



CLANDESTINO



CITIZENS AND GOVERNANCE IN A
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EUROPEAN
COMMISSION

Report on an International Workshop organized by PICUM, MRN and COMPAS on Understanding Irregular Migration in Northern Europe

London, UK, March 27, 2009

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Working for the rights of all migrants



PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

The Platform for International Cooperation on Undocumented Migrants (PICUM), in cooperation with the ESRC Centre on Migration Policy and Society (COMPAS) and Migrants Rights Network (MRN) held a workshop on 27 March 2009 in London, UK, entitled "Understanding Irregular Migration in Northern Europe."

The workshop was part of the EU funded CLANDESTINO project – "Undocumented Migration: Counting the Uncountable. Data and Trends across Europe" and brought together nearly 150 participants including representatives of NGOs and trade unions, researchers, local authorities, policy makers, journalists, and other professionals to discuss policies and responses to irregular migration in the United Kingdom, France, the Netherlands, Germany and Austria.

This report provides an overview of the contributions of the speakers as well as the main themes of discussion in the plenary and workshop sessions.

This report was prepared by PICUM.

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PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a non-governmental organization based in Brussels, Belgium, 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 labor conditions.

 Migrants' Rights Network
Working for the rights of all migrants

The Migrants' Rights Network (MRN) is working for a rights-based approach to migration, with migrants as full partners in developing the policies and procedures which affect life in the UK.

MRN aims to strengthen the voice of migrants in discussion and debates, both within civil society and with regional and national authorities. Bearing this in mind, MRN conducts research and projects to enable migrant community organizations to engage with key legislative and policy issues.



The mission of COMPAS is to conduct high quality research in order to develop theory and knowledge, inform policy-making and public debate, and engage users of research within the field of migration.

The mobility of people is now firmly recognised as a key dimension shaping society today, but the relationship between migration and societal change is only partly understood. Research at the Centre on Migration, Policy and Society (COMPAS), core funded by the Economic and Social Research Council is geared to deepen the understanding of this relationship.



Executive Summary

CLANDESTINO workshop

“Understanding Irregular Migration in Northern Europe”

London, UK, March 27, 2009

This report highlights key points of the discussion of a wide range of actors who attended a workshop within the “Clandestino” project, an interdisciplinary project funded by DG Research of the European Commission. This project intended to support policy makers in designing and implementing appropriate policies regarding irregular migration by providing realistic estimates on the numbers of undocumented migrants currently residing in Europe.

At the workshop, which was organized by PICUM, Migrants Rights Network and Compas, nearly 150 representatives of NGOs and trade unions, researchers, local authorities, policy makers, journalists, and other professionals discussed policies and responses to irregular migration in the United Kingdom, France, the Netherlands, Germany and Austria.

The first part of the day-long workshop consisted of a plenary session with a presentation of the main findings of the Clandestino project, responses from experts in the field, and discussion with participants. The second part consisted of four parallel workshop sessions, in which participants exchanged information about current developments on various issues concerning irregular migration and strategies for upholding the rights of undocumented migrants. The event concluded with a final plenary session and discussion amongst participants.

One of the main conclusions of the Clandestino project is that the total number of irregular migrants in Europe is estimated from 2.8 to 6 million, not 8 million as previously stated by official EU sources. In the five countries examined in the workshop, four major paths into irregularity, ordered according to their relevance, were identified as follows:

1. Regular entry and working in breach or visa overstaying;
2. Refused asylum seekers who do not leave or who are de facto non-removable;
3. Withdrawal or loss of status for various reasons;
4. Clandestine entry.

The project has found that there are few paths out of irregularity; regularization was mentioned as the most common avenue amongst few others. The various country reports found that policy discourses on irregular migration vary from country to country, with public debate usually framed by positions about “humanitarian concerns” or “public order issues.” In four of the countries studied, recent policy emphasis has been orientated towards rigid immigration control, deterrence and enforcement.

In the plenary discussion that followed the presentation of the main project findings, some participants raised concerns about the lack of information of the number of deaths and abuses encountered by migrants in the country reports. The debate also focused on the lack of rights inherent within immigration policies such as lack of access to health care assistance and infringement of rights while migrants are kept in detention.

Doubts regarding state policies implemented by the five countries led participants to ponder over consequences resulting from restrictive measures such as border controls undertaken by those governments. The lack of information as well as understanding of public discourses on the subject was seen to be a common gap needing to be filled. It was emphasized that the Clandestino project was partly the result of a call from the European Commission for more accurate and comprehensive numbers in relation to immigration. The current

control policies are in fact based on very poor data which instead need to be set as some participants pointed out.

Following the plenary session, participants discussed various themes relative to irregular migration more in depth in the parallel workshop sessions.

The first workshop focused on the impact of labor market policies and regulations and their link to irregular migration. The main finding was to acknowledge the clash between labour law and immigration law. Legal cases from the UK and Germany were presented and attention was drawn to the consequences and implications deriving from contradictory public policies, while shedding light on the incompatibilities between policies based upon fundamental rights and those on restrictive measures to migration.

Participants in the second workshop shared expertise and good practices concerning regularization in the European Union. They highlighted that this is a most likely a long-term battle, and that sustainable solutions will emerge as the debate develops rather than following dogmatic assertions. This will depend upon civil society being drawn more centrally into the debate than they are currently. Campaigners should not lose heart but maintain commitment. Regularisation would be a critical factor in securing the human rights of millions of people currently outside the system, but there is a need for states to address the deficiencies in immigration systems which produce irregularity among migrants, as well as tackling wider issues around vulnerability in employment. Civil society also needs to better engage with the media, in order to effectively communicate research and put forward positive images of undocumented migrants.

The third workshop discussed barriers and strategies in gaining access to public services for undocumented migrants, such as health care, education and housing. Participants stressed that authorities should develop policies which

guarantee equal access for undocumented migrants to public services. NGOs should have a complementary role and should not be burdened with ironing out deficiencies in the mainstream system or being pressurised by authorities to jeopardize their position of trust.

The fourth workshop discussed the role of the media in social policies and political discourse. Participants concluded that more emphasis should be directed to the diversity of roles of the media. Achieving a positive role for media needs work from many angles – in media, alternative technologies, and action on the ground. Activists in the field of migrants' rights and integration often take a one-dimensional view of the media in which their role is always "bad" – conveying a negative image of migrants – but civil society response should try to get positive images into the media instead. Campaigning against misrepresentation and for more positive coverage of migrants, their communities, and the migration process would remain vital. The workshop showed that this issue is very complex and that stakeholders have to respond on several dimensions.

The Clandestino London workshop shed light on various aspects concerning irregular migration but also determined the importance of data in a field still complex and partly unknown. The following points aim to resume the main issues raised during the plenary sessions and workshops:

- Social and labour rights should come first in order to establish a human rights based approach towards the issue;
- More collaboration amongst different actors working in the field, especially between individuals and organizations, should be encouraged to find opportunities to work with researchers; involving NGOs in conducting research and making policies is thus of utmost importance;
- Increased networking and cooperation amongst different actors are therefore encouraged to raise awareness;

- Regularization as a key issue needs to be explored in depth;
- Many human rights instruments have never been properly implemented nor well interpreted; using the legal framework to effectuate change for undocumented migrants such as providing them with free access to public services was identified as a key element;
- Work within media personnel (infrastructures) should be carried out in order to influence journalists' practice – when and if appropriate conveying voices of migrants without mediation. A simple starting point would be to cultivate alliances and networks with media professionals/practitioners, rather than constantly and somewhat stubbornly criticizing and dismissing the media. Establishing sustainable platforms of media support and output should be achievable by building concrete media alliances – with print and broadcast journalists as well as filmmakers, independent radio and new media producers in addition to artists, photographers and creative writers – hence productive networks;
- Developing a progressive narrative for migration is necessary to shed light on the phenomenon; there is a need to perceive irregular migration as a solution and not as a problem;
- A proper use of language is crucial in order to change attitude towards irregular migrants; terminology plays a key role. The terms “undocumented” and “irregular” were then advocated instead of “illegal.”

While taking a numerical outlook to raise awareness on the issue was undoubtedly considered extremely important, at the same time many argued that more research should be carried out about humanitarian issues concerning undocumented migrants and also to envision alternative solutions. Many participants stressed that NGOs play a crucial role in setting a relevant agenda in overcoming the many difficulties of gathering essential information about undocumented migrants, who tend to live in the shadows and in miserable conditions.

The Clandestino project was established in order to support policy makers in designing new policies by employing data while collecting civil society views; regarded as a significant tool to conceive future policies, data could represent an important instrument if properly implemented. Its impact however is left to European politicians and their political will; the ability of both researchers and civil society to take on the challenge of bringing it further in the political debate is therefore crucial.

Keynote Speakers – Plenary Session

Opening Remarks



Zrinka Bralo from the **Migrant Refugee Communities Forum (MRCF)** opened the Clandestino London workshop and shared her personal experience of being a migrant herself, having arrived in the UK as a refugee and being

in a semi-undocumented status for a few years. Ms. Bralo said that a political discussion in the UK had started following the statements in favour of regularization by the Mayor of London, Boris Johnson, and warmly welcomed this development. She stressed that in this context more similar fora and workshops are called for and also warned not to praise this current trend too soon, since important efforts are still necessary.

The first speaker, **Michele LeVoy**, Director of the **Platform for International Cooperation on Undocumented Migrants (PICUM)**, gave a brief overview of EU policy developments concerning irregular migration since the European Council adopted a common integration policy in 1999. Despite various initiatives by the EU to fight irregular migration, there is still a sizeable number of undocumented migrants in Europe. According to the estimates based on the situation in 2005 and provided by the Clandestino consortium, the number of undocumented migrants in the European Union ranges from 2.8 to 6 million. Ms. LeVoy emphasized that in the absence of concrete data, many undocumented migrants will continue to remain invisible in policymaking and for policy makers.

Ms. LeVoy said that a recent European Commission joint report on social protection and inclusion stated that there were about 79 million people within the European Union at risk of poverty in 2007. This report - which assesses national strategy reports outlining the priorities of the EU member states until 2011 on social inclusion and fighting

poverty, health care and pensions – highlights that there are important gaps which persist between immigrants and the majority population. Nonetheless, the absence of details concerning migrants with regard to national strategy plans came across as a serious omission. She stressed that not having information on vulnerable groups such as undocumented migrants contributes to the lack of policies in order to promote more social inclusion.

