

Opinion on the situation of migrants in Calais and in the Pale of Calais

(Plenary Assembly - 2 July 2015 - Adoption: unanimous, one abstention)

1. In the early spring of 2015, the *Commission nationale consultative des droits de l'homme* (CNCDH - National Consultative Commission on Human Rights) was alerted by several of its members (Médecins du Monde, France Terre d'Asile, Secours Catholique, and La Cimade) of the extremely worrying humanitarian situation of migrants in Calais and in the Pale of Calais. It immediately decided to refer the matter to itself and wished to have an objective and impartial assessment at its disposal. To this end, it carried out numerous interviews and meetings¹ and visited Calais on 4 June 2015. During this visit, the CNCDH delegation was deeply shocked by the inhuman conditions in which the migrants try to survive and the impasse facing not only these exiles but also the public authorities confronted with problems of an exceptionally complex nature.
2. Due to its geographical situation and its proximity to the British coast, Calais is a key point of transit for people trying to reach the United Kingdom, with the passage possible either by sea or by rail (Eurotunnel). The significant presence of migrants in this town and the surrounding area for nearly 25 years is indisputably the result of a serious geopolitical situation stemming from the special status enjoyed by the United Kingdom inside the European Union (EU).
On the one hand, this State is not party to the Schengen Convention of 14 June 1985 instituting an area of free movement of people, even if certain provisions of this agreement relating to police cooperation are integrated into British law, excluding however the right of pursuit and the immigration aspect.
On the other hand, France and the United Kingdom have concluded several treaties and bilateral administrative agreements, so as to relocate British border controls to the French port and rail zones and to strengthen security arrangements in the latter². Although the

¹ Please refer to the annex for a list of persons interviewed and met.

² Protocol between the Government of the French Republic and the Government of the United Kingdom (...) *Concerning Frontier Controls and Policing, Cooperation in Criminal Justice, Public Safety and Mutual Assistance Relating to the Channel Fixed Link*, signed in Sangatte on 25 November 1991; Additional Protocol to the Sangatte Protocol between the Government of the French Republic and the Government of the United Kingdom (...) *On the Establishment of Bureaux Responsible for Controls on Persons Travelling by Train Between the United Kingdom and France*, signed in Brussels on 29 May 2000; Treaty between the Government of the French Republic and the Government of the United Kingdom (...) *Concerning the Implementation of Frontier Controls at Seaports of Both Countries on the Channel and North Sea*, signed in Le Touquet on 4 February 2003.

See also the Administrative Arrangement between the French Ministry of the Interior and the Home Secretary of the United Kingdom of Great Britain and Northern Ireland *On the Fight Against Terrorism, Organised Crime, Drug Trafficking and Illegal Immigration*, signed on 19 May 1989; the Franco-British Arrangement *For the Application of the Protocol of 25 November 1991, Concerning Frontier Controls and Policing, Cooperation in Criminal Justice, Public Safety and Mutual Assistance Relating to the Channel Fixed Link, Concerning Frontier*

initial objective of these international texts was to contain migratory movements towards the United Kingdom³, their implementation led in practice to a ban on migrants leaving France and made Calais and its surrounding area an area of concentration of exiled persons with all the security issues and humanitarian dangers this implies⁴. This entanglement of treaties and various administrative arrangements, broadly in contradiction with EU law, is extremely worrying to the extent that it makes France the “policing arm” of British immigration policy⁵. These bilateral texts, drawn up for the most part with no transparency, in such a way that no effective political control could be exercised over them, and which, since they are unpublished, escape jurisdictional control and create *de facto* a zone of non-law, should be clarified. Faced with the acceleration of the migratory movement in the Pale of Calais, the CNCDH is concerned to see the public authorities give comprehensive consideration to migratory policy between the United Kingdom and France, without omitting the humanitarian and social issues. It thus calls for great vigilance from the public authorities at a time when the EU’s migratory policies are being redefined.

3. A short-term and segmented approach to these questions portends a case of “history repeating itself”. In September 1999, the *Centre d'hébergement et d'accueil d'urgence humanitaire* (Accommodation and Reception Centre for Humanitarian Emergency) managed by the Red Cross, was created in a former hangar located in Sangatte. In three years, 67,000 migrants in transit have passed through this camp, i.e. more than 20,000 per year, hoping to be able to cross the border⁶. In December 2002, Nicolas Sarkozy, then Minister of the Interior, ordered the closure of the centre following particularly difficult negotiations with the United Kingdom government⁷. However, this decision did not have the expected

Controls in Direct Trains Using the Channel Fixed Link, signed on 29 June 1994; the Franco-British Arrangement *For the Application of the Additional Protocol to the Sangatte Protocol Concerning the Establishment of Bureaux Responsible for Controls on Persons Travelling by Train Between the United Kingdom and France*, signed on 6 June 2001; Arrangement *For the Establishment of Zones of Control in Application of the Treaty Signed in Le Touquet on 4 February 2003 Concerning the Implementation of Frontier Controls at Seaports of Both Countries on the Channel and North Sea*, signed on 16 October 2003; Administrative Arrangement between the Minister of the Interior, Internal Security and Local Liberties of the French Republic and the Home Secretary of the United Kingdom of Great Britain and Northern Ireland *Concerning the Bearing of Service Weapons by French Police on British Territory in Application of the Treaty Concerning the Implementation of Border Controls in the Channel and North Sea Seaports of the Two Countries*, signed on 24 November 2003; Administrative arrangement *Taken in Application of the Treaty Signed in Le Touquet on 4 February 2003 and Concerning the Juxtaposed Controls Implemented on the Ports of Dover and Calais*, signed on 19 February 2004; Joint Initiative of proximity cooperation between the prefect of the Pas-de-Calais and the Chief Constable of Kent Police, signed on 24 June 2004; Franco-British Administrative Arrangement *On Strengthening the Fight Against Immigration*, signed in Evian on 6 July 2009; Administrative Arrangement *Concerning the Strengthening of the Common Frontier*, signed in London on 2 November 2010.

³ See in particular P. Masson, *Rapport n° 240 fait au nom de la Commission des affaires étrangères du Sénat (...) sur le projet de loi autorisant l'approbation du Protocole additionnel au Protocole de Sangatte* [Report no. 240 produced on behalf of the Foreign Affairs Commission of the Senate (...)] on the bill authorising the approval of the Additional Protocol to the Sangatte Protocol (...), 29 March 2001; G. Lengagne, *Rapport n° 2985 fait au nom de la Commission des affaires étrangères de l'Assemblée nationale (...) sur le projet de loi adopté par le Sénat autorisant l'approbation du Protocole additionnel au Protocole de Sangatte (...)*, [Report no. 2985 produced on behalf of the Foreign Affairs Commission of the National Assembly (...)] on the bill adopted by the Senate authorising the approval of the Additional Protocol to the Sangatte Protocol (...), 18 April 2001; L. Guédon, *Rapport n° 1292 fait au nom de la Commission des affaires étrangères de l'Assemblée nationale sur le projet de loi adopté par le Sénat autorisant l'approbation du traité entre le Gouvernement de la République française et le Gouvernement du Royaume-Uni (...) relatif à la mise en œuvre de contrôles frontaliers dans les ports maritimes de la Manche et de la mer du Nord des deux pays* [Report no. 1292 produced on behalf of the Foreign Affairs Commission of the National Assembly on the bill adopted by the Senate authorising the approval of the treaty between the Government of the French Republic and the Government of the United Kingdom (...) concerning the implementation of border controls at seaports of both countries in the Channel and North Sea].

⁴ To this end, see Migreurop, *Les frontières assassines de l'Europe*, October 2009, pp. 65-87.

⁵ For more details, see O. Cahn, *La coopération policière franco-britannique dans la zone frontalière transmanche*, Doctoral thesis in Criminal Law, University of Poitiers 2006, pp. 195-204, 405-408.

⁶ For more details, see S. Laacher, *Après Sangatte...nouvelles immigrations, nouveaux enjeux*, La Dispute 2002.

⁷ See J.-P. Alaux, “Calais vaut bien quelques requiems”, *Plein droit* n° 104 (March 2015), p. 7.

effect of ending the influx of migrants into various areas in the North of France⁸. As a result of consecutive migratory movements following various crises which affected the Middle East and the African continent in the 2000s⁹, the Channel coast has seen temporary camps multiply, with several hundred migrants counted at a single site¹⁰. The term “*jungle*”¹¹ is commonly used, including by the public authorities, to refer to the sub-human living conditions in which these exiled people live, in violation of human dignity (Article 1 of the EU Charter of Fundamental Rights).

