

**Reflections on:
Unauthorized migrants; migrants in irregular situations**

**A «WORK IN PROGRESS» DRAFT FOR DISCUSSION¹
prepared for the**

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We commit ourselves to ensuring full respect for the human rights of refugees, internally displaced persons and migrants, regardless of their migration status, and support their host cities in the spirit of international cooperation, taking into account national circumstances and recognizing that, although the movement of large populations into towns and cities poses a variety of challenges, it can also bring significant social, economic and cultural contributions to urban life.

New Urban Agenda (Habitat III, Quito, 2016) paragraph 28

Introduction

This paper seeks to provide a broad but brief overview of the issues and concerns of migrants in irregular situations and to provide contextual perspective as well as several policy formulations for governance of migration appropriate to address unauthorized migrants.

The fundamental premises for this analytical brief is the notion that, first and foremost, all migrants are human beings and, consequently, that a primary responsibility of governance and government is ensuring respect for and realization of all basic rights of all human beings on the territory of any state.

Following is a brief review of key aspects of experience and situation of migrants in irregular situations. It is substantially the problem statement of conditions and issues providing a primary basis for what must be done to address the situation and human condition of all 'unauthorized migrants'. The brief concludes with the outline of an agenda of governance policy lines and measures to effectively and appropriately address irregular migration.

I. Who are undocumented migrants/migrants in irregular situations/*sans papiers*?

Undocumented migrants (in French, *sans papiers*) refers to migrants who are in irregular or unauthorized migration situations. «Undocumented» may be a misnomer as most migrants in irregular situations have documents and papers, just not the «right» ones authorizing their entry, stay, residence and/or employment in a country.

Despite the generalized *hype* about irregular migration, most migrants in irregular or undocumented situations in Europe –and in other regions-- actually migrated and moved across borders in regular circumstances –with visas or not needing visas and/or in regional free movement regimes-- but subsequently overstayed visas or terms of entry and stay or otherwise fell out of authorized status. In some cases, they applied for asylum but their applications were rejected. In other cases, some migrants and refugees labelled as 'irregular' or 'illegal' may not so be under the terms and recognized rights established in regional 'free movement' systems.

However, the concept of illegality and the characterisation of persons as «irregular» or illegal 'by definition' poses a large ethical challenge, one with extremely serious consequences today for human rights and for social cohesion in an «integrated» mobile world.

¹ Please note: additional footnote citations and references and a reference list will be included in a future edition.

II. Contradictory to Human Rights

The very notion of illegality is directly contradictory to the intent and content of the Universal Declaration on Human Rights and in essence to all nine fundamental human rights treaties. The notion of illegality of persons strikes directly at Articles 6 and 7 of the UDHR and their subsequent reflections in Covenants and Conventions; it similarly negates the spirit and letter of the non-discrimination principle reiterated in every international human rights instrument, the grounds for non-discrimination explicitly expanded to cover nationality in the 1990 ICRMW.

While perhaps less stark, the label of «irregular» is a differentiating characterization of *person* and *identity* that is in effect discriminatory, disabling and indeed defamatory, and certainly contrary to the spirit of contemporary human rights law. A relevant notion is highlighted in the very title of the latest global human rights instrument, the International Convention on People with Disabilities – which explicitly dismisses the notion that people could be *disabled* by definition or by label, rather that some people may have disabilities –and need particular protections of their human rights because of their situation.

In practice, the treatment of people labelled as illegal or irregular underscores the clear and present danger of such differential and exclusionary labelling. On the one hand, increasingly aggressive, dehumanizing policies and practices of government at national levels that «illegalize», often explicitly criminalize, and seek to remove and deport «illegal migrants». In many cases, undocumented migrants are residing and contributing in their place of residence for years. On the other hand, the vicious, often conscious and destructive treatment in and by individuals and groups among host societies reaches not infrequently proportions of deadly violence as well as total social exclusion.

Furthermore, dominant rhetoric, narratives --and actions-- often don't make clear distinctions between foreigners and «illegals.»

Freedom of movement and rights to establish residence and access employment throughout the European Union for nationals of EU member States and for legally established third country nationals means that EU citizens and legally resident *third country nationals* are not among undocumented migrants in the community. This is similar to situations in the several regional economic communities in Africa, Central America, Eurasia, South America, and to a partial extent in the Caribbean that have established freedom of movement, residence and establishment regimes.