Ms. LeVoy highlighted that undocumented migrants have human rights that are internationally recognized within the human rights framework defined by the UN, but undocumented migrants remain criminalized in the eyes of the public. Local actors who work with undocumented migrants face enormous pressures to defend their basic social rights, in a context in which EU member states have explicit provisions that restrict migrants' access to social services. As an example, she noted that in February 2009, the Italian Senate voted an amendment which would oblige doctors to denounce irregular migrants who visit their clinics; as a result, 200 doctors demonstrated against this amendment. Ms. LeVoy also stressed that denying healthcare to undocumented migrants contravenes codes of professional ethics.

Recently the Commissioner of Human Rights of the Council of Europe stated that migrant children are one of most vulnerable groups in Europe, particularly those separated from their families. PICUM recently released a publication and held an international conference on undocumented children, in an attempt to draw attention and exchange strategies with a wide range of actors on how to better protect this particularly vulnerable group of undocumented migrants.

Ms. LeVoy also highlighted that it is imperative to promote fair working conditions for undocumented workers. Undocumented migrants need to work in order to survive, and they overwhelmingly tolerate exploitation and abuse from their employers and recruiters. As an example of PICUM's work to promote awareness of undocumented workers'

rights and their conditions, she pointed to the report *Ten Ways to Protect Undocumented Migrant Workers* which provides innovative ways used by NGOs and trade unions to uphold these workers' rights.

“A recent European Commission joint report on social protection and social inclusion highlights that there are important gaps which persist between immigrants and the majority population. The Commission also notes that the absence of details concerning migrants with regard to national strategy plans came across as a serious omission. Not having information on vulnerable groups such as undocumented migrants contributes to the lack of policies in order to promote more social inclusion.”

MICHELE LEVOY, PICUM

She concluded her presentation by drawing attention to a resolution passed by the European Parliament on 14 January 2009. This resolution contains various recommendations to uphold the rights of undocumented migrants. The European Parliament calls on EU member states to ratify the UN Migrants Rights Convention and to stop using the term “illegal immigrants”. It also stresses that member states should safeguard the right of undocumented migrants to trade union membership and reminds employers that their first task is to protect workers. Particular attention should to be paid to the children of migrants, including those who are undocumented, so that every child can recognize their rights, including the right to non-discrimination.

Summary of CLANDESTINO Northern European Countries Reports: Main Findings

Franck Düvell from the **Centre on Migration, Policy and Society (COMPAS)** gave an overview and comparison of irregular migration in Northern Europe and presented some of the key findings from the CLANDESTINO project.

The CLANDESTINO project aimed to provide an inventory of data and estimates on irregular migration (stocks and flows) in 12 selected EU countries, including: Greece, Italy and Spain (Southern Europe); France, the Netherlands, UK, Germany and Austria (Western and Central Europe); and Poland, Hungary, Czech Republic and Slovakia (Central Eastern Europe). The project also looked at transit migration in countries and regions used as key “stepping stones” by undocumented migrants en route to the EU, notably Turkey, Ukraine and Morocco.



CLANDESTINO was a response to the need for more reliable and systematic data on undocumented migration in the European Union. This interdisciplinary project intended to support policy makers in designing and implementing appropriate policies regarding irregular migration by providing realistic estimates on the numbers of undocumented migrants currently residing in Europe. The creation of a database on irregular migration as a tool for policy makers and non-governmental agencies alike was one of CLANDESTINO's aims.

Impact of Economic Crisis on Undocumented Migrants

The project began in 2007 with a study of migration under conditions of prosperity. Dr. Düvell provided a brief analysis of how this has been changed by the current economic crisis. He stated that the first possible scenario started from increased redundancies of indigenous citizens who would have to consider types of work they previously would have rejected, thereby competing with both regular and irregular migrants for the same jobs. This is already being observed in some parts of Spain in the agricultural sector. In addition, irregular migrants who lose jobs usually do not have other means of subsistence. They must rely on their social networks but these communities will not be able to support the unemployed in the long term, so it is likely that they will return home. Dr. Düvell added that this issue is argued in the US where the number of irregular migrants is decreasing.

A recent report from the World Bank suggested that many countries from which immigrants originate are affected worse than destination countries by the economic crisis. When livelihoods become even scarcer in the poorer countries, competition over these could increase and could culminate in tensions and conflicts that lead to an increase in migrants and refugees. Consequently many irregular migrants would not be able to return home even if they wished to. Some fear that once they leave, they might not be able to return to their country of destination again due to protectionist measures. This would mean that the number of irregular migrants who stay and risk becoming destitute rises. According to another scenario envisaged, it was shown that due to job losses of indigenous people in countries of destination, their household income is likely to decrease. This tendency could lead to an increase of demand for cheap labour, for instance as regards low cost property maintenance or care; thus, the shadow economy could also increase creating even more opportunities for irregular immigrant workers. Dr. Düvell argued that it was impossible

to forecast how these consequences will sum up, which trend will finally dominate and whether or not the future irregular net migration balance will be positive or negative.

Dr. Düvell then proceeded to the main part of his presentation, an overview of four aspects of irregular migration that were studied and analysed in the Clandestino project.

Size of the Irregular Immigrant Population

Firstly, he stated that there are problems with the definitions of the phenomenon to be measured and the available data varied across the Northern EU countries. In Germany and Austria, legally residing citizens from other EU countries who are engaged in undeclared employment are sometimes included in the “irregular immigrants” category. In the UK, some estimates include failed asylum seekers even though they might be non-removable and still in the system. For various reasons, irregular immigrants are sometimes double counted, for instance in the UK and Germany.

The total number of irregular migrants in Europe is estimated from 2.8 to 6 million. Dr. Düvell cautioned that this did not imply that the central estimate is the most likely; instead, the total population of undocumented could be around 5 million, or even higher, though considerably lower than most previous estimates which referred to nearly 8 million irregular immigrants in Europe. This lower estimate is due to several reasons. Firstly, various countries that were previously countries of origin of undocumented migrants (e.g. Poland, Romania) have now become member states of the EU and their citizens are no longer irregular. This trend is strengthened by regularisation programmes in certain countries. Given these global figures, it is estimated that 1% of the population of the EU is undocumented. If a comparison was made between the proportion of irregular immigrants to the whole population in the United States, the EU at 1% seemed to fare better than the United States at 3.8% to 4%.

Table 1: Size and Proportion of Irregular Immigrants in Northern Europe

	Population	Immigrants (foreign born)	% of pop.	Irregular Immigrants	% of immigrants	% of pop.	Regularised
Austria	8,200,000	789,000	9.6	62,000 - 88,000	8-11	0.76-1.08	Not known
France	63,000,000	5,000,000	8.1	200,000 -400,000	4-8	0.32-0.64	269,000
Germany	82,000,000	6,700,000	8.2	500,000 -1,000,000	7.5-15	0.61-1.22	Not known
Netherlands	16,400,000	1.732.000	10.6	60,000 -150,000	3.5-8.7	0.37-0.92	29,300
UK (2001/9)	60,000,000	4.9-6.500,000	8.3-10.8	400,000 -725,000	8.1-11.1	0.6-1.21	Not known
EU-25	461,000,000	40,000.000	8.7	2,800,000 -6,000,000	7-15	0.61-1.3	4,000,000

Main Paths Into and Out of Irregularity

The second theme of the project was to study how migrants become irregular and how they can (re-) regularise their position. Dr. Düvell pointed out that in Germany there are immigration law-related and labour market law-related paths into irregularity. Until 2004, visa-free entry followed by unauthorized stay and undeclared employment were probably the most important paths into irregularity. Whilst “unauthorised entry” has increased disproportionately, its absolute level has considerably decreased by around 40%; equally smuggling is down by 2/3 and even use of falsified documents seems to have decreased. The large majority of refused asylum seekers appeal or receive subsidiary status whilst those who are not expelled are formally tolerated, receive documents accordingly and remain in the system.

In the UK, the majority of irregular migrants enter the country legally and subsequently move into irregular status. The most common path into irregularity is overstaying the expiry date or working without commission or working longer hours than legally permitted. Whether or not this can be considered “smuggling” is disputed. Dr. Düvell explained that “illegal entrants” in the UK are persons who: 1) unlawfully enter or seek to enter in breach of the immigration laws or of a (previous) deportation order or 2) enter or seek

to enter by means which include deception. The latter is particular vague, as it covers clandestine border crossing as well as entry for purposes other than declared. Special attention should be paid to rejected asylum seekers who are assumed to be still residing in the UK. Many could not be deported so they are placed in the system but with a “tolerated” or “waiting for removal” status.

Dr. Düvell regarded the term “illegal entrants” as grossly misleading. This was because many had actually entered the country legally but subsequently slipped into irregularity. In France, it is difficult for asylum seekers to arrive legally and for migrants to reunite with their families, therefore irregular immigration and stay is the consequence. 80% of Algerian irregular migrants fall into this category. Most irregularly residing immigrants in the Netherlands have entered legally which leads to the conclusion that overstaying is the main source of irregularity in the country. The largest group are labour migrants followed by refused asylum seekers. In the case of Austria, it is the withdrawal and loss of status but not irregular entry or overstaying that are possibly perceived as the most important pathways into irregularity. This highlights the crucial role of state practices and regulations in producing irregularity. One such group are rejected asylum seekers who cannot be returned.

Based on the country studies, Dr. Düvell concluded that in Northern Europe there are four major paths into irregularity (ordered according to their relevance):

1. Regular entry and working in breach or visa overstaying;
2. Refused asylum seekers who do not leave or who are de facto non-removable;
3. Withdrawal or loss of status for various reasons;
4. Clandestine entry.

On the contrary, there are few paths out of irregularity. The UK government granted an amnesty for asylum seeker families; there are also opportunities for concessionary regularisation after a 14-year stay. Germany granted a temporary and renewable status to a quarter of its tolerated migrants, mostly rejected asylum seekers. France regularised irregular immigrants in 1997-1999 and a much smaller number in 2007; moreover, irregular workers can apply for regularisation if they work in a shortage profession. The Dutch government offered a one-off regularisation in 2007. Further to this, a recent change in the law offers the opportunity to reinstate status once it was lost for a period of two years after this occurred. Finally, Austria grants an odd “deportation adjournment,” a kind of non-status to rejected, non-removable asylum seekers.

“The Clandestino project concludes that the total number of irregular migrants in Europe is estimated from 2.8 to 6 million. This does not imply that the central estimate is the most likely; instead, the total population of undocumented could be around 5 million, or even higher, though considerably lower than most previous estimates which referred to nearly 8 million irregular immigrants in Europe. Given these global figures, it is estimated that 1% of the population of the EU is undocumented.”