4. 2014 and 2015 were marked by a strong increase in the number of migrants arriving in Calais and the surrounding area. The interviews conducted at the CNCDH only allow an approximate evaluation of this movement. At the end of 2013, there were between 300 and 400 migrants in Calais. These numbers rose to 800 in July 2014, then 1,500 at the end of the year. Their number currently oscillates between 2,500 and 3,000. Little information is available on the profile of these migrants¹². For the most part they are single men aged between 18 and 35 originating from the Sudan, Eritrea, Ethiopia, Egypt, Afghanistan, Syria and Iraq. The number of women in Calais has increased in recent months, and now stands at around 300¹³. The same goes for unaccompanied minors, several hundred of whom originate from Afghanistan and Eritrea¹⁴. It is obvious, notably given their migratory paths and living conditions, that these exiled persons are all intrinsically vulnerable. Dispersed among temporary camps or insalubrious squats, they live in great precarity with deplorable sanitary conditions. Within this context, the arrivals in recent months have engendered an unprecedented situation of humanitarian crisis, forcefully denounced by all of the associations present on the ground¹⁵.

In reaction to this emergency situation and fearing its detrimental effects on her municipality, the Mayor of Calais¹⁶ proposed in August 2014 the opening of a reception centre “far from local residences” and the handing over of the adjacent land. After some hesitation, this proposal was finally accepted by the Minister of the Interior¹⁷. The objective is clearly to distance the migrants from the town centre and to render their presence invisible, as well as to amply demonstrate the subsequent multiplication of police operations to evacuate squats and other “*jungles*”. However, the CNCDH still hopes to see in the creation of the reception centre a first step towards a response that respects human dignity. It is in this spirit that it will formulate its recommendations in the present opinion.

⁸ Dunkerque, Cherbourg, Dieppe or nearby the highway areas of Norrent-Fontes and Grand-Synthe.

⁹ See C. Wihtol de Wenden, *La question migratoire au XXI^e siècle. Migrants, réfugiés et relations internationales*, Les Presses de SciencesPo, 2013.

¹⁰ For more details, see O. Thomas, *Des émigrants dans le passage. Une approche géographique de la condition de clandestin à Cherbourg et sur les côtes de la Manche*, Doctoral thesis in geography, University of Caen 2011.

¹¹ “Dzangâl, forêt : le mot est d’abord utilisé par les Afghans pour désigner les campements de cabanes dans lequel les exilés sont amenés à vivre auprès des frontières auxquelles ils sont bloqués, de la Grèce à Calais. Sous la forme anglaise de jungle, il est repris par les exilés des autres pays. La forêt comme espace de l’animalité, alors que les humains vivent dans les maisons et les villes” [“Dzangal, forest: the word was first used by the Afghans to designate the encampments of shacks in which exiles lived on the frontiers where they were blocked, from Greece to Calais. Under the English form of jungle, it was taken up by exiles in other countries. The forest as an area of animals, whereas humans live in houses and cities”] (P. Wannesson, “Une Europe des jungles”, *Plein droit* no. 104, March 2015, p. 18).

¹² See however the very documented study by Secours Catholique (Caritas France): “*je ne savais pas où allait notre barque*”. *Paroles d’exilés à Calais*, Paris 2015.

¹³ P. Leclerc (HCR), *Interview of 14 April 2015*. See also C. Monnet, “Les dames de la jungle”, *La chronique* no. 341 (April 2015), pp. 18-20.

¹⁴ P. Leclerc (HCR), *Interview of 14 April 2015*.

¹⁵ M. Pette, “Les associations dans l’impasse humanitaire?”, *Plein droit* no. 104, March 2015, pp. 22-25.

¹⁶ The current Mayor of Calais is Ms Natacha Bouchard. She was unfortunately not available to meet the delegation of the CNCDH on June 4, 2015.

¹⁷ For a chronology of events, see J.-P. Alaux, *op. cit.*, pp. 4-5.

5. It should be noted that, since the closure of the Sangatte centre, aid to migrants is sometimes the fruit of spontaneous individual initiatives¹⁸. It is above all provided by the associative sector which benefits from private donations or public subsidies¹⁹. In order to address the fragmentation of activities²⁰ and to support the volunteers, an inter-associative group rallied to create a “*plateforme de services aux migrants*” (PSM -Migrant Services Platform)²¹ in October 2011. In spite of a genuine desire for coordination with the political and administrative authorities, dialogue still often remains difficult, while the abstention of the public authorities has forced the associations to fulfil missions that would normally fall within the jurisdiction of the State and the local and regional authorities. The CNCDH must therefore hail the considerable work and exemplary commitment of the associations involved in the front line of reception, orientation, accommodation and support for the migrants present in Calais and in the Pale of Calais. These associations often work in very difficult conditions. Due to insufficient resources, they are forced to constantly “manage shortages”²².

Recommendation No. 1: The CNCDH recommends that the public authorities accord due importance to the know-how of the associations and to their proposals. Regarding the public service missions that are entrusted to them, sufficient funding should be anticipated. Furthermore, there is an urgent need to coordinate the synergies between the State, local and regional authorities and associations.

6. More fundamentally the CNCDH deems it urgent that respect for the fundamental rights and liberties of migrants and asylum seekers be placed at the heart of State action and European policies²³. It is certainly not an easy task, but more than necessary in the current period marked by the proliferation of extremisms²⁴ and populist discourses often tainted by racism and xenophobia²⁵. It is essential that public opinion be clearly informed of the political, social, security and humanitarian issues involved in the situation in and around Calais. The dramatic events relayed by the press should not trivialise the rejection of these populations who, it should be remembered, have courageously fled at the risk of their lives from the armed conflicts affecting the Middle East and elsewhere. It is thus without excessive idealism or naivety that the CNCDH forcefully advocates the implementation of:
- a realistic national policy respecting the fundamental rights of migrants (I.);
 - a solidarity-based European policy respecting the fundamental rights of migrants (II.).

¹⁸ See T. Status, “Une ville au fil des migrants”, *La Chronique* no. 341 (April 2015), pp. 14-15.

¹⁹ On the role played by the associations, see M. Pette, *S’engager pour les étrangers. Les associations et les militants de la cause des étrangers dans le Nord de la France*, Doctoral thesis in sociology, University of Lille 2012; M. Pette, “Les associations dans l’impasse humanitaire”, *op. cit.*, pp. 22-25.

²⁰ For more details on this question, see CFDA, *La loi des jungles. La situation des exilés sur le littoral de la Manche et de la Mer du Nord. Rapport de mission d’observation mai-juillet 2008*, online at: http://cfda.rezo.net/download/La%20loi%20de%20la%20jungle_12-09-2008.pdf

²¹ See www.psmigrants.org. See also M. Devries, “Une plateforme contre l’éparpillement”, *Plein droit* no. 104, March 2015, p. 13.

²² During its visit to Calais on 4 June 2015, the CNCDH delegation learned that the associations had procured tents and coverings for a great number of migrants, but there were not enough for all of the migrants due to the exhaustion of stocks.

²³ To this end J.-F. Dubost, “La situation pourrait-elle être différente?”, *La chronique* no. 341, April 2015, p. 21.

²⁴ See P. Muzny (dir.), *Les démocraties face à l’extrémisme*, Institut Universitaire Varenne 2014.

²⁵ See CNCDH, *La lutte contre le racisme, l’antisémitisme et la xénophobie. Rapport 2014*, La documentation française 2015.