Carefully established estimates of the number of undocumented migrants in Europe indicated that the total population in irregular situations numbered 3 to 6 million in 2014 (the latest year of available data) –at most just over 1% of the EU population. This represents 6 to 12% of the total «migrant population» of 52 million in the EU –a total including both EU nationals residing in other EU member countries and third country nationals.

Research and anecdotal evidence indicates that significant numbers of migrants in irregular situations –and considerable portions of populations of unauthorized migrants—have been resident for long periods of time in host countries, a situation holding in many countries across all regions. They are significantly integrated given their circumstances, are generally economically active and contributing economically, pay taxes, make social security contributions –which most will never benefit from, contribute more to making than taking jobs, draw few public assistance benefits, and more than a few manage to set up businesses. Many have legally/regular resident family members including children. Given their circumstances as well as dependency by families 'back home' on remittances from remaining employed, figures show that crime rates by unauthorized migrants are generally lower than for the host population (more so when incomparable immigration infractions are excluded from comparisons).

Nearly all unauthorized migrants are de facto part of the cities or rural areas they reside in; participate in some level of community life; and they contribute significantly to filling labour and skills needs and shortages. ILO research showed that unauthorized migrant workers in European countries tended generally to find work within days or weeks of arrival and were only competing if at all with the most marginal workers in the domestic work force. In bigger terms as elaborated below, unauthorized migrants play a quasi-structural role in some industrialized and developing countries by providing cheap, docile labour –and skills—that effectively subsidize and maintain otherwise unviable domestic economic activity, business enterprises and entire sectors. While some analysts argue that this impedes modernization and productivity increases, it certainly contributes to impeding off-shoring of some economic activity and employment. The conditions and constraints on unauthorized migrant workers also serve to discipline' the labour force at least in certain sectors by constraining pressures including supply-demand disparities otherwise conducive to driving wage and cost increases.

BOX

Routes to becoming undocumented

The routes to becoming an undocumented migrant are complex and often the result of arbitrary policies and procedures over which the migrant has little or no control. It is PICUM's experience that the majority of undocumented migrants entered Europe legally but after a period of time, experienced difficulties and found themselves without the relevant permit for residence or employment. Irregularity is caused by an administrative infringement and not a criminal offence - it is a process fueled by exploitation, redundancy, misinformation and administrative delays.

Once in an unregulated status, migrants are systematically denied those elements which constitute a basic standard of living and face a de facto violation of their fundamental rights. They lack health care, are denied education, deprived of labour protections and occupy the worst housing conditions in Europe.

While it has been estimated by the OECD that there may be from 5 to 8 million undocumented migrants in (the wider) Europe, they remain invisible in the eyes of policy makers. This situation puts enormous strain on local actors such as NGOs, health care and educational professionals, and local authorities, who often work with limited resources to defend undocumented migrants' fundamental rights and guarantee them a basic standard of living.

These local actors are confronted on a daily basis with situations in which they witness that irregular legal status is an obstacle for a sizable part of the population in accessing basic social services. Professional groups, such as doctors and teachers, experience clashes between what their professional ethics tell them to do and the incriminatory discourse regarding undocumented migrants.

Source: PICUM

III. Final Solutions

What is most striking about both narrative and action on the «illegal/irregular migration question» across many countries worldwide today are the similarities and parallels with the treatment –and consequences-- of «the Jewish Question» throughout Europe and elsewhere in the late 19th and first part of the 20th Century. The characterizations of the issue –and the people-- as «problem» with dramatic, exclusionary solution remain remarkably similar in words and concepts. In the (chilling) words of a Danish diplomat at a meeting in Geneva a few weeks ago: «The solution to illegal migrants is dignified deportation.» Indeed, the «solution» being applied today in many countries around the world is the same as across Europe and elsewhere in the 1930s: expulsion and deportation with round-ups, detention, forced movements, loss or expropriation of property, family separation.

The characterisation and the solution being applied these very days to the Rohingya «illegal immigrants» problem in Myanmar-Burma is the lurid demonstration of how close and easily the

illegalization of people –any people, for any reasons, can approach the «final solution» --again-- in our supposedly «never again» 21st Century world.

