

READMISSION AGREEMENTS OR BLACKMAIL TO DEPORTATIONS?

International meeting on readmission agreements

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What does “readmission” mean?

Claudia CHARLES, GISTI

A readmission agreement is an agreement by which the signatory States commit themselves to readmitting on their soil their own nationals who were apprehended as they were in an irregular situation on the soil of another State; but also foreigners who are not nationals but who transited through their soil before being apprehended in another State.

This logic is not new. It has been developing at bilateral level (between two States) as well as multilateral level (for example the Community readmission agreements which will be discussed this morning).

With this definition, the readmission agreements and more generally the readmission “logic” can seem easily understandable and we could even think that they do not raise any specific issues. This is not the case.

First, the notion of agreement: understanding, assent, similarity. It would be logical to think that a readmission agreement has been negotiated, debated and the stakes discussed between two States or more, with equal force and equal means. But we know that the balance of power is far from equal. This is the reason we meet today. The conclusions of the European Council in its “Proposal for a comprehensive plan to combat illegal immigration and trafficking of human beings” from 27 February 2002 are explicit : “...before the negotiation of any readmission agreement, the interests of the European Union and of the Member States should be taken into account.” This morning, we will have illustrations of these difficulties through the examples of the EU-Pakistan agreement (which seems “on the right track”) and the one with Morocco.

Besides the negotiation issues, a readmission agreement does not guarantee by itself that the persons in an irregular situation are “sent back” to a State in total respect of the rules of international law and of the protection of fundamental rights. The agreement between Greece and Turkey which came into effect in 2002 proves it. It provides that each contracting State allow the return of migrants intercepted in an irregular situation. In fact, most deportations from Greece to Turkey are not carried out in the framework of this agreement, but in a massive and illegal way. We could also take the example of the refoulements between Italy and Greece. It is the same thing. During the morning and early afternoon, two talks will be dedicated to these situations. This subject is also developed in the recent Migreurop report of October 2009 “Europe’s murderous borders”, *which you can find here in French and English*.

Lastly, what can be said of the (numerous) refoulements in areas where no agreements have been signed, where the concerned countries use every means to send back migrants they can. The cases of the borders between Mali-Mauritania and Mali-Algeria will be presented this afternoon. However, these countries do not have a “monopoly” on such methods. Morocco, which illegally sends back migrants to the Algerian borders or to the Sahara desert, is also a good example. You must know that since at least 2002 this country is “resisting” the pressure the European Union is putting on its government to sign a readmission agreement. What seems like “unwillingness” did not keep this

country from rising to the “advanced” status (status between EU membership and association agreement) and from being applauded by the EU for the efforts accomplished “to deal with illegal immigration, which have led to a substantial reduction in immigration flows from Morocco”¹.

Readmission policy is therefore various, diffuse and complex. We will also see throughout the day that it can be outside the framework of the migration flows management and control policy to meet an economic dynamic, in principle far from the questions we are interested in today.

Since the 1990s, what is called a readmission clause exists in the partnership and cooperation agreements contracted between the European Community and third countries such as Ukraine, Moldavia, Kazakhstan; or in the euro-Mediterranean association agreements in the 2000s (in particular Algeria, Morocco and Tunisia); or in the Cotonou agreements (June 2000). It establishes the principle of the readmission of nationals and the possibility of contracting agreements to allow the readmission (the deportation) of Third countries nationals and stateless persons.

Besides, since June 2002 and the Sevilla European Council, the EU requires this clause to be part of any cooperation agreement, association agreement or any equivalent agreement it concludes with any other State. This link between the economic and commercial policy, or the “dangerous liaison” between development aid and migration flows management is not exclusive to the European Union. The member States also got down to the development of such a policy at a bilateral level: France and its joint management agreements for migration flows, Spain and the Africa Plan or Italy and the friendship agreements contracted with Libya or Tunisia. These cases will be presented throughout the day.

So, we are facing a multiple, diverse and diffuse reality. But let’s not fool ourselves, this reality is part of one and sole logic: that of deportation, of “isolation of migrants and criminalisation of the migratory phenomenon”, with all the dangers it entails, the same logic Migreurop had already condemned in its “No to expulsion agreements” campaign in 2008. These are the reasons why Migreurop, its member organisations, partner organisations and more generally, us, citizens, members of civil society, political representatives, must understand this reality and act against this logic.

This is the objective of Migreurop through the organisation of this meeting. We hope it will bring you elements of thought and analysis but also ideas for action to say “No to expulsion agreements”.

I) COMMUNITY READMISSION AGREEMENTS

Role of European Parliament in negotiations on readmission agreements

Hélène Flautre, *MEP Green/Europe Ecologie- Co President of the EU-Turkey Joint Parliamentary Committee*

- Democratic deficit of readmission agreements

> Under the Treaty of Nice, the European Parliament was informed only in last resort, and only its advice was asked for.

> However, with the Treaty of Lisbon and its entry into force this Tuesday 1st December, the approval of the European Parliament will be necessary to carry out one of these agreements. The EP has a real power of veto, which could stop any agreement process after years of negotiations. This is why this prospect worries the Commission and the Council which will not be able to negotiate these agreements on their own.

- Need to build a majority within the European Parliament

¹ 6th meeting of the EU-Morocco association council

However, a majority which would act in that direction still has to be built within the EP. The vote of the directive on the return of illegal migrants proved it is not that easy. On the other hand, during the vote of a resolution on the Stockholm Programme at the last plenary session of November, we managed to withdraw the amendment which aimed to associate Frontex to the negotiation of these agreements. A veto from the EP (for instance on the EU-Pakistan agreement) would be a good message. It would enable the EP to position itself as a necessary institution in the negotiation of readmission agreements. The EP could then require to be informed through the whole negotiation, to be consulted for the grant of a mandate and to examine the human rights situation in the signatory country.

- Negotiations with third countries

The negotiations are slow because third States have no interest in concluding such agreements.
e.g.: Morocco, Turkey

- Stand of the Commission

The Commission considers the negotiation of such agreements solely on an efficiency basis. The core issues on the principle of readmission itself are missing.

- Prospects of action

- > Tools are at the disposal of the members of Parliament: use the institutional means in committee work to raise a subject, for instance readmission agreements, in order to obtain a political agreement to demand a study to evaluate the latter. For example, it is what I initiated in LIBE by pushing to get a study evaluating a readmission agreement, starting with one country (Ukraine in this case) to encourage a systematic evaluation mechanism of all the concluded agreements.
- > The European Union Agency for Fundamental Rights could also play a relevant part in the evaluation of these agreements. It could provide documentation but also recommendations which should necessarily be taken into account by the Council and the PE.

Ongoing negotiations: e.g. the EU-Pakistan agreement

Chiara Tamburini, policy advisor of the GUE-NGL group in the European Parliament

In the introduction², it is stated that the powers of the European Parliament are not yet established and it seems the EU-Pakistan agreement will be adopted following the former procedures provided for by the treaty. This agreement will be the 12th agreement concluded by the European Union on this issue.

However, Pakistan has not ratified the Geneva Convention on refugees, there are attacks, women have no rights and seven year-old children are detained with adults.
In fact, this agreement aims to repatriate Afghans even though they are harassed by the police in Pakistan and the international conventions are not respected.

The idea of this agreement is to send back third State nationals who arrived directly from Pakistan by plane or boat. In fact, it is directed against Afghans and stateless persons.

Furthermore, the agreement is not surrounded by serious guaranties:

- when a member State makes a readmission request, Pakistan would have 30 days to make a decision. If no answer has been given, after another 30 day extension, the agreement would be considered established in case of silence.
- regarding readmissions by mistake, the mistake should be established in the 3 months so a rectification can be made.
- Pakistan could be a transit territory for persons readmitted in other countries
- regarding data protection, it is worrying that any necessary information for the identification of persons could be kept for later use or handed to other organisms.

Lastly, the guarantees provided for by the agreement would only apply to the persons entered in the European Union after the implementation of the agreement, which raises in particular the problem of the proof of the date the persons entered.

² Of the Lisbon Treaty

Last October, the EU Council claimed that the EU was concerned about the security situation in Pakistan and regretted the victims of this insecurity situation³, even though the Council still carries on the negotiation process of the agreement. It is absolutely incoherent and unacceptable.

State of play of readmission agreements in the Mediterranean Basin

Chadi Sidhom, *EMNHR (Euro Mediterranean Network for Human rights)*

There are different types of readmission agreements:

- Bilateral agreements
- Agreements including readmission clauses even though they concern other subjects: there is a multiplication of agreements following this model (example: between Egypt and Israel).
- Exchanges of letters between States which are used as a starting point to readmission agreements. Such is the case between France and Algeria. In these cases, the problem lies in the legal value of such a document.
- Agreements on the movement of persons
- Extradition agreements
- Joint management agreements for migration flows
- Voluntary return agreements. For instance, between Iraq and Denmark. This agreement, which has been translated into English, deals with “voluntary” return and how to organise “voluntary” return to Iraq. But it also deals with how to send back persons residing without authorisation who do not want to go back but who will finally be forced to. At first, Iraq refused to sign but eventually did.
- Readmission clauses

The procedure can vary from an agreement to another. All in all, these agreements aim to force third countries to monitor their borders.

Generally, sending back is risky. Indeed, when the persons are sent back to another country than the country of origin, it often leads to detention. There is also the “domino” effect: each country sends back the “unwanted” to other countries. Besides, by concluding such agreements, the third country is forced to control its borders, and to withdraw the right to leave freely the soil of its own country as is the case of Algerian legislation (“Harragas⁴” trying to leave the country and we can assume there are asylum seekers among them).

There is currently a lack of transparency and control on readmission clauses even if the European Parliament will soon be able to use its assent.

