



# Report of the British Refugee Council and France Terre d'Asile joint fact-finding mission to Calais

September 2009

In May 2009, as a result of concerns about migrants in Calais, their exceptionally poor living conditions, and the lack of access to protection for refugees in the area, the Refugee Council conducted a fact-finding mission to Calais in partnership with the French NGO, France Terre d'Asile. The joint nature of our visit enabled us to share expertise about the French procedures for accessing asylum, housing and support as well as the media and political environments in the UK and France.

During our visit we visited 'the jungle' to see conditions and spoke to some of the people (mainly Afghans) who sleep rough and camp there. In addition, we visited two squats in the town where Eritreans and Iraqis were living. We met with the Deputy Mayor of Calais who is responsible for social affairs and with the local and well-established NGO, Association Salam, which runs a soup kitchen every day, providing a hot evening meal to all the migrants by the quayside.

## Current concerns about the situation in Calais

### 1. Protection concerns

The Refugee Council and France Terre D'Asile do not believe that the issue of whether individuals in Calais need international protection under the 1951 Refugee Convention, the ECHR or on compassionate grounds has been properly addressed. It is widely assumed by the French and British authorities and by the media that migrants do not claim asylum in France and are therefore economic migrants who do not need asylum and are instead intending to abuse the UK asylum procedure as a means of staying in the UK once they get there. It is significant to note that the predominant nationalities in Calais are major refugee countries of origin - Afghanistan, Iraq and Eritrea. However, asylum applications in the region are strikingly low: only 171 new applications were registered in the *Département* of Pas-de-Calais<sup>1</sup> while France received more than 27 000 new applications (excluding dependants) in 2008.

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<sup>1</sup> NB, this figure does not include applications for asylum made at the local detention/removal centre, nor applications which fall within the remit of the Dublin II regulation. No official figures are available, but according to a report published last year by the French Coordination for Asylum Law (CFDA), 73 asylum applications were registered at Coquelles retention centre in 2007. The same year, there were 940 positive Dublin II hits in Pas-de-Calais.

In terms of accessing protection on an individual level, it is clear that many individuals do not know how or where to claim asylum and have no access to independent legal advice nor interpreters, despite the valuable work of local NGOs and their efforts to provide legal information. Fear of being returned under the Dublin II Regulation<sup>2</sup> further lessens the likelihood that individuals with a right to international protection will apply for asylum. Migrants who have transited through Greece are particularly fearful of being returned under Dublin II. It is well documented that accessing the asylum procedure in Greece is difficult, in particular for minors, and there are many deficiencies with the Greek asylum procedure and cases of refoulement by the Greek authorities.<sup>3</sup>

A significant proportion of those in Calais appear to believe that France does not offer accommodation and support to asylum seekers throughout the substantive asylum procedure. This misconception could be due to the lack of information that is available to migrants in Calais, but may also be due to the delays that many asylum seekers experience in accessing accommodation once they have lodged a claim for asylum. To further complicate matters, France does not provide accommodation or support to those whose return is pending under the Dublin II Regulation.<sup>4</sup>

Since early May, migrants have been able to claim asylum in Calais without having to travel 100 km to Arras. This development is welcome. From the 5<sup>th</sup> of May to 29<sup>th</sup> July, 137 applications were registered, of whom 61 asylum seekers were already registered in another EU country. Only 36 asylum seekers were granted a temporary residence permit pending the determination of their protection claim, of whom 33 accepted accommodation in an asylum seekers' reception centre.

Fear of being returned to their country of origin was also cited by some of the migrants we spoke to as a reason why they have no desire to claim asylum in France, though it should be noted that at the present time France does not enforce removals to Afghanistan, the country of origin of the majority of the migrants we spoke to. Following the British-French summit in June, however, there is an expectation that France will begin removals to Afghanistan.

At a policy level, viewing the population in Calais as a monolithic group who wish to 'abuse the system' and whose only wish is to go to the UK has grave consequences. For example, it results in access to asylum not being viewed as a priority by the French authorities, and information about the asylum system and access to free and independent legal advice is not provided by the local French authorities.<sup>5</sup> In contrast, we note that since December 2006, IOM has been providing migrants with information about voluntary return, the risks of crossing the Channel irregularly, and on migration and asylum in the UK. In 2009, IOM began a pilot project to provide migrants with reintegration assistance if they take up voluntary return to their country of origin. These IOM activities are supported by the French and British authorities.