I. FOR THE IMPLEMENTATION OF A REALISTIC NATIONAL POLICY THAT RESPECTS THE FUNDAMENTAL RIGHTS OF MIGRANTS

A. MINIMAL LIVING CONDITIONS

1. The CNCDH's assessment: an undignified and intolerable situation (a single water point for nearly 3,000 persons, no shelters, no toilets accessible from 7pm to noon the following day)
7. The migrants have been encouraged to settle on a heathland made available to them by the municipality and the regional council. Located outside of Calais (around 4 kilometres from the centre) below the RN 126 trunk road, it was previously used for landfill. The terrain, covering 18 hectares, is uneven, sandy, and exposed to the wind and storms. In this respect, it should be specified that the climate around Calais is oceanic, and thus humid and fresh. Between 2,500 and 3,000 people are currently living on this heathland under dangerous and insalubrious temporary shelters (tarpaulins and precarious shacks) in a state of distress and total deprivation. The CNCDH was extremely shocked to note, during its visit to the site, that the terrain did not include any installation allowing a dignified life. There is neither electricity nor lighting, nor toilets nor water points. A single waste bin is provided for all the migrants, so waste and excrement litter the ground. Above all, the persons living on the heathland only have access to a single water point equipped with three taps situated alongside the Jules Ferry reception centre, which forces a great number of them to travel more than a kilometre to use it. The extremely precarious living conditions and the concentration of nearly 3,000 people on an undeveloped site - 8 communities each with their own history live on the heathland - are a factor of dehumanisation and liable to engender an explosive situation, as shown by the regular occurrence of violence between individuals and communities²⁶. The CNCDH expresses its deep concern regarding what could be likened to a shanty town, since no dignified shelter has been constructed to this day by the public authorities.
8. The "Jules Ferry" daytime reception centre, managed by the association "*La vie active*", opened its doors in January 2015. Its current configuration is the result of development work carried out up until April 2015²⁷. Installed on the premises of a former holiday centre located alongside the heathland, it is designed to offer services to 1,500 people. It has 45 employees, with the daily help of around 10 volunteers. This centre functions from noon to 7pm, so as to allow the migrants access to:
 - drinking water (the water point already mentioned comprising three taps accessible both day and night);
 - toilets (30 toilets accessible from noon to 5pm, 10 toilets accessible from 5pm to 7pm);
 - showers (60 showers accessible from 12.15pm to 3pm, one shower lasting 6 minutes);
 - a laundry (accessible from 12.15pm to 3pm);
 - electricity sockets (for recharging mobile phones);
 - a nursing unit (open from Monday to Friday from 11am to noon for women and children, then from 12.30pm to 2.30pm for the population as a whole);
 - an information office from the *Office français de l'immigration et de l'intégration* (OFII - French Office of Immigration and Integration);

²⁶ On Sunday 31 May 2015, a conflict broke out on the heathland between the Sudanese and the Eritreans. Shelters were set on fire and persons wounded with bladed weapons. The associations warned the public authorities of the explosive situation stemming from the creation of a "shanty town" by the State (see the letter to the Prime Minister of 5 June 2015).

²⁷ 10 million euros was spent on investment and operation to enable the opening of the Jules Ferry reception centre.

- distribution of tea and coffee (from 12.30pm to 2.30pm);
- one meal per day prepared on site by the provider “API-restauration”, distribution at 5pm;
- three covered courtyards equipped with backup heating systems, but without tables and chairs.

Since March 2015, 100 places are reserved for women and children for overnight accommodation.

2. The CNCDH’s recommendations

a. Improving access to food

9. The Jules Ferry centre was certainly designed to host 1,500 persons, but it has been able to adapt itself to the increase in demand and organise the distribution of more than 2,000 meals in one day (2,300 meals on Saturday 30 May 2015). In these conditions, the CNCDH can only salute the considerable efforts undertaken to satisfy all demands. Furthermore, each meal distributed at the Jules Ferry centre includes 200g of meat, 300g of starches and vegetables, 250g of unsliced bread and a dessert (fruit or yoghurt). A soup is added during the winter period. For the CNCDH, this composition would appear to meet the minimum standards for recommended daily allowances.
10. However, given the precariousness of the living conditions and physical activity exerted by the migrants (distance to be covered to get to the distribution site, attempted passage to the United Kingdom), the CNCDH regrets that the distribution of food only takes place once a day, noting also that the heathland is located several kilometres from the shops. The therefore migrants cannot easily buy food supplies, all the more so as they are sometimes forbidden access to some establishments²⁸. In addition, the distribution of meals takes place at the end of the afternoon on the premises of the Jules Ferry centre. This causes long queues, with migrants having to wait outside, with no protection against bad weather, for between 1½ and 3 hours before receiving the food trays.

Recommendation No. 2: Although the CNCDH commends the planned installation of a covered courtyard to protect the queue, it nonetheless recommends the improvement of the distribution conditions for meals. The resources allocated to the Jules Ferry centre need to be increased so that distribution takes place earlier in the day and can be done more rapidly.

b. Guaranteeing access to water and sanitation

11. Outside of the opening hours of the Jules Ferry centre (between 7pm and noon the next day) and according to the terms already outlined, access to showers, toilets and laundries is not guaranteed. As far as access to water is concerned, it should be stressed that the 2,500 to 3,000 migrants present on the heathland only have access to a single water point comprising three taps. The public authorities do not organise any other distribution of water, which could be done notably through supply tanks.
12. In two important opinions of 20 September 2007²⁹ and 23 June 2011³⁰, the CNCDH strongly affirmed that the fundamental right to water and sanitation is a human right, in line with

²⁸ The CNCDH was informed of such practices during the inter-associative meeting held on 4 June 2015 in Calais.

²⁹ CNCDH 20 September 2007, *Avis sur le droit à l’eau et à l’assainissement*, online at: www.cncdh.fr.

³⁰ CNCDH 23 June 2011, *Avis sur la mise en œuvre du droit de l’homme à l’eau potable et à l’assainissement*, online at: www.cncdh.fr.

several international bodies such as the United Nations General Assembly³¹, the Human Rights Council³², the Sixth World Water Forum and the Sustainable Development Summit in Rio. The CNCDH places great importance on the incorporation of this right into French law, so as to ensure its precise content and effectiveness. Several initiatives have been taken in recent years to render this right more substantive³³, but they are not enough to give full effect to the right to water and sanitation, in particular for people living in precarious situations or humanitarian distress, as is the case in Calais³⁴. It is for this reason that the recent bill on the effective implementation of the human right to potable water and sanitation, submitted to the National Assembly³⁵, should be commended. The CNCDH can therefore but once again call for a change in legislation³⁶ and practices³⁷, so as to allow an effective access to water and sanitation for the most deprived living in shanty towns³⁸.

13. During its visit to Calais, the CNCDH noted the will and the commitment of the State to improve the situation³⁹, since the argument of a “suction effect” cannot reasonably be invoked to exonerate it from the implementation of a reception service meeting humanitarian standards, given the specification that the latter should have preceded the installation of the migrants on the heathland. For the CNCDH, it is essential that the State and the local and regional authorities, within the framework of their respective competences, proceed as quickly as possible with the extension of drinking water and sanitation networks. Waste collection should also be reinforced.

Recommendation No. 3: The CNCDH recommends, in accordance with minimum humanitarian standards⁴⁰, the installation in sufficient numbers on the heathland and in all places where migrants stay:

- of free drinking water points in sufficient numbers⁴¹ and accessible 24 hours a day;
- of free public toilets, accessible 24 hours a day and in sufficient numbers⁴²;
- of showers and free public laundries accessible all day;
- of public waste bins with daily collections;

³¹ A/RES/64/292: “*The human right to water and sanitation*”. Under the terms of this resolution, access to drinking water and sanitation is recognised as a fundamental right, “*a prerequisite for the realization of other human rights*”.

³² A/HRC/15/9: “Human rights and access to safe drinking water and sanitation”, 15th session, point 3 of the agenda. This resolution of the Human Rights Council states that “*the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living*” - such as is notably defined in the Pact concerning cultural, social and economic rights - “*and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity*”.

³³ See Council of State, *Rapport public 2010. L’eau et son droit*, La documentation française 2010.

See also Act no. 2006-1772 of 30 December 2006 on *water and aquatic environments*; Act no. 2011-156 of 7 February 2011 *concerning solidarity in the areas of water supply and sanitation*.

³⁴ CNCDH 23 June 2011, *Avis sur la mise en œuvre du droit de l’homme à l’eau potable et à l’assainissement*, *op. cit.*, § 4.

³⁵ National Assembly, *Bill no. 2715 on the effective implementation of the human right to potable water and sanitation*, presented by Michel Lesage, Jean Glavany and others.

³⁶ Note that, on 18 December 2012, the President of the CNCDH addressed a letter to the Prime Minister in which she recommended a development of the legislation.

³⁷ Note the existence of a guide to best practice at the initiative of the Minister of Ecology, Sustainable Development, Transport and Housing and of the Association des maires de France (*Accès à l’eau et à l’assainissement pour les plus démunis. Exemples de bonnes pratiques*, 2012).

³⁸ CNCDH 20 November 2014, *Avis sur le respect des droits fondamentaux des personnes vivant en bidonvilles*, *JORF* no. 0034 of 10 February 2015, text no. 92, § 27.

³⁹ This clearly emerged from the meeting of the CNCDH delegation with Ms Buccio, Prefect of the Pas-de-Calais, and with Mr Gaudin, Sub-prefect of Calais.