FRANCK DÜVELL, CENTRE ON MIGRATION,
POLICY AND SOCIETY (COMPAS)

Main Policy Discourses

The third theme of the project, main policy discourses on irregular migration, vary from country to country. In the Netherlands as well as in the UK, there is a general focus on immigration politics. In Germany and the Netherlands, the main policy discourses seem to cover issues related to integration; in France and the Netherlands concerns have been raised as regards religious matters, and in particular on Muslim immigration and perceived fundamentalism. The focus in Austria is on refugees and asylum system. Irregular migration does not figure significantly in public discourse in Germany, Austria, France or the Netherlands. However, when it does, public debate is usually framed by positions about “humanitarian concerns” or “public order issues”, as in Germany, where it becomes a sensitive issue for public authorities, or it is related to crime, such as fraud and human trafficking, as in the Netherlands. It is only in the UK that irregular migration has been such a sensitive issue, high on the agenda, focusing on the failure of the state to control its borders.

Major Policies and Recent Changes

Finally, concerning the fourth theme studied in the project, Dr. Düvell explained that in four of the countries studied, recent policy emphasis has focused on rigid immigration control, deterrence and enforcement. The Dutch government has redefined irregular migrants through the lens of deterrence, exclusion and removal. The UK has seen a surge in protectionist immigration legislation and a principle shift from a previously relatively liberal approach to a tough enforcement ethos can be observed. On the one hand, the Home Office was reformed and a new UK Border Agency set up, while on the other hand, internal surveillance was enhanced and ID cards for immigrants introduced. The UK has also tightened enforcement by deploying more staff to borders and territory, drawing more police officers into immigration operations and increasing the number of enforcement operations, such as workplace raids. Most of these measures are targeting ethnic minority groups.

The French government implemented a combined biometric visa/database system in 2008. There was an increase in workplace raids and almost 900 employers and 1,000 irregular immigrant workers were arrested. Unexpectedly, Germany has yet to make explicit efforts to improve its enforcement although it is considered as a country with the highest level, both in absolute and in relative terms, of irregular immigrants. However, Germany still restricts migration from the new European Union member states and it already has one of the best developed intelligence, data gathering, data exchange and enforcement politics.

Dr. Düvell highlighted that the actual implementation of policies and laws differ in reality as clearly illustrated by France's attempt to get rid of irregular migrants. In 2004, while some 64,000 deportation orders were issued, only 13,000 were executed. It reinforced the belief that an overwhelming number of irregular migrants are not deported; they are possibly "not deportable". The concept of voluntary return is encouraged but this applies mostly to asylum seekers.

In conclusion, Dr. Düvell stated that the national experts who wrote the country studies for the Clandestino project came up with a set of recommendations which could be summarized as follows:

1. A more nuanced debate on the issue (e.g. do not exploit migration control debates as an ideological battlefield but search for pragmatic solutions that could be more favourable to migrants and the receiving society).
2. Access to social services for irregular migrants (e.g. open certain public services for irregular immigrants).
3. Measures to reverse "irregularity" (e.g. find a solution for those who are not deported, not regularised nor do not leave the country).
4. Prevention of irregularity (e.g. introduce more legal migration channels).

Feedback from Experts in the Field



Dita Vogel from the **Hamburg Institute of International Economics (HWWI)** started her presentation by stating that in Germany the mixture of personal and commercial relationships and interests is not atypical for irregular

work in private households. The domestic work sector in Germany relies strongly on irregular migrants and is more important than in other Northern countries with more extensive "child and aged-care systems," but also less significant than in some Southern European countries where there seem to be more live-in domestic workers. She also pointed out that in Northern Europe the situation is very different if compared to Eastern European countries.

Ms. Vogel explained that irregular residency is considered a crime in Germany. Undocumented migrants made up 13% of crime suspects in 2006 (the figure had decreased from 22% in 2001). In terms of absolute numbers, the number of people arrested for irregular residence fell from 120,000 in 2001 to 60,000 in 2006.

She invited the audience to ponder over several questions in order to open a debate afterwards: if there are fewer "irregular residents" but more undocumented workers and if the length of stay and number of problems might increase despite the fact that actual numbers are decreasing. Ms. Vogel stressed that there is more of an incentive to stay than to commute, and the longer a person stays in irregularity, the more problems s/he will face. One of the pathways into regularity is for children born from at least one German parent. She emphasized that labour inspectors and labour courts exist to enforce labour rights, not to conduct immigration raids.



The next panelist, **Jean-Eric Malabre** from the **Groupe d'Information et de Soutien des Immigrés (GISTI)**, addressed a few points about the interaction between migration law and undocumented migrant workforce in the European

context by referring to the French example. As a lawyer defending migrants' rights, Mr. Malabre questioned the complexity of law and its constant changing nature, therefore making compliance rather impossible. In 2006 the French government introduced new policies focusing on the concept of integration according to which, one of the prerequisites for remaining in France is the ability to be integrated. Mr. Malabre challenged such requirements by wondering how a migrant could be integrated before having acquired legal status. The implication of this ambiguity is to make it impossible for immigrants to enter France or the EU legally and be regularised once they enter. He pointed out that the law is driven by the needs of society: there are thousands of irregular migrants in France who work in the labour market despite their irregular status. He added that some 26,000 deportations take place every year in France. Yet, it is common knowledge that the government cannot deport all irregular migrants, who number approximately half a million. As regards the feasibility of such attempt, the French government would have to carry out some 1,400 deportations a day which, according to Mr. Malabre, is practically impossible.

In France there are strong labour laws that protect workers and provide benefits such as social security for legal residents. However, irregular migrants accept jobs that are paid less than the

minimum wage because they often do not have a choice. Mr. Malabre said that employers and trade unions have been asking for flexibility which is exactly what irregular migrants offer. "Not only are they extremely flexible but also there is no minimum wage issue, no taxes, no 35-hour working week with them... And it is very easy to get rid of them; a phone call often is enough," he said.

France has comprehensive criminal legislation against "illegal employment" which is theoretically addressed to employers. In reality, irregular migrants are often criminalised and regularly deported. Mr. Malabre argued that it is rare to see cases brought to courts against employers; the long chain of subcontractors makes it hard to pin down who the ring-master is. He admitted that the ambiguity in French law makes it easy for employers to exploit irregular migrants. He feared that the imposition of more restrictions in Europe such as tighter border controls, repression, deportation and detention will lead to a more precarious situation for migrant workers. The mafias which invest in human smuggling will profit from it and make more money. Mr. Malabre pointed out that migrants will keep coming to France and to other parts of Europe because "we need them and make them come" and no government will be able to "stop the sea with its fingers". He added that countries in Northern Europe need migrant workers to work, to build their houses, and even to put up detention centres for foreigners and to pay for their retirement benefits due to the rapidly ageing population.

Mr. Malabre concluded by underlining that while 50 years ago French recruiters for car industries, mines, etc. used to travel to remote villages in Africa to recruit workers, today the "clandestine selection process" is very similar, only more elaborated and subtle.

"The law is driven by the needs of society: there are thousands of irregular migrants in France who work in the labour market despite their irregular status. Some 26,000 deportations take place every year in France. Yet, it is common knowledge that the government cannot deport all irregular migrants, who number approximately half a million. As regards the feasibility of such attempt, the French government would have to carry out some 1,400 deportations a day which is practically impossible."

JEAN-ERIC MALABRE, GROUPE D'INFORMATION ET DE SOUTIEN DES IMMIGRÉS (GISTI)



Rian Ederveen from **Stichting LOS** made a presentation entitled “Who Counts for NGOs?” Ms. Ederveen explained that there are nearly 100 NGOs in the Netherlands that provide assistance to undocumented migrants, and that most of these

NGOs receive support from local governments. These NGOs offer shelter for failed asylum seekers and other undocumented migrants, ranging from 3,000 to 5,000 beds, and they are in contact with approximately 10,000 undocumented migrants in the Netherlands. Through the support they provide, these Dutch NGOs have contact with refused asylum seekers, including a great number of women, families with children and people who are ill. On the other hand, they do not have easy contact with refused asylum seekers who are rejected through a short procedure, nor healthy and single men, people supported by family members, or irregular labour migrants.

Ms. Ederveen explained how much these NGOs need information about irregular migrants and their needs such as shelter and food. In order to enhance the protection of their human rights, civil society needs to know the numbers of undocumented migrants and what the human rights violations are. Furthermore, it is important to identify the types of support provided by churches, schools, and migrant communities, and to find ways to strengthen support.

The numbers of irregular migrants that are known in the Netherlands are not used by policy makers in order to protect this vulnerable group, but to expel them. Even when they are exploited as cheap workers, authorities claim that the best way to protect them is to expel them.

In the Netherlands, research on undocumented migrants has been carried out since mid-nineties. Sociologists, anthropologists and some criminologists have been actively involved in

“The numbers of irregular migrants that are known in the Netherlands are not used by policy makers in order to protect this vulnerable group. Even when they are exploited as cheap workers, authorities claim that the best way to protect them is to expel them.”

RIAN EDERVEEN, STICHTING LOS

the field. At the beginning, research was mainly carried out by academics but since 2000, studies on the topic have been requested by the national authorities.

Recent governmental findings have indicated that the number of irregular migrants in the Netherlands is around 100,000 (non-EU) whereas the number of irregular workers is 80,000 (EU and non-EU). 80% are single, young men in their twenties and thirties, mostly coming from China, Morocco and Turkey. However, according to Ms. Ederveen, views from NGOs and civil society are “absent” and neither data concerning vulnerable people nor trends as regards vulnerability and dependency were provided for these studies.

Referring to the so-called “Capture-Recapture” method employed by authorities in the Netherlands to count irregular migrants, those who are “captured for irregular stay” are mainly single young men from Eastern Europe and North Africa whereas those “captured for irregular work” are principally Turkish and Chinese men. According to Ederveen, what the Clandestino project did not “catch” were instead women, children, elderly, people who stay inside their houses (e.g. domestic workers), hence hidden. These are the most vulnerable irregular migrants, but their numbers are not known.

Ms. Ederveen questioned the accuracy of the Clandestino research findings for the Netherlands since most data were provided by the police, labour inspectorates and employers; consequently,

definitions employed also had to follow those used by all these agencies. Moreover, she argued that numbers could have been influenced through the “capture policy.” Very little research was carried out through interviews conducted with irregular migrants themselves. Therefore, according to her, the report reflected the interests of the authorities and not those of NGOs and did not provide any quantitative conclusions.

