



PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

**NGO Round Table Report on
Civil Society Strategies to Promote the
Use of Regularisation Programmes for
Irregular Migrants in Europe**

Strasbourg, 1 October 2007

This report, prepared by PICUM on behalf of the Council of Europe's Committee on Migration, Refugees and Population, presents the proposals made by civil society to promote the use of regularisation programmes for irregular migrants in Europe at the NGO Round Table in Strasbourg on 1 October 2007. It also takes into account the Committee on Migration, Refugees and Population Report on "Regularisation Programmes for Irregular Migrants" hereafter referred to as the Greenway report, and Resolution 1568 and Recommendation 1807 (2007) of the Parliamentary Assembly.

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PICUM, the Platform for International Cooperation on Undocumented Migrants, is a non-governmental organization that aims to promote respect for the human rights of undocumented migrants within Europe. PICUM also seeks dialogue with organizations and networks with similar concerns in other parts of the world.

PICUM promotes respect for the basic social rights of undocumented migrants, such as the right to health care, the right to shelter, the right to education and training, the right to a minimum subsistence, the right to family life, the right to moral and physical integrity, the right to legal aid and the right to fair labour conditions.

PICUM's activities are focused in five main areas:

1. **Monitoring and reporting:** improving the understanding of issues related to the protection of the human rights of undocumented migrants through improved knowledge of problems, policies and practice.
2. **Capacity-building:** developing the capacities of NGOs and all other actors involved in effectively preventing and addressing discrimination against undocumented migrants.
3. **Advocacy:** influencing policy makers to include undocumented migrants in social and integration policies on the national and European levels.
4. **Awareness-raising:** promoting and disseminating the values and practices underlying the protection of the human rights of undocumented migrants among relevant partners and the wider public.
5. **Global actors on international migration:** developing and contributing to the international dialogue on international migration within the different UN agencies, international organizations, and civil society organizations.

PICUM has nearly 90 affiliated members and 90 ordinary members in approximately 20 countries in Europe and beyond. PICUM's monthly newsletter on issues concerning the human rights of undocumented migrants is produced in seven languages and circulates to PICUM's network of more than 2,400 civil society organizations, individuals and further.

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Forward

The question of irregular migration has made its way on to policy agendas across Europe, both at the level of the European institutions, the nation states, regional and local government, and the administration of the public services.

The governments of many countries are inclined towards often alarmist positions, claiming that the movement of people across frontiers without the appropriate forms of approval represents a fundamental threat to the integrity of the nation state and the principles of sovereignty and self-determination. The European institutions, such as those of the European Union and the Council of Europe, are inclined to look at these matters somewhat differently. Advances towards peace and cooperation across the region in the second half of the last century depended on the pooling of sovereignty to ensure that a uniform standard of human rights were maintained. Agreement on common standards has allowed Europe to make progress across the past 60s years in the realms of human rights and democracy, and in organising the terms of commerce and trade across national frontiers.

Aspects of immigration policy have already passed into the realm of European cooperation, with the European Court of Human Rights available to rule on issues which fall within the province of the Convention on Human Rights, and the European Union upholding the right of free movement across its internal frontiers for citizens of member states.

The long involvement of the European institutions in the various aspects of immigration policy should encourage a degree of optimism that they will have something positive to contribute in the vexed area of irregular migration and the position of undocumented migrants. For this reason the resolution adopted by the Parliamentary Assembly of the Council of Europe in October 2007 should be warmly welcomed as a positive engagement on the part of an institution with vast expertise across a wide range of policies which affect the lives of people living in nations that stretch from the borders of central Asia to the shores of the Atlantic ocean.

In adopting the recommendations of the Greenway Report, the Assembly has set out a programme for inquiry, research and cooperation which has the scope for involving civil society at all levels, as well as national governments and Parliaments. The convening of a roundtable of representatives of leading immigration rights NGOs across Europe in Strasbourg on 1 October 2007, provides encouraging evidence of the commitment of the Council of Europe to rooting its initiatives in the work of organisations and networks which work in the interests of millions of people across the region.

It is vitally important that the proposals set out in the Greenway Report, discussed in detail in the sections that follow, are taken up and acted on. The call for a public hearing of evidence about the situation of undocumented migrants in Europe today, has huge potential for opening up discussion in a positive way, and involving a wide range of organisations operating at national, regional and local levels whose work brings them into contact with the plight of people who are often in an extremely vulnerable situation. The final section of this report sets out a series of proposals intended to transform this discussion into immediate, vital action.

There are no compelling reasons to believe that the governments of European countries have found their own independent routes to good, practical policies in dealing with irregular migration and the position of undocumented migrants. There have undoubtedly been positive experiences on some issues in some countries in recent years, such as the regularisation exercise in Spain which benefited nearly 700,000 people in 2005. Work around the Greenway recommendations could play an invaluable role in increasing awareness about such constructive initiatives and in discussing ways in which they could be repeated in other countries.

But many of the most important and hopeful developments at work in and around the position of undocumented migrants have taken place outside the reach of central government, and are to be found in the work of regional and local councils, in public services, such as the health services, in the trade unions support of vulnerable migrant workers resisting exploitation, churches and faith organisation networks in promoting an ethos of solidarity with people in need, and in anti-poverty campaigns and human rights associations across the length and breadth of Europe.

The ideas discussed during the NGO Round Table discussion in October set out many practical ideas for cooperation on projects and initiatives that would engage civil society and the European and national institutions. We hope that what was discussed on that day, and the recommendations which marked the conclusion of the day, will be read with interest by a wide audience right across Europe, and that it will lead to closer contact and new working partnerships to develop and advance action and policy in this vital area.

Don Flynn
Chair, PICUM
London, 14 January 2008.

Background

Various events were planned in Strasbourg on 1 October 2007, as a lead up to the Parliamentary Assembly debate on regularisation. Civil society, including representatives of irregular migrants and human rights organisations, journalists, ombudsman, national parliamentarians and others were encouraged to participate in and contribute to these events. The programme consisted of an NGO round table meeting, a demonstration/picnic, a meeting of the Committee on Migration, Refugees and Population, a press conference and finally the Parliamentary debate.

