



# General Assembly

Distr.: General  
6 June 2012

English only

---

## Human Rights Council

Twentieth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 May 2012]

---

\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## Management of the external borders of the European Union (EU) and EU laws and policies on migration and asylum

The International Commission of Jurists (ICJ) welcomes the report of the Special Rapporteur on the human rights of migrants.<sup>1</sup> The ICJ applauds the decision of the Special Rapporteur to focus on the European-Mediterranean region, and on European Union (EU) laws and policies on migration, in his work for 2012-2013. The ICJ has for several years been particularly concerned about the inadequacies in the protection of the human rights of migrants in southern Europe. Inadequacies in the protection of the human rights of migrants to the EU have been augmented as a result of the large numbers of migrants crossing the Mediterranean from North Africa in 2011. Even before this, however, there were significant shortcomings in the protection of migrants' human rights in many southern EU countries. These are long-term problems that deserve the concerted and sustained attention of the Human Rights Council as well as of the institutions of the European Union.

The ICJ shares the concern of the Special Rapporteur about the increased resort to administrative detention of migrants, and the length of time for which migrants are being detained in many countries. In many such instances, unnecessary or prolonged detention contravenes States' international legal obligations, including under the International Covenant on Civil and Political Rights and the European Convention on Human Rights.]. Detention of migrants is a particular concern in Europe, where the EU Returns Directive permits detention of migrants for up to 18 months.<sup>2</sup> The application of this Directive in national systems has led to a substantial increase in the use and duration of migration detention in EU Member States. In some EU States, this has been exacerbated by barriers to access to legal advice for migrants in detention, and inadequate procedures for judicial review of detention. The impact of poor conditions of detention is also greater where the period of detention is longer, leading to a greater risk of such conditions violating the prohibition on cruel, inhuman or degrading treatment.

In Greece, the detention of asylum seekers has led to violations of Greece's international human rights obligations, as a result of the systematic detention of migrants, without provision of adequate reasons, in overcrowded and insanitary conditions. The European Court of Human Rights identified such violations in the landmark judgment of *M.S.S. v Belgium and Greece*, delivered in early 2011.<sup>3</sup> Since then, although new asylum laws have been enacted, and plans formulated for new detention facilities as well as new open reception centres, detention conditions in most facilities have not improved significantly. The ICJ, as it noted in its recent submissions to the Committee against Torture, remains concerned that detention conditions for migrants in Greece violate the prohibition on inhuman and degrading treatment under the Convention against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR) as well as the European Convention on Human Rights (ECHR).<sup>4</sup>

---

<sup>1</sup> UN Doc A/HRC/20/24 (2012).

<sup>2</sup> Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 15.

<sup>3</sup> *M.S.S. v Belgium and Greece*, App No 30696/09 (2011) ECHR 108.

<sup>4</sup> International Commission of Jurists, Submission to the Committee against Torture on the Combined 5th and 6th Periodic Reports of Greece (October 2011) at <[http://www.icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal\\_Documentation&id=23897](http://www.icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal_Documentation&id=23897)>.

In Malta, there is a presumption of detention of irregular migrants, and the great majority of migrants are held in detention centres, for periods of up to 18 months. The ICJ conducted a mission to Malta in late 2011 to examine the human rights protection for migrants in both detention centres and in open reception centres. The ICJ found the conditions in some detention centres to be seriously overcrowded and inadequate, and therefore in violation of Malta's obligations to protect against cruel, inhuman and degrading treatment under Article 7 ICCPR, Article 16 CAT and Article 3 ECHR.<sup>5</sup> The ICJ called on the Maltese authorities to revise the policy of mandatory detention and to apply administrative detention on a case-by-case basis and only where necessary as a last resort. Similar recommendations were made by the Working Group on Arbitrary Detention following its visit to Malta in 2009.<sup>6</sup>

In addition to the detention of migrants, there are several other pressing issues that in the view of the ICJ merit the attention of the Special Rapporteur in his inquiries into human rights and migration in the EU. These include:

- The human rights consequences of apprehension of migrants at borders and accelerated asylum procedures applied to such migrants, which sometimes provide asylum seekers with insufficient opportunities to present their case, and allow only for appeals of decisions which do not have a suspensive effect on deportations;
- The human rights obligations of States related to the interception of migrants at sea, and “pushbacks” of boats of migrants, without consideration of possible claims for international protection of those on board; and
- Reception conditions for migrants, that violate the prohibition on inhuman and degrading treatment, either by accommodating migrants in overcrowded, insanitary and unsuitable reception centres, or by leaving them homeless and destitute (circumstances which were found to violate Greece's obligations to protect against inhuman or degrading treatment in *MSS v Belgium and Greece*).

These deficiencies should be addressed as an EU-wide problem, given the central role of EU migration law and policy in shaping national regulation on migration and asylum. They are symptomatic of weaknesses in the human rights protection afforded by EU law on migration and asylum and, in certain respects, are exacerbated by the operation of EU laws. Particularly problematic is the returns system under the Dublin Regulation, in accordance with which, in many cases, Member States automatically return asylum seekers to the first Member State of arrival without assessing their application or the conditions that may be faced by them in the first Member State of arrival. The large numbers of asylum seekers returned to some southern European States has strained reception facilities and asylum procedures considerably, to an extent that puts the human rights of migrants at risk. Although most EU Member States have suspended Dublin Regulation returns to Greece, following the judgment of the European Court of Human Rights in *MSS v Belgium and Greece* and the ruling of the Court of Justice of the European Union in *N.S. v SSHD*,<sup>7</sup> the Dublin system is still in place, and contributes to the unequal protection of rights for asylum seekers in the EU.

<sup>5</sup> International Commission of Jurists, *Not Here to Stay: Report of the International Commission of Jurists on its Mission to Malta on 26-30 September 2011*, <<http://documents.icj.org/ICJMaltaMissionReport-Final.pdf>>.

<sup>6</sup> Report of the Working Group on Arbitrary Detention, Addendum, Mission to Malta, UN Doc A/HRC/13/30/Add.2 (2010).

<sup>7</sup> *N.S. v Secretary of State for the Home Department and M.E. and others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, C-411/10 and C-493/10, European Court of Justice (21 December 2011).

The European Union aims to create a Common European Asylum System for EU Member States by 2013. As negotiations progress on the revision of the instruments that make up this system, it is vital that the violations of migrants' human rights occurring across the region be addressed by strong human rights protections in the legislation that makes up the Common Asylum System. Such considerations should not be secondary to the interests of border control and minimisation of migration to the EU. The international human rights obligations of EU States must inform all aspects of the CEAS. Furthermore, the EU as an institution has human rights obligations under the Charter of Fundamental Rights of the European Union.

### **Call for action**

The ICJ suggests that the Special Rapporteur, in his investigation into these important matters, should address both the international obligations of EU Member States to protect the rights of migrants, and the impact of the EU legal framework on the protection of those rights.

---