Regarding the impact of these agreements, the European Commission has made a practical and statistical study which remains silent on the impact on the respect of human rights, on the situation of third countries and on the respect of the right to asylum in return countries.

Lastly, it should be borne in mind that in some countries, persons who left the country irregularly are subjected to penal proceedings in case of return. For example, in Egypt, they incur 3 years of prison.

The Moroccan case: The stakes of the negotiation process

Hicham Rachidi, *GADEM* (Morocco)*

Moroccan nationals are readmitted by Moroccan authorities in the framework of bilateral agreements: Malaga agreements with Spain, agreements with Belgium, France and Italy. Since 2000, the EU has tried to convince Morocco to sign a readmission agreement allowing the return of any “irregular” migrant having transited by Morocco. Official negotiations on a Morocco-EU readmission agreement opened in 2003.

In October 2005, Morocco reactivated the readmission clause in the agreement known as the “Malaga” agreement (treaty on good neighbourly relations concluded with Spain in 1993 which

³ “The EU is concerned about the security situation in Pakistan and regrets that hundreds of innocent civilians have become victims of indiscriminate attacks aimed at destabilising the Pakistani state”, Council conclusions on Strengthening EU Action in Afghanistan and Pakistan, 27 October 2009

⁴ Irregular migrants, “*brûleurs de frontières*”

contains a readmission clause), consequently welcoming 73 migrants from sub-Saharan Africa who managed to get over the Ceuta border fence. Among them, several asylum seekers. The Spanish journalist Ignacio Cembrero [El País], confirms the migrants were readmitted by Morocco on personal demand addressed by the King of Spain to the King of Morocco (which shows that readmission agreements can be informal). A high-level meeting between Morocco and Spain planned in Seville and postponed several times took place further to this readmission.

In 2007, a new European neighbourhood and partnership instrument came into force. The European Neighbourhood Policy (ENP) acquired a 654 Million euros envelop for the 2007-2010 period. In July 2007, during the 6th meeting of the EU-Morocco Association Council, the European Union greeted the efforts Morocco made to cope with illegal immigration as well as the progression of negotiations on the readmission agreement.

In October 2008 the 8th meeting of the EU-Morocco Association Council was held. The European Union regretted no readmission agreement was concluded and reasserted the importance of the near conclusion of this agreement which would, according to the EU, open new possibilities of development of the EU-Morocco cooperation. Benita Ferrero Waldner on a visit in Rabat declared that the EU-Morocco relations have clearly progressed but the readmission agreement in negotiation since 2003 is still not finalised.

At the end of 2008, Morocco obtained the advanced status (www.statut-avance.com). Politically, the advanced status results in the setting up of a high level steering committee; a summit between the King of Morocco and the President of the Council in the presence of the president of the European Commission.

The first EU-Morocco summit is scheduled for March 2010 under Spanish presidency, Mr Zapatero went to Rabat in November 2009. Among the subjects mentioned to prepare the summit was the readmission issue. A senior Moroccan official confirmed that following this meeting, high level pressure was put on the Ministry of Foreign Affairs and Cooperation to act towards the finalisation of the readmission agreement. The source however pointed out that the reference in the agreement on the readmission by Morocco of any person having transited by Moroccan soil would be replaced by a reference to the nationals only.

From now on, the way is opened for the organisation of the 1st Morocco-EU summit. The King of Morocco will probably travel to Cordoba on March 8th 2010.

The Ukrainian case: Consequences of the signature of a Community agreement on a transit country

Sophie Baylac, *Médecins Sans Frontières Italy*

In January 2010, the readmission agreements will come into force for non nationals who transit by Ukraine. In 2008, the readmission agreement concerning nationals came into force.

Indeed, the control of migrations in Ukraine is a crucial stake for the EU because Ukraine is at the doorstep of Europe and therefore on the migration route. Poland and Slovakia have bilateral readmission agreements with Ukraine.

The consequences are visible today: The EU financed the construction of 2 centres in which the migrants sent back by Slovakia, Romania and Poland, are detained. The problem concerns the arbitrary detention of migrants. This is the reason why the HCR and NGOs are starting to look into the situation of migrants in Ukraine.

Moreover, Ukraine has signed numerous bilateral readmission agreements with third countries such as Tajikistan, Vietnam, and soon, China.

Migrants can be detained 6 months in Ukraine and, besides, are victims of racism and xenophobia. But then, the surveys on migrants' rights are only interested in detention places and not in the general situation of migrants on Ukrainian territory.

Questions-Debate

- Situation of Western Sahara

Morocco has ceased to return persons towards Algeria but continues towards Mauritania. Regarding the situation of Western Sahara, very few voices are raised. Morocco has managed to obtain the support or the neutrality of the major powers regarding the situation of Western Sahara.

- Standpoint of the European Parliament on readmission agreements

There have been debates on the forced returns towards Kabul. Texts remain lukewarm even if some general principles are admitted. Be it as it may, there is no clear majority on readmission agreements.

- Possibility that EP members be part, even as observers, of the monitoring committee provided for by each Community readmission agreement, which members of the European Commission and of the concerned third country attend.

In the end, members of Parliament will be included in this committee. They will then have an impact on readmission agreements through their approval.

- Possible change with the Treaty of Lisbon?

There will not be any change with the Treaty of Lisbon because there is on the one hand, the Commissioner for Human Rights and on another hand, the commissioner for Justice and Home affairs. This division is quite worrying.

- Risk for asylum seekers?

The risks are high for asylum seekers sent back through readmission agreements. Indeed, they risk being placed in a detention centre. They are also marginalized, victims of racism and in an irregular or precarious situation. Recently, in Morocco there have been cases of deaths of asylum seekers.

II) FROM READMISSION AGREEMENTS TO « NEW GENERATION » AGREEMENTS

The Spanish case: the strategy of the « African programme »

Nerea Azkona, *ALBOAN and ENTRECULTURA** (Spain)

1. Contextualisation of the investigation

The communication that we are going to present forms part of a more extensive investigation with the objective of clarifying the coherence between the co-operation and migration policies of the Spanish State. The aim is to review whether the co-operation policies are in any way subordinated to the migration policies, which would mean an instrumentalisation of the Official Development Aid (ODA) in favour of the control of migratory flows.

First of all, we would like to establish and clarify the framework from which we are starting. The research that Alboan-Entreculturas-University of Deusto are carrying out is structured in two parts: to review the normative framework regarding migration policies of, first, the European Union; and second, concentrating on the Spanish case. In this part we will also look at Official Development Aid (ODA) and the Framework Agreements of Migratory Cooperation and Readmission, called New or Second Generation Agreements, signed between Spain and countries of origin and transit of African migrations while the Africa Plan I was in force (2006-2008).

The incoherence of policies would be related to **interested associationism**, that is to say, the formulation of policies with high-priority objectives with respect to security and control of illegal migratory flows, leaving aside, or in the worse case ignoring altogether, the solidarity objective of development co-operation. According to the NGO Development Co-ordinating Group of Spain

(CONGDE), these Plans do not correspond to the Millennium Development Goals (MDG) but rather to the internationalisation of Spanish companies in Africa, and according to Cuttitta (2008), to the externalisation of Europe's southern border into the African countries responsible for controlling migratory flows.

2. The Africa Plan I (2006-2009), the Africa Plan II (2009-2012) and the “new generation agreements”

The Ministry of Foreign Affairs and Co-operation (MAEC) of the Spanish government, within the tools for managing Spanish policy with respect to Sub-Saharan Africa, has developed two *Africa Plans*, the first of which was published in 2006 and its follow-up which has just been published in 2009.

The Africa Plan I (2006-2008) (API) has been studied from many perspectives, and by different agents (academic and civil society), and of all the criticisms that have been made of it, the one most often repeated is of the **improvisation** that surrounded its writing and launching. The context that surrounded the API, was the so-called (by the mass media) “crisis of the *cayucos* [open boats]” (2006), and a year before, the events on the land border between Spain and Morocco (October 2005), where two citizens of Cameroon died as a result of police action. **The media discourse**, which was sensationalist, repeatedly cited the increase in African migratory flows, giving the image of an avalanche which did not, and still does not, correspond with reality⁵ (JSM-E, 2009). In fact, the population of Africans in the Spanish state is not the most numerous, as is reported in the API itself (MAEC, 2006): “*Contrary to a widely extended perception, immigrants of sub-Saharan origin represent a modest proportion of the foreign population registered in Spain*”. However, the treatment by the mass media of these people who want to cross the border, along with the **political discourse**, characterised by opportunism, were the driving forces behind the API. Thus, as Carballo de la Riva (2009:6) says, “*public policies are characterised by their immediacy, based on specific events*”.

In contrast to this improvisation that characterised the API, Africa Plan II (PAII) is developed “*on the basis of consensus*” (MAEC, 2009:5), since as mentioned in the Africa Table, the body which created the first plan, by members of Spanish civil society, although insufficiently consensual, since they forgot to consult sub-Saharan actors (administrations, civil society and citizens). In both plans, Africa is treated from this perspective, as an **object**, and not as a subject, although, later, the agreements will request association and joint responsibility.

Even so, according to the CONGDE, the PAII has same weak point which characterised the first: **incoherence with development policies**, especially, with the Spanish Master Plan of Co-operation 2005-2008 (MP), the framework document that establishes the objectives, criteria, sectorial and geographical priorities of the Spanish development co-operation and in whose elaboration all the aforementioned Spanish agents participated. The greatest incoherence between these two instruments, API and MP, is regarding the so-called high-priority countries (see map 1 in Annex 1). Eduardo Romero (2006: 50) justifies this incoherence by saying that the high-priority countries and of

5 Jesuit Service for Migrants (JSM) Spain, Democratic control for the management of the Southern Border. April 2009. In 2008 sub-Saharan residents in Spain were less than 4% of the total of immigrants.

specific interest in the API in their majority correspond to the countries that can be useful for Spanish interests, in this case referring to the control of migratory flows, and for this reason, labels as “*conditional co-operation*” that which Spain offers these countries, since in the bilateral “new generation” agreements it offers small and unspecified quotas of legal workers in exchange for the commitment to contain illegal emigration and the acceptance of repatriations of nationals and people from third countries who have passed that way along their migratory route.