II. Treatment of migrants in irregular situations: psycho-social considerations –the essence of experience of human beings

1. Exclusion, repression and fear

The essence of being unauthorized, undocumented and labelled «illegal» with its criminalizing implication is the essence of dehumanizing social exclusion –from community, from participation, from legal recognition and from the essential identity of being a social being.

If there can be a worse, it is living in constant fear where one is living –of apprehension and deportation by authorities, meaning inevitably for many destruction of livelihood, disruption of means to support family and self-support, family disintegration for many, loss of property, imprisonment sometimes for substantial periods. In many cases, it means forced return to places with no security, safety or means to livelihood.

The denial of inclusion and the reality of exclusion have daily consequences on health, learning, employment, productivity at work, and any kind of social engagement with own and host communities. The social and economic costs are huge by all indications, but little research and measurement has been done other than case studies in several countries.

2. Physical and social violence

Living undocumented, in irregular situations, is also generally living in constant fear of physical and psychological violence: harrasment in public places, at work, at home by hostile 'locals'; attacks up to firebombings of homes, businesses and religious places, even murder by individuals or mobs; violent treatment by police and/or other authorities; bullying of children at schools; etc.

Hostile, negative, threatening portrayals in news media, social media, schools and/or by political, government, police and other authorities also present unauthorized migrants, indeed many migrants, with threatening environments that induce insecurity and fear –these too representing forms of psychological violence.

3. Identity and psycho-social damage

Every person has a right not only to a legal identity but to a human identity in fundamental cultural, social, community and environmental senses. These facets together are what makes it possible for human beings to live, to function in family and community, to contribute productively in economic activity and to participate in society, city and ultimately nation.

The migration experience itself generally disrupts human identity as it involves separation from family, from local life context, and particularly the loss of basic identity 'landmarks': notably local language, community, ethno-cultural context, and physical environment.

Long-term, indeed even short term consequences of exclusion –notably by denial, rejection, criminalization de facto or by implication, and denigration of identity of people -both as migrant and as as foreigner--contributes directly to social and psychological pathology. All the more so for those in irregular situations. In more benign manifestations, depression, apathy, health pathologies, social disengagement, inability to work productively or to work at all are among the results.

Less benignly, aggressive and violent behaviour, such as family violence, and socially aggressive or destructive acts, can certainly be attributed at least in part to experiences of migrant exclusion; experiences magnified for those in irregular situations. There is currently considerable speculation –although inadequate clinical or research evidence-- that the exclusion experience of migrants, particularly of marginalized «second generation» children of migrants, is a contributory factor to so-called «radicalization».

4. Discrimination

Discrimination –unjustified differential treatment—prevents equal opportunity, provokes conflict among groups within the population, and undermines social cohesion. Discrimination prevents

integration by reinforcing attitudes that constrain certain identifiable groups to marginalized roles and poor conditions.

Migrants' status as non-nationals often leaves them less protected under host country national law; unauthorized migrants generally have little or no protection. Additionally, because they are less familiar with the local language and with the legal and social support systems in the new country, and in many cases as visible minorities, migrants in regular as well as irregular situations are particularly at risk of discrimination. Differences from local populations --notably race, ethnicity or religion-- are often large factors in discrimination migrants are subjected to.

Discrimination is unjustified differential treatment. Discrimination on the basis of race, ethnicity, national origin, gender and other distinctions is universally prohibited in international law and the national legislation of most States. Discrimination is defined in the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin" (and any other criteria that may be defined at the national level), "which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation." unless based on inherent requirements of the job. (C-111, Art. 1(1)(a) and (b)).²

Discrimination on the basis of nationality is also explicitly prohibited under international law, including in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as in national law in a number of European and other countries. To a certain extent, prohibition of discrimination on basis of nationality can be interpreted to extend legal protection against discrimination to non-national migrants irrespective of status, for example in realization of fundamental rights, such as labour law protection, schooling and access to health care.

Without protection from discrimination, immigrants and their children --particularly those in irregular situations, end up over-represented in the ranks of the long-term unemployed and at high risk of social exclusion. Exclusion and ultimately, breakdown of social cohesion are results of denial of employment opportunities, relegation to substandard housing and marginalized neighbourhoods, lack of education and training opportunities, absence of police protection, obstacles in the exercise of one's cultural practices, and multiple discrimination in community life.