⁴⁰ These standards have notably been defined in the context of the *Sphere Handbook* written by the NGOs (online at: www.spherehandbook.org) and the UNHCR, *Handbook for Emergencies*, 3rd ed. 2007, online at: <http://www.unhcr.org/472af2972.html>).

⁴¹ Under the terms of the above-mentioned *Sphere Handbook*, a minimum of one high flow tap should be installed for 250 people.

⁴² Note that the above-mentioned *Sphere Handbook* envisages the installation of at least one latrine for 50 people.

- a lighting system covering all the areas of occupancy.

Given the urgency, the CNCDH recommends, while awaiting the completion of the work, that the public authorities immediately implement provisional services for latrines and water distribution (notably through supply tanks) and that, starting now, they anticipate the arrival of new migrants.

c. Guaranteeing the protection of health and access to care

14. The extreme and undignified living conditions in the “jungles”, in the squats and on the heathland are factors that to infectious diseases and aggravating factors of pathologies. The CNCDH has been informed of the occurrence of a scabies epidemic⁴³, as well as of the strong prevalence of dermatosis, pulmonary infections and digestive pathologies⁴⁴. Ecchymosis, haematomas and other wounds notably resulting from violence or risks taken during an attempted passage to Great Britain should also be noted⁴⁵. In addition, the instability due to the chaotic itinerary of the migrants, exhaustion and the imperatives of survival lead them to neglect seeking health care. This situation is especially worrying for young children and pregnant women whose medical monitoring is interrupted.

15. The CNCDH wishes to stress the importance that it accords to the preservation of the right to health for the most deprived populations, “*as protecting first those who are among the most vulnerable is not only an ethical imperative, it is also the only way to create the conditions which allow us to protect us everyone in the long term*”⁴⁶. This basic right has been the subject of reminders in several recent opinions, which stress both access to care and prevention⁴⁷. Although the installation of showers and toilets in the Jules Ferry reception centre is a real advance in the area of hygiene and prophylaxis, this arrangement is unquestionably too limited with regard to the number of people currently living on the heathland (see above).

Moreover, the existence of a nursing unit in the same place is to be commended. A nurse seconded by the hospital is on duty from Monday to Friday between 11am and 2.30pm, with the task of dispensing care that does not require medical treatment. Medication is not distributed. Not all those seeking care can be seen⁴⁸. In view of the significant number of patients present as soon as the nursing unit opens, a registration is made of those whose state of health requires a medical examination⁴⁹. The latter are then transferred by shuttle to the *Permanence d’Accès aux soins de Santé* (PASS - On-call Health Care Provision service)⁵⁰, which allows access to free and unconditional care to persons in a highly precarious situation without social security coverage. But the queue is long, access to the shuttle is not easy, the social support insufficient and the stress often discouraging⁵¹. Regarding the PASS, it is unquestionably undersized and saturated⁵².

⁴³ On 28 May and 2 July 2014, four camps were dismantled. The public authorities invoked a scabies epidemic and the lack of sanitary infrastructures.

⁴⁴ M. Quinette (MDM), *Interview of 7 April 2015*.

⁴⁵ During its visit to the Jules Ferry centre on 4 June 2015, the nurse present informed the CNCDH that a great deal of their activity consisted in applying bandages to various wounds.

⁴⁶ J.-C. Ameisen (President of the CCNE), “Favoriser la santé est une clé”, *Le Monde* of 4 June 2015 (section: “Vivre ensemble”), p. 4.

⁴⁷ CNCDH 20 November 2014, *Avis sur le respect des droits fondamentaux des populations vivant en bidonville*, *op. cit.*, §§ 45-52.

⁴⁸ Médecins du Monde, *Calais: des violences de toutes sortes. Summary for the CNCDH and the DDD presented by the Médecins du Monde Mission Migrants Nord Littoral*, June 2015, p. 8.

⁴⁹ *Ibid.*, p. 7. There are currently around thirty nursing consultations per day. Only 15% of these receive nursing care, the remaining consultations are sent to the PASS or to A&E.

⁵⁰ The PASS are attached to the public hospitals (Act no. 98-657 of 29 July 1998, *Framework Act on Measures to Combat Social Exclusion*). The PASS in Calais was created in 2006.

⁵¹ Médecins du Monde, *op. cit.*, pp. 7-10.

⁵² *Ibid.*, pp. 9-10.

Recommendation No. 4: The CNCDH recommends strengthening the resources allocated to the nursing unit at the Jules Ferry centre. More medical personnel should be allocated and resources (both material and human) adapted to the situation should be provided to ensure more extensive opening hours (all day and at weekends) and that patients are physically accompanied to the PASS for treatment. The CNCDH also recommends the creation of a stock of common medication within the structure, so as to avoid pointless transfers to the PASS.

Recommendation No. 5: the CNCDH recommends strengthening the resources allocated to the PASS, reinforcing patient information and monitoring, as well as the improvement of the social support provided.

16. Given the characteristics of the migrant population in Calais, the people living on the heathland only rarely benefit from health coverage even though they could have access to the *Aide Médicale d'Etat* (AME - State Medical Aid). Given their administrative status and the cultural and linguistic barrier, few of them initiate the process if they are not supported. The existing support arrangements should thus be strengthened.

Recommendation No. 6: The CNCDH recommends strengthening information and support for migrants regarding entitlement of rights to health insurance.

B. ASYLUM

17. Firstly, the interviews conducted at the CNCDH have broadly confirmed that Calais and the Pale of Calais are points of transit. The migrants who stay there very often wish to reach the United Kingdom in order to request asylum there. This choice is dictated by the following considerations:

- either it is linked to the British asylum procedure (rapidity of the procedure and access to accommodation);
- or to the implementation of the Dublin III Regulation. (many do not submit an asylum request in France for fear of being sent back to the country of first entry);
- or it relates to the general living conditions of the migrants (knowledge of the English language, easy access to the labour market, relative tolerance by the authorities of illegal work)⁵³.

The Ministry of the Interior and the OFPRA have initiated very positive actions to encourage the migrants present in Calais and in the Pale of Calais to submit an asylum request in France⁵⁴. The means relating to the entry into procedure have undeniably been strengthened. The authority given to the Sub-Prefecture of Calais for the submission of asylum requests and the creation of a local branch of the OFII in this town should be noted.

The OFII first visited the squats and other sites of residence of the migrants, before organising office hours in dedicated offices located on the premises of the Jules Ferry centre immediately adjacent to where meals are distributed⁵⁵. Moreover, an agreement has been concluded with the company "ISM-interprétariat" to organise an interpretation helpline. In these conditions, the CNCDH notes the efforts undertaken by the OFII to allow the immediate reception of the migrants, to ensure their referral and to provide them with

⁵³ To this end R. Ficek (FTDA), *Interview of 7 April 2015*; R. Sodini (Asylum and immigration advisor to the Ministry of the Interior), *Interview of 28 May 2015*; S. Renaud and N. Tamine (French Red Cross), *Interview of 14 April 2015*; M. Pette (sociologist), *Interview of 27 May 2015*.

See with regard to the migrants present in Sangatte, S. Laacher, *op. cit.*, pp. 78-85.

⁵⁴ R. Sodini (Asylum and immigration advisor to the Ministry of the Interior), *Interview of 28 May 2015*; P. Brice (Director General of the OFPRA), *Interview of 27 May 2015*.

⁵⁵ This was specified to us on 4 June 2015 by Mr Bergamini, *Director of the OFII branch in Calais*.

all of the useful and necessary information on the possibility of requesting asylum in France, as well as on the terms of access to accommodation.

Recommendation No. 7: The CNCDH recommends that the public authorities continue their efforts to guarantee aid before and during the submission of an asylum request by informing applicants, in a language they understand:

- of the potential advantages of submitting an asylum request in France;
- of the procedure to follow and of their rights and obligations during this procedure, including the right to appeal before the National Court of Asylum.

In order to ensure better visibility of information resources on asylum law, a dedicated site - an “asylum centre”⁵⁶ - could be created to raise awareness among migrants on requesting asylum in France, provide them with useful information and help them to take the first steps. The use of cultural mediators, as advocated by the Aribaud Vignon report, is an avenue to explore⁵⁷.

18. Secondly, the CNCDH can only note with satisfaction the efforts undertaken by the OFPRA to rapidly process the asylum requests submitted by the migrants present in Calais and the Pale of Calais. The average processing time for asylum requests currently stands at one and a half months⁵⁸. Note should also be made of the OFPRA’s visits:

- to ensure that protection officers have greater knowledge of the specific characteristics of the situation in the Calais area;
- to organise mobile missions for Eritreans (111 of them having obtained asylum in May 2015).