Ms. Ederveen also criticised the definition of “illegal,” arguing that it consists of a legal construction and not a human quality. She noted that irregular migration stems from both economical and social reasons. Effects of enforcement policies were summarized in three aspects of the life of irregular migrants: 1) quality of their life and environment; 2) their public image and reactions from institutes; and 3) their ability to integrate. She cautioned that the more they are chased, the more they become vulnerable and the less are willing to ask for help. “Private shelters in the Netherlands are fined if their owners provide assistance to irregular migrants and employers are penalised for hiring ‘illegal’ domestic workers. As a result, the current enforcement policy creates an environment whereby NGOs and doctors are prohibited from helping them,” she concluded.

Discussion

During the plenary discussion which followed, one participant began by emphasizing that it is also important to count the numbers of irregular migrants who are dying or abused as a result of asylum and immigration policies. She said that a large proportion of undocumented migrants commit suicide out of desperation and that the largest growth in the number of deaths is related to immigration raids which could be defined as “random state violence”.

A lawyer who carried out his own private investigation on migrants

asked if the Clandestino project considered the number of children born from migrants in the countries involved and if schools provide economic assistance. He said his research focused on the rights of migrants and the treatment of their children and pointed out that there were people whose cases were never taken up nor ended while in detention. Since he spent himself three months undercover in detention centres, he was able to argue that migrants stayed on average over a year in each of the detention centres he investigated in. He said that most of them are “economic migrants” who wish to return home but instead are languishing in detention centres in the UK.

A participant from Italy underlined that while it is estimated that there may be millions of undocumented migrants in Europe, many of them have no voice. He said that in Milan by 6 am, they are on the street queuing and waiting for a job but added that at the end of the month, they are replaced by new arrivals. He argued that the EU should bear the bulk of responsibility for causing irregular migration and regretted that on average migrant workers come to Europe with money in order to work but receive nothing in return for their labour.

In response, the chair Ms. Bralo explained that the CLANDESTINO project came about partly as a result of a call from the European Commission for more accurate and comprehensive numbers in relation to immigration. She added that the current



control policies are based on very poor numbers and agreed on the need to quantify these numbers as one participant pointed out. Ms. Vogel responded by saying that her research was based on a country report which did not record the number of deaths. Mr. Malabre mentioned the international NGO network “Migreurop”, which records the number of people who die while trying to enter Europe.

“It is also important to count the numbers of irregular migrants who are dying or abused as a result of asylum and immigration policies. Many undocumented migrants commit suicide out of desperation and the largest growth in the number of deaths is related to immigration raids which could be defined as ‘random state violence.’”

CONFERENCE PARTICIPANT

Coming back to the question regarding people who were detained but would like to return back home, Mr. Malabre responded that one of the effects of current laws and policies is to deter people from going back to their countries of origin. He cited the example of students who wanted to return home but feared they could lose their ability to work in France if things would have not worked out in their country. Mr. Malabre also highlighted the differences among national laws concerning nationality in the European Union when it comes to counting children of migrants. The German law is problematic as it still considers the second or third generation of immigrants as foreigners.

Another participant spoke about the tragedy of people who were smuggled while passing through the Mediterranean Sea, and the possibility of seeing bodies floating in the sea. Since she was in Malta the week before the workshop, she argued that contradictions and hypocrisy in the state law must be denounced. The participant questioned the meaning of and difference between “illegal” and “legal” status: whether it is the right of the state versus the right of a human being. Moreover,

she said she would have appreciated to know positive contributions from migrants, including undocumented migrants, to the economy.

Another participant referred to a recent UNHCR report which looked at the impact of UK immigration controls, e.g. extra-territorial law. The report included Turkey as one of the key transit countries for asylum seekers and undocumented migrants. She asked whether or not the panel had considered refugees, and would have been interested in capturing more data on this group and the reason why the majority of asylum seekers entered the UK rather than France.

In response, Mr. Duvell said it was impossible for the CLANDESTINO project to address all the questions raised. He pointed out that there were many other projects working on similar issues, such as access to protection, transit countries, etc. Mr. Duvell stressed the importance for civil society and organisations to send a loud message in order to identify bodies which could carry out research on the topics NGOs would be interested in. He added that the morning discussion was important in order to draft the basis for other relevant upcoming projects.

“The Clandestino project could not have addressed all of the questions raised by participants at this conference concerning undocumented migrants. However, civil society and organisations should send a loud message in order to identify bodies which could carry out research on the topics NGOs would be interested in.”

FRANCK DÜVELL, CENTRE ON MIGRATION, POLICY AND SOCIETY (COMPAS)

Mr. Malabre highlighted the large amount of money spent on deportation and the fact that funds were allocated to the Moroccan government to prevent people from leaving the country and entering France. He said that although the camp in Sangatte,

near Calais, has disappeared, people have remained. According to him, one of the reasons why asylum seekers choose to enter the UK instead of France is due to the lack of information. Besides, when they are caught in Europe, they automatically are fingerprinted which makes it difficult to obtain asylum in Europe. Mr. Malabre noted that people who arrive in Calais for the first time have what is called “burned fingers”. He went on saying that another reason which makes Britain one of the preferred destinations in Europe for migrants is the fact that if compared to other European languages, English is a language that is commonly spoken, especially in former British colonies by asylum seekers from Africa and the Middle East such as Afghanistan, adding that the ability to speak the local language is crucial to find jobs.

Ms. Vogel said that the people who designed control regimes are often perceived as “careless,” but many are seriously concerned that once the borders are opened up, it would unleash a torrent of immigrants and the social system would be unable to cope. Therefore, they are against any suggestions to open up the borders, suspecting that even minor openings could lead to multiplying inflows. She invited participants to take the worries and concerns of these actors into consideration and influence them to search for ways to make the control regime as open as possible.



Ms. Bralo wrapped up the morning session by giving the floor to two journalists from Finland currently working on a book about undocumented people in Europe. The journalists explained that book aims to raise awareness on the issue of irregular migration, as there is a lack of public discourse about undocumented migrants in Finland. Anyone in contact with undocumented migrants willing to share their stories and be photographed for the book was invited to contact them directly.

Workshop Sessions

Workshop I:

How Do Labour Markets “Create” Irregular Migration? The Impacts of Policies and Regulations

Dita Vogel of **Hamburg Institute of International Economics (HWWI)** served as moderator of this workshop session. The meeting began with presentations from **Sonia McKay** of Working Lives Research Institute, London Metropolitan University (UK) and **Vesela Kovacheva** of Hamburg Institute of International Economics (HWWI) (Germany).

Following the presentations, participants were invited to focus on these main issues:

- Discussion on possible similarities and differences amongst Germany, the United Kingdom and other Northern European countries concerning labour market regulations with an impact on irregular migration
- Main challenges and opportunities regarding labour market policies: identification of common problems and specific needs in terms of labour market regulations
- Recommendations as regards labour market regulation and irregular migration
- Identification of well-designed regulations and good practices regarding labour market policies



Contributions

Sonia McKay of **Working Lives Research Institute** provided an overview of the clash of public policies in the UK system and noted how much status impinges on rights. McKay presented two legal cases submitted to the European Court in order to assess which rights irregular migrants are entitled to. She stressed that the right of non-discrimination and the right to be paid the national minimum wage are the two most important rights undocumented migrants should have and benefit from.

The first case, “*Vakante versus Addey and Stanhope School*”, concerned a Croatian national citizen who in 1992 applied for asylum but who never heard if the application had been accepted. In 1998 he joined a graduate teacher training scheme and subsequently obtained paid employment at the school as a trainee mathematics teacher. Mr Vakante was dismissed and presented a complaint of race discrimination and victimization to the employment tribunal. His employer counter-claimed illegality. In order to emphasize the length of the procedure, it was also mentioned that by 2004 when the tribunal was hearing the employment case, his asylum case still had still not been determined upon.

Another example was the *Hall* case which concerned issues of illegality and enforcement. The ruling stated that while the contract could not have been entered without both parties agreeing that it should operate illegally (without payment of tax), responsibility for illegality entirely depended on the worker. Moreover, since the court considered the “illegal” conduct as criminal and the complaint of discriminatory treatment too bound with the illegality of the contract, the tribunal did not condone discrimination.

In the second case which McKay presented, “*Blue Chip versus Helbawi*”, Mr Helbawi, a foreign student in the UK, was permitted to work under a student working visa, but in fact worked in excess of his permitted working time. Mr Helbawi brought a claim that he had been paid less than the national minimum

wage, and his employer sought to argue that by working in excess of his permitted working time, the employment contract was illegal and as a result there was no liability. The Employment Appeal Tribunal held that notwithstanding the flagrant and deliberate breach by Mr Helbawi of his permitted working time, he could bring a claim for those hours that he was permitted to work outside term time (since there was no limit on these) but that he had no right to claim for any work done in term time, since the effect of working more hours than he was permitted made the whole of the term time contract illegal.



Ms. McKay invited the audience to consider what would have happened if the student had refused to work the additional hours. In truth he would not have been given the work. The ruling highlighted that working beyond the permitted hours was not an oversight but deliberate. The claim for the national minimum wage could not have been made without reliance on a contract. The tribunal noted that the contract potentially could be severed but only to give protection to non-term time work. Helbawi had knowingly exceeded his hours and there was no right to enforce any payment at all and not just the national minimum wage.

Ms. McKay continued questioning whether or not public policy on the national minimum wage should override public policy to prevent illegal working and whether it should be left to the courts to make the choice. She drew attention to the consequences and implications deriving from contradictory public policies, one based upon fundamental rights and another on migration.

Vesela Kovacheva of the Hamburg Institute of International Economics provided an overview of another case that was covered by the media in Germany: the case of Ana S. in Hamburg. Ana S. entered the country legally in 2004 with a regular residence permit as an au pair. After her permit expired, Ana continued working as an irregular domestic worker. For the next two years she was underpaid and worked under exploitative conditions. She introduced a claim against her employer in 2007. The judge informed the foreigners' authorities of Ana's irregular residence which put her at risk of deportation. No toleration was possible as the German law stipulates it only to irregular migrants if they are victims of crime and appear as a witness in a judicial proceeding. Nonetheless, Ana received support from a humanitarian organization as well as a trade union to enable her to assert her labour rights in a mediation process. She was in fact informed about the possibility to file a claim against the employer due to underpayment. A lawyer from the trade union represented her in the labour court, which protected her from being disclosed and deported by the police. "I thought that without papers I would not have any chance. As they told me that I can assert my rights without papers, it was something completely new for me. I always thought that without papers, it does not work", Ana S. was quoted as saying. A settlement was found in a mediation process in 2008 and Ana received monetary compensation by the employer for the time she was underpaid. However, she was not granted legal residence status but obliged to leave Germany and still liable to expulsion. The case of Ana S. shows that a claim for labour rights in Germany implies a high risk for undocumented migrants and support by various organisations is crucial for success.