Discrimination has a double impact on **refugee and migrant women**, again especially those in irregular situations. Most job opportunities for women migrants are in unregulated sectors, such as agriculture, domestic work and services. Gender segregated labour markets contribute to discriminative employment in countries of destination, resulting in high levels of abuse and exploitation of women migrant workers.³ A crucial component of the anti-discrimination equality agenda is promotion of rights and inclusion of all residents, both women and men, girls and boys, from all backgrounds, facilitating access to decent jobs, encouraging the full participation in cultural, civic and political life and ensuring equitable provision of quality public services to all.

III Topical Dimensions

1. Unauthorized migrants, employment and exploitation

Employment, work, and economic activity are the basis of participation, self support, and indeed identity for most adults in any social and cultural context.

Yet unauthorized migrants are formally denied all three, often in deliberately contradictory policy and practice regimes, regimes that de facto tolerate presence while permitting but ignoring

2 Text of ILO Convention 111 at: (<http://www.ilo.org/ilolex/english/convdisp1.htm>).

3 Taran, Patrick, Irina Ivakhnyuk, Maria da Conceicao Pereira Ramos, Arno Tanner. *Economic Migration, Social Cohesion and Development*. Council of Europe, Strasbourg. 2009. See "Gender and migration, pages 38-39.

employment exploitation that benefits certain employers, industries and sectors.

The evidence would suggest that the presence and utilization of unauthorized migrant workers is a structural feature of maintaining viable economies and labour market control deliberately if deniably utilized to a substantial extent in many industrialized countries today.

The benefits are not only sustaining otherwise unsustainable workplaces and entire economic sectors –and maintaining those sectors' economic activity and employment in country versus being off-shored. In some countries at least, the employment of substantial numbers of unauthorized migrant workers enables domestic production of «affordable» --read cheap-- food, goods and some services that help pacify large portions of populations facing materially marginal situations, precarious employment and low or no incomes. For example, in the USA, where it is estimated nearly 50 % of the population lives below, at, or no more than 20% above the poverty line, cheap food in particular and some consumer goods and services provided by unauthorized migrant labour provide a sense of material welfare for many, albeit often far from well-being.

Migrants in irregular situations admittedly used –and abused-- in many industrialized countries, so much so that immigration and economic policies appear closely attuned –both to economic cycles and to interactive policy measures.

Some contemporary policies suggest recognition of migrant labour –particularly in unauthorized situations-- as a tool towards maintaining workforce 'discipline,' compliance and passivity, especially during periods of restructuring characterized by widespread job losses, job downgrading and higher unemployment. The confrontation need not be direct, but simply the intimation that if employed workers protest pay cuts, worsening working conditions and/or seek to unionize, they can be laid off and replaced by others who will take whatever job is offered at whatever pay in whatever conditions because they have no other choice.

Migrants in irregular situations are present and employed often precisely because they are undocumented. The attractiveness of unauthorized workers can be attributed to their flexibility, availability and most importantly, because they are cheap to employ. Denial of fair working conditions, abusive working relations and environments, absence of health and safety protections and sub-standard or sub-minimum pay, permits domestic employers in sectors such as agriculture, food processing and food services to respond to needs and demands of populations for cheap food and basic consumer goods and services --in a competitive situation vis a vis cheap imports.

In reality, unauthorized workers often work long hours, in dangerous and unhygienic conditions. Many do not receive their wages or receive less than was agreed upon and may be fired without being given due notice, etc. If they are apprehended whether in workplaces or in the community in immigration enforcement raids, unauthorized workers will generally face deportation without being able to claim their last wages; in many cases they lose everything they have including family relations in the destination country when they are taken into detention and immediately put in deportation procedures.

Certain employers often resort to cutting costs by lowering standards of working conditions, particularly in agriculture, construction and services such as health care. With nationals generally unavailable and/or unwilling to accept such work –at least in past epochs of economic growth and employment stability—unauthorized workers «fill the gap». Two mechanisms help provide 'supply' of unauthorized migrant labour and skills when 'needed' or demanded by employers. Reports abound of employers recruiting workers abroad –usually indirectly through intermediaries or simply 'word of mouth' and effectively enticing movement across borders «without inspection» as US immigration service parlance puts it.