Although the CNCDH commends such procedural facilities, it is nonetheless concerned by the discrimination and inter-communal rivalries that they could entail.

Recommendation No. 8: The CNCDH recommends pursuing the objective of reducing the length of the asylum procedure, it being specified that this should not in any case, as the European Court of Human Rights⁵⁹ has stressed, prejudice a quality examination of the asylum request and thus the effectiveness of the procedural guarantees granted to asylum seekers.

Recommendation No. 9: The CNCDH recommends the regular organisation of mobile missions by the OFPRA with respect to all nationalities present. This would contribute to establishing a lasting “asylum culture” in Calais and in the Pale of Calais⁶⁰.

19. Thirdly, the CNCDH commends the efforts of the Government which, on 17 June 2015⁶¹, undertook to:

⁵⁶ P. Brice (Director General of the OFPRA), *Interview of 27 May 2015*.

⁵⁷ J. Aribaud and J. Vignon, *Le pas d’après. Rapport à Monsieur le Ministre de l’Intérieur sur la situation des migrants dans le Calaisis*, June 2015, p. 76.

⁵⁸ Note that the average processing time for requests by the OFPRA decreased from 205 days in 2013 to 203.5 days in 2014. Concerning more specifically the length of processing of first requests under the normal procedure, it decreased from 278 days in 2013 to 266 days in 2014 (see OFPRA, *Rapport d’activité 2014*, Paris 2015, p. 32).

⁵⁹ European Court of Human Rights 2 February 2012, *I.M. v. France*, Application. no. 9152/09. In this case, France was the subject of a ruling by the European Court of Human Rights for not having allowed an asylum seeker, placed under the fast-track procedure and detained, to assert the merits of his claim notably because of the “*extremely rapid, indeed summary processing of his request by the OFPRA*” and of the “*extremely brief character of the period of forty eight hours which was given to him to prepare his appeal*”. For the Court, the fast-track procedure violated Article 13 combined with Article 3, so in practice the plaintiff did not have recourse to an effective remedy allowing him to assert the merits of the claim of Article 3 while his expulsion to Sudan was underway.

⁶⁰ Note that around 700 asylum requests have been made in Calais since September 2014: 95% of the first 600 requests were Sudanese, the last 100 being Eritrean.

⁶¹ See the plan *Répondre au défi des migrations. Respecter les droits, faire respecter le droit*, online on: <http://www.interieur.gouv.fr/Actualites/Communiqués/Repondre-a-la-crise-des-migrants>.

- create additional reception capacities: 4,000 accommodation places for asylum seekers by 2016, which will be added to the 4,200 planned by the end of this year, as well as 5,500 accommodation and rehousing places for political refugees;
- ensure the responsiveness of the emergency accommodation systems by strengthening shelter capacities to 1,500 places.

More specifically concerning the situation in and around Calais, the CNCDH notes with satisfaction that the asylum seekers placed under the normal procedure are referred to the *centre d'accueil pour demandeurs d'asile* (CADA - Reception Centre for Asylum Seekers) within 3 to 4 weeks of the issuing of a provisional residence permit⁶². This period is very short with respect to the national average and the saturation of the CADA reception system⁶³.

However, it emerges from the interviews conducted at the CNCDH that neither the asylum seekers placed under the fast-track procedure nor those covered by the implementation of the Dublin III Regulation currently benefit from accommodation⁶⁴. During its visit of 4 June 2015, the CNCDH delegation noted the presence on the heathland of a great number of people belonging to these categories⁶⁵. The emergency arrangements for *hébergement d'urgence pour demandeurs d'asile* (HUDA -Emergency Accommodation for Asylum Seekers) and those related to social accommodation under common law (the "115") are currently saturated. In addition, access to overnight accommodation at the Jules Ferry centre is too limited, since only 100 places are provided to shelter women and children. This forces the migrants to live on the heathland under temporary shelters, in great insecurity and humanitarian distress. When the CNCDH visited the sites, numerous migrants solicited the help of the members of the delegation in requesting a tent and sometimes a simple tarpaulin so as to sleep sheltered from bad weather. Yet the "*right to emergency accommodation granted by the law to anyone without shelter who is in a situation of medical, psychic and social distress*" is considered by the Council of State as a "*fundamental freedom*"⁶⁶. It is thus urgent to review the dimensions of the arrangements for accommodation under common law. Short-term management of accommodation must not result in temporary solutions becoming permanent.

Recommendation No. 10: The CNCDH strongly recommends that the public authorities provide funding to strengthen the reception capacity of emergency accommodation arrangements, so as to definitively put an end to the inhumane and undignified living conditions of the migrants present on the heathland.

In the meantime, it is imperative to immediately distribute tents meeting the standards defined by the HCR, it being specified that the use of the latter must remain provisional⁶⁷. The distribution of covers, mattresses and heating supplies is also a priority⁶⁸.

⁶² This was specified to us on 4 June 2015 by Mr Bergamini, *Director of the OFII branch in Calais*.

⁶³ See notably IGF/IGAS/IGA, *Rapport sur l'hébergement et la prise en charge financière des demandeurs d'asile*, April 2013; V. Létard and J.-L. Touraine, *Rapport sur la réforme de l'asile remis au ministre de l'intérieur le 28 novembre 2013*, Paris 2013.

⁶⁴ This question was raised during the inter-associative meeting organised by the CNCDH on 4 June 2015 in Calais.

⁶⁵ Note that according to Olivier Clochard (Migreurop), 80% of the persons present in Calais and in the Pale of Calais come under the provisions of the Dublin III Regulation (see: *Interview of 14 April 2015*).

⁶⁶ CE Ord. 10 February 2012, *Karamoko A.*, req. no. 356456.

⁶⁷ UNHCR, *Handbook for Emergencies*, op. cit., pp. 221-222 and Annex 1. / Chap. 21.

⁶⁸ *Ibid.*, p. 220.

C. ILLEGAL PRACTICES

20. Several interviews conducted at the CNCDH⁶⁹, documents drawn up by NGOs⁷⁰, the recent report of the Council of Europe Commissioner for Human Rights⁷¹, as well as two decisions by the Defender of Rights⁷², note illegal practices by law enforcement, or suspicion of perpetration of acts of violence by the latter (beatings, unauthorised use of tear gas, etc.). In this respect, it should be specified that the Defender of Rights was recently referred to for a complaint of similar acts which took place between 2012 and 2015. Although the CNCDH can, without any naivety, understand the imperatives governing the implementation of operations intended to maintain order⁷³, and of their effects, it notes that these operations should take place with total respect for legality, as well as the basic rights and freedoms of migrants. The most fundamental principles of the rule of law impose a strict proportionality of state constraint to the objectives that it pursues.

Recommendation No. 11: The CNCDH recommends that the public authorities not marginalise or deny the violations which could be caused to the fundamental rights and freedoms of migrants, and the latter should in no case suffer from disproportionate state force. Close attention should be paid to the opinion and recommendations of the Defender of Rights. Criminal and disciplinary proceedings should be systematically undertaken in the event of proven suspicion of perpetration of criminal offences by the law enforcement officers.

21. Furthermore, the CNCDH is notably aware of the misuse of the procedure of *obligation de quitter le territoire français* (OQTF - Obligation to Leave French Territory), the latter having been implemented without the desire to proceed effectively to an expulsion outside French territory. The Melun administrative court has thus sanctioned, on the basis of misuse of powers, a prefectorial decision of OQTF taken with the sole purpose of expulsion of a party from the common land managed by the city of Calais occupied with others by a foreign person without a residence permit⁷⁴.

Recommendation No. 12: The CNCDH recommends the strictest respect for the provisions of the CESEDA in the implementation of expulsion procedures. Failing this, the principle of the rule of law and the fundamental rights and freedoms of foreigners will be reduced to nothing.

D. MIGRANT SMUGGLING AND HUMAN TRAFFICKING

22. The passage to the United Kingdom is an extremely lucrative activity for smuggler networks, whose presence in Calais and in the Pale of Calais causes great insecurity for all

⁶⁹ O. Clochard (Migreurop), *Interview of 14 April 2015*; V. De Coninck (Secours Catholique), *Interview of 7 April 2015*; J.-F. Dubost (Amnesty International), *Interview of 7 April 2015*; M. Pette (Sociologist), *Interview of 27 May 2015*.

This question was also widely discussed during the inter-associative meeting organised by the CNCDH on 4 June in Calais.

