

1) Conceptual framing on undocumented migrants and irregular migration:

- **Is being undocumented or irregular a crime?**
 - Some countries' legislation penalize irregular entry or stay; some countries also penalize individuals who provide assistance to undocumented migrants.
 - Yet irregular entry or stay are not crimes against people, property or security per se, and should be disaggregated.
- **Human rights are for all people, and independent of stay permit.**
 - International human rights framework and recent guidance from wide range of UN special procedures and bodies reaffirms undocumented migrants' human rights
 - World Medical Association declaration and oath for health professionals

2) Data and evidence:

- **No clear picture about irregular migration in the EU**
 - Most recent figures for authoritative estimates of undocumented in EU are outdated (now more than 10 years old);
 - Figures on undocumented in the EU produced by Eurostat and border authorities are predominantly in context of immigration enforcement (e.g. irregular arrivals; numbers of return orders) and don't give the full picture
 - Better understanding the phenomenon of irregularity in the EU today and ways in which people are becoming undocumented (through both irregular and regular entry) is needed.

2) Data and evidence:

- **More accurate data and evidence can challenge misconceptions**
 - As an example, data shows that unaccompanied children rarely benefit from full family reunification, yet the term “anchor children” is commonly used and infused with judgments about parents’ role in migration of their children alone.
 - Presence of undocumented workers allows uncompetitive and inefficient economic actors and sectors to remain in business. If certain sectors (e.g. agriculture) had to pay minimum wage to its workforce, people couldn’t afford to eat. Food remains produced by undocumented workers with no means to organize to improve conditions. On the employers’ side, they feel compelled to keep costs down and what’s the most flexible are labor costs.
 - Research could further clarify degree to which undocumented workers fill needs in various sectors in EU countries (agriculture; construction; domestic work; services industry, etc).

3) Striking a balance:

- **Governments have to balance a wide range of interests**
 - Controlling migration; protecting the public; tackling vulnerability; supporting prosperity.
- **Why can't courts give a clear picture of human rights standards?**
 - Courts are trying to preserve a core of human rights but also be receptive to governmental concerns about immigration status. Judges operating in courts operate in grey zones in the law and the tension between human rights standards and specific legal doctrines.
- **Unintended vs. intended consequences**
 - Migration management policies may produce both unintended consequences (e.g. Germany's "open door" policy may have led to an increase in smuggling) as well as intended consequences (e.g. UK's aim to reduce the size of the undocumented population in the country through strict enforcement both at the borders and internally)

3) Striking a balance:

- **“Migration has the potential to tear the EU apart”**
 - Migration is at the heart of the existence of the EU today. The battle at the political level is about keeping the Union together as well as offering protection to migrants.
 - The values that we have are not tradable commodities; we should not lower our standards and also accept racism or lowering of the rule of law amongst EU member states as the price to pay for keeping regional cohesion.
- **Political leadership is needed – this is a moral solution, not a technocratic solution.**

4) Return policies

- **Ensuring sound policies on return faces multiple challenges**
 - “People are not packets – you cannot just ship them back to the sender.”
 - Ensuring effective return rates increasingly referred to by policy makers as only way to gain public acceptance for public to accept refugee framework.
 - Return is not sustainable; costly and a big use of resources.
- **Challenges of return and enforcement aren’t more easily acknowledged.**
 - Is there space to be open? That there are limits to what can be achieved with an enforcement agenda?
 - Making priorities about enforcement – example from Amsterdam and NL police about prioritizing fighting crime and safe communities rather than enforcement of irregular status.

4) Return policies

- **What are the limits of a deterrent and criminal approach to removing people?**
 - It should be accepted that all undocumented migrants in the EU won't be deported nor expelled; it is not feasible legally nor because of budget reasons.
- What can be done to **enhance return with dignity** (focusing on voluntary return)?
 - Focus on “future orientation”, social work accompaniment and legal aid

5) Regularization and regular channels

- **Opening up regular channels on national and EU level**
 - Development of sustainable pathways for refugees, including increased targets for resettlement
 - Preventing erosion of asylum system (to avoid additional irregularity)
 - At EU level, opening up regular channels for labor migration *across skills levels* (in addition to ongoing transposition of Seasonal Workers' Directive)
- **Regularization**
 - Evidence from all EU countries demonstrates regular as well as occasional policy tool (Italy: from 1986 to 2012 involved 6 amnesties in 30 years and 2 million people regularized); Portugal: 3 regularizations since 1992
 - Governments in many of those cases felt the need to regularly regularize undocumented as many were working in sectors providing essential services, such as e.g. care to the elderly in private homes.
 - Yet possibly more difficult in current context to advocate for regularization

6) Children

- **Child rights legislation and protections:**
 - International child rights law recognizes children until the age of 18 with a set of protections.
 - Migration policy discussions need child protection experts. The agency of children also needs to be an integral part of the discussion.
 - Making child rights legislation superior to any legislation concerning residence status
 - EU law and practice on detention (including of children and their families) increasingly being separate from the normative framework currently developing in the Council of Europe and UN. More attention needs to be focused on alternatives to detention.
- **Ageing out:**
 - Need to pay attention to when children turn 18 and lose protection.
- **Regularization of status:**
 - Should examine national level practices enabling children as well as parents to become regularized.
 - Portuguese situation of regularization: children born in the country and could prove residence for 10 years (also through school attendance) could regularize and gain citizenship. This could also create pathway for their parents to acquire citizenship.

