by the *La Vie Active* association and is designed for 100 persons. However, on 20th July 2015, it was catering for 86 women and 26 children, i.e. 112 persons. Despite this, about thirty women and children were still waiting for accommodation. This figure has apparently increased still further, since the association recently mentioned a waiting list of 70 persons.

The team at the centre informed the Defender of Rights that about fifty additional places, or even another accommodation centre reserved for unaccompanied girls of between 16 and 18 years of age, would be needed in order to cater for the whole of the women and children present in the shanty town and wishing to have the benefit of the facility.

Moreover, this centre only accommodates children accompanied by their mothers. Any man arriving at the centre with a child with a view to providing it with shelter would thus have no other option than to entrust it to a woman from his community, even if the latter had no bonds with the child, in order for her to accompany the child in the centre. The Defender of Rights is concerned by the fate reserved for these children.

The Defender of Rights recommends an increase in accommodation capacities and the creation of specific facilities enabling the reception of unaccompanied girls between 16 and 18 years of age, on the one hand, and of children accompanying their fathers, on the other.

2. Children lacking any educational facilities

At the time of visits, the Defender of Rights’ officials ascertained that the children of the Calais shanty town did not have the benefit of the provision of any educational measures, in

¹⁰⁰ Cass. Crim., 22nd January 2013, No. 12-90.065.

violation of the fundamental right, enshrined in the constitution, of education for all¹⁰¹, and the corollary thereof, compulsory school attendance.

Nevertheless, the compulsory nature of school attendance for all children, whatever their parents' administrative situation and conditions of residence – whether legal or not – within the territory of the municipality, is recalled by a number of Circulars¹⁰², in accordance with Articles L.111-1, L.122-1 and L.131-1 of the Code of Education (*Code de l'éducation*) and France's international undertakings. In application of the same texts, Circular No. 2014-088 of 9th July 2014 recalls that “*education is a right for all children residing within national territory, whatever their nationality, migratory status and previous history*” and that the UNCRC “*guarantees the right of education to children irrespective of any distinction based upon their nationality or personal situation*”.

In this respect, under the authority of the prefect, mayors are bound to draw up a list of all of the children residing in their commune who are subject to compulsory school attendance.

Moreover, the Defender of Rights' officials noted that the children of the Calais shanty town did not have the benefit of the provision of any activities. At the time of their visit to the *Maison des Femmes*, the Defender of Rights' officials ascertained the absence of any toys or premises dedicated to children, the room initially provided for this purpose having been requisitioned in order to accommodate a larger number of people. The team of the *La Vie Active* association mentioned plans to set up a marquee in order to be able to provide activities for children, pending the possible provision of a new multi-purpose hall. There is therefore a real will to improve the provision of educational support for the children catered for. However, for the time being it has not been possible to fulfil this desire, due to insufficient resources.

Children nevertheless need to take part in activities in order to grow and develop. These activities are essential in so far as they call upon cognitive skills and physical aptitudes which need to be exercised. They also enable the child to acquire self-confidence, and even to relieve suffering by restoring hope of a return to normal life.

In this respect, Article 31 paragraph 2 of the Convention on the Rights of the Child places an obligation upon the State to promote the child's right to take full part in cultural and artistic life, and to encourage the organisation of appropriate facilities for leisure, recreational, artistic and cultural activities for children, under conditions of equality.

The Defender of Rights asks for the Prefect of Pas-de-Calais and the mayor of Calais to meet the responsibilities incumbent upon them by virtue of the legal obligation to provide an education for children, to draw up a list, in accordance with Article L.131-6 of the Code of Education, of all of the children in the Calais shanty town to whom this obligation applies and to ensure that these children are sent to school.

In addition he recommends that financial, material and human resources be allocated to the implementation of real support for the migrant children of Calais, in order to

¹⁰¹ Paragraph 13 of the Preamble to the Constitution of 1946: “*The Nation guarantees equal access of children and adults to education, professional training and culture. The organisation of free and secular public education at all levels is a duty of the State.*”

¹⁰² See in particular Circular No. 2012-142 of 2nd October 2012 on the education and schooling of children from itinerant and traveller families.

enable them, in spite of the harshness of their daily lives, to develop as children of their age.

3. The need for greater diligence in the implementation of existing legal provisions

The interviews conducted by the Defender of Rights' officials made it possible to bring to light the presence of female asylum-seekers within the *Maison des Femmes*, whereas the latter should have access to the national reception system. This failure to provide accommodation within the asylum-seekers reception system is likely to paralyse a facility that is already overcrowded and not only leave women on the street, but also their children (Cf. *supra*).

In addition, it was ascertained that there was a particularly long waiting period, of up to three months, before asylum-seekers could obtain an appointment enabling them to lodge an asylum application. The Defender of Rights has raised the question of these administrative practices, which are put in place in certain regions, with the authorities. They are justified by the flood of asylum applications, but deprive asylum seekers of access to material reception conditions (accommodation and support in particular; on material reception conditions for asylum seekers, cf. *infra*). Act No. 2015-925 of 29th July 2015 reforming asylum law provides that asylum applications shall be registered within three days. In principle, this should enable asylum seekers to have the benefit of material reception conditions more quickly. However, as the Defender of Rights has already emphasised in his opinion No. 14-10 of 6th November 2014, there is reason to doubt that the registration deadlines are in reality complied with, the current practices of prefectures being so far removed from them. Moreover, the law attributes the right to depart from this three-day rule to the regulator under certain unspecified conditions.

In the *Tarakhel v. Switzerland* case, the European Court of Human Rights had occasion to assert that asylum seekers are even more vulnerable in the case of families with children and that reception conditions for child asylum seekers should be adapted to their age, in such a way as to ensure that they do not lead to their being placed in situations of stress and fear having a particularly traumatic impact upon their psyche¹⁰³.

The Defender of Rights therefore recommends that special attention should be given to the situation of asylum seekers accompanied with children, in particular when the latter are very young. These children's vulnerability makes it necessary to ensure that the registration of their parents' asylum applications and guidance of the latter for securing accommodation solutions are completed with the greatest diligence.

Moreover, numerous minors present in Calais, whether accompanying an adult or unaccompanied, hope to join a member of their family living in England. It would be appropriate to speed up the time for performance of existing procedures enabling family reunification (on the basis of Article 17 of the Dublin Regulation). Indeed, the current waiting times, which are often longer than one year, prompt these young people to resort to circuitous and dangerous channels, instead of the legal channels provided for the purpose.

¹⁰³ ECHR, Grand Chamber, 4th November 2014, *Tarakhel v. Switzerland*, application No. 29217/12.

B. A specific system dedicated to unaccompanied foreign minors

The reception and care system for unaccompanied foreign minors within the Pas-de-Calais department came into force on 10th September 2012. It is subject to a protocol fixing the general framework of the system and the various different actors' respective undertakings.

1. Emergency accommodation which despite being unconditional is ill-adapted to the needs of the majority of unaccompanied minors present in the Pale of Calais

Two specific procedures have been elaborated according to the age of the unaccompanied minors concerned.

Emergency reception for children under fifteen years of age comes under the responsibility of *La Vie Active*, which has four places within a children's care institution, where they are accommodated for a maximum period of eight days while their situation is assessed, thus enabling the child welfare services to direct the minor concerned to the most suitable place.

At first sight, the number of places devoted to the emergency reception of unaccompanied foreign minors under fifteen years of age appears to be rather limited. However the system is not overcrowded. It would therefore appear that the number of places is adequate. However, the minors concerned very often refuse emergency reception because they do not want to leave the shanty town, due to fear of being separated from the group. In addition, the fact that the reception facility is not overcrowded in reality reveals the unsuitability of the reception system, which does not take into account the specific situation of unaccompanied minors in the Pale of Calais, their life histories and their tenacious will to reach England.

The same considerations apply to unaccompanied foreign minors over fifteen years of age. For the latter, emergency accommodation, assessment and long-term care are entrusted to *France Terre d'Asile* (FTDA), which opened a reception centre devoted to these young people in 2012, in Saint-Omer.

Cruises are organised in the camps on a daily basis by the association's youth workers in order to spot unaccompanied foreign minors, offer them emergency accommodation and accompany them to the reception centre. Voluntary workers from the associations working with migrants also call the cruise teams when they encounter unaccompanied foreign minors wishing to use the accommodation facility.

However, due to its distance from Calais, the centre in Saint-Omer does not enable provision of effective shelter for all of the young people who could be received there.

In this respect, FTDA informed the Defender of Rights' officials that the fact that the centre is located 45 kilometres from the Pale of Calais constituted an advantage in so far as it keeps the smugglers at a distance, who can exercise considerable pressure upon the young people they accompany.

Moreover, in addition to the emergency accommodation service, the Saint-Omer centre provides a day reception service and a stabilisation and social integration service for young people looked after on a long-term basis. According to the FTDA, the presence of minors who have joined the child welfare scheme within the centre makes exchanges possible with new arrivals. In some cases the latter, after seeing how the measures provided for

unaccompanied minors work on a long-term basis, change their outlook and decide to settle down in France. The encounters between these two groups therefore appear to have a non-negligible influence upon new arrivals' migration plans.

Nevertheless, although the location of the centre quite far from Calais meets a legitimate objective, that of separating the young people from persons likely to harm them, it is also a shortcoming for the reception facility, since this geographical distance constitutes a hindrance to the provision of accommodation for young people.

Indeed, it was observed that the centre's geographical distance constitutes an obstacle for the young people, who do not want to leave the group of adults they have been travelling with, or risk being far away from the places of transit to England when a favourable opportunity arises to continue their journey. During the week only ten to fifteen young people are thus catered for, although thirty places are available. The majority of the young people who agree to go to the Saint-Omer centre do so on Saturday evenings, the time when there are no heavy goods vehicles going to England. They then take advantage of this time to rest and have a shower, but without any intention to stay.

The statistical data provided by the FTDA confirms this information: although the number of young people received for emergency accommodation increased threefold between 2013 and 2014, they stayed for shorter periods, most of them henceforth only staying for a single night on average. Indeed, with fewer possibilities of reaching England, young people do not want to miss any opportunity for getting there that may arise. Moreover, the number of young people coming for accommodation at the centre on their own initiative was greater in 2013. The majority of young people arriving at the centre are now directed there by the cruise teams, sometimes after long discussions in order to persuade them.

In addition, the population catered for has changed. There were few Eritreans in 2013, but their numbers increased sharply in 2014. However, it is more difficult to stabilise and socially integrate these young people because they have definite plans to depart to England. Indeed, the associations present on the ground have observed that the young people who do accept accommodation have plans to settle down in France and are often originally from West Africa. However, the young people present in Calais for the most part want to reach England and rarely go back on their decision. Other emergency accommodation centres have therefore been opened, on an exceptional basis, in particular at the time of the expulsions of migrant camps in May 2014. They have enabled the provision of shelter for one hundred and twenty-four young people. Amongst these, only one young person decided to live in France.

The reasons driving these young people to abandon the prospect of settling down in order to get to England at any cost are many: they may involve a common language or the existence of family ties in Britain, but may also be the result of the young people's lack of information on their rights, the opportunities offered by measures provided for them in France and, more generally, the positive prospects of living in France. Be that as it may, these young people who, for various different reasons, refuse to take part in the reception system and remain in a vulnerable situation, reveal two kinds of shortcomings on the part of the authorities resulting, on the one hand, from failure to implement legal provisions, despite the existence thereof, which would enable family reunification with regard to these young people and, on the other hand, from lack of resources devoted to the provision of information to young people about the choices open to them. The specific situation of unaccompanied foreign minors present in

Calais, that is to say their determination to get to England and their refusal, whether free or under duress, to settle down in French territory, therefore needs to become a prior consideration before any reflection with regard to the provision of measures for them.

The Defender of Rights recommends that resources be allocated to increasing the provision of access to legal information and advice for minors, enabling them to receive full information on the various different legal mechanisms open to them, with a view to settling down in France as well as departure to England and, if necessary, legal support in the procedures undertaken for this purpose.