Ms. Kovacheva continued by stating that the fact that labour markets "create" irregular work that is invisible to the national authorities was reported in 2006 by the German newspaper the Spiegel, which referred to the demand for domestic workers in Germany and stated that "In some states there are places in day cares for less than 3% of all babies". Moreover, irregular work is often hidden both from

society and national authorities; there are in fact hardly any labour inspections in private households.

Ms. Kovacheva concluded her presentation by remarking that information and legal support provided by NGOs are crucial in order to make the invisible life of undocumented migrants more visible, and that granting a temporary residence permit during a judicial proceeding in labour disputes should be taken into consideration by the authorities. She also pointed out that two advice centres based both in Hamburg and Berlin and part of the main German trade union Ver.di have been opened since then, which shows that a rethinking process towards the perception of irregular migrants' rights on the part of trade unions has started.

“The case of Ana S. is noteworthy, because as an underpaid and exploited undocumented domestic worker, she received support from a humanitarian organization as well as a trade union to enable her to assert her labour rights in a mediation process. A lawyer from the trade union represented her in the labour court, which protected her from being disclosed and deported by the police. ‘I thought that without papers I would not have any chance. As they told me that I can assert my rights without papers, it was something completely new for me. I always thought that without papers, it does not work,’ Ana S. was quoted as saying.”

VESELA KOVACHEVA, HAMBURG INSTITUTE OF INTERNATIONAL ECONOMICS

Discussion

One participant asked whether or not the discourse was also related to trafficking and if any compensation was provided by the law. Another participant suggested outlining which kind of rights Ana S. was entitled to since in the case they remain blurred.

A lawyer stressed the similarities with the American system and underlined how the labour market and domestic work are tightly bound. Another participant commented on the situation of trafficked workers, drawing a link with the victims of trafficking while admitting the difficulty of identifying such linkage. She cited some examples of the current situation taking place in Belgium, bringing to the attention of the public that even employers are scared and ask for alternatives. A representative from an Italian NGO compared irregular migration to a new way of slavery since according to him “the Italian government uses migrants because they are a cheap work force supply on which the economy relies.”

Ms. McKay underlined that in both of the cases she presented, the illegality of the contracts was shown as the major point in the ruling. She remarked how the public agenda in the UK has historically been hostile to migrants and that due to the recession, the courts may at the moment be even more willing to protect employers. It was also underlined that the role of the states is crucial in order to protect undocumented migrants since states determine immigrants' rights and thus could influence UK laws. A participant argued that the lack of consideration for irregular migrants is what makes them unknown whereas an academic remarked that further awareness should be raised about the violations of immigration legislation.

“The public agenda in the UK has historically been hostile to migrants and due to the recession, the courts may at the moment be even more willing to protect employers. Yet the role of the states is crucial in order to protect undocumented migrants since states determine immigrants' rights and thus could influence UK laws.”

SONIA MCKAY,
WORKING LIVES RESEARCH INSTITUTE

It was further noted that judges have pronounced proactive decisions and that the law is not correctly applied. A number of participants described the existence of discrepancies between labour law and labour migration, and policies on fundamental rights and on migration.

Findings

1. Clash between labour law and immigration law: the law cases presented from the UK and Germany contributed to understanding what happens when different governmental policies clash since in both cases they failed in guaranteeing rights.

Challenges/Opportunities

2. Raise a firewall between labour rights and migration control so that labour law enforcement can have the priority.
3. Labour rights should come first as a result of the first point outlined above.
4. Establish a human rights based approach in the labour market.

Recommendations

1. Influence public opinion in order to support irregular workers, particularly trade unions since their role is crucial in order to shed light on undocumented migrants' situations.
2. More research on labour rights violations and their impact on the labour market should be done to raise awareness on the topic as well as monitoring legislation.
3. Monitor the EU Employers' Sanctions directive to properly follow up with its implementation and consequences.
4. More collaboration amongst different actors working in the field and with migrants' countries of origin is key to make linkages amid a wide range of stakeholders and empower the conditions of irregular workers.

Workshop II:

Durable Solutions, Regularisation? Sharing Expertise and Good Practices Regarding Regularisation within the European Union

Don Flynn, Director of the **Migrants' Rights Network**, chaired the discussion. The session began with two short presentations on the subject of regularisation: the first from Albert Kraler of the International Centre for Migration Policy Development (ICMPD) in Austria, followed by Laura Zorrilla from the UK-based Strangers into Citizens campaign.

The aims of this workshop session were as follows:

- Discussion on possible similarities and differences amongst Northern European countries on implementing regularisation as a durable solution
- Main challenges and opportunities regarding regularisation in Europe:
 - Identification of common problems and specific needs in terms of using regularisation as a durable solution
 - Identification of good practices regarding regularisation
- Recommendations when dealing with regularisation



Contributions



Albert Kraler of the **International Centre for Migration Policy Development (ICMPD)**

made a presentation which drew on the findings of the comprehensive Regine study on regularisation within the European

Union (EU) (http://ec.europa.eu/justice_home/doc_centre/immigration/studies/docs/regine_report_january_2009_en.pdf).

He gave a broad overview of the nature and impacts of regularisation programmes across European Union (EU) member states, reminding the audience that 22 out of the 27 EU member states have some form of regularisation mechanisms in place and that 5.5 to 6 million migrants were regularised in the last 14 years or so in the EU. He drew on European examples to challenge the myth of the “pull factor,” i.e. the claim that regularisation programmes attract significantly higher numbers of irregular migrants to that state, arguing instead that it is governmental immigration policies which bring about irregularity.

In addition to the importance of developing long-term, strategic regularisation strategies, Kraler argued that national immigration frameworks need increased flexibility to address the complex challenges of modern migration.

Laura Zorilla presented a civil society perspective from the **Strangers into Citizens campaign**, run by the London Citizens organisation. The SiC campaign calls for an “earned amnesty” for undocumented migrants who have been irregularly resident in the UK for four years or more, and have undergone a further 2-year “probationary” period.

Ms. Zorilla described how the SiC campaign developed around the principles of community organising, as a small-scale initiative which organically gained momentum. The campaign has been successful in creating political space for the Government to act on irregular migration without being seen as “soft on immigration” – as such its policies have been endorsed by the three key candidates for London Mayor in 2008 and supported by the Liberal Democrats. The campaign gathered 15,000 people at a rally in May 2007 in Trafalgar Square, and hopes to gain more support this year.

Discussion

Don Flynn proposed that the discussion first focus on the challenges faced by civil society when trying to share experiences and best practices around a regularisation of undocumented migrants, before identifying key recommendations for taking the work forward. The discussion drew on a wide range of experiences, with participants contributing perspectives from a variety of organisations and national backgrounds.

Participants began the discussion by looking at strategies for pro-regularisation campaign work. One person outlined her perception of the risks of activism on this issue, commenting that campaigns which draw wide attention to this issue could produce a public backlash against undocumented migrants and frighten politicians away from making pro-migrant policies. The chair suggested that it certainly could be a risk for campaigners to be too prescriptive in the policies that they advance. This point was picked up by another participant who argued that campaigners sometimes compromise over their “policy asks” for regularisation mechanisms (e.g. agreeing to use government concepts of the “good migrant”), inadvertently undermining the fundamental human rights principles underpinning campaigns.

“Various European examples challenge the myth of the ‘pull factor,’ i.e. the claim that regularisation programmes attract significantly higher numbers of irregular migrants to that state. It can be argued that governmental immigration policies rather bring about irregularity.”

ALBERT KRALER, INTERNATIONAL CENTRE FOR MIGRATION POLICY DEVELOPMENT (ICMPD)

Backing up human rights arguments with reliable evidence was also considered a challenge by participants, in order to bust commonly held myths about regularisation. One participant felt that more reliable data on the numbers of undocumented migrants were needed. There was concern among another person about the use of the “welfare argument” put forward by the Government – i.e. that a regularisation of significant numbers of people would lead to an unsustainable surge in demand for public services. A participant said that there was a need to communicate the cost/benefit arguments for regularisations more clearly. Although activists may feel that economic arguments sit uneasily within human rights campaigns, he argued that this would be a powerful and persuasive angle to get the general public on board.

Campaigning within existing economic and political climates was considered a major challenge in the UK and across the EU. Overcoming political opposition is an ongoing challenge – a Dutch participant gave an example from the Netherlands of a regularisation programme in 2007/8, whereby 26,000 refused asylum seekers were regularised. Having done so, the Dutch government then refused to consider implementation of further programmes which might be able to address the situation of a wider group of undocumented people, arguing that

the problem was now solved. A participant from a major British trade union outlined the challenges of sustaining a pro-regularisation argument at a time of recession and job losses, and amid the danger of sliding into an era where the right dictates the agenda.

A participant from a local government office urged that any regularisation initiative must be tailored to target the most vulnerable migrants. The dangers of excluding the neediest people by reserving amnesty for those who can meet set requirements (e.g. proving employment, lack of criminal record and so on) were illustrated by another participant from Hamburg who gave the example of the high benchmarks for accessing amnesty in Germany.

The importance of a European-wide campaign was presented by a participant from France, who stressed the inter-connectedness of national policies and, for example, the purported impact of amnesties on neighbouring countries e.g. in the 2005 Spanish amnesty. The overarching challenge of drawing the public into the debate, and making this a public issue, was also debated in response to a question from the chair about how to draw civil society more widely into this discourse.

One participant stressed that it is critical to successfully engage the media, arguing that communicating research and putting forward positive images of undocumented migrants is our responsibility. A number of comments indicated that a regularisation alone would not solve the acute problems faced by undocumented migrants – one contributor commented that any regularisation needs to be accompanied by measures to keep people in the system; a further participant felt that vulnerability in low-paid employment needs to be addressed more effectively in order to challenge the issues in the long-term. This was illustrated by a further commentator who pointed out the existence of forced labour within the EU and concluded that legalisation alone cannot solve

all of the problems faced by vulnerable people. More widely, the critical role of migrant workers in the labour market needs to be supported. The chair urged participants to look at the PICUM's *Ten Ways to Protect Undocumented Migrant Workers* to consider strategic thinking, and how to encourage wide engagement with the issues in a way which fosters integration rather than demands assimilation.