In addition, we do not only find inconsistencies between the different foreign policy plans, but between different types of policies, such as the policies of co-operation (foreign) and immigration (domestic). This collision of policies can be seen in an objective of each plan: Within the API, this is objective 3 and its lines of action, which aims “*to promote co-operation so as to order migratory flows*”. Within the PAII, it is objective 4, which calls for “*consolidation of the association with Africa regarding migration*”.

2.1. Africa Plan I and the promotion of co-operation to order migratory flows

The editors of the plan make an introduction referring to the causes of the African migration, the consequences for the development of the country, the number of people who migrate, and the solutions that they find for this challenge, thus justifying the existence of the API.

With respect to the causes, we would like to point out that the African migratory phenomenon is decontextualised, being the causes reduced to “*political considerations, mainly, socio-economic ones*”, as well as to the population increase, without mentioning the post-colonial relationship that has characterised the bond between Europe and Africa. In this sense, Eduardo Romero (2005: 162) considers that the API only presents endogenous causes (corruption, weak states, porous borders, absence of democracy, rampant population growth) as an explanation for the misery of the majority of the population, as well as the degradation of ecosystems, without referring to the situation that the African countries occupy in the international system.

Regarding the consequences, only two negative points are mentioned: that remittances perpetuate a dependent economy, and the fact that migration is considered as an “*escape valve for demographic pressure and the lack of opportunities*”. We consider that this point is not very accurate, since they do not mention the positive consequences of migration either in the country of origin or in the destination (for example, the alternatives that circular migrations offer for both the origin and the destination), and nor is mentioned the greatest dependency of all: external debt and tied aid which is given as import credits. According to Intermon-Oxfam (2007), in 2005, the cases of Cameroon and Uganda went to the extreme of reimbursing Spain for the return of credits from the Development Aid Fund (FAD) more funds than they received in ODA. Cameroon, which only manages to spend 1.2% of its GDP on health, reimbursed Spain up to 4,526,034 Euros in 2005.

With respect to the governmental agents *involved in the topic* the following are emphasised: *Ministry of Work and Immigration, Department of the Interior, and Ministry of Foreign Affairs and Co-operation*. When analysing the execution of “new generation” agreements, besides considering the political ideas that underlie the API, it is very interesting to consider the actor that makes the journeys, as well as the

one that negotiates and elaborates the agreement, because migratory agreements signed by Foreign Affairs and cooperation agreements signed by Interior could arise.

The API proposes as a solution to African irregular migration *“adopting as regards migration [...] a global approach that bears in mind the causes of immigration, the positive effects of a regular and ordered immigration both for the countries of origin and for Spain as a destination country, and the circumstances in which irregular immigration takes place, with devastating effects for the countries of origin, transit and destination of the migratory flows”*. This is the EU's strategy regarding migration, and quite aside from the debate on the protagonism or otherwise of Spain in the EU's migratory policy, according to Alberdi and Bidaurratzaga (2008: 211) *“what is true is that this positive conditionality of migration has also been incorporated in the global approach to migration of the EU”*.

In addition, it calls for a **principle of joint responsibility**, which seeks solutions in three dimensions: internal, bilateral and multilateral. In this research we are considering border control as a line of action of the internal dimension; and in the majority of the lines of action of the bilateral dimension, in which “new generation” agreements are mentioned. In fact, the objective of this bilateral point of view is *“to obtain greater collaboration with the countries of origin and transit by means of the creation of a network in Agreements framework of Migratory Co-operation and Readmission”*.

With respect to the line of action **“border control”**, we wish to emphasise that, besides reinforcing with institutional support for the people in charge and the mechanisms to develop a optimum migratory management for the government, *“the procedures for repatriation of immigrants who enter the national territory in an irregular way will be made more flexible, in conditions that guarantee scrupulous respect for human rights and International Law and the commitments assumed by Spain”*. Also we wish to emphasise that *“specific budgetary lines will be established for co-operation regarding migration, including co-financing of European projects, in the Ministries of Work and Social Affairs, Interior, and Foreign Affairs and Co-operation”*. We would conjecture that the increase in ODA from the Spanish state towards the countries of sub-Saharan Africa, could be conditional on **border control**.

On the other hand, within the **bilateral** dimension, the Spanish government develops 8 lines of action, of which we would highlight the following:

- “Conclusion and, where appropriate, promotion of Framework Agreements of Migratory Co-operation and Readmission and of the fight against organised crime, with the most outstanding sub-Saharan countries in this respect, that is to say, Senegal, Mali, Nigeria, Ghana, Cameroon, Niger, the Ivory Coast, Cabo Verde, Guinea-Bissau, Guinea-Conakry and Gambia”
- “The Spanish Government will make every effort to achieve consolidation in the countries of origin of irregular immigration of political will and administrative capacity to work together, so that, inasmuch as the agreements of Migratory Co-operation enter in force, or even without them, the aforementioned countries harness their policies against illegal migration and accept the repatriation of their nationals”
- “Collaboration will be increased to strengthen the administrative, police and judicial capacity of the countries of origin and transit so as to adapt them to the control of their borders and the

fight against the mafias, by means of training, technical assistance and equipment for border control and the detection of false documentation”.

The CONGDE raises the criticism that, in spite of identifying high-priority objectives and detailing the lines of action, the strategies that are to be followed in order to reach them are not indicated, nor is the means of evaluating them. In fact the API has not been evaluated.

2.2. Africa Plan II (PAII) and the consolidation of association with Africa regarding migration

The objective in the PAII analogous to what we have just seen, is number 4, which states: *“in the bilateral scope, during the period in force of the PA 2009-2012, attention will be paid to the effective application of the bilateral Agreements of Migratory Co-operation with the countries that have signed them – at the moment the Republic of Guinea, Gambia, Guinea Bissau, Niger, Cabo Verde and Mali as well as those which may be signed in future with other African countries”.*

In the PAII the lines of action are divided into the three axes of the European global approach to migration, which are developed in the Conclusions of the Presidency of the Council of the EU celebrated in Brussels in December 2005, that is to say: the organisation of legal migration; the coordinated fight against illegal immigration and the mafias that traffic in human beings; and migration and development. We can emphasise the line of action that relates to the intersection of each objective with the cross-sectional objective of respect for Human Rights, which states: *“to support the elaboration and putting in practice of migratory policies that are coherent with respect to Human Rights”.* Not only coherence is mentioned at this moment, but there is also a commitment to [promote] *“coherence and the positive contributions which the public policies of the Spanish state, not specifically in ODA, can have on the objectives of development in the countries of origin and transit of migration”.*

Having contextualised the tool in which the “new generation” agreements of the Spanish state are framed, we will now proceed to carry out a **descriptive analysis** of the agreements that have been made during the execution of the API with the following sub-Saharan countries (dates are the day of signing, not the day of entry into force): Republic of Mali (23 January 2007); Republic of Guinea (9 October 2006); Republic of Gambia (9 October 2006); Republic of Cabo Verde (21 February 2008); Republic of Niger (7 March 2007).

According to Asín Cabrera (2008: 171) we can affirm that the Africa Plan *“marks a before and after in the reorientation of Spanish migration policy with regard to sub-Saharan Africa”.* This is demonstrated in the lines of action developed on the international bilateral level and which take shape in the “new generation” agreements. This new category of bilateral agreements represents an advance with respect to the first agreements signed by Spain with African countries focussed entirely on the readmission of irregular migrants.

2.3. New or second generation agreements between the Spanish state and the countries of Western Africa

First of all, we are going to distinguish between different types of agreements: those that regulate labour flows; those that regulate readmission; “new generation” agreements, which for Asín

(2008) are different from the previous ones in that they **begin from foreign policy to end up in domestic policy**. The Spanish state has formally concluded these three types or categories of bilateral agreements with African countries regarding migration.

With respect to this characteristic of the “new generation” agreements, until now many investigations had concentrated on analysing the instrumentalisation of ODA, but always with policies, ministries, and departments that corresponded to the same type of policies in different scopes or with different actors, for example: co-operation and commerce (both are matters of Foreign Affairs). What characterises our research is the interaction of policies in several scopes: countries change the roles they play (from a source of migrants to a receiver of aid and vice versa), the policies are developed with the perspective and point of view of different governmental agents, with different objectives (domestic and foreign), aside from the interaction of agents (academy, civil society and administration) and of perspectives that already existed in the other investigations. It is for this reason that CDP must be present in the analysis of these agreements, whose aim is to “*combat and mitigate irregular migratory flows [by means of] international co-operation through the conclusion of bilateral agreements of migratory co-operation and readmission with the countries of origin or transit of irregular immigrants, [and which] occupy a central place in EU and Spanish immigration policy*” (Asín, 2008:167). These agreements are inspired by the global approach adopted by the EU of immigration as a positive factor of development, and therefore readmission is no longer considered as an isolated tool of migratory flow management. The framework agreements are not international agreements on readmission in a strict sense, but instruments that start from the consideration of immigration management as a responsibility that must be shared between the countries of origin, transit and destination and without losing sight of the positive links and synergies that exist between development and migration policies. They consist of 18 articles in 8 chapters, preceded by an introduction, which mentions the global approach, associationism, joint responsibility; they include an Annex on the procedures and guarantees for the readmission of people, which other, previous agreements did not incorporate.