NGO Round Table

Comité Intermouvements Auprès des Evacués (CIMADE), in cooperation with the **Platform for International Cooperation on Undocumented Migrants (PICUM)** and the **Independent Non-Governmental Organisations with Participatory Status with the Council of Europe** organized the NGO Round-Table on “Regularisation Programmes for Irregular Migrants” held on 1 October 2007 at the Council of Europe, Strasbourg.

The purpose of the round-table meeting was to further the discussion on regularisation programmes in Europe. It was held prior to the **Parliamentary Assembly of the Council of Europe** debate, concerning a report entitled, “Regularisation Programmes for Irregular Migrants”, prepared by British Parliamentarian Mr. John Greenway for the **Committee on Migration, Refugees and Population. Resolution 1568 and Recommendation 1807 (2007)** were to be voted on at the Parliamentary Assembly.^{1 & 2} Civil society was encouraged to contribute to the debate and to propose strategies for promoting the use of regularisation programmes for irregular migrants in Europe.

Demonstration (Picnic)

A picnic of dedicated citizens was also organised outside the Council of Europe by **Réseau Educations Sans Frontières (RESF)** from 12:30 to 14:30, to allow members of the Parliamentary Assembly of the Council of Europe to meet representatives of organisations in contact with irregular migrants.

RESF voiced its support of the Greenway Report and their interest in the debate taking place at the Parliamentary Assembly. “The approach developed in the report you will study seems for us to deal with the question in a humane and realistic way. In particular, it’s based on the respect of human rights and on the real examination of the situation”, proclaimed RESF.³

Press Conference

A press conference followed the meeting at 14:30 with the participation of the Rapporteur Mr. John Greenway, PICUM Chair Mr. Don Flynn and Ms. Françoise

¹ John Greenway (Rapporteur), ‘Report of the Committee on Migration, Refugees and Population; Regularisation Programmes for Irregular Migrants’, (July 2007), Doc. 11350. Available online at: <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc07/edoc11350.htm>

² See Resolution 1568 (2007) on Regularisation Programmes for Irregular Migrants. Available online at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1568.htm> and see Recommendation 1807 (2007) on Regularisation Programmes for Irregular Migrants. Available online at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/EREC1807.htm>

³ Réseau Education sans Frontières (RESF) (Network for Education Without Borders), ‘Letter addressed to Parliamentary Assembly’, 25 September 2007, (Strasbourg: RESF, 2007)

Poujoulet, a representative from CIMADE. “There are 5.5 million undocumented migrants living within the European Union and it is practically impossible to send them back. We cannot leave them living in the margins of society working in the black economy indefinitely”, reported Mr. Greenway at the press conference.

The Greenway Report ⁴

Mr John Greenway’s report for the Committee on Migration, Refugees and Population examines regularisation campaigns that have been held in nine European countries since 1981⁵. The report states that during this time over 4 million immigrants have been regularised through more than 20 programmes. It estimates that there are over 5.5 million irregular migrants living within the EU, with another 8 million in Russia. The report concludes that regularisation programmes should be used as one of many tools for the management of migration in Europe, in conjunction with other internal and external controls. Programmes should be carried out in a humane way, respecting the rights of migrants and their families.

The report acknowledges that the use of regularisation programmes has been highly controversial in member states, examining both the benefits and concerns surrounding their implementation. It instructs the Council of Europe intergovernmental Committee to undertake further research on the outcome of past regularisation programmes and the effectiveness of return programmes. It also asks the Committee to organise a major hearing on the issue involving government and civil society representatives. The report asks that member states adopt a number of accompanying measures when implementing regularisation programmes, including strengthening the administration, consulting employers and civil society, and ensuring publicity of the programmes.

It further recommends that a broad set of principles regarding regularisation programmes in Europe be established, while recognizing that each country’s unique social, political, cultural and economic characteristics require programmes to be tailored to their particular needs. It advises “the Council of Europe Human Rights Commissioner to encourage member states to implement regularisation programmes as a means of safeguarding the human dignity and human rights of a particularly vulnerable group of persons in member states of the Council of Europe.”⁶

Welcome and Introduction

Mr. John Greenway, a British Parliamentarian (European Democratic Group) appointed by the **Parliamentary Assembly of the Council of Europe’s Committee on Migration, Refugees and Population** to prepare the report on “Regularisation Programmes for Irregular Migrants” opened the discussion with a brief speech. The Rapporteur began by stressing the importance of the upcoming debate at the Assembly for the management of migration in Europe. He commended the Assembly’s courageousness in making decisions that do not necessarily conform to the political stance of national governments. He also explained his shock, since becoming an Assembly member, at the scale and human cost of migration. “It is simply not acceptable to have 5.5 to 6.5 million migrants within the European Union living in our communities, to shrug them off and to say that we should send them all back,” he said.

⁴ See Greenway (2007)

⁵ *Ibid.* The nine countries are Belgium, France, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

⁶ Greenway (2007)24, page 5.

Mr. Greenway went on to propose four strategies for the future of regularisation programmes in Europe:

1. Increased debate on the successes and failures of implemented regularisation programmes.
2. Analysis of national return programmes, their practicality and prevalence.
3. Factual examination of the dynamics of regularisation programmes.
4. Planning of a major hearing on the issue.

“This is a humanitarian and human rights issue”, declared Mr. Greenway, and went on to express his personal view that many families living in an irregular situation in Europe would have to be regularised, in keeping with the Council of Europe’s mandate of protecting human rights.

“It is simply not acceptable to have 5.5 to 6.5 million migrants within the European Union living in our communities, to shrug them off and to say that we should send them all back.”

MR. JOHN
GREENWAY

Mr. Michel Julien, President of the **North South Dialogue and Solidarity Grouping of INGOs with Participatory Status with the Council of Europe**, followed by elaborating on several points of relevance with regards to the North South Dialogue and Solidarity Grouping, including the 2003 TLEMCEN Forum on intercultural and inter-faith dialogue, the 2005 MESSINA Forum on integration and migration⁷, and the 2006 Algiers Forum on North-South Mediterranean Dialogue.

The path ahead is regularisation.”