⁷⁰ See FTDA, *Les migrants et le Calais. Quelle sortie de crise*, October 2014, p. 8; Human Rights Watch (HRW), *France: les migrants et les demandeurs d'asile victimes de violences et démunis. Rapport*, 2015; Médecins du Monde, *op. cit.*, pp. 5-6.

⁷¹ Council of Europe Commissioner for Human Rights, *Report by Nils Muiznieks following his visit to France from 22 to 26 September 2014*, COE 2015, p. 31.

⁷² DDD 13 November 2012, *Decision no. MDS-2011-113*; DDD 24 November 2014, *Decision no. MDS-2014-150*.

⁷³ In this respect, it should be specified that the missions to maintain order concern the crossing sites (the port and Eurotunnel zone), Calais town centre and the Jules Ferry centre.

⁷⁴ TA Melun 19 February 2015, *M.*, no. 1406150. For other examples of illegal practices, see P. Henriot, "Cahier de jurisprudence. Les opérations d'évacuation des jungles: le fiasco du traitement contentieux de masse", *Plein droit* no. 104, March 2015, pp. I-VIII.

(migrants, employees and association volunteers, the residents and inhabitants of Calais, law enforcement). The interviews conducted at the CNCDH notably revealed threats by smugglers to migrants and volunteers, acts of violence against migrants (beatings, setting fire to shelters, etc.) and even sexual abuse⁷⁵. To this should be added the misinformation provided by the members of these networks to migrants, upholding an idyllic image of the United Kingdom⁷⁶. In this respect, we should note the resources devoted to the fight against the networks of smugglers by the judicial authority and the air and border police. This led to the conviction of 569 individuals in 2014 and 440 since the beginning of 2015⁷⁷. Nonetheless, the Aribaud Vignon report states that “*the Calais region suffers from a lack of ambition of criminal policy concerning the detection and prosecution of networks and channels*”⁷⁸.

Recommendation No. 13: The CNCDH recommends that the public authorities define and implement an intransigent and ambitious criminal policy to combat the smuggling of migrants. Cooperation with the United Kingdom and European cooperation should also be strengthened in order to dismantle the channels⁷⁹.

23. Moreover, the CNCDH is concerned by acts of trafficking mentioned during certain interviews⁸⁰. Migrant smuggling is increasingly becoming a gateway to trafficking, the sum not paid to the smugglers resulting in situations of debt bondage⁸¹. Following the so-called Palermo Protocol adopted in 2000, the Framework Decision of 19 July 2002 and the Council of Europe Convention of 2005⁸², the CNCDH adopted on 18 December 2009 an *opinion on the fight against the trafficking and exploitation of human beings in France*, several of the recommendations of which should be forcefully reiterated:

Recommendation No. 14: The CNCDH recommends the identification of potential victims of trafficking or exploitation be carried out on the basis of clearly defined criteria adapted to the specificities of the migration routes of the exiles present in Calais and in the Pale of Calais, in particular for minors⁸³.

Recommendation No. 15: The CNCDH recommends ensuring that enquiries concerning acts of trafficking or exploitation be immediately and systematically opened, without being dependent on the statement or complaint of a victim, especially when the latter are minors⁸⁴.

⁷⁵ M. Quinette (MDM), *Interview of 7 April 2015*.

⁷⁶ FTDA, *Les migrants et le Calais*, *op. cit.*, p. 6.

⁷⁷ These figures were communicated to us verbally on 4 June 2015 by Mr Renaud Bernhardt, Departmental Director of the PAF of the Pas-de-Calais during the CNCDH's visit.

⁷⁸ To this end J. Aribaud and J. Vignon, *op. cit.*, pp. 10, 59-64, 85-88.

⁷⁹ *Ibid.*, pp. 76, 87-88.

⁸⁰ G. Colas (Secours catholique, coordinator of the collective “Ensemble contre la traite des êtres humains”), *Interview of 7 April 2015*.

⁸¹ See L. Guinamard and G. Colas, *Les nouveaux visages de l'esclavage. Contre la traite des êtres humains*, Editions de l'atelier 2015, pp. 93-96.

⁸² *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, additional to the *United Nations Convention Against Transnational Organized Crime*, adopted by the United Nations on 15 November 2000 in Palermo and ratified by France on 6 August 2002; Framework Decision 2002/629/JAI *On Combating Trafficking in Human Beings*, adopted on 19 July 2002 and binding on all Member States of the European Union; Council of Europe Convention *On Action Against Trafficking in Human Beings*, adopted on 16 May 2005 in Warsaw and ratified by France on 9 January 2008.

⁸³ See UNICEF, *Chaque enfant compte partout, tout le temps. Rapport alternatif de l'UNICEF France et de ses partenaires dans le cadre de l'audition de la France par le Comité des droits de l'enfant des Nations-Unies*, June 2015, p. 32. This report notes, in relation to unaccompanied foreign minors, the absence of a mechanism of identification of the victims of trafficking of human beings.

⁸⁴ CNCDH conf. 22 May 2014, *Avis sur la proposition de loi renforçant la lutte contre le système prostitutionnel*, JORF no. 136 of 14 June 2014, text no. 70, §§ 8-17.

E. MINEURS ISOLÉS ÉTRANGERS (MIE - UNACCOMPANIED FOREIGN MINORS)

24. The interviews conducted at the CNCDH established the presence in Calais and in the Pale of Calais of unaccompanied persons aged under 18⁸⁵, mainly originating from Afghanistan and Eritrea⁸⁶. The *Association France Terre d'Asile*, which carries out visits and receives MIEs aged from 15 to 18 within the framework of an emergency accommodation system, took responsibility for no less than 1,364 young people in 2014, and 500 during the first quarter of 2015⁸⁷. During its visit to Calais, the CNCDH was informed of the presence on the heathland of numerous MIEs who have not been supported by the ASE or the associative sector. In this respect, it should be specified that only:

- 30 emergency accommodation places are dedicated to MIEs aged over 15 in the centre managed by FTDA in Saint-Omer;
- 4 emergency accommodation places are reserved for MIEs aged under 15 in a centre managed by the association “*La vie active*” in Calais.

Many of these young people run away to attempt the “passage” to the United Kingdom, without having been subjected to a social evaluation⁸⁸.

25. In its opinion of 26 June 2014 *on the situation of unaccompanied foreign minors*⁸⁹, the CNCDH stressed that the most basic fundamental right of these young people is to obtain protection from the authorities (Article 20 of the International Convention On The Rights Of The Child⁹⁰). In order to render this right concrete and effective, it has formulated several recommendations, some of which should be reiterated with regard to the MIEs present in Calais and in the Pale of Calais.

Recommendation No. 16: The CNCDH recommends that any unaccompanied foreign youths be informed fully of their rights from their first contact with the services responsible for emergency provisional reception. Particular attention should be paid to information relating to the possibility of referral to the juvenile court judge and to the different avenues of appeal offered to MIEs to contest the legal and administrative decisions to which they could be subjected.

Recommendation No. 17: The CNCDH recommends that all unaccompanied foreign youths be allowed to express their opinion before any legal or administrative decision concerning them. This right to be heard provides the basis for the fundamental right to be mandatorily assisted by an interpreter and a specially trained *ad hoc* administrator⁹¹, as well as a lawyer where appropriate.

Recommendation No. 18: The CNCDH recommends that the public authorities consider that the fact of a minor being foreign and unaccompanied entails a presumption of danger, which in turn forms the basis for the right to access to the arrangements for

⁸⁵ R. Ficek (FTDA), *Interview of 7 April 2015*; P. Leclerc (HCR), *Interview of 14 April 2015*.

⁸⁶ P. Leclerc (HCR), *Interview of 14 April 2015*.

⁸⁷ J.-F. Roger (FTDA) communicated these figures to the delegation of the CNCDH during the inter-associative meeting of 4 June 2015 held in Calais.

⁸⁸ *Ibid.*

⁸⁹ CNCDH 26 June 2014, *Avis sur la situation des mineurs isolés étrangers présents sur le territoire national. Etat des lieux un an après la circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers (dispositif national de mise à l'abri, d'évaluation et d'orientation)*, JORF no. 0156 of 8 July 2014, text no. 92.

⁹⁰ Article 20 of the Convention: “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” The Convention, signed in New York on 26 January 1990, was ratified by France (see the publication by Decree no. 90-917 of 8 October 1990).

⁹¹ The recent UNICEF report stresses that access to an *ad hoc* administrator is in practice far from automatic (UNICEF, *op. cit.*, p. 30).

common law protection laid down in the Family and Social Action Code and in the Civil Code.