Finally, and to finish this brief analysis, we would like to emphasise a series of commentaries that we have been formulating throughout these months of research in relation to the API and the “new generation” agreements. Even though the protection and guarantee of the fundamental rights of foreign immigrants who are under jurisdiction of a state is one of the most worrisome aspects proposed by the application of agreements regarding migration, as of 2003, the inclusion in agreements of guarantees of Human Rights has become a habitual practice. Although this Annex is found in each of the agreements, there have been studies and investigations (SOS Racism, 2006; CEAR, 2008) that have brought to light practices of African governments which ignored these commitments, leaving sub-Saharan immigrants in the desert, or keeping them in unhealthy conditions in detention centres.

Finally, to emphasise that the specific agreements of readmission have the purpose of fixing the normative rules of readmission and the transit of irregular migrants; however, the framework agreements of co-operation regarding migration, are more in tune with the orientations of Spanish and EU foreign policy carried out at the moment with the African states.

3. Conclusions from the point of view of Coherence of Development Policies

We can say that the API was the fruit of improvisation. The PAII has improved in numerous ways, for example in the greater linking with the Spanish Co-operation Master Plan, the inclusion of cross-sectional objectives like respect for Human Rights, the promotion of co-ordination between donors and recipients of aid and with existing policies at European and multilateral level.

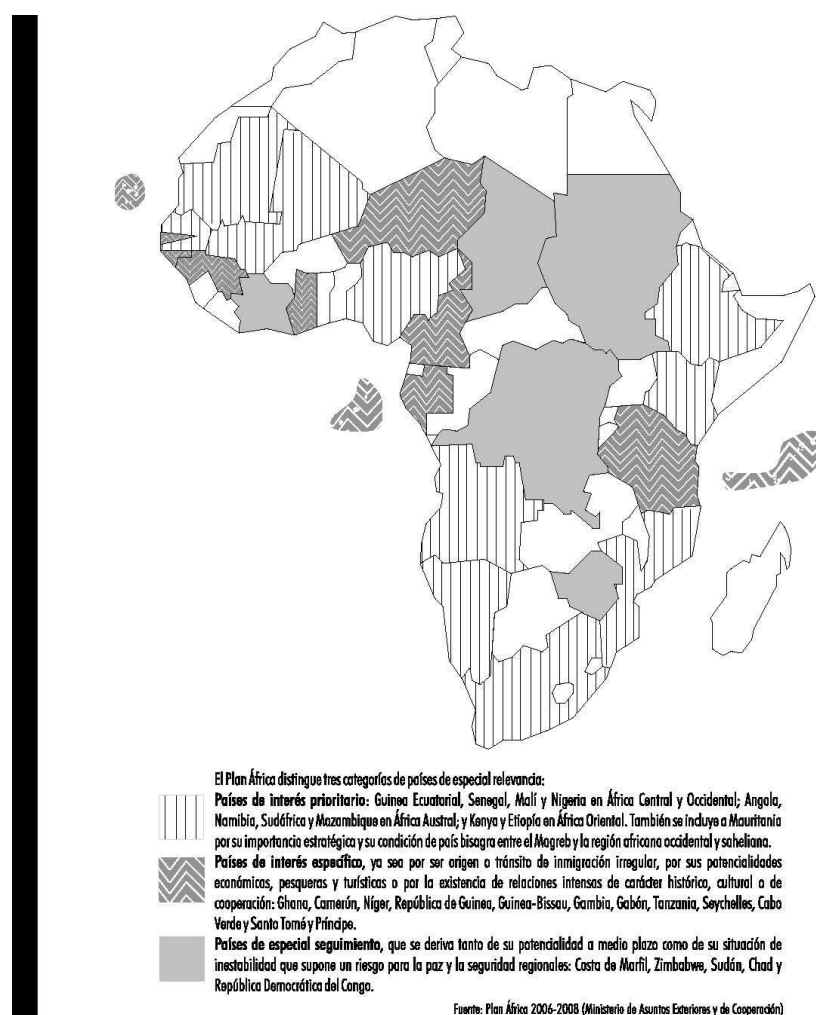
API (2006: 11) considers that “*the fundamental pillar of this commitment to sub-Saharan Africa is development co-operation*”. However, one of the key objectives of present European and Spanish migration policies refers to the effort to fight against irregular immigration by means an increase in international co-operation and co-ordinated action. Therefore, it is interesting to complete the analysis of these “new generation” agreements, by reviewing the amounts of ODA, as well as the sectors of the CAD of the OECD from which the aid was derived, because we suspect that development cooperation is conditional and even that resources destined to ODA could be being used to finance border control activities. In this sense, within the most reactionary Spanish political discourse we find declarations such as: “*we are only going to help those that help us*”.

In fact, Spanish foreign and domestic policy are obsessed with the control of migratory flows from Africa, and the instruments created are organised around this preoccupation. Within domestic policy this does not cause too much incoherence, but the two plans set out by the MAEC demonstrate this priority over interest in solidarity and the development of the African continent. Against this background, of the incoherence of policies and interested associationism, it is difficult to promote this development, if the objective is to intensify the economic and political relations by internationalising Spanish companies and externalising Europe's southern border.

How we can link migrations and development such that the result is optimal for all? Concerning CDP, already we have observed that European and Spanish policies are seeking their own development, something which they display with, according to Eduardo Romero, an “obscene transparency”. The linking of policies only emphasises the control of migratory flows, leaving aside alternatives that promote the development of both the countries of origin and destination, for example, the circular migration. If we follow this type of policies, which do not promote development in the countries of origin, but which are dedicated to creating more and higher walls,... will this type of *linking* reinforce the vicious circle that we now face, or will we be able to create a virtuous circle which will benefit everyone?

4. Anexos

Anexo 1: Mapa países Plan África I



Fuente: Romero (2006:50)

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The French case: Joint management agreements for migration flows: « les accords de gestion concertée des flux migratoires »

Marie-Dominique Aguilon, *Cimade** (France)

France has concluded nine joint management agreements for migration flows. These agreements are based on 3 points:

- the organisation of legal immigration (work, study,...);
- the prevention of irregular immigration (borders surveillance, readmission, prevention of documentary fraud...); and
- the “développement solidaire” (*solidarity development*), official development aid.

The first and third points are used as bait to make concerned countries sign the agreements. Four agreements are already effective: with Gabon since September 2008; with Tunisia since May 2009; with Senegal; and with Congo Brazzaville.

Five agreements must be ratified before coming into force (Benin, Cape Verde, Mauritius, Burkina Faso and Cameroon).

The finance bill plans the signature of 20 agreements before 2012. 6 of them should be signed in 2010: Mali, Egypt, Guinea, Philippines, Democratic Republic of Congo and Haiti.

The negotiation of these agreements remains very secret. Very little information is available. The social partners did not confer on the first part (legal immigration through work) even though the CESEDA plans to do so as soon as the lists of professions are established. Moreover, it is difficult to find them once ratified.

I- Prevention against irregular immigration

Objectives are set by the French government. The readmission of persons requires the complicity of the authorities of the signatory States, in particular when the delivery of a consular pass is compulsory in absence of passport.

Certain States allow the readmission of non nationals who transited through their territory. They have then to transfer them to their country of origin. The agreements do not provide any provision on the terms of this transfer of non nationals.

All these agreements include police cooperation (training of the Border Police, biometry...). Funds for this cooperation are deducted from official development aid. Development aid and the organisation of legal immigration are the compensations granted by France to obtain the signature of these agreements.

II- Organisation of legal immigration

Possibilities of legal immigration remain marginal and already exist in national legislation. The residence card “Compétences et Talents” (Competencies and Talents) exists in domestic law but also appears in these agreements. The agreements provide the delivery of one hundred and fifty cards for each country, except for Tunisia, which is entitled to one thousand five hundred. Nevertheless, the delivery rate is very low and the figures are not reached.

Students’ rights are covered by domestic law.

Regarding the residence work permit (“titre de séjour salarié”), it fixed 108 permits for Senegal, 78 for Tunisia and 9 for Gabon. Is this permit for undocumented persons already on French soil or only for persons residing in their country of origin? The answer depends on the concluded agreements.

III- “Développement solidaire”

The idea of « développement solidaire » is based on the erroneous postulate that the more concerned countries develop, the less their nationals will be tempted to emigrate. But then, migratory clauses are much more complicated.

Senegal and Mali have development aid agreements but for other countries, there is nothing specific. The joint management agreements for migration flows create disparities between countries. If Tunisia will receive forty million euros over three years, Burkina Faso will only receive three million euros. The development policy is at the service of the migration policy.

Refoulements at the Greek and Turkish border, in the framework of the readmission agreement between the two countries

Clemence Durand, HCA/RASP* (Turkey)

Greece and Turkey have signed a readmission agreement in 2001 which is not working well. Few migrants are sent back through this agreement. Turkey requires conclusive evidence extending the procedure period which leads to the release of migrants in Greece who had reached the maximum detention time.

However, many migrants are expelled from Greece to Turkey in an inhuman and illegal way.

Some migrants are blocked in the Aegean Sea by the FRONTEX "Poseidon" operation supported by Greek and Turkish navies. Migration by sea is becoming more and more difficult and risky, forcing migrants to take more and more risks. They use less powerful and less noisy engines which extends the time of the crossing and the risks taken. The authorities, whose objective is not to let anyone go through, cause accidents on purpose. They tow inflatable boats into Turkish territorial waters and burst them forcing migrants to jump in the water. They are then rescued by Turkish authorities. Sometimes, migrants are also left drifting, deprived of oars and engines.