The Defender of Rights also recommends that an alternative solution should be put forward for young people who do not wish to move away from Calais. The opening of an accommodation centre and day reception facility, also open to young people under 15 years of age, near the Calais migrant camp, would enable provision of shelter for them as well as the detection of especially vulnerable situations (influence of smugglers, risks of trafficking and prostitution etc.). This centre could also enable the establishment of contact with young people desiring more permanent protection and agreeing to move away in order to take part in the scheme created at Saint-Omer.

2. The Problem of the Reliability of Age Assessments for Minor Status

Shelter is provided at the Saint-Omer centre on simple declaration of minor status. However, when declared minors decide to settle down, they can only be admitted to the child welfare scheme after an assessment aimed at confirming or invalidating their declarations concerning their unaccompanied minor status. This assessment is conducted by the FTDA association and is based upon an interview between an assessor and the young person concerned. The results of this appraisal, that is to say the FTDA's assessment of the consistency of the account, life history and age declared by the young person, are simultaneously sent to the child welfare services (for the purposes of information) and to the State Counsel's Office (*parquet*) (for follow-up procedures).

Amongst the young people who express a desire to settle down in France, only 46% are subject to provisional placement orders, the rest being deemed to be major after completion of the assessment.

Although the Defender of Rights approves of the presumption of good faith on which the emergency provisional reception system provided for under Article L.223-2 of the Social Action and Family Code (CASF) is based, on the other hand he calls for special vigilance with regard to the quality and reliability of the assessment process. Indeed, it may prove difficult for young people who have expressed the desire to settle in France to go back on their decision, in particular when this decision leads to the breaking off of relations with parents who financed the journey or smugglers who were previously accompanying them.

3. Failure to take civil status documents into account

After receiving the assessment, the State Counsel's Office either orders a provisional placement measure or decides to discontinue the procedure.

The Circular issued by the Minister of Justice on 31st May 2013, concerning the practical details of provision of measures for unaccompanied foreign minors, recommends that the

assessment of minor status should be based upon a range of different pieces of information including assessment by youth workers, the taking into account of civil status documents and, in case of continuing doubt and as a last resort, a bone age test.

However, although the assessment made by the FTDA association is, quite logically, based upon the account given by the young person and the credibility thereof, it apparently does not take into account any civil status certificates or identity documents produced by the latter. Nor is any greater attention paid to civil status documents by the State Counsel's Office, which apparently bases its decisions solely upon the assessment conducted by the youth workers of *France Terre d'Asile* and follows the latter's conclusions in 99.9 % of situations.

In a letter of 21st September 2015, in response to the Defender of Rights' requests, the State Counsel thus confirmed that his Office never orders any additional investigations with regard to the authenticity of civil status documents, even when the latter contradict the conclusions of the assessment made by the association.

The Defender of Rights recalls that under the terms of Article 47 of the Civil Code, "*Full faith must be given to acts of civil status of French persons and of foreigners made in a foreign country and drawn up in the forms in use in that country, unless other records or documents held, external evidence, or elements drawn from the act itself establish, after all useful verifications that may be necessary, that the act is irregular, forged, or that the facts declared therein do not correspond to the truth*".

This Article establishes a presumption of regularity with regard to foreign civil status certificates. It is incumbent upon the administration to overturn this presumption by producing proof of the irregular, forged or inaccurate nature of the document in question. This right to overturn the presumption of authenticity with regard to civil status documents should be exercised through the implementation of a legal verification procedure, with the guarantees attached thereto.

The Defender of Rights reminds the whole of the actors concerned that the civil status documents produced by young persons in support of their minor status should be considered to be conclusive evidence in their favour, insofar as the document has not been subject to an expert documentary assessment finding it to be lacking in authenticity or fraudulent in nature. He specifies that, an assessment by youth workers should never take precedence over an undisputed civil status document certifying the minor status of the person concerned.

4. Absence of legal support for young people excluded from the reception system

When the State Counsel pronounces a decision to discontinue proceedings with regard to young persons assessed as being major, the latter are still able to directly refer their cases to the juvenile court judge on the basis of Article 375 of the Civil Code. When examined by the Defender of Rights' officials, the FTDA team declared that they systematically inform the young persons concerned of the existence of this means of remedy. However, the association does not offer any support for these procedures, which in practice deprives the right of any real effect.

Yet, there is no association working in the area of legal support for minors assessed as being majors, whether in Calais or at Saint-Omer. As a result, after the dropping of their cases has been pronounced by the State Counsel, young persons assessed as being major apparently never refer their cases to the juvenile court judges of the Court of Saint-Omer.

In view of the small percentage of young people actually subject to placement orders after having expressed the desire to settle down in France (less than half) and the importance that the State Counsel's Office gives to the minority assessment conducted by *France Terre d'Asile* (the sole basis of decisions to discontinue proceedings in virtually all cases), despite the fact that there is no means of measuring the reliability of such assessments, the Defender of Rights considers that it is absolutely essential to guarantee that young persons assessed as being major have effective access to the court.

In this respect, the Defender of Rights reiterates the recommendations of his decision No. 2014-127 of 29th August 2014 in which he recommended that “*any young person deemed to be major shall be issued a copy of their minority assessment as well as the ruling pronouncing them not to be entitled to child welfare assistance, mentioning the means of appeal to higher administrative authorities and legal remedy, as well as instructions concerning access to legal advice. At this time it is essential for the young person to be provided with information, in a language that they understand, concerning the right to be assisted by a lawyer in the proceedings that they may wish to lodge against this decision (referral of the case to a juvenile court judge or an administrative court).*”

5. A need to emphasise the quality of provision of long-term educational measures

The FTDA is directly and fully responsible for the situation of unaccompanied foreign minors, since nobody is in charge of them within the child social welfare service in the Pas-de-Calais and the only action taken by the Council of the Department in this area is the financing of the system.

In this regard, the Defender of Rights emphasises the quality of the educational support enjoyed by unaccompanied foreign minors subject to child protection measures.

The interviews conducted by the Defender of Rights' officials show that considerable work of building relationships and raising awareness is undertaken by *France Terre d'Asile*, both among the inhabitants of Saint-Omer and in relation to the sector's various different administrative bodies. This work contributes to facilitating the procedures undertaken for the young people's social integration. The association thus notes that, thanks to this work, applications for provisional work permits submitted with a view to professional training, and those made, at the time of reaching full legal age, for the issue of a “private and family life” residence permit, as well as for access to reception support for young adults, are almost systematically granted.

However, the Defender of Rights regrets that these unaccompanied foreign minors' cases are almost never referred to the guardianship judge, which results in their being deprived of suitable legal status.

Indeed, under the terms of Article 390 of the Civil Code, “*Guardianship becomes applicable when the mother and father are both deceased or deprived of the exercise of parental authority. It also becomes applicable with regard to children whose filiation is not legally established. No departure is made from the specific laws governing the child social welfare service*”. Article 373 of the Civil Code specifies that “*Fathers or mothers who are not in a position to express their will, due to incapacity, absence or any other cause, are deprived of parental authority*”.

Yet, in the absence of a ruling by the guardianship judge, the service to which the unaccompanied foreign minor is entrusted cannot make any decision falling within the field of parental authority (signature of an apprenticeship contract, authorisation of a surgical act etc.) without submitting a specific request to the juvenile court judge and receiving the latter’s authorisation on each occasion. The provision of care for minors on a daily basis is thereby rendered complex and, indeed, less in accordance with their interests.

The Defender of Rights therefore recommends that the cases of all unaccompanied foreign minors subject to child protection measures within French territory should be systematically referred to the guardianship judge.

VII. The right, as a woman, to specific health protection and not to suffer sexual violence

The presence of women in the Calais squats and “jungles” is, in itself becoming ever less rare. In addition to some 100 women accommodated at the Jules Ferry centre, some 200 women currently live in the shanty town, some by choice, to remain with people they accompany and others because there is no room at the Jules Ferry centre. Some of them are accompanied by children.

The fact of being a woman, a migrant and without a home puts those exiled in the Calais “new jungle” in an extremely vulnerable position. They not only experience the same sort of obstacles in relation to access to fundamental rights that anybody living in these conditions would have but also suffer obstacles relating to their gender.

A. Obstacles to their right not to suffer sexual violence or to be victims of trafficking.

However, according to information reported by *Médecins du Monde* to the Defender of Rights, women in the camp are very often isolated and rarely accompanied by their spouse, companion or travelling companion or other members of their family. Because of this isolation they are particularly vulnerable and in particular, targets for sexual aggression or in a situation of forced prostitution. The volunteers at *Médecins du Monde* “clinic” testify to the state of terror in which these single, stray women live in the shanty town. They refer, for example to the case of a young Eritrean woman of 25 who had arrived alone the day before in the shanty town. This young woman was suffering from a number of old traumas but, they explained, the true reason for her coming for consultation was that “*she had to pass the night outside in the open and was in a state of panic at the idea of another night outside. She had been harassed by men wanting to take her into their tent by force*”. A female mediator went with the young woman to the Jules Ferry centre, where she was registered on the waiting list

(56th) the capacity of the centre being completely insufficient for the growing number of women on the camp¹⁰⁴. Whilst waiting for a place to become free for the young Eritrean woman, *Médecins du Monde* supplied her with a duvet and the mediator found her a tent where another Eritrean woman allowed her a space for the night. The next day, *Médecins du Monde* explained, the young woman came to the clinic in tears. “*the husband of the woman who had allowed her to stay in the tent came back drunk in the night. She was crying and didn't want to tell us what happened*”.¹⁰⁵

The Defender of Rights recommends that an immediate shelter should be organised for all single women on the camp. The Defender of Rights requests that funds be allocated so that the capacity of the accommodation centre for women and children is tripled (from 100 to 300 places).

The Defender of Rights' officials have been informed of rumours of the existence of prostitution in the camp. Under the provisions of Article L.316-1 of CESEDA, the Code for Entry and Residence of Foreigners and Right to Asylum, a foreign national making complaint against any person accusing them of having committed the offence of procuring or trafficking human beings or who is a witness in criminal proceedings in relation to a person being tried for such offences may be issued with a residence permit for "private and family life". This temporary residence permit gives the right to work. It is renewable throughout the criminal proceedings subject to the provisions for its issuing continuing to be satisfied. In the event of final sentencing of the accused, a residence permit is issued by right to the foreign national having made the official complaint or having been witness.

In this respect, the Defender of Rights recommends that procedures should be set up so that clear, precise information on rights of residence may be issued to women who are victims of trafficking or procurement.

Additionally, everything should be done in relation to the danger to which women are exposed who decide, sometimes at the risk of their life, to undertake this process of denouncing their procurement or the person exploiting them. With regard to the problems inherent to such procedures, it is important that these women are able to count on assured real protection and not simply hypothetical protection. On this last point, the GRETA (the Group of experts fighting against the trafficking of human beings) has exhorted the authorities to ensure that, in practice, victims of trafficking have assistance and are not subject to the latter's co-operation at enquiries and to criminal proceedings which are necessarily long, stressful and whose outcome is uncertain. In this respect, the fact that States are able, as in France to issue a residence permit in exchange for a victim's co-operation may block unconditional access for victims to this assistance as the European Commissioner Mr Nils Muižnieks has recalled in his press release mentioned above.¹⁰⁶

The Defender of Rights also, at the same time, recommends that legislative changes should be envisaged in order that, where a foreign national accuses a person of procuring or trafficking, or witnesses against them in criminal proceedings, the

¹⁰⁴ The association managing the Jules Ferry centre, *La Vie Active* then said that there were over 60 women currently on the centre waiting list.