In early June 2009, UNHCR established a presence in Calais, and is working in cooperation with France Terre d'Asile to provide reliable and objective information to migrants about French asylum procedures. UNHCR's presence illustrates that the UN itself has concerns about the protection needs of some of the migrants in Calais and believes the situation to be sufficiently grave as to establish protection-oriented activities there. UNHCR and France Terre D'Asile have drafted a roadmap setting out their planned

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<sup>2</sup> The Dublin Regulation aims to "*determine rapidly the Member State responsible [for an asylum claim]*" and provides for the transfer of an asylum seeker to that Member State.

<sup>3</sup> In July 2009, UNHCR announced that it will not participate in the new asylum procedure in Greece unless significant structural changes are made. UNHCR issued a statement highlighting that the current procedures 'do not sufficiently guarantee efficiency and fairness of the refugee status determination procedure in Greece as required by International and European legislation.'  
<http://www.statewatch.org/news/2009/jul/greece-unhcr.prel.pdf>

<sup>4</sup> According to the European Commission's recent evaluation of the Reception Directive, only France, Spain and Austria do not apply the Reception Directive to the Dublin procedure. Recital 8 of the proposed recast Reception Directive clarifies that the Directive applies "during all stages and types of procedures concerning applications for international protection and in all locations and facilities hosting asylum seekers".

<sup>5</sup> Note that the French authorities recently released an action plan which contained a commitment to improve health services, provide lunch, improve sanitary facilities and provide information about asylum and voluntary return. This commitment is to be welcomed. Page 2 of 7

activities in Calais and along the coast in surrounding areas. The roadmap calls for emergency action to be taken immediately, along with additional measures that require EU commitment.

The Refugee Council and France Terre d'Asile believe that the migrants in Calais must be treated as individuals with different needs. Some require access to international protection, while others have no protection needs and require different solutions, including access to assistance with voluntary return. We believe that procedures should be put in place as a matter of urgency to ensure that individuals are able to access high quality, independent advice on their legal status as well as their options.

We believe that regular and transparent sharing of information and expertise amongst stakeholders, including the French and British Governments, French Local Authorities, the UNHCR and NGOs could help to ensure that appropriate responses and solutions can be identified.

## **2. Unaccompanied children**

During our trip it became apparent from our observations and from the information given to us by local NGOs, that there is a significant population of children, reportedly of a young age (10yr-16yrs) sleeping rough in Calais, either alone or accompanied by a friend/relative but not within the care of the local authority. We have serious concerns about the welfare of these children.

We believe that the particular needs of children should be addressed as a priority to ensure their safety and protection. Unaccompanied children should never be returned, either under Dublin II or to their country of origin, unless it is in their best interests.

## **3. Women in Calais**

The proportion of women migrants in living in the Calais area is very low, and at the time of our visit, most of these women were from Eritrea. As a result, women are highly visible. They are particularly vulnerable and face risks that stem from living in such precarious conditions alongside such a large number of men. The poor living conditions mean that women are forced to wash and use the toilet in the same area as men, whether that be in the jungle or a squat. The risk of sexual violence to women during their stay in Calais is of extreme concern. In addition, many of the women in Calais have reported experiencing rape, sexual violence and other human rights violations in their countries of origin. These women clearly need protection and specialised services to assist them to recover from their trauma. Such services are not available to them in Calais. At the time of our visit, women additionally lacked access to sanitary wear, female interpreters, advice on security, domestic violence services and antenatal care.

## **4. Family reunion with refugees in the UK**

A common reason cited by the migrants we spoke to for wanting to travel to the UK was to reunite with family members. The present channels for refugee family reunion to the UK are contained in the UK's Immigration Rules and provide for pre-departure spouse and minor children to join family members who are recognised as refugees or granted humanitarian protection in the UK. This narrow interpretation of 'family' does not allow other close family members (e.g. uncle, brother or cousin) to join family, and thus does not recognise that the notion of 'family' has different meanings in different cultural contexts. As Thomas Hammarberg, Council of Europe Commission for Human Rights has observed, a strictly limited definition of family to include only parents and their immediate children "... ignores the obvious fact that the shape of the core family differs depending on traditions and situations. In war-torn and HIV affected areas, for instance, it is not unusual for orphaned children to be cared for by other relatives. Often grandparents, or other members of the extended family, depend on the active generation. A

positive and humane policy should consider the real family pattern in each individual case.”<sup>6</sup>

The international community has agreed in a number of declarations that the family is the fundamental group unit in society. For refugees, the right to family reunion is particularly crucial as in many cases refugees have been forced to leave family members behind when fleeing, or have lost relatives in the chaos of flight. Separation from close family members can cause severe stress, undermine recovery from trauma and prevent vulnerable refugees from being able to rebuild their lives to their full potential.