Others cross the border by foot through a river in the North of Greece. They must first avoid mines spread by Greece to prevent Turkish invasion at the time of the conflict on the Island of Cyprus. Then, migrants are turned back on boats drifting on Evros River. Any signs indicating they travelled through Greece are taken away. Lightly dressed, they have to face weather conditions often difficult. Most of the time, Turkish authorities are not even informed.

Many migrants are arrested in certain neighbourhoods of Athens and turned back by group of a hundred to Turkey.

Minors under HCR protection are sometimes turned back by Greek authorities outside any legal framework.

Migrants turned back that way towards Turkey are generally detained without neither health care nor lawyer. Detention is not time limited.

For its part, Turkey also carries out this kind of illegal refoulement, notably on its oriental border. Turkish authorities leave migrants in the mountains, pushing them towards Iraq or Iran. Iraqi or Iranian soldiers are generally not informed by Turkey and start firing at people crossing the border.

Greece and the European Commissioner in charge of migrations, Jacques BARROT, criticised the attitude of Turkey in its application of the 2001 agreement. On the other hand, Turkey requires financial aid to conform to its commitments. A meeting between Jacques Barrot and the Turkish Minister of the Interior led to a raise of financial aid given to Turkey in exchange of the resumption of the negotiations of a global agreement with the EU on migrants readmission.

In a decision of the 22nd December 2009⁶, the European Court of Human Rights condemned Turkey for the violation of articles 3, 5 and 13 of the Convention. The facts of the case concerned two Iranians detained and threatened with expulsion towards Iran. Foreigners' detention in Turkey is considered as being arbitrary because of the lack of appeal.

Questions-Debate

- What about the Turkish fishermen arrested for piracy for having rescued migrants? A full discharge of these fishermen should be required.

The authorities claim that the fishermen got in the way of police action. They were released but a trial will take place in Palermo.

- Do migrants still arrive in Lampedusa? If so, where are they detained since this site closed?

Even if the Minister of the Interior claims otherwise, migrants still arrive in Lampedusa. They are then either spread out in the whole country or put back in a boat towards Portugal. There is no publication on that subject. The only information available comes from a mediator.

- Tunisian authorities apply the agreement signed with France while France does not, in particular regarding work permits.

The agreement between France and Tunisia provides the allocation of 1500 "Compétences et Talents" cards but nothing requires French authorities to reach this figure.

Another question was asked but the chairwoman asked the answer to be given during the round table discussion on the modes of action.

⁶ Decision of the 22nd December 2009, [ABDOLKHANI et KARIMNIA v. TURQUIE](#)

- The level of Human Rights in Europe is falling, the EU should advocate for them around the world, but instead it finances repression and dictatorial countries.

North-East agreements and Roma repatriation: the Kosovar and Serbian cases

Karin Waringo, *Chachipe (Luxembourg)*

At the time of their independence, the countries of ex-Yugoslavia entered talks in order to conclude readmission agreements with EU countries. They led in part to the signature of a dozen bilateral agreements between those countries and EU Member States.

In the signature of these agreements, two types of issues are at stake:

For the countries of ex-Yugoslavia, it is a matter of proving their political maturity and border control and migration flows management are amongst the basic criteria for joining the European Union.

For EU countries, it is a matter of having at their disposal an instrument making the return of refugees and illegal immigrants, or immigrants whose residence permit has expired, easier.

The subject of my talk today is the impact of these agreements on Roma. We realize that the different ethnic communities are unequally affected by the application of these agreements.

The readmission office in Belgrade airport noted that 59% of repatriated persons in March 2006 through this airport were Roma⁷.

At the time of the signature of a readmission agreement between Serbia and EU, Serbian political representatives talked about 50 000 to 100 000 persons in an irregular situation in EU countries and so who might be repatriated by force. Most of them are Roma. The reintegration strategy adopted by the Kosovar government in December 2007 together with the repatriation policy, establishes at 100 000, the number of Kosovar nationals living abroad, without any status. Out of the 53 000 Kosovars living in Germany without any residence permit, 38 000 are thought to be Roma or Ashakali and Egyptians from Kosovo, two communities generally included as Roma.

How can this Roma over-representation among persons considered as expellable or expelled be explained?

If it is true that a large number of Roma left former Yugoslavia, it is not the only explanation.

Despite the lack of statistical data, we can suggest several explanations:

- Unlike other ethnic communities, Roma did not have any incitement to go "back home" at the end of the wars which tore apart former Yugoslavia. Nor did they have the alternative of settling in another region of Yugoslavia where their community would be in the majority.
- Unlike other ethnic communities, Roma from Yugoslavia could not rely on a strong Diaspora either, which would have helped their integration in the host country.
- Because of a certain number of structural factors, Roma have most probably benefited less from regularization measures. One of the basic criteria of the new regularization policy in Germany, the *Bleiberechtsregelung*, is, for instance, the fact that a family should be able to provide for its needs without having to resort to social systems. For Roma, whose families are generally bigger, it is often impossible.

However, a fourth factor should be added, the one of Roma discrimination that can be found in asylum procedures. More than any other group, Roma are exposed to the accusation of being false asylum seekers. Considered as nomad, even though Roma from the Balkans have been sedentary for

⁷ Source : Republic of Serbia: Readmission, January 2007

centuries, we suppose they migrate to find a better life or an economic benefit. As Roma are discriminated against everywhere, their discrimination in Serbia or in Kosovo is not enough to justify asylum.

* * * * *

As our time is limited, I will restrict myself to the presentation of some information on forced repatriations towards Kosovo. Since the end of the conflict, the HCR has published positions on the treatment of the asylum applications. It claimed that ethnic minorities including Roma and Serbians in the south Kosovo were still exposed to a risk of persecution and should therefore benefit from international protection. On this basis, the United Nations civilian administration has rejected every readmission requests concerning Roma.

A sudden turn occurred at the moment of the independence. In October 2007, the government of Kosovo already had, on inspiration of international Community, adopted two political documents intended to make readmission and reintegration of Kosovar nationals in an irregular situation in their host country easier. Since the declaration of independence, the government of Kosovo has started talks with around ten countries in order to conclude readmission agreements and a first agreement was signed with Belgium last October.

Since November 2008, the Kosovar Minister for Home Affairs has managed all readmission requests. As provided for in the readmission policy, the ethnic origin of persons who are subjected to such a request is no longer taken into account. Even though the agreement concluded between Germany and Kosovo has not officially come into force, several dozens of Roma have been repatriated since May. Just in September, around 2000 readmission requests have been submitted by German authorities; almost half of them concerned Roma.

At the time of the implementation of the visa facilitation policy, the stake for Kosovo is to obtain, as well, such a facilitation by committing itself to taking back its nationals in an illegal situation. However, Kosovo is also looking for support for its independence, and Roma and other ethnic minorities, whose rights only appear on paper, are paying the price of this policy.

What are the consequences?

To have kept a whole population in a state of uncertainty has had a negative effect on its integration prospect and in particular on children's schooling. It is notably the case in Germany where people are considered "tolerated" even though they have lived there for more than 15 years. It can also be the case of children even though they were born in Germany.

The fear of being repatriated one day has contributed to keeping this population in a state of movement. Each time threats become more massive, some people vanish into thin air or migrate to another country. Others give in to pressure or blackmail, to take up the title of this meeting, and agree to a voluntary return.

These people often leave again immediately after their repatriation. From Kosovo, they migrate to Serbia or Montenegro in order to raise money to pay a facilitator.

The forced repatriation policy supplies the facilitation networks. It pushes a whole community into going underground and into illegality. It contributes to providing arguments to those to whom Roma are nothing else than eternal nomads, living on the edge of society.

We demand the end of forced repatriations of Roma towards Kosovo and other Balkan countries and the creation of conditions to allow Roma to become free from their condition.

Agreements between origin and transit countries in Africa, refoulement practices beyond the scope of readmission agreements

- ***The Algeria-Mali border: illegal refoulements outside agreements***

Sara Prestianni (Migreurop)

Refoulements at the Algeria-Mali border are a clear example of what could be called informal agreement. Readmissions and refoulements are carried out from Algeria to Mali even though no readmission agreement was signed between the two States. These informal agreements have the same tragic consequences as those of readmission provided by bilateral agreements. Hundreds of migrants are sent from Algeria to Mali most of the time in inhuman and degrading conditions.

Algeria: Europe's new policeman

Since the late 1990s, the tendency is to the externalisation of the management of European borders control by neighbouring States (starting with Morocco, Libya and Ukraine). The European Union, through negotiations and the signature of agreements, tries and often succeeds in subcontracting measures of control but also asylum management to its neighbours which are often sadly known for their lack of democracy. The countries to which the EU delegates the management of migrations flows have often not signed the Geneva Convention, as is the case with Libya; or they are countries like Morocco where refugees are hardly acknowledged by the State; or a country like Turkey which signed the Geneva Convention but which made a point of keeping what is called a geographic clause. This clause only allows European nationals to apply for asylum to authorities. Other applications are dealt with by HCR and therefore give no rights.

Algeria assumes a more and more central role in the externalisation of border control carried out by the European Union because of its strategic geographic position for the departure of its own nationals (*Harragas*) for the European continent, as well as for the transit and settling of sub-Saharan migrants. These are the reasons why the EU has identified Algeria as a potential candidate for the role of policeman of Europe.

The approval of a law on immigration in 2007 which seems to copy French legislation, as well as the raids and deportations carried out by Algeria are obvious signals of the collaboration of Algeria with the EU regarding management of migration flows.

As in the case of Morocco, the transit of migrants went on to become a long term settlement. In this case, the Algerian stage allows saving money in order to continue the migration route towards other African countries or Europe. Indeed, building sites in Algeria need labour force and make abundant use of underpaid sub-Saharan migrants working in bad conditions. A very useful tool has developed in Algeria: raids. The authorities, in league with building site managers, take the migrants away once the main building work is finished and just before they receive their salary. Raids are carried out in cities with a high concentration of migrants: Alger, Oran, Inshala, Tamanrasset, but also near Djanet (at the border with Libya). Policemen arrest migrants in the streets, in their house or in their working site.