Recommendation No. 19: The CNCDH strongly recommends that the public authorities guarantee accommodation to unaccompanied foreign minors, as well as quality support and monitoring dispensed by staff trained in the specificities and problems relating to MIEs. Consideration of a possible extension of the financial participation of the State must be undertaken as quickly as possible. To this end, the creation of a specific fund with contributions from the ministerial departments concerned (principally: justice, social affairs, foreign affairs, interior) should be envisaged. Only an ambitious policy for the reception of these youths will be able to guarantee them access to their rights and an effective exercise of the latter, foremost among which is the fundamental right of asylum.

26. Finally, during the discussion of a bill *on the protection of children*⁹², the CNCDH wishes above all to reiterate its recommendations concerning the determination of the age of unaccompanied youths⁹³ and more particularly its opposition to the current practice consisting of ordering medical-legal reports to determine age based on physical examinations of the young unaccompanied foreigner. For the CNCDH, the evaluation of age on the basis of an examination of bones, genitalia, hair growth and/or of teeth should be banned.

II. FOR THE IMPLEMENTATION OF A SOLIDARITY-BASED EUROPEAN POLICY THAT RESPECTS THE FUNDAMENTAL RIGHTS OF MIGRANTS

27. As a preliminary remark, it should be recalled that the common policy of the EU in terms of asylum and migration should be based on solidarity between the Member States and imply mechanisms intended to ensure a balance in the efforts agreed by the different Member States to receive refugees and support the consequences of this reception⁹⁴. In light of the significant arrival of migrants in Calais and the Pale of Calais, and of the humanitarian disaster that it is liable to engender, the CNCDH can only hope for a solidarity initiative and balanced sharing of responsibilities between France and the United Kingdom in accordance with EU primary law (Articles 67.2 and 78-80 of the Treaty of the Functioning of the EU).

⁹² Senate, *Bill no. 444 concerning child protection submitted 13 May 2015*. Article 21 ter of this text proposes supplementing Article 388 of the Civil Code with the following three paragraphs:

“radiological bone examinations for the purposes of age determination, in the absence of valid identity documents and when the alleged age is not apparent, can only be carried out on the decision of the judicial authority and after the agreement of the interested party.

The conclusions of these examinations, which should specify the margin of error, cannot in themselves allow determination of whether the interested party is a minor. The benefit of the doubt is with the interested party.

In the event of doubt on the interested party’s status as a minor, an evaluation of their age on the basis of an examination of pubic development of primary and secondary sexual characteristics should not be made”.

⁹³ CNCDH 26 June 2014, *Avis sur la situation des mineurs isolés étrangers présents sur le territoire national*, *op. cit.*, §§ 10-21.

⁹⁴ See notably European Council, Tampere, *Conclusions of the Presidency*, 15 and 16 October 1999, Point no. 4; The Hague Programme *Strengthening Freedom, Security and Justice in the European Union*. Conclusions of the Presidency, Brussels 4 and 5 November 2004, 14292/04 REV1, Annex 1, p. 17; Decision no. 573/2007/EC of 23 May 2007 of the European Parliament and Council concerning the creation of the European fund for refugees (...), Recital no. 6; European Commission, *Green Paper on the Future Common European Asylum System*, Brussels 6 June 2007, COM(2007) 301, pp. 11-13; Regulation (EU) no. 516/2014 of the European Parliament and of the Council of 16 April 2014 concerning the creation of the asylum, migration and integration fund (...), Recitals no. 1 and 2.

A. ENCOURAGING THE IMPLEMENTATION OF THE TEMPORARY PROTECTION PROCEDURE

28. The significant presence of migrants in Calais is a direct result of the crossing of the borders of the Schengen Area by entire populations who flee, risking their lives, from the armed conflicts affecting the Middle East and elsewhere⁹⁵. The first countries affected by these migratory movements are those located at the extremity of the Schengen Area, such as Italy and Greece in particular. In this respect, the CNCDH has noted on several occasions⁹⁶ that response to a situation of a mass influx of migrants is taken into account by EU law which has instituted a temporary protection, a procedure which has not been applied until now⁹⁷.

Recommendation No. 20: The CNCDH recommends initiating a reflection process on the application of Directive no. 2001/55/EC of the Council of 20 July 2001 *on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*.

Recommendation No. 21: The CNCDH invites France to adopt the relocation proposal for asylum seekers, as formulated by the European Commission in its agenda on migration.

B. USING ALL THE POTENTIAL OF THE DUBLIN III REGULATION.

29. For the CNCDH, the Dublin III Regulation should not be exclusively interpreted as an instrument of allocation of asylum requests between Member States⁹⁸. Since a large number of people living on the heathland are covered by this text⁹⁹, the latter should, as a priority, be implemented to activate solidarity between France and the United Kingdom¹⁰⁰.
30. Recital no. 17 lays down the following principles: “Any Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation”.

Recommendation No. 22: The CNCDH recommends a systematic application of the humanitarian clause of Article 17-2 of the Dublin III Regulation by virtue of which France can ask that the United Kingdom “take charge of an applicant in order to

⁹⁵ See Amnesty International, *The Human Cost of Fortress Europe*, July 2014; Amnesty International, *Lives Adrift: Refugees and Migrants in Peril in the Central Mediterranean*, October 2014; FIDH - Migreurop - REMDH, *Frontex. Entre Grèce et Turquie: la frontière du déni*, May 2014.

⁹⁶ CNCDH 28 November 2013, *Avis sur le régime d’asile européen commun*, JORF no. 287 of 11 December 2013, text no. 82, § 5; CNCDH 20 November 2014, *Avis sur le projet de loi relatif à la réforme de l’asile*, JORF 0005 of 7 January 2015, text no. 57, § 5.

⁹⁷ See CNCDH 23 June 2011, *Avis sur les mouvements migratoires liés aux “printemps arabes”*, online at: www.cncdh.fr. See also the letter of 20 November 2013 addressed to the President of the Republic by the President of the CNCDH concerning the reception of Syrian refugees.

⁹⁸ To this end J.-P. Alaux (GISTI), *Interview of 14 April 2015*; J.-F. Dubost (Amnesty International), *Interview of 7 April 2015*; P. Leclerc (HCR), *Interview of 14 April 2015*; C. Six (La Cimade), *Interview of 14 April 2015*.

⁹⁹ On 14 April 2015, Olivier Clochard (Migreurop) specified, during his interview by the CNCDH, that 80% of the migrants present in Calais and the Pale of Calais are “Dublinable”.

¹⁰⁰ To this end FTDA, *Les migrants et le Calaisis*, *op. cit.*, p. 15. See also J.F. Dubost (Amnesty International), *Interview of 7 April 2015*; P. Leclerc (HCR), *Interview of 14 April 2015*.

We note that, concerning the implementation of the Dublin III Regulation, the outgoing flows towards the United Kingdom are very low (see: CICI, *Les étrangers en France. Année 2013. 11^{ème} rapport établi en application de l’article L. 111-10 du CESEDA*, Paris 2014, p. 119).

bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations” even if the United Kingdom is not competent to process the asylum request, with regard to the criteria laid down by the Regulation.

31. As for Recital no. 14, it lays down the principle according to which *“respect for family life should be a primary consideration of Member States when applying this Regulation”* before stressing the necessary guarantee of the principle of family unity, notably in the superior interests of the child (Recital no. 16).

Recommendation No. 23: The CNCDH recommends an application of the so-called familial clauses of the Dublin III Regulation (Articles 9, 10, 11 and 16), when a person has relatives or family and friends in the United Kingdom.