¹⁰⁵ Mady DENANTES, « Le bidonville de Calais est-il en France ? » [“Is the Calais shanty town french?”]: <http://blogs.mediapart.fr/blog/mady-denantes/030915/le-bidonville-de-calais-est-il-en-france>

¹⁰⁶ Nils MUIŽNIEKS, “*Without papers but not without rights: the basic social rights of irregular migrants*”, Press Release, Strasbourg, 20 August 2015.

prefect no longer has the simple right to issue a residence permit but is obliged to apply the law as it stands without exercising discretion. Article L 316-1 of CESEDA could thus be amended to provide for a temporary residence permit to be (without any "maybes") issued to the foreign national making official complaint against a person they accuse of offences under Articles 225-4-1 to 225-4-6 and 225-5 to 225-10 of the penal code or is a witness in criminal proceedings relating to a person being tried for the same offences, as has elsewhere been proposed in the first reading by the Senate in debates on the gender equality bill (Article 14a of the new proposal adopted on first reading by the Senate on 17 September 2013).

B. Obstacles to access to termination of pregnancy for migrant women

In addition to the overall patent breaches of fundamental rights of access to health which have been described in part IV, the Defender of Rights has received a claim for family planning from the Pas-de-Calais relating to the conditions of accepting applications for terminating pregnancies made by migrant patients.

Under Articles 18 and 20 of Constitutional Law No. 2011-333, the Defender of Rights carried out an in-depth examination of the case and twice asked the hospital inspection for information. In the context of this examination, departmental memorandum No. 4 "Details of accepting disadvantaged patients for birth control and in particular foreign patients in an illegal situation" was brought to its notice. This memorandum raised a number of questions which some have not yet been asked.

Firstly, this memorandum states that "it is obligatory that all patients [who are disadvantaged and in particular foreign nationals in an illegal situation] are sent to the PASS, the Healthcare Centre for those without resources, who will be responsible for coordinating consultations". Under the terms of the replies given to the Defender of Rights' officials by the hospital on 17 September 2015, this would mean that except in the case of an emergency, any pregnancy test which might be necessary as a result of a consultation, suggesting there was a pregnancy, is not to be carried out at the hospital but requires a meeting with the PASS. This decision not to carry out this examination when the person is already in the hospital is, according to the hospital, applicable to all women in a disadvantage situation and not just for migrant women, on the grounds that they would need an interpreter which, rightly, would be found at the PASS.

In so far as, in certain cases, this acceptance for care is carried out directly at the hospital, the hospital Director stated to the Defender of Rights' officials that they would change this memorandum to delete the word "obligatorily" This change enabling a too restrictive reading of this memorandum to be avoided does not result in a refusal to provide emergency care and is certainly an improvement but does not appear to be sufficient. Indeed, this service memorandum presents another problem in this respect: in not distinguishing foreign patients in an illegal situation according to whether they have health insurance cover (AME) or not the memorandum may be interpreted as forcing all patients who are in an illegal situation - even those having health insurance cover - to have a meeting at the PASS which is not necessary for them, the pregnancy test being part of the "basket" of care under this medical cover.

Secondly, in this same memorandum, it is stated that "*the secretary will ensure that the patient shall, as an obligation, have a consultation at the family planning centre for contraception access*". The Defender of Rights has asked the hospital about the legislative

basis for this obligation, deeming that this constraint was such as to create an obstacle to acceptance for care within legal time limits, in particular because of mobility problems that these patients encounter and the distances between the places where they live and the institution concerned. Looking at applicable legislation there is indeed an obligation for the healthcare provider, after pregnancy testing, to provide information to the women in question in relation to contraception and in no case to being sent to a family planning centre - however relevant and well advised this might be - is not a necessary preliminary for terminating a pregnancy. The hospital Director stated, in his letter dated 17 September 2015 that he agreed with this analysis and stated that the departmental memorandum would be changed in this respect.

Moreover, the Defender of Rights also questioned the actual significance of the doctor's right to "*challenge the patient at any time where they deem that legislative and safety provisions have not been met*", which is mentioned in this internal memorandum. The reply from the hospital hardly convinced the Defender of Rights: if, as set out in his letter of 17 September mentioned above this specification has just one purpose, that of complying with regulatory provisions relating to complying with time limits and receiving consent, he cannot understand why this reminder is set out in a departmental memorandum relating only to patients in disadvantaged situations

Finally the principal concern of the Director relating to this service memorandum, relates to non-French speaking patients being assisted by an interpreter, the internal memorandum stating that their presence is "*obligatory for all consultations*". In effect, without challenging the need for a patient to give informed consent, voluntary abortion is, nevertheless, subject to compliance with a legal time limit for it being carried out which might, in some circumstances be difficult to reconcile with the need for an interpreter for all meetings. To the question of knowing whether the obligation of there being an interpreter present at each meeting is such as to delay consultations when an interpreter is not available, the hospital replied to the Defender of Rights' officials that it had never been its intention to impose such constraints to delay consultations. It should be stated that the Defender of Rights does not, in any event, consider that the possible incompatibility between the requirement for an interpreter for all meetings and keeping to time limits is intentional by nature. It is simply that whilst the presence of an interpreter is a recommendation for best practice issued by the health authorities there is in fact no legal obligation. Therefore if this recourse is of benefit, *a priori* for the patient in question it would not be right to remove their possibility of having full actual access to the right to voluntarily terminate an undesired pregnancy, this right having been defined as being a "freedom" by the Constitutional Council in 2001¹⁰⁷

From this it may be found that the obligatory nature of this presence, stated in the departmental memorandum from the hospital is excessive as it is not based on any legal obligation liable to stop access to healthcare which has been requested even though it is true that the recruitment of a second interpreter in January 2015 was to limit these risks.

In this respect, to enable informed consent to be best received from patients, the Defender of Rights' officials have questioned the hospital on the possibility of making the capacity of interpreter available to any person chosen by the patient (family member, friend, social worker or association helper) whilst the Defender of Rights officially notes the efforts already

¹⁰⁷ The Constitutional Council, 27 June 2001, Dalloz Critique No. 2001-446, Act No. 2001-588 dated 4 July 2001 relating to voluntary termination of pregnancy and contraception.

undertaken for the translation of all documents relating to pregnancy termination in the hospital. In his response dated 17 September mentioned above, the hospital Director stated that he was not in favour of such possibility being made available, deeming that "*some of these patients could be pressurised by family members and traffickers*". The Director has however said that he is in favour of the presence of a third party interpreter on condition that the hospital interpreter can confirm the veracity of their interpretation. This information having been brought to the attention of the Defender of Rights demonstrates rather that in the interests of confidentiality, some patients might not prefer - where they were accompanied by a member of an association or of their family able to translate the doctor's words- to be accompanied by an additional person, particularly where it is a man and not part of the healthcare team.

The Defender of Rights' officials asked the hospital about the existence of this same obligation for the presence of an interpreter for other healthcare operations requiring the patient's consent. In other words, he questioned whether the administration departments of the hospital other than the family planning department also identified non-French speaking patients to provide, if necessary, an interpreter at consultations and in particular surgical consultations. The hospital Director replied to the Defender of Rights that this obligation existed for all of the institution's departments but has not, until now, sent any memoranda deriving from other departments mentioning such a requirement. Moreover no details have been given to the Defender of Rights about the existence of such an obligation to non-French speaking patients who are not in a disadvantaged position.

In addition to the terms of this internal memorandum, the association making application alleged that following the retirement of a doctor who at that time carried out terminations of pregnancies in the hospital, these operations were referred to other hospitals in particular that at Dunkirk for at least one month at the end of 2014 and this information was confirmed by the PASS coordinating doctor at the meeting in July 2015. The hospital Director, in his response dated 17 September 2015 stated that a short-term problem (the retirement of the practitioner in charge of pregnancy termination) and the conscience clause which was opposed by a number of practitioners caused patients to be redirected to other cities including Dunkirk whilst awaiting reorganisation of the department.

There is one single point which has not been explained: the hospital has not yet explained the allegations of family planning under which the doctor, having temporarily taken over responsibility for pregnancy terminations before the actual reorganisation of the department would have required proof of residence prior to accepting a patient, specifying that these were the new directives from the hospital management. In the absence of additional information brought to the attention of the Defender of Rights it must be thought that these requirements are more explained by a misunderstanding of French legislation by the practitioner having taken over the pregnancy terminations after the retirement of the practitioner who had been at the hospital for many years. In any case, the Defender of Rights would issue the reminder that no conditions relating to the residence or administrative position of the patient should stop or hinder their right to access to pregnancy termination. Whereas the claimant was finally able to have their pregnancy termination in Grande-Synthe, it was at the cost of additional constraints and anxieties and solely because of the special family planning assistance from which all migrant women are not able to benefit in Calais.

The Defender of Rights requires that:

- Either the obligation to have an interpreter present at all meetings relating to the pregnancy termination be cancelled where the patient does not wish a third party to be present, such requirement not being based on legislative requirements but simple good practice;
- or there be a right for patients to the family planning department to be accompanied by a member of an association locally supporting migrants and/or an interpreter of their choice;
- or a reminder be issued of the prohibition on submitting access to pregnancy termination to any form of residence and generally, cancel specific conditions for foreign women accessing pregnancy termination, the latter being able to terminate the pregnancy without any requirement as to the duration and regularity of their stay in France.

The Defender of Rights is satisfied to note the fact that his intervention "has obliged [the hospital] to improve [its] practices" according to its director's own words and asks to be kept informed of changes made to make family planning department practices fully compliant with legislation in force.

Finally, the *Defender of Rights* knows that having insufficient funds and negligence in implementing rights to pregnancy termination are such as to make its content empty or at the least reduce its scope. These obstacles make access to this right to a number of places in the region "*often difficult*"¹⁰⁸ for which reason the Defender of Rights will be particularly vigilant that actual access to this right is ensured for the most vulnerable and deprived women liable to be subject to sexual violence which undoubtedly some of the migrants living in the Calais shanty town suffer. In this respect, we note that whereas the European Court for Human Rights maintains its wish to leave States the freedom to acknowledge right to abortion or not, it increasingly shows willingness to ensure full effectiveness of this right where it is protected internally.¹⁰⁹

¹⁰⁸ Report relating to access to pregnancy termination by the Haut Conseil à l'Égalité entre les femmes et les hommes (HCEfh) [gender equality Council], issued on 7 November 2013 to the Ministry for Women's Rights.

¹⁰⁹ ECHR, 26 May 2011, *Risks Review v. Poland*, appeal. No. 27617/04.

Second Part

Threats to fundamental rights increased by a policy of hermetically sealing the border

Whereas the unprecedented increase in security procedures (I) has had no dissuasive effect on the determination of exiles to continue their migratory journey, it has on the other hand resulted in multiple breaches of their most essential rights and in particular their rights to life and not to suffer inhuman or degrading treatment (II)

I. An unprecedented increase in security procedures

Between April 2014 and June 2015, the number of migrants in Calais increased from 400 to almost 4000 according to Pas-de-Calais prefecture sources. This situation results in tension not only with the police but also between migrants. Above all it has very worrying health and humanitarian consequences (please see above). Whereas the response of politicians to this increase in the number of persons undeniably has a humanitarian aspect - resulting in particular in creating the Jules Ferry reception day centre - nonetheless the insufficiency of response, in particular in relation to the emphasis on security, in their intervention by the authorities has to be noted. The increase in the number of migrants at Calais has resulted in the deployment of an impressive security system, financed jointly by the French and British governments, represented on the one hand by an exceptional police presence (A) and on the other hand by an even greater physical strengthening of the border (B).

A. Exceptional police presence

On 13 November 2012, following claims by a number of associations the Defender of Rights made a report¹¹⁰ relating to incidents of harassment between 2009 and 2011 against migrants in the Pale of Calais involving the police.

In this report, the Defender of Rights had already referred to the peculiarity of the situation in Calais, the border between France and the United Kingdom being a border which is outside the Schengen Area and therefore requiring specific controls. These controls were strengthened by a number of agreements entered into by the two governments including the Treaty of Le Touquet signed on 4 February 2003, a few months after the closure of Sangatte: this treaty gave the right to bilateral border controls at all maritime ports in the Channel and in the North Sea situated in the other party's territory. "The Administrative Arrangements" dated 6 July 2009 strengthened the Treaty of Le Touquet and " *provides for setting up latest detection technology financed by the UK, which will maintain it, in exchange for a decrease by France in the number of foreign nationals in an irregular situation at the joint border and its surrounding areas*".¹¹¹

¹¹⁰ Decision by the Defender of Rights No. MDS 2011-113 dated 13 November 2012.