The process of refoulement

The arrest leads automatically to police custody during which migrants are brought to court, without a lawyer, but with interpreters (English and French). The judgement leads systematically to detention either in a prison under ordinary law where cells are kept for migrants or in real detention camps for foreigners.

Migrants interviewed in Gao, Kidal, Tinzaouaten, who had just been sent back from Algeria, denounce the detention conditions in Algerian camps. They are forced to live in insalubrious cells, gathered in a few square meters, undernourished (for 5 persons: one loaf of bread and one or two litres of milk per day). Migrants describe a real "process" from detention to refoulement. They are transferred every 10 to 15 days in camps located in the South. Transported by groups of 50 to 100 persons in lorries, they all converge to the detention camp of Tamanrasset: those arrested in Alger, Oran, Inshala, but also those returned to Djanet (at the Libyan border). Tamarasset, at the edge of the desert, has become a place of installation for migrants who have to live hidden in caves on the outskirts of the city because of the racism of local population.

From Tamanrasset, Algerian policemen gather migrants together (about a hundred persons) and organise convoys of "prison lorries" which travel through the Algerian desert and leave migrants in the deserted no man's land of Tinzaouten (at the Malian border). Migrants describe the very difficult travel conditions which last more than 10 hours, piled up without being allowed to ask for a break.

Tinzaouten, a town of madness

Tinzaouten is a border city: one part is Algerian with occupied houses and another part, Malian, deserted with abandoned houses.

After being subjected to the “process” of detention and refoulement and arriving in Tinzaouten, migrants are left in the Algerian part of the city and walk to the Malian side where the abandoned houses have been transformed into ghettos.

There is one ghetto per nationality: Nigerians, who represent the majority of the population in transit in this region, Senegalese, Burkinabes, Liberians and Cameroonians. The living conditions in the ghettos are very hard. Most of the time, they do not have any means of subsistence. It is very difficult to find food or to have access to medical assistance. The situation of women is particularly hard in Tinzaouaten. At the time of the visit carried out in 2009, they were 70 living in the ghettos. Most of them were Nigerian. Around 20 of them were pregnant and two had babies. Women are often a bargaining counter with local military for what some of them call “ghetto tranquillity”.

Tinzaouten is a real trap for migrants who remain blocked in this buffer zone at around a hundred kilometres of Tamanrasset (North) and Gao (South). Because of the rebellion in this region, Tinzaouten has been for a long time at the centre of the curfew zone (in particular in 2008/2009). The traffic towards south and north was stopped and migrants were blocked without being able to move forward or go backwards. At the time of a mission carried out in January 2008 in Kidal (Mali), migrants often used the expression “city of craziness” to talk about Tinzaouaten, giving the large number of migrants who, being stuck, became insane with fear, rage and helplessness.

Since September 2009, a convoy of the Red Cross has forwarded migrants by groups of 50 to the city of Gao (Mali), 700 km south from Tinzaouten. It unblocked a situation of impasse which had become unbearable. The Red Cross has as its main mission to transfer vulnerable persons present in Tinzaouaten, in particular women. Once in Gao, women are housed by the House of Migrants in Gao which allows them to rest and go back to their journey towards Niamey (Niger) or Bamako (Mali) the following days.

- ***The Mali-Mauritania border***

Rafael Lara, *APDHA** (Spain)

As explained in the presentation of Nerea Azkona, an “Africa Plan” was set up to try to reduce flows of migrants from Africa to the Canaries, Spain... We observe pressures for Spain to accept its role of immigration controller (the Spanish government finances a camp built by the army) and for Mauritania to accept repatriations, in particular those of migrants caught in sea.

Through its externalisation policy, the European Union and Spain put Mali and Mauritania in charge of their borders management. Mauritania, which is lacking means, is unscrupulous (racism against foreigners, slavery, a coup took place in Mauritania in 2008 and Spain did not react). European pressure on Mali and Mauritania has as a consequence relatively peaceful relations between Mali and Mauritania in order to come to an agreement and manage immigration.

Humanitarian organisations have denounced detention conditions in Mauritania (in the Nouhadibou detention centre) and readmission conditions. In the framework of readmission agreements, Mauritania deports migrants arrested near the border with Mali. Migrants are conveyed by bus for hours, discharged at the border and abandoned several kilometres from the border to avoid their coming back. No assistance at the border is organised by Mali which receives funds to make its borders resistant to migrants’ flows (construction of 17 border-posts, weapons purchase...).

- ***The Mali-Mauritania border***

Alassane Dicko, AME (Mali)

The contributor presents field observations collected in October 2009.

The situation of returned persons remains problematic at the border. Since October 2008, nothing has changed: from the handing over to Malian authorities, migrants are not taken care of. It is a simple evacuation without any measures planned. The money given to Malian authorities for the conveying of returned persons is not useful to returned persons, they have to manage by themselves. Malian authorities lack information about how these people are treated.

In Mali, there are two organisations in the area but the prefect of the region does not agree with this presence. If an NGO wants to help, we need help in the border area. The Spanish Red Cross came and asked to occupy an old building they would renovate themselves. The prefect of the cross-border area has asked for more means to help returned persons and has tried to implement some measures.

Certain foreigners try to come from Morocco to Mali, which is even more dangerous because the area is full of mines.

Mali and Mauritania share 45% of their borders. They have to work together to improve the situation but the Mauritanian authorities do not do much: they do not take their responsibilities and there is no consultation between authorities.

Regarding this policy, authorities require to formalise all this but it is slow.

Questions-Debate

- What is the state of the negotiations of the readmission agreement between France and Mali? It is a real business of return. The CIGEM⁸ gives money to manage migration. The Spanish government plays a double game: humanitarian assistance and security. It is the Red Cross that pays transport and the right to asylum is completely flouted. We must insist on the violence done and on the heavy psychological consequences. The CIGEM representative said that the Bamako CIGEM was not useful so there are 10 Million euros used but not for the returned foreigners. What is the point in making one in Rabat? There are organisations "growing" in Africa, thanks to European money. Notably, the Red Cross has an ambiguous role in the immigration process and makes the interests of Europe regarding borders easier. NGOs do not have means, it is difficult in Morocco. It is difficult to organise meetings if the participating persons can not travel. This preoccupation must be taken into account.

The agreement between France and Mali is stillborn. It is also because of the particularity of Mali. Efforts must be increased.

In the last year, there have been a lot of studies on the relevance of the CIGEM action. Nothing to do with the needs in the field. The whole issue of the "credibilisation" of the CIGEM immigration management must be taken into account. In Mali, the call of all intervening organisations to give credibility to the figures (training to strengthen capacities, creation of a federation but unsound, to interest organisations with calls for proposal for the reception of migrants...). Calls are going to be made to look after migrants psychologically. 9 organisations have had funds to receive migrants. Operations of voluntary return for vulnerable migrants also in Morocco or Libya: they have only collected a few testimonies and made a few appointments with the people concerned. It is not a real reception. The CIGEM is polluting the field a bit.

- (Karin Waringo) Regarding the role of organisations, it can be noted that in host countries some organisations play a part in the repatriation process. They lose credibility because refugees do not come back to see them to describe their situation. We have condemned the policy of organisations which want to obtain financing and position themselves to help the return. This issue generates conflicts between organisations. Our organisation does not receive any financing but is based on voluntary participation.

⁸ Centre of migration information and management (Centre d'information et de gestion des migrations)

III) TOWARD MOBILIZATION PROSPECTS: *Examples of mobilizations against readmission agreements*

Mobilization in Haïti against the signature of the agreement on combined management of migration flows with France

Emeline Sauvignet, *Collectif Haïti de France*

The **Collectif Haïti de France** is a network of 65 member organisations. We pursue a double objective: to encourage networking between solidarity actors with Haiti on one side; and to raise awareness on the situation of Haitians, in particular in Guadeloupe, Guyana, France and Dominican Republic.

1/ What is the origin of the mobilization against readmission agreements between France and Haiti?

Following facts: we knew that the Framework Partnership Document (FPC)⁹ France-Haiti 2008/2012, which sets the French official development aid strategy in Haiti, contains a paragraph which explains that the actions of co-development and against illegal immigration will lead to negotiation, in order to sign during the year 2008, a bilateral joint management agreement for migration flows.

We explained our concern to the organisations of the *Collectif Migrants Outre Mer* (MOM)¹⁰ which we are part of. The MOM is a network of 13 French organisations committed to the defence of migrants' rights in French Overseas Territories and Departments. Several French organisations are present today. We have also discussed this question several times with the PAFHA, which mainly federates Haitian organisations from the Ile-de-France region.

2/ Our mobilization has been collective from the outset

1st action: in April 2009, we signed a letter altogether (also supported by the Union of Latin American organisations of France¹¹) to explain to organisations and activists from different networks what a readmission agreement is, and what the consequences on undocumented Haitians here and the families there are. We called for the mobilization of France and Haitians civil societies against this agreement. We received several answers of support.

2nd action: by getting closer to Migreurop, we updated our information on the situation of other countries and co-signed the **letter of the 14th of May 2009 calling on members of the national assemblies to refuse the joint management agreements submitted to their vote**, given that Haiti was one of the countries currently negotiating.

It was and still is **very difficult to know by fact the state of these negotiations**. We cannot get any clear information from French and Haitians authorities.