For family members who are split in different EU countries, the state may exercise discretion by using the humanitarian clause of the Dublin II Regulation.<sup>7</sup> The UK has very rarely used its discretionary power, even in the most compelling and compassionate cases. This results in refugees being left with no option but to resort to illegal travel to reunite with family members. The Regulation also states that if an unaccompanied child has a close family member (defined in the Regulation as a parent) in another member state, the child’s application should be considered in that country, providing it is in the child’s best interests.

We believe that the UK and France should be proactive in seeking to uphold the principle of family unity for refugees, including those in the Calais area.

## 5. Juxtaposed controls

During the Refugee Council’s visit to the UK’s juxtaposed controls in Calais we were grateful for the open sharing of information by UKBA’s representatives.

We believe that it in seeking solutions to the problems in Calais it is possible and necessary for governmental and non-governmental stakeholders to engage in dialogue at operational and policy levels. The UK authorities conduct immigration controls at the port of Calais and Coquelles and at the Eurotunnel they check passengers travelling by vehicle and on foot. Once the UK intercepts a person with inadequate travel documentation via their immigration control, they are fingerprinted and passed to the French authorities to deal with. It is our impression that the UK and French authorities have very little contact with regards to the individuals that are ‘handed over’ and no follow up action is taken to determine what happens to them. Anecdotal evidence suggests that the same people are intercepted many times over. Most worryingly, the dangers of irregular travel are serious and of great concern and have resulted in deaths in a number of instances.

We believe that the UK and French authorities should establish formal and regular avenues of communication and co-operation and should jointly draft and agree standard operating procedures. A joint committee has just been set up to implement the French-British action plan adopted by the French and UK Governments in July. We expect that this will result in closer working on matters relating to border controls, detection technology and forced return. Joint procedures are also required to outline how to work together to improve the protection of intercepted individuals who are vulnerable, including children, and how to ensure that those vulnerable individuals can access independent legal advice and/or the UNHCR and, in the case of those who have sustained physical injuries, access to health services.

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<sup>6</sup> [http://www.coe.int/t/commissioner/viewpoints/080804\\_EN.asp](http://www.coe.int/t/commissioner/viewpoints/080804_EN.asp)

<sup>7</sup> Article 15 of the Dublin II Regulation states that a member state may reunite members of a family or other dependant relatives on humanitarian grounds. If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor. The EC recast of the Dublin regulation proposes to change this discretionary clause to an obligatory clause.

## **6. Humanitarian situation**

It is clear that the living conditions of the hundreds of migrants in Calais are entirely unacceptable and should be addressed as an urgent priority. The poor living conditions have a negative impact on migrants' physical and mental health and create a lack personal security which is particularly serious for women and children. Dismantling the informal settlements in itself will not solve the problems.

While the reasons for the continuing presence of migrants in the area are incredibly complex, the situation is compounded by the lack of sufficient places in reception centres for asylum seekers and for homeless people in France. The shortage is particularly acute in Calais. Past efforts by the French authorities to disperse migrants from the Calais area to other parts of France have failed, and there is clearly a need for a new and comprehensive plan of action to resolve the situation.

We believe that the situation in Calais calls into question the efficacy of the Common European Asylum System, as the specific pressure in Calais is partly a consequence of the poor reception and protection standards in Member States that migrants pass through before they reach France.

### **On the basis of our findings, the British Refugee Council and France Terre d'Asile make the following recommendations:**

#### **To the EU institutions and Member States:**

- The issue of Calais should be discussed and addressed at the EU level, including with respect to the particular pressures that the Dublin II regulation may be placing on the Calais area. It is apparent that Dublin II dissuades some migrants with protection needs from seeking asylum in France because they fear they will be sent back to another EU country if they do so. They thus remain in legal limbo without any opportunity to access to a legal status. Information should be gathered as to the reasons why asylum seekers moved on from countries such as Italy and Greece. The recast Dublin II Regulation should be discussed in the light of examples of pressures faced by states in areas such as Calais. Unaccompanied children should not be returned under the Dublin II Regulation, unless it is in their best interests.
- Improving standards of protection and reception for asylum seekers across the EU should be addressed as a priority by the European institutions and Member States.
- The forthcoming European Asylum Support Office could assist the French and UK authorities by providing training to local stakeholders, assisting in analysing the current situation and identifying appropriate long-term solutions and short-term, emergency responses.

#### **To the UK and French authorities:**

- The situation in Calais is one for which there is no 'quick fix' solution. It is a symptom of a wider European problem and a lack of consistency in the treatment of migrants across the EU. The French and UK authorities should commit to seeking long-term solutions and recognise that refugees will continue to suffer if emphasis is placed on increasing returns and extra-territorial border controls without ensuring that refugees' protection needs are met. The practical co-operation measures

promoted by the EU to facilitate the building of the Common European Asylum System<sup>8</sup> are particularly relevant to resolving the situation in Calais.