A second, in some places predominant, mechanism is subcontracting employment to locally-based labour brokers, effectively divesting the contracting firm of any responsibility for hiring or paying

workers, and any responsibility to know anything about them. The labour brokers (referred to as gang-masters in the UK) conversely may have no knowledge and certainly no responsibility for the actual conditions of work where they dispatch workers to. At least in some cases when unauthorized workers are identified in workplace raids, the employer can «pass the ball» to the labour broker who provided the labor(ers) as a service commodity, while the labour broker office can simply disappear before immigration enforcement pays a visit.

The fundamental tension is between the criminalization and prosecution of unauthorized workers on the one hand and on the other, the objectively structural need in many countries developed and developing for unprotected and highly exploitable workers to do the 3-D work (dirty, dangerous and degrading) and keep costs down, notably in agriculture, construction, domestic work, hotel and restaurant sectors, and increasingly, home and institutional care of growing populations of aged people. Some analysts highlight the convergence between criminalizing and effectively persecuting «illegals» and their exacerbated precariousness, absence of protection and inability to organize that keep them highly useful as a cheap, exploited and effectively dehumanized labour force.

Rights to decent work for all

To be developed...

2. Health and Health Care for Undocumented Migrants

(this section to be revised)

Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.⁴ This includes all migrants regardless of immigration status. Migrants, due to the circumstances present before the departure, during travel, at the destination as well as those returning to the place of origin, face increased levels of susceptibility to health risks.⁵ Moreover, different groups of migrants face different degrees of risks. Those migrants originating from areas of poverty or displaced by warfare, conflict or natural disaster, those with limited skills and particularly those in irregular situations have greater health risks.⁶ Only by implementing health care policies without discrimination, stigmatization, or inequality can these risks be addressed and the health of migrants be protected.

Migration in and of itself does not put people at risk of medical pathologies or negative health outcomes. Rather, the circumstances in which people migrate, notably social determinants of health such as their living and working conditions, and their migration status, can leave them more exposed to health risks and less able to cope with illness, including HIV-related illness. Instead, it is the conditions of migration and the lack of appropriate legal, policy and practical responses that exacerbate health risks and increase vulnerability in places of origin, transit, and destination. Many of these conditions and policy choices can be improved, and modifying them can have very beneficial consequences, including improved migrant health, improved public health in the host country, and reduction in reduction of communicable diseases, notably HIV and AIDS and TB.

Multiple, usually interconnected factors increase risks of negative health outcomes for migrants ; these are generally exacerbated for migrants in irregular situations:

- *separation from family, familiar and accessible local context, loss of 'landmarks';*
- *precarious and marginal living conditions;*
- *absence of access to health services, health education, treatment;*
- *discrimination, including discrimination based on sex, sexual orientation, gender identity and xenophobia;*

4 United Nations General Assembly, International Convention on Economic, Social and Cultural Rights, Art. 12.

5 IOM, WHO, and OHCHR, *International Migration, Health and Human Rights* (Geneva: International Organization for Migration, 2013), 29.

6 WHO and IOM, "Tuberculosis Prevention and Care for Migrants," (October 2014), http://www.who.int/tb/publications/WHOIOM_TBmigration.pdf.

- *social exclusion and cultural marginalization, in some cases cultural repression;*
- *language and social communications barriers;*
- *specific health and HIV-related stigmatization;*
- *precarious, temporary, restricted legal status/recognition; as well as*
- *particular risks and vulnerabilities for migrants in irregular or undocumented situations;*
- *precarious access to work, absence of formal work for some; and*
- *difficult, degrading, or dangerous working conditions.*

Access to healthcare and realization of universal rights to health for unauthorized migrants is problematic everywhere. In addition to facing legal, social and practical barriers, unauthorized migrants generally lack sufficient financial resources to cover healthcare services.⁷ It is especially problematic in cases where states oblige undocumented migrants to cover all their healthcare costs.⁸ In the United States, healthcare services received by undocumented migrants are often not covered by any insurance.⁹ Undocumented migrants remain the largest uninsured group in the country and poverty levels among the group are accelerating.¹⁰