“Regularisation alone would not solve the acute problems faced by undocumented migrants; any regularisation needs to be accompanied by measures to keep people in the system. Vulnerability in low-paid employment needs to be addressed more effectively in order to challenge the issues in the long-term.”

SEVERAL CONFERENCE PARTICIPANTS

Challenges

1. **Anchoring pragmatism in principles** – a challenge for all working towards a sustainable regularisation solution is ensuring that the fundamental human rights principles are not lost in the outcomes.

By being too prescriptive as to what a policy should look like, pro-regularisation campaigners run the risk of being deconstructed and ultimately shot down by those on the other side. Ultimately, the most vulnerable should be able to benefit and as such “earned amnesty” policies carry risks in the medium/long-term.

2. **Challenging the myths** – dominant myths around regularisation are peddled both by those against and for regularisation.

Those campaigning for regularisation need to challenge myths e.g. the “pull factor” myth, but also need to be careful in their own rhetoric which may over-simplify the complex factors playing into the regularisation debate.

3. **Swimming against the tide** – pro-regularisation campaigners now find themselves moving against the trends of immigration policy, the economic climate and public opinion.

However, although it is a difficult task and may seem counter-intuitive at this time, arguing for regularisation still remains a case worth making.

Recommendations

4. **Sensitivity to the tempo of the debate** – it can be expected that this is a long-term battle, and that sustainable solutions will emerge as the debate develops rather than following dogmatic assertions. This will depend upon civil society – the real experts – being drawn more centrally into the debate than they are currently. Campaigners should not lose heart but maintain commitment.
5. **Regularisation – “only one tool in the box”** – although a regularisation of their legal status would be a critical factor in securing the human rights of millions of people currently outside the system, there is a need for states to address the deficiencies in immigration systems which produce irregularity among migrants, as well as tackling wider issues around vulnerability in employment.
6. **Don’t fear the media** – civil society needs to better engage with the media, in order to effectively communicate research and put forward positive images of undocumented migrants.

Workshop III:

Access to Public Services: Barriers and Strategies in Gaining Access to Public Services (e.g. Health Care, Education, Housing) for Undocumented Migrants



Michele LeVoy, Director of **Platform for International Cooperation on Undocumented Migrants** served as the moderator for this workshop and opened the session by stressing the importance of access to public services within PICUM's core work. Like many of the organisations participating in the workshop, PICUM was an initiative of those who faced challenges in providing services to undocumented migrants. Keen to make contacts with other organisations facing the same problems, PICUM grew to encompass a network of almost 3,500 organisations and individuals throughout Europe and beyond. Gathering the experiences of NGOs from across Europe, PICUM had completed numerous studies to highlight undocumented migrants' insufficient access to housing, education, health care and fair working conditions and actively highlighted the role of local actors in ensuring these basic elements to undocumented migrants.

The session began with presentations from Cheikh Traoré of the Greater London Authority (UK) and Rian Ederveen of Stichting Los (Netherlands).

Contributions

Cheikh Traoré, Health Policy Officer with the **Greater London Authority**, made a presentation about the context of irregular migration in the UK and the City of London's strategy to collect data regarding health to furnish an informed discussion on possible solutions. The Greater London Authority (GLA) serves as the regional government for London, led by an elected mayor and assembly members who are responsible for implementing the mayor's policies in the city, and works to develop policies and strategies relating to undocumented migrants.

He described the UK as a rather unique situation for undocumented migrants. Its National Health System (NHS), financed by national taxation and managed by the Department of Health, was established on values of equal access and remains free at the point of entry. However, while the NHS succeeds as an "all encompassing" system, those excluded from public services are left without any alternative or parallel system in which to obtain care. No identity card system is operational in the UK and migrants often have the problem of "too many documents," such as letters from the authorities, but they are denied access to care. There are several categories and much terminology in use: undocumented migrants may be classified as "failed asylum seekers," "people with no recourse to public funds" and other categories.

The London Mayor's office, in partnership with other authorities, has set out to address health inequalities by gathering evidence on the difficulties facing vulnerable groups, such as undocumented migrants, to access health care services. The Greater London Authority (GLA) contains a strategic body called the London Strategic Migration Partnership which can be targeted by lobbyists to promote policy change.

Mr. Traoré highlighted how the debate surrounding "entitlements" arose frequently in the UK and was key to the frequent policy changes trying to restrict immigrants' access to services. This situation

created massive problems for undocumented migrants as well as service providers; those at front line are confused about who is entitled to free services and who must pay.

Undocumented migrants are no longer eligible for free secondary care in the UK. Since April 2004, amendments to the National Health Services (Charges to Overseas visitors) Regulations have limited subsidized secondary care to those able to prove one year's legal residence in the UK. Subsidised access to primary care is currently a grey area; the British government held consultations on the issue but no legislation has yet been passed. The provision of care for undocumented migrants remains discretionary among GPs, with migrants often left to "shop around" until they can find a willing provider.

A key issue traditionally facing policy makers in London has been the lack of data regarding irregular migrants. The London Mayor recently launched a debate on the issue of regularisation by commissioning a report by the London School of Economics which estimated that 725,000 irregular migrants resided in the UK, 270,000-500,000 of whom are in the City of London itself. A follow-up report is expected, set to examine the economic impact of regularisation. Through these initiatives, Mayor Johnson aimed to foster an informed debate regarding amnesty for irregular migrants who had resided in the UK for over five years without a criminal record.

"The London Mayor's office, in partnership with other authorities, has set out to address health inequalities by gathering evidence on the difficulties facing vulnerable groups, such as undocumented migrants, to access health care services. The Greater London Authority (GLA) contains a strategic body called the London Strategic Migration Partnership which can be targeted by lobbyists to promote policy change."

CHEIKH TRAORÉ, GREATER LONDON AUTHORITY

Rian Ederveen of Stichting LOS (Landelijk Ongedocumenteerden Steunpunt) presented the work of this PICUM affiliated NGO which works specifically on the national level in the Netherlands concerning undocumented migrants.

Stichting LOS has gathered significant information on undocumented migrants' access to services in the Netherlands. Their research found that systems for education and health care were well organised, doctors are refunded for the care they provide and undocumented children can attend schools. In practice however, undocumented migrants often had no knowledge of their rights and were afraid to return to health care services in case they were reissued with a bill, while schools faced problems in convincing the government to reimburse fees for undocumented children.

The domains of housing and employment were significantly less accessible. The Netherlands has a sizable social housing sector which encompasses almost all of the rented housing market and is controlled in relation to a tenant's income. As undocumented migrants are ineligible for social housing, they may only access the private housing market exposing them to poor and unsafe conditions at exploitative prices. The high rates of subletting among students and undocumented migrants has emerged as a major issue for the government which is conducting spot checks to clean the registers, gain information and expel undocumented migrants in the process. Stichting LOS has begun to work with an umbrella organisation on housing coordination to uncover legal avenues for undocumented migrants to access social housing.

Undocumented migrants face similar difficulties to access the employment market, leaving many to work with forged documents or in hidden sectors such as domestic work. While processes are underway to ensure that salaries are paid and work based accidents covered by employer, social security remains inaccessible to undocumented migrants; in recent years a "creative" lawyer has attempted to use international human rights law

to change Dutch law regarding social security for children, for elderly and sick people. Barriers are breaking but it takes a long time, she surmised.



Discussion

Many participants began by highlighting the difficulties undocumented migrants experienced when trying to access services and the trend among European governments to limit this access further.

The health system in particular was viewed as a government tool to punish irregular migrants and respond to media reports of an “immigration crisis.” Public service workers in the UK were increasingly required to become immigration officers, a situation one union representative described as “unbelievable” as “they are not trained to become immigration officers, they do not understand when looking at these papers whether or not the migrant should have access.” The funding limitations exerted on social services had compelled frontline providers to assist as few people as possible. One participant referred to a case in which an underfunded local social services department had been assigned to care for an undocumented family in need of housing in which one parent had mental health difficulties, effectively shook off the responsibility by reporting the family to the Home

Office. “I have heard of these cases and I think it is very disturbing; the whole of public welfare system is becoming enmeshed with control,” he was quoted as saying.

Many participants considered that undocumented migrants were the first to suffer from service cutbacks. In the UK, the government had stopped funding English classes for newly arrived migrants, a move adamantly opposed by civil society groups, which consequently increased the need for interpreters in the health care sector. The lack of mental health services was also raised as an issue; a fieldworker from the geographically large region of East Anglia noted that no services in Eastern European languages were available in this region; thus “if people do not have problems when arriving, they will have one after awhile.”

NGOs play a large role in enabling migrants to access the mainstream system. Reference was made to Médecins du Monde’s Project: London which had a team dedicated to securing GP access for excluded groups, a task which took an average of 8 hours per patient. Many visitors to Project: London’s centre have never seen a doctor and some are victims of torture who have gone without treatment for injuries and chronic pain. Examples given by UK participants illustrated how the huge differences existing between county councils and borough councils have left NGOs with the job of negotiating with officials.

“Public service workers in the UK are increasingly required to become immigration officers. This situation is unbelievable, as these workers are not trained to become immigration officers; they do not understand when looking at these papers whether or not the migrant should have access.”

BRITISH UNION REPRESENTATIVE

In Spain, legislation allows undocumented migrants to access care if they obtain a registration card, yet numerous barriers exist in practice and it is becoming increasingly difficult to obtain. Working at the grassroots level, one Spanish participant has witnessed numerous displays of discretionary power among local authorities who block the health card. NGOs in Spain are often left to work as cultural mediators, trying to level out the rights of undocumented migrants.

Numerous examples were provided by participants as to the disproportionate effects these limitations had upon particularly vulnerable groups such as women and children. Undocumented children over the age of 16 have no right to education in the UK, often live rough to avoid contact with the authorities and their migration status was the primary concern when they attempted to access the health system.