¹¹¹Please see the Migreurop report, "*Les frontières assassines*", Hors collection, October 2009, p.69. A second phase in the administrative arrangements also provided for participation by France in "joint operations in relation to returning migrants, in particular joint returns by air" with the implementation at national level "on a regular basis" of "forced returns to their countries of origin of a significant number of foreign nationals in an irregular situation of key nationalities" in particular those who "are not asking for asylum or are not eligible for asylum respectively in France or the United Kingdom, where they are situated", and those who "refuse an offer of voluntary return".

In application of these agreements a large policing system was set up in Calais with a view to decreasing the "migratory pressure" on this border. In his report published in 2012, the Defender of Rights described the organisation of this system and in particular the role devolved to the border police carrying out the duties of border control at crossing points and the fight against illegal immigration (specific to this Département and forced by the claimed attractiveness of the United Kingdom and the size of the migratory flow) with the support of Republican Security Companies riot police, the CRS. Up until December 2013, the principal mission of these CRS was the "*Vigipirate*" homeland security process (in the port and tunnel) and then the fight against illegal immigration and work traditionally devolved to the CRS (the maintenance of public order and safety, official travel) based on the needs of the border police, the PAF.

However, from 12 December 2013, "the long-term "*Vigipirate*" process and fight against illegal immigration" by the CRS for the PAF was suspended by decision of the Ministry of the Interior to be replaced by "generally securing the Calais public safety area" (under the authority of the Pas-de-Calais Departmental Directorate for Public Safety, (the DDSR) ¹¹². In this context, between July 2014 and September 2014, CRS staff were increased and in October 2014 "*in the face of ever more frequent invasions of an ever more determined nature by the migrants*"¹¹³ a squadron of mobile gendarmes was sent to reinforce the process of fighting against illegal immigration. "*Up until this new order [from 23 October 2014] according to the CRS North area directorate memorandum dated 17 December 2014] the CRS acted in the context of the fight against illegal immigration whilst being placed under the authority of the Pas-de-Calais Departmental Directorate for Public Safety*"¹¹⁴. From 23 October 2014, the DDSP received reinforcements of a half unit of CRS for securing the Calais city centre, commercial areas and the centres for distributing meals which then existed.

From 11 December 2014, when the migrant population in Calais was estimated at two thousand three hundred migrants, a plan for fighting against illegal immigration and handling human beings in the Calais area was ordered by the General Directorate of National Police, the DGPN, relating to all of the active Directorates of the national police (DDSP, DZCRS, DDPAF).¹¹⁵ This had three objectives, set out as being: "*to guarantee public safety in the Pale of Calais; destabilise illegal immigration networks and trafficking in human beings; supporting local coordination of security forces and operational contacts with bordering countries*".

The coordination of all forces on site taking part in this work was placed under the General Inspectorate of the IGPN, the General Inspectorate of National Police, itself placed under the authority of the Pas-de-Calais Prefecture.

The security forces' operations in Calais may be summarised as follows: "*DDSP services and those of the gendarmerie group are to carry out their traditional duties of public safety and*

¹¹² Memorandum No. 5081/2014D/53 from the CRS North area Directorate dated 17 December 2014 relating to co-ordinating the CRS process in Calais.

¹¹³ Memorandum No. 5081/2014D/53 from the CRS North area Directorate dated 17 December 2014 relating to co-ordinating the CRS process in Calais.

¹¹⁴ Memorandum No. 5081/2014D/53 from the CRS North area Directorate dated 17 December 2014 relating to co-ordinating the CRS process in Calais.

¹¹⁵ Memorandum No. 5081/2014D/53 from the CRS North area Directorate dated 17 December 2014 relating to co-ordinating the CRS process in Calais.

are therefore to be involved in ascertaining illegal presence, delinquency on the public highway and violence between or within communities. Mobile force units (principally CRS) are to strengthen regional service operations (principally the DDSP). They are to secure the approaches to port and tunnel control points where the size of the flow results in a backup of lorries [...] The municipal police, whose job is not to fight illegal immigration are, nonetheless, to be aware of the related problems". In relation to the PAF, its services are to "ensure application of the foreign nationals code in particular in implementing measures for removal as well as the fight against smuggling networks"¹¹⁶. In relation to the latter point, Defender of Rights' officials have been informed that six networks had been dismantled by the PAF since the start of 2015 and that action was also being taken in collaboration with the United Kingdom authorities relating to international networks.¹¹⁷

Amongst the forces of order present, it appears that the mobile forces (and more particularly the CRS) play a central role insofar as they are asked to ensure highway security and proper functioning of public transport services and, in this respect, to keep migrants away from lorries carrying goods to the United Kingdom (insofar as the migrants attempt to get into them to cross the Channel).¹¹⁸

Concretely, two principal duties have been devolved to the CRS¹¹⁹. Firstly a duty to "*fight against illegal immigration*", which, in particular, consists of ensuring fixed surveillance at various precise points - one of its purposes is to detect "*any slowdown in road traffic (favouring attempts to enter lorries by migrants)*" - and active surveillance. Secondly, a duty to "*secure*" in particular aiming to ensure that there is a permanent presence on the ground to prevent delinquent activity, with external reinforcements from the anti-criminality brigade from December 2014 - principally in the city centre and commercial areas -, but also to "*secure*" the centre for distributing meals at the Jules Ferry Centre.¹²⁰

In the context of their duties, CRS officers may, in particular, be confronted by migrants who do not have the right to residence in France. In this case, "*they should be stopped and questioned and provide a procedural response without in any way removing the process which has been set up. Responsibility for providing this procedural response will be with the Pas-de-Calais DDPAF*"¹²¹. To do this, the information room and command centre of the DDSP are to request the DDPAF. As appropriate, the DDPAF will be responsible for transferring the individuals in question and "*procedures for verifying the right to be or reside in France*".¹²²

¹¹⁶ Report by Jean ARIBAUD and Jérôme VIGNON, *op. cit.*

¹¹⁷ Information from declarations made by the Pas-de-Calais Prefect at her meeting with agents of the Defender of Rights in Calais in June 2015.

¹¹⁸ Information from declarations made by Police Authorities at their meeting with agents of the Defender of Rights in Calais in June 2015.

¹¹⁹ Memorandum No. 5081/2014D/53 from the CRS North area Directorate dated 17 December 2014 relating to co-ordinating the CRS process in Calais.

¹²⁰ Memorandum No. 5081/2014D/53 from the CRS North area Directorate dated 17 December 2014 relating to co-ordinating the CRS process in Calais.

¹¹⁸ DDPAF 62 memorandum No. 244/2014 dated 9 December 2014 relating to "coordinated operations in the fight against illegal immigration implemented from 10 September 2014 within and at the entry to the Calais port area". In connection with Memorandum No. 36955 from the DDSP dated 8 September 2014 relating to "local organisation in the fight against illegal immigration - Instructions applicable to the Calais CSP". These two memoranda set out the procedures for cooperation between the PAF, the DDSP and the CRS provided to it.

¹²² DDPAF 62 memorandum No. 244/2014 dated 9 December 2014 relating to "coordinated operations in the fight against illegal immigration implemented from 10 September 2014 within and at the entry to the Calais port area".

In relation to mobile gendarmes, these are to provide periodic reinforcement to forces and, principally at night in port and railway areas. Their duty is to carry out visual checks on vehicles and persons entering the embarkation terminals, ensure that road traffic is kept moving, secure working areas at night and to carry out surveillance of the distribution of meals at the Jules Ferry centre when the CRS are not there.¹²³

We therefore note that there is a multiplicity of security forces present in Calais: public safety, CRS, border police, departmental gendarmerie, mobile gendarmerie, not forgetting municipal police. To these is to be added private security agents carrying out surveillance of parking areas in the port area.

This summer, in response to "*massive intrusions*"¹²⁴ reported on site, the Minister of the Interior decided to reinforce these staff by adding two additional units to the five and a half units of mobile forces already present in Calais on a permanent basis. Over 500 mobile gendarmes have thus been added to the local forces, increasing the number of police and gendarmes deployed to 1300. This is a completely exceptional procedure for a city of 75,000 inhabitants and Calais has become the city with the highest ratio of police officer per inhabitant in France¹²⁵. The Minister of the Interior himself agreed to this when he decided, in October 2014, to send 100 additional police and gendarmes to Calais, stating, nevertheless, that the procedure appeared "*fully justified given the situation*"¹²⁶

B. Strengthening the physical border

As well as this exceptional police presence numerous resources have been devoted to strengthening the physical border firstly by use of additional security at the port (2) and then secondly at the site managed by the Eurotunnel group (2).

1. Securing the port by the construction of a wall

In their declaration dated 20 September 2014, the British and French Ministers of the Interior announced their agreement to create a joint operating fund including a UK contribution of €15 million over three years which was, in particular, to be used to increase security at the port of Calais and the port area in order, as the agreement states to ensure "*greater protection against migrant incursions*". This strengthening of security involved "*the construction of strong barriers along the bypass giving access to the port area in compliance with the investment plan drawn up by the port management*". It was on this basis that, last April the construction of a wall was started on the Calais border along the bypass leading to the port of Calais docks. This "secure corridor" which extends for nearly 3 km comprises a

¹²³ According to information provided by the mobile gendarmerie to agents of the *Defender of Rights* at their meeting in Calais in June 2015

¹²⁴ The decision to strengthen police presence at the Eurotunnel site was in reaction to the figures published in the press and confirmed by the Eurotunnel group and the Minister of the Interior showing over 2000 attempts at intrusion by night at the Eurotunnel site. These figures have led the President of the Eurotunnel group to speak of "regular mass high scale and possibly organised invasions for media purposes". These figures are to be taken with precaution. Effectively they suggest that every night almost all of the migrants in Calais attempt to enter the Eurotunnel site which seems hardly possible given the 8 km which separates Eurotunnel from the camp and that all of the migrants are far from making this journey daily. In reality, these figures do not take account of the fact that one single person on the site may be identified several times by security systems.

¹²⁵ Report « Le pas d'après » on the situation of migrants in the Calais area provided by Jean ARIBAUD and Jérôme VIGNON to the Minister of the Interior in June 2015.

¹²⁶ La Voix du Nord, 23 October 2014, *Migrants : Bernard Cazeneuve déploie 100 hommes de plus à Calais (Migrants: Bernard Cazeneuve deploys another 100 men in Calais)*

double fence, one four metres high and the other over two metres high with razor wire along the top. This arrangement is also supported by an infrared detection system

The construction of this immense fence known as the "wall of shame" by some associations¹²⁷ cannot help reminding one of other walls on the Europe borders, at Melilla, the Spanish enclave in Morocco, in Greece, in Bulgaria, and more recently in Hungary which are perceived as symbols of "fortress Europe". However the Calais wall, as demonstrated by the anthropologist Claude CALAME¹²⁸, has a special dimension; it is part of the policy of externalising borders which is being implemented, generally at European Union level except that in this case it is not outside Europe but within it that the border has been moved (externalising the UK border to French soil). Additionally the new wall does not aim to stop people from entering the Schengen area but in fact to stop them from leaving it. We are therefore looking here at a sort of inverted "Schengen logic" which has failed to question the serious obstacle to the law, protected by the European Convention of Human Rights, of leaving any country whatsoever including ones' own.

2. Securing the Eurotunnel site involves delegating border controls to private contractors

Along with the construction of this physical barrier, exceptional funds have been allocated by France and the United Kingdom to strengthen security at the Eurotunnel site. Thus in the first half-year of 2014, the group received 13 million euros from the French and British governments in compensation for security costs incurred whilst the British government undertook to pay nearly 5 million euros to the group for 2015. In July 2015, the group asked for additional compensation of 9.7 million euros.