Restrictions on access to healthcare for undocumented migrants can cause an additional set of problems. In some places, it is common practice for migrants in an irregular situation to use identification or health care cards belonging to individuals who have legal status in the country in order to get healthcare treatment. This creates not only administrative complications, which can lead to access being even more difficult to achieve, it can also create real medical risks because treatments designed for one individual may be inappropriate or even harmful for another.¹¹

Regarding enhancing access to healthcare for migrants in irregular situations, Medicine Sans Frontiers (MSF) projects highlighted a number of 'good practice' initiatives to reach migrants with healthcare services: mobile clinics, cultural mediators, collaboration with local migrant-friendly NGO's, and advocacy.¹² Case study research carried out under the auspices of the ASEF Public Health Network covering a number of European and Asian countries demonstrated that NGOs play a major role in covering costs for healthcare provision to undocumented migrants and thus, in effect aid formal healthcare systems in 'saving money'.¹³ The report recommends that governments work closely with NGOs as they provide a key link in "providing medical services" to migrants, particularly those in irregular or undocumented situations.¹⁴

3. Social Protection

All persons, all migrants, are entitled to social protection. Social security has been defined as: *The protection which society provides for its members, through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity old-age and death; the provision of medical care; and the provision of subsidies for families with children.*¹⁵

For reference, *social security* first emerged in 1919 in the Treaty of Versailles. Social security for

7 Anderson E. Stanciole and Manfred Huber, "Access to Health Care for Migrants, Ethnic Minorities and Asylum Seekers in Europe," *European Center* (May 2009): 1-8.

8 Chauvin, P. et al. (2009) at 1-157.

9 Steven P. Wallace, Jacqueline Torres, Tabashir Sadeghi- Nobari, Nadereh Pourat, E. Richard Brown, *Undocumented Immigrants and Health Care Reform, UCLA Center for Health Policy Research* (April 2012): 1- 51

10 ANA ISSUE BRIEF, "Nursing Beyond Borders: Access to Health Care for Documented and Undocumented Immigrants Living in the US," (2010): 1-10.

11 UNDP (Bangkok, 2015), at 31.

12 "Access to Healthcare for the most Vulnerable Migrants: a Humanitarian Crisis, *Conflict and Health* 9 No. 16 (2015): 3.

13 ASEF Public Health Network, "Migrants and Healthcare- Social and Economic Approaches," (2014): 85.

14 ASEF Public Health Network, "Migrants and Healthcare- Social and Economic Approaches," (2014): 1- 122

15 See ILO, 2010. *Coordination of Social Security – Training Modules*

“all in need” was highlighted in the ILO Declaration of Philadelphia (1944). The Universal Declaration of Human Rights (1948) subsequently articulated social security as a basic human right for “everyone as member of society.” Basic social security principles were embodied progressively in ILO Conventions and Recommendations including on migrant access and international portability. These principles were reiterated in the European Code of Social Security adopted by Council of Europe in 1964 (revised in 1990).¹⁶ Specific regional accords among countries of the Caribbean, East Africa, the Gulf region and South America explicitly cover migrant worker access to and portability of social security coverage.

However, many migrants in regular situations and most in irregular situations cannot access participation and/or they find contributions and benefits are not transferable (portable) to home countries or elsewhere if and when they emigrate onward or repatriate to places of origin.

Due to undocumented, unauthorized or unrecognized status and presence, migrants in irregular situations tend to be denied access to and benefits of social protection, certainly to formal mechanisms. Ironically, unauthorized migrants contribute substantially to social security programs in a number of countries through mandatory employment enrolment and deductions, but never benefit although the systems do. The US social security administration calculated that over a recent 5 year period, it realized a 50 billion dollar surplus from contributions of unauthorized migrants who would never be able to claim benefits given that they were obliged to use invented numbers and/or addresses, enrolment numbers of other contributors, or otherwise did not have verifiable data to make and prove claims.

4. Housing and Shelter

This section to be developed.

Reference text below from PICUM:

Access to housing is one of the main problems for undocumented migrants whose situation is characterized by residential mobility. Many are forced to live as nomads because of the uncertainty of their income and their irregular status. Undocumented migrants often develop strategies to avoid controls on the housing market. They live in the homes of their legalised relatives, share rooms with other migrants, pay provisions to legal residents who act as the formal tenant or they rent on the unofficial housing market. Subsequently, housing can be very expensive and, quite frequently, apartments are overcrowded.