MR. MICHEL
JULIEN

Since 1981 twenty regularisation programmes have affected almost 4 million irregular migrants, yet, as Mr. Julien indicated, there is no unified European position on the use of regularisation programmes, neither for the Council of Europe nor for the EU. “The path ahead is regularisation”, insisted Mr. Julien.

Ms. Marie Odile Wiederkehr, President of the Regional Council of **CIMADE** and the Meeting Chair welcomed the participants and presented some commentary on the Greenway Report. She argued that the report had one major positive point, namely its pragmatic approach to the problem of irregular migration in Europe. She underlined that, as stressed by the Greenway report, regularisation programmes would provide undocumented persons living in Europe with a legal status, a solution that would enable the protection of their human rights and dignity, to which European states are committed. In her opinion, the report views regularisation as a tried and tested solution, that increases tax revenue for receiving countries and cuts down on the scale of the underground economy. “Of course, some people think that protection of human rights is not really a priority, but if we tell those same people that there is going to be an economic advantage, those same people just prick up their ears and listen”, remarked Ms. Wiederkehr.

She explained that the report seeks to address the criticisms of which regularisation programmes are often a target, including the argument that regularisation simply rewards law-breakers and creates a pull effect for migrants. The Rapporteur had demonstrated that these disadvantages have been overstated and that the reasons for migration are manifold. Ms. Wiederkehr also stated that regularisation programmes should be carefully thought through if they are to be effective; they must involve input from the migrants themselves, in coordination with businesses and trade unions. She stressed the

⁷ See Messina Declaration of 12 November 2005. Available online at: http://www.coe.int/t/e/ngo/public/Messina_Declaration.asp

importance of the NGO meeting in accurately informing public opinion and in moving away from oversimplification of the issue.

In her concluding remarks, she proposed discussing strategies for promoting regularisation programmes in Europe. National or Europe-wide campaigns and demonstrations could be engaged in, such as those organized by the French based Réseau Educations Sans Frontières (RESF), to heighten the profile of actions.

Opening Presentation

Mr. Don Flynn, Chair of the **Platform for International Cooperation on Undocumented Migrants (PICUM)**, presented the opening speech on the European experience with regularisation programmes and coordination in promoting the rights of undocumented migrants. He introduced PICUM, a Europe-based network consisting of about 4,000 organizations including those from across the globe.

“Irregular migration is something that is generated out of the engine room of the economic system itself – it is an additional category of migrants within the concept of managed migration.”

MR. DON FLYNN

Mr. Flynn elaborated on PICUM’s analysis of the current situation with regards to irregular migration. He explained that the mobility of labour is built into the system of economically driven globalisation, frequently taking the form of irregular migration. States have pursued a policy of “managed migration” as a response to this phenomenon, concentrating on the management of skilled workers. The difficulty of such a system was that it failed to recognise that migration takes place across the skill scale. States often expect low-skilled work to be taken over by groups within society, including students and tourists, even though this is not sustainable: “Irregular migration is something that is generated out of the engine room of the economic system itself – it is an additional category of migrants within the concept of managed migration.” Mr. Flynn continued by commenting on the financial costs generated by such a system of managed migration, for example the expense of carrying out tests and the fees associated with processing visas and filling out lengthy documents. He argued that this put an increased burden on migrants, thereby weakening their control over their own situation.

After outlining the current situation of irregular migration in Europe, Mr. Flynn then described the diversity of responses to the problem. The state response has invariably been a police response focused on enforcement, he reflected. On the other hand, with growing levels of knowledge accumulating through increased contact on the real predicament of irregular migrants, civil society actors, including trade unions, are increasingly adopting a position of solidarity rather than animosity towards migrants. He observed that a pragmatic response is being sought, as dialogue with the people who are supposedly cast-off develops, as witnessed in a recent health care conference organized by PICUM.⁸ “When we talk about irregular migrants we are not talking about, as many national governments do, a marginal delinquent minority.” Mr. Flynn ended his presentation by welcoming the upcoming Council of Europe initiative as an event that could possibly take the movement forward.

Country Experiences

⁸ See PICUM, ‘Report of PICUM International Conference on Access to Health Care for Undocumented Migrants in Europe, 28-29 June 2007’, (Brussels: PICUM, 2007). Available online at: <http://www.picum.org/>

France

Ms. Sarah Belaisch, representative of the French-based NGO **Comité Intermouvements Auprès des Evacués (CIMADE)**, initiated the first round of presentations on country experiences of regularisation programmes. She discussed the Circular of 13 June 2006⁹ in France concerning the regularisation of families of schooled children.

Ms. Belaisch argued that the programme was more of a media spectacle than an honest attempt at regularisation. Of more than 300,000 applicants, the Ministry of Interior officially announced that only 6,924 had been regularised. Ms. Belaisch elaborated on the situation prior to the circular, during which the French government increasingly decided to expel irregular migrants. With several “scandalous cases” attracting public attention and the mobilization of the grass roots Réseau Education Sans Frontières (RESF), the Minister of Interior Affairs Nicolas Sarkozy was forced to allow the regularisation of families with schooled children.

Ms. Belaisch went on to describe the conditions stipulated in the programme. She said that families were to be regularised, subject to the state informing them about possible assistance to return to their countries of origin and the family having rejected the accompanying financial support. Ms. Belaisch maintained that there were three objective and three subjective criteria to be fulfilled by the applicants:

Objective Criteria:

1. More than two years of residence of the parents in France.
2. The child had to either be born in France or to have lived there before the age of 13.
3. Schooling of the child, including nursery school, since September 2005.

Subjective Criteria:

1. The child had to have no ties to his/her country of origin.
2. The family had to be fully integrated into French society.
3. The parents must have been responsible for the child’s care and education since his/her birth.

Right from the beginning, the ministries were unprepared for the implementation of these measures, criticized Ms. Belaisch. She pointed out that the ministries could not cope with the number of applicants, thereby causing disorganization - families not being properly received, and police involvement in sending people away from overcrowded facilities. Families were only given two months to send in their documents and the prefectures were not prepared to assess whether certain criteria, particularly the subjective criteria, were fulfilled.