- A survey of the make up of the migrant population in Calais (age, gender, nationality, reasons for leaving country of origin, family composition), should be carried out in order to identify those with protection needs, family reunion needs as well as vulnerable individuals with physical and mental health problems, including those resulting from torture, trauma, their flight from their country of origin journey and poor conditions of living in France.
- We would recommend that co-operation between the authorities of the UK and France be increased at policy and operational level, including by:

Holding regular meetings involving local and national authorities, NGOs, UNHCR, IOM and representatives from the refugee community to discuss and identify solutions to the unmet protection needs among the migrant population in Calais.

Drawing up Standard Operating Procedures for the French and UK authorities based at the port of Calais. These should include procedures to safeguard the needs of vulnerable individuals, including unaccompanied children who are passed between the UK and French authorities.

Sharing information with relevant stakeholders including NGOs about the changing profiles of the migrant population in Calais, including nationalities, age and gender, and particularly vulnerable groups or individuals.

- The UK and French authorities should facilitate access for UNHCR and independent NGOs to the juxtaposed control areas as well as detention centres in order to ensure that individuals with protection needs are able to understand that they may claim asylum in France.
- The situation should be regularly reviewed jointly by all stakeholders and the impact of increased NGO and UNHCR presence on asylum claims in Calais monitored.
- Private carriers - ships, lorries and trains- should be provided with information and training to sensitise them to the specific needs of vulnerable individuals, in particular unaccompanied children and trafficking victims. They should receive comprehensive advice as to the procedure to follow when such individuals identified

### **To the French authorities:**

- Action should be taken to ensure that accommodation is made available immediately to all those in need of international protection, particularly in light of the current requirement that asylum seekers in France have a postal address in order to enter the asylum procedure. In the short term, accommodation might take the form of an emergency centre in the area, or the immediate creation of sufficient places in reception centres for asylum seekers outside the Calais area. Such action would enable the French authorities to comply fully with their obligations under the EU Reception Directive.<sup>9</sup>
- The French authorities should assess the situation of all asylum seekers on a case by case basis and should not seek to apply the Dublin II Regulation to asylum seekers who would be returned to

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<sup>8</sup> Practical cooperation is promoted in the EC policy plan for asylum published in June 2008.

<sup>9</sup> Article 13 of the Reception Directive stipulates that material reception conditions, including accommodation, should be available to asylum seekers when they make their application.

countries with inadequate protection and reception standards that fail to meet international and European minimum standards. France should consider exercising discretion when considering these asylum cases.

- Asylum seekers who the French authorities are seeking to return under Dublin II should be provided with adequate reception conditions, in particular access to accommodation, for the duration of their stay in France.
- Comprehensive and impartial information about the asylum procedures should be provided to individuals in the Calais area. Information should cover the right to claim asylum in France and the processes of accessing accommodation, support, health services, education and legal advice. Written and oral information should be disseminated by relevant stakeholders including the local authorities, NGOs and lawyers. It should be made available in languages that migrants can understand, including Pashtun, Tigrinya, Kurdish and Arabic.
- Access to UNHCR, and to free independent legal advice and representation from legal advisers with expertise in migration and asylum, should be provided and confidentiality must be assured.
- The Calais municipal authorities should ensure that migrants in Calais are able to access appropriate services to meet their diverse needs, with particular attention to migrants' age, gender, culture and religion.
- Unaccompanied children should be dealt with via a specific procedure which recognises their particular needs as children and ensures that authorities act in their best interests.
- Unaccompanied children should be provided with accommodation separately from adults.
- The humanitarian needs of the population in Calais should be addressed as a matter of priority. This includes ensuring adequate access to health services, clean water for drinking and washing, toilet facilities and sanitary facilities for women.
- The needs of refugee women in Calais should be addressed as a matter of urgency. Women currently lack physical protection and should be provided with access to safe accommodation, female support workers, female legal advisors and interpreters, and services to meet the need of survivors of rape and sexual violence.
- Police activity in the Calais area must be conducted so as to ensure the dignity of all migrants.

#### **To the UK authorities:**

- In seeking solutions to the problems in Calais, the UK authorities should acknowledge that migrants in the Calais area are not all 'illegal', and that an unknown proportion are indeed refugees with a right to protection under international law.
- The principle of family unity must be respected by the UK authorities as a matter of paramount importance. The cases of individuals who wish to be reunited with relatives in the UK should be examined in the light of international, regional and domestic law and best practice. Family reunion should be approached by the UK in a generous spirit and the definition of 'family member' should pay due regard to the reality and importance of non-nuclear family relationships.