Undocumented migrants are disproportionately vulnerable to exploitation by unscrupulous landlords as they lack a means of redress. Often they are fearful to file a complaint against bad housing conditions because of their precarious status, and in many countries in the EU they are systematically denied access to any support or complaint measures.

Source : PICUM

5. Undocumented Children

This section to be revised.

Below is 'reference text' from PICUM

Who are undocumented children

Undocumented children are a diverse group, that often change between categories or statuses during the course of their childhood. For example, they may have submitted an application for international protection

¹⁶ See: Gruat, Jean-Victor. 1998. *Adequacy and Social Security Principles in Pension Reform*, OECD Ageing Working Paper 3.1, Organization for Security and Cooperation in Europe, Paris

as a family, which was refused, or applied for an official family reunification scheme through a family member with regular status, but not qualified.

As the child's status is dependent on their parents', they too become undocumented if the parent loses their residence or work permit. Children can be undocumented after having entered Europe irregularly and can even be born 'undocumented migrants', although they have never moved anywhere, because their parents are undocumented.

Why they become undocumented

There are few provisions in migration policy for child migrants. Some protections have been introduced for certain categories of migrant children in recent years, such as asylum-seeking, unaccompanied, or trafficked children. However, children who do not fit in to these categories are not protected. Moreover, procedures are not yet in place to ensure that children's rights are actually taken into account. This is especially the case when children are accompanied by their parents or other caregivers.

As a result, children are more at risk of becoming undocumented. Their individual situations are rarely considered in decisions to grant or refuse residence permits or claims for international protection. Their status is linked to their parents' status, so if their parent loses their status, so does the child.

Denied services and protection

At the same time, undocumented children are usually not considered in public social policies or are specifically denied access to services. Across Europe, undocumented children face legal and practical barriers to pursuing an education, getting the health care they need, and having a decent and stable home.

As for their parents, cases of violence and abuse against children cannot be reported to the police without risking arrest or family separation. This is because police often pay more attention to a victim's residence status than to the crime they have come to report. This places undocumented children at greater risk of experiencing or witnessing violence, as they and their families are 'zero risk' victims.

Detained and deported

Children are also subject to immigration control measures. This means that children are being apprehended, detained and deported. There are children that are awoken from their beds in dawn raids to arrest families. Children are detained, often in prison-like facilities alongside adults. Children are deported to countries they do not know. Child rights law states that children should never be detained for immigration purposes, nor repatriated or separated from their families, unless it is to protect them. Current practice falls far short of these standards.

PICUM RECOMMENDATIONS

- *A comprehensive and integrated approach: all migrant children's rights should be addressed and assured in all policy areas, with concrete actions by the different actors and coordination between them, at all levels of governance.*
- *Treat all children as individual rights holders – as children, first and foremost – in immigration and asylum procedures, including if they are accompanied by their parents or other caregivers. This should not jeopardise their right to family life.*
- *Children should be ensured non-discriminatory access to services, protection and justice. Laws, policies and practices that discriminate against children according to their migration or residence status should be revised to ensure that all migrant children's rights are explicit in law and accessible in practice. This includes pursuing proactive measures to address practical barriers.*
- *Evaluate enforcement regulations and practices – apprehension, detention and deportation – in order to assess the impacts on child rights and redress systematic and individual rights violations.*
- *Cease the immigration detention of children and families with children, as well as family separation through detention. Alternatives to detention for families that respect child rights should be developed and implemented.*
- *Existing legal safeguards should be 'operationalised' – made a reality in practice for children. For example, further guidance should be developed and delivered on how the best interests of the child principle can be applied in practice.*

- *Child rights tools that are being developed and implemented for certain categories of children should be adapted and applied to other groups of migrant children, and the promising laws, policies and practices that are improving protection of all children's rights regardless of status in some countries and localities should be transferred to others.*
- *Improve data collection methods, with full respect of data protection standards, establishing a firewall between population data and immigration enforcement. Ensure data is publicly available.*

IV. What is to be done

There are indeed solutions –proven remedies-- for irregular migration and the situation of unauthorized migrants. In addition to remedies and responses to particular areas of concern noted above, an overall framework or reframing is essential.