After 24 July 2006 a shift in policy emerged, whereby a quota was established for the regularisation of 6,000 people. According to CIMADE, this led to more restrictive screening and a massive rejection of applicants.¹⁰ Ms. Belaisch mentioned that often families in exactly the same situation received unequal treatment. A programme that

⁹ Circulaire N. NOR/INT/K/06/00058/C. Available online at: http://www.interieur.gouv.fr/sections/a_votre_service/lois_decrets_et_circulaires/2006/intk0600058c/downloadFile/file/INTK0600058C.pdf

¹⁰ CIMADE, ‘Rapport d’Observation : De la Loterie à la Tromperie’, (Paris: CIMADE, 2007) Available online at: http://www.cimade.org/downloads/Cimade_Rapport_circulaire.pdf

incited hope in irregular migrant families eventually led to their disillusionment and ultimately fear of being sent back, she related.

In conclusion, Ms. Belaisch reiterated her opening statement about the 2006 programme being a media operation for the French government. She reflected that it allowed the government to present itself as both humane and firm while at the same time weakening the mobilization of activists.

Spain

Ms. Marta Sainz de Baranda from **ACCEM** followed with her presentation of the situation in Spain. She asserted that the programmes in Spain were more successful than those in France. As the Greenway report details, Spain has implemented more regularisation programmes than any other European country; there have been six since 1985.¹¹ The most recent “2005 Normalization Process” was the result of a government policy in consultation with trade unions, employers associations and NGOs.¹²

“Our goal as an NGO is to improve the existing ways of gaining legal status for undocumented migrants – to open new lines without forgetting the most important issue, which is to protect the basic rights of those migrants.”

MS. MARTA SAINZ
DE BARANDA

In Ms. Baranda’s opinion, the 2005 programme was a successful one in that it achieved the intended goal of reducing the size of the underground economy and satisfying the existing demand for foreign labour, while increasing government revenue. Employers were held responsible for submitting applications of foreign workers, which reduced administrative costs, and ACCEM was appointed by the Spanish government to inform civil society and to advise migrants on the application process.

“It is difficult to identify a single model of regularisation programmes”, Ms. Baranda asserted. She continued by outlining the specificities of the Spanish context: a robust demand for low-skilled foreign labour, existence of one of the largest informal economies in the EU characterized by an overly relaxed attitude towards the contracting of undocumented migrants, and sluggish regular channels of entry. The Spanish government had to adhere to its

human rights responsibilities, particularly in relation to return, and to address the societal marginalization of undocumented migrants, which often left them vulnerable to exploitation.

Regularisation in Spain continues to be a controversial issue, receiving criticism from the main opposition party within the country and other EU member states. Considering this, the current government has not mentioned any intention of operating another regularisation programme.

Ms. Baranda ended her presentation by reiterating ACCEM’s solution concerning the use of regularisation programmes for irregular migrants in Spain. ACCEM’s stance is that permanent programmes granted on a case-by-case basis should be carried out, believing that this approach would be less likely to draw the type of attention that a large-scale effort would. “Our goal as an NGO is to improve the existing ways of gaining legal status for undocumented migrants – to open new lines without forgetting the most important issue, which is to protect the basic rights of those migrants.”

¹¹ Greenway (2007)23, page 10.

¹² Ministerio de Trabajo y Asuntos Sociales, ‘Proceso de Normalización de Trabajadores Extranjeros’, 2005. Available online at: <http://www.mtas.es/migraciones/proceso2005/>

Portugal

The third speaker, **Ms. Camila Rodrigues**, from the **Jesuit Refugee Service Portugal**, related the Portuguese experience with regularisation programmes. Ms. Rodrigues began with a brief historical analysis, pointing out that Portugal had traditionally been a country of emigration. The migratory flux changed to one of immigration, after the revolution in 1974 and subsequent independence of the African colonies. The 1980s and 1990s were marked by an atypical increase in the foreign population residing in Portugal, mainly from the former African colonies (PALOPS)¹³, Brazil and eventually also Eastern Europe.

Ms. Rodrigues continued by laying out the legal context in which the Portuguese government has been dealing with the influx of immigrants. In 1992¹⁴ an extraordinary regularisation programme swung into force with the objective of solving the inflow problem of irregular immigrants through a coupling of legalization with restrictive legislation. She reported that, while in practice the programme effectuated few changes in migratory flux, a new extraordinary regularisation programme implemented in 1996¹⁵ resulted in an increase of almost 8% in the foreign population residing in Portugal. Again in 2001 and 2004,¹⁶ extraordinary regularisation processes occurred, the implementation of which was strongly influenced by the employment sector.

“The successive governments always adopted a reactive posture; recognizing that former regulation mechanisms failed and, as a consequence, creating extraordinary regularisation processes or amnesties to legalize undocumented migrants”, summarized Ms. Rodrigues. Accordingly, 59% of documented migrants in Portugal have obtained their legal status through an extraordinary regularisation process, she maintained.

Ms. Rodrigues concluded by mentioning the new law 23/2007 of 4 July, which has not yet been regulated.¹⁷ She suggested that the new law reveals a shifting government perspective with regards to migration; the phenomenon of migration is seen more as ever changing and constant. It has officially been recognized that the Portuguese employment sector needs immigrant workers and that regulation instruments used thus far have been ineffective. The government priority now is to promote the creation of channels for legal migration and to efficiently manage migratory fluxes. Ms. Rodrigues also elaborated on the role of civil society, through the creation of COCAI (Consultative Council for Migration) in 1998, which was set up to promote consultation and dialogue between the government and representatives of immigrants and ethnic minorities, including representatives of the employment sector.¹⁸

¹³ PALOPS countries are Angola, Mozambique, Guinea Bissau and São Tomé e Príncipe.

¹⁴ Decreto-Lei n.º 212/92, de 12 de Outubro 1992, ‘Institui o primeiro processo de legalização extraordinária de imigrantes clandestinos’.

¹⁵ Lei n.º 17/96, de 24 de Maio 1996, ‘Estabelece um processo de regularização extraordinária da situação dos imigrantes clandestinos’. Available online at: http://www.igf.min-financas.pt/infllegal/bd_igf/bd_legis_geral/leg_geral_docs/LEI_017_96.htm

¹⁶ Altera o Decreto-Lei n.º 244/98, de 8 de Agosto, ‘que regula as condições de entrada, permanência, saída e afastamento de estrangeiros do território nacional’, and Artigo 71 do Decreto-Lei n.º 6/2004, ‘Lei da Imigração Ilegal e da Expulsão’.