3rd action: In July 2009, I went to Haiti, met several defence of Human Rights organisations and we talked about these ongoing agreements. None of them knew about a possible signature of such agreements, because they are all much more mobilised on the situation of Haitians in the Dominican Republic, Canada and the United-States. On the other hand, they were familiar with the concept of "readmission" except what they called it "deportation" as in the United-States. Then, in August 2009, 8 organisations wrote an open letter to the press, the Haitian authorities and the French embassy in Haiti demanding that the Haitian government make public the negotiations regarding this agreement which under the pretext of co-development, will make the situation of many Haitian families and French families from Haiti more precarious, and adding that they will mobilize to prevent the signature of such an agreement.

⁹ Document Cadre de Partenariat (DCP)

¹⁰ Overseas migrants collective

¹¹ Union des Associations Latino-américaines de France

4th action: on the 16th of October 2009, the Haitian organisations Racin Ginen and AMITI initiated a demonstration in front of the Haitian Consulate demanding that no entry passes be delivered and putting pressure on the Haitian government not to sign these readmission agreements. The Collectif Haïti de France publicized the demonstration and liaised them with *Droit Devant!!* in order to strengthen their presence with activists of the “Racket on the work and social security contributions of undocumented workers” campaign. Over 50 Haitians were present and a delegation was received by the Consul. He declared that the Haitian government had not signed the agreement yet and that they would take time to study it carefully. He added that, personally, he supported the mobilization and would take the necessary measures not to deliver without careful consideration expulsion passes. He also confirmed that the pressure from the French government were particularly insistent.

3/ Faced with these actions, what is the position of the authorities?

The Haitian authorities in Haiti do not seem preoccupied by the lot of Haitians on French, Guadeloupe and Guyana soil.

French authorities, during a meeting at the embassy, informed us there was no money for co-development in 2010 and no readmission agreement was in the process of being signed. A member organisation of the Collective spoke last week to official of the Ministry of Immigration and Solidarity development (Ministère de l’Immigration et du Développement Solidaire) who explained that until a readmission agreement is signed between the two countries, no additional funds will be planned for co-development.

4/ The next step

We wish to take time to meet with French-Haitian organisations in France (some of them are here today) to decide how to continue mobilization. We are still in contact with the 8 organisations mobilized in Haiti. We wish to support mobilizations in Guyana and Guadeloupe. Finally, we wish to continue to commit ourselves to a more international mobilization.

Mobilization in front of Latin America Embassies

William Herrera, *Union of Latin-American organisations in France*

For the last few years, the Latin-American organisations have been mobilizing for the cause of undocumented persons at local level, in Paris. In the framework of our actions, on the one hand, we have observed in France and at a European level, the implementation of migration policies which dehumanise the migration phenomenon. The adoption of the Directive of Shame in June 2008 by the European Parliament and the approval of the European Pact on Immigration and Asylum in November that same year indicate the will of European political authorities on the “joint management for migration flows” issue: border control, strengthening of the utilitarian logic of migrations and European coordination regarding the expulsion of immigrants in irregular situation. On the other hand, we suffer the concrete and daily consequences of the actions of the French State concerning migrants: detention of Latin-Americans and, in certain cases, their expulsion for having no papers.

This policy was subjected to the refusal of certain Latin-American Heads of State and notably of the Union of South American Nations (UNASUR). But then, a certain number of Latin-American Consuls often give passes making the expulsion of Latin Americans easier, which is contrary to the positions of the Heads of State (we are thinking in particular of Evo Morales, Rafael Correa or Michelle Bachelet). For that reason, we sent a letter to all Heads of State of Latin America and Caribbean in July 2009 asking them to remind their diplomatic representations not to sign those passes:

“In the framework of an expulsion procedure, once pressures on the defence of immigrant rights organisations and resorts before courts are exhausted, the detained person is imprisoned in a centre known as “detention” centre until his/her expulsion. If the police does not manage to have access to the passport of the immigrant, it demands an entry pass from the consulates.

This is because without an entry pass, expulsion is impossible and release is ensured after 30 days of detention.

This is the reason why we request your intervention towards your diplomatic representation in order to prevent this representation from becoming the executor of the expulsion of its own national by giving an entry pass, when it owes him/her protection and assistance". (Extract from the letter sent to the Latin American Heads of State on July 27, 2009 - non official translation).

This letter was followed by a series of interviews with consulates, in particular of Andean countries to ask them not to sign entry passes. In addition, we follow continuously the cases of Latin-Americans in detention to prevent the granting of entry passes and to guarantee the commitment of certain diplomatic representations not to sign this document which would allow their expulsion.

In October 2009, because of the visit of representatives of the Ecuadorian National Secretary of Migration (SENAMI), we personally handed a letter addressed to Rafael Correa, President of Ecuador and also President pro tempore of UNASUR in which we expressed our commitment to the cause of migrants and our support for the prospect of a regional migration policy for Latin America which is supposed to be an alternative model to the one proposed by France and the European Union. In this context, we make the following demand to the member States of UNASUR:

"The strengthening of a real dialogue on migrations with the European Union based on the total respect of international law and fundamental rights of human beings, of the right to freedom of movement and installation, the recognition of economic, social and cultural contributions of migrants in countries of origin as well as in host countries, the total refusal of discriminatory actions against migrants and the implementation of historical reciprocity after the generous welcoming of European emigrants in Latin America".

We request that these points be a central part of the next EU-Latin America and Caribbean Summit in Spain in 2010 and that they represent a fundamental stake of the Bi-regional Strategic Partnership.

Mobilization in Mali against the signature of a joint management agreement for migration flows with France

Alassane Dicko, *Permanent Secretary AME (Mali)*

I would like to react regarding the mobilization prospects on readmission agreements. The agreement under negotiation with our country has still not been signed. We have led a certain number of activities centred on an **international synergy**. We have developed several **actions with the Cimade and with collectives of support to undocumented persons**. It enabled us to federate all parties to give visibility to the "Racket on undocumented workers". Being mobilized against these agreements gave us the opportunity to **extend our activities outside Mali, in the subregion**.

We insisted on the **destabilization of our space of freedom of circulation** (Economic Community of West African States, ECOWAS) by explaining that if Mali, which is the central lock, were to sign the agreement, the whole subregion would be at risk of being reconfigured. First, Mali will position itself as another policeman (like North African countries like Mauritania). The people who come will be in transit; either Mali will build detention centres or these people will end up being escorted to the frontier. As a consequence, preconceptions will be focused on travellers who wish to enter Mali. Because we all know that most sub Saharans go through Mali.

We **approached our National Assembly**. First, we insisted on the opacity of these agreements and on the fact that the terms are neither known nor discussed in our National Assembly. The government shuts itself away, in restricted committees and decides on an issue which can have consequences on the lives of thousands of persons. We condemned this opacity, we asked the National Assembly to examine this question. In **2008**, we **worked for 3 days with the foreign affairs committee of our National Assembly**, which led to the formalization of a common action. AME and civil society came to the National Assembly to try to publicize the issue so that deputies could take this opportunity to ask for this text to be examined as the government has not passed it on yet. We did a **sit-in on June 17, 2008** which turned out badly particularly because of the repression by more than 200 policemen. But we did not leave it there. We had to continue, because of the inevitable destabilization of the subregion. We took our demands to a higher level. We manage to contact the **Inter-Parliamentary Committee of the WAEMU** (West African Economic and Monetary Union), consisted of 40 deputies

from 8 countries of our economically integrated subregion. We came forward to them and they invited us to **participate in the 3rd session which was essentially devoted to migration**. We are working together.

Regarding the demonstrations to denounce these agreements, we noticed that in Mali or in other African countries, no one, neither journalists nor even some officials, knew about these agreements and their effects. These activities enabled us to federate intentions, to alert civil society to encourage citizen vigilance. As the whole subregion is concerned, some other countries also start to listen. Unfortunately, a certain number of countries such as Niger, Mauritania or Mali, already had to introduce in their national legislation forms of prevention against illegal emigration. Presenting all those aspects enabled us to federate people in our movement, to give another élan to Malian civil society. The 4th round took place from the 8th to the 11th January with many components of Malian civil society. There was an entire week of campaigns. In addition, every year AME organises a Day of Migrants. This year, it was about readmission agreements. We are still developing techniques to gather people and to create a keen interest which will extend the debate and perpetuate it. Today, in Mali, people know what readmission agreement means.

Mobilization in France in the framework of the campaign « Racket » in front of several embassies

Ali El Baz, *ATMF**, France

Undocumented persons pay their contributions to French organisms but do not benefit from them. It is racketeering. How can migrants be deported when they have worked for 5 or 10 years and have paid their contributions the whole time. It is a theft.

Our action: meeting with ambassadors of 8 African countries, notably with the embassies of North African countries, to explain that these migrants enable their families to live in their countries of origin, and that they should not play the game of French authorities while the country does not gain anything in helping the deportation of undocumented persons.

The statistics of entry passes delivered by North African authorities show that the deliverance rate of the embassy of Algeria is decreasing and that that of Morocco is increasing.

Other actions of protest concerning:

- URSSAF¹²: how can the racketeering of undocumented persons be stopped?

- State pension funds

- ILO: undocumented persons have rights and the ILO is not doing anything to change things and to defend them.

Suggestion for a campaign against refoulements

Alessandra Capodanno, ARCI (Italy)

It seems interesting to launch actions whose means are information and pressure from the bottom: to consider citizens as targets and not only governments and institutions. This idea is based on a survey carried out on 100.000 persons of whom 53.3% consider refoulement as a good instrument to control migration flows.

ARCI has launched an operation of post cards sent and addressed to the Minister of the Interior to ask him to stop refoulements. It is a simple mean citizens can use to express themselves. This method can be used more generally for different issues in the field of immigration and could also be used to inform European Members of Parliament.

¹² French organism responsible for collecting the multiple employee and employer contributions for health cover, unemployment insurance, retirement and pension plan etc.