A rights-based perspective, long experience of many countries, recognizing social costs and benefits, economic needs and contributions, and imperatives of social cohesion all urge an overall strategic approach based on three principle lines, necessarily with a framing narrative:

- No human being is illegal/irregular;
- All residents in our societies have rights to be and to remain with full protection of rights and with opportunities to contribute productively.
- Inclusion and participation for all are the means to productive, sustainable and cohesive societies in our globalized and mobile world.

It will evidently take courage, adamant advocacy, and decisive action to 'do the right thing.' All the more so in the current climate. But the attitudes and action of citizens and of local governments around the world amply demonstrate that achieving inclusive communities with good governance is possible.

Five main law, policy and practice components for governance, all with proven practice.

1) Regularization. Period.

A. Formal regularization processes with ample, accessible 'safe and orderly' procedures

- Requiring documentation yes, but that which is feasibly provided by persons heretofore «undocumented» by necessity.
- May set minimum 'qualifying period', most large and successful regularizations have set minimum established prior stay in country at 2 to 5 years.
- While employment documentation may be requisite, access must be non-discriminatory for women, children, persons with disabilities or other situations precluding past employment.
- Providing for a 'permanent' type solution rather than precarious or time-limited; any renewal or revocation conditions must be confidence inspiring, not only to migrants but also to employers and communities.

B. Interim or in exceptional (political) situations: Policy and procedure of non-persecution, *make status a non-issue, rather rights protection and safety as bottom lines.*

Yes, this diverges from a control based approach, but it reflects the essence of free and democratic society. And upholds freedoms of movement, of identity, of place, of association, of choice.

- Decriminalize immigration law and infractions; reinstate prior predominance of immigration as civil and administrative law, codes and penalization of infractions.
- No engagement of immigration control and enforcement activity at or around schools, health facilities and social services; in residential neighbourhoods; and around workplaces, union facilities or where migrant workers gather; or around places of religious congregation.
- No immigration detention except in cases invoking criminal law.
- End deportation and forced expulsion (except where legitimate national security reasons or public safety can be justified)

- Provide ample incentives and support for voluntary departure and viable voluntary return and reintegration

2) Services and inclusion for all, notably at local level --already general practice in most cities in West

Ample references specifically to *refugees, migrants regardless of status and internally displaced persons* throughout the New Urban Agenda provide detailed orientation for city law, policy and practice applicable worldwide. The Agenda was agreed and approved at a highest level UN Habitat III world conference in Quito in October 2016, endorsed and supervised by the UN General Assembly and is explicitly complementary to the UN 2030 Sustainable Development Agenda.

3) Ample opportunities for circulation –within regions where most migrate

Already the case for more than half of world's migrants to greater or lesser degree in 13 regional economic communities concerning more than 100 countries.

However, urgent measures are required in many member states of some RECs and in some RECs as a whole to adopt legislation, policy and practical measures to ensure functionality of the respective systems, and to rescind laws, policies and practices that thwart or constrain effective realization in full of legal regimes for free movement, residence and establishment (employment and business).

4) Jobs, jobs, jobs

in all places.

People move or stay where they can provide for their families in peace and decency –with decent work and decent standards of well-being. Irregular migration is in many cases a direct vector and consequence of dysfunctional economies and dysfunctional States that leave many without access to decent work, or without any work and means to self-support at all. The response is a universal, serious and well-resourced application of the 2030 Sustainable Development Agenda, with particular attention to Goals and Targets addressing:

- National development planning, infrastructure, investment, support to enterprise development, labour market and labour regulation, and training and education
- All of which are needed –in coherent and coordinated approaches-- to prioritize «job rich» development in all countries with decent work intentions and standards.

5) Peace on earth ; end intervention in and support for armed conflict.

Most irregular movement today is out of war, conflict and repression –and the indecent hopelessness of conflict shattered countries.

Three broad but basic measures immediately applicable by a majority of States worldwide are:

- Ending foreign military intervention in armed conflicts,
- Stopping arms sales, particularly to countries and regions in conflict, and
- Ceasing overt or clandestine support to belligerents in internal «civil wars»

Realization of the first three lines will ensure that migration ultimately results in rights-respecting, just and beneficial outcomes for all and inclusive and sustainable societies. Broad implementation of the latter two policy lines will all but eliminate high «supply side» compelling pressures for irregular migration.

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DRAFT at 16 September 2017

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