C. WITHDRAW FROM THE BILATERAL TREATIES AND AGREEMENTS LINKING FRANCE AND THE UNITED KINGDOM

32. Although the CNCDH certainly recognises that Franco-British cooperation is particularly important, it notes that this understanding can only be established at the expense of EU law and the European Convention on Human Rights.
33. Firstly, as has already been specified, France and the United Kingdom have concluded several treaties and bilateral administrative agreements so as to relocate British border controls to the French port and railway zones and to strengthen the security arrangements in the latter. The application of these texts results in migrants without visas remaining on French soil in the undignified living conditions described above. These migrants thus try to reach the United Kingdom at any cost, often risking their lives and seeking the help of unscrupulous smugglers, even though leaving French territory is a right. For all these reasons, the CNCDH sees in the application of the bilateral agreements a disproportionate prejudice to the fundamental right to leave a country¹⁰¹ laid down in Article 2-2 of Protocol No. 4 to the European Convention on Human Rights (ECHR)¹⁰².
34. Secondly, the CNCDH can only note that, although France has an interest in dealing with the problems caused to its public order by the collateral damage of the migratory pressure exerted on the borders of the United Kingdom, it can only draw a slender benefit from the solutions supposedly contributed by the bilateral agreements. The study of their provisions amply demonstrates that they do not privilege in any way the interests of France. The latter has moreover agreed to contribute broadly to the material cost of strengthening the impermeability of the English borders, without it being seriously possible to consider whether it draws an equivalent benefit from it. Although the arrangement of September 2014 envisaged the payment over three years of 15 million euros by the United Kingdom to France, this sum appears completely derisory with respect to the cost engendered by the reception of migrants in France. In this respect, it is useful to recall

¹⁰¹ See Council of Europe Commissioner for Human Rights, *The Right to Leave a Country. Issue Paper*, Published by the Council of Europe, 2013; C. Wihtol de Wenden, *Le droit d’émigrer*, CNRS-éditions 2013.

¹⁰² Article 2 - “Freedom of movement.

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

that the installation of the Jules Ferry centre was financed at a sum of 10 million euros - in investment and operation - France contributing 60%, and the EU the remaining 40%. The British financial compensation being largely in the field of security, France must bear alone, for more than 20 years, the moral and material cost of a disastrous humanitarian situation. These leonine agreements cruelly highlight what some have called the “*Talleyrand complex*”¹⁰³.

35. Thirdly, these treaties and administrative arrangements structure a thick entanglement of four police legal systems at the borders, the rules applicable being different depending whether the same offence is perpetrated on a train travelling between Paris and London, a train travelling between Brussels and London, in the port of Calais, in Calais town centre, or on the railway rights-of-way of Calais and Calais-Frethun. As a result of this juxtaposition of legal systems, the law applicable is extremely complex and difficult to access, notably for those on whom it falls to implement it every day¹⁰⁴. For the CNCDH, the imperative of legal security and that of quality of law require extensive simplification.
36. Fourthly, certain provisions contained in these bilateral agreements relate to the determination of the State responsible for the processing of the asylum request. This is the case with Article 4 of the Additional Protocol to the Sangatte Protocol¹⁰⁵ and Article 9 of the Le Touquet Treaty¹⁰⁶. For the CNCDH, the application of these provisions results in practice and in law in the discarding of the provisions of the Dublin III Regulation recalled above¹⁰⁷, even though France and the United Kingdom are bound by secondary EU law and the legal department of the EU Council had, from 1997, stressed the incompatibility of these two articles with the former Dublin Convention¹⁰⁸. Finally and above all, due to the externalisation of British border controls onto French soil, the United Kingdom will almost never be competent to process asylum requests, since the conditions laid out by the above-cited provisions can in practice only be met with difficulty. Consequently the agreements and bilateral administrative arrangements prevent the submission of asylum requests in this country. The CNCDH sees here an attack on the very substance of the right

¹⁰³ *Ibid.*, pp. 405-408. It reflects “the expression of the confrontation between two antagonistic diplomatic traditions which see a certain French utopianism confront a British pragmatism solely concerned with efficacy. Thus, whereas the United Kingdom privileges in the area of policing cooperation the undertakings strictly necessary with respect to the interest of its internal policy, France accepts taking part in the definition of large scale projects which are not always relevant to its internal security priorities and do not necessarily correspond to the resources at its disposal. Thus the logic of Realpolitik obliges that British determination imposes itself on French aspiration”.

¹⁰⁴ See O. Cahn, *La coopération policière franco-britannique dans la zone frontalière transmanche*, op. cit., pp. 244, 336, 578-579.

¹⁰⁵ Article 4: “when a person submits a request for refugee status or any other kind of protection provided for in international law or in the domestic law of the State of departure during a control carried out at the station of the State of departure by the officers of the State of arrival, this request shall be examined by the authorities of the State of departure in accordance with the rules and procedures of its domestic law. The same provisions shall be applicable when the request is submitted after the person has passed through this control and before the train doors close at the last scheduled stop at a station located in the territory of the State of departure. If such a request is made after the train doors have closed, it shall be processed by the State of arrival in accordance with the rules and procedures of its domestic law”.

¹⁰⁶ Article 9: “when a person submits a request for refugee status or any other kind of protection provided for in international law or in the domestic law of the State of departure during a control carried out at the station of the State of departure by the officers of the State of arrival, this request shall be examined by the authorities of the State of departure in accordance with the rules and procedures of its domestic law. The same provisions shall be applicable when the request is submitted after the person has passed through this control and before the departure of the ship of the State of departure. If such a request is made after the departure of the ship, it shall be processed by the State of arrival in accordance with the rules and procedures of its domestic law.”

¹⁰⁷ To this end O. Cahn (University of Cergy-Pontoise/CESDIP), *Interview of 10 June 2015*; G. Sadik (La Cimade), *Interview of 20 May 2015*.

¹⁰⁸ Opinion of the legal department of the EU Council no. 13532/97 of 23 December 1997, unpublished. For more details, see O. Cahn, *La coopération policière franco-britannique dans la zone frontalière transmanche*, op. cit., pp. 112-113 and 118-119.

to asylum. It is astonished that France has not removed the provisions of the administrative arrangements incompatible with the provisions of the Dublin III Regulation and that the European Commission has not noted these incompatibilities in accordance with Article 36 of this Regulation.

Recommendation No. 24: The CNCDH strongly recommends the withdrawal of the so-called Le Touquet and Sangatte treaties and agreements.

LIST OF PERSONS INTERVIEWED AND MET BY THE CNCDH

Jean-Pierre Alaux, GISTI (14 April 2015)

François Angelini, Departmental Director of Public Security for the Pas-de-Calais (4 June 2015)

Jean-Paul Arbelin, Divisional Police Commissioner, head of the Calais district of public security (4 June 2015)

Stéphane Bergamini, Director of the Calais branch of the OFII (4 June 2015)

Renaud Bernhardt, Departmental Director of the air and border police (4 June 2015)

Cécile Bossy, Médecins du Monde (4 June 2015)

Pascal Brice, Director General of the OFPRA (27 May 2015)

Fabienne Buccio, Prefect of the Pas-de-Calais (4 June 2015)

Olivier Cahn, Senior lecturer at the University of Cergy-Pontoise / CESDIP (10 June 2015)

Nathanaël Caillaux, Plateforme de service aux migrants (4 June 2015)

Olivier Clochard, Migreurop (14 April 2015)

Geneviève Colas, Secours Catholique (7 April 2015)

Vincent De Coninck, Secours Catholique (7 April 2015)

Aurélien Denoual, Médecins du Monde (4 June 2015)

Martine Devries, President of the Plateforme des services aux migrants (4 June 2015)

Faustine Douillard Faustine, France Terre d'Asile (4 June 2015)

Jean-François Dubost, Amnesty International (7 April 2015)

Stéphane Duval, La vie active (4 June 2015)

Lou Einhorn, Médecins du Monde (4 June 2015)

Radoslaw Ficek, France Terre d'Asile (7 April 2015)

Gilles Furigo, Inspector General of the National Police (4 June 2015)

Denis Gaudin, Sub-Prefect of Calais (4 June 2015)

Hugo Grenier, Permanence contre les violences (4 June 2015)

Maya Konforti, Auberge des migrants (4 June 2015)

Philippe Leclerc, HCR (14 April 2015)

Caroline Maillary, GISTI (14 April 2015)

Muriel Masse, Emmaüs France (4 June 2015)

Sylvain Mathieu, Inter-ministerial Delegate for Accommodation and Access to Housing (22 June 2015)

Claire Millot, Salam (4 June 2015)

Marie-Ange Montoy, Salam (4 June 2015)

Mathilde Pette, Sociologist, post doctoral fellow at the Clersé (CNRS/ Lille 1), visiting researcher at Ceraps (CNRS/ Lille 2) (27 May 2015)

Mathieu Quinette, Médecin du Monde (7 April 2015)

Sybille Renaud, French Red Cross (14 April 2015)

Jean François Roger, France Terre d'Asile (4 June 2015)

Gérard Sadik, La Cimade (20 May 2015)

Eve Shahshahani, ACAT France (7 April 2015)

Camille Six, La Cimade (14 April 2015)

Raphaël Sodini, Immigration and Asylum Adviser to the Ministry of the Interior (28 May 2015)

Nasrine Tamine, French Red Cross (14 April 2015)