This funding has enabled the implementation of a large scale security system: over 400 cameras provide surveillance for the site and film is analysed in real time by a "security control" room where coordination is also carried out of the various participants. The security guard service has 200 employees added to the French police presence on site. Thus nearly 1000 people work on a shift basis in the surveillance and security of the Eurotunnel terminal.

The cooperation agreement entered into between France and Great Britain dated 20 August 2015 has strengthened this process yet again. Effectively, it comprises a particularly elaborate security dimension, in particular providing for the creation of a new control room within which additional freight search teams will be deployed 24 hours a day and seven days a week to reduce the number of illegal passengers and the deployment of British police officers in Calais to help the French authorities in the fight against trafficking networks. The agreement provides additionally for the payment of 10 million euros by Great Britain which is to be allocated to reinforcing police cooperation and the provision of additional facilities for Eurotunnel site security (barriers, cameras, security staff), which goes to confirm a process which has already been engaged of delegating a highly sovereign area to the private sector, being border control.¹²⁹

"No to the wall of shame" is the slogan of the meeting on 18 December 2014 called, in particular by Emmaüs at which there were several hundred people to denounce the construction of the wall around the port in the context of the International Migrants Day.

¹²⁸ Claude CALAME, *Calais: des murs contre l'immigration* [Calais: walls against immigration], 24 September 2014, blog hosted by Médiapart

¹²⁹ Jacques GOUNON, CEO of Eurotunnel, confirmed this as follows: "We continue to carry out a sort of sealing of the tunnel under the Channel in relation to migrants passing into Great Britain as the number of migrants

II. Violence suffered by refugees, in particular relating to police action

Whereas violence suffered by refugees in Calais are the result, above all, of physical risks resulting from attempts to cross the border (cf. *infra*), the most symbolic of these - and the most criticised- is that relating to the paradoxical duties given to the police to contain migrants and stopping them from leaving French territory.

Given all of the information brought to the attention of the Defender of Rights, it seems that the hybrid nature of the duties allocated to the police as with the inappropriateness of the legal context for intervention, encourages confrontation (D). However when it relates to harassment (B) or other ethical breaches (C), the investigation of claims submitted for examination to the Defender of Rights is hindered by a number of obstacles (A).

A. Investigation of claims hindered by specific obstacles

In the context of investigating numerous claims that it receives, showing breaches of ethics in relation to migrants in the Pale of Calais, the Defender of Rights finds himself confronted by a number of problems relating both to the extremely atypical nature of the situation in Calais (1) and the legal context of implementing his prerogatives (2).

1. Problems relating to the situation in the Pale of Calais

Firstly migrants who believe that they are victims of harassment by the forces of law and order are rarely identified in applications as they generally prefer not to disclose their identity for fear of reprisals as they are often in contact with the police in their attempts at crossing and also for fear that this might be an obstacle to their departure.

Moreover, in those rare cases where migrants are identified, their great mobility means that they have often left Calais by the time the Defender of Rights is referred to, so stopping additional details from being collected. It should be stated that in sufficiently substantiated cases or those which are highly serious, the departure of a migrant or the inability to identify them does not stop investigations proceeding.

In relation to proving claims, it is often difficult for migrants to collect proof in support of their allegations. Particularly in relation to violence, victims have limited chances of having their injuries officially recorded by a medical certificate, given their living conditions which often resemble survival conditions, but also problems of access to a doctor. In fact, the PASS, the free medical clinic for persons without resources, and the hospital are a long way away by foot from the shanty town where the migrants are (8 km on foot) and therefore present difficulties of access for persons with injuries unable to be driven. It is certainly the case that PASS nurses are on duty daily at the Jules Ferry centre and thus carry out first-aid and even assist migrants in emergency cases. However in the event of serious injury, no doctor is present. Only associations like *Médecins du Monde* work directly with the migrants. In relation to those who come to the PASS, the coordinating doctor for this centre has stated to the Defender of Rights that the principal reason for consultation was traumatology and that when asking patients about the origin of their injuries they very often explained that they

intercepted by the British forces can be counted on the fingers of one hand. Most are intercepted in France. This has a cost", Le Monde, 22 July 2015.

were linked to attempted crossings (falling from lorries, walls and trains) but also, to a lesser extent but on a regular basis nonetheless, violence by the police. In these cases, the doctor offers patients to provide them with a medical certificate certifying these injuries and informing them of their right to make official complaint.

Migrants not understanding their rights or trivialisation of the injuries suffered are other obstacles in obtaining information which might prove their allegations.

Thus the absence of precise information and the diversity of forces of law and order on site as well as their high mobility often makes it difficult, not to say impossible, to identify the accused officers.

2. Legal problems

Other procedural problems may also arise in investigating claims by the Defender of Rights. Firstly his investigations may be made very difficult by the circumstances being old. Some associations, having made application to the Defender of Rights have provided a considerable amount of work in collecting information and witness statements in relation to incidents between 2012 and 2014. However if referred to in 2015, the Defender of Rights will find it difficult to carry out useful investigations relating to facts occurring in 2012 and 2013, in particular because of the impossibility of finding the persons in question or those likely to be able to provide information and the loss of evidence.

Moreover the Defender of Rights' investigating procedures may be subjected to delays imposed by other procedures. Thus, where allegations result in the opening of an enquiry by the Public Prosecutor, the Defender of Rights has to ask the legal authorities to have access to the proceedings in compliance with Article 23 of the Constitutional law No. 2011-333 dated 29 March 2011 by which "*where the Defender of Rights is referred to or automatically creates an application in relation to facts giving rise to a preliminary enquiry or on the spot investigation or for which a court enquiry is opened and court proceedings are being carried out, he has to receive prior agreement from the jurisdictions applied to or from the Public Prosecutor as the case may be for implementing Article 18 except for the last paragraph of Articles 20 and 22 [...]*". The Defender of Rights finds himself therefore subject to delays which cannot be avoided relating to the progress of legal procedures. In other cases, he is subject to delays relating to requests that he makes to higher authorities of accused state employees.

Currently, the Defender of Rights carries out his investigations relating to numerous allegations of harassment by the forces of law and order that he receives making best efforts to reconcile as best as possible the need to clarify these cases with the above-mentioned problems. Thus where he knows that an enquiry has been opened in relation to incidents for which he has been referred to, the Defender of Rights has asked the Public Prosecutor to provide the related case file as shown later and is still waiting for some of these.

To be precise, a first case file relating to a migrant complaining of police violence on 16 July 2014 was requested on 27 August 2014 in relation to a claim occurring before the overall referral on 29 January 2015 (CF. *infra* point C). In the absence of any response, two reminders were sent out to the Public Prosecutor on 6 March and 4 May 2015. The Defender of Rights finally obtained the case file on 26 May 2015 which was closed without further

action on 22 April 2015. Investigations are currently being carried out on the basis of the documents received.

At the same time, on 2 April 2015, a second case file was requested from the Public Prosecutor relating to a migrant complaining of violence at the time of his questioning by the police on 23 May 2014¹³⁰ and, in the absence of response, the reminder was sent out on 4 May 2015. The Public Prosecutor refused to supply this case file on the grounds that an investigation was currently being carried out relating to this case and that no evidence could be disclosed because of this.

Moreover, in his request dated 4 May 2015, the Defender of Rights asked the Public Prosecutor for three other case files to be sent relating to applications for incidents occurring on 20 and 29 January and 14 March 2015. However in the absence of response, the agents of the Defender of Rights met with the Public Prosecutor on 17 June 2015 to share the need to obtain the information requested to complete appropriate investigations in these cases. Following this meeting, a reminder was sent to the Public Prosecutor on 17 July 2015 with a new application relating to 3 other case files which the Defender of Rights knew of relating to incidents from 1 December 2014, 22 April and 5 May 2015. This request and the preceding one have not been replied to and another reminder was sent to the Public Prosecutor by email on 8 September 2015. Attempts to contact the Public Prosecutor by telephone upon each reminder in writing were unsuccessful. In summary, six case files are still awaited.

We would note, in this respect, that such refusals to provide files or absences of responses, despite reminders by the *Defender of Rights' officials* are exceptional - or practically non-existent - in cases where the establishment has to deal with matters of security ethics.

In relation to the cases referred described above, the Defender of Rights will give his conclusion at the end of his investigations. He reserves the right, in the event of there being found individual breach of ethics by the police, to send individual recommendations to the Ministry of the Interior; being, in particular, requests for reminder of their ethical obligations to the security agent in question, an application for disciplinary sanctions against the officer or yet again sending to the public prosecutor where a criminal breach has been found to have been committed by the security agent in question.

B. Continuing evidence of harassment since publication of the 2012 report

At the time his 2012 report was published, the *Defender of Rights* criticised individual behaviours found - some of which were acknowledged by the police - consisting of provoking or humiliating migrants. His investigations enabled light to be shed, in particular, on the existence of a "non-settlement" strategy for migrants (providing surveillance of their places of settlement and movements; avoiding tented settlements; increasing the presence of police units etc.) The Defender of Rights had then recommended extreme vigilance by the police in relation to certain regular practices disclosed, in particular those consisting of taking migrants a few kilometres from the place where they were living and then letting them out, sometimes on the edge of the motorway; these consisting of increasing identity controls on the public highway without real grounds and inspections of the places where the migrants live, covert evictions and pressurising community activists. With this aim in mind, the Defender of Rights

¹³⁰ Application sent by the General Inspector of Confinement centres.

has asked that precise written general instructions forbidding these practices be distributed and regular reminders given to staff working in the field.

In response, the Minister of the Interior stated on 6 March 2013 that the General Inspectorate of National Police, the IGPN, had carried out a review of police/public relations in the Pale of Calais. An progress report on this work contained comments and proposals which had been included in replies that the Minister of the Interior sent to the Defender of Rights. In fact, the Minister refuted the existence of the practices complained of considering that they were essentially based "*on declarations made by association managers relating to remarks which are not verifiable relating to old situations*" that there was no evidence to support it. Additionally, he stated to the Defender of Rights that some of the evidence mentioned had already been brought to his attention and that enquiries had been carried out and that they had not been able to establish any behaviour representing breach of disciplinary or ethical regulations by police officers.

It should however be recalled that the recommendations issued by the Defender of Rights in his 2012 report resulted in numerous investigations, in particular hearing a number of police officers (border police, Republican security companies, public safety), whether operators or managers and the use of numerous videos. We would note in this respect, that recommendations made by the Defender of Rights are always preceded by a fair in-depth investigation taking care to respect the principle of all parties being present.¹³¹

Moreover a number of European and International authorities and a number of non-governmental organisations (NGOs) have since recognised the reliability of the Defender of Rights' conclusions, joining the consensus on its findings and in turn making their own recommendations, deeming that the situation had not improved.

Firstly, the Commissioner for Human Rights for the Council of Europe in his report dated 17 February 2015, stated that the decision by the Defender of Rights which "*disclosed humiliating and destructive police practices in relation to humanitarian gifts and personal effects and the expulsion of migrants from their shelters carried out outside the legal context*" to conclude that "*the decision [which] recommended that these practices should be ended [did not seem to have been more carried out. The evacuation of 610 migrants from a camp in Calais situated next to a site where meals are distributed on 2 July 2014 provides a recent illustration of this lack of improvement]*".