¹⁷ Lei n.º 23/2007 de 4 Julho 2007, ‘Aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional’. Available online at: http://www.refugiados.net/cidadevirtual/legislacao/leis/lei_23_2007_estrangeiros.pdf

¹⁸ COCAI was created by the Decreto-Lei n. 39/98, de 27 de Fevereiro, 1998.

“The successive governments always adopted a reactive posture; recognizing that former regulation mechanisms failed and, as a consequence, creating extraordinary regularisation processes or amnesties to legalize undocumented migrants.”

MS. CAMILA RODRIGUES

United Kingdom

Mr. Raymond Perrier, Coordinator of the UK-based **“Strangers into Citizens”** campaign led by the **Citizen Organizing Foundation**, an alliance of community based organizations, followed by chronicling the evolution of the campaign within the context of the United Kingdom.

Mr. Perrier commenced with an analysis of the situation of migration in the UK. Britain has been a great draw for migrants, with government estimates assessing the number of irregular migrants at about half a million. This problem is often politically denied or remedied through strategies that are wholly unrealistic, he added. Neither of the main political parties has taken a position on the issue, out of fear of political suicide. Rates of deportation have increased substantially in the past years, even though, as Mr. Perrier suggested, it would take 25 years and cost the government seven billion Euros to carry out a mass deportation at the current rate. From Mr. Perrier’s perspective, “the presentation of the problem is one which is informed by rhetoric rather than reason”.

Strangers into Citizens, put forward with the assistance of the Institute for Public Policy Research (IPPR), proposes a one-off earned “amnesty” for those who have resided in the UK for a minimum of four years in an irregular position. They would be granted a two-year right to work, and at the end of that time, pending a test for English proficiency, they would be entitled to a right to proclaim indefinite stay in the UK.

Mr. Perrier revealed that the campaign has received a groundswell of support, owing to the fact that many of the irregular migrants are very much a part of their local communities. A London rally on 7 May 2007 gained national attention, with over 20,000 participants, including leading members of the Roman Catholic and Anglican churches. In his presentation, Mr. Perrier referred to a measure recently passed by the Liberal Democratic Party that is more or less similar to the campaign’s proposal, although he observed that due to the upcoming elections the recommendations would probably not be proposed.

“The presentation of the problem is one which is informed by rhetoric rather than reason”

MR. RAYMOND
PERRIER

For Mr. Perrier, the goal of Strangers into Citizens is to change the debate to one characterized by reason. If such irregular migrants were to be regularised, he expounded, the net gain to the British taxpayer would be about 1 billion Euros per year. “Irregular migrants are certainly not going to go home of their own accord, therefore the alternative would be to have so many people living in the shadows in an unjust situation.”

The campaign is now going into its second phase of addressing those people who are not yet willing to publicly voice their support, including, in Mr. Perrier’s opinion, the new Prime Minister and the deputy leader of the Labour party.

At the end of his presentation, Mr. Perrier reiterated that the UK government policy has increasingly been one of internal and external restriction and control. Faced with this

resistant political environment, emphasized by a hostile media, it is important not to underestimate the scale of the task ahead.

Netherlands

Ms. Dominique van Huijstee of **Stichting Los** in Utrecht, examined regularisation programmes in the Netherlands. She reiterated the analysis in the Greenway report that the number of regularisation programmes and regularised migrants in the Netherlands has been very small. There are estimates, however, that the number of irregular migrants currently living in the Netherlands varies between 100,000 and 200,000. In her analysis, the Dutch programmes either aim at regularising irregular migrant workers or ex-asylum seekers. Given this divide, Ms. Van Huijstee split her presentation to independently address each target group: migrant workers, asylum seekers and also children.

Important criteria for regularisation programmes of migrant workers have always been uninterrupted long duration of stay and working history, suggested Ms. Van Huijstee. As stated in the Greenway report, in 1975 exactly 10,416 migrant workers, of mainly Moroccan and Turkish origin, were given residence permits.¹⁹ However, Ms. Van Huijstee asserted that subsequent regularisation programmes completed in the 1990s were characterized by large rejection rates.

“According to DCI-NL, Dutch immigration law and practice ignores the individual interests of the child and does not give them full right to participate in the residence proceedings ... Expelling the child after more than five years of residence in the Netherlands causes damage to the development of the child.”

MS. DOMINIQUE
VAN HUIJSTEE

A regularisation programme specifically for asylum seekers who had been waiting for five years or more for a decision on their first application by the government was initiated in 2003, following a huge influx of refugees into the Netherlands in the 1990s and subsequent campaigns by NGOs. “5,800 files were examined, 2,079 were granted a residence permit and 3,703 were rejected,” Said Ms. Van Huijstee. In 2003, the newly appointed Minister for Integration and Immigration, Ms. Rita Verdonk, resolved that the remaining 26,000 rejected asylum seekers were to be returned, attracting both national and international criticism. As Ms. Van Huijstee elaborated, continuous campaigning from especially smaller NGOs finally attained results by focusing on the media and public opinion to keep the subject on the political agenda. In December 2005, the Dutch labour party, PVDA, accepted a motion for a regularisation programme. Finally after the elections in 2006, PVDA formed a new government with the Christian Party and made this an important issue. As a result, in June 2007 the Parliament reversed previous government policy and voted to

allow 30,000 failed asylum seekers, who had applied before 2001, to stay in the Netherlands.

Ms. Van Huijstee looked at a third case, focussing on the experience of children. Defence for Children International the Netherlands (DCI-NL) had embarked on a test case, challenging the Dutch government’s immigration policy as a violation of various articles in the Convention on the Rights of the Child (CRC)²⁰, among them articles 2, 3, 6 and 12. “According to DCI-NL, Dutch immigration law and practice ignores the individual interests of the child and does not give them full right to participate in the residence

¹⁹ Greenway (2007) 61, page 16.

²⁰ The Convention on the Rights of the Child. Available online at: <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

proceedings.” DCI-NL argued that expelling the child after more than five years of residence in the Netherlands, “causes damage to the development of the child”, reported Ms Van Huijstee. The judge eventually declined the case although it is still to be decided whether an appeal will be made.