Those in favour of refoulements are not well informed which leads us to suggest adding to these post cards an information sheet on rights to asylum explaining what refoulement and deportation are. This method is quite effective with students.

The promotion on social networks can also be affective, because they reach a different audience, one which is not already won over to the cause of migrants.

IV) DEBATE WITH THE AUDIENCE: prospects of collective work and actions against readmission agreements

Claudia Charles, GISTI

Last April there was a first meeting on readmission agreements. Ideas of action and mobilization were suggested. Quick reminder:

- Referral to regional organisations such as the African Union, the European Council, the Organisation of American States to make them aware and to ask them what they are planning to do regarding those readmission agreements and regarding deportations.
- I also remind that within the Migreurop network there is a working group on readmission agreements and we have a mailing list for debate to which everyone can subscribe. To subscribe to this list, you just need to send an email to contact@migreurop.org.
- I also think we should take up the idea of Helen Flautre on the referral to the European Parliament. Next Tuesday enters into force the Treaty of Lisbon and it is an opportunity we can not miss. In my opinion, it is a double level action: in each European Union country as well as at the level of the European Parliament itself, and the different committees concerned.
- Within the work group on readmission agreements we thought we also could launch a campaign: testimonies of people deported because of all kinds of readmission agreement. These testimonies (written, verbal, video or photo) could be used to write a black paper on which could be based legal actions (European Court of Human Rights or national courts) to prove that these agreements are generally implemented illegally. And even when it is legally done, it still doesn't always respect fundamental rights provided for by international law.
- As for "voluntary returns", we are well aware that they are disguised deportations. We must alert the public opinion aware and denounce much more strongly voluntary returns.

Filippo Miraglia, Arci Italy

In my opinion, we should try to set up at least **three levels of intervention** on this readmission agreements issue and more generally on the mobilization around the externalisation of borders.

1. **The legal level.** We must find all the possibilities the law leaves us – either at national or international level – to prevent these agreements, deportations, refoulements being set up. **Migreurop should set up an international work group**, a specific project on this issue.
2. **The political level.** We should create a tool allowing us to **question those who make decisions**, government, European Commission, European Parliament, and to let them know some people in Europe do not agree with these readmission agreements and the externalisation of borders policy. We sometimes did it through campaigns, letters, but we must do it **more systematically** and have a plan. Each time something goes towards externalisation of borders, on each readmission agreement, Migreurop has to intervene at all levels.
3. **The cultural or general information level.** Alessandra has spoken about the campaign we are about to carry out in Italy. These three levels must be brought together to try to talk with public opinion. A lot of people do not know what is happening at European borders and on these issues. We must have a general project made up of these three parts.

Lastly, I have a question on the role of NGOs: we had a discussion in Italy on the question of externalisation of borders for instance. After the refoulement in Libya, there were 32 000 applications for asylum in Italy and this year there are hardly any. The right for asylum in Italy was almost cancelled

because people can't get there anymore. Most people – 60% - who apply for asylum in Italy arrive on Lampedusa, Sicily... **Therefore, some Italian NGOs, in the name of saving people who are dying in the sea and the desert, are involved in projects paid for by the Italian government or the European Commission for instance.** I have seen information brochures for people who went to leave explaining the risks, and it is the EC which pays for that. In Mali, an Italian NGO warns people not to emigrate. They have had several times money from the European Commission to play this part in different countries. And now, there is the Italian Council for Refugees (CIR) whose activities with the Italian and Libyan governments inside detention centres in Libya, no one really knows. They are also presenting a project to the Committee of the European Refugee Fund (FER), to set up in Libya an office managed by NGOs so that people can apply for asylum to the Italian government from Libya. You see there is an implication of Italian NGOs. Some think it is normal and correct to handle application for asylum outside Italy. **There must be an effort for more transparency. All the information the Migreurop network and people who work with us have on externalisation and asylum must be given, and the implication of the work of NGOs in Africa and elsewhere must be known.**

Marie-Dominique Aguilon, Cimade (France)

I would like to come back to what Alassane Dicko and Claudia Charles said regarding the testimony campaign. I think it is important to try to carry out **a work of surveillance on the implementation of joint management agreements for migration flows recently entered into force.** I also think in particular of Burkina Faso and I come back to this question of ECOWAS which established freedom of circulation for ECOWAS nationals within its territory. For instance, in the case of the agreement with France, Burkina Faso has accepted to readmit non Burkinabe nationals. ECOWAS nationals will certainly be deported towards Burkina. **We must pay attention to the imbalance of a subregion caused by these numerous deportations.**

Besides, I would like to emphasize and say a word about the communiqué of union representatives of 5 West African countries. It is a communiqué released on the 20th of November by unions from Senegal, Benin, Burkina Faso, Mauritania and France, which are mobilised in support to undocumented workers in France and which clearly denounce joint management agreements for migration flows. Regarding the instrumentation of official development aid, readmission, etc., it is another example of mobilization coming from the South. Then, why not extend reflection to other actors – I am thinking in particular of the **readmission agreements work group.** Readmission is included in other issues, legal migration, etc. **Why not extend it to unions?**

Isabelle Saint Saëns, Act Up Paris, Migreurop network

First, I would like to come back to what William Herrera said. He reminded us with justification the very hard text a year ago, in which Evo Morales required to the European Union to abandon the directive on the return of illegal migrants. Not long after that, he went to Tripoli where he had most cordial interviews with Colonel Kadhafi. In the campaign against readmission agreements, we should try to show the contradictions between the position of Evo Morales and the practices of consulates in Europe. We should also emphasize on the role which cannot be ignored, played by **Libya** economically, industrially, geographically and also at the level of repression and detention policy, in the European policy of externalisation of borders. Kadhafi is a key character. **People won't understand what the policy of externalisation of borders is, if we don't explain how countries such as Libya but also Morocco or Tunisia, play a part in it.**

Secondly, to come back to what Filippo said, **we must show our disagreement to those who make decisions at European level.** At Act Up, we have a little experience in contradicting (thanks to an international network of Latin-American, Brazilian, Indian, south African, Thai activists) to European arenas, with reasoning and mobilizations, in particular against WTO TRIPs agreement, everything based on patents, agreements on merchandise. It led to progress in fabrication and distribution of generic medicines. In International arenas they are bothered if we publicly show their contradictions and let them know what we think.

Konstantinos Papantoniou, GISTI and Cimade

I used the article 39 of European Convention of Human Rights rules to prevent people from being turned back to Greece because of inhuman conditions. For different reasons, national legal means do not work anymore. In the framework of Dublin II, there is no emergency resort, because we don't know the more or less official regulation between Greece and Italy. Therefore, we don't have any legal means since Greece decides to turn back persons illegally as the readmission agreement doesn't work. I am wondering if this campaign should not address the ECHR directly to demand that Human rights be respected, to make them aware of the problem and to put political pressure on Member States. There are different angles of actions. We can attack Greece on detention conditions, illegal agreements with Turkey, or on the fact that Greece has not even signed the protocol forbidding collective deportations. This should help us get directly involved. In France, we carry out procedures based on this article 39 and attempts have been made in Italy and Belgium. In Greece, it is very difficult. We should coordinate all these actions.

Hicham Rachidi, Gadem

I would just like to repeat the suggestion that we lead a global action requiring an international instrument for the protection of Human rights at the borders, which is essential. Of course, the actions you are suggesting are useful. Legal referrals to regional and national courts are important. But we work only case by case. We need an action which could bring a political response to an eminently political issue.

William Herrera, Union of Latin-American organisations in France

I wanted to insist on the role of the organisations of migrants and on what migrants can ask to their governments. When we wrote the letter on entry passes, we asked ourselves the following question: are we going to look for signatories, NGOs working in France with migrants? Our answer was to keep this type of letter as an action coming from organisations of migrants. I thought about the press release done in May 2009¹³ on readmission agreements and one of the critics published in the newspaper *Le Monde*. It accused organisations of having a colonizing note because we had an opinion on the actions of African States. To avoid this kind of criticism, I think we should extend to organisations of migrants. It has to be an action that comes from migrants towards their government.

Chiara Tambourini

I would like to focus on the different campaigns which have been mentioned. I think a campaign towards European representatives would be effective. But I have serious doubts regarding the "article 39" campaign, as we called it earlier. We have to make clear what we understand by it because we haven't seen in detail how to organise it. An informative campaign is one thing. If it is a campaign that leads to several appeals, to too many applications before courts, I am sceptical. The article 39 is an exceptional measure which usually works. If we create traffic jams at the ECHR, it may not work. An informative campaign, fine; a result analysis of the implementation or not of the article 39 by Member States, fine as well. If it is a campaign that leads to too many appeals at the same time, as a demonstrative gesture, I think it would be counterproductive.

To come back to a campaign that could involve European Members of Parliament, I think there are three categories of European MPs:

- those who are already aware of those issues and on our side, as Helen Flautre;
- those who have no idea of what we are talking about today. An email campaign to make them aware could draw their attention on the fact that certain voters are conscious of this issue.

¹³ « Une gestion « concertée » de flux migratoires au détriment des droits des migrants », 12 mai 2009 , <http://www.gisti.org/spip.php?article1484>

- and those who are well aware of what we are talking about, and have a position opposite to ours. In that case, a campaign can also be effective, if we make them aware that their position is not necessarily popular.

In all those cases, it can be useful. But if we send mails like spams, it is totally useless. It would be useful if the deputy receives the mail in his/her mother tongue and particularly from a voter of his/her country. I don't know it is feasible technically, but we can do it.

One good news, **the European Parliament has awarded the LUX Prize to “Welcome”, which, thanks to that award, will be translated in all languages of Europe. Maybe we could use this film to spread its ideas.**