One participant had first hand experience when her child became ill: “I can remember when I arrived in this country and my child was diagnosed with leukaemia; the first thing I was asked was not about my child but about whether or not I have the right to go to the hospital”. A doctor participating in the workshop had come across cases in which children were not taken to see a GP although they were entitled, as their parents were terrified of being discovered and deported. The situation has worsened by the fact that as the NHS had traditionally been so accessible to everyone, literally no other institutions existed to send people. “Not only is the approach failing in its aim, but it is causing a huge amount of suffering,” one participant stated.

Another NGO experienced huge difficulties when liaising with social services regarding a group of Algerian minors who were living rough in a park. “The first thing social services asked me was specific details about which part of the park they were living in,” the NGO representative stated. When he was not forthcoming with details, social services “asked me to tell the youth that if they

went to their offices, they could receive help in returning home,” he was quoted as saying.

Participants also identified the gender aspect arising from insufficient access to services. In the UK, new legislation allowing certain treatments for undocumented migrants left prenatal and postnatal care ominously absent from the text, leaving one academic to suspect that “it is about stopping reproduction of undocumented migrants.” A Swedish nurse in attendance agreed there was a clear gender aspect to the issue of health care access, since inadequate access leaves women and children systematically more vulnerable. Undocumented women in Sweden are routinely refused abortion and the lack of legislation in this area left it to the discretion of the medical practitioner, local hospital or region. In the UK, the diverse interpretation of existing guidelines has seen some women issued with bills for £3,000 having given birth in hospitals which was described as “terrifying for them.”

Lack of access to public services also has a disparate affect upon women experiencing violence; many victims of domestic violence in the UK were made additionally vulnerable by a lack of entitlement to public funds or state-funded refuges. This not only included irregular migrants and visa overstayers, but also women granted leave to remain but denied “recourse to public funds.” One participant working with Latin American women in London noted how this group “has nowhere to go when fleeing violence; most choose to avoid the police and social services often try to separate the child from their mother in order to provide protection.” Ms. LeVoy announced that PICUM had begun preparations for a new gender strategy which would focus on key issues facing undocumented women in order to fill the gap in lack of information and exchange good practices.

Discussion then moved to examine undocumented migrants’ access to social services in the Nordic welfare states. One Swedish academic noted the

importance of differentiating between availability and accessibility, as a service may be available in theory but not accessible in practice. In a study, their institute had found that 80% of undocumented migrants were afraid to seek health. “There is a very mixed view in our country and we have to work with the challenges.”

Sweden fared amongst the most restrictive models regarding the provision of public services to undocumented migrants. Their educational system does not provide education for undocumented children, the majority of health care is provided only on a payment basis and the housing situation is showing an increased pattern of exploitation and organised crime with landlords renting out overcrowded accommodation and charging migrants an extra £50 to use the address. Children of failed asylum seekers in Sweden were granted the same level of access as nationals but health care providers were rarely aware and usually charged them the equivalent of £200 for an appointment.

In Denmark, undocumented migrants have no access to housing, labour rights, education and could only access via emergency services or when in detention. Participants agreed that the current political situations in these Nordic countries leave little prospect for positive change, especially regarding health services which officials deemed a “pull factor” for irregular migrants. “In these welfare states, the only solution is to wait for the political environment to change, to stop people’s health from deteriorating and civil society is left to

“I can remember when I arrived in this country and my child was diagnosed with leukaemia; the first thing I was asked was not about my child but about whether or not I have the right to go to the hospital”.

UK CONFERENCE PARTICIPANT

find ways out whereby private organisations work with health professionals to deal with the human side of this issue,” one participant stated.

Challenges

1. Access to services linked to migration control

Access to public services was considered to have become part of European governments’ wider punitive approach aimed at discouraging people from the country and encouraging others to leave. This situation has led to increased pressure upon public service workers, medical professionals and an over complication of the systems in question.

Doctors and nurses have been laden with migration control duties and lack knowledge as to exactly what this role curtailed. The UK’s secondary care system has become so complex that it limits access for a number of vulnerable groups; it was a system fundamentally developed to exclude and only addressed access in order to force people outside so in effect, it also deterred those with entitlements to care. Many NGO representatives stated migrants were regularly denied access to services they were entitled to due to inadequate knowledge among health workers regarding the complexities of the migration system.

2. Negative effects on society at large

Social structures have become effectively weakened by the enforced linkages between migration status and access to public services. Current restrictions on access to secondary care services were considered to have fuelled racism and xenophobia by encouraging frontline professionals to make judgements based on the race and ethnicity of those in need. In the labour market, legally residing migrant workers were forced to remain in exploitative and dangerous conditions or risk losing their jobs and thereby become undocumented.

Strategies

1. Using legal frameworks to effectuate change for undocumented migrants.

Advocates were advised to familiarise themselves with the legal framework so they could use it to their advantage. Human rights entitlements are not based on immigration status and must be applied without discrimination. While legislative challenges often focused upon the “right to be here,” scope also existed to expand on legal definitions. Advocacy campaigns needed to remind authorities that international laws oblige them to show “the duty of care” to those on its territory.

Promoting awareness about the need to protect undocumented migrants’ fundamental rights was identified as a key element in shifting public perception; media fostered public opinion tended to perceive undocumented migrants as criminals while grassroots organisations saw them as people. It was important to highlight the state’s legal obligation to irregular migrants and humanise them in the media. One participant alluded to a case involving migrant workers in the UK who became undocumented having left an exploitative employer; a trade union successfully supported their case before the Parliament on the argumentation that their immigration status was only breached as the rights as workers had been violated by employers.

2. Increase networking and cooperation with professional bodies and other actors

Cooperation with professional bodies could also increase awareness among public officials regarding undocumented migrants’ entitlement to services. In the words of one participant, “the automatic assumption that they do not have rights is just lazy thinking on the part of local authorities and there is a huge amount of work that could be done in raising the legal knowledge of those working in public services.”

A representative from a public sector trade union stated that while many of its members are instructed by their employers to refuse services to those without papers, the union has taken an active role in advising them to *always* provide services to undocumented migrants and has guaranteed them full support if they are reprimanded or lose their job for doing so. The representative suggested that a similar stance from other trade unions could go a long way towards alleviating the pressure on public service workers.

A joint advocacy strategy taking place in Sweden has successfully brought medical associations, churches and civil society organisations together to demand access to health care for undocumented migrants. One advocate commented “we need to promote a human rights culture which recognises innate rights and does not push a political agenda.” Such cooperation is not always easy to obtain; Swedish trade unions have traditionally shown huge resistance to solidarity with undocumented workers and taken an active role in immigration inspections in the workplace, but they were successfully pressured by Swedish civil society groups who became aware that the national trade union body had signed an agreement in Brussels regarding universal health.

Cooperation with larger, supra-state bodies was offered as a possible strategy; one participant pointed to resolutions emerging from the previous two WHO assemblies which raised the importance of health for migrants. Paradoxically, while primary care was being pushed by Europe’s governments abroad, it was simultaneously denied within their own territories.

3. Targeting national government

Workshop participants overwhelmingly agreed that it was in the best interests of their country to allow access to services and felt frustration at the authorities’ short-sightedness on the issue.

National authorities charged with implementing EU policies were identified as an important advocacy target. One participant summarised “everything at EU level is about monitoring migrants who are seen as greatest security risks...we should not be speaking *to* our governments but speaking *from* our communities about the effects these policies are having.” The civil society campaign to stop the detention of children offered one example in which the national authorities could be targeted: “we have the right to disobey unjust laws, human rights are not defined by your citizenship status, it is defined by your humanity and this is codified under international law.”

In Sweden, NGOs had succeeded in establishing regular contacts with politicians and shown a high degree of flexibility in these debates but the whole issue of health care has become enmeshed with migration control discourse. While the current political climate is feeding competition amongst parties to become more right wing in their discourse, civil society could respond by maintaining front line dialogue, as one participant explained: “we bring up issue from grassroots level, telling stories of women and children affected by the issue,” he was quoted as saying.

Recommendations

1. Authorities should develop policies which guarantee equal access for undocumented migrants to public services.
2. NGOs should have a complementary role and not be burdened with ironing out deficiencies in the mainstream system or being pressurised by authorities to jeopardize their position of trust.

Workshop IV:

Role of the Media in Social Policies and Political Discourse. Media and Political Discourse on Irregular Migration and Policy Implications and Challenges Ahead.

The chair, **Bastian Vollmer, Centre on Migration, Policy and Society (COMPAS)**, began the workshop by introducing the other two members of the panel, Aine O’Brien, Forum on Migration and Communications (FOMACS), and Richard Stanton, Migration Work CIC (Rapporteur). He then outlined the main aims of the workshop as the following:

Identification of common problems and specific needs with regard to the role of the media in social policies and political discourse on irregular migration.

Identification of good practices in relation to the role of the media in social policies and political discourse on irregular migration.

Contributions

Mr. Vollmer Centre of the **Migration, Policy and Society (COMPAS)** presented his paper entitled *Political Discourse and Media Nexus: Examples for Northern European Countries*. He focused on four EU countries: Austria, Netherlands, the UK and Germany.



With regard to Austria, Mr. Vollmer noted that political discourse about irregular migration focuses predominantly on “irregular workers,” but that there is an “employer – employee paradox.” Official policy, he explained, targets the “irregular employer,” not the “irregular employee”; yet the media depicts the migrant employees as the cause of this “unlawful” situation. Media in Austria tend also to “sensationalise” the numbers of irregular workers.

In the Netherlands, media coverage on irregular migration has diminished drastically: from 2002 to 2007 there was an approximate 75% decrease in the number of articles on irregular migration. While in Austria media discourse focuses on irregular workers, Vollmer pointed out that in the Netherlands irregular migration is often linked with (“broader”) issues of crime, terrorism and security.

Moving on to the UK, Mr. Vollmer said the media made “gross exaggerations of the scope of irregular migration.” He added that this situation calls for the government to respond and to demonstrate “effective governance.” He illustrated UK media coverage by quoting texts from two newspapers, the Daily Mail and the Sun. Both examples exaggerate the numbers of irregular migrants living in the UK, while employing a militaristic discourse with words like “invasion” and “army of illegals.”

Mr. Vollmer stressed that although Germany “has one of the highest rates of irregular migrant populations in the EU,” there is little media attention to this issue. Unlike the other countries, he continued, media and public discourse in Germany is highly focused on the issue of integration of the current immigration population.

He concluded with the following overview of media coverage in these countries:

- The complexity of the phenomenon of irregular migration is downplayed; the focus is more on stigmatising migrants (e.g. presenting them as criminals) and scapegoating them as “the deviant.”
- Numbers of irregular migrants are often exaggerated, fuelling the need to demonstrate effective governance.
- Media seem to fuel the shift in the political discourses moving the policy issues of irregular migration into the security paradigm, e.g. an increasing perception of threat and fuelling an ongoing “continuum of insecurity.”