The Commissioner continued by stating that he "*profoundly regretted this continuing state of affairs for a number of years in Calais and in the region [...]* and believed that it was "*urgent that the French authorities fully implemented the Circular dated 26 August 2012 and the recommendations made by the Defender of Rights relating to evacuating sites and proposing*

¹³¹ Hearings of Mrs L. H. from Amnesty International and A. C. from Médecins du Monde, Messrs. M. Q., No Border collective supporters, C. S. from the Auberge des Migrants, V. D. C. from Secours Catholique, Mr. QN. from Médecins du Monde, Mrs S. M., journalist, Messrs. E. H., deputy director for Calais town hall technical department and D. S., environmental director at Calais town hall. Hearings of Messrs. H. D., superintendent, deputy to the Departmental Director of Border Police for the Pas-de-Calais (DDPAF), T. C., police commander and coordinator for the coastline, deputy at the DDPAF, Mrs L. M., police lieutenant, Mr. A. D., deputy brigadier at the departmental directorate of border police; and Messrs. P. P., former chief inspector and former regional director for the Republican Security Companies (CRS) for the North, V. R., brigadier-chef, with the Sainte-Adresse CRS, H. N., brigadier-chef, with the Lambersart CRS, E. C., brigadier major, with the Béthune CRS. Hearings of MM. A. K., R. A., H. A., A. M. (migrants). Hearings held in Calais on 22 and 23 May 2012 by his officials who collected a number of testimonies from migrants whether anonymous or not which they had made at different places where they have lived and to the town hall technical department.

long-term solutions for decent reception and accommodation arrangements for migrants in Calais and in the region. All hate activity targeting migrants is to be subjected to effective enquiry and severely sanctioned by the courts".

Secondly the findings of violence, established by the Defender of Rights have also been repeated by the United Nations Committee for Human Rights on 21 July 2015. Indeed, in its report: *"the Committee is concerned about allegations of bad treatment, excessive use of force and disproportionate use of intermediary weapons and in particular at the time of questioning, forced evacuation and maintaining law and order. It is also concerned about continuing "ethnic profiling" and allegations of police harassment, verbal abuse and the abuse of force against migrants and those seeking asylum in the city of Calais [...]"*¹³²

In addition to the European and International Authorities, NGOs have once again emphasised the problems which migrants living in Calais encountered with police. Thus, for example the Human Rights Watch report published on 20 January 2015 relating to abuse described by the migrants, which *"[...] include beatings and attacks with tear gas (...)". Thus, "In November and December 2014, Human Rights Watch held interviews with 44 persons seeking asylum and migrants in Calais including three children. Most of the interviews were held in groups; the migrants and those seeking asylum have described what appear to be routine abuse by police officers which they attempted to hide, in lorries or when they were walking in the city. Nineteen people including two children stated that the police had mistreated them at least once in particular by beating. Eight had had arms or legs fractured or other visible injuries which according to them had been caused by the police in Calais and in the area. Twenty one of them including two children told the police that they had been sprayed with tear gas. [...] In November 2014, the departmental director for public security, addressing journalists, denied the allegations of bad treatment. In a meeting with Human Rights Watch on 16 December 2014, the advisory members of the Minister of the Interior's Office stated that they were not up to date with police violence against migrants and those seeking asylum in Calais but that they would make enquiries as to whether these allegations were founded on "specific facts". On 14 January 2015, the prefect for the Pas-de-Calais Département denied unjustified use of force by the police against migrants in Calais [...]"*.

Whereas the current French government no longer contradicts the conclusions drawn by the Defender of Rights as the preceding government did, it has not however taken this up. To the contrary, it has made comments on the report by the Human Rights Commissioner mentioned above. Thus, in particular it stated that *" public authorities have strongly mobilised their resources to provide solutions to the serious problems that the situation in the Calais area produces. This action is organised according to the following priorities: to keep public order and safety, fight against trafficking networks, provide a humanitarian response to the extremely disadvantaged position in which the migrants find themselves, and to comply with rights to asylum requirements relating to those persons needing protection. This action has been carried out by State institutions in continuous discussion with local government organisations concerned and associations working with migrants and the United Nations High Commission for Refugees"*.¹³³

¹³² The United Nations Committee on Human Rights made its final observations on 21 July 2015 after having examined the fifth periodic report from France (CCPR/C/FR/5) dated 10 July 2015, page 5.

¹³³ Comments by the French government on the report by the Council of European Human Rights Commissioner, Mr Nils Muižnieks, following his visit to France from the 22nd to 26 September 2014, Pages 16-17.

More recently, on 24 November 2014, the Defender of Rights decided on setting up a system for filtering access to the site where meals are distributed to migrants between 7 and 15 July 2013.¹³⁴ This system consisted of setting up security for all persons arriving inside the distribution point with accurate counting and distinguishing between nationalities and a filtering and channelling of persons entering the site. The border police central directorate explained that this system was necessary to ensure the safety of association members and migrants, some of whom were liable to be armed. Whereas the Defender of Rights has accepted the legitimacy of strengthened security systems in the context of increased tension between migrants, he has considered that the methods of implementation were disproportionate in this case. Not only does it breach migrants' dignity, who are vulnerable people, but also their freedom of movement and above all the right of access to the sole place for distribution of food in Calais.

The Defender of Rights has recommended to the Minister of the Interior that he remind local authorities and in particular the Departmental Police Directorate at the Calais border and officers of the CRS operating in Calais to ensure that they do not breach migrants' dignity, their freedom of movement and the exercise of humanitarian action when there is a real risk of confrontation on the gathering site for refugees such as the meal distribution site in Calais.

In response to these requests, by letter dated 14 September 2015, the Minister of the Interior stated that the methods used in the system set up by the police were, according to him, appropriate. In this respect he stated that *"this filtering which is necessary and temporary (seven consecutive days) and exceptional, aimed at distributing food in peace and in no way aims to intimidate or dissuade migrants"* He added that this system had proven efficient and that association volunteers had appreciated this police presence which helped them in the distribution of food. Finally, the Minister stated that *"in a difficult environment, the police are determined to carry out their work respecting the dignity of persons and their freedom of movement"* adding that *"it is in this spirit that they have ensured that migrants have completely safe access to places where they can take their meals without fear of fights or incidents"*

However, the Defender of Rights does not share the Minister's view and considers that simple presence by police at the site was sufficient to ensure safety for all and ensure that the distribution of food could be carried out in peace without frisking and nationality checks for all persons present. These systematic measures actually exceed the legal context and disproportionately breach migrants' rights.

Moreover, another form of harassment is regularly brought to the Defender of Rights' notice, closely related to their choice of closing down places where migrants live in the city centre and isolate them on land next to the Jules Ferry centre, without use of public force. For the police this consisted of stopping all attempts at installing camps, squats or other makeshift shelters.

In this respect and in relation to the occupation of land illegally, it should be recalled that in compliance with Article L 411-1 of the Code of civil execution procedures *"In the absence of special provisions to the contrary, expulsion from a building or an inhabited area may only be carried out by court decision or an executory settlement report and after serving an order to leave the premises"*.

¹³⁴ Decision by the Defender of Rights No. MDS 2014-150 dated 24 November 2014.

However in the event of an offence discovered while it is being committed, "in flagrante delicto", police have the right to intervene and investigate, in particular enabling prohibition of access to the premises and placing persons in police custody. Articles 53 *et seq* of the Penal Procedural Code considers as "flagrant" recording the facts within "a time very close to when the action takes place" which is commonly acknowledged as being defined as 48 hours as a maximum, whilst in fact this time limit has no legal substance.

This legal arsenal results in associations assisting migrants having to provide evidence of earlier occupation of the premises in order to stop eviction in the context of "in flagrante delicto" procedures. But they sometimes come up against refusal by court bailiffs to come to officially record the presence on the premises or the police to accept their unsworn statements which they consider to be partial.

In this context, the authorities, for their part, have systematically expelled migrants before the expiry of the 48-hour time limit to avoid having to apply to the courts and to enter into long court proceedings before legally being able to carry out an eviction. This way of acting which is repeatedly carried out without delay is experienced as "harassment" by migrants and associations and at the same time sets the police off on work which proves at the very least, to be repetitive.

C. Numerous physical injuries to migrants brought to the attention of the Defender of Rights

On 29 January 2015, nearly three years after the publication of the Defender of Rights' 2012 report, association members again consulted the Defender of Rights. The actions which were complained of took place between January 2012 and January 2014 and are principally of the same type as those which were complained of in the first referral to the Defender of Rights (identity checks known as "ethnic profiling", surveillance of living areas, evictions from living areas, inappropriate comments, intimidation, physical violence, pressure on association humanitarian militants and other forms of harassment). The authors of this referral explained that "*abuses that the refugees suffer have not stopped since the Defender of Rights' decision 2011-113. The more spectacular forms have stopped or are no longer recorded except in isolated areas on the edge of the city*".

Alongside this overall referral, the Defender of Rights had, from time to time, cases referred to him concerning problems occurring during the remainder of 2014 and 2015. Whereas these ad hoc applications to refer a matter have for the most part been made by association representatives who originated the overall referral dated 29 January 2015, they have also sometimes been submitted by the General Inspector of Confinement centres (one referral relating to a migrant imprisoned in the Longuenesse prison complaining of police violence following his questioning in Calais in a police station), by a lawyer and by the migrants themselves although this is very rare.

It should be noted that the most recent allegations (for 2015) essentially relate to allegations of violence, in much greater volume than the types of actions which have been complained of up until now. According to the associations encountered in Calais by the Defender of Rights' officials in June 2015 this finding does not in any way mean that other forms of harassment which have been complained of have stopped but indeed are still occurring. The fact that the Defender of Rights has only received applications for the most serious attacks shows rather

that violence has become trivialised and even internalised by associations coming to the aid of migrants and by the migrants themselves. It is, to the contrary, the multiplication and intensification of this violence which explains that other actions, deemed to be less serious and more mundane are not, therefore, more disclosed.

In this respect, the Defender of Rights has received numerous testimonies from migrants stating that they have been attacked by the police, most often at the edge of motorways near to or within heavy goods lorries. In some cases this has been filmed and the Defender of Rights has received videos. Moreover, one video in which a police officer appears using force against a number of migrants on the edge of a motorway was widely distributed in the media during May 2015 and resulted in an own-initiative referral by the Defender of Rights¹³⁵. These incidents have also resulted in court enquiries being opened¹³⁶. The Defender of Rights is still waiting for the conclusion of the enquiry and receipt of documents from the proceedings from the court to continue investigation of this case in application of Article 23 of the constitutional law mentioned above.

Other videos sent to the Defender of Rights particularly in the context of a referral dated 22 May 2015 by Calais Migrant Solidarity relate to the use of tear gas by police against migrants. In addition to these video recordings are a number of witness statements - from all of the referrals - witnessing disproportionate and/or unjustified use of tear gas on migrants, sometimes at close range and most often when they were walking along motorways. In particular, the Defender of Rights has received evidence from Médecins du Monde care staff attesting that they had received a number of people for consultation stating that they had been victims of tear gas sprayed close to their eyes or face. Investigations are currently being carried out by the General Directorate of National Police on the most substantiated cases to identify the police officers in question and to determine the circumstances in which this tear gas has been used¹³⁷. In the context of these investigations, the Defender of Rights has also requested the General Directorate of National Police (DGPN) to provide data at its disposal on the quantity of tear gas used by police on duty in Calais in 2014 and 2015 and the figures relating to the Ile-de-France area and for France as a whole for the same period. He is still waiting for this information which might enable him to compare the volume of tear gas used by the police in Calais against that used in the rest of France; this use clearly being in its context and circumstances.

Of particular significance is the eviction on 2 July 2014 of the principal Calais migrants' camp at the meal distribution site organised by the "Salam" association in the port area. This living area was created after the evacuation by the police, on 28 May, of three other camps sheltering some 650 people. In total, 320 people including some 60 minors were evicted, according to the information provided by the prefecture itself. This eviction took place in the morning a little after 6:30 am whilst the occupants were still asleep. It required a large number of police. The incidents reported to the Defender of Rights in 2015 disclose that the police blocked all access to the squat (including sea access, blocked off using zodiac inflatables) so that migrants could not escape and to this blockade was added the use of tear gas. The evidence for the conditions under which this eviction took place is difficult to report

¹³⁵ A little after his own-initiative referral, a case was referred to the Defender of Rights in relation to this action - amongst others - by "Calais Migrant Solidarity".

¹³⁶ *V. infra II. A Problems arising in investigating claims (legal problems).*

¹³⁷ This request for explanations sent to the DGPN relates to the use of tear gas and other allegations (in particular allegations of physical violence, violent eviction and theft).

in so far as the police acted hidden from sight from journalists and associations as security personnel had encircled the camp in advance. However, it has been reported that some 15 buses entered the site to stop and question the migrants thus causing great stress to people who had already experienced the destruction of another living place one month earlier.