As a final analysis of the experience in the Netherlands, Ms. Van Huijstee acknowledged that a considerable negative shift in asylum policy was caused by the influx of refugees in the 1990s. Furthermore, Dutch policymakers’ fear of migrants coming in and benefiting from the elaborate social welfare system was a main reason for not creating an open migration policy and decent regularisation programmes. This is only recently starting to slowly change.

Germany

Mr Udo Moerschen, Chairman of the **Flüchtlingsrat im Kreis Viersen**, recounted the German experience with regularisation programmes. Germany is not mentioned in the Greenway report and, as Mr. Moerschen pointed out, has never had a campaign to support undocumented migrants in gaining a legal right to stay. The German government does not take official notice of undocumented migrants, even though their numbers may be estimated between 100,000 and 1 million, as Mr. Moerschen recounted. Irregular entry and residence in Germany is considered an offence.

Despite this reality, Mr. Moerschen explored a different group, for which regularisation programmes have been actualised, namely “tolerated persons”: those who have no right of residence but do exist in a documented manner. These individuals often reside for more than 10 years in a state of “deferred deportation”, due to various humanitarian, formal or practical reasons. The first two regularisation campaigns were launched in Berlin in 1987 (4,000 regularised persons) and Lower Saxony in 1990 (unknown number of regularised persons), when the number of these “tolerated persons” exceeded 200,000. In 1990, a new Aliens Act²¹ implemented the first regularisation campaign for the whole of the Federal Republic of Germany, allowing asylum-seekers and “tolerated persons” the right to stay if they had been resident for more than eight years, continued Mr. Moerschen. In 1996, another campaign for “hardship cases” effectuated the approval of only 8,000-9,000 persons for a residence permit due to strict restrictions, although in 1999, out of 50,000 applicants, 30,000 succeeded. In 2001, a campaign especially for Yugoslavians and Bosnians granted a residence permit to 20,000 persons.

When the number of tolerated persons again exceeded 200,000, a new campaign started in 2006 until June 2007. More than 14,000 out of 71,000 applicants were approved. Most recently in August 2007, the Immigration Act²² was changed to include another programme, with the required criteria of maintaining oneself financially and having resided in Germany for more than six years (families) or eight years (singles). One important difference in this last programme is the granting of residence permits in advance for those applicants still looking for a job. As a final note, Mr. Moerschen reflected that analysis concerning this last campaign would have to wait.

²¹ The Aliens Act of 9 July 1990 (Ausländergesetz AuslG). Available online at: http://www.fluechtlingsinfo-berlin.de/fr/pdf/AuslG_1990

²² Changes to the Immigration Act made 19 August 2007 (Zuwanderungsgesetz). Available online at: http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Nachrichten/Pressemitteilungen/2007/08/Reform_Zuwanderungsgesetz.templateId=raw,property=publicationFile.pdf/Reform_Zuwanderungsgesetz.pdf

Belgium

A presentation on the final country, Belgium, was given by **Ms. Marine De Clynsen**, of **CIRÉ (Coordination et Initiatives pour et avec les Réfugiés et Étrangers)**, a platform of social associations active in the fight for and with refugees and foreigners. The organization works on two separate levels: at the policy level, articulating a political standpoint and lobbying authorities on various issues, and at the local level, developing projects and offering services to migrants.

Ms. De Clynsen began by commenting on the Belgian context regarding the legal possibilities for immigrants to stay in the country. During the 1940s and 50s there was an inflow of immigrants from Greece, Italy and Spain to Belgium, and in the 1960s and 70s predominantly from Turkey and Morocco. Following an economic recession in the early 1970s, Belgium decided to close its borders to foreign labour in 1974, except for skilled labour. Ms. De Clynsen stated that, in Belgium, the single piece of legislation guiding the acquisition of a resident permit is the Law of 15 December 1980,²³ which stipulates that the only possible ways of obtaining a permit for a long duration of stay (more than three months) are through an asylum application, family reunion, marriage, student status or for humanitarian reasons.

This law has undergone continuous reform since 1980, continued Ms. De Clynsen, along the lines of reducing social rights, strengthening conditions for approval, and allowing the possibility of retention of asylum seekers. Over the years 2006/2007, the law has changed in depth modifying the regularisation procedure for asylum seekers, making conditions for family reunion harder, including other more restrictive reforms. Parallel to these amendments, there has been a policy of return of foreigners.

Ms. De Clynsen went on to criticize the asylum procedure in Belgium. She argued that there was a high presumption of fraud without enough consideration of the protection of asylum applicants. She also disapproved of the arbitrary character of regularisation policy in Belgium, its lack of transparency and lack of legal criteria.

Belgium has predominantly applied the case-by-case approach for regularising migrants, remarked Ms. De Clynsen. One main difference in Belgium, compared to many other European countries, is the emphasis on humanitarian rather than economic grounds for application. She continued by mentioning several regularisation campaigns that took place in Belgium, in particular that of 2000. The objective of this procedure was to do away with the backlog of asylum applicants and to regularize migrants living in an irregular situation; therefore an independent commission and legal criteria for regularisation were established. The procedure was to be carried out in parallel with a complete reform of the asylum procedure, however the reforms did not materialize, generating a new backlog of applicants. The independent commission and legal criteria have also since been dismissed.

She maintained that the past four years have been characterized by a permanent division between the Ministry of the Interior and the *sans-papiers* wishing to obtain

“Today collective action and this permanent fight seems to be the only possible solution despite its unofficial character.”

MS. MARINE
DE CLYNSEN

²³ The Law of 15 December, 1980 (Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers / Van de Wet 15 December 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen). Available online at: http://www.dofi.fgov.be/fr/reglementering/belgische/wet/Loi_Version20070606.pdf

regularisation; the government is unwilling to offer a new campaign and only forceful methods by these migrants (such as numerous hunger strikes) seem to bring advances. “Today collective action and this permanent fight seems to be the only possible solution despite its unofficial character”, she ascertained.