7) Why enable irregular migrants access to services and justice?

- **Values:**
 - The basic message is about decency and at the heart of the human rights culture in Europe: how much are we prepared to see the person next to us suffer?
 - Human rights: undocumented migrants are first of all human beings
 - Migrants are part of the solution and not the problem
 - A country's own migration history may also be a factor in contributing to more progressive policies
- **Anti-discrimination**
 - If we reduce people to destitution, we'll increase racism
 - Regular migrants are also affected by racial profiling if UDM are prioritized in terms of enforcement

7) Why enable irregular migrants access to services and justice?

- **Public health**
- **Crime prevention**
- **Economic reasons:** including undocumented migrants in mainstream services is a win-win for all and less costly than exclusion from these services.
- **Professional ethics:** service providers not being able to do their jobs
- **Practical reasons:** most undocumented migrants won't be expelled and eventually will regularize; it is better to offer integration services earlier on than not at all, or at a stage when it's too late.

8) Whole of government and multistakeholder approaches:

- **Horizontal, across governmental ministries**
 - Development of firewalls (CoE ECRI recommendation) to ensure separation between immigration enforcement and services and justice
 - Examining existing data protection frameworks and tools and applicability in developing firewalls
 - Closer coordination between Justice and Home Affairs and other DGs (Health; Employment; Justice; Education) to mainstream undocumented migrants in those services
 - Benchmarking of “One Stop Shops” which enable integration of migrants, regardless of status, as a transversal file and coordinated amongst different ministries
 - Ensuring undocumented migrants’ protection in legislative tools in both migration and non-migration fields (EU directives - Victims of Crime; Employers’ Sanctions; Anti-Trafficking; Council of Europe Istanbul Convention)
 - Widening funding frameworks to enable undocumented to be covered under social inclusion and other funding (and not just funding on return)

8) Whole of government and multistakeholder approaches:

- **Vertical, involving different governmental levels**
 - Cities and regional governments – recognizing oftentimes tension between city and national government
 - Problem solving approach to finding solutions for people within their communities facing social exclusion due to irregular status
 - Benchmarking of promising practices (examples in New York City and Barcelona) in outreach to migrant communities; municipal ID programs; legal accompaniment
- **Multistakeholder approaches**
 - Involving civil society (“third sector”); migrant-led organizations; trade unions; employers; research community
 - Way forward on strategic litigation: alliance between local governments, civil society about how to strive for broader interpretation of the law (Social Charter cases in the NL case in point).

9) Reframing the debate:

- **Words matter**
 - The migration debate should avoid criminalizing and discriminatory terms
 - Using “illegal” to describe migrants or migration sets harsh tone
 - “Persons in irregular situations” or alternatively “irregular” or “undocumented” migrants
- **Linking between undocumented and wider socially excluded populations**
 - In recent decades, we’ve focused increasingly on the human rights of specific “minorities” (including undocumented migrants) but the majority feels disaffected.
 - Identity politics: “Yes, it may cost us to have fewer migrants in our country, but we don’t care.”
 - A lot of fears about migration are “proxy fears” – about “how do I find my place in the world” rather than the fear or the threat of migrants per se.
 - Race, belonging, prejudice, discrimination – this is what ties many undocumented migrants to other groups experiencing similar issues.
 - We need to see migration as an opportunity and not a threat.

10) What is achievable?

- **Opportunities on the global level:**
 - Process in 2017-2018 on the Global Compact on Migration is migration's big moment and historical opportunity for the international community to come together.
 - Some agreements may be readily attained (e.g. municipal ID cards; birth registration; better pre-departure information for potential migrants)
 - Opportunity to link to the Sustainable Development Goals 2030 agenda
- **Recognition of urgency, yet realism about reality of progress**
 - Progress is made slowly, over a somewhat long period of time. It may take years for something to reach national law and even more years for something to come to the reality.
 - "Pick your battles" and think about short-term as well as medium to long-term goals.

10) What is achievable?

- **Strategies for change are multi-faceted**
 - Organizing done by immigrants themselves, coupled with civic participation, can contribute to policy changes.
 - Importance of single-focused coalitions to push for policy change.
 - Framing as e.g. health issue, rather than a migration policy issue.
 - Mainstreaming undocumented migrants into broader social and justice policies and frameworks (e.g. including violence against women)