A few days ago, on 23 September 2015, the Defender of Rights received a claim relating to the violence accompanying this incident two days earlier in forced eviction by police of the last four living places for Syrian refugees in the Calais city centre. Widespread use of tear gas was once again condemned. Investigations are currently taking place with the association referring the case in order to collect from it evidence in support of its claim. The Defender of Rights' officials have watched a video published by the British newspaper The Guardian which relates the events linked to this incident and which shows a climate of extreme violence.

In any case, whatever the results may be of all of these cases sent to the Defender of Rights, the memorandum dated 17 December 2014 relating to coordinating the CRS arrangements in Calais already attests to "*frequent use of tear gas [...] to attempt to push back [the migrants] as fear of the uniform was not enough*" and that this use was even "*preferred*" to "*push back migrants coming onto the bypass or who were in too close a contact*".¹³⁸

Other forms of violence have also been brought to the Defender of Rights' attention, and in particular a number of cases of migrants hit on the motorway by police vehicles causing them serious injuries. Amongst these cases, two resulted in the opening of court enquiries. The Defender of Rights is still waiting for the case notes to be sent by the Public Prosecutor.¹³⁹

To this are to be added: a number of allegations made by volunteers assisting migrants, incidents of intimidation against some by the police. In particular, incidents of destruction by the police have been reported to the Defender of Rights of digital equipment used by volunteers to film police action and the deletion of recorded data. One of the applications resulted in a court enquiry being opened following a complaint by a volunteer. Investigations by the Defender of Rights will continue after this enquiry has been sent by the Public Prosecutor.¹⁴⁰

Whereas all of the applications result in investigations relating to the police, the Defender of Rights has also heard of allegations of violence by individuals. Thus, a number of migrants questioned by the Defender of Rights' officials in Calais disclosed recent aggression by individuals on the edges of the shanty town next to the Jules Ferry centre and in the Calais city centre. Some of them have stated that they have made an official complaint relating to these incidents. The migrants however denounce the passivity of the police in the face of this aggression. For their part, the police and the Boulogne-sur-Mer Public Prosecutor, which the Defender of Rights' officials also met in Calais on 17 June 2015, have stated that they have

¹³⁸ Memorandum No. 5081/2014D/53 from the CRS North area Directorate dated 17 December 2014 relating to linking the CRS process in Calais.

A Memorandum No. 36955/2014 has also been sent to the Defender of Rights from the Departmental Directorate for Public Safety for the Pas de Calais dated 8 September 2014 relating to "local organisation of the fight against illegal immigration. Instructions applicable to the Calais CSP"; memorandum No. 244/2014 from the Border Police Departmental Directorate for the Pas-de-Calais dated 9 September 2014 relating to "coordinated operations in the fight against illegal immigration implemented from 10 September 2014 within and around the Calais port area"; and a Memorandum from the area directorate for the CRS North dated 12 December 2014 which was subject to time-limited application and which therefore will not be mentioned in this report.

¹³⁹ V. infra : I. 2) Problems arising in investigating claims (legal problems).

¹⁴⁰ V. infra : I. 2) Problems arising in investigating claims (legal problems).

actually received complaints relating to these incidents and that enquiries were currently being carried out.

The *Defender of Rights* has finally received an application in relation to a case concerning a number of migrants who have been victims of violence by lorry drivers having discovered them in their lorries, in parking areas in the presence of a security guard who did not intervene to stop violence against them. These incidents have been filmed and recorded and widely distributed on Internet at the time of the incidents in March 2015. A court enquiry has been opened. The *Defender of Rights* is still waiting for the case notes to be sent by the court.¹⁴¹

D. The hybrid nature of duties devolved to the police and the inappropriate nature of legislation for intervention which encourages confrontation

1. Sensitive duties for the police

The duties given to the police are sensitive. In their duties, the CRS have in particular to move migrants away from lorries. Because of the special type of individuals that the police need to repel, this work does not fall within the traditional framework for intervention. Effectively, migrants facing up to the police are not typical of the type of people that the CRS have traditionally been required to contain in operations to maintain law and order. There are also participants whose aims are completely opposite: on the one hand, the police responsible for moving individuals from border crossing and on the other hand people in an extremely vulnerable situation who are often deeply traumatised and determined to continue their migratory path whatever the risk, to attain what they consider to be "Eldorado". Furthermore, this migrant "hunt" proves to be in vain as they are still there. In the face of this situation, the police and gendarmerie authorities met in Calais have all stated that their staff felt worn down and even powerless. In June 2015 over 20 police officers had to have time off work¹⁴². In addition to this feeling of being worn down there also dominates a lack of sense given to the operations: it might appear at the least paradoxical to have as your main duties to chase and disperse migrants in order to stop them from leaving French territory whilst other police - perhaps the same officers - are carrying out surveillance operations, in Vintimille for example so that other migrants, trying to continue their journey towards the North of Europe, do not enter this very same French territory.¹⁴³

In addition, the police authorities have stated that they have noted a decline in the dissuasive force of police officers and that their presence alone was no longer sufficient to stop migrants attempting to board heavy goods lorries as had previously been the case. It was confronting this explicit finding that tear gas became the preferred response of the CRS as stated in the memorandum dated 17 December 2014 mentioned above and as shown elsewhere, in

¹⁴¹ V. infra : I. 2) Problems arising in investigating claims (legal problems).

¹⁴² North Shore, 11 June 2015, *Arrêts de travail dans la police : la hiérarchie comprend et prend acte* (Sick leaves in the police: the administration understands and takes note).

¹⁴³ The Prime Minister thus admitted that temporary controls at the border had been setup since the month of June - Le Figaro 16 September 2015.

claims made to the Defender of Rights in which unjustified and/or disproportionate use of tear gas had an important role.¹⁴⁴

Generally, the Defender of Rights notes that the police are ordered to manage situations by force whilst this needs to be organised and thought through more globally, at least at European level. Summarising the situation of migrants in the Pale of Calais as one single dimension of security and policing is to go down the wrong road, its resolution can only be via political reflection not only between France and the United Kingdom but also at a higher level in relation to migratory movement.

2. Some legal context for action which might be specified

It is certainly the case that the memorandum mentioned above from the Area Directorate of the CRS North dated 17 December 2014 relating to coordinating CRS procedures in the Pale of Calais gives summary reminder of the legal context of use of force by police representatives and their ethical obligations. Some elements however are worth detailing again.

In this case the provisions of Article R 431-3 of the Penal Code relating to the maintenance of public order are involved, under the terms of which: "*the use of force by police is only possible when circumstances make it absolutely necessary to maintain public order under the provisions of Article 431-3. Force used must be proportionate to the problem to be stopped and must end when this ceases.*"¹⁴⁵

In relation to the maintenance of law and order the provisions of Article 431-3 of the Penal Code are to be recalled, under the terms of which: "[...] *A crowd may be dispersed by force after two warnings for it to disperse have remained without effect made under the conditions and according to the procedures provided for under Article L 211-9 of the Internal Security Code*".¹⁴⁶

Under the terms of Article L 211-9 of the Internal Security Code "[...] *These warnings are to be given under the right procedures for informing persons participating in a crowd of their obligation to immediately disperse. However, members of the police called up to dissipate a crowd may immediately use force where violence or assault is used against them or where they cannot otherwise defend the ground that they occupy*".

The circumstances in which police officers "cannot otherwise defend the ground that they occupy" as set out in the Article mentioned above are not defined. This phrasing, which is vague is therefore liable to manipulation; it might be used to justify use of force without warning to disperse a crowd in many cases. This finding seems to be shared by the police as a phrase in the memorandum relating to coordinating the CRS procedures in Calais states: "*the defence of ground which we need to occupy for strategic reasons cannot serve forever as a legal palliative insofar as migrants activity is known and repetitive*". Here the context of

¹⁴⁴ Memorandum No. 5081/2014D/53 from the CRS North area Directorate dated 17 December 2014 relating to co-ordinating the CRS process in Calais.

¹⁴⁵ This article was repealed by decree No. 2013-1113 dated 4 December 2013. These provisions were repeated in Article R.211-13 of the Internal Security Code.

¹⁴⁶ Under the terms of Article 431-3 of the Penal Code, the concept of a crowd is defined as " [...] any meeting of persons on the public highway or in a public place liable to disturb public order [...]".

the reaction loses its primary meaning".¹⁴⁷ The hypotheses covered by this phrasing should be clearly defined.

In any case, whether against migrants in the context of maintaining law and order or in another context (legitimate defence, apprehending the author of a crime or in "flagrante delicto" etc.) it should be recalled that the police or gendarmes are to "*use force in the context set out by law, only when it is necessary in a proportionate way to the objective or the seriousness of the threat, as the case may be. Weapons may only be used when absolutely necessary and in the context of legislative provisions applicable to its own status*" (Article R 434-18 of the Internal Security Code - the Ethical Code for the national police and gendarmerie).

The instructions for use dated 14 June 2004 from the DGPN should also be recalled, relating to the use of incapacitating products in particular in an enclosed setting¹⁴⁸ which mentions the circumstances in which tear gas bombs, sixth category weapons, may be used. In this case, the use of tear gas might be envisaged, in particular in situations of maintaining law and order; or where the police find themselves in a situation of legitimate self-defence; or in the event of crime or in "flagrante delicto" to apprehend the perpetrator; or again to reduce clear resistance to legal intervention by the police and thus avoid the use of weapons or other means of neutralisation.

Additionally, the instructions for use provide for a number of precautions in the event of the use of tear gas bombs and mention is made of the "*necessity to use aerosols in the context of proportionate response, used with discernment particularly in an enclosed setting where their use is to be exceptional*". In particular tear gas bombs "*in so far as possible are not to be used at a distance of less than one metre from a person*", close up use risking "*the provocation of an ocular impact which would be dangerous for the person targeted*". The need, for officers using incapacitating bombs is also mentioned, of "*taking account of information that they might have, obtain or assume relating to the condition of the persons targeted*". In this respect, the recommendation is to be very careful in the use of this product with persons whose "*state of health may be shown to be fragile (pregnant women, young people under aged, the elderly [...])*". Finally the use of tear gas is to be mentioned in procedures as with the use of force.¹⁴⁹

Consequently, and before the Defender of Rights decides on individual cases referred to him, it should be here mentioned that particular vigilance should be implemented in the use of these weapons and police officers working in the field should be reminded of the legal context for using this defensive method.

With regard to all of these elements, the Defender of Rights includes the recommendations made by the United Nations Committee for Human Rights dated 21 July 2015¹⁵⁰, worded as follows: "*Member States should take all appropriate steps, in particular in relation to training,*

¹⁴⁷ Memorandum n° 5081/2014D/53 from the CRS North area Directorate dated 17 December 2014 relating to coordinating the CRS process in Calais.

¹⁴⁸ Instructions for use dated 14 June 2004 relating to the use of incapacitating products in particular in an enclosed setting (DAPN/LOG/CREL/N°2004/40).

¹⁴⁹ In relation to the National Gendarmerie, an Urgent memorandum n° 88170 dated 15 November 2013 relating to the use of high-capacity teargas sprays also recalls the essential requirements of necessity and proportionality in the use of this weapon.

¹⁵⁰ The United Nations Committee on Human Rights made its final observations on 21 July 2015 after having examined the fifth periodic report from France (CCPR/C/FR/5) dated 10 July 2015, page 5.

to stop police officers and security officers from using excessive force or using intermediary weapons in situations where use of additional force or lethal force would not be justified"

Investigations are continuing to shed light on the cases brought to the attention of the Defender of Rights. However given the large volume of allegations in this area - made by the migrants themselves, by Médecins du Monde¹⁵¹ doctors, by local associations and Human Rights Watch¹⁵² - as well as by using videos sent to the Defender of Rights it is impossible to ignore the existence of violence against migrants in Calais and more particularly the use of tear gas.