In summary, Ms. De Clynsen noted that Belgian government decisions regarding regularisation have been arbitrary and reactive in nature rather than proactive. She argued for the creation of an independent body to work on the issue and to set up a clear regularization policy founded on established criteria.

Discussion

Ms. Marie Odile Wiederkehr opened up the discussion, inciting participants to debate future strategies regarding regularisation programmes of irregular migrants in Europe.

In this report, the discussion has been divided into two sections: the first addresses important themes’ surrounding regularisation and the second considers civil society recommendations and strategies.

Part 1: Important Themes Surrounding Regularisation

1. No unified European criteria in place for regularising irregular migrants

A comment was made on the large variation in criteria for regularising irregular migrants amongst the countries presented. The differences apply to, among other things, requirements on length of stay, employment, earned regularisation and level of integration. States undertake regularisation programmes for various reasons, tailoring the programmes to their specific needs.

Another contributor remarked on a related insight that there is also a large divergence in perverse outcomes and unintended consequences of regularisation programmes between the presented countries. The question then arose as to whether a European-wide approach should be sought, given these variations in context.

2. Electoral pressures upon politicians

It was made apparent through the various country presentations that one major hindrance to the implementation of regularisation programmes has been the political sensitivity of the issue. Politicians are often wary of outwardly voicing their opinions concerning the issue out of fear of losing in upcoming elections.

3. Varying access to basic social rights

Despite state obligations under international human rights law, there exists significant variations in the quality of medical and social support irregular migrants receive across Europe.²⁴

In Spain, irregular migrants’ social rights are often recognised, including the right to receive medical treatment, the right to medical coverage and the right to attend school from the ages of 6 to 16. These rights are protected even if the migrant is working irregularly in Spain, whereas in other countries, people have very limited access to social and medical support.

²⁴ For a detailed account of the international human rights instruments applying to undocumented migrants, see PICUM, ‘Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework’, (Brussels: PICUM, 2007). Available online at: <http://www.picum.org>.

4. Regularisation on medical grounds

An inquiry was made on the different country positions regarding regularisation for medical reasons. In France many application renewals have been rejected for temporary permits for health reasons of people whose state of health or medical situation in their country of origin has not changed. Some very ill foreigners have been taken back to their countries of origin in very bad conditions, including undocumented migrants who are HIV positive and have been returned.

In Spain there is a procedure to receive a resident permit on medical grounds, but it is very difficult to obtain because the individual had to have become ill only after entering Spain and they must demonstrate that medical treatment was not available in their country of origin.

In Portugal there are also various obstacles for migrants seeking to be regularised for medical purposes. The migrant requires a document from an expert saying that they cannot be returned home, yet given the lack of knowledge on access to health care in many migrant countries of origin it is difficult to be objective.

5. Family reunion and polygamy

One commenter brought up the subject of family reunion in France and the harsh financial criteria for allowing people to bring in family members. Another participant responded that polygamy creates a barrier in loosening the requirements for family reunion. A third speaker clarified that it was not possible for migrants to be regularised or to be reunited with ones family if in a polygamous relationship in France, as articulated in the Law of 24 August, 1993.²⁵ She added that since 1993 polygamous adults are not entitled to any rights in France if they are undocumented, therefore women who wish to get a residence permit must officially put an end to their polygamy, i.e. through divorce. The situation is a little different for women in a polygamous situation who have obtained a residence permit prior to 1993. In such cases only the first wife would be entitled to any rights. She also mentioned that her organisation often encountered the issue of polygamy.

6. Forced return

An insight was made that regularisation programmes are often coupled with departure programmes. Various speakers contributed their knowledge of return programmes in individual countries.

A contributor from France discussed the situation of expulsion in the country, noting the government objective of expelling 25,000 people per year. He added that officials send people away just so that target figures can be met; they are systematically given expulsion orders after their asylum applications have been denied. He went on to say that increased identity checks are also carried out.

In Spain, on the other hand, it is quite difficult to return a person to their country of origin. The Spanish government must first give a warning and only if caught a second time is it easier to expel the migrant. If a person lacks identity documents, it is not possible to return them.

²⁵ Loi n° 93-1027 du 24 Août 1993, 'relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France', is available online at: <http://mjp.univ-perp.fr/france/loi93-1027.htm>

Portugal does not have an effective deportation system. Undocumented migrants who are caught are usually given a notification to leave. They may also be detained and deported but this does not happen very often. In Portugal it is also not uncommon to find undocumented migrants who never fit into a regularisation process and have lived for 20 years in the country, accumulating these notifications.

Part 2: Civil Society Recommendations and Strategies

1. Adopt the Greenway report

There was considerable consensus at the meeting that the Greenway report should be adopted. “The report demonstrates a different approach to the issue of undocumented migrants. It should be adopted”, asserted Ms. Wiederkehr.

2. Coordinate a series of national hearings

One participant suggested extending the scope beyond the NGO meeting to coordinate a series of national hearings in which the respective NGOs are brought together to present their experiences and evidence. This could possibly lead to a European-wide process of gathering and presenting information.²⁶

3. Research and learn from experience

During the discussion it was made apparent that throughout Europe there has been extensive experience with regularisation campaigns, therefore it is important to analyse and learn from these experiences. “We are not coming to this from a blank slate”, commented Mr. Flynn. A speaker noted that increased debate on successes and failures of implemented programmes, analysis of return programmes and factual examination of migration dynamics were necessary. Also, another participant added that migrants themselves should be involved in the analysis.^{27 & 28}

4. Involve civil society

One contributor pointed out the importance of getting civil society organisations involved in the implementation of regularisation programmes.

²⁶ In Rec. 1807, a recommendation is made for the Committee of Ministers to instruct the European Committee on Migration to 5.4. “Organise a major hearing on the issue of regularisation programme involving not only government departments but also representatives of irregular migrants, civil society, trade unions and employer organisations.”

²⁷ Further research on regularisation programmes was proposed in Res. 1568 (2007) 16. “The Assembly also recognises that further research is needed on the outcome of past regularisation programmes, including on issues such as the possible “pull effect” of regularisation programmes, the impact on the informal economy, the contribution to social security and tax contributions and the impact on the lives of persons who have been regularised and whether they have lapsed back into an irregular situation. The Assembly therefore recommends that member states that have carried out such programmes in the past, carry out such studies as a priority.”