Introducing herself as researcher/academic and filmmaker, **Aine O’Brien** of the **Forum on Migration and Communications (FOMACS)** began her talk by arguing that when faced with complicated problems in the field of representing migration one requires mixed methodologies, adding further that “grassroots strategies are effective when they are collaborative.” The following questions were then posed to the audience:

1. How do we talk about mixed strategies for dealing with the media?
2. How do we bridge the gap between the everyday experience of undocumented migrants and the simultaneous communication of this experience through media discourse?
3. What collaborative, cross-sector strategies do we develop?
4. How do we challenge popular stereotypes (e.g. the “criminalisation of the illegal”; “welfare fraudster/scrounger”; “foreigners taking our jobs/wage undercutters,” etc) without inadvertently falling into counter stereotypes?

5. How do we avoid producing a counter stereotype, resulting in a well-meaning but equally problematic discourse of “otherness” (e.g. “victimized”; “deserving/hard-working/pays taxes”; “has endured a grueling, perilous journey en route”; “isolated from social network and family”; “vulnerable and without agency”, etc)
6. How do we render irregular migrants visible when the very act of exposing their identities is a risky endeavor?

She then showed the film called “New Beginnings,” a short (6 minutes) animated production. The film tells the story of primary school kids who take up the topic of irregular migration, responding to the situation of a classmate from a migrant family whose dad has become undocumented. Based on NGO case studies, she noted that the film is an example of a “collaborative project,” bringing together media professionals and people in non-media sectors and organizations, such as teachers, school children and teacher unions. She said that more of these cross-sector projects are needed to challenge the current (negative) media discourse on irregular migration.

“When faced with complicated problems in the field of representing migration one requires mixed methodologies. Grassroots strategies are effective when they are collaborative.”

AINE O'BRIEN,
FORUM ON
MIGRATION AND
COMMUNICATIONS
(FOMACS)

Discussion

Following the film, one participant pointed to the strengths and advantages of working with children, especially when dealing with communities where xenophobic attitudes are strongly established and people resist learning about the reality of migration.

Press ownership was raised: whether a media source depicts negative or positive images of migrants will depend on its agenda. In reply, Mr. Vollmer noted that policy making can be influenced by media discourse. Ms. O'Brien stressed the importance of collective ownership of media sources. The following two strategies were vital in responding to the media agenda:

- making connections and working *with* journalists and media producers
- producing local stories for local people – working collaboratively to “co-create the story.”

Another participant raised concerns on “how to bring migrants’ stories to the mainstream media.” Ms. O'Brien replied by recognizing the problem. One factor tending to exclude migrant experience from mainstream media coverage were the challenges and obstacles faced by migrant professionals when they try to navigate the internal culture of media production, e.g. gaining access to an editing role and position.

Further points raised by other participants were the following:

- Failure to convey migrants’ stories may result from “laziness amongst consumers, not just journalists: ‘people’ want to read simple stories, not complex ones.”
- In the Netherlands, a Dutch participant reported that media campaigning had helped to achieve regularization for some migrants.
- “One can use the media successfully,” it was said, e.g. by persuading influential people such as politicians to get involved in “creating” stories.
- Journalists/activists must aim to show not only individual migrant experience but also the “big picture.”

The debate continued with a participant wondering “whether or not is it enough just to raise awareness of migration issues and what more can be done.” Ms. O'Brien responded by agreeing with the participant, adding that it is also about “public

action, in the form of public solidarity,” citing the example of an activist street photography exhibition of “sans-papiers” in Paris in 2008. Throughout the discussion involving a wide range of questions and participants, other points raised were the following:

- local media and national media often play different roles, with local newspapers (for instance) often much more positive about migrant communities in their area;
- the need for more contacts with media departments in local government;
- weakness of political culture in the UK, making it harder to hold serious debate on migration.

Richard Stanton, of **Migration Work CIC** and workshop rapporteur, gave a brief overview of the discussion. Activists in the field of migrants’ rights and integration, he noted, often take a one-dimensional view of the media in which their role is always “bad” – conveying a negative image of migrants – and our response is just to try to get positive images “into the media” instead. Campaigning against misrepresentation and for more positive coverage of migrants, their communities, and the migration process would remain vital. But in dialogue with Ms. Aine O’Brien, the workshop had shown that this issue was very complex; that civil society had to respond on several dimensions; and that if it did so, the media offered as many opportunities as threats.

“Media in social and political discourses on irregular migration is a very complex issue, and civil society has to respond on several dimensions. If it does so, though, the media will offer as many opportunities as threats.”

RICHARD STANTON, MIGRATION WORK CIC

- While recognizing the complexity of the media role, the discussion pointed the audience towards action at the following levels:
- Work within *mainstream media structures* so that migrant experience is more directly reflected in media production, e.g. supporting migrants in achieving more senior positions, or encouraging exchange and internship programmes.
- Systematic and strategic use of *new media technologies* to create alternative channels for communicating news about migrants and images of migration.
- “*Creating the story*”: work with non-media partners including not only communities and NGO advocacy groups but also public service providers where possible – especially at local level – to organise activities and events which convey important messages about migrant experience, and will become “news” for the media.
- Placing work on media and media images in the wider context of *local or regional strategies for migrants’ integration*. Again this may offer ways of engaging local and regional authorities, which will usually see how important it is for social cohesion and community relations to get better public understanding of migration.

Findings

1. **More emphasis should be directed to the diversity of roles of the media** – positive/negative, varying between national/local and not “them versus us.”
2. **Achieving positive role for media needs work from many angles** – in media, alternative technologies, action “on the ground.”

Challenges

1. **Work within media personnel (infrastructures) in order to influence journalists’ practice, programming from inside** – (when and if appropriate conveying voices of migrants without mediation).
2. **Create the migration “story/stories”**: create partnerships, “host” and migrant communities, for joint action, which then becomes news.

Recommendations

1. **Identify official structures (e.g. local/regional authorities) with “integration” agenda; propose partnerships to work on joint local action.**
2. **Embrace new technologies** – films, blogs, social media sites, and different media genres, etc.

Plenary Session

The afternoon plenary session kicked off with the rapporteurs presenting summaries of the discussions from the four break-out workshops.

Discussion

The presentations generated much interest among the participants and a series of questions were fired and addressed to the rapporteurs. A couple of participants were particularly interested in the clash between labour and immigration controls. One said that despite the presence of laws which protect the rights of workers, immigration law effectively “cancels out” all other laws, making it hard for undocumented migrants to access any rights or services. The participant gave the example of an undocumented migrant who had to pay taxes for many years while working in the UK. He went to court and won his case. Despite having succeeded, the immigration authorities attempted to deport him.



Another participant shed light on those who have been regularised but for various reasons, lost their papers. As their papers/cards were tied to their “employability,” they were therefore unable to find work. It appeared that there are conditions attached to different statuses.



Another participant was incensed that the provision of essential social services is tightly linked to immigration status. She argued that the human rights of children especially should not be placed second fiddle in the immigration agenda.

A question was raised as to whether the UN Convention on the Rights of the Child could be used to advocate on behalf of migrant children, trafficked children and other vulnerable children. At a recent PICUM conference that was held at the beginning of 2009 on undocumented children, a speaker from the UN encouraged participants to submit shadow reports to France and Italy, which would be up for review under the Committee of the Rights of the Child in 2009. Following the event, a French NGO submitted a lengthy shadow report on violations of undocumented children to the UN. Another participant highlighted that a Dutch NGO sent a compliant to the Council of Europe with reference to the Social Charter about the lack of shelter for undocumented children in the Netherlands.

“Despite the presence of laws which protect the rights of workers, immigration law effectively ‘cancels out’ all other laws, making it hard for undocumented migrants to access any rights or services.”

CONFERENCE PARTICIPANT

Closing Remarks

After a full day of intense discussion and sharing experiences on the issue of undocumented migrants in Europe, **Don Flynn** from the **Migrants Rights Network (MRN)** and **Zrinka Bralo** from the **Migrant and Refugee Communities Forum (MRCF)** closed the CLANDESTINO London workshop.



Mr. Flynn admitted that the London workshop was an experiment, as the organisers were not certain how activists and civil society organisations would have received a project such as CLANDESTINO. Based on his years of experience working on irregular migration, Flynn said there is a need for facts, perspectives and ability to argue for the rights of undocumented migrants to be recognized. “How do we argue that undocumented migrants are not criminals?” he was quoted as saying. International migration is a complex process and migrants, regardless of their status, are humans. Yet many of them often find themselves living on the margins of the society.

Regularisation is another key issue that needs to be explored in depth. Mr. Flynn argued that the evidence for regularisation is “not there”. He encouraged individuals and organisations to find opportunities to work with researchers in order to develop a *progressive narrative for migration*. Flynn said migration is part of the modern world we live in and that it is crucial to shift from seeing it as a solution instead of a problem. While considering

the London workshop a mere beginning, he noted that the CLANDESTINO Project has shed light on this sensitive issue.

“Where will we go next?” Mr. Flynn reminded the audience that there is wisdom and realism in this instance. “It is not a campaign we expect to win tomorrow but it is about entrenching ourselves in a process that will develop over the future ahead, so to dispel pessimism and be optimistic. We should look at the opportunities, not the obstacles,” he was quoted as saying.

He added that people, including employers, trade unions and local authorities, would be drawn into the job of policing migrants but they would not like it in the long term. Eventually, they will recognize the ethical side of and the human rights involved in the issues.

“If we can find a way of talking to them,” Flynn said, “we will win those arguments.”

“British Guantanamo” was the new term Ms. Bralo will take away from the conference as the term used by French lawyers to describe attempts to prevent people coming over to the UK from France. She added

that an important point raised was language. All kinds of labels are used today to describe migration experience, without much thinking involved. She argued that it is important to change language to change attitude. According to Ms. Bralo, attending the workshop was extremely inspiring. “Very often, we work in isolation and the issue seems to be overwhelming, but it is important to know that there are other groups in Europe working on the same topic”.

“Individuals and organisations should find opportunities to work with researchers in order to develop a progressive narrative for migration. Migration is part of the modern world we live in and it is crucial to shift from seeing it as a solution instead of a problem.”

DON FLYNN, MIGRANTS RIGHTS NETWORK (MRN)

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