It is for this reason that the Defender of Rights deplores the inconsistency of the succession of orders received by the police and recommends:

- **that Police officers operating in the Calais area be reminded of the circumstances in which tear gas is to be used in order that they use this weapon in a necessary and proportionate way - and its use is not to be trivialised because of the repetitive nature of their work - and that they be systematically accountable;**
- **that the circumstances in which the police "are not able to defend the ground that they occupy in any other way" (Article L 211-9 of the Internal Security Code) be clearly defined in the context of maintaining public law and order in so far as this wording - which allows use of the police to disperse a crowd without prior warning - is particularly vague;**
- **that all police officers and gendarmes working in the Calais area be equipped with mobile cameras which would be activated at the start of their operations to prevent any abnormal behaviour and remove any suspicion about the circumstances in which the intervention takes place;**
- **that legal proceedings be carefully handled to avoid making the situation more tense. In this respect, he requests that evidence enabling him to successfully complete his work be provided in more reasonable time to his officials.**

¹⁵¹ Mady DENANTES, « Le bidonville de Calais est-il en France ? » "Is the Calais shantytown in France?", *Op.Cit.*

¹⁵² Report dated 20 January 2015, *op cit.*

General Conclusion

The whole of this report shows that public policies guided by the risk of a magnet effect have harmful effects with regard to exiles' access to their fundamental rights. In addition to the violence connected with their living conditions and with the lack of consistency of the tasks entrusted to the police, the common thread of the various stages of migrants' journeys is characterised by **the precedence of control over respect for fundamental rights**, whether with regard to entering the European continent or subsequently crossing the different borders, the Calais border only being one amongst others. The persons found in Calais already have a considerable migratory history behind them. The control to which they are subjected begins well before their arrival there and contributes to placing them in their state of destitution.

For example, although the crossing of the Mediterranean on improvised boats is extremely dangerous and frequently makes rescue operations necessary, when priority is given to border control it can nevertheless actually be to the detriment of such rescue actions. This is shown, in the first place, by the pressures exercised upon Italy by the European States in order to stop the *Mare Nostrum* human rescue operation (an Italian operation decided upon after a shipwreck that claimed very many lives) and give priority to the existence of surveillance operations orchestrated by Frontex¹⁵³. The French Minister of the Interior had himself shown his reservations with regard to the development of a rescue operation of this kind which, once again, carried the risk of a magnet effect: *“although the Italian navy’s rescue operation [Mare Nostrum] has enabled the rescuing of numerous migrants at sea, [it] has also resulted in the creation of fixed migrant gathering points in the North of France”*¹⁵⁴. These claims then became louder when Italy, concerned to put pressure on the rest of Europe in order to no longer finance *Mare Nostrum* on its own, decided to allow migrants to enter European territory without collecting their fingerprints in the EURODAC file, thus preventing other States from having asylum seekers readmitted to its territory. The European Union then replaced *Mare Nostrum* by putting an operation in place under the aegis of Frontex.

However, these two types of operations do not pursue the same objectives, since Frontex's assigned task is the control of migratory flows and not sea rescue. For this reason, the agency cannot therefore take action in territorial waters to the same extent as *Mare Nostrum*. This has been expressly stated by both Mr Jean-Claude Juncker¹⁵⁵, then Commissioner, and Mr Fabrice Leggeri¹⁵⁶, Frontex Executive Director. What is more, Frontex's mandate - which allows it to intercept ships before they reach European Union territorial waters, land migrants in non-EU countries and turn back any boats reaching a Member State's territorial waters – does not provide any guarantees with regard to the need for international protection of the

¹⁵³ This is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

¹⁵⁴ French Government cabinet meeting (*Conseil des ministres*), September 2014

¹⁵⁵ Recalling the creation of Frontex, he explained that the Agency's *raison d'être* lay in the idea that the success of free movement within the Schengen Area depended upon Europe's capacity to make its external borders secure.

¹⁵⁶ On 22nd April 2015, the eve of the European Summit, Mr Leggeri asserted that saving lives in the Mediterranean did not come within the Agency's mandate.

persons concerned and compliance with the principle of the prohibition of expulsion or return of refugees as guaranteed under Article 33 of the 1951 Refugee Convention¹⁵⁷.

Thus, although the Frontex agency's budget has greatly increased¹⁵⁸, certain bodies, including the UNHCR, which considers "a European '*Mare Nostrum*' operation" to be necessary"¹⁵⁹, still point out the continuing incompatibility between its mandate and the objectives pursued by sea rescue operations. At the same time, in order to offset what it considers to be the shortcomings of European policy, the NGO *Médecins Sans Frontières* has been organising sea rescue operations with a ship, the Dignity-I, since May 2015.

Controls and obstacles to the right to emigrate, in order to apply for asylum if need be, are also imposed by means of the **increasing penalisation of the illegal crossing of borders, as well as greater difficulty in actually crossing them.**

Within the framework of the bill concerning the law on foreigners currently under discussion in the French Parliament¹⁶⁰, two amendments reveal the will to criminalise all crossings and attempted crossings. The Government had planned to increase the penal sanctions in case of intrusion in port areas prohibited to the public. It was difficult not to anticipate this new provision, aimed at penalising trespass on the part of migrants living in Calais and attempting to reach Great Britain.

Although this amendment was finally withdrawn before the reading, another provision modifying the Penal Code was, for its part, adopted. Indeed, Article 28 *bis* A of the bill, which was not present in the initial text, creates a new offence of usurpation of identity or travel documents. This offence will have been committed when a usurpation is committed with the intention of "*unduly obtaining a capacity, status or advantage*" which, formally speaking, may equally concern French citizens and foreigners. However, in so far as this provision is created within the framework of a bill concerning the law on foreigners and one of the scenarios for commission of the offence is usurpation for the purposes of entering or remaining in the Schengen territory, there can be no doubt that the bill in reality creates an offence solely aimed at foreigners. Beyond any reflection with regard to the appropriateness of the creation of an offence of this kind, the very severity of the punishment appears excessive: 5 years' imprisonment and a fine of 75,000 euros¹⁶¹.

In his opinion No. 15-20 presented to the Law Commission of the Senate, the Defender of Rights requested the withdrawal of this provision. Indeed, it would be particularly paradoxical to prosecute exiles, living in the Pale of Calais and wishing to go to Great Britain, for the commission of an offence of this kind since, although they may indeed have entered the Schengen Area by usurping another identity, on the other hand they are indeed trying to leave rather than remain within it.

¹⁵⁷ Sabine Llewellyn, *Search and Rescue in Central Mediterranean Sea*, Mission Echanges et Partenariats – Migreurop - Watch the Med – Arci, June 2015.

¹⁵⁸ However, this budget remains equal to the previous cost of Operation *Mare Nostrum*, despite the fact that the latter was borne by a single State.

¹⁵⁹ *Le Monde*, 21st April 2015, *Naufrages en Méditerranée : Frontex et sa mission « Triton » mises en cause* [*Shipwrecks in the Mediterranean: Frontex and its "Triton" mission called into question*].

¹⁶⁰ Bill concerning the law on foreigners adopted at the first reading by the French National Assembly.

¹⁶¹ It should be recalled that Article 226-4-1 of the Penal Code provides that the act of impersonating a third party with a view to disturbing their or another's peaceful existence, or causing prejudice to their honour or consideration, is punished by one year's imprisonment and a fine of €15,000.

France is far from having a monopoly with regard to this tendency to more severe punishment of the illegal crossing of borders. By way of example, one might mention the case of a Sudanese national, arrested this summer by the British police at the gateway to Great Britain after having walked almost the entire 50-kilometre length of the Channel Tunnel. He has been charged with obstruction of the circulation of trains, on the basis of British law of 1861¹⁶², and has been remanded in custody pending a verdict on his case from Canterbury Crown Court at the beginning of 2016¹⁶³. For its part, Hungary, a State through which migrants living in Calais are likely to have passed, adopted an Act on 4th September making any attempt to cross the fence set up on its border an offence and increasing the powers of special army units for this purpose.

These various different examples appear to disregard that, pursuant to Article 31 of the UN 1951 Refugee Convention, States “*shall not impose penal sanctions, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization*”

Finally, since the beginning of the summer of 2015, exiles have shown a greater tendency to attempt to go through the Channel Tunnel, access to the port of Calais having become difficult due to the setting up of barbed wire, gratings and video surveillance cameras. This measure, which was simultaneously reinforced by Eurotunnel in order to attempt to prevent these intrusions, cost the life of more than ten migrants in the space of a few weeks, electrocuted, hit by trains and crushed by catenaries¹⁶⁴. The PASS free medical clinic and Calais hospital's accident and emergency department, as well as the “clinic” established in the shanty town, are unable to cope in the face of the growing number of fractures caused by attempts to hold on to trains and injuries caused by barbed wire (torn hands in particular)¹⁶⁵.

This objective of making property (not people) “secure” is in no way a deterrent, the exiles already having a migratory history behind them strewn with obstacles and risks, often itself preceded by persecutions in the country of origin from which they fled. However, in addition to causing bodily harm, it also reinforces social inequalities: by increasing the prices charged by “smugglers” who, for their part, are able to use less dangerous channels, it leads to the taking of even greater risks by the most destitute exiles. This is particularly clearly illustrated by the fact that the dead found electrocuted or drowned in the Eurotunnel water basin are minors, very young migrants and women, sometimes accompanied with babies.

For the ultimate violence inflicted upon exiles, that of resorting to migrant traffickers, is indeed a direct result of the choices thus implemented. In this respect, the unanimous support for the fight against traffickers in the political positions taken at both the European and national levels, is not without raising questions.

The French National Consultative Commission on Human Rights (CNCDH) recommended that “*an uncompromising and ambitious crime policy should be elaborated and implemented in order to fight against the trafficking of migrants. Cooperation with the United Kingdom and*

¹⁶² Malicious Damage Act.

¹⁶³ *The Guardian*, Immigrant who ‘walked almost entire Channel tunnel’ appears in court, 24th August 2015.

¹⁶⁴ Cf. references (press article listing deaths).

¹⁶⁵ *L’Obs*, Migrants de Calais : des moyens pour la sécurité, pas pour l’humanitaire [“Calais migrants: resources for security, not for humanitarian aid”], 21st August 2015.

*European cooperation should also be reinforced in order to break the trafficking networks*¹⁶⁶. For its part, the Aribaud-Vignon report pointed out that “*the Calais region suffers from a lack of ambition in crime policy with regard to the detection and prosecution of trafficking networks and rings*”¹⁶⁷. Moreover, the examples reported in the press (70 dead from suffocation in lorry abandoned by the drivers¹⁶⁸ / violence, control and extortion rackets in certain camps in the Pale of Calais¹⁶⁹) bear witness, were there any doubt, that exiles fleeing their countries without any legal means of travel are in a very weak position and prey to all forms domination. They are unquestionably in need of protection, which should be provided immediately.

It is nevertheless appropriate to raise questions concerning the possible ambiguity of the unanimous call to fight against smugglers, render them harmless, or even physically eliminate them by means of military operations organised by the UN, in Libya in particular. The fight against smugglers in the interests of their migrant victims may, in reality, lead to these migrants being prevented, to an even greater extent, from fleeing countries such as Syria and Eritrea, which they are legally prohibited to leave. The only way of effectively protecting all exiles from the risk of human trafficking therefore appears to be the opening of legal channels of emigration by means of previously established and enumerated provisions under European law, such as humanitarian visas for example. This solution would have the merit of establishing the precedence of respect for fundamental rights over the blockade approach.

¹⁶⁶ Opinion of the CNCDH, quoted above.

¹⁶⁷ Aribaud-Vignon report, quoted above.

¹⁶⁸ *Le Monde*, 27th August 2015, *En Autriche, une terrible odeur de mort autour du camion* [“Horrible stench of death around a lorry in Austria”].

¹⁶⁹ *Le Figaro*, 25th September 2015, *Migrants, les camps du Calais sous le joug des gangs criminels* [“Migrants, the camps of the pale of Calais under the yoke of criminal gangs”].