²⁸ In Rec. 1807, a recommendation is made for the Committee of Ministers to instruct the European Committee on Migration to: “ 5.1. Collect and analyse information on the number of irregular migrants living in Council of Europe member states as well as information on the number of irregular migrants entering Council of Europe member states annually; 5.2. Collect and analyse information on the effectiveness of return programmes including information on the number of irregular migrants returned by member states of the Council of Europe; 5.3. Carry out an analysis of member state’s experiences on carrying out regularisation programmes with a view to formulating guidelines or a recommendation of the Committee of Minister to member states on organising regularisation programme for irregular migrants”

5. Public awareness through the media

A proposition was made to take advantage of the media in disseminating clear and accurate information to the public about what is actually happening in both economic and human rights terms. The speaker emphasized the need to get closer to public opinion on the issue. Another person mentioned the possibility of raising awareness regarding the different types of regularisation programmes. Various models are referred to in the Greenway report: exceptional humanitarian programmes, family reunification programmes, permanent or continuous programmes, one-off or one-shot programmes and earned regularisation programmes.²⁹ A participant illustrated that public discussion is often buried in misrepresentation and misdirection; therefore it is important to clarify and elaborate on all aspects of regularisation programmes.

6. The case-by-case approach

Discussants briefly considered one type of regularisation programme, namely the case-by-case approach. A commenter indicated that such an approach would draw less attention and would therefore be a more politically preferred approach.

7. Long-term policy

A speaker criticized the lack of a coherent long-term policy in any European country with regards to irregular migrants. He emphasized the need for a coherent long-term policy that provided genuine legal ways of entry and was not simply an emergency management plan.³⁰

8. Accompanying measures to improve implementation of regularisation programmes³¹

One commenter argued that accompanying measures were needed in carrying out and supporting regularisation programmes, including:

1. Strengthening the administration: Providing enough trained staff, equipped with clear guidelines on how to implement the programme.
2. Preparing integration programmes, not only after but also parallel to carrying out regularisation programmes.

Another commenter affirmed the importance of such a proposition, stressing the need to properly inform those involved in the programme - both migrants and those assessing applications. It should be made clear who is eligible for the campaign. He maintained that in France, the situation is characterized by an amateur, arbitrary approach to applying regularising criteria. Often, the reason for refusal is unknown. This lack of objective assessment creates a problem particularly for those organisations trying to advise irregular migrants on their application and on the likelihood of their acceptance, he added.³²

²⁹ Greenway (2007)15, page 9.

³⁰ Increased channels for regular migration is discussed in Res. 1568 (2007) 20.1. "Provide greater opportunities for regular migration in order to reduce the number of irregular migrants"

³¹ For a detailed account of proposed measures that should be considered when installing a regularisation campaign see, 'PICUM standpoint on Regularisation', (Brussels: PICUM, 2002). Available online at: <http://www.picum.org/POLICY/POLRegularisation.htm>

³² Various accompanying measures were proposed in Res. 1568 (2007) 17. "The Assembly considers that a number of accompanying measures should be adopted by member states when implementing regularisation programmes. These include: 17.1.strengthening the administration to be able to deal with the potential number of applicants for regularisation; 17.2.ensuring that administrative requirements are kept to a minimum; 17.3.guaranteeing against fraudulent procedures; 17.4.preparing integration

One speaker also criticized the short time period provided for filing applications in Belgium. She proposed allowing more time for sending in applications and advertising the programme well in advance.

Another individual proposed setting up an independent commission or body for the processing of applicants in order to improve transparency and credibility.

9. Humanitarian vs. Economic Discourse

There was extensive debate on the use of both humanitarian and economic arguments in promoting regularisation programmes. One participant argued that the economically beneficial aspects of regularisation programmes should be introduced into the dominant discourse. He was surprised this had not yet been brought to the fore in French society.

Another commenter opposed this mode of conduct, arguing that civil society should establish normative principles for regularisation programmes that are expressed in humanitarian, not economic terms.³³ Some suggested civil society norms were:

1. Open acknowledgement that irregularity is not a criminal activity but rather a survival strategy; therefore criminal sanctions are not appropriate.
2. The need to address labour market issues.
3. Promotion of the idea that regardless of type of regularisation, the programmes need to be a low cost, low bureaucracy procedure.
4. Argue for the inclusion of the maximum amount of people possible within the regularising guidelines (80% plus).

programmes for those who are regularised; 17.5.consulting employers and employees and irregular migrants and civil society in preparing and implementing the programmes; 17.6.ensuring publicity for the programmes reaches irregular migrants; 17.7.ensuring that the programmes and their benefits are explained carefully to the media and to the public in general; 17.8.keeping European partners informed of plans for regularisation programmes and their implementation.”

³³ The humanitarian perspective is elucidated in Res. 1568 (2007) 15.3.“Evaluate the situation of persons living in an irregular situation from a humanitarian and human rights perspective and examine the impact that regularisation of their situation might have on these persons, including in terms of integration into society and their potential return to their country of origin”; and the economic perspective is elucidated in Res. 1568 (2007) 15.4.“Review the economic demand for migrants and consider how far this is currently being filled by irregular migrants. Furthermore, analyse the economic contribution made by irregular migrants together with the impact that regularisation of their situation would have on the informal economy, social security contributions and tax receipts.”

Conclusion

The NGO round table meeting was welcomed by all in attendance as a success, characterized by informative discussion and insightful proposals. It was attended by over 60 people representing civil society and received European wide media coverage, including a broadcast by EURONEWS.³⁴ Ms. Rachel Kondak from the Office of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, was also present.

Resolution 1568 and Recommendation 1807 (2007) on “Regularisation programmes for Irregular Migrants” were both adopted at the Parliamentary Assembly debate of the Council of Europe on 1 October 2007 (29th sitting) without any amendments.³⁵

³⁴ Other articles on the debate at the Parliamentary Assembly were also published. For example, see Bladi.net, ‘L’UE compte 5,5 millions de Clandestins’, (1 October 2007). Available online at <http://www.bladi.net/14735-ue-clandestins.html>

³⁵ See Res. 1568 (2007) and Rec. 